



**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT-II)**  
**(Part Heard Bench)**

**IA. NO. 2750/ND/2022**  
**IN**  
**Company Petition No. (IB)-1243(ND)/2018**

**IN THE MATTER OF:**

**India SME Asset Reconstruction Company Limited**

**... Applicant/Financial Creditor**

**Versus**

**M/s Medirad Tech India Limited**

**... Respondent**

**AND IN THE MATTER OF IA. NO. 2750/ND/2022:**

**Hemalata Hospitals Limited**

Through its Authorized Representative,  
D-155, Sarita Vihar,  
New Delhi – 110076

**... Applicant**

**VERSUS**

**Sh. Siba Kumar Mohapatra**

Resolution Professional of  
Medirad Tech India Limited  
Flat No. E/402, Baishnav Vihar,  
Bomikhal, Near Durga Mandap,  
Bhubaneshwar - 751010

**... Respondent**

**Order Delivered on: 09.08.2023**

**SECTION:**      **Section 60(5) of IBC 2016**

**CORAM:**

**SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (J)**

**SH. L.N. GUPTA, HON'BLE MEMBER (T)**

**PRESENT:**

**For the Applicant**      : Adv. Tishampati Sen, Adv. Shubhanshu Gupta,  
Adv. Kartik Pant

**For the Respondent**    : Adv. Meghna Rao



## ORDER

PER: SH. L. N. GUPTA, MEMBER (T)

The present IA No. 2750 of 2022 has been filed by Hemalata Hospitals Limited (hereinafter referred to as, the '**Applicant**' or '**HHL**') under Section 60(5) of IBC, 2016, read with Rule 11 of NCLT Rules, 2016 seeking the following reliefs:

- a) *Allow the instant application*
- b) *Set-aside the act of termination of the Service Agreement dated 01.09.2006, Lease Agreement dated 31.12.2013 along with Supplementary Agreement dated 01.01.2014 by the Resolution Professional;*
- c) *Pass ad-interim directions restraining the Resolution Professional and the Committee of Creditors to act on the voting and decision relating Resolution Plans otherwise will make the instant Application infructuous;*
- d) *Pass such other/further and other reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."*

2. To put the facts succinctly, the underlying main Petition CP (IB)-1243/ND/2018 was filed by M/s India SME Asset Reconstruction Company Limited against the Corporate Debtor namely, M/s Medirad Tech India Limited under Section 7 of IBC, 2016, which was admitted vide Order dated 08.12.2021 by this Adjudicating Authority and the Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor was initiated. The Corporate Debtor at present is represented through its Resolution Professional (RP) Sh. Siba Kumar Mohapatra (**Respondent**).



3. It is stated by the Applicant that the Corporate Debtor is the absolute owner of a Speciality Hospital running in the name and style of “Hemalata Hospitals & Research Centre” (hereinafter referred to as **‘Hospital’**) set up by the Corporate Debtor at P/2, Jaydev Vihar, Nalco Square, Bhubaneswar, Odisha. The Corporate Debtor owns all the plant, Machinery, Equipment, furniture, fixture, building, land, and open space of the said Hospital. The Applicant has further stated the following:

3.1 For the purpose of running the said Hospital, a Service Agreement dated 01.09.2006 was entered into between the Corporate Debtor and the Applicant, wherein it was agreed that the Applicant shall manage and run the medical services in the Hospital owned by the Corporate Debtor.

3.2 Under the said Agreement, the Applicant was responsible for providing various services to the Hospital including patient care through its own doctors/consultants and nurse and other staff; deciding & fixing the tariff and implementation of pricing policy in the Hospital etc., more particularly as provided under Clause 2 of the said Agreement.

3.3 The Agreement provided for the revenue sharing as consideration whereby the revenue was shared in the ratio of 15% : 85% between the Applicant and the Corporate Debtor respectively. The Corporate Debtor was to furnish within 30 (thirty) days from the expiry of the respective year to the Applicant, the complete and accurate statements of the gross revenue of the Hospital for that year and all payments were to be reconciled and any excess or shortfall in payment was to be duly debited or credited to the respective account.



3.4 The tenure of the Agreement was 40 (Forty) years from the date of its execution with a provision of further renewal. Clause 6.2 specifically provided that the Agreement may be terminated by mutual consent of the parties expressed in writing. The termination clause is reproduced herein under:

**“6. Termination**

6.1 *Subject to the terms of this Agreement, this Agreement shall come into force effective from the date hereinabove first mentioned and remain valid for a period of 40 (Forty) years from the said date, unless terminated earlier in accordance with the provisions contained hereinafter.*

*This Agreement may be renewed/modified for such further periods on such terms and conditions as may mutually be decided by the parties.*

6.2 *This Agreement may be terminated by mutual consent of the Parties expressed in writing.*

6.3 *Notwithstanding anything contained above, on the termination of the Agreement, the clause on arbitration will continue to persist until such time that any dispute between the Parties has been resolved.”*

*(Emphasis supplied)*

3.5 The aforesaid clause clearly mandated termination of the Agreement by mutual consent and anything done contrary to the termination of the Service Agreement is contrary to the contractual obligations.

3.6 To strengthen the financial viability in the aforesaid Service Agreement, the parties decided to bring additional safeguards to the Agreement, and accordingly, on 31.12.2013, a Lease Agreement was entered into between the Corporate Debtor and Applicant wherein the Corporate Debtor agreed to lease the Hospital including the equipment, furniture & fixture at an annual rental of Rs.9,00,000/- to Applicant. The Applicant was also responsible for maintaining the facility along with the equipment, Plant and machinery,



furniture, and fixture in good working order, for running the day-to-day medical services and management of the Hospital. In case of any dispute between the two agreements, the terms of the Lease Agreement were to prevail.

3.7 The Lease Agreement was effective from 31.12.2013 and was binding for a period of 30 (thirty) years with a provision of further renewal. The Lease Agreement further provided that the same can be revoked on mutual consent by giving 30 days written notice to the other party and the acceptance of the same by the other party. The revocation clause is reproduced hereunder:

*“2(d). The lease arrangement can be revoked on mutual consent by giving a 30 days written notice to the other party and the acceptance of the same by the other party”*

3.8 A Supplementary Agreement dated 01.01.2014 was signed between the Corporate Debtor and the Applicant amending the Lease Agreement dated 31.12.2013 with respect to the payment obligations.

3.9 During the period of 2006-2021 the Corporate Debtor and the Applicant were both honoring the terms of the Agreements. There was no default in payment of expenses of any staff, or employee consultant. During the aforesaid period, there was steady growth and the overall business was profitable.

3.10 In the meantime, on adjudication of a Section 7 Application, CIR Process was initiated against the Corporate Debtor with effect from 08.12.2021, and Mr. Siba Kumar Mohapatra was appointed as the Interim Resolution Professional, who subsequently got confirmed as RP. The RP vide its letter dated 30.05.2022 abruptly and before the end of the tenure, terminated both the Agreements on illegal grounds. The RP, inter-alia stated that the



Agreements were creating hindrances in the Resolution of the Company, and at the request of the Prospective Resolution Applicants (PRAs), the said Agreements were terminated. Pertinently, the termination is illegal as the it is contrary to the provisions of the Agreements which provided for termination only by mutual consent or by 30 days' notice in case of the Lease Agreement.

3.11 The Applicant vide its letter dated 02.06.2022 duly replied to the illegal termination and the RP was requested to withdraw the termination letter within 48 hours and not to act on the said termination. The RP replied to the letter on 06.06.2022 reiterating the termination. The RP stated that the Lease Agreement dated 31.12.2013 was not registered and both agreements were inadequately stamped. The RP also informed that the PRAs have put forth a condition of terminating the Agreements.

3.12 The Hon'ble Supreme Court in the matter of **Gujarat Urja Vikas Nigam Limited vs. Amit Gupta & Ors (2021) 7 SCC 209** opined that the termination of an agreement which is the main source of revenue generation of the Corporate Debtor is against the objective of the Code which envisages that the Corporate Debtor should be preserved as a going concern. The termination of the Agreements was without any application of mind and without weighing the criticality of the service being provided by the Applicant to protect and preserve the value of the Corporate Debtor and to ensure the management of operations of the Corporate Debtor as a going concern.

3.13 In light of the aforesaid facts and position of law, it is submitted that the termination of the Agreements is bad in law and is liable to be set aside. Further, the RP and the CoC ought to be restrained from acting on the voting



and decision relating to Resolution Plans which otherwise will make the instant Application infructuous.

4. On issuance of a notice, the Respondent filed its reply and written submissions stating mainly the following:

4.1 It was the poor financial condition of the Corporate Debtor that led to default in payments to sundry creditors like medicine suppliers, and the Corporate Debtor incurred losses consistently from F.Y. 2016-2017 till F.Y. 2018-2019. Thus, the Corporate Debtor defaulted in repaying the loan amount to the Financial Creditors as a consequence of which the application for commencement of CIRP was admitted.

4.2 While further perusing the records of the Corporate Debtor, the RP observed that these transactions, i.e., the Service Agreement and the Lease Agreement were related party transactions, as per the Audited Financial Statements of the Corporate Debtor and the Applicant.

4.3 In response to the request, the Company Secretary of the Corporate Debtor furnished us a copy of the Lease agreement executed on 31.12.2013 between the Corporate Debtor and the Applicant. The copy of the Service Agreement dated 01.09.2006 was received at a much later date. The original copies of the Agreements were not available in the Company records and are not provided by the Suspended Board of Directors till date despite several reminders.

4.4 In fact, the Applicant had no restriction from the Respondent/RP whatsoever, in any manner for providing services to the Corporate Debtor until the Agreements were terminated on 30.05.2022.



4.5 It has been almost 6 months since the initiation of CIRP, and the Applicant did not initiate or have any discussion with the Respondent/RP regarding their plan for the operation and management of the hospital and providing service as mandated in the agreements.

4.6 Thus the allegation that the Respondent /RP is not experienced is absolutely false and baseless, as the responsibility to provide the services was of the Applicant. It is the Applicant's inability to provide services after the initiation of CIRP that led to a stoppage in the functioning of the Hospital.

4.7 It was only when there was the surreptitious removal of certain original land documents on the 15th of June 2022 from the Office files by 2 employees, including one suspended director, their entry was restricted.

4.8 Another reason for the restriction was the unauthorized entry to the premises of the CD by 2 outsiders (reportedly friends of Dr. A.K. Rath) on 23<sup>rd</sup> June 2022 and threatening staff of CD. Even there was a report of Physical assault and verbal abuse to security staff by the Suspended Director Dr A. K. Rath on 04<sup>th</sup> October 2022. The entry is still provided subject to approval from the Respondent.

4.10 Even after six months of CIRP, the Applicant/ Hemlata Hospital Limited (HHL) failed to provide the operation and management of the hospital and provide service as stipulated in the agreements. That it has been almost 6 months since the initiation of CIRP, but the Applicant did not initiate or have any discussion with the Respondent Resolution Professional regarding their plan for the operation and management of the hospital and providing service as mandated in the agreements.





4.11 The last part-time Doctor engaged on a regular basis by HHL was Dr M.K. Behera, who left the job on 18<sup>th</sup> November 2021 and his last service was on 29<sup>th</sup> November 21, which was much before initiation of CIRP.

4.12 The lease agreement had to be terminated for the successful resolution plan to take effect. The new Successful Resolution Applicant cannot be made to run from pillar to post to remove the Lessee.

4.13 Further, the Operational Creditors including the Government dues, and Workmen & Employees shall be paid 100% of the claim admitted by the Resolution Professional.

4.14 Even the unsuccessful Resolution Applicant had requested for termination of the above two related party agreements as a pre-condition for their offer.

4.15 Therefore, the Termination Notice dated 30.05.2022 served on the Applicant is legitimate in nature and is critical to maintain the viability of the Corporate Debtor as a going concern, maximize the value of its assets, and improve the likelihood of its insolvency resolution.

4.16 It is pertinent to note that the Lease Agreement dated 31.12.2013 between the Corporate Debtor and the Applicant is also not registered. As per Section 17 (1) (d) of the Indian Registration Act, 1908, the registration of lease of immovable property from year to year, or for any term exceeding one year is compulsory. Further, the Lease Agreement, as well as the Service Agreement, do not appear to be stamped adequately.

5. The Applicant has filed its rejoinder and stated that:



5.1 A bare perusal of the reply filed by the Respondent makes it clear that the actions of Resolution Professional in illegally initiating the termination of the Agreements under question being Service Agreement dated 01.09.2006, Lease Agreement dated 31.12.2013 along with Supplementary Agreement (hereinafter “Agreements”) are void and beyond the powers granted to it by the Insolvency and Bankruptcy Code, 2016. The RP has failed to provide any cogent reasons or any substantial provision of law to justify the illegal actions taken by it against the Applicant herein.

5.2 Even though there is no direction from this Adjudicating Authority of not to allow the Applicant or its staff to enter the Hospital premises, the RP has been illegally restricting the use of the premises. The expensive medical equipment owned by the Applicant are lying without any supervision and the Applicant is not being allowed to inspect or use the same.

5.3 Even the Applicant's vehicles are inside the Hospital premises and the RP is not allowing the Applicant's staff inside.

5.4 The computers belonging to the Applicant are now being used by the Corporate Debtor and restriction in access is hampering and delaying the statutory compliances to be undertaken by the Applicant.

5.5 The RP has placed on record the Financial Statements of the Corporate Debtor for FY 2016-17 till FY 2018-2019. As per the Statements, the Revenue of Corporate Debtor for various years is as follows:

Year ending on 31.03.2016	INR 5,74,76,844/-
Year ending on 31.03.2017	INR 5,93,57,753/-
Year ending on 31.03.2018	INR 5,76,84,308/-
Year ending on 31.03.2019	INR 5,29,49,139/-



The Corporate Debtor had a stable revenue over the years because of the continuation of the Agreements with the Applicants. The continuing revenue over the years clearly shows that the Agreements were never a loss-making arrangement. In fact, being the sole source of revenue for the Corporate Debtor, and also for the Applicant, the Agreements played a major role in repaying the principal and interest amounts to various Lenders during their respective terms.

5.6 Pertinently, on multiple occasions, the Applicant extended its support to the Corporate Debtor in payment of loan amount to Banks. The Applicant facilitated the payment of Rs.7.75 Crores against the principal amount of Rs. 8.4 Crores to Technology Development Board, one of the creditors between 2015 to 2017. In furtherance of the same, it is worthwhile to note that in the year 2010 when the SARFAESI proceedings were initiated against the Corporate Debtor by IDBI, the Applicant ensured the payment of Rs. 50 Lakhs to IDBI and further an amount of Rs. 75 Lakhs were deposited in the Hon'ble High Court of Odisha by the Applicant in the year 2012 for fulfilling the conditions imposed by the High Court for stay of the SARFAESI proceedings which allowed the continuation and sustenance of the operations of the Hospital. The Corporate Debtor did not have access to even Working Capital since 2005, and it was the Applicant who infused money to keep the Corporate Debtor as a going concern.

5.7 The equipment possesses complex and sophisticated machinery and without proper care will soon become unserviceable, thus causing irreparable



loss to the Applicant. More so, access to the Applicant to its own property is not being provided by the RP, which is a clear violation of statutory and constitutional rights leading to a complete financial and operational deterioration of the Applicant. The RP has provided no justification for not allowing the personnel of the Applicant to take care of these equipment. The medical equipment that are currently in use since 2007 onwards are all in the stock of the Applicant. All the purchases are done through the Applicant's account only. The Corporate Debtor's equipment is only those that were purchased before 2007. The RP has physically taken over the premises and the Applicant is not being allowed to inspect the equipment. The hospital today is running because of the equipment purchased through Hemalata.

5.8 The Applicant and the Corporate Debtor are related party is a known fact and the same is reflected in the Balance Sheets since the year 2006. The requirement of NoC from the creditors for the purpose of entering into a lease agreement never existed. The Service Agreement was entered into in the year 2006 and the Lease Agreement was executed in the year 2013. The Financial Creditors were very much aware of these agreements as it was the sole source of revenue and business for the Corporate Debtor. The Creditors were also aware that the loan amount repayment is being done through the revenue generated by the Applicant. The e-mail dated 23.05.2022 issued by the RP suggests that it was the RP who was adamant to terminate the agreements and the Financial Creditors had no role to play. The basis for terminating the Agreements in the said e-mail is the non-submission of the NOC. To the contrary, the original Petitioner i.e., ISARC which also holds the highest voting



rights in the CoC, in its e-mail dated 24.05.2022 left it to the RP to terminate the agreements. At this stage, there was no statement by the RP to the effect that the Agreements erode the financial credibility of the Corporate Debtor.

6. We heard the submissions of both parties and perused the documents and Written Submissions placed on record. After going through the pleadings, we observe that through the present application, the Applicant has challenged the termination of the Service Agreement dated 01.09.2006, the Lease Agreement dated 31.12.2013, and the Supplementary Agreement dated 01.01.2014.

