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BEFORE THE AJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD

IA 39 of 2018 in C.P. (I.B) No. 84/7/NCLT/AHM/2017

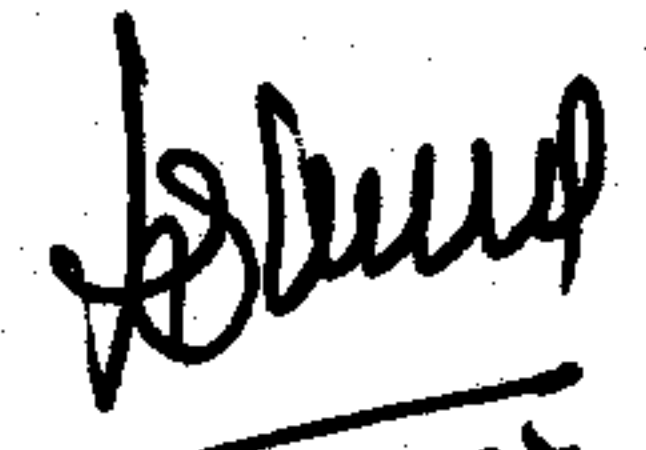
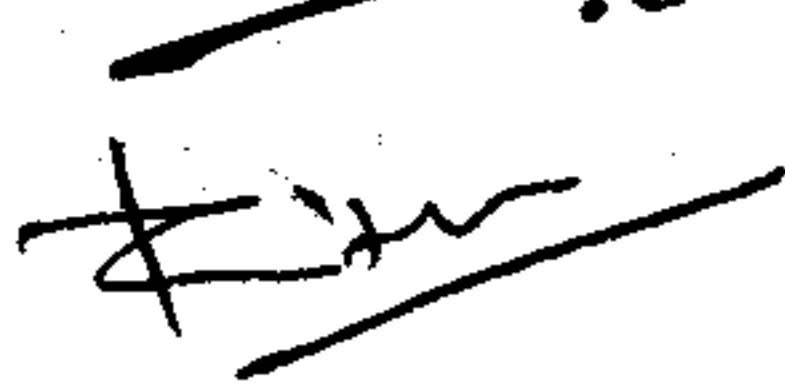

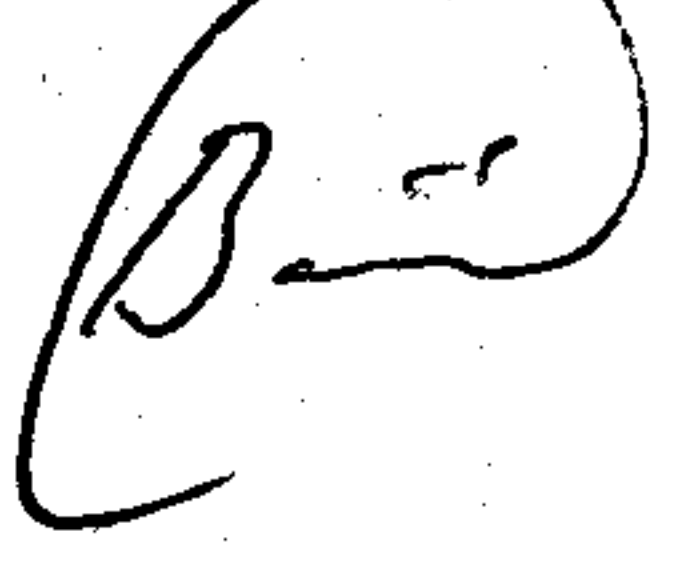
Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 20.03.2018

Name of the Company: Anil Kohli RP.
V/s.
Edelweiss Asset Reconstruction Co. Ltd & Anr.

