



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOCHI BENCH**

**IA(IBC)/93/KOB/2024  
IN  
CP(IBC)/14/KOB/2023**  
*(Under Section 36(4) and 60(5) of IBC,  
2016)*

**&**

**INTERVENTION  
PETITION(IBC)/1/KOB/2025  
IN  
IA(IBC)(PLAN)/1/KOB/2025  
IN  
CP(IBC)/14/KOB/2023**  
*(Under Rule 11 and Rule 32 of NCLT  
Rules, 2016, read with Order 1 Rule 10 of  
the Code of Civil Procedure, 1998)*

***In the matter of:***

***M/s. Furnace Fabrica (India) Limited***

**MEMO OF PARTIES:**

**IA(IBC)/93/KOB/2024**

**1. Dr. Badri Prasad**

Flat No. A-802, 8th Floor Progressive Sea  
Lounge Plot No.44/45, Sector-15 CBD  
Belapur Navi Mumbai - 4006014 Email:  
[drprasad.ff@gmail.com](mailto:drprasad.ff@gmail.com).

**2. Shashikiran Prasad**

Flat No. A-801, 8th Floor Progressive Sea  
Lounge Plot No.44/45, Sector-15 CBD  
Belapur Navi Mumbai - 4006014 Email:  
[s.prasad@ffil.co.in](mailto:s.prasad@ffil.co.in)

**3. Archana Prasad**

Flat No. A-802, 8th Floor Progressive Sea  
Lounge Plot No.44/45, Sector-15 CBD



Belapur Navi Mumbai - 4006014 Email:  
p.archi@yahoo.com

**4. FF International Limited**

CIN: U24233MH2014PLC256766 D-30/8,  
TTC Industrial Area, MIDC Thurbhe,  
Thane -400705

**5. Pacific Refractories Limited**

CIN: U26921GJ1994PLC137619 184-P4-  
P1-P, Opp. Modern Ceramics 8-A National  
Highway, At Vaghasiya Wankaner Rajkot –  
363621

**6. Begg Cousland Private Limited**

CIN: U24100MH2010PTC205949  
Plot No.27, MIDC, Chemical Zone  
Taloja Industrial Area,  
Navi Mumbai -400071

**...Applicants**

**1. Alok Kumar Agarwal**

Resolution Professional of Furnace  
Fabrica (India) Limited CIN:  
U28123KL1985PLC026752 Opposite  
MILMA Dairy Koonamthai, Edapally Kochi,  
Kerala - 682024 Email:  
alok@insolvencyservices.in  
[furnace.ibt@gmail.com](mailto:furnace.ibt@gmail.com)

**2. Abdul Rehman Basheeruddin**

2, Deonar Firm Road, Zenith Park  
Chembur, Mumbai-400088 Email:  
[abasheeruddin@furnacefabrica.com](mailto:abasheeruddin@furnacefabrica.com)

**3. Raiz Basheeruddin**

2, Deonar Firm Road, Zenith Park  
Chembur, Mumbai -400088 Email:  
[raiz.ffil@gmail.com](mailto:raiz.ffil@gmail.com)



**4. Dr. Sanam Basheer**

41/960 CC, Opp. Krishnabhatt Towers  
Pulleppady Road, North Ernakulam  
Ernakulam-682018, Kerala Email:  
[drsanambasheer@gmail.com](mailto:drsanambasheer@gmail.com)

**5. Nezee Basheeruddin**

2, Deonar Firm Road,  
Zenith Park Chembur,  
Mumbai – 400088

**6. Amina Mohamed Ali**

2, Deonar Firm Road,  
Zenith Park Chembur,  
Mumbai -400088

....Respondents

**INTERVENTION  
PETITION(IBC)/1/KOB/2025**

**MEMO OF PARTIES:**

**1. FF International Limited**

CIN: U24233MH2014PLC256766  
D-30/8, TTC Industrial Area, MIDC  
Thurbhe, Thane - 400705  
Represented by Sashikiran Prasad

**2. Pacific Refractories Limited**

CIN: U26921GJ1994PLC137619  
184-P4-P1-P, Opp. Modern Ceramics  
8-A National Highway, At Vaghasiya  
Wankaner Rajkot-363621  
Represented by Sashikiran Prasad

**3. Begg Cousland Private Limited**

CIN: U24100MH2010PTC205949  
Plot No.27, MIDC, Chemical Zone  
Taloja Industrial Area,  
Navi Mumbai - 400071  
Represented by Sashikiran Prasad



**4. Dr. Badri Prasad**

Flat No. A-802, 8th Floor  
Progressive Sea Lounge  
Plot No.44/45, Sector 15, CBD  
Belapur, Navi Mumbai 400614.