7. On perusal of the record, it is observed that the Respondent/RP terminated the Lease Agreement vide its termination notice dated 30.05.2022. The Applicant has contended that the RP terminated the lease without the written consent of both parties in violation of Clause 6 of the Lease Agreement dated 31.12.2013.

8. Per Contra, the RP has contended that the Applicant is a Related Party of the Corporate Debtor. The same is also admitted by the Applicant in its Rejoinder. He has further contended that the PRAs made a condition that for submission of the Resolution Plan, such related party Agreements need to be terminated. Hence, in the interest of the Corporate Debtor, the Agreements under reference were terminated.

9. Against this backdrop, we would like to examine the submissions of both parties. Undisputedly, as admitted by the Applicant in its rejoinder, the Corporate Debtor and the Applicant in this IA are related parties to each other.



The relevant averment made by the Applicant in para 15 of the Rejoinder is reproduced below:

“15. That the Applicant and the Corporate Debtor are related party is a known fact and the same is reflected in the Balance Sheets since the year 2006. The requirement of NoC from the Creditors for the purpose of entering into a lease agreement never existed. The Service Agreement was entered into in the year 2006 and the Lease Agreement was executed in the year 2013.....”.

10. Hence, a question arises - **Could the RP during CIRP continue the operation of these “Agreements”, which are “related party transactions”?** In order to find an answer to this question, we refer to the duties of the RP as listed in Section 25 of IBC 2016, which reads thus:

**25. Duties of resolution professional. -**

(1) 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.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely: -

(a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;

(c) raise interim finances subject to the approval of the committee of creditors under section 28;

(d) appoint accountants, legal or other professionals in the manner as specified by Board;

(e) maintain an updated list of claims;

(f) convene and attend all meetings of the committee of creditors;

(g) prepare the information memorandum in accordance with section 29;

<sup>1</sup>[(h) invite prospective resolution applicants, who fulfil 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.]

(i) present all resolution plans at the meetings of the committee of creditors;

(j) file application for avoidance of transactions in accordance with Chapter

III, if any; and

(k) such other actions as may be specified by the Board.

On perusal of the contents of Section 25 of IBC 2016, we do not find any explicit provision in the duties of RP dealing with the related party transaction. Hence, we would now find out whether such transactions could be carried out with the approval of the CoC. Accordingly, we refer to Section 28 of IBC 2016, which is reproduced below:



**28. Approval of committee of creditors for certain actions. -**

**(1) Notwithstanding anything contained in any other law for the time being in force, the resolution professional, during the corporate insolvency resolution process, shall not take any of the following actions without the prior approval of the committee of creditors namely: -**

- (a) raise any interim finance in excess of the amount as may be decided by the committee of creditors in their meeting;
- (b) create any security interest over the assets of the corporate debtor;
- (c) change the capital structure of the corporate debtor, including by way of issuance of additional securities, creating a new class of securities or buying back or redemption of issued securities in case the corporate debtor is a company;
- (d) record any change in the ownership interest of the corporate debtor;
- (e) give instructions to financial institutions maintaining accounts of the corporate debtor for a debit transaction from any such accounts in excess of the amount as may be decided by the committee of creditors in their meeting;
- (f) undertake any related party transaction;**
- (g) amend any constitutional documents of the corporate debtor;
- (h) delegate its authority to any other person;
- (i) dispose of or permit the disposal of shares of any shareholder of the corporate debtor or their nominees to third parties;
- (j) make any change in the management of the corporate debtor or its subsidiary;
- (k) transfer rights or financial debts or operational debts under material contracts otherwise than in the ordinary course of business;
- (l) make changes in the appointment or terms of contract of such personnel as specified by the committee of creditors; or
- (m) make changes in the appointment or terms of contract of statutory auditors or internal auditors of the corporate debtor.

(2) The resolution professional shall convene a meeting of the committee of creditors and seek the vote of the creditors prior to taking any of the actions under sub-section (1).

(3) No action under sub-section (1) shall be approved by the committee of creditors unless approved by a vote of <sup>1</sup>[sixty-six] per cent. of the voting shares.

(4) Where any action under sub-section (1) is taken by the resolution professional without seeking the approval of the committee of creditors in the manner as required in this section, such action shall be void.

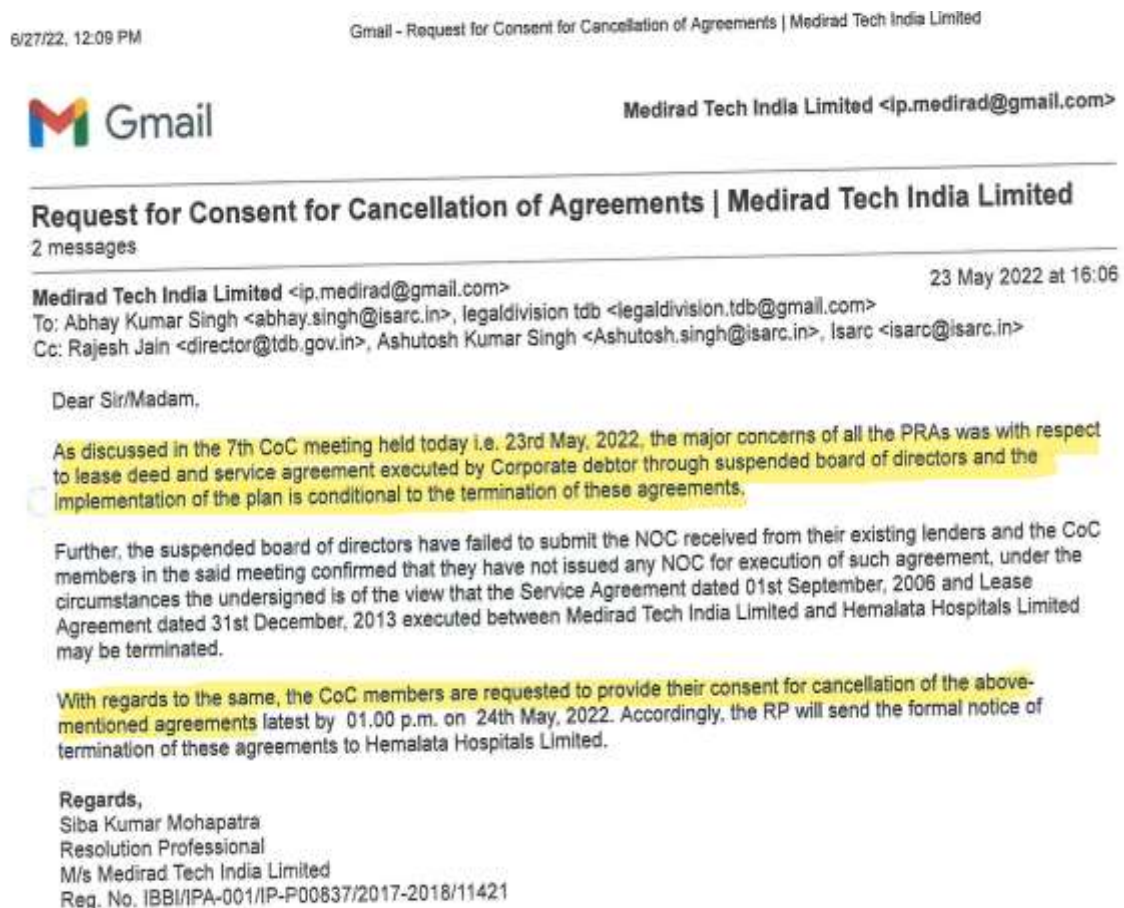
(5) The committee of creditors may report the actions of the resolution professional under sub-section (4) to the Board for taking necessary actions against him under this Code.

On the bare perusal of the provision contained in Section 28(1)(f) read with the provision under Section 28(3) of IBC 2016, we find that the “related party transactions” cannot be undertaken or carried out by the RP during the period of CIRP without the knowledge and approval of CoC with 66% of the votes.





11. From the e-mail dated 23.05.2022 sent by RP to the members of the CoC (filed by RP as part of the reply to the instant IA), it is noticed that in the 7<sup>th</sup> CoC meeting held on 23.05.2022, a major concern of all the PRAs was with regard to the lease deed and service agreement executed by the CD through the suspended board of directors and implementation of the Resolution Plan being conditional to the termination of these agreements. Accordingly, the RP sought the consent of the CoC members for the cancellation of the above-mentioned agreements. The e-mail dated 23.05.2022 reads thus:



12. From the record, it is seen that both the CoC members had either issued expressed NOC or not objected to the termination of the aforesaid Agreements. The e-mail reply dated 24.05.2022 from ISARC (having 66.54% voting shares in the CoC) to the RP, conveys their no objection thus:





----- Forwarded message -----

From: **Abhay Kumar Singh** <[abhay.singh@isarc.in](mailto:abhay.singh@isarc.in)>

Date: Tue, May 24, 2022 at 9:47 AM

Subject: Re: Request for Consent for Cancellation of Agreements | Medirad Tech India Limited

To: Medirad Tech India Limited <[ip.medirad@gmail.com](mailto:ip.medirad@gmail.com)>

Cc: Rajesh Jain <[director@tdb.gov.in](mailto:director@tdb.gov.in)>, Ashutosh Kumar Singh <[Ashutosh.singh@isarc.in](mailto:Ashutosh.singh@isarc.in)>, ISARC <[isarc@isarc.in](mailto:isarc@isarc.in)>, legaldivision tdb <[legaldivision.tdb@gmail.com](mailto:legaldivision.tdb@gmail.com)>

Dear Sir,

For your information we have not given any approval regarding the subject agreement. Hence its upon you being the RP where you want to terminate or keep alive.

As we have not given any approval, so we have no objection for termination.

Warm Regards,

**Abhay Kumar Singh**

Chief Manager

**India SME Asset Reconstruction Company Ltd.**

@SIDBI BO

Constantia Building Floor VIII, A - Wing,

11, Dr U N Brahmachary Street, Kolkata-700017.

Tel.No. 033-40445272 ,Mobile No.7980394478.

website : [www.isarc.in](http://www.isarc.in)

Further, the other member of the CoC i.e., TDB (having 33.46% voting shares in the CoC) had also responded vide its e-mail dated 26/25.05.2022 stating that they had not given any consent for either of the Agreements and hence, the termination/cancellation of the Agreements can be done by RP. The said e-mails read thus:



6/27/22, 12:10 PM

Gmail - Fwd: Request for Consent for Cancellation of Agreements | Medirad Tech India Limited



Medirad Tech India Limited <ip.medirad@gmail.com>

## Fwd: Request for Consent for Cancellation of Agreements | Medirad Tech India Limited

1 message

Siba Mohapatra <sibmohapatra@yahoo.co.in>  
To: ip.medirad@gmail.com

26 May 2022 at 20:42

Sent from my iPad

Begin forwarded message:

**From:** legaldivision tdb <legaldivision.tdb@gmail.com>  
**Date:** 26 May 2022 at 19:42:31 IST  
**To:** Siba Mohapatra <sibmohapatra@yahoo.co.in>  
**Subject:** Fwd: Request for Consent for Cancellation of Agreements | Medirad Tech India Limited

Dear Sir,

Kindly find the inputs suggested by our Legal consultant.

This is forwarded to you for consideration and necessary action.

Regards,  
T.K.SivaSankari.

----- Forwarded message -----

**From:** Banusri Velpandian <banusriv@gmail.com>  
**Date:** Wed, 25 May 2022, 12:12  
**Subject:** Re: Request for Consent for Cancellation of Agreements | Medirad Tech India Limited  
**To:** legaldivision tdb <legaldivision.tdb@gmail.com>  
**Cc:** Nalini Negi <assistantlawofficer1@tdb.gov.in>

Dear Ms Nalini,

As there is no specific NOC that has been issued by TDB to M/s Medirad for either services agreement or lease agreement with Hemlata hospitals, the following can be conveyed to the RP;

1. NOC has not been issued for either services agreement or lease agreement with Hemlata hospitals by TDB
2. Termination/ cancellation or any other form of discontinuation of the above stated agreements can be undertaken by the RP who has the statutory authority to govern the company's affairs keeping in view that such action is essential for the CIRP

Also since I have court appointed Mediation(s) on every Friday afternoons, the proposed CoC schedule has to be changed/postponed

Further, the arbitration proceedings of TDB matters also have been scheduled to be heard in the same time slot

RP to be requested for alternate date and time for the upcoming CoC

With best regards,

*Banusri.*

Dr.Banusri.V, FCI Arb, MICA  
Advocate, PhD in Law



13. It is further noticed from the Minutes of the 8<sup>th</sup> CoC meeting held on 26.05.2022 under Agenda Item No. A-6: “To discuss on the revised Resolution Plans submitted by the Prospective Resolution Applicants (PRAs)”, the CoC had discussed the issue of the cancellation of the Lease Deed and the Service Agreement with the “related party of the CD” being central to the plans submitted by both the PRAs. The discussion and the consent of CoC members as recorded in the minutes reads thus:

The Chairperson submitted that the cancellation of Lease deed and the Service Agreement with the related party of the CD was central to the Plans being submitted by both the PRAs. The Chairperson advised CoC that both the members of CoC have confirmed that they have not given their approval/NOC for the above two agreements executed by MTIL with Hemalata Hospitals Limited. The Chairperson advised the CoC that the PRAs do not consider the above two agreements beneficial to the success of the CD and accordingly they have strongly requested for termination of the agreements. The Chairperson requested CoC members to convey their approval to RP for termination of the agreements. While ISARC agreed for termination of the agreements, TDB representative opined that termination/cancellation of the above stated agreements can be undertaken by the RP who has the Statutory authority to govern the Company’s affairs keeping in view that such action is essential for the CIRP.

The Chairperson noted the view of CoC members and advised them that he will take suitable steps accordingly.

In a nutshell, in terms of Section 28(1)(f) read with Section 28(3) of IBC 2016, the “related party transactions” cannot be undertaken by the RP without the approval of the CoC with 66% of the votes. In the instant case, the CoC instead of giving approval to continue with “the related party transactions in terms of Lease Deed and Service Agreements” has given its consent to terminate those related party agreements, in its commercial wisdom. **Hence, we find no illegality committed by the RP in terminating the Service Agreement dated 01.09.2006, the Lease Agreement dated 31.12.2013 along with Supplementary Agreement dated 01.01.2014.**



14. Even otherwise, on a perusal of Clause XIII of the Resolution Plan approved by the CoC, it is noticed that the Resolution Applicant has sought termination of the Lease and Service Agreements. The contents of the Concessions sought by the SRA are reproduced below for immediate reference:

**XIII. REMEDIES / CONCESSIONS DEMANDED BY AIOPL:**

AIOPL prays to the R.P and Committee of Creditors that the two below mentioned existing agreements between Medirad Tech India Limited ( Corporate Debtor) and Hemlata Hospitals Limited need to be terminated before AIOPL makes any payment towards the Resolution and before taking hand over of the Hospital.

- a) Service Agreement entered on 1<sup>st</sup> day of September 2006 between Medirad Tech India Ltd and Hemalata Hospitals Ltd
- b) Lease Agreement 31<sup>st</sup> Day of December 2013 between Medirad Tech India Ltd and Hemalata Hospitals Ltd

15. Thus, the Resolution plan proposal made by the SRA is contingent upon the termination of the aforementioned Agreements. Hence, for a moment for the sake of argument, even if we agree to the contention of the Applicant that the agreements could have been set aside only by mutual consent of the parties or advance notice, the fact remains that the SRA has sought the termination of both the Service Agreement dated 01.09.2006 and Lease Agreement dated 31.12.2013 as a concession and condition under the Resolution Plan. Therefore, we would still like to examine **Whether, on approval of the Resolution Plan, the SRA is empowered to terminate the “related party contracts/Agreements”**.

16. It is in this background, we refer to Regulation 39(6) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which deals with the approval of the Resolution Plan and reads thus:



**“39. Approval of resolution plan.**

1..

2..

3..

4..

5..

6. A provision in a resolution plan which would otherwise require the **consent of the members** or partners of the corporate debtor, as the case may be, under the terms of the constitutional documents of the corporate debtor, shareholders’ agreement, **joint venture agreement or other document of a similar nature**, shall take effect notwithstanding that such consent has not been obtained.”