Section of the Companies Act: Section 30 r/w 31 of the Insolvency and
Bankruptcy Code


S.NO. NAME (CAPITAL LETTERS) DESIGNATION REPRESENTATION SIGNATURE

1.	ASHISH SHAH	PCS	Resol. Applicant	
2.	RITU SHAH FOR THAKKAR AND PAHWA	ADV.	for. RP	
3.	LALIT W PATEL	ADV.	AXIS BANK	
4.	Baiju Bhagat	Adv	Financial Creditor	

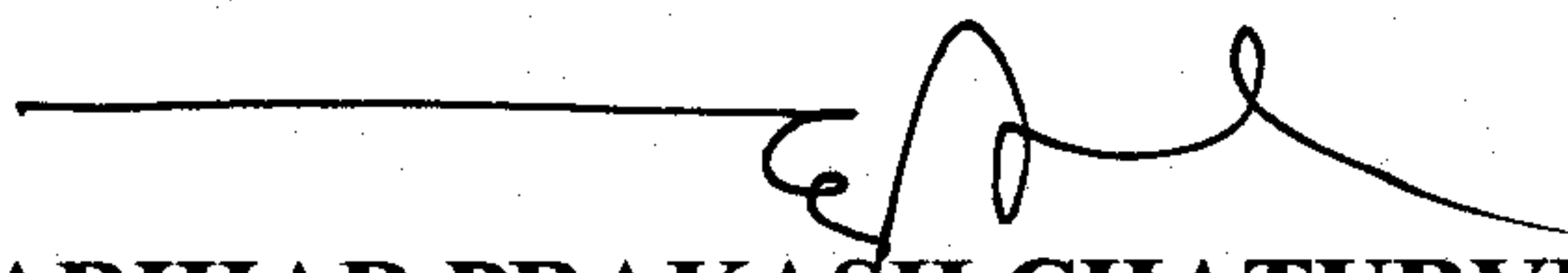
ORDER

Learned Senior Advocate Mr. Navin Pahwa with Learned Advocate Ms. Ritu Shah present for Applicant. Learned PCS Mr. Anish Shah present for Resolution Applicant. Learned Advocate Mr. Lalit Patel present for Axis Bank. Learned Advocate Mr. Baiju Bhagat present for Financial Creditor.

The order is pronounced in open Court. Vide separate sheets.


MANORAMA KUMARI
MEMBER JUDICIAL

Dated this the 20th day of March, 2018.


HARIHAR PRAKASH CHATURVEDI
MEMBER JUDICIAL

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH,
AHMEDABAD**

**I.A. 39 OF 2018
IN
CP(IB)No. 84/NCLT/AHM/2017**

In the matter of the Insolvency and Bankruptcy Code, 2016;

AND

In the matter of Sections 30 r/w 31 of the Insolvency and Bankruptcy Code, 2016;

AND

In the matter of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

AND

In the matter of Kalptaru Alloys (P) Ltd.

Anil Kohli,
Resolution Professional in relation to,
Kalptaru Alloys (P) Ltd.
(Under Corporate Insolvency Resolution Process)
A Company incorporated under the
provisions of Companies Act 1956
Having its Registered Office at
701, Avdhesh, Opposite Gurudwara,
Nr. Thaltej Chowkdi,
Ahmedabad- 380054.

.....Applicant
(Resolution Professional)

Versus

1. Edelweiss Asset Reconstruction Co. Ltd.
Registered office at
'Edelweiss House'
Off CST Road,
Kalina, Santacruz (E)
Mumbai - 400098.
2. Axis Bank
4th Floor, Shivalik Ishan
Nr. C.N. Vidhyalaya
Ambawadi, Ahmedabad- 380 006Respondents

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Appearance:

Learned Senior Advocate Mr. Navin Pahwa with Learned Advocate Ms. Ritu Shah present for Applicant. Learned PCS Mr. Ashish Shah Present for Resolution Applicant. Learned Advocate Mr. Lalit Patel present for Axis Bank. Learned Advocate Mr. Baiju Bhagat present for Financial Creditor.

