

SPS METAL CAST AND ALLOYS LTD.
(IN CIRP)

DETAILED REVISED
INVITATION FOR
EXPRESSION OF INTEREST

IN CONNECTION WITH REVISED FOR G
DATED 10-11-2019 IN THE CIRP OF
SPS METAL CAST AND ALLOYS LTD

AVISHEK GUPTA
RESOLUTION PROFESSIONAL OF
SPS METAL CAST AND ALLOYS LTD

DETAILED INVITATION FOR EOI

Pursuant to the revised Form G issued in connection with the CIRP in the case of SPS METAL CAST AND ALLOYS LTD. this Detailed Invitation for EOI is issued to enable participation by the Prospective Resolution Applicants. Eligible persons desirous to participate may submit their EOI on or before 25TH November 2019.

Pursuant to our Newspaper Advertisement dated 10-11-2019 inviting Resolution Plans from prospective Resolution Applicants, this Detailed Invitation for EOI document is made to provide details / clarity to various criteria / eligibility related to the Resolution Applicants /Resolution Plans.

The information provided herewith is categorized into the following Chapters:

- A. BRIEF PARTICULARS OF CORPORATE DEBTOR**
- B. ABOUT THE ONGOING CIRP**
- C. THE EOI PROCESS**
- D. CRITERIA AS PER SECTION 25 (2) (h) of IBC,2016**
- E. INELIGIBILITY CRITERIA OF PROSPECTIVE RESOLUTION APPLICANTS UNDER SECTION 29 A TO THE EXTENT APPLICABLE**
- F. MANDATORY CRITERIA OF RESOLUTION PLANS**

All prospective resolution applicants who meet the requirements of the invitation for expression of interest shall submit their expression of interest latest by 7 PM on 25th November, 2019. Please be informed that the expression of interest received after the time specified here shall be rejected.

Please also be informed that the expression of interest shall be unconditional and shall be accompanied by the documents specified in Chapter - (C) THE EOI PROCESS.

The details / mandatory provisions thought as might be required to enable prospective resolution applicants in submitting the EOI are provided in this document. However, the same shall not be construed as inclusive of all the mandatory requirements; all the provisions contained in the IBC, 2016 and Regulations thereto will be applicable to the extent relevant in this EOI process. The words and expressions used in this document shall have meaning as per the IBC, 2016 and Regulations thereto.

Avishek Gupta
Resolution Professional of Sps Metal Cast and Alloys Ltd.
Reg.No: IBBI / IPA-003 / IP / N000135 / 2017-2018 / 11499

CHAPTER - A

BRIEF PARTICULARS OF CORPORATE DEBTOR

A-1: PARTICULARS AS PER MCA SITE:

The identity of the Company is provided herein below in brief; these are as taken from the MCA site.

✚Name of the Company:	SPS METAL CAST AND ALLOYS .LTD.
✚Date of Incorporation:	24/07/1990
✚CIN No:	U27104WB199PLCO49475
✚ Registered &Corporate Office:	ELEGANT TOWERS 224 A.J.C BOSE ROAD KOLKATA WEST BENGAL-700017
✚Listing Status:	Unlisted
✚Authorized Share Capital is	Rs.130,000,000/-
✚Paid up Share Capital is	Rs.112,655,000/-
✚Directors of the company:	<u>Date of Entry</u>
1. Mr. Bipin Kumar Vohar	from29-01-1994
2. Mr. Sudesh Kumar Agarwal	from25-11-2013
3. Mr. Arjun Kumar Santhalia	from02-08-1993

A-2 NATURE OF BUSINESS OF THE CORPORATE DEBTOR:

SPS Metal Cast & Alloys Limited was incorporated in the year 1990 with objects to set up to carry on the business of manufacturers, processors, re-rollers, refiners, forgers, smelters, converters, producers, exporters, importers, dealers, distributors, stockists, buyers, sellers, agents or merchants in all kinds and forms of steel and iron castings, steel including mild, high carbon, spring, high speed , tool, alloy, stainless and special steel, iron, metals, and alloys, ingots, billets, bars, joists, rods, squares, structural, tubes, poles, pipes, sheets, wires, rails, rolling materials, rollers, other materials, made wholly or partly of iron, steel, alloys, and metals required in or used for industrial, agricultural, transport, commercial, domestic, building, power transmission and/or construction purposes.