*(Emphasis Supplied)*

17. At this juncture, we refer to the Judgement dated 07.03.2023 in the matter of **“IDBI Bank Vs. Jaypee Infratech Limited”** in Company Petition No. (IB)-77/ALD/2017, wherein the following was observed with respect to the termination of the related party contracts:

*“124. On perusal of Regulation 39(6) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, it is evident that inter alia, lack of consent of shareholders/members of JIL i.e., JAL (being the holding company) for joint venture agreement or other document of a similar nature cannot create any hindrance in approval of the Resolution plan. Therefore, we are of the view that the contracts/agreements, to which JAL is referring, will come under the ambit of Regulation 39(6). A similar observation was given by the Hon’ble NCLT Principal Bench in the matter of **State Bank of India Vs. Bhushan Steel Limited** dated, (2018) ibclaw.in 274 NCLT, dated 15.05.2018, which reads as under:*

*“67. A perusal of Regulation 38 would clearly show that by virtue of mandatory contents of the resolution plan discussed under Section 30 and 31 of the Code the requirement of Regulation 38*



stand fulfilled. However, the objections raised under Section 29A (a) and (d) of the Code which are discussed separately. Even the requirement of Regulation 39 stand fulfilled as the RP has submitted the resolution plan of H1 resolution applicant as approved by the CoC to this Tribunal with the certification that the contents of the resolution plan meet all requirements of the Code and the CIRP Regulations and that the resolution plan has been duly approved by the CoC. **There is no scope for argument left that shareholder, or parties to joint venture agreement or anyone holding similar document need to accord sanction in view of the provisions of Regulation 39(6) of the CIRP Regulations. Regulation 39 (6) clarifies that the resolution plan as approved by the CoC must take effect notwithstanding the requirement of consent of the members or partners of the Corporate Debtor under the terms of the constitutional documents of the Corporate Debtor, shareholders' agreement, joint venture agreement or other document of a similar nature.**”

*(Emphasis Supplied)*

The aforesaid judgment was upheld by the Hon'ble NCLAT passed in the matter of *Bhushan Energy Limited vs. State Bank of India and Ors.* in CA(AT)(I) 267 of 2018, dated 10.08.2018 and even the challenge to it before the Hon'ble Supreme Court was withdrawn [*M/s. Bhushan Energy Limited vs. State Bank of India in Civil Appeal No. 8517 of 2018, dated 10.01.2020*].

**125. In view of the above findings, we find no illegality in the clause seeking termination of the related party contracts of JAL.”**

18. In view of the Judgement in “IDBI Bank Vs. Jaypee Infratech Limited” (2023) ibclaw.in 91 NCLT and “State Bank of India Vs. Bhushan Steel Limited” dated, (2018) ibclaw.in 274 NCLT, dated 15.05.2018, it is evident that the Related Party Contract/Agreement can be sought to be terminated via the relevant Clauses in the Resolution Plan.



19. Hence, even if we consider the prayer of the Applicant for restoring the Agreements, then also they will stand terminated vide the provision made/sought by the SRA under the Resolution Plan duly approved by the Committee of Creditors (CoC).

20. In the instant case, the Respondent/RP has specifically stated in its written submissions and reiterated during the hearing that SRA has made a stipulation in its Resolution Plan to seek termination of the Related Party Contracts/Agreements.

21. To conclude, (a) In terms of Section 28(1)(f) read with Section 28(3) of IBC 2016, the “related party transactions” cannot be undertaken by the RP during the period of CIRP without the approval of the CoC with 66% of the votes. In the instant case, the CoC instead of giving approval to continue with “the related party transactions in terms of Lease Deed and Service Agreements” gave its consent to terminate or did not object to termination of those related party agreements, in its commercial wisdom; and (b) In view of the settled position, related party contracts can be sought to be terminated via the relevant Clauses in the Resolution Plan. **Therefore, we find no illegality committed by the RP in terminating the Service Agreement dated 01.09.2006, Lease Agreement dated 31.12.2013 along with Supplementary Agreement dated 01.01.2014.**

**22. Hence, the application is Dismissed, being devoid of merits.**

Sd/-  
**(L. N. GUPTA)**  
**MEMBER (T)**

Sd/-  
**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (J)**





**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT-II)**  
**(Part Heard Bench)**

**IA. NO. 5617/ND/2022**  
**IN**  
**Company Petition No. (IB)-1243(ND)/2018**

**IN THE MATTER OF:**

**India SME Asset Reconstruction Company Limited**

**... Applicant/Financial Creditor**

**Versus**

**Medirad Tech India Limited**

**... Respondent**

**AND IN THE MATTER OF IA. NO. 5617/ND/2022:**

**India SME Asset Reconstruction Company Limited**

Swavalamban Bhavan, C-11,  
G-Block, Bandra Kurla Complex,  
Bandra (East), Mumbai - 400052,  
Maharashtra

**... Applicant**

**VERSUS**

**M/s Medirad Tech India Limited**

Having a registered office at:  
D-155, Sarita Vihar  
New Delhi – 110076

**... Respondent**

**Order Delivered on: 09.08.2023**

**SECTION: Section 30(6) of IBC 2016**

**CORAM:**

**SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (J)**

**SH. L. N. GUPTA, HON'BLE MEMBER (T)**

**PRESENT:**

**For the Applicant** : Adv. Shouryendu Ray, Adv. Neelu Mohan for  
Successful Resolution Applicant

**For the Respondent** : Adv. Tishampati Sen, Adv. Palash Singhai for  
Suspended Board of Directors

**For the RP** : Adv. Meghna Rao





## **ORDER**

**PER: SH. L. N. GUPTA, MEMBER (T)**

The present IA No. 5617 of 2022 has been filed by India SME Asset Reconstruction Company Limited (hereinafter referred to as, the '**Applicant**') under Section 30(6) of IBC, 2016, seeking the following relief:

- a) *Allow the present application*
- b) *Approve and accept the resolution plan dated 30.05.2022 along with its annexures and addendums submitted by Asian Institute of Oncology Private Limited as approved by the Committee of Creditors with 100% voting share in its 09th meeting as submitted in respect of the Corporate Debtor, i.e., Medirad Tech India Limited.*
- c) *Declare upon approval of the Resolution Plan by his Hon'ble Adjudicating Authority, the provisions of the Resolution Plan shall be binding on the Company, its employees, members, creditors including the Central Government, State Government, local authority, its guarantors, and other stakeholders in accordance with section 31 of the Code, and shall be given effect to and implemented pursuant to the order of this Hon'ble Adjudicating Authority.;*
- d) *Terminate the Service Agreement dated 01.09.2006 and the Lease Agreement dated 31.12.2013 along with the Supplemental Agreement dated 01.01.2014 executed between the Corporate Debtor and HHL for the successful resolution and execution/implementation of the resolution plan.*
- e) *Approve the appointment of the monitoring committee as approved by the Committee of Creditors;*
- f) *Approve and grant reliefs and directions sought under the resolution plan by the Resolution Applicants;*
- g) *Pass such other or further order/orders(s) as may be deemed fit and proper in the facts and circumstances of the instant case."*



2. To put the facts succinctly, the underlying main Petition CP (IB)-1243/(ND)/2018 was filed by M/s India SME Asset Reconstruction Company Limited against the Corporate Debtor namely, M/s Medirad Tech India Limited under Section 7 of IBC, 2016, which was admitted vide Order dated 08.12.2021 of this Adjudicating Authority. The Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor was initiated and Sh. Siba Kumar Mohapatra was appointed as IRP and later confirmed as RP.

3. It is submitted by the Applicant that in terms of Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the IRP made a Public Announcement in Form-A on 11.12.2021 to invite the claims. A copy of the public announcement was uploaded on the website of the Insolvency and Bankruptcy Board of India (IBBI).

4. It is further submitted by the Applicant that the IRP constituted a Committee of Creditors (CoC) comprising the following 02 members.

List of secured financial creditors (Other than financial creditors belonging to any class of creditors)

Sl. No.	Name of creditor	Details of claim received		Details of claim admitted						Amount of contingent claim	Amount of any mutual dues, that may be set-off	Amount of claim not admitted	Amount of claim under verification	Remarks, if any	Security Interest
		Date of receipt	Amount claimed	Amount of claim admitted	Nature of claim	Amount covered by security interest	Amount covered by guarantee	Whether related party?	% of voting share in CoC						
1	Technology Development Board	20-12-21	302,838,962.00	301,915,435.00	Secured	301,915,435.00	301,915,435.00	No	33.46	0	0	923,527	0	Claim admitted till CIRP commencement date	Note 1
2	India SME Asset Reconstruction Company	21-12-21	600,497,968.31	600,497,968.31	Secured	600,497,968.31	600,497,968.31	No	66.54	0	0	-	0		Note 2
				403.31		902,413,403.31	902,413,403.31		100	0	0	923,527	0		



5. It is stated by the Applicant that the 'Form-G' was published on 02.03.2022 in the daily newspapers, namely, Financial Express (English) - New Delhi Edition, Times of India (English) - Bhubaneswar Edition, Sambad (Odia, being the regional language newspaper) - Bhubaneswar Edition, Jansatta (Hindi, being the regional language newspaper) – New Delhi Edition. As per Form G, the last date for submission of Resolution Plans was 02.05.2022.

6. It is further stated by the Applicant that the following EOIs were received by it in response to publication of the Form G.

<b>S.N.</b>	<b>Date of receipt of EoI</b>	<b>Name of prospective applicant</b>
1	15.03.2022	MGM Minerals Limited
2	15.03.2022	Asian Institute of Oncology Private Limited
3	16.03.2022	RKG Fund I, Scheme of RKG Trust
4	16.03/2022	Kundan Care Products Limited
5	16.03.2022	Derit Infrastructure Private Limited
6	17.03.2022	Hemalata Hospitals Limited

7. In terms of Regulation 36A (8) and Regulation 36A (9) of the CIRP Regulations, the Applicant conducted due diligence relying upon the documents submitted by the PRAs along with the Expression of Interest so as to ensure that the above PRAs complied with the said regulation and sought clarifications from the PRAs for this purpose. In terms of Regulation 36 A (10) of the Insolvency and Bankruptcy Code, 2016 (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), the Applicant issued a provisional list of PRAs on 26.03.2022. In terms of Regulation 36(12), the final list of the PRAs was issued by the Applicant on 05.04.2022, which is reproduced overleaf -



S.N.	Prospective Resolution Applicant
1.	MGM Minerals Limited
2.	Asian Institute of Oncology Private Limited
3.	RKG Fund I, Scheme of RKG Trust
4.	Derit Infrastructure Private Limited
5.	Hemalata Hospitals Limited

8. Out of the aforesaid list, only 02 PRAs namely, MGM Minerals Limited and Asian Institute of Oncology Private Limited (hereinafter referred to as “**AIOPL**”) submitted the Resolution Plans, which were put to vote in the 9<sup>th</sup> CoC meeting held on 06.06.2022. The said resolutions, as placed before the CoC for consideration under Agenda C. – “Voting Items” and voting read thus:

1.	<p><b>To approve the Resolution Plan submitted by Asian Institute of Oncology Pvt. Ltd.</b></p> <p><i>“RESOLVED THAT pursuant to Section 30(4) of Insolvency and Bankruptcy Code, 2016 read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and in accordance with any other provisions, rules and regulations made thereunder, approval of the members of the Committee of Creditors of Medirad Tech India Limited be and is hereby accorded to the Resolution Plan received on 30.05.2022 along with the annexures and addendum, if any, submitted by Asian Institute of Oncology Private Limited for Medirad Tech India Limited.</i></p> <p><i>RESOLVED FURTHER THAT the Resolution Professional of Medirad Tech India Limited be and is hereby authorized to take such steps as may be necessary in relation to the above, if required and to settle all matters arising out of and incidental thereto and sign and execute all documents and writings that may be required and generally to do all acts, deeds, make payments and things that may be necessary, proper, expedient or incidental for the purpose of giving effect to the aforesaid resolution including filing necessary applications with the Hon’ble NCLT for the same.”</i></p>
2.	<p><b>To approve the Resolution Plan submitted by MGM Minerals Limited</b></p> <p><i>“RESOLVED THAT pursuant to Section 30(4) of Insolvency and Bankruptcy Code, 2016 read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and in accordance with any other provisions, rules and regulations made thereunder, approval of the members of the Committee of Creditors of Medirad Tech India Limited be and is hereby accorded to the Resolution Plan received on 30.05.2022 along with the annexures and addendum, if any, submitted by MGM Minerals Limited for Medirad Tech India Limited.</i></p> <p><i>RESOLVED FURTHER THAT the Resolution Professional of Medirad Tech India Limited be and is hereby authorized to take such steps as may be necessary in relation to the above, if required and to settle all matters arising out of and incidental thereto and sign and execute all documents and writings that may be required and generally to do all acts, deeds, make payments and things that may be necessary, proper, expedient or incidental for the purpose of giving effect to the aforesaid resolution including filing necessary applications with the Hon’ble NCLT for the same.”</i></p>





9. The approved resolution and voting results of the 09<sup>th</sup> CoC meeting held on 06.06.2022 over the said 02 Resolutions read as under:

**Resolution No. 1: To approve the Resolution Plan submitted by Asian Institute of Oncology Pvt. Ltd.**

*“RESOLVED THAT pursuant to Section 30(4) of Insolvency and Bankruptcy Code, 2016 read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and in accordance with any other provisions, rules and regulations made thereunder, approval of the members of the Committee of Creditors of Medirad Tech India Limited be and is hereby accorded to the Resolution Plan received on 30.05.2022 along with the annexures and subsequent addendum/s, if any, submitted by Asian Institute of Oncology Private Limited for Medirad Tech India Limited.*

**RESOLVED FURTHER THAT** *the Resolution Professional of Medirad Tech India Limited be and is hereby authorized to take such steps as may be necessary in relation to the above, if required and to settle all matters arising out of and incidental thereto and sign and execute all documents and writings that may be required and generally to do all acts, deeds, make payments and things that may be necessary, proper, expedient or incidental for the purpose of giving effect to the aforesaid resolution including filing necessary applications with the Hon'ble NCLT for the same.”*

Sr. No	Financial Creditors	Voting share	For	Against	Abstained
1	India SME Asset Reconstruction Company Limited	66.54%	✓	-	-
2	Technology Development Board	33.46%	✓	-	-
	<b>Total</b>	<b>100.00%</b>	<b>100%</b>	<b>-</b>	<b>-</b>

**Conclusion of Resolution 1:**

According to Section 30(4) of the Insolvency & Bankruptcy Code, 2016, save as otherwise provided in the Code, the decision of the Committee of Creditors shall be taken by a vote of **not less than sixty-six per cent.**

The resolution is voted in favor by **100%** of the voting share of financial creditors.

Hence, it is concluded that **Resolution 1 is approved.** The members of the committee of creditors are requested to take note of the above summary record.

XXXX

XXXX

XXXX

XXXX

XXXX



**Resolution No. 2: To approve the Resolution Plan submitted by MGM Minerals Limited**

*“RESOLVED THAT pursuant to Section 30(4) of Insolvency and Bankruptcy Code, 2016 read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and in accordance with any other provisions, rules and regulations made thereunder, approval of the members of the Committee of Creditors of Medirad Tech India Limited be and is hereby accorded to the Resolution Plan received on 30.05.2022 along with the annexures and subsequent addendum/s, if any, submitted by MGM Minerals Limited for Medirad Tech India Limited.*

**RESOLVED FURTHER THAT** *the Resolution Professional of Medirad Tech India Limited be and is hereby authorized to take such steps as may be necessary in relation to the above, if required and to settle all matters arising out of and incidental thereto and sign and execute all documents and writings that may be required and generally to do all acts, deeds, make payments and things that may be necessary, proper, expedient or incidental for the purpose of giving effect to the afore-said resolution including filing necessary applications with the Hon'ble NCLT for the same.”*

Sr. No	Financial Creditors	Voting share	For	Against	Abstained
1	India SME Asset Reconstruction Company Limited	66.54%	-	✓	-
2	Technology Development Board	33.46%	-	✓	-
	<b>Total</b>	<b>100.00%</b>	-	<b>100%</b>	-

**Conclusion of Resolution 2:**

According to Section 30(4) of the Insolvency & Bankruptcy Code, 2016, save as otherwise provided in the Code, the decision of the Committee of Creditors shall be taken by a vote of **not less than sixty-six per cent**.

The resolution is voted in favor by **0%** of the voting share of financial creditors.

Hence, it is concluded that **Resolution 2 is not approved**. The members of the committee of creditors are requested to take note of the above summary record.

On perusal of the above resolution, it is observed that the Resolution Plan submitted by M/s Asian Institute of Oncology Private Limited was approved by the CoC of the Corporate Debtor with 100% votes.





10. The details of the distribution of amounts to various stakeholders under the resolution plan, as captured in the Compliance Certificate in Form 'H', are reproduced below –

**FORM H**

**COMPLIANCE CERTIFICATE**

(Under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)

1, Siba Kumar Mohapatra, an insolvency professional enrolled with IIP-ICAI and registered with the Board with registration number IBBI/PA-001/IP-P00837/2017-2018/11421, am the resolution professional for the corporate insolvency resolution process (CIRP) of Medirad Tech India Limited.