Order delivered on 20th March, 2018

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)
Hon'ble Ms. Manorama Kumari, Member (J)**

ORDER

(Per: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J))

1. The present I.A. 39 of 2018 in CP (IB) 84 of 2017 is filed by Shri Anil Kohli, Resolution Professional in relation to Kalptaru Alloys Private Limited, the Corporate Debtor under Sections 30 r/w 31 of the Insolvency and Bankruptcy Code, 2016 and in particular under the provisions of Sec. 30(6) of the IB Code r/w. Regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulation 2016 (for short 'the Regulations'), seeking approval of this Tribunal to the Resolution Plan for the Corporate Debtor which is duly approved by Committee of Creditors in their meeting held on 9.1.2018.

2. The brief facts are as under: -

- I. The Financial Creditor, Edelweiss Asset Reconstruction Co. Ltd. filed CP (IB) No. 84/NCLT/AHM/2017 under section 7 of the IB Code before this Bench for initiation of Corporate Insolvency Resolution Process in respect of the Corporate Debtor i.e. Kalptaru Alloys Private Ltd. The

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petition was admitted by this Bench vide order dated September 5, 2017 and Shri Anil Kohli came to be appointed as IRP.

- II. That on 11.09.2017 the custody of the assets of the Corporate Debtor was taken by the IRP by visiting the factory unit and two registered valuers were appointed for assessing the liquidation value of the Corporate Debtor.
- III. On 26.09.2017 Committee of Creditors (for short 'CoC') was constituted. CoC in its first meeting held on 4.10.2017 appointing Shri Anil Kohli as the Resolution Professional. The CoC also decided to invite Expression of Interest for the Resolution Plans.
- IV. As per the decision of CoC dated 4.10.2017, the Resolution Professional published the Expression of Interest for Resolution Plans for the Corporate Debtor in English Daily 'Indian Express' Gujarat Edition on 16.10.2017. As per the publication, the last date for submission of expression of interest was fixed as 30.10.2017.
- V. Second CoC meeting was held on 31.10.2017. The members of the CoC noted that upon publication of the advertisement inviting Expression of Interest, Six Expression of Interests are received, out of which One Expression of Interest was from the Corporate Debtor and one from the Director of the Corporate

Debtor in his individual capacity. The CoC decided to call for the Resolution Plan from the Resolution Applicants. It was decided that the Resolution Plans be submitted by 15.11.2017 and the same be placed for consideration before the CoC in its third meeting. It was further decided to reduce the notice period from 7 days to 48 hours as per Regulation 19 (2) of the Regulations for calling the meeting of CoC.

VI. The third meeting was held on 21.11.2017. The CoC noted that out of six persons who submitted the Expression of Interest, only one Resolution Plan is submitted. The Resolution Professional however apprised the participants in the CoC that an amendment is made in the Regulations which is known as Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2017 dated 7th November 2017 which stipulate further compliances in respect of the Resolution Plan.

VII. The fourth meeting of CoC was held on 12.12.2017. It was noted that the Resolution Plan is received from Shubhmangal Exim Private Limited in coordination with Concord Biotech Limited. The Resolution Professional apprised the CoC of the fact that the Resolution Plan is in compliance of the IB Code as amended even as per the latest ordinance dated 7.11.2017. The Resolution Applicant

explained the contents of the Resolution Plan to the participants. Upon some deliberations, it was suggested that the Resolution Plan be modified and a revised Resolution Plan be submitted within 2 days to the Resolution Professional.

- VIII. The Resolution Applicant in the meanwhile sent a letter dated 7.12.2017 to the Resolution Professional making disclosure of eligibility u/s. 29(A) of the IB Code. A similar letter dated 2.1.2018 was also given by Concord Biotech Limited u/s. 29(A) of the IB Code to the Resolution Professional.
- IX. The last and the final meeting of CoC was held on 9.1.2018. The participants discussed the Resolution Plan received from Shubhmangal Exim Private Limited in coordination with Concord Biotech Limited. It was informed to the CoC that the Resolution Plan was forwarded to Edelweiss Asset Reconstruction Limited to enable them to seek internal legal approvals and that the approvals are received.
- X. We have gone through the contents of Resolution Plan submitted for approval which contains statements dealing with the interest of all stakeholders, including financial creditors, operational creditors and workmen of the Corporate Debtor as to the proposal for payment of their dues. The Resolution Plan further makes provisions for the Insolvency Resolution Process cost as per Regulation