B-6 THE NAME, REG. NO., ADDRESS, EMAIL ID, ETC. OF THE RESOLUTION PROFESSIONAL ARE AS FOLLOWS:

The Resolution Professional may be contacted for any query related to the above EOI process at the below-referred address / email id.

<i>Name of Resolution Professional:</i>	<i>Avishek Gupta</i>
<i>IP Reg. No:</i>	<i>IBBI / IPA-003 / IP / N000135 / 2017-2018 / 11499</i>
<i>Address:</i>	<i>CK 104, Ground Floor, Sector 2, Salt Lake City Kolkata -700091 W.B.</i>
<i>Phone No:</i>	<i>+91 33 23340941</i>
<i>Email Id:</i>	<i>rp.spsmetal@gmail.com</i>

Please note: RP has applied to the Hon'ble NCLT Kolkata bench seeking time extension , which if not granted, this invitation for Expression of Interest will become invalid.

CHAPTER - B
ABOUT THE ON GOING CIRP
(CORPORATE INSOLVENCY RESOLUTION PROCESS)

The major events in relation to the CIRP of the corporate debtor are chronologically stated below:

B-1. INITIATION OF CIRP & APPOINTMENT OF IRP:

Jai Balaji Industries Limited, Operational Creditors (“OC”) filed an application under section 9 of the Insolvency and Bankruptcy Code, 2016 (“IBC) read with Rule 6 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 for initiation of corporate insolvency resolution process (“CIRP”) of the Company , SPS Metal Cast & Alloys Limited (“CD”) before the Hon’ble National Company Law Tribunal, Kolkata Bench (“NCLT”) which was admitted by the NCLT vide its order dated 25.06.2019 (“said Order”). Pursuant to the said Order, the management of the affairs of the Company has been vested with Mr. Rakesh Kumar Agarwal, the Interim Resolution Professional of the Company (“IRP”) appointed by the NCLT with effect from 25th June, 2019 but after order received from Hon’ble NCLT IRP has been changed and new Resolution Professional (“RP”) Mr. Avishek Gupta has been appointed from 3rd October 2019 onwards. Further, in terms of Section 17(1)(b) of the IBC, the powers of Board of Directors of the Company have been suspended with effect from the date of the receipt of order and functions of the Board of Directors is being exercised by the RP as per the provisions of the IBC.

B-2 PUBLIC ANNOUNCEMENT IN FORM A:

Public Announcement as per the provisions of Regulation 6 of the Regulations made by interim Resolution Professional on 28 June, 2019 in Financial Express and Aajkal.

B-3.CUSTODY OF THE ASSETS OF THE CORPORATE DEBTOR:

As part of the Corporate Insolvency Resolution Process, Resolution Professional took the management control of the activities of the Corporate Debtor. He visited the plant along with his team on 23rd October 2019. Persons accompanied Resolution Professional are Mr. Syed Afzal Ahmed, Mr. Rohit Singh and Mr. Balasubramanium Govindarajan, (an expert in iron & steel industry and team Member of RP). As informed by representative of the Company, the plant has been non-operating since October 2018. In anticipation of critical labor agitation, Resolution Professional and his team were accompanied by 2 guards out of which 1 was armed. The Unit is around 5 kms from Durgapur Railway Station. The overall condition of the factory seemed fine but as the factory has been shut down for over a year, some refurbishment and minor fixes may be required. As per visual inspection, the furnace and all other equipment appear fine but technical assessment would be useful and Resolution Applicants are advised to carry out their due diligence. Resolution Professional and his team stuck a notice at the factory premise gate informing about the Corporate Debtor undergoing CIRP and contact details of the Resolution Professional.