2. The details of the CIRP are as under:

Sl. No.	Particulars	Description
1	Name of the CD	<b>Medirad Tech India Limited</b>
2	Date of Initiation of CIRP	<b>08/12/2021</b>
3	Date of Appointment of IRP	<b>08/12/2021</b>
4	Date of Publication of Public Announcement	<b>11/12/2021</b>
5	Date of Constitution of CoC	<b>30/12/2021</b>
6	Date of First Meeting of CoC	<b>06/01/2022</b>
7	Date of Appointment of RP	<b>14/01/2022</b>
8	Date of Appointment of Registered Valuers	<b>21/01/2022</b>
9	Date of Issue of Invitation for EoI	<b>02/03/2022</b>
10	Date of Final List of Eligible Prospective Resolution Applicants	<b>05/04/2022</b>
11	Date of Invitation of Resolution Plan	<b>31/03/2022</b>
12	Last Date of Submission of Resolution Plan	<b>02/05/2022</b>
13	Date of Approval of Resolution Plan by CoC	<b>14/06/2022</b>
14	Date of Filing of Resolution Plan with Adjudicating Authority	<b>05/08/2022</b>
15	Date of Expiry of 180 days of CIRP	<b>06/06/2022</b>
16	Date of Order extending the period of CIRP	The application requesting the extension of CIRP period for a period of 90 days was filed on 04/06/2022 and the Adjudicating Authority vide order dated 07.07.2022 has partly allowed



		the prayer and granted a 60 days extension starting from 07.06.2022.
17	Date of Expiry of Extended Period of CIRP	05/08/2022
18	Fair Value	<b>Rs. 50,73,05,160.74</b>
19	Liquidation value	<b>Rs. 40,51,61,776.74</b>
20	Number of Meetings of CoC held	<b>9 (Nine)</b>

3. I have examined the Resolution Plan received from Resolution Applicant Asian Institute of Oncology Private Limited and approved by Committee of Creditors (CoC) of Medirad Tech India Limited.

4. I hereby certify that-

(i) the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.

(ii) the Resolution Applicant Asian Institute of Oncology Private Limited has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.

(iii) the said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 100% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

(iv) ~~The voting was held in the meeting of the CoC on [state the date of meeting] where all the members of the CoC were present.~~

or

I sought vote of members of the CoC by electronic voting system which was kept open at least for 24 hours as per the regulation 26.

[strike off the part that is not relevant]

5. The list of financial creditors of Medirad Tech India Limited being members of the CoC and distribution of voting share among them is as under:

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1.	India SME Asset Reconstruction Company Limited	66.54	Voted for the Resolution Plan submitted by Asian Institute of Oncology Private Limited
2.	Technology Development Board	33.46	Voted for the Resolution Plan submitted by Asian Institute of Oncology Private Limited

6. The Resolution Plan includes a statement under regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the Code and regulations made thereunder.

7. The amounts provided for the stakeholders under the Resolution Plan is as under:

(Amount in Rupees)						
Sl. No.	Category of Stakeholder *	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	-	-	-	-
		(ii) who voted in favour of the resolution plan	903,335,194	902,413,403	430,000,000	47.60%
		Total[(a) + (b)]	<b>903,335,194</b>	<b>902,413,403</b>	<b>430,000,000</b>	<b>47.60%</b>
2.	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-





		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	-	-	-	-
		(ii) who voted in favour of the resolution plan				
		Total[(a) + (b)]	-	-	-	-
3	Operational Creditors	(a) Related Party of Corporate Debtor	-	-	-	-
		(b) Other than (a) above:				
		(i) Government	18,390	18,390	18,390	100%
		(ii) Workmen	2,924,203	2,082,214	2,082,214	71.21%
		(iii) Employees	10,673,058	2,046,858	2,046,858	19.18%
		(iv) Operational creditors other than (i), (ii) & (iii)	15,196,135	10,891,788	10,891,788	71.67%
		Total[(a) + (b)]	28,811,786	15,039,250	15,039,250	52.20%
4	Other debts and dues		-	-	-	-
<b>Grand Total</b>			<b>93,21,46,980</b>	<b>917,452,653</b>	<b>445,039,250</b>	<b>47.74%</b>

\*If there are sub-categories in a category, please add rows for each sub-category.

# Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.]

8. The interests of existing shareholders have been altered by the Resolution plan as under:

Sl. No	Category of Share Holder	No. of Shares held before CIRP	No. of Shares held after the CIRP	Voting Share (%) held before CIRP	Voting Share (%) held after CIRP
1	Equity	1,19,00,000	0	100%	-
2	Preference	-	-	-	-

9. The compliance of the Resolution Plan is as under:

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
Section 25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	Annexure received along with EOI	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Annexure received along with EOI	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Annexure received along with EOI	Yes
Section 30(2)	Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process costs? (b) provides for the payment to the operational creditors? (c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan? (d) provides for the management of the affairs of the corporate debtor? (e) provides for the implementation and supervision of the resolution plan? (f) contravenes any of the provisions of the law for the time being in force?	Page 35 Point 3  Page 1 of Addendum 1 received on 03.06.2022  Page 37  Refer 38-Point No. 4 read with Page 34-Point No. IX (B) (2)  Page 34 Point B  Page 38 Point 6	Yes
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC?	Page No. 14 Point 15	Yes



	(b) has been approved by the CoC with 66% voting share?	Resolution Plan has been approved by 100% voting shares	
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Page 33 Point IX A	Yes
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Page 38 Point 1 & 2 read with Page 37 - Financial Creditor point	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Page 24 and 25 -Point VI. A & B and Page No. 1 and 2 of Addendum 2 dated 13.06.2022	Yes
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	Page 2 of Addendum 1 received on 03.06.2022	Yes
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule?  (b) for the management and control of the business of the corporate debtor during its term?  (c) adequate means for supervising its implementation?	Page 33 Point IX A  Page 33 Point IX B	Yes
38(3)	Whether the resolution plan demonstrates 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?	<ul style="list-style-type: none"><li>• Page 38 Point 8</li><li>• Page 14 Point 15</li><li>• Page 33 Point IX A</li><li>• Page 2 of Addendum 1 received on 03.06.2022</li></ul>	Yes





	(e) the resolution applicant has the capability to implement the resolution plan?	• Page 11 Point 13	
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	No	Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	The Performance Security in the form of Bank Guarantee was received on 22.07.2022. An Addendum to the Performance Security in the form of Bank Guarantee dated 03.08.2022 was received.	Yes

10. The CIRP has been conducted as per the timeline indicated as under:

Section of the Code / Regulation No.	Description of Activity	Latest Timeline under regulation 40A	Actual Date
Section 16(1)	Commencement of CIRP and Appointment of IRP	T	08/12/2021
Regulation 6(1)	Publication of Public Announcement	T+3	11/12/2021
Section 15(1)(c) / Regulation 12 (1)	Submission of Claims	T+14	22/12/2021
Regulation 13(1)	Verification of Claims	T+21	29/12/2021
Section 26(6A) / Regulation 15A	Application for Appointment of Authorized Representative, if necessary	T+23	NA
Regulation 17(1)	Filing of Report Certifying Constitution of CoC	T+23	30/12/2021
Section 22(1) and regulation 17(2)	First Meeting of the CoC	T+30	06/01/2022
Regulation 35A	Determination of fraudulent and other transactions	T+115	02/04/2022
Regulation 27	Appointment of two Registered Valuers	T+47	21/01/2022
Regulation 36 (1)	Submission of Information Memorandum to CoC	T+54	03/02/2022
Regulation 36A	Invitation of EoI	T+75	02/03/2022
	Publication of Form G	T+75	02/03/2022
	Provisional List of Resolution Applicants	T+100	26/03/2022
	Final List of Resolution Applicants	T+115	05/04/2022
Regulation 36B	Issue of Request for Resolution Plan, which includes Evaluation Matrix and	T+105	31/03/2022



	Information Memorandum to Resolution Applicants		
Section 30(6) / Regulation 39(4)	Submission of CoC approved Resolution Plan	T+165	05/08/2022
Section 31(1)	Approval of Resolution Plan	T=180	05/08/2022 (The application requesting the extension of CIRP period for a period of 90 days was filed on 04/06/2022 and the Adjudicating Authority vide order dated 07.07.2022 has partly allowed the prayer and granted a 60 days extension starting from 07.06.2022.)

11. The time frame proposed for obtaining relevant approvals is as under:

Sl. No.	Nature of Approval	Name of applicable Law	Name of Authority who will grant Approval	When to be obtained
1	Resolution Applicant has mentioned that the approvals required from NCLT and other Statutory Approvals to be obtained within 0-6 months			

12. The Resolution Plan is not subject to any contingency.

or

The Resolution Plan is subject to the following contingencies (Elaborate the contingencies):

i. Termination of Service Agreement dated 1<sup>st</sup> September, 2006 and Lease Agreement dated 31<sup>st</sup> December, 2013 between Medirad Tech India Limited and Hemalata Hospitals Limited.

13. Following are the deviations / non-compliances of the provisions of the Insolvency and Bankruptcy Code, 2016, regulations made or circulars issued thereunder (If any deviation/ non-compliances were observed, please state the details and reasons for the same):

Sl. No.	Deviation/Non-compliance observed	Section of the Code / Regulation No. / Circular No.	Reasons	Whether rectified or not
1	The last date for Submission of Information Memorandum was	Regulation 36 of IBBI (CIRP) Regulations, 2016	Confidentiality undertaking not received	Yes.



	<p>31/01/2022. Information Memorandum was submitted to one CoC member on 03/02/2022 and to the 2<sup>nd</sup> CoC member on 31/01/2022</p>		<p>from CoC members.</p> <p>Therefore, Information was shared with the CoC members on the same date on which the Confidentiality Undertaking was received by the Resolution Professional from the respective CoC member</p>	
2.	<p>The last date to publish the expression of interest in Form G was 21/02/2022 but the Form G was published on 02/03/2022.</p>	<p>Regulation 36 A of IBBI (CIRP) Regulations, 2016</p>	<p>The Resolution Professional had sent a notice on 15/02/2022 for CoC meeting to be held on 18/02/2022 for approving the eligibility criteria for prospective resolution applicants and approving the cost of publication. But one CoC member (TDB) requested a postponement in meeting date from 18/02/2022 to</p>	<p>Yes</p>





			28/02/2022. Therefore, the relevant approval relating to Form G were taken on 28/02/2022 and Form G was published on 02/03/2022.	
--	--	--	---	--

14. The Resolution Plan is being filed 60 days after the expiry of the period of CIRP provided in section 12 of the Code. An Application for extension of 90 days beyond the CIRP period was filed with Hon'ble National Company Law Tribunal, New Delhi (NCLT) on 04.06.2022. The NCLT on 07.07.2022 approved the extension of CIRP period by 60 days starting from 07.06.2022 vide order dated 07.07.2022.

14A. Whether the resolution professional has, in accordance with regulation 35A,-  
(a) applied to the Adjudicating Authority on or before the one hundred and thirty-fifth day of the insolvency commencement date: No\*

\*There were few documents which were received around the time when the Resolution Plan was approved by the Committee of Creditors and the same are under verification by the Transaction Auditor. If any of the transactions fall under section 43, 45, 50 and 66 of Insolvency and Bankruptcy Code, 2016, the appropriate application shall be filed accordingly at the earliest.

(b) filed Form CIRP-8 with the Board on or before the one hundred and fortieth day of the insolvency commencement date: No

15. Provide details of section 66 or avoidance application filed / pending.

Sl. No.	Type of Transaction	Date of Filing with Adjudicating Authority	Date of Order of the Adjudicating Authority	Brief of the Order
1	Preferential transactions under section 43	-	-	-
2	Undervalued transactions under section 45	-	-	-
3	Extortionate credit transactions under section 50	-	-	-
4	Fraudulent transactions under section 66	-	-	-

15A. The committee has approved a plan providing for contribution under regulation 39B as under:

- Estimated liquidation cost: Rs. 7,30,420 (Excluding Liquidator Fee)
- Estimated liquid assets available: -
- Contributions required to be made: Rs. 7,30,420
- Financial creditor wise contribution is as under:

Sl. No.	Name of financial creditor	Amount to be contributed (Rs.)
1	India SME Asset Reconstruction Company Limited	4,86,021
2	Technology Development Board	2,44,399
<b>Total</b>		<b>7,30,420</b>

15B. The committee has recommended under regulation 39C as under:

- Sale of corporate debtor as a going concern: Yes/No
- Sale of business of corporate debtor as a going concern: Yes/No

The details of recommendation are available with the resolution professional.

15C. The committee has fixed, in consultation with the resolution professional, the fee payable to the liquidator during the liquidation period under regulation 39D. - The CoC in the 9<sup>th</sup> CoC meeting had decided that the Liquidator's fee shall be decided in consultation with the Liquidator proposed to be appointed in case the Resolution Plan is not approved by the Adjudicating Authority.

16. I, Siba Kumar Mohapatra, hereby certify that the contents of this certificate are true and correct to the best of my knowledge and belief, and nothing material has been concealed therefrom.


Name of the Resolution Professional: Siba Kumar Mohapatra  
IP Registration No: IBBBI/PA-001/IP-P00837/2017-2018/11421  
Address as registered with the Board: E/402, Baishnav Vihar, Bomikhal Near Durga Mandap, Bhubaneswar, Khordha, Orissa, 751010  
Email id as registered with the Board: sibmohapatra@yahoo.co.in



11. As per the Form 'H' filed/on record by the Applicant/RP, the Fair Market Value of the Corporate Debtor is Rs.50,73,05,160.74/- and the Liquidation Value of the Corporate Debtor is Rs.40,51,61,776.74/-. The total amount provided by the Successful Resolution Applicant (SRA) under the Resolution Plan is Rs.44,50,39,250/-, which is nearly 110% of the liquidation value of the Corporate Debtor. Further, as per Clause 7 of Form 'H' the total amount provided by the SRA is 47.74% of the total amount claimed.

12. The Applicant/RP has also filed the Affidavit of the Director of the SRA stating that they are not barred under Section 29A to submit the Resolution Plan. The affidavit reads thus:



**AFFIDAVIT**

I, Dr. Ramakant Krishnaji Deshpande, son of Krishnaji Deshpande aged 65 years resident of 801, Raheja Empress, Veer Savarkar Marg, Opposite Siddhivinayak Temple, Prabhadevi, Mumbai 400025, the Resolution Applicant, do hereby solemnly affirm, state and declare as under:

1. That I am fully conversant with the facts and circumstances of the matter and am also duly empowered and competent to swear and affirm this affidavit.



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फॉर्म-२/ANNEXURE - II  
 फॉर्म (ए) के तहत, अधिनियम / विधि  
 Form (A) under the Act / Ordinance  
 अधिनियम / विधि / Ordinance  
 के तहत प्रस्तुत किया गया है /  
 Presented under the Act / Ordinance  
 क्या यह एक पंजीकृत  
 Whether it is a Registered  
 व्यक्ति / नाम है? / Person's Name  
 व्यक्ति / नाम है? / Person's Name  
 यदि नहीं, तो व्यक्ति / नाम /  
 If not, then name of the person  
 के माध्यम से / Through other person  
 के माध्यम से / Through other person  
 क्या यह एक पंजीकृत  
 Whether it is a Registered  
 व्यक्ति / नाम है? / Person's Name  
 व्यक्ति / नाम है? / Person's Name  
 यदि नहीं, तो व्यक्ति / नाम /  
 If not, then name of the person  
 के माध्यम से / Through other person  
 के माध्यम से / Through other person  
 क्या यह एक पंजीकृत  
 Whether it is a Registered  
 व्यक्ति / नाम है? / Person's Name  
 व्यक्ति / नाम है? / Person's Name  
 यदि नहीं, तो व्यक्ति / नाम /  
 If not, then name of the person  
 के माध्यम से / Through other person  
 के माध्यम से / Through other person  
 क्या यह एक पंजीकृत  
 Whether it is a Registered  
 व्यक्ति / नाम है? / Person's Name  
 व्यक्ति / नाम है? / Person's Name  
 यदि नहीं, तो व्यक्ति / नाम /  
 If not, then name of the person  
 के माध्यम से / Through other person  
 के माध्यम से / Through other person

४०

फॉर्म-१ Annexure - I  
 केवल अधिवक्तियों के लिए / Only for Affidavits  
**ASIAN INSTITUTE OF ONCOLOGY PVT. LTD.**  
 भारतीय चिकित्सा संस्थान प्रा. लि. / ASI-CUMBALI HOSPITAL  
 भारतीय चिकित्सा संस्थान प्रा. लि. / ASI-CUMBALI HOSPITAL  
 भारतीय चिकित्सा संस्थान प्रा. लि. / ASI-CUMBALI HOSPITAL  
**KEMPS CORP. - 400036**  
**TEL. NO.: 022-82771111**



1 C MAR 2022

भारत चिकित्सा संस्थान प्रा. लि. / भारतीय चिकित्सा संस्थान प्रा. लि.  
 भारतीय चिकित्सा संस्थान प्रा. लि. / भारतीय चिकित्सा संस्थान प्रा. लि.  
 भारतीय चिकित्सा संस्थान प्रा. लि. / भारतीय चिकित्सा संस्थान प्रा. लि.  
 भारतीय चिकित्सा संस्थान प्रा. लि. / भारतीय चिकित्सा संस्थान प्रा. लि.  
 भारतीय चिकित्सा संस्थान प्रा. लि. / भारतीय चिकित्सा संस्थान प्रा. लि.  
 भारतीय चिकित्सा संस्थान प्रा. लि. / भारतीय चिकित्सा संस्थान प्रा. लि.  
 भारतीय चिकित्सा संस्थान प्रा. लि. / भारतीय चिकित्सा संस्थान प्रा. लि.