38(1) of the Regulations. Required statement under Regulation 38(1A) of the Regulations is also made. The Resolution Plan also stipulates the term and its implementation schedule. It also provides for the management and control of business of the Corporate Debtor during term of the Resolution Plan and adequate means for supervising its implementation. The salient features of Resolution Plan as contained in the gist of Resolution Plan and as discussed in the CoC dated 9th January, 2018 may be reproduced herein below: -

MATTERS OF DISCUSSION:

- (1) Confirmation of the minutes of fourth meeting of Committee of Creditors held on 12-12-2017.**

All the participants unanimously confirmed the minutes of the fourth meeting of Committee of Creditors held on 12-12-2017.

- (2) To discuss and vote upon the Resolution Plan submitted by M/s. Shubhmangal Exim Private Limited in coordination with M/s. Concord Biotech Limited.**

The RP apprised the participants that a Resolution Plan was received from M/s. Shubhmangal Exim Private Limited in coordination with M/s. Concord Biotech Limited. The RP further apprised that the same was forwarded to Edelweiss Asset Reconstruction Limited to enable them to seek internal legal approvals. The RP apprised the participants that the Resolution Plan has

been studied by him and his team and all compliances have been ensured taking into consideration the provisions of the code and regulations including the amendments to the code and regulations including latest amendments thereto. The RP apprised the CoC members about the issues identified in Resolution Plan. The issues discussed and the response of the Resolution Applicant is as under:

- (1) Disqualification of one of the Directors (Mr. Bijal Surenderbhai Shah) of M/s. Shubhmangal Exim Private Limited**

The RA clarified that resignation of the said Director has been submitted and it will be filed under CODS scheme in due course of time. The documents pertaining to the resignation of Mr. Bijal Surendrabhai Shah and appointment of Mr. Vipulbhai Manubhai Mehta were provided to the RP by the RA.

- (2) Further it was apprised to the participants by the RP that since the disqualified Director also holds 50% shares of Shubhmangal Exim Private Limited, he comes under the definition of "connected person"**

It was clarified by the RA that the shares have been transferred by Mr. Bijal to Mr. Rajni Kant Mehta. The RA provided the share transfer documents to the RP.

The RP then confirmed that the Resolution Plan meets all other compliances as per the provisions of the code.



In pursuance thereto, the Resolution plan was presented by the Resolution Professional to the members of the Committee of Creditors.

Gist of the Resolution Plan is as under:

"The resolution applicant is interested in diversifying the business activities and hence decided to venture into ferrous metal industry by acquiring a sick unit. The corporate debtor also has huge track of land running into 487222 sq. meters which is of no use for the resolution applicant. The resolution applicant plans to sell the land and has also discussed the proposal to sell the land to a company M/s. Concord Biotech Ltd. Which is also a Gujarat based company and has agreed to buy the land at Rs. 33,50,00,000 (Rupees thirty three crore fifty lakh only) which would pay a sum of Rs. 1,00,00,000 (Rupees one crore only) at the time of approval of plan by CoC and rest within 30 days of the approval of plan by NCLT.

Subject to above the broad conditions of the resolution plan are as under:

- 1. 100% of the existing (pre-Resolution Plan stage) shareholding of Kalptaru Alloys Private Limited would be written off.**
- 2. EARC shall convert unsustainable level of debt (total outstanding - cash pay-out) to equity in such a way that EARC holds 100% of equity of KAPL.**
- 3. SEPL shall buy out the entire equity shares allotted to EARC for a total consideration of Rs. 40,00,000 (Rupees forty lakhs only)**
- 4. Sale of land belonging to KAPL to Concord Biotech Limited utilization of all plant and machinery by KAPL for furtherance of its business.**