**5. Shashikiran Prasad**

Flat No. A-801, 8th Floor  
Progressive Sea Lounge  
Plot No.44/45, Sector 15, CBD  
Belapur, Navi Mumbai 400614

.....**Petitioners**

**Alok Kumar Agarwal**

Resolution Professional of Furnace  
Fabrica (India) Limited  
CIN: U28123KL1985PLC026752  
Opposite MILMA Dairy  
Koonamthai, Edapally Kochi,  
Kerala – 682024

....**Respondent**

**Order delivered on: 22.08.2025.**

**Coram:**

**HON'BLE MEMBER (JUDICIAL) : SHRI. VINAY GOEL**

**HON'BLE MEMBER (TECHNICAL) : SMT. MADHU SINHA**

***Appearances:***

For the Applicant : Ld. Sr. Counsel Mr. Aravind Pandian & Mr. Akhil Suresh

For R1/RP : Mr. Pulkitesh Dutt Tiwari

For R2 to R5 : Mr. Rohan Kumar



## ORDER

### Per Coram

1. The IA(IBC)/93/KOB/2024 has been filed under Section 36(4) & 60 (5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as Code) with the following reliefs: -
  - a. *“Declare and direct that the assets of the Applicant Nos. 4-6 and the assets as set out in the MoU are carved out of the assets of the Corporate Debtor and do not form a part of the estate of the Corporate Debtor;*
  - b. *Direct the Respondent No. 1. i.e., the Resolution Professional of the Corporate Debtor to enforce the MoUs with retrospective effect not limited to but including the handover of the shareholding of Applicant Nos.4-6 in terms of the MoUs and the management and control of the Applicant Nos.4-6;*
  - c. *Direct the Respondents to refrain from taking any coercive steps against the Applicant Nos. 4-6 and to refrain from creating hurdles or obstacles in form or manner whatsoever and to co-operate with the Applicant and provide assistance wherever necessary while transferring the shareholding of Applicant Nos.4-6;*
  - d. *Any other order that this Hon'ble Tribunal may deem fit in the facts and circumstances of this case.”*
2. In addition to the above the Applicants have filed an Intervention Petition(IBC)/1/KOB/2025 under Rule 11 and Rule 32 of NCLT Rules, 2016 read with Order 1 Rule 10 of the Code of Civil Procedure, 1908, with principal relief to Intervene the Applicants as additional respondents in IA(IBC) (PLAN)/1/KOB/2025 filed by the Resolution Professional under Section 30(6) of the Insolvency and Bankruptcy Code, 2016.
3. In view of the pendency of the aforesaid application and the Intervention Petition, we deem it appropriate to decide both matters by a common order to avoid repetition and conflicting judgment.



**Brief facts of the IA(IBC)/93/KOB/2024 are as follows: -**

4. The applicants submitted that Applicant No.1 commenced his career in refractory lining in 1974 and subsequently established his own business. During the course of his work, he became acquainted with Respondent No.2. After initially expressing interest in joining the Applicant's business, Respondent No.2 deferred his decision and continued in his employment until 1978. Thereafter, he joined the Applicant's business, and they formed a partnership firm, M/s. Furnace Fabrica, with equal stakes held by their respective families.
5. Further, M/s Furnace Fabrica Private Limited, was incorporated on 03.12.1985 to provide engineering, procurement, and construction services. It was later converted into a public company on 08.08.1996. The Applicant No.1 and Respondent No.2 expanded their business operations by incorporating three more companies: M/s Pacific Refractories Limited (1994), M/s Begg Cousland Private Limited (2010), and M/s FF International Limited (2014). The management of Respondent No.1 and its subsidiaries was shared between two groups: the Prasad Group (Applicant Nos. 1 to 3) and the Basheeruddin Group (Respondent Nos. 2 to 6), with the sons of both Applicant No.1 and Respondent No.2 serving as directors on the Board of Respondent No.1.
6. It is stated that the Prasad Group and Basheeruddin Group mutually agreed to restructure Respondent No.1's ownership and management due to differences. A Memorandum of Understanding (MoU) was signed on 01.03.2014, outlining the reorganization plan. Following this, the Prasad Group withdrew from managing Respondent No.1, while the Basheeruddin Group took over. An addendum to the MoU was later executed on 09.09.2014. Despite the agreement, the Basheeruddin Group delayed



implementation. Hence, the Prasad Group sends follow-up emails, including one on 31.10. 2017, requesting a valuation exercise and shareholding transfers, which went unanswered