B-4. INTIMATION OF CIRP TO VARIOUS AUTHORITIES

Intimations of Initiation of Corporate Insolvency Resolution Process to Regulatory Authorities like GST, MCA, INCOME TAX , PF etc. authorities was made by IRP.

REPORT CERTIFYING CONSTITUTION OF COMMITTEE OF CREDITORS:

The Report certifying the Constitution of Committee of Creditors as per Regulation 17 (1) of the Insolvency and Bankruptcy of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (herein after stated as the CIRP Regulation, for brevity) was made to the Hon'ble National Company Law Tribunal, Kolkata Bench.

COMMITTEE OF CREDITORS CLAIMS RECEIVED AND ADMITTED

Based on the claims received and admitted till the date of this report, and also based on the provisions of the Code and Regulations, as of now, the Committee of Creditors consist of the following secured Financial Creditors:

- 1. Indian overseas bank*
- 2. Gouri Iron & Steel Pvt. Ltd.*

**There are few claims related to Corporate Guarantee provided by the Corporate Debtor which is under verification and legal opinion is being sought in this matter.*

The summary of total claims received till the date of this invitation is as follows:

<i>SUMMARY REPORT OF CLAIMS</i>			
<i>No</i>	<i>NAME OF THE CREDITOR</i>	<i>AMOUNT (Rs)</i>	
		<i>CLAIMED</i>	<i>ADMITTED</i>
<i>1</i>	<i>Financial Creditor</i>	<i>1,461,646,253</i>	<i>1,461,646,253</i>
<i>2</i>	<i>Operational Creditor</i>	<i>634,350,272</i>	<i>601,813,419</i>
<i>3</i>	<i>Workers / Employees</i>	<i>0</i>	<i>0</i>
<i>4</i>	<i>Other Creditors</i>	<i>867,792,647</i>	<i>812,721,127</i>
	<i>TOTAL</i>	<i>2,963,789,173</i>	<i>2,876,180,800</i>

B-7 DECISION TOWARDS THE INVITATION TO EOI PROCESS

19-08-2019: The second meeting of the Committee of Creditors (CoC) was held on the 19th Day of August, 2019 and Registered Valuers and Transactions Auditors were appointment.

11-09-2019: The third meeting of the Committee of Creditors (CoC) was held on the 11th September, 2019 and eligibility criteria and Evaluation Matrix was finalized with CoC.

25-10-2019: The fourth meeting of the Committee of Creditors (CoC) was held on the 25th October, 2019 and reduction in notice period for COC meetings from 72 hours to 48 hours was done

07-11-2019: The CoC decided for Revised form G and the extension of time for 90 days was approved by COC.

CHAPTER – C

THE EXPRESSION OF INTEREST (EOI) PROCESS

C.1 THE FORM – G PUBLISHED IN NEWS PAPERS

This document is in conformity with the Revised Form G published in newspapers on 10-11-2019 to provide the details of the invitation to the EOI from prospective resolution applicants for SPS Metal Cast And Alloys Limited.

C.2 BASIC REQUISITES / DOCUMENTS TO BE PROVIDED WITH EOI

The EOI (Expression of Interest) shall be unconditional and be accompanied by all documents specified in C-5 including the following documents;

- (a) an undertaking by the prospective resolution applicant that it meets the criteria specified by the committee under clause (h) of sub-section (2) of section 25;
- (b) relevant records evidencing that the applicant meets the minimum criteria under clause(a);
- (c) an undertaking by the prospective resolution applicant that it does not suffer from any ineligibility under section 29A to the extent applicable;
- (d) relevant information and records to enable an assessment of ineligibility under clause(c);
- (e) an undertaking by the prospective resolution applicant(s) that it shall intimate the resolution professional forthwith if it becomes ineligible at any time during the corporate insolvency resolution process;
- (f) an undertaking by the prospective resolution applicant that every information and records provided in expression of interest is true and correct and discovery of any false information or record at any time will render the applicant ineligible to submit resolution plan, result into forfeiture of any refundable earnest money deposit, and attract penal action under the Insolvency and Bankruptcy Code ;and
- (g) an undertaking by the prospective resolution applicant to the effect that it shall maintain confidentiality of the information and shall not use such information to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29.