5. **Concord will allow SEPL to remove machinery which are permanently attached to the land proposed to be acquired by Concord.**
6. **SEPL shall within 30 days of acquisition of land by Concord, start dismantling machinery and transfer the same to 116, Vill. Karoli, Tal. Kalol, Dist. Gandhinagar.**
7. **Settlement of all the outstanding dues, secured and unsecured, including all the financial creditors, trade creditors, employee dues like salary, wages, bonus etc. as per the terms envisaged in the Resolution Plan as mentioned later in the plan.**
8. **Reliefs and concessions from various concerned authorities like Central Excise, Income Tax, VAT etc.**
9. **Restart of operations at a different location which could be the present premises of SEPL or a separately identified location.**
10. **Infusion of fresh funds on need based by SEPL for continuous operations of KAPL.**

Any expenses on transfer and registration of the land will be borne by M/s. Concord Biotech Ltd.

The funds realized from the sale of land to be appropriated towards the clearance of the dues as follows;

Category of creditors	Particulars	Categorization in books of accounts	Amount of claim/dues*	Amount payable as one time settlement of dues against the claims
CIRP cost	CIRP costs to be consolidated and paid in priority to all other stake holders			35,00,000
Secured financial creditors	Edelweiss Asset Reconstruction Co. Ltd.	Long term borrowings	48,05,68,875	29,10,00,000
	Axis Bank Ltd.	Short term borrowings	3,13,83,180	1,40,00,000
Un-secured financial creditors	Other financial creditors (unsecured) as per Annexure B	Short term borrowings		
	1. Loans Promoters of KAPL		17,20,000	Nil
	2. Loans from Others (No claims have been		84,13,300	29,44,655

	<p>shown received from these parties in information memorandum prepared under CIRP but amount have been shown payable to them in balance sheet, hence amount provided to be distributed in proportion to their amount outstanding)</p>			
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*** The CIRP cost cannot be quantified precisely at present. The total CIRP costs will be known only at the end of the CIRP process. The resolution applicant proposes a sum of Rs. 35,00,000 (Rupees thirty five lacs only) for the entire CIRP costs. Any CIRP cost in excess of the amount provided in the plan, shall be borne by the Resolution Applicant.**

Moreover, amount payable/not payable to all stakeholders has been detailed in the resolution plan"

It was apprised to the participants by the RP that Edelweiss ARC needs to nominate a person responsible for supervision of implementation of Resolution Plan. Mr. S.K. Pradhan representative of Edelweiss Assets Reconstruction Company nominated the name of Mr. Anil Kohli for supervising the implementation of Resolution Plan at a remuneration of Rs. 2.5 lacs p.am. after approval; of resolution plan by Hon'ble NCLT till the final implementation of the plan. This was agreed upon by Shubhmangal Exim Private Limited. It was also decided that appointment letter to Mr. Anil Kohli shall be issued by Shubhmangal Exim Private Limited.

RP suggested that a Bank account in the name and style of Kalptaru Alloys Private Limited – resolution plan account from which the entire operations of the implementation of the resolution plan and for deposit of earnest money by the resolution applicant should be opened immediately. It was further decided that the authorized representatives of M/s. SEPL and M/s. Concord Biotech Limited shall operate the bank

account under authorization of Mr. Anil Kohli till the implementation of the resolution plan.

At this stage, Mr. S.K. Pradhan enquired about the deposit of Rs. 1 crore by the RA. It was clarified by the RA that the cheque will be deposited in the bank once the resolution plan is approved by CoC.

It was unanimously decided to open the Bank Account with a scheduled commercial bank. Further, it was proposed by the RP that receipt for deposit of the cheque will be given to RA after confirmation is given by the Bank that the operations of the Bank account will be allowed only after authorization by Mr. Anil Kohli.