2. That I have understood the provisions of Section 29A of the Insolvency and Bankruptcy Code, 2016 (“IBC”). I confirm that neither Asian Institute of Oncology Private Limited nor any person acting jointly or in concert with Asian Institute of Oncology Private Limited is ineligible under Section 29A of IBC to submit resolution plan (s) in the Corporate Insolvency Resolution Process of M/s. Medirad Tech India Limited under the provisions of the Insolvency and Bankruptcy Code, 2016.
3. That Asian Institute of Oncology Private Limited has not been rendered ineligible under the provisions of Section 29A of the Insolvency and Bankruptcy Code, 2016.
4. That I therefore, confirm that Asian Institute of Oncology Private Limited is eligible under Section 29A of the Insolvency and Bankruptcy Code, 2016 to submit a resolution plan for M/s. Medirad Tech India Limited.
5. That I confirm that the said declaration and disclosure is true and correct.
6. That I am duly authorized to submit this declaration by virtue of Board Resolution dated 04.03.2022
  - a) That None of the connected person is an undischarged insolvent;
  - b) None of the connected person is identified as willful defaulter by any bank or financial institution or consortium thereof in accordance with the guidelines of the Reserve Bank of India.
  - c) None of the connected person 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 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;



- d) None of the connected person is convicted for any offence punishable with imprisonment for two years or more;
- e) None of the connected person is disqualified to act as a director under the Companies Act, 2013, to act as Director;
- f) None of the connected person is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;
- g) None of the connected person 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;
- h) None of the connected person has executed an enforceable guarantee in favour 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;



None of the connected person has been subject to any disability, corresponding to clauses(a) to (h), under any law in a jurisdiction outside India.

*Rakesh P. Dooa*

**DEPONENT**

**Verification**

Verified at Mumbai at this 11.03.2022 that the content of the above affidavit are true and correct to my personal knowledge, nothing is false in it and no material facts have been concealed there form.



**Attested by me**

*[Signature]*

**RAKESH P. DOOA**  
B. Com., LL.B  
Advocate High Court,  
Notary Government of India  
6, Kondaji Bldg. No. 3  
Behind Tata Hospital, Parel,  
MUMBAI - 400012.

*Meghnat*

**DEPONENT**

*Meghnat*  
Signature &

13. The Applicant/RP has also filed the proof of the Performance Guarantee (submitted by SRA) issued by Kotak Mahindra Bank, which is valid till 20.03.2024. The said Guarantee reads thus:





FINANCIAL BANK GUARANTEE

BG No: 06381GF220017935  
Date of Issue: 22<sup>nd</sup> Jul, 2022

To,  
Technology Development Board (BENEFICIARY NAME)  
Department of Science and Technology,  
Ministry of Science and Technology,  
Block II, Second Floor,  
Technology Bhavan,  
New Mehrauli Road,  
New Delhi - 110016.

1. In consideration of ASIAN INSTITUTE OF ONCOLOGY PRIVATE LIMITED having registered office situated at 93/95, ACI CUMBALLA HILL HOSPITAL, AUGUST KRANTI MARG, MUMBAI 400036 (hereinafter called the "Successful Resolution Applicant(s)") agreeing to undertake the obligations under the RFRP dated 28TH MARCH, 2022, issued by the Resolution Professional, in consultation with the CoC and pursuant to the approval of the CoC members at their meeting held on 25TH MARCH, 2022 (hereinafter called "RFRP"), the Letter of Intent, and any other required documents, issued by the Resolution Professional, in consultation with the CoC and pursuant to the approval of the CoC in respect of the Resolution Plan for Medirad Tech India Limited (hereinafter called the "Corporate Debtor") the KOTAK MAHINDRA BANK a banking company incorporated and registered under Companies Act 1956 and having license to carry on banking business under the Banking Regulation Act, 1949 having its

...2...

*K.S. Sawant*  
KAMLESH SAWANT  
EMP: 80012  
S. MANAGER



*Siraj Ahmed Khan*  
SIRAJ AHMED KHAN  
EMP: 79059  
MANAGER  
*Meghadha*



Kotak Mahindra Bank Ltd.

Sr. No.: BG 587181



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Bank Guarantee No. 06381GF220017935 Dated 22-Jul-2022

registered office at 27 BKC, C 27, G Block, Bandra Kurla Complex, Bandra (E), Mumbai, Maharashtra - 400051 and its one of branch office at City View Building, 201 Dr, Annie Besant Road, Worli, Mumbai 400 018 (herein after called the "Guarantor Bank") forthwith on demand in writing from any officer authorized by it in this behalf without any protest or demur, any amount up to and not exceeding ₹ 4,45,03,925/- (Rupees Four Crore Forty Five Lakhs Three Thousand Nine Hundred Twenty Five Only) only on behalf of Successful Resolution Applicant (hereinafter called "Performance Guarantee") against any and all loss and/or damage caused to or suffered by or would be caused to or suffered by the Technology Development Board by reasons of any breach by the said Resolution Applicant(s) of any of the terms and conditions contained in the RFRP.

2. We, the Guarantor Bank do hereby undertake to pay the amounts due and payable under this Performance Guarantee without any demur, merely on a demand from the Technology Development Board including from any officer authorized by it in this behalf. Any such demand made on us, shall be conclusive as regards the amount due and payable by us under this Performance Guarantee. However, our liability under this Bank Guarantee shall be restricted to an amount not exceeding ₹ 4,45,03,925/- (Rupees Four Crore Forty Five Lakhs Three Thousand Nine Hundred Twenty Five Only)

3. We undertake to pay to the Technology Development Board, any money so demanded but not exceeding ₹ 4,45,03,925/- (Rupees Four Crore Forty Five Lakhs Three Thousand Nine Hundred Twenty Five Only) notwithstanding any dispute or disputes raised by the Successful Resolution Applicant(s) in any suit or proceeding pending before any Court or Tribunal relating thereto our liability under this present being absolute and unequivocal.

4. The Guarantor Bank shall make payment hereunder on first demand without restriction or conditions and notwithstanding any objection by the Successful Resolution Applicant and / or any other person. The Guarantor Bank shall not require the Technology Development Board to justify the invocation of this Bank Guarantee, in respect of any payment upto ₹ 4,45,03,925/- (Rupees Four Crore Forty Five Lakhs Three Thousand Nine Hundred Twenty Five Only) made hereunder.

5. The payment so made by us under this Guarantee shall be a valid discharge of our liability for payment thereunder and the Successful Resolution Applicant(s) shall have no claim against us for making such payment.

6. We, the Guarantor Bank further agree that the guarantee herein contained shall remain in full force and effect till 20-Mar-2024 (for a period of 9 months from the date hereof) and that it shall continue to be enforceable till all the dues of the Successful Resolution Applicant(s) in relation to the Resolution Plan and /or under or by virtue of the RFRP have been fully paid and its claim satisfied or discharged or till the Technology Development Board certifies that the Resolution Plan has been effected and that the terms and conditions of the RFRP have been fully and properly carried out by the said Successful Resolution Applicant(s) but not later than the expiry date. The Bene shall be entitled to invoke this Performance Guarantee up to 365 Days from the last date of the validity of this Performance Guarantee by issuance of a written demand to invoke this Performance Guarantee.

7. We, the Guarantor Bank, further agree that the CoC shall have the fullest liberty without our consent to vary any of the terms and conditions of the RFRP or to extend time of performance by the said Successful Resolution Applicant(s) from time to time or to postpone for any time or from time to time any of the

...3...

*K.S. Sawant*  
KAMLESH SAWANT  
EMP: 80012  
S. MANAGER



*Siraj Ahmed Khan*  
SIRAJ AHMED KHAN  
EMP: 79059  
MANAGER  
*Meghadha*





Sr. No.: BG 587180



(3)

17

Bank Guarantee No. 0638IGF220017935 Dated 22-Jul-2022

Powers exercisable by the Technology Development Board against the said Successful Resolution Applicant(s) and to forbear or enforce any of the terms and conditions relating to the RFRP. We shall not be relieved from our liability by any reason of any such variation or extension being granted to the said Successful Resolution Applicant(s) or by any such matter or thing whatsoever which under the law relating to sureties would but for this provision have effect of so relieving us.

8. This Performance Guarantee shall be valid and binding on the Guarantor Bank and shall in no event be terminable by notice or any change in the constitution of the Guarantor Bank or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alterations made, given, or agreed with or without our knowledge or consent, by or between the parties. This Performance Guarantee shall not be affected in any manner by reason of merger, amalgamation, restructuring, liquidation, winding up, dissolution or any other change in the constitution of the Guarantor Bank.

9. This Performance Guarantee shall be interpreted in accordance with the laws of India and the courts at Mumbai shall have exclusive jurisdiction. The Performance Guarantor Bank represents that this Performance Guarantee has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Performance Guarantor Bank in the manner provided herein.

10. This Performance Guarantee shall be a primary obligation of the Guarantor Bank and accordingly the Technology Development Board shall not be obliged before enforcing this Performance Guarantee to take any action in any court or arbitral proceedings against the Successful Resolution Applicant(s), to make any claim against or any demand on the Successful Resolution Applicant(s) or to give any notice to the Successful Resolution Applicant(s) or to exercise, levy or enforce any distress, diligence or other process against the Successful Resolution Applicant(s).

11. The Guarantor Bank represents and warrants that adequate stamp duty has been paid on this Guarantee for its enforceability in Mumbai and in the event, the stamp duty is found to be deficit, it shall be solely liable to pay the same as per the applicable law.

12. We, the Guarantor Bank, lastly undertake not to revoke this Performance Guarantee during its currency except with your prior written consent.

"Notwithstanding anything contrary contained in any law for the time being in force or banking practice, this guarantee shall not be assignable or transferable by the beneficiary. Notice or invocation by any other person such as assignee, transferee or agent of beneficiary shall not be entertained by the Bank. Any invocation of guarantee can be made only by the beneficiary directly."

All claims upto ₹ 4,45,03,925/- (Rupees Four Crore Forty Five Lakhs Three Thousand Nine Hundred Twenty Five Only) under this Performance Guarantee shall be payable City View Building, 201 Dr, Annie Besant Road, Worli, Mumbai 400 018

This Performance Guarantee will be returned to us as soon as the purpose for which it is issued is fulfilled.

...4...

KAMLESH SAWANT  
EMP: 80012  
S. MANAGER



SIRAJ AHMED KHAN  
EMP: 79059  
MANAGER  
TRUE COPY

Sr. No.: BG 587179



(4)

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Bank Guarantee No. 0638IGF220017935 Dated 22-Jul-2022

Notwithstanding anything to the contrary contained herein -

i. Our liability under this Guarantee shall not exceed ₹ 4,45,03,925/- (Rupees Four Crore Forty Five Lakhs Three Thousand Nine Hundred Twenty Five Only)

ii. This Guarantee shall be valid up to 20-Mar-2024 (being the date of expiry date of the Guarantee)

iii. The beneficiary's right as well the Bank's liability under this Guarantee shall stand extinguished unless a written claim or demand is made under this Guarantee on or before completion of one year from expiry date i.e. 20-Mar-2025

Executed this 22<sup>nd</sup> day of Jul, 2022 at Mumbai

FOR KOTAK MAHINDRA BANK LTD.

AUTHORIZED SIGNATORIES  
Bank Stamp

KAMLESH SAWANT  
EMP: 80012  
S. MANAGER

SIRAJ AHMED KHAN  
EMP: 79059  
MANAGER



14. The following is stated in the Resolution Plan with regard to the source of funds of the Resolution Applicant, which reads thus:

XII. SOURCE OF FUNDS

[The source of funds is detailed below.]

Table I:

Description of Source of Funds
Insolvency Resolution Process Costs
The source of Funds : Funds infused by Promoters of AIOPL - Equity
Workmen and Employee settlement amount : Funds Infused by Promoters of AIOPL - Equity
Upfront recovery to Financial Creditors and claims being paid to operational creditors Funds Infused by Promoters of AIOPL - Equity

Thus, it is noticed that the entire cost of acquiring the Corporate Debtor is being infused by the SRA as equity.

15. In order to support its credentials, the SRA, the Asian Institute of Oncology Private Limited ("**AIOPL**"), which is reportedly operating 2 Cancer care hospitals in Mumbai and commissioned 3<sup>rd</sup> in Indore, in its Resolution Plan has submitted the following background, financial overview of AIOPL, details and backgrounds of the Board of Directors and Business rationale of the proposed resolution plan, which is reproduced overleaf, for the sake of convenience:





### III. PROFILE OF THE RESOLUTION APPLICANT

#### a) **History/ Background of Asian Institute of Oncology Pvt Ltd:**

Asian Institute of Oncology Private Limited was established in the year 2003 and continuing imparting Cancer Care since then with the help of India's best known Cancer Consultants through the vehicles of two Cancer Centers at present. It was also operating at Bhubaneswar earlier in collaboration with AMRI Hospital (Bhubaneswar) from 2016-2019 as Asian Cancer Institute at AMRI Hospital. AIOPL is recognized as the Best Cancer Care Center in Private Sector in Western India by Times of India for five past years in succession. Currently it is running two cancer centers in Mumbai. The third center - 100 bed facility is under construction to be commissioned by July 2022 at Indore.

**2002-2012-** Started in collaboration with established S.L. Raheja Hospital Mumbai from 2002 to 2012, starting Oncology department for the first time in this 30 year old Hospital. It then established its reputation in the following years and brought S.L. Raheja Hospital into recognition and prominence in the world of Oncology.

**2012-2019;** Started Greenfield Cancer Hospital at the premises of Somaiya Hospital by leasing a part of the raw building starting from scratch and equipping it and managing it to take it to the standard levels of the Best Private Cancer Care hospital In Western India and also running educational programs acknowledged by the Maharashtra Medical University.

**2015-till date-** Built up a peripheral Day Care Center with diagnostics and pharmacy at Borivali East Mumbai to take Cancer Care to the doorsteps of patients at Borivali in Mumbai.

**2016-2019-** Introduced the Oncology Discipline for the first time in collaboration with AMRI Hospital (Bhubaneswar) building up a strong patient care base.

**2018 till date-** Took over a completely closed and neck deep in debt, about to be liquidated -past reputed Cumballa Hill Hospital at *Kemps Corner, Mumbai*. AIOPL practically rebuilt it from scratch by a complete makeover, reequipping, handling all labor problems, building stock of medications, laying SOPs for patient care, employee care, clearing all dues and establishing robust patient inflow with sustainable scalable revenue stream taking it to be recognized by Times of India Survey last year into Best Emerging Multispecialty Hospital in Small category. This was the Hospital where the past Prime Minister of India - late Hon'ble Shri Rajiv Gandhi was born.

**2021 March -till date-** Converted the Day Care facility at Borivali (Mumbai) into a full services Hospital facility in collaboration with local Apex Hospital to build the Brand of Asian Cancer Institute @ Apex Hospital - Borivali Mumbai.

**January 2022 till date-** The Asian Cancer Institute has leased a 100 bedded facility at Indore which is coming up-



to be commissioned by July 2022 with surgery, medical oncology and radiotherapy.

Total number of major and supra-major cancer Surgeries conducted in last 7 years alone is over 7133 (Seven Thousand One Hundred Thirty Three).

**b) Geography of Operations:**

AIOPL is operating two Cancer Care Hospitals in Mumbai. The Third Hospital is planned to be commissioned by 3<sup>rd</sup> July 2022 at Indore.

**c) Financial Overview of AIOPL:**

In Lakhs Rs

	2018-19	2019-20	2020-21	2021-22
<b>Revenue</b>				
OPD (No. of patients per year.)	13129.00	13521.00	6992.00	
IPD (No. of patients per year )	3932.00	3786.00	2281.00	
Capacity / No of Beds	80.00	92.00	87.00	53.00
Medicine & Consumable (IPD) - Revenue in lakhs	1385.20	1333.78	1070.38	1213.74
Ward and other Charges- ) - Revenue in lakhs	4061.64	4189.20	3132.61	3812.17
Other Income	37.01	28.48	187.97	14.78
<b>Total ( In Lakhs Rs)</b>	<b>5483.85</b>	<b>5551.45</b>	<b>4390.95</b>	<b>5040.68</b>
<b>Expenditure</b>				
Consultant Fee	1883.81	1938.28	1635.91	1712.18
HR cost	863.37	741.40	763.86	598.25
Material Cost	1206.77	1187.31	901.03	1066.10
Lease Rent	150.00	150.00	150.00	150.00
Other expenses	1034.26	1145.08	1200.17	811.96
<b>Total Opex ( In Lakhs Rs)</b>	<b>5138.22</b>	<b>5162.08</b>	<b>4650.96</b>	<b>4338.50</b>
<b>EBIDTA</b>	<b>345.63</b>	<b>389.37</b>	<b>-260.01</b>	<b>702.19</b>
<b>PBT</b>	<b>121.31</b>	<b>144.59</b>	<b>-539.24</b>	<b>334.78</b>

**d) Details of AIOPL group companies and corporate structure, composition and share holding etc:**

AIOPL is a single private limited company with the following shareholding pattern:

XXXX XXXX XXXX XXXX XXXX





e) AIOPL's experience in the relevant industry/sector:

Asian Institute of Oncology Private Limited (AIOPL) was established in the year 2003 and continuing imparting Cancer Care since then with the help of India's best known Cancer Consultants through the vehicles of (02) two Cancer Centers at present in Mumbai. It was also operating at Bhubaneswar earlier in collaboration with AMRI Hospital Bhubaneswar from 2016-2019 as Asian Cancer Institute at AMRI Hospital. AIOPL is recognized as the Best Cancer Care Center in Private Sector in Western India by Times of India for five past years in succession. AIOPL is coming up with its 3<sup>rd</sup> Center at Indore – a 100 bedded facility to be commissioned by the 3<sup>rd</sup> July 2022 with surgery, medical oncology and radiotherapy.