- (h) A copy of the EOI document signed by the applicants as token of its' / his / her / their acceptance of the conditions specified therein.
- (i) Board Resolution / Power of Attorney authorizing the submission of EOI and authorizing a person to act on behalf of the resolution applicant(s).

C-3 GENERAL GUIDELINES W.R.T EXPRESSION OF INTEREST

- a. The last date and time of submission of expression of interest is 25th November, 2019 till 7 PM. Please be informed that the expression of interest received after the time specified here shall be rejected.
- b. The EOI and documents shall be sent to the Resolution Professional through person / registered post / speed post / courier; the resolution professional shall not be held responsible for non-delivery of EOI and all documents for any reason. To strengthen the process the EOI applicants are requested to send an email conformation of the sending of EOI by post or other means with details of docket number etc. for tracking along with a scan copy of the original application.
- c. Briefing Session – Pre-EOI submission session – If some more details are required by any of the EOI applicants or if more clarifications are required, the details can be sought from the resolution professional whose contact details are already provided.
- d. On 27th November, 2019 a Provisional list of eligible prospective resolution applicants will be prepared by the Resolution Professional and the same will be communicated to all the EOI applicants and to the Committee of Creditors. Any objection to the inclusion or exclusion of an Applicant in the provisional list may be made to the resolution professional with supporting documents within three days from the date of issue of the provisional list. That is, all the objections shall be received by the resolution professional on or before the 2nd December, 2019. The objections may be sent to the email id of the resolution professional.
- e. On receiving the objections on the inclusion or exclusion of an EOI applicant specified above the Resolution Professional shall be issuing the final list of prospective resolution applicants within 4th December,2019.
- f. The EOI shall state clearly the name of the person to be contacted, the communication address, email and telephone number for contact in case of need. The communication of the Provisional List of eligible Prospective Resolution Applicants will be made only to the email id provided by the prospective applicants. The communications to the - Resolution Professional (other than the EOI document) shall be made to his email address only and

shall be made strictly from the communication email id of the Prospective Resolution Applicant provided for communication in the EOI.

- g. The Prospective Resolution Applicants shall bear all the costs associated with the submission of EOI / Resolution Plans. Resolution Professional or the Committee of Creditors, regardless of the conduct or outcome of the process, will not be responsible for any costs thereof.
- h. All the prospective applicant selected in the final list of eligible prospective resolution applicants is required to submit a Demand Draft / Pay-order of Rs.25 Lakhs (refundable) along with the Resolution Plan ; (No interest shall be payable on the amount to be provided along with the Resolution Plan). The Demand Draft needs to be paid in favor of “SPS METAL CAST AND ALLOYS LTD. “payable at par.
- i. The prospective resolution applicant whose bid is selected as successful bid by the CoC will provide a performance bank guarantee and the EMD will be returned to him subsequently.
- j. The Prospective Resolution Applicants must intimate the Resolution Professional immediately in writing of any material change to the information contained in the EOI / Resolution Plan, including any substantial changes in their ownership or their financial or technical capability. Copies of the relevant documents substantiating any such changes must be submitted along with such intimation.
- k. This document specified different dates as last dates for various activities in the resolution process period, these dates shall be adhered to by all concerned. If the last date of receipt of a document happens to be a holiday for the office of the Resolution Professional, the next working day of the Resolution Professional shall be considered for the receipt of that specified document. The office of the Resolution Professional follows the bank holidays followed in West Bengal State (except the second and fourth Saturday holidays of banks) as its holiday.