Matters for Voting

1) Approval of Resolution Plan submitted by Shubhmangal Exim Private Limited in coordination with M/s. Concord Biotech Limited for filing with Hon'ble NCLT

After discussion it was "Resolved unanimously that the Resolution plan submitted by M/s. Shubhmangal Exim Private Limited in coordination with M/s. Concord Biotech Limited is approved. Futher resolved tht Bank account for the entire operations of the implementation of the Resolution Plan and deposit of Earnest Money to be opened with a Scheduled Commercial Bank in the name of Kalptaru Alloys Private Limited - Resolution Plan"

XI. Thus the Resolution Plan has been unanimously approved by the members of the CoC in the said meeting dated 9.1.2018.

XII. The petition further discloses that Concord Biotech Limited has deposited amount of Rs. 1,00,00,000/-

(Rupees one crore only) with the Bank as per the requirement of the Resolution Plan.

XIII. The Resolution Plan has been approved by the CoC within the stipulated period of 180 days from the date of admission of the petition.

3. The petition was filed on 23.1.2018 and it was taken up for first hearing on 29.1.2018. On the said date an affidavit dated 24.01.2018 was filed on behalf of the Axis Bank Limited thereby placing on record a letter dated 18.01.2018 of the guarantor in favour of the Bank agreeing to pay an amount of Rs. 1.24 Crores over and above the amount mentioned in the proposed Resolution Plan.
4. We heard Shri Navin Pahwa, Learned Senior Counsel with Ms. Ritu Shah, Advocate for Thakkar and Pahwa, Advocates for the Resolution Professional and Shri Baiju Bhagat, Learned Advocate for Edelweiss Asset Reconstruction Co. Ltd. and Shri Lalit Patel, Learned Advocate for the Axis Bank and perused the averments contained in the petition and the documents attached thereto, we also perused the contents of further affidavit dated 3.03.2018 tendered today by the Learned Advocate appearing for the Axis Bank.
5. We perused the Resolution Plan which is duly approved by the CoC in its meeting dated on 9.01.2018. We considered

the compliance status of the Resolution Plan as submitted by the Resolution Professional, a copy thereof has been annexed with (at page 126) the present compilation. The compliance status goes to show that the Resolution Plan is found to be in order and is in compliance with the provisions of the IB Code and the Rules and Regulations made thereunder. The Resolution Plan further contains stipulations with regard to making payments to its stake holders including the employees and workers. The Resolution Plan contemplates such that the company is going to be revived and would continue as a going concern. We have already noted that the Resolution Plan has been duly approved by the CoC and it meets with all the requirements of the IB Code and Regulations made thereunder. The Resolution Plan seems to be in the interest of the Corporate Debtor and its stakeholders, hence appears to be bona fide. Therefore, this Court is of humble opinion that its being an adjudicating authority is not expected to substitute its views in respect of technical aspects of a Resolution Plan. Our view/such stand finds support from the provision of Unictal Model Code of Insolvency. The relevant portion thereof is reproduced herein below: -

63. The more complex the decisions the court is asked to make in terms of approval or confirmation, the more relevant knowledge and expertise is required of the judges and the greater the potential for judges to interfere in what are essentially commercial decisions of creditors to approve or reject a plan. In particular, it is highly