7. Further, it is stated that the Applicant No.1 sent emails to Respondent No.2 on 26<sup>th</sup> & 27<sup>th</sup> December 2017, requesting the demerger of the Kandla workshop from Respondent No.1 to Applicant No.4 and expediting separation activities as per the MoU and Addendum. Pursuant to this, the Respondents applied for transfer of the Kandla SEZ business to Applicant No.4, which was approved on 28.08.2018. Consequently, Applicant No.4 obtained a fresh GST registration, and Respondent No.1's GST registration was cancelled.
8. Despite receiving regulatory approval for transferring the Kandla SEZ business to Applicant No.4, the Respondents delayed handing over operations until September 2019 and incurred unjustifiable debts, now repayable by the Applicants. The Applicants repeatedly requested completion of the division process as per the MoU and Addendum. On 23.01.2018, Applicant No.1 sent an email seeking completion of the separation process. In response, Respondent No.1 acknowledged the delay, offered an ad-hoc payment of Rs. 40 lakhs, and requested cooperation, while seeking time for compliance feedback.
9. The Applicants repeatedly followed up with the Respondents to implement the MoU and Addendum, but were met with delays and excuses. In August 2020, Applicant No.1 requested Respondent No.2 to replace personal guarantees as agreed. Respondent No.2 suggested alternatives, but progress was slow. Amidst COVID-related funding needs, Applicant No.1 reluctantly agreed to sign bank documents, while reiterating demands for guarantee replacement. Due to ongoing issues, Addendum No.2 was executed on



09.11.2020, modifying the shareholding structure and providing for mutual indemnification and replacement of personal guarantees.

10. It is submitted that the Applicant No.1 and Respondent No.2 entered into a MoU with two addendums, outlining their agreement. The Applicant No.1 requested that Respondent No.2 to resign from certain companies and replace the personal guarantees provided by the Applicant No.1. Despite repeated requests (emails dated 18.03.2021, 05.04.2021, and 10.06.2021), Respondent No.2 failed to replace the guarantees. Respondent No.1 eventually sent a letter to the State Bank of India on 16.07.2021, acknowledging the need for replacement.
11. Further, it is stated that the Applicants extended an unsecured loan of Rs. 1.85 crores to Respondent No.2, which was not repaid despite a loan recall notice. Furthermore, the Respondents have been negligent in managing Respondent No.1, diverting funds to other entities, including City Hospital Private Limited and a workshop in Morocco, without consent or approvals. This has led to significant financial issues and tax liabilities for Respondent No.1, prejudicing the Applicants. The Respondents' actions demonstrate a clear breach of the MoU and addendums, and the Applicants seek relief for the outstanding loan amount and replacement of personal guarantees.

**Brief facts of INTERVENTION PETITION (IBC)/1(KOB)2025: -**

12. The present application bears striking similarities to IA(IBC)/93/KOB/2024 in its factual matrix. Additionally, it is submitted that the Resolution Professional has attempted to include the applicants' assets in the resolution plan, which they claim is illegal. Further, it is submitted that they will suffer irreparable harm if their assets are included in the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor. They request to be impleaded as necessary parties to protect their rights and interests,



specifically to raise objections to the Resolution Plan and/or exclude their assets from the CIRP, as per the Memorandum of Understanding.

**SUBMISSIONS ON BEHALF OF RP IN IA(IBC)/93/KOB/2024 & INTERVENTION PETITION (IBC)/1(KOB)2025: -**

13. The respondent No.1 objects to the Application on the grounds of non-joinder of a necessary party, namely Furnace Fabrice (India) Limited (the Company). The Company owns the assets and businesses in dispute, and its absence as a party respondent would prevent the Court from passing effective orders. The Respondents submit that the Application is liable to be dismissed due to the Company's non-impleadment, as it is a necessary party for complete and effective adjudication of the dispute.
14. The Respondent No.1 contends that this Tribunal lacks jurisdiction to adjudicate the dispute, as the prayers sought by the Applicant amount to specific performance of the MoU, which falls outside the Tribunal's powers under the Insolvency and Bankruptcy Code, 2016. The dispute relates to the implementation of an MoU executed in 2014 and has no connection to the Insolvency Resolution Process of the Company. The Respondents argue that the Tribunal, acting as the Adjudicating Authority, can only adjudicate disputes related to the Insolvency Resolution Process and not private disputes between erstwhile management factions. Further, it is stated that this application is barred by limitation. The Applicants have failed to establish how their claim, arising from a document allegedly executed nearly 10 years ago, is within the prescribed period of limitation. The Respondents submit that the claim is marred by delays and laches, and is therefore hopelessly time-barred.
15. The Respondent No.1 submits that the Applicants' claims for carving out assets and handing over shareholding would violate the moratorium under