This financial year the revenue of AIOPL from the existing two centers would be around Rs 50 Crs. AIOPL is on an expansion mode as it wishes to establish 5 more new Cancer hospitals in the next 3 years in Tier II cities of India in order to provide Modern, Qualitative & Cost-effective Cancer Care treatment to

all sections of the Society.

f) Brief over view of the management personnel of the AIOPL:

#### **BOARD OF DIRECTORS**

##### **DR. RAMAKANT K. DESHPANDE ( CHAIRMAN)**

A Padmashri Award Winner -2014 along with several professional recognition awards, with 38 years of experience in Oncology, trained at Tata Memorial Hospital, Sloan Kettering cancer Centre- New York , Royal Marsden Hospital –London, National University- Singapore, with over 65 publications in peer reviewed journals, several chapters in Cancer Text Books as author, membership of all top Professional Cancer Specialty associations Recognised as one of the finest Thoracic cancer Surgeons, having pioneered new procedures in the Country with a Hospital Management Diploma from TISS , a Best Medical Entrepreneur Award, and over 20 years experience in Hospital Management.

##### **DR. SANJAY SHARMA (DIRECTOR)**

One of the finest Breast , Thoracic and Gastrointestinal Cancer Surgeons in the Country with 43 years of experience, Winner of many professional awards, Trained in Cancer Surgery at Tata Memorial Hospital, Memorial Sloan Kettering cancer Centre & Cornell University at New York and at National Cancer Centre Japan, at Stanford –USA and with over 50 professional publications, one of the promoter Directors of the Asian cancer Institute for past over 20 years with membership and Chairmanship of most professional Indian oncology associations.

##### **DR. DEEPAK MUKUND PARIKH (DIRECTOR )**

One of India's finest Head and Neck and Laser Surgery Consultants with Global Recognition, member of most Oncology professional Organizations with over 35 years of experience, trained at the Tata Memorial Hospital Mumbai, Endinbroke Hospital Cambridge-England and Laser Institute at Gottingen Germany , one of the original promoter Directors of the Asian Cancer Institute for over 18 years , member of the Centre for Raja Ramanna Centre for Advanced Technology-Indore and Current Chairman of Bombay City Ambulance College with over 45 publications.

##### **DR. JAGDEESH NARHAR KULKARNI (DIRECTOR)**

A Distinguished Academician and World renowned Genio Urinary/ Gynaecology Cancer Surgeon, with over 45 years of experience, Pioneer in Robotic Surgery in the country with the best results, over 65 publications, Ex President of Urology association , One of the first Promoter Directors of the Asian Cancer Institute.

##### **MR. ANIL KAMATH (DIRECTOR)**

A Distinguished Chartered Accountant by Qualification and World known Healthcare Professional who took the Wockhardt Hospital from a Single Institute to a Group of 14 Hospitals as the Group CEO for over 10 years, one of the promoter Director of a Well known Ophthalmic chain of Centers, he is a Senior Advisor in Strategic Management, Healthcare and Hospitals, Organization Development and Finance based in Mumbai; Advisor in Corporate and Charity Activities to many Corporate and NGOs.

##### **Mr RAGHAVENDRA KULKARNI [Director]**

A true Professional with post-graduation from Temple University, Philadelphia, PA, U.S.A in Bachelor of Science, Major in Mechanical Engineering Hands-on Professional with excellent communication skills





who specialist in reducing Operational risk & cost. International experience of working with multi-national teams in Asia, Middle East in large Repair Projects, Operations support & Asset Management. He brings in the experience of detailing various projects, handling their implementation in time bound and cost sensitive manner. He is the son of DrJagdeesh Kulkarni.

#### **MR. VARUN RAMAKANT DESHPANDE (DIRECTOR)**

Alumuni of Carnegie Mellon University Pittsburgh USA; Varun Deshpande is a board member and son of DrRamakant Deshpande. He has been named a leading young voice for climate solutions by India Climate Collaborative, one of Asia's Most Influential Tastemakers by Tatler Asia, and one of India's 25 Most Influential Young Citizens by GQ. Varun has spoken all over the world ranging from the Indian Institutes of Technology to Harvard University, and his writing has featured in media including The Hindu, First Post, and The Daily Guardian. Promoting Healththrough Environment friendly means is his passion. Equally passionate about Tobacco cessation and reducing Carbon Footprint by bringing in smart proteins in Indian food habits, currently he also currently serves as the CEO of the Asian pacific Chapter of International " Good Food Institute".

#### **OTHER KEY MANAGERIAL PERSONNEL**

##### **MR. ARUN SHETTY (UNIT HEAD)**

He holds MS, DBM and is a Director and Head - Professional Services. He is an expert in Hospital Administration. His achievements are as follows •Associate Professor of Surgery at the Topiwala National Medical College & B.Y. L. Nair Charitable Hospital

•Associate Professor of Surgery at Grant Medical Collage and Sir J J Hospital •Examiner for MBBS, Bombay University

•General Secretary Students' Union Topiwala National Medical College

##### **MR. RAJIV YADAV (CHIEF OPERATING OFFICER)**

He holds MS(Ayu), DHS(TISS), MBA(SMU), PGDMLS (Symbiosis). He currently is a Chief Operating Officer of the Company.

##### **MR. DIVYAPRAKASH R. DUBEY ( COMPANY SECRETARY AND LEGAL HEAD)**

He is holding professional excellence into Secretarial, Corporate Legal matters, Mergers and Amalgamation, Listing compliances, Companies Act, 1956/2013 compliances and expertise, etc. He is holding professional degrees such as Company Secretary (ICSI), LL.B, LL.M, B.com with more than 8 years of experiences into Corporate world

##### **MR. NIHAL JOSHI ( FINANCE HEAD)**

He is a Chartered Accountant in Finance & Accounts. He is a Chartered Accountant with more than 7 years of experience into Audit, Taxation, Finance management, Financial Reporting and Financial Analysis.

##### **g) Summary of competitive advantages of AIOPL:**

Asian Institute of Cancer is a leading and reputed Cancer Care Hospital. It has created a mark for itself



and provides thought leadership in the area of Cancer care. The consulting doctors and promoters of AIOPL are known across the country in the field of Cancer care. AIOPL has the requisite financial strength, technical know-how and well established reputation in Cancer Care hence providing a large competitive advantage.

h) Business rationale of the proposed resolution plan:

Annual Incidence of Cancer in India : 14 – 15 lacs per year @ annual incidence of about 135 per 100,000 population. Existing cancer cases at any point of time is 3 times the incidence being i.e 42 lacs cases

HCG Cancer care chain of Hospitals caters to 75000 to 1 lac patients per year currently

The National Cancer grid treats 5 – 6 lacs cancer patients per year

Remaining 35 lacs Cancer patients being treated through the stand alone entities

Hence if AIOPL caters to address even 10 % of the Remaining Cancer cases

through its chain of Hospitals that itself translates into 2 – 3 lacs patients per year .

With that calculation, the annual incidence of Cancer in Odisha with a population of about 4.37 Crores would be about 58,000 and three times as many prevailing cancer patients warranting their care. However there are not enough qualitative cancer care treatment facility available in the state to cater to the burden of cancer. Moreover latest facilities like nuclear medicine treatments etc are not available adequately in the State. Hence AIOPL views an opportunity to set up a world class Cancer care Hospital at Bhubaneswar providing modern and latest techniques to detect and treat Cancer for all sections of the society.

Thus AIOPL with its pool of established pool of Oncologists can very certainly create a huge Brand Identity in Odisha and sure to become the first port of call for **Modern and cost effective Cancer care.**

16. As regards the implementation Schedule, the Applicant has submitted that the SRA undertakes to implement the plan in a period of one year as per the details, as given in the Resolution Plan, reproduced overleaf:



**IX. IMPLEMENTATION & MONITORING OF THE RESOLUTION PLAN:**

**A. Implementation Plan:**

The typical implementation plan as envisaged by AIOPL is set out below:

**Table : I**

DESCRIPTION	TIMELINE from Peaceful and Charge Free Possession
Handover of the Hospital, RoC Approvals, Initial Mobilization of Resources, Formation of Monitoring Committee etc	0-15 days
Appointment of Contractors, Architects	16 <sup>th</sup> Day to 30 days
New Building Plan and Approval from Bhubaneswar Building Development Authority	30th day to 60 days
Other Regulatory and Statutory Approval	0 – 60 days
Expansion of Hospital from existing 46,000 sq.ft construction to 1,00,000 sq.ft construction in order to accommodate 150 beds	60th day to month 12 Months
Makeover of Existing Hospital	60 <sup>th</sup> Day -8 Months
Modern Equipment& Furniture / Computers / Recruitment of New Doctors and Staff	8- 10 Months
Selection and Hiring of New Staff	9-12 month
Procurement and Installation of New Latest Radio Therapy Machine and other Machines	10- 12 Months

17. As regards the Monitoring and supervision over the implementation of the Resolution Plan, the Applicant submitted that the Plan has provision of a Monitoring Committee with RP, 02 Members from the secured Financial Creditors, and 02 Management Members to be appointed by the SRA/AIOPL. The relevant details as given in the Resolution Plan are reproduced thus:





**B. Monitoring plan:**

Step	KEYSTEPS
1.	<b>Approval of the Committee of Creditors and Adjudicating Authority</b> <ul style="list-style-type: none"><li>• The Resolution Plan will have to be approved by the CoC.</li><li>• Post receipt of the approval of the CoC, the Resolution Plan will have to be filed with the Adjudicating Authority for its approval.</li></ul>
2.	<b>Reconstitution of Board and Constitution of Monitoring Committee</b> <p>Upon approval of plan by Adjudicating Authority, the following actions to be taken:</p> <ul style="list-style-type: none"><li>• <b><u>Constitution of Monitoring Committee:</u></b></li><li>• AIOPL proposes that a Monitoring Committee be formed which would assess the progress of the work as per the Resolution plan provided herewith.</li><li>• The Monitoring Committee shall not be responsible for the day to day operations however it would monitor and report the overall progress as per the resolution plan on a monthly basis.</li><li>• The Monitoring Committee is proposed to be constituted by and between the following members</li><li>• Insolvency Professional i.e. the implementation agency (Chairman of the Committee)</li><li>• (02) Two members from secured financial creditors</li><li>• (02) Two management members appointed by AIOPL</li><li>• Hence Total 5 members as mentioned above</li><li>• The committee shall meet (offline/ online) atleast once a month to take stock of the progress.</li><li>• The fees payable to the Insolvency Professional (Implementation Agency) to be discussed and borne by AIOPL as mutually decided at the time of formation of committee.</li><li>• The committee shall be in existence till 06 months from the date of possession.</li><li>• <b><u>Board:</u></b> Reconstitution of the Board of Medirad Tech India need to happen once the shares are transferred to AIOPL.</li><li>• The New Board members would be:<ul style="list-style-type: none"><li>• Dr Ramakant Deshpande</li><li>• Dr Sanjay Sharma</li><li>• Mr Varun Deshpande</li><li>• Mr. Raghvendra Kulkarni -</li><li>• An Independent Director to be from Odisha</li><li>• CEO of the Hospital – To be hired</li></ul></li></ul>





3.	<b>Repayment of priority dues</b>	
	Within [ 90 ] days from approval of plan by Adjudicating Authority and LOI & Charge Free possession whichever is later ,the following amounts shall be paid:	
	a) <i>Payment towards CIRP costs – [100 % of costs submitted i.e.Rs 59,30,000/-to be paid at the time of peaceful and charge free possession of the Hospital. Any additional costs to be borne by AIOPL and paid at actual]</i>	
	b) <i>Operational creditors settlement amount–[100 % of Statutory and Govt Dues i.e.Rs. 18,390/- to be paid at the time of Possession. Similarly 100 % amount i.e. Rs. 41,29,072/-to be paid to Workmen and Employees. 100% of claim admitted i.e. Rs. 1,08,91,788/- to be paid at the time of possession to all other operational creditors apart from workmen and employees ]</i>	
	c) <i>Upfront cash recovery to financial creditors–[Rs. 43,00,00,000/- i.e. approx. 48% of claim admitted would be paid]</i>	
	d) <i>Upfront payment towards outstanding employee dues–[100 % of claim admitted by IRP to be paid at the time of possession. No other payment to be made apart from the claims admitted by IRP]</i>	
4.	<b>Seeking approvals and implementation Of the transaction structure</b>	
	Approvals required from NCLT and other Statutory Approvals to be obtained within 0- 6 months	

18. However, before proceeding ahead, it is observed that the Suspended Board of Directors filed their objections to the Resolution Plan. Further, during the course of the hearing, the Suspended Directors brought to our attention, a letter dated 03.09.2022 issued by the Government of Odisha to the RP with regard to the Registered Lease Deed No. 6193 dated 03.11.2000 and No. 1435 dated 24.02.2006, and alleged that the RP did not take steps with respect to the said letter. The contents of the said letter dated 03.09.2022 read thus:

IA. No. 5617/ND/2022 in (IB)-1243/(ND)/2018

India SME Asset Reconstruction Company Ltd. Vs. Medirad Tech India Ltd.

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Government of Odisha  
General Administration & Public Grievance Department

No. 24824 /CA  
GAD-CA4-ALLOT-0024-2022

Dtd. 03.09.2022

From

Shri Sushanta Kumar Mohanty, IAS  
Director of Estates & Ex-officio  
Addl. Secretary to Government

To

Mr. Siba Kumar Mohapatra  
Resolution Professional appointed by  
Hon'ble National Company Law Tribunal  
in IB No. 1243/ND/2018

Sub: IB No. 1243/ND/2018 in the matter of India SME Asset Re-construction Company Ltd. vs. M/s Medirad Tech. India Ltd. u/s 7 of the Insolvency and Bankruptcy Code, 2016.

Sir,

In inviting a reference on the subject cited above, I am directed to say that area measuring Ac. 2.426 dec. bearing Drg. Plot No. P/2, Drg. No. B/983 (BDA) in Mz-Jayadev Vihar & Chandrasekharapur was allotted in favour of Medirad Tech. India Ltd. for establishment of Project on Radiation Therapy and Cancer Institute on payment of premium vide this Deptt. Order No. 6124 dtd. 17.04.2000. Accordingly Registered Lease Deed No. 6193 dtd. 03.11.2000 has been executed and registered.

Further an additional area measuring Ac. 0.168 dec. pertaining to Drg. Plot No. 1(pt.), 13(pt.) and 14(pt.) as per Drg. No. B/348 in Mz-Chandrasekharapur was allotted in favour of Medirad Tech. India Ltd. on payment of premium vide this Deptt. Order No. 15443 dtd. 13.12.2005. Accordingly supplementary registered lease deed No. 1435 dtd. 24.02.2006 has been executed and registered.

The relevant conditions of Clause-(xiv) and (xvi) contained in the registered lease deed transpires as below :-

**Clause xiv**

(xiv) That he shall not without the consent in writing of the lessor use or permit the use of the said land for any purpose other than that for which it is leased or transfer the same without such consent.

**Clause xvi**

(xvi) In the event of the closure/dissolution/defunct of the institution M/s Medirad Tech India Ltd., New Delhi, the lease land along with building if any thereon shall be the property of Government.

B. Grant of permission to mortgage in respect of Plot No. P/2, measuring Ac. 2.426 dec. was allowed vide GA Deptt. Letter No. 2597 dtd. 28.02.2001 in favour of Technology Development Board, New Delhi and vide Letter No. 13985 /CA dtd. 31.12.2002 in favour of IDBI Bank, Mumbai on pari passu basis to develop IT solutions in Radiation Therapy for cancer patients. The common

TRUE COPY



conditions contained in the permission order No. 2597 dtd. 28.02.2001 and No. 13985 /CA dtd. 31.12.2002 are indicated below:-

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(a) He will be liable for action for violation of the terms and conditions of the lease and in that event the aforesaid Board/IDBI can only claim their mortgage dues so far as the lessee's interest is concerned and not beyond.