MODE OF SENDING EOI & DOCUMENTS

As earlier specified, the EOIs shall be submitted in person or by registered post or speed post or courier to the office of the Resolution Professional. All Prospective Resolution Applicants who meet the requirements of the invitation for expression of interest and wishes to submit expression of interest, shall submit the same latest by 7 PM on 25-11-2019.

The EOIs and all documents sent by registered / speed post or courier shall be addressed to the Resolution Professional at the address provided in Form G / this document. The Resolution Professional will not be responsible for any delay in postal / courier transmission and the Prospective Resolution Applicants themselves shall ensure that the EOIs are delivered to the office of the Resolution Professional before the specified date and time.

The EOIs will be received at the office of the Resolution Professional on all working days, between 11 AM to 7 PM. The EOI received after the last date and time of receiving the EOI shall not be accepted for any reason

At the top part of the cover in which the EOI and documents are sent shall be written “EOI FOR RESOLUTION PROCESS OF SPS METAL CAST AND ALLOYS LTD”.

ILLUSTRATIVE LIST OF DOCUMENTS AS SUPPORTING OF E.O.I

All prospective resolution applicants who wish to submit EOI shall submit relevant records of authority including the evidence of meeting the criteria under section 25 (2) (h) of IBC, 2016 Read with Regulations thereto; an illustrative list of documents in support of eligibility is provided below; the list need not be construed as inclusive of all relevant records.

- Letter stating Expression of Interest of the Resolution Applicant(s) signed by the person(s) authorized to make the EOI on behalf of the Applicant;
- Copy of PAN Card of the Resolution Applicant(s);
- Copy of Incorporation document of the Resolution Applicant(s);
- Copy of Memorandum and Articles of Association, in case the Resolution Applicant is a Company, constitutional document in case of LLP, registered copy of Partnership Deed in case of Partnership firms;
- Copy of KYC including Address Proof of the Resolution Applicant(s);
- Copy of KYC of the person(s) authorized to represent the Resolution Applicant(s);
- Copy of appropriate Board Resolutions, wherever applicable, (separate resolution of

all the participants, in case of joint applicants) authorizing the participation (either singly or jointly with others named in resolution), and also authorizing officials to represent the Resolution Applicant;

- Copies of Audited Annual Report, in case of Companies, for the previous 3 Financial Years;
- Certificate of net worth issued by a Chartered Accountant in case of individual resolution applicant(s);
- Undertakings / Documents as stated in C-2 (BASIC REQUISITES / DOCUMENTS TO BE PROVIDED WITH EOI) above; AND
- Other Documents evidencing that the Resolution Applicant(s) meet the Minimum Criteria approved by the Committee of Creditors, if the same is not revealed from the items listed above;

TENTATIVE TIMELINE OF VARIOUS PLAN PROCESSES /EVENTS:

The Corporate Insolvency Resolution Process is a time bound process and therefore the importance of observance of time schedules assumes great importance. The following are the time schedules fixed and shall be adhered to by all concerned.

The important dates in the Resolution Plan process are as under:

- 10-11-2019: Newspaper advertisement in Revised Form G
- 10-11-2019: Detailed Invitation for EOI will be made available in the respective link provided in the form G
- 25-11-2019: Last date of receiving EOI at the office of the Resolution Professional– within 7 PM of 25-11-2019
- 27-11-2019: Date of issue of Provisional list of eligible prospective resolution applicants
- 02-12-2019: Last date of receipt of Objection, if any, of inclusion / exclusion in the Provisional list of prospective resolution applicants
- 04-12-2019: Preparation of Final list of eligible prospective resolution applicants

- 04-12-2019: Issuance of RFRP (Request for Resolution Plans)
- 04-12-2019: Issue of Information Memorandum, Evaluation Matrix
- 04-01-2020: Last date of receipt of Resolution Plans

CHAPTER – D

MINIMUM CRITERIA AS PER SECTION 25 (2) (h) of IBC, 2016 AS APPROVED BY THE COC – DATED: 02-05-2019

The Minimum Criteria for the prospective Resolution Applicants of the corporate debtor SPS Metal Cast and Alloys Limited, as approved by Committee of Creditors in their Meeting .