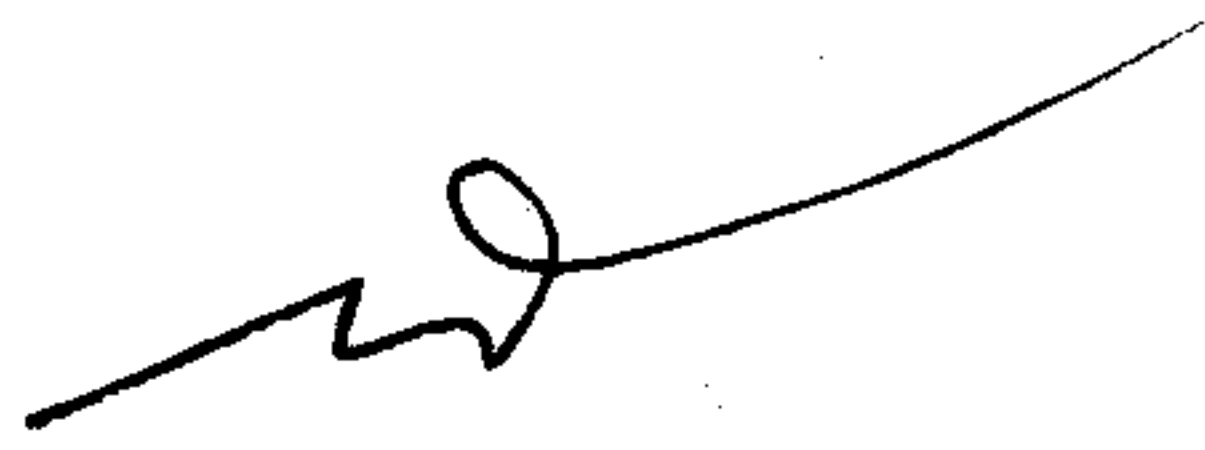
desirable that the law not require or permit the court to review the economic and commercial basis of the decision of creditors (including issues of fairness that do not relate to the approval procedure, but rather to the substance of what has been agreed) nor that it be asked to review particular aspects of the plan in terms of their economic feasibility, unless the circumstances in which this power can be exercised are narrowly defined or the court has the competence and experience to exercise the necessary level of commercial and economic judgement. For these reasons, it is desirable that the requirements for approval of the plan by creditors and confirmation by the court be carefully designed to minimize potential problems of the kind discussed here. 9. Effect of an approval and, where required, confirmed plan

64. Where the plan is approved by the requisite majority of creditors and equity holders and, where required, confirmed by the court, insolvency laws generally provide that it will bind all affected ordinary unsecured creditors, including creditors who voted in support of the plan, dissenting creditors, creditors who did not vote on the plan and equity holders.

Some insolvency laws also provide that the plan will bind directors and other parties as determined by the court. Some insolvency laws stipulate that the parties who are bound will be prevented from applying to the court to have the debtor liquidated (except in specific circumstances, such as where implementation fails or the debtor fails to perform its obligations as required under the plan), to start or continue legal proceedings against the debtor or to pursue

enforcement without approval of the court. Some laws also provide that once the plan is approved by creditors and, where required, confirmed by the court, the property of the insolvency estate returns to the control of the debtor for implementation of the plan (unless the plan provides otherwise) and the debtor may obtain discharge from debts and claims pursuant to the plan"

6. By placing reliance on the above stated provision and of the commercial wisdom of the Committee of Creditors a conscious decision seems to have been taken for adopting and recommending the present resolution plan as submitted by the resolution applicant the Shubhmangal Exim Private Limited, deserves to be approved and the present IA to be allowed.
7. Therefore, the present IA No. 39 of 2018 is allowed. The Resolution Plan of Kalptaru Alloys Private Limited is approved with the following directions:
 - (a) The Resolution Plan shall be binding the Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan.
 - (b) As per Regulation 39(6) of the Regulations, it is further directed that any provision in the Resolution Plan which would otherwise require the consent of the members of the Corporate Debtor, shall take




effect notwithstanding that such consent has not been obtained.

- (c) The moratorium order passed by this adjudicating authority under section 14 vide order dated 5.09.2017 in CP(IB) 84 of 2017 shall cease to have effect.
- (d) The Resolution Professional shall forward all records relating to the conduct of the Corporate Insolvency Resolution Process and the Resolution Plan to the Board to be recorded on its database.
- (e) The Resolution Professional is further directed to send a copy of this order approving the Resolution Plan to all the participants and invitee(s) of the CoC as also to the Resolution Applicant.
- (f) The registry of this Tribunal is directed to forward a copy of this order along with copy of the Resolution Plan to the Registrar of Companies, Ahmedabad and to the Insolvency & Bankruptcy Board of India, for information.

7. IA 39 of 2018 in CP (IB) 84 of 2017 stands disposed of accordingly.


Ms. Manorama Kumari
Member (J)


Harihar Prakash Chaturvedi
Member (J)