(b) In case of default in repayment of the loan by the lessee the said Board /IDBI shall get clearance from the lessor (Govt.) before putting the mortgaged property to sale and in the event of the said property being sold the purchaser shall execute a deed of agreement in the form to be indicated by the lessor (Govt. to abide by the terms and conditions of the original lease deed for the remaining period of the lease.

(c) In case of default of repayment of loan by the lessee the said Board /IDBI may auction the entire property and not portion thereof and after recovery of their dues pay the balance to the original lessee, the Director, Medirad Tech. India Ltd.

(d) Individuals who are not eligible to get lease of land of Capital, Bhubaneswar under the principles governing the grant of lease of land at Bhubaneswar shall not be eligible to take part in the auction sale of the mortgaged property.

Additional Conditions contained in mortgage permission order No. 13985 dtd. 31.12.2002 are indicated below:-

(e) In case of violation of terms and conditions and sale of the lease hold plot the interest of the TDB, Govt. of India, New Delhi is the first charge, will remain secured and unaffected on the said plot and building constructed thereon.

(f) The Government of Orissa does not undertake to bear any implied or direct liability on behalf of both the mortgages. It also reserves the right to fully resume the immovable property in case of violation of any lease conditions or otherwise.

The Chairman & Managing Director, Hemalata Hospitals & Research Centre has submitted a representation enclosing a copy of the order passed by the Hon'ble National Company Law Tribunal (NCLT) in I.B. No. 1243/ND/2018. On perusal of the order passed by the NCLT, it is seen that a petition u/s 7 of the Insolvency and Bankruptcy Code 2016 read with Rule 4 of the Insolvency and Bankruptcy Rule 2016 by India SME Asset Reconstruction Company Ltd. against M/s Medirad Tech. India Ltd. with a prayer to initiate the Corporate Insolvency Resolution Process against M/s Medirad Tech India Ltd. (hereinafter, Corporate Debtor).

The Hon'ble Tribunal has disposed of the matter on 08.12.2021 with the following orders:

"35. The Financial Creditor has proposed the name of IRP. Accordingly, we appoint, Mr. Siba Kumar Mohapatra having registration No. IBBI/IPA-001/IP-P00837/2017-2018/11421 and enrolment No. IP-P00837 duly empanelled with the IDBI as the IRP. He is directed to take such steps as are



mandated under the Code, more specifically under Sections 15,17,18,20 and 21 and shall file his report before the Adjudicating Authority. **175**

36. The Financial Creditor is directed to deposit a sum of Rs. 2(Two) lakhs to meet the immediate expenses of IRP. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIR costs."

C. The land schedule involved in the case is a leasehold land allotted by the GA & PG Deptt. for the purpose of establishment of "Information Technology Project on Radiation Therapy, Allied Sciences and Cancer Institute". GA & PG Deptt. has not been impleaded as a party before the Hon'ble Tribunal.

The clause – (xiv) of the Register Lease Deed provides that, the lessee shall not without the consent in writing of the lessor use or permit the use of the said land for any purpose other than that for which it is leased or transfer the same without such consent. Further Clause-(xvi) of the Register Lease Deed provides that in the event of the closure/dissolution/defunct of the institution M/s Medirad Tech India Ltd., New Delhi, the lease land along with building if any thereon shall be the property of Government.

Further, it is pertinent to mention here that the land schedule involved in respect of the land relating to Mz-Jayadev Vihar is recorded in forest classification. As per the order of the Hon'ble National Green Tribunal in OA No. 29/2019, the user agency is required to regularise the matter by filing forest diversion proposal before the competent authority as per the provisions of F.C. Act, 1980.

You are therefore requested to take cognizance of the specific conditions contained in the Registered Lease Deed No. 6193 dtd. 03.11.2000 and No. 1435 dtd. 24.02.2006 read with the conditions mentioned in the NOC Order No. 2597 dtd. 28.02.2001 and No. 13985 dtd. 31.12.2002, while proceeding to resolve the insolvency matter as per the provisions of Insolvency & Bankruptcy Code (IBC) with the orders of Hon'ble National Company Law Tribunal (NCLT). Any deviation in overriding the terms and conditions of lease deeds executed by Government in GA & PG Department and the orders of the NOC issued at Government level may lead to future litigation.

This may be treated as Urgent.

Yours faithfully,

Director of Estates & Ex-officio  
Addl. Secretary to Government

Memo No. 24825 Dt. 03.09.2022

Copy forwarded to the Deputy Registrar Judicial, National Company Law Tribunal, CGO Complex, Lodhi Road, Block-3, New Delhi-110003 for favour of kind information and necessary action.

Director of Estates & Ex-officio  
Addl. Secretary to Government

Memo No. 24826 Dt. 03.09.2022

Copy forwarded to Dr. Arabinda Kumar Rath, Chairman & Managing Director, Medirad Tech India Ltd. for information and necessary action. **176**


Director of Estates & Ex-officio  
Addl. Secretary to Government

- Encl: 1. Registered Lease Deed No. 6193 dtd. 03.11.2000  
2. No. 1435 dtd. 24.02.2006  
3. Mortgage permission Order No. 2597 dtd. 28.02.2001  
4. Mortgage permission Order No. 13985 dtd. 31.12.2002





19. Accordingly, this Bench asked the RP whether he has replied to the aforesaid letter. The RP, in response to the same, filed an affidavit annexing therewith the reply sent in response to the Government of Odisha's letter dated 03.09.2022, which reads thus:

 **ANNEXURE D** Medirad Tech India Limited <ip.medirad@gmail.com>

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**Medirad Tech India Limited-Hemalata Hospital & Research Centre**  
1 message

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**Medirad Tech India Limited** <ip.medirad@gmail.com> 18 November 2022 at 10:32  
To: Sushanta Mohanty <doegad2015@gmail.com>  
Cc: "sibmohapatra@yahoo.co.in" <sibmohapatra@yahoo.co.in>  
Bcc: Meghna R <advmeghnar@gmail.com>

Kind attention:

Shri Sushanta Kumar Mohanty, IAS  
Director of Estates & Ex-officio Addl. Secretary to Government of Odisha

Dear sir,

Referring to your letter dt 03.09.2022 attached to the trailing mail, we have noted the contents of the letter. In fact we have already replied in this regard to Mr Manas Ranjan Samal, Additional Secretary in your department vide our letter Dt 29.08.2022.

In this connection we reiterate that Hon'ble National Company Law Tribunal (NCLT), New Delhi Bench -II vide its order Company Petition – CP (IB) No.1243/ND/2018 dated 08th December, 2021 has admitted the petition filed by India SME Asset Reconstruction Company Limited, for initiation of Corporate Insolvency Resolution Process in respect of M/s. Medirad Tech India Limited under section 7 of the Insolvency and Bankruptcy Code, 2016. The Hon'ble NCLT appointed the undersigned as the Interim Resolution Professional (IRP) and his appointment was confirmed as Resolution Professional (RP) in the first meeting of the Committee of Creditors(CoC). As per section 17 of the Insolvency and Bankruptcy Code, 2016 (Code), the powers of the Board of Directors of M/s. Medirad Tech India Limited stand suspended and all the powers of the Board are now vested with the RP.

Further, after following due process as laid down under IBC 2016, we have since finalised the Resolution plans received and the Resolution Plan from the successful Resolution applicant as approved by CoC, has been filed with the NCLT, New Delhi Bench-II for their approval on 5th August, 2022. The Cancer hospital run by the Company is now non-functional since Dec'2021.

In view of the foregoing, we would like to inform you that since the Company is in the final stage of CIRP process, the directions as mentioned in the order dated 26th April, 2022 to file an application with the Forest Clearance as required under the Forest Conservation Act, 1980 will be filed by the Successful Resolution Applicant after the NCLT approves the Resolution Plan submitted as mentioned above.

We would, therefore, request you to consider our request in terms of our above letter Dtd 29.08.2022 and allow us additional time till 31.12.2022 for initiating necessary action as mentioned in your letter No. 13683/CA GAD-CA4-MUSC-0043-2022 Dtd 17.05.2022, to be complied by the new management of the Company (successful Resolution applicant), as approved by Hon'ble Tribunal of NCLT, New Delhi.

We note to advise you further developments regarding the approval of Resolution plan by Hon'ble Tribunal in due course.

Thanking you.

Regards,  
S.K.Mohapatra  
Resolution Professional  
Medirad Tech India Limited

On Monday, 5 September 2022, Sushanta Mohanty <doegad2015@gmail.com> wrote:  
Please find the attachment.

—  
Regards,  
Siba Kumar Mohapatra  
Resolution Professional  
M/s Medirad Tech India Limited  
Reg. No. IBBI/PA-001/IP-P00837/2017-2018/11421



20. Thus, we find that RP has duly informed the Government of Odisha that (a) after following the due process of IBC 2016, it has finalised the Resolution plan of SRA as approved by CoC, which has been filed and awaiting approval of the NCLT. The Cancer hospital run by the Company has been non-functional since December 2021, (b) Since the Company is at the final stage of the CIRP, the directions as mentioned in the order dated 26th April 2022 to file an application with the Forest Clearance as required under the Forest Conservation Act, 1980 will be filed by the Successful Resolution Applicant once the NCLT approves the Resolution Plan and (c) additional time till 31.12.2022 be allowed for initiating necessary action to be complied by the new management of the Company (i.e., SRA successful Resolution applicant.)

21. The RP further stated the following in its affidavit dated 09.05.2023 explaining the details. The contents of the affidavit are reproduced below:

**SUBMISSIONS OF RESPONDENT IN**  
**COMPLIANCE WITH ORDERS DATED 12.04.2023 & 26.04.2023**

I, Siba Kumar Mohapatra, s/o Late Harihar Mohapatra, aged about 66 years, Indian Inhabitant, having my address at E/402, Baishnav Vihar, Bomikhal, Near Durga Mandap, Bhubaneswar, Odisha, PIN-751010 do hereby solemnly swear and state that:

1. I am the Resolution Professional of the Corporate Debtor and have been in-charge of managing the affairs of the Corporate Debtor during the Corporate Insolvency Resolution Process initiated by this



Hon'ble Court vide Order dated 08<sup>th</sup> December 2021 passed in the extant Company Petition.

2. At the outset, and without prejudice to the contents of the present additional affidavit, I say that the present affidavit is only being filed for the limited purposes of bringing on record the letters exchanged between the Respondent/Resolution Professional and the concerned government department.
3. That the letter dated 17<sup>th</sup> May 2022 directs that MTIL/Corporate Debtor in view of the National Green Tribunal order dated 26<sup>th</sup> April 2022, undertake steps for immediate action for filing of forest diversion proposal and to complete the process within four months. A copy of the letter dated 17<sup>th</sup> May 2022, along with the order of the National Green tribunal is herewith annexed and marked as **Annexure A.**
4. That vide response dated 29<sup>th</sup> August 2022, the Respondent/Resolution Professional provided the details of the process of CIRP and stated that the resolution plan was pending approval. That further, as per order 26<sup>th</sup> April 2022, it would be the successful resolution applicant who would take appropriate steps as directed by this said order for forest clearance in accordance with the Forest Conservation Act, 1980 on approval of the resolution plan by the Hon'ble NCLT, New Delhi. A copy of the response dated 29<sup>th</sup> August 2022 is herewith annexed and marked as **Annexure B.**



5. That again it is pertinent to note that the letter dated 03<sup>rd</sup> September 2022, simply requests the Respondent/Resolution Professional to take cognizance of the conditions as stated in the said letter while proceeding to resolve the insolvency matter as per the provisions of IBC, 2016. A copy of the letter dated 03<sup>rd</sup> September 2022 is herewith annexed and marked as **Annexure C**.
  
6. That in response to the above letter dated 03<sup>rd</sup> September 2022, the Respondent/Resolution Professional vide email dated 18<sup>th</sup> November 2022, stated that all points have been taken cognizance of and even a representation has already been provided to Shri. Manas Ranjan Samal, Additional Secretary vide response letter dated 29<sup>th</sup> August 2022. The Respondent/Resolution Professional repeated and reiterated that the resolution plan was pending for approval.
  
7. That further, it would be the successful resolution applicant who would take appropriate steps as directed by the Hon'ble National Green Tribunal in its order dated 26<sup>th</sup> April 2022 for forest clearance in accordance with the Forest Conservation Act, 1980 on approval of the resolution plan by the Hon'ble NCLT, New Delhi and hence sought time for initiating necessary action contemplated in letter dated 17<sup>th</sup> May 2022 and the present one under response. A copy of the response dated 18<sup>th</sup> November 2022 is herewith annexed and marked as **Annexure D**.





8. That further as per letter dated 31.03.2023 addressed to Shri. Sushanta Kumar Mohanty, IAS, Director of Estates & Ex-officio Addl. Secretary to Government of Odisha, the Respondent/Resolution Professional requested that extension of time sought in his letter dated 31<sup>st</sup> December 2022, be further extended till 30<sup>th</sup> June 2023 for initiating the necessary action for forest diversion proposal. A copy of the letter dated 31<sup>st</sup> December 2022 and letter dated 31<sup>st</sup> March 2023 is herewith annexed and marked as **Annexure E(COLLY)**.
9. The Respondent/Resolution Professional vide letter dated 17<sup>th</sup> April 2023 to Shri. Manas Ranjan Samal, Additional Secretary to Government of Odisha, General Administration & Public Grievances Department had sought for clarification from the said officer regarding initiation of Forest Diversion, as in the Khatians, issued by the concerned Tahsildars, the 'Kisam' of the land leased to the Corporate Debtor by the GA Dept is clearly mentioned as 'Gharabari' and no portion of land leased to Corporate Debtor by the GA Dept is under 'Jungle' Category. The response/clarification from GA Dept. is awaited. The letter dated 17<sup>th</sup> April 2023 is herewith annexed and marked as **Annexure F.**
10. That thus in compliance with the orders dated 12<sup>th</sup> April 2023 and 26<sup>th</sup> April 2023 the Respondent/Resolution Professional is bringing on record, the letters issued to the Corporate Debtor and the responses provided therein.

For Medirad Tech India Limited  
Resolution Professional  
  
DEPONENT  
SIBA KUMAR MOHAPATRA  
RESOLUTION PROFESSIONAL  
(MEDIRAD TECH INDIA LIMITED)



PLACE : BHUBANESWAR  
DATE: 09.05.2023





22. On a perusal of the abovesaid affidavit, it is noticed that the National Green Tribunal (NGT) vide its order dated 26.04.2022 in the matter of “Subash Mohapatra Vs. State and Others” passed in OA No. 29/2019/EZ passed the following directions:

*“16. In this view of the matter, we dispose of this Original Application with a direction to the State Government to expedite the process of obtaining Forest Clearance under the Forest (Conservation) Act, 1980, following due process of law. The said exercise shall be completed for all the Government/Private Institutions within a period of four months from the date of this judgment.*

*17. The District Magistrates & Collectors along with the concerned. Divisional Forest Officers of the different Districts where Revenue Forest Land has been identified for taking up Compensatory Afforestation may identify and demarcate encroachment free Revenue Forest area for each proposal in accordance with law within a period of two months.*

*18. The State Government or the Ministry of Environment, Forests and Climate Change, as the case may be, may also take the Net Present Value (NPV) or Penal Net Present Value (PNPV) while granting clearance under the Forest (Conservation) Act, 1980 in accordance with law.”*

23. Accordingly, the State Government of Odisha vide its letter dated 17.05.2022 directed the Corporate Debtor to take necessary action in terms of the order dated 26.04.2022 passed by the NGT. The letter dated 17.05.2022 is reproduced overleaf, for the sake of convenience:



Government of Odisha  
General Administration & Public Grievance Department

No. 12683 /CA  
GAD-CA4-MISC-0043-2022

Dtd. 17-05-2022

From

Sri Manas Ranjan Samal, OAS(SAG)  
Additional Secretary to Govt.

To

The President/MD/Director  
The Medirad Tech India Ltd  
(Hemalata Cancer hospital)  
Bhubaneswar

**Sub: Communication of the Judgment dated 26.04.2022 passed by the Hon'ble National Green Tribunal in OA No. 29/2019/EZ in the matter of Subash Mohapatra vrs. State and others.**

Sir,

In inviting a reference on the subject noted above, I am directed to communicate herewith the judgment dated 26.04.2022 passed by the Hon'ble National Green Tribunal in OA No. 29/2019/EZ in the matter of Subash Mohapatra vrs. State and others for taking immediate action for filing of diversion proposal and to complete the process within four months. The relevant directive part of the order is quoted below:-

*"16. In this view of the matter, we dispose of this Original Application with a direction to the State Government to expedite the process of obtaining Forest Clearance under the Forest (Conservation) Act, 1980, following due process of law. The said exercise shall be completed for all the Government/Private Institutions within a period of four months from the date of this judgment.*


*17. The District Magistrates & Collectors along with the concerned Divisional Forest Officers of the different Districts where Revenue Forest Land has been identified for taking up Compensatory Afforestation may identify and demarcate encroachment free Revenue Forest area for each proposal in accordance with law within a period of two months.*

*18. The State Government or the Ministry of Environment, Forests and Climate Change, as the case may be, may also take the Net Present Value (NPV) or Penal Net Present Value (PNPV) while granting clearance under the Forest (Conservation) Act, 1980 in accordance with law.*

*19. An Action Taken Report in this regard shall be submitted before the Tribunal on or before 30.09.2022 by the State Government."*

In view of the above direction of the Hon'ble Tribunal necessary action may be taken in this regard and action taken in the matter be intimated to this Department for filing of affidavit before the Hon'ble Tribunal before 30.09.2022 regarding the action taken in the matter.