Parameters	
Minimum Net worth	Consolidated group net worth of Rs 25Cr. as per last audited balance sheet
Vintage	3 years
Legal Structure – for Prospective Resolution Applicant	Company or partnership firm or LLP
Financial Investors	Mutual Funds, Private Equity / Venture Capital Funds, Domestic / Foreign Investment Institutions, NBFC, Asset Reconstruction Companies, Banks and similar entities – Total AUM /Loan portfolio Rs. 100 Cr as per last audited balance sheet There will be a minimum lock in period of 3 years of the investment made by the Financial Investor .
EMD required to be submitted along with Resolution Plan by all the applicant selected in Final list of eligible prospective resolution applicants	Rs.25 Lakhs

CHAPTER – E

MANDATORY INELIGIBILITY CRITERIA OF PROSPECTIVE RESOLUTION APPLICANTS UNDER SECTION 29 A / OTHER PROVISIONS

GENERAL:

In this document, the Code shall mean the Insolvency and Bankruptcy Code, 2016 and the CIRP Regulation shall mean the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Debtor) Regulations, 2016, as amended up to date and as applicable to the CIRP under consideration.

CLAUSE (h) OF SUB-SECTION (2) OF SECTION 25 OF THE CODE:

Section 25 (2) (h): For the purpose of sub-section (1) the resolution professional shall undertake the following actions, namely:- Invite prospective resolution applicants, who fulfill such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans.

Sub-section (1) of section 25 states that it shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor including the continued business operations of the corporate debtor.

SECTION 29 (A) OF THE CODE:

[PERSONS NOT ELIGIBLE TO BE RESOLUTION APPLICANT]

A person shall not be eligible to submit a resolution plan if such person acting jointly or in concert with such person-

- (a) is an undischarged insolvent;
- (b) is a willful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949);
- (c) at the time of submission of the resolution plan has an account, or an account of a corporate debtor under the management or control of such person or of whom such person

is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949) or the guidelines of a financial sector regulator issued under any other law for the time being in force, and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor;

Provided *that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan;*

Provided further *that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor;*

Explanation 1 – *For the purpose of this proviso, the expression “related party” shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.*

Explanation II – *For the purposes of this clause, where a resolution applicant has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under this Code, then the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under this Code;*

- (d) has been convicted for any offence punishable with imprisonment–
- i. of two years or more under any Act specified under the Twelfth Schedule ;or
 - ii. for seven years or more under any other law for the time being in force;

Provided *that this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment;*

Provided further *that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;*

(e) is disqualified to act as a director under the Companies Act, 2013 (18 of 2013);

Provided further *that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;*

(f) is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;

(g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code;

Provided *that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;*

(h) has executed a guarantee in favor of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part;

(i) is subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or

(j) has a connected person not eligible under clauses (a) to (i).

Explanation I - *For the purposes of this clause, the expression “connected person” means-*

(i) *any person who is the promoter or in the management or control of the resolution applicant; or*

(ii) *any person who shall be the promoter or in the management or control of the business of the corporate debtor during the implementation of the resolution plan; or*

(iii) *the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii)*

Provided that nothing in clause (iii) of Explanation I shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor:

Provided further that the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date;

Explanation II—For the purposes of this section, "financial entity" shall mean the following entities which meet such criteria or conditions as the Central Government may, in consultation with the financial sector regulator, notify in this behalf, namely:—

(a) a scheduled bank;

(b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organization of Securities Commissions Multilateral Memorandum of Understanding;

(c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999 (42 of 1999);

(d) an asset reconstruction company register with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(e) an Alternate Investment Fund registered with Securities and Exchange Board of India;

(f) such categories of persons as may be notified by the Central Government.