Yours faithfully,

  
Additional Secretary to Govt.

24. From the record, it is seen that in response to the abovesaid letter dated 17.05.2022, the Applicant/RP intimated Additional Secretary to the Govt. of Odisha vide its letter dated 29.08.2022 stating that the CIR process has been initiated in respect of the Corporate Debtor. The RP further informed that it had finalized the Resolution plans and has filed an application with the NCLT



seeking its approval. He sought additional time for initiating necessary action to be taken by the new management of the Company/SRA upon approval of the Resolution Plan. The reply of the RP reads thus:



## ANNEXURE B

Date: 29.08.2022

26

To,  
The Additional Secretary to the Govt. of Odisha  
General Administration & Public Grievance Dept.  
Lokseva Bhawan.  
Sachivalaya marg.  
Bhubaneswar-751001

**Sub: Communication of the Judgment dated 26.04.2022 passed by the Hon'ble National Green Tribunal in OA No. 29/2019/EZ in the matter of Subash Mohapatra Vrs, State and others**

Dear Sir,

With reference to your Letter No. 13683/CA, GAD-CA4-MISC-0043-2022 dated 17-05-2022 addressed to Medirad Tech India Limited we inform you that Hon'ble National Company Law Tribunal (NCLT), New Delhi Bench -II vide its order Company Petition – CP (IB) No.1243/ND/2018 dated 08<sup>th</sup> December, 2021 has admitted the petition filed by India SME Asset Reconstruction Company Limited, for initiation of Corporate Insolvency Resolution Process in respect of M/s. Medirad Tech India Limited under section 7 of the Insolvency and Bankruptcy Code, 2016. The Hon'ble NCLT appointed the undersigned as the Interim Resolution Professional (IRP) and his appointment was confirmed as Resolution Professional (RP) in the first meeting of the Committee of Creditors (CoC). The copy of said NCLT order is enclosed herewith as Annexure -A.

As per section 17 of the Insolvency and Bankruptcy Code, 2016 (Code), the powers of the Board of Directors of M/s. Medirad Tech India Limited stand suspended and all the powers of the Board are now vested with the RP.

Further, after following due process as laid down under IBC 2016, we have since finalized the Resolution plans received and the Resolution Plan from the successful Resolution applicant as approved by CoC, has been filed with the NCLT, New Delhi Bench-II for their approval on 5<sup>th</sup> August, 2022. The Cancer hospital run by the Company is now non-functional since December, 2021.

In view of the foregoing, we would like to inform you that the directions as mentioned in the order dated 26<sup>th</sup> April, 2022 to file an application with the Forest Clearance as required under the Forest Conservation Act, 1980 will be filed by the Successful Resolution Applicant after the NCLT approves the Resolution Plan submitted as mentioned above.





We would, therefore, request you to consider our case and allow us additional time till 31.12.2022 for initiating necessary action as mentioned in your letter by the new management of the Company (successful Resolution applicant), as approved by Hon'ble Tribunal of NCLT , New Delhi.

Thanking you.

Yours faithfully,

For Medirad Tech India Limited



**Siba Kumar Mohapatra**  
**Resolution Professional**

**IBBI Registration No: IBBI/IPA-001/IP-P00837/2017-18/11421**

**Address: E/402, Baishnav Vihar, Bomikhal, Near Durga Mandap,  
Bhubaneswar, Khordha, Odisha -751010**

**Registered E-mail ID: sibmohapatra@yahoo.co.in**

**Correspondence E-mail ID: ip.medirad@gmail.com**

25. In view of the aforesaid communications, we feel that the RP had taken appropriate sufficient steps in terms of his replies dated 29.08.2022 and 18.11.2022 to apprise the status of CIRP and filing of the Resolution Plan duly approved by CoC to the Government of Odisha.

26. The other objections raised by the Suspended Board of Directors read thus:

26.1 The Corporate Debtor had entered into a Loan Agreement with the Technology Development Board ("TDB") on 30.08.2000 seeking TDB's assistance for developing the project. The project defined under the Loan Agreement clearly stated that it is an Information Technology Project and it was aimed at developing technology in relation to radiotherapy.

26.2 Furthermore, the valuation of the Corporate Debtor is highly questionable. Pertinently, when the account of the Corporate Debtor was declared NPA by the Banks in the year 2007-2008, neither any capital was infused nor any amount was invested towards the purchase of machinery,



equipment, etc. Any value that is determined is because of the service and lease agreements with Hemalata Hospital Ltd. (“HHL”) which was managing the hospital. The suspended Director had requested the RP during the 8<sup>th</sup> and 9<sup>th</sup> CoC Meeting on 26.05.2022 to provide the Valuation Reports, but the RP rejected such a request.

26.3 The claim of Indian SME Asset Reconstruction Company Limited (“ISARC”), the original Applicant before this Authority, as of 10.06.2018, was Rs. 39,20,76,489/-. However, the amount claimed and approved by the RP for the said Applicant is to the tune of Rs. 60,04,97,968/- as of 08.12.2021. The claim of TDB was accepted to the extent of Rs. 301,915,435/- whereas TDB in its 24<sup>th</sup> Annual report for the year 2020-21 had showed an amount of Rs. 1114.21 Lakhs to be due from the Corporate Debtor which is contradictory to the amount claimed in the CIRP. Pertinently, of the principal amount of Rs. 840 Lakhs towards the debt of TDB, an amount of Rs. 775 Lakhs is already paid. Therefore, even the accepted claims are without any basis and the RP has failed to conduct an exercise to quantify the claims appropriately, which is detrimental to the prospects of Corporate Debtor.

26.4 On an application filed by ISARC before DRT, Cuttack, the Corporate Debtor was directed to pay an amount of Rs. 10.79 Crores, due from 17.12.2019. On the basis of this, the Suspended Director proposed a settlement under Section 12A of IBC vide e-mail dated 04.05.2022 and on 16.05.2022. The same was also discussed in the 6<sup>th</sup> CoC meeting and the suspended Director was assured that ISARC will review the offer. However, till date, there has been no communication on the offer of settlement.





26.5 Furthermore, the SRA has violated the conflict-of-interest clause of the RFRP. In 2018-19, the SRA was in negotiations with the suspended Director for a possible collaboration and in this regard, all the confidential financial and other information was shared with the SRA, which the SRA did not disclose to the CoC or the RP.

27. In response to the aforesaid Reply/Objections filed by the Suspended Board of Directors, the Applicant/RP filed its rejoinder stating the following:

27.1 The issue of the amount of claim filed by the Financial Creditor, being India SME Asset Reconstruction Limited ("**ISARC**") has already been dealt with by this Hon'ble Tribunal in I.A. No. 903 of 2021 vide order dated 04.10.2022, wherein Technology Development Board of India ("**TDB**") had sought the relief of inspecting the claim form filed by ISARC, which was allowed by this Hon'ble Tribunal. If there were any discrepancies in the claim amount of ISARC, TDB would have taken further steps to address the same.

27.2 However, after the documents of ISARC were shared with TDB, in compliance with the said order, the fact that TDB did not raise any further objections clearly exhibits that there was nothing incorrect about the acceptance of the claim by this Applicant/RP.

27.3 As per the provisions of the IBC, 2016, the suspended board of Directors or promoters are given the notice to participate in every meeting of the CoC, however, they do not have any voting rights, and participating does not mean that they become a member of the CoC and thus gain access to all documents that are meant to be shared only with the CoC members.



27.4 Further as per Regulation 35 (2) of the IBBI (CIRP) Regulations, 2016, which states that after the receipt of the resolution plans in accordance with the IBC, 2016, the RP shall provide the fair value and the liquidation value to every member of the CoC in electronic form, on receiving an undertaking from the members to the effect that such member shall maintain the confidentiality of the fair value and the liquidation value and shall not use such values to cause an undue gain or undue loss to itself or any other person and comply with the requirements under section 29 (2) of the IBC, 2016. That the provision is silent on sharing documents such as the valuation report with the Suspended Board of Directors.

27.5 The minutes of the CoC meetings clearly show that the suspended board of director Dr. A.K. Rath was present in each and every meeting and accordingly he was well aware that the Asian Institute of Oncology Private Limited was one of the Prospective Resolution Applicant (“**PRA**”) mentioned in the Provisional List. While Dr. Rath informed the CoC of his prior discussions and negotiations with this PRA, it was also further informed that nothing resulted from those discussions. Beyond mentioning this, Dr. Rath never raised this issue of any alleged conflict of interest by the PRA. If there was cause for concern about this alleged conflict of interest, then the same was never put forth by Dr. Rath or even raised by the members of the CoC.

27.6 Further, Clause 1.2 of the Request for Resolution Plan (“**RFRP**”) clearly stipulates that conflict-of-interest results in the fact that a PRA can only be disqualified for having any conflict of interest with the Corporate Debtor, that too at the discretion of the RP in consultation with the CoC.



27.7 The entire bidding process was conducted transparently and in a thorough manner in which the PRA offered the highest amount through its Resolution Plan. Further, the PRA has a proven track record of reviving and restructuring a sick entity and has credible experience in running a hospital. By making such allegations, the suspended board of directors is only interfering in the commercial wisdom of the CoC, as the CoC has been aware and has taken into consideration all factors of the PRA and approved the Plan with a 100% majority.

27.8 It is in the 05<sup>th</sup> CoC meeting that Dr. A.K. Rath was advised that any proposal for settlement of dues and withdrawal of CIRP needed to be submitted through ISARC, who was the Applicant in the Section 7 Petition through the form FA. However, it is repeated and reiterated that this settlement only pertained to the closure of the dues of ISARC. The Applicant reiterated to Dr. A.K. Rath the procedure to be followed for withdrawal of the CIRP.

28. We heard the submissions of both the Applicant/RP and the Suspended Board of Directors and went through the pleadings on record. The objections raised by the Suspended Board can be summarized as under:

- i) The valuation report of the CD was not supplied by the RP to the Ex-Management,
- ii) The claim of India SME Asset Reconstruction Company Limited (ISARC) was admitted higher than the actual amount,
- iii) The offer under Section 12A made by the Suspended Board of Directors was not communicated by the RP to the ISARC, and



iv) SRA violated the conflict-of-interest clause of the RFRP (Request for Resolution Plan) since it was already in a negotiation with the Suspended Director for possible collaboration.

29. As regards the objection of the Ex-Management regarding not sharing the Valuation Report of the CD with them, it is observed that no provision of the Code or Regulation has been pointed out by the Suspended Board pursuant to which the Valuation Report of the CD could be shared with them. Hence, we cannot reject or remand back the Resolution Plan merely because the valuation reports of the CD were not shared with the Suspended Management. Hence, we do not find this objection sustainable.

30. The other objection raised by the Suspended Board relates to the acceptance of a higher claim of ISARC. The RP has stated that vide order dated 04.10.2022 passed in I.A. No. 903/2021, wherein the other member of CoC/Financial Creditor namely, Technology Development Board (TDB) sought relief of inspecting the claim filed by ISARC, the prayer of the other Financial Creditor, namely, TDB was allowed. The RP contended that had there been any discrepancy in the claim amount of ISARC, TDB would have brought such fact before this Adjudicating Authority. However, no such fact was brought to the notice of this Adjudicating Authority. We find credence in the submission of RP and agree that had the higher claim of ISARC been accepted by the RP, then the TDB, the other Member of CoC, who inspected the records, would have been the aggrieved party. However, no such objection was raised by the other Financial Creditor i.e., TDB. Hence, we find no merit in this objection.



31. The next objection raised by the Suspended Board of Directors is that its settlement proposal under Section 12A of IBC 2016 was not considered. RP in this regard stated that the settlement proposal was not comprehensive in nature. During the course of the 06<sup>th</sup> meeting of the CoC, the representative from ISARC stated that the terms of the proposal were not acceptable to them. Hence, there was no consensus with regard to the settlement between the CoC and the Suspended Board of Directors. Accordingly, we find no merit in this plea of the Suspended Board of Directors. Even otherwise, once the Resolution plan is approved by the CoC, the settlement proposal under Section 12A of IBC, 2016 cannot be considered by the CoC.

32. Another objection raised by the Suspended Board is that the SRA had violated the conflict-of-interest clause of the RFRP. The RP has denied the allegation and stated that the entire bidding process was conducted transparently in which the PRA offered the highest amount through its Resolution Plan. Further, the RP contended that the Chairman of AIOPL (the SRA) Dr. Ramakant K. Deshpande is a Padma Shri (2014) award winner and has a proven track record of reviving a sick entity and has a credible experience in running a cancer hospital. By making such allegations, the suspended board of directors is only interfering with the commercial wisdom of the CoC, which after taking into consideration all factors, has approved the present Resolution Plan with a 100% majority. We find no document in the pleadings nor any such document produced by the Suspended Board of Directors during the hearing to substantiate their allegation. Hence, the objection, being devoid of merit, is rejected.





33. Since in the aforesaid paragraphs, we have dealt with all the objections raised by the Suspended Board of Management, we would like to proceed ahead with the matter.

34. The role of the Adjudicating Authority while considering a Resolution Plan has been examined by the Hon'ble Supreme Court in a series of judgments. The relevant portion of the judgement of the Hon'ble Supreme Court in Civil Appeal No. 10673 of 2018 in the matter of **“K. Sashidhar Vs. Indian Overseas Bank & Ors.”** is reproduced below:

*“35. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan “as approved” by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides : (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise*



*their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.”*

*“38. Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under Section 30(2) of the I&B Code or, at best, by the adjudicating authority (NCLT) under Section 31(2) read with 31(1) of the I&B Code. No other inquiry would be permissible. Further, the jurisdiction bestowed upon the appellate authority (NCLAT) is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in Section 61(3) of the I&B Code, which is limited to matters “other than” enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited jurisdiction as specified in the I & B Code and not to act as a court of equity or exercise plenary powers.”*

35. Thus, it is a well-settled principle of law that the Adjudicating Authority is not required to interfere with the decision taken by the CoC in its commercial wisdom, save and except the circumstances referred to in Section 30(2) of the IBC, 2016. In terms of the Compliance Certificate filed in Form-H



by the Applicant/RP, the Resolution Plan does not contravene any of the provisions of the law for the time being in force.

36. In the sequel to the above, we have no other option but to approve the Resolution Plan as approved by the CoC and as placed by the Applicant before this Adjudicating Authority. **We, therefore, allow the present Application and approve the COC-approved Resolution Plan placed before us by the Applicant/RP.**

37. In the Resolution Plan, the SRA has sought the following concessions:

**XIII. REMEDIES / CONCESSIONS DEMANDED BY AIOPL:**

AIOPL prays to the R.P and Committee of Creditors that the two below mentioned existing agreements between Medirad Tech India Limited ( Corporate Debtor) and Hemlata Hospitals Limited need to be terminated before AIOPL makes any payment towards the Resolution and before taking hand over of the Hospital.

- a) Service Agreement entered on 1<sup>st</sup> day of September 2006 between Medirad Tech India Ltd and Hemalata Hospitals Ltd
- b) Lease Agreement 31<sup>st</sup> Day of December 2013 between Medirad Tech India Ltd and Hemalata Hospitals Ltd

38. The admissibility of these concessions has already been dealt with in detail while adjudicating the I.A. No. 2750 of 2022. Hence, the same is granted for the reasons stated in the order passed in I.A. No. 2750 of 2022.

39. This Adjudicating Authority directs the following in respect of the Resolution Plan approved:

- (i) The approved Resolution Plan, as recommended by COC, shall become effective from the date of passing of this Order and shall be implemented strictly as per the term of the plan and implementation schedule given therein;



(ii) The reliefs and concessions as sought by the Resolution Applicants in para XIII are granted.

(iii) The Performance Guarantee shall be renewed by the SRA till the Resolution Plan is fully implemented.

(iv) The Monitoring Committee as provided in the Resolution Plan shall be set up by the Applicant within 07 days of passing of this Order, which shall take all necessary immediate steps for implementation of the Resolution Plan.

(v) The order of the moratorium in respect to the corporate debtor passed by this Adjudicating Authority under Section 14 of the IBC, 2016 shall cease to have effect from the date of passing of this Order; and

(vi) The Resolution Professional shall forward all the records relating to the conduct of the CIRP and the Resolution Plan to the IBBI for its record and database.

40. The Court Officer/RP shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance. A copy of this order shall also be sent by the Court Officer/RP to the IBBI for their record.

Sd/-  
**(L. N. GUPTA)**  
**MEMBER (T)**

Sd/-  
**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (J)**