CHAPTER – F

MANDATORY CRITERIA OF RESOLUTION PLANS

F.1 GENERAL

The Mandatory Criteria of Resolution Plans as contained in the Code and the CIRP Regulation are stated below; the Code shall mean the Insolvency and Bankruptcy Code, 2016 and the CIRP Regulation shall mean the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Debtor) Regulations, 2016, as amended up to date.

F.2 SECTION 30 OF THE CODE:

(1) A resolution applicant may submit a resolution plan along with an affidavit stating that he is eligible under section 29A to the Resolution Professional prepared on the basis of the information memorandum.

(2) The Resolution Professional shall examine each resolution plan received by him to confirm that each resolution plan:-

- (a) Provides for the payment of the IRP Costs in the manner specified by the Board in priority to the payment of other debts of the corporate debtor
- (b) Provides for payment of debts of operational creditor in such manner as specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53
- (c) Provides for management of the affairs of the CD after approval of the Resolution Plan
- (d) The implementation and supervision of the resolution plan;
- (e) Does not contravene any of the provisions of the law for the time being in force;
- (f) Confirms to such other requirements as may be specified by the Board.

Explanation: For the purpose of clause (e), if any approval of shareholders is required under the Companies Act, 2013 (18 of 2013) or any other law for the time being in force for

the implementation of actions under the resolution plan such approval shall be deemed to have been given and it shall not be a contravention of that Act or Law.

(3) The resolution professional shall present to COC for its approval such resolution plans which confirms the condition referred to in sub-section(2)

(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six per cent of voting share of the financial creditors, after considering its feasibility and viability, and such other requirements as may be specified by the Board:

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017, where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section. ”.

Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment Ordinance, 2018).

(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered:

Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.

(6) The RP shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority

F-3: REGULATION 37 OF THE CIRP REGULATION:

REG.37. A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximization of value of its assets, including but not limited to the following: -

- (a) transfer of all or part of the assets of the corporate debtor to one or more persons;
- (b) sale of all or part of the assets whether subject to any security interest or not;
- (c) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;
- (d) satisfaction or modification of any security interest;
- (e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;
- (f) reduction in the amount payable to the creditors;
- (g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;
- (h) amendment of the constitutional documents of the corporate debtor;
- (i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;
- (j) change in portfolio of goods or services produced or rendered by the corporate debtor;
- (k) change in technology used by the corporate debtor; and
- (l) obtaining necessary approvals from the Central and State Governments and other authorities.”

F-4: REGULATION 38 OF CIRP REGULATION (MANDATORY CONTENTS OF RESOLUTION PLANS)

REG. 38 (1) The amount due to the operational creditors under a resolution plan shall be

given priority in payment over financial creditors.

(1A) A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.

(2) A resolution plan shall provide:

- (a) the term of the plan and its implementation schedule;
- (b) the management and control of the business of the corporate debtor during its term;&
- (c) adequate means for supervising its implementation.

(3) A resolution plan shall demonstrate that–

- (a) it addresses the cause of default;
- (b) it is feasible and viable;
- (c) it has provisions for its effective implementation;
- (d) it has provisions for approvals required and the timeline for the same; and
- (e) the resolution applicant has the capability to implement the resolution plan.

Date:10-11-2019

Place: Kolkata

Avishek Gupta

Resolution Professional

IP Reg. No: IBBI/IPA-003/IP-N000135/2017-2018/11499

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These provisions are provided in order to assist the recipient in examine the meeting of eligibility criteria before taking a decision on the participation in the EOI process.

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Date:10-11-2019

Place: Kolkata

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