the Insolvency and Bankruptcy Code. Specifically, they contend that such relief would contravene Section 14(1)(b), which prohibits transferring or disposing of the Corporate Debtor's assets, and Section 14(1)(d), which prohibits recovery of property in possession of the Corporate Debtor. The Respondents submit that granting relief would be impermissible, regardless of alleged ownership rights, as the assets are part of the Corporate Debtor's assets during the Corporate Insolvency Resolution Process.

16. The Respondent No.1 submits that the Company's assets are subject to a security interest/charge in favor of financial creditors, which is registered with the Registrar of Companies. Therefore, the bifurcation of assets sought by the Applicants would violate the rights of these financial creditors, who have a secured interest over the Company's movable and immovable assets.
17. Moreover, it is stated that if the Applicants' claims are accepted, they would be treated as creditors and entitled to payment in accordance with the IBC. Bifurcation of assets as sought by the Applicants would give them super priority over secured financial creditors, operational creditors, workmen, and employees, which is contrary to the scheme of the IBC. The Respondents emphasize that the IBC is a special law that overrides other laws, and payments to creditors must be made strictly in accordance with the IBC's provisions on priority, quantum, and distribution.
18. The Respondent No.1 contends that the MOU lacks legal enforceability and does not create any subsisting rights. The MOU is flawed as it fails to clearly identify the assets and businesses to be transferred, provide a valuation, and has not been adequately stamped, rendering it inadmissible as evidence. Therefore, the MOU cannot be relied upon for granting any relief to the Applicants. Further, it is submitted that the Applicants took no steps to implement the MOU for over 10 years, indicating a lack of intention to give



effect to it. Despite executing the MOU in 2014, the parties did not take any concrete actions to bifurcate the assets and business of the Company, rendering the MOU ineffective.

19. The Respondent No.1 submits that the Applicants failed to reflect the alleged demerger in the Company's books of accounts, which show minimal variation in assets and liabilities before and after the execution of the MOU. The financial records for 2013-2021 demonstrate no significant changes, indicating that the parties never intended to implement the MOU and took no legally binding steps towards its implementation.

20. The Resolution Professional in the reply affidavit to the INTERVENTION PETITION (IBC)/1(KOB)2025 submits that the Applicants lack the requisite locus standi to intervene in the present application seeking approval of the Resolution Plan for the Corporate Debtor. Notably, the Applicants have not participated in the Corporate Insolvency Resolution Process (CIRP) in any capacity and are entirely unconnected to the process. Furthermore, the scope of this application is limited to the approval or rejection of the Resolution Plan, as duly approved by the Committee of Creditors. In accordance with the provisions of the IBC, 2016, the Resolution Professional is the sole authority empowered to prosecute this application. Consequently, the inclusion of the Applicants as party respondents would be devoid of legal basis and contrary to the statutory framework governing the CIRP.

**SUBMISSIONS ON BEHALF OF R2 to R5 IN IA(IBC)/93/KOB/2024**

21. Respondents 2-5 contend that this application is not maintainable against Furnace Fabrica (India) Limited, as it is currently undergoing the Corporate Insolvency Resolution Process (CIRP). They claim that the (MoU) dated



01.03.2014, between Prasad Group and Basheeruddin Group, is not a legally binding contract due to lack of clarity on consideration, ambiguity, and vagueness. The MoU is considered a preliminary agreement outlining roles and responsibilities, rather than a formal contract. The respondents cited *the Indian Contract Act, 1872, and case laws (Jai Beverages Pvt. Ltd. v. State of Jammu and Kashmir and Bikram Kishore Parida v. Benudhar Jena)* to support their argument that the MoU is not enforceable. Additionally, they argue that the applicants are trying to bypass the requirements under the Companies Act, 2013, and that the Tribunal lacks the power to sanction the draft demerger structure proposed in the MoU.

**Rejoinder filed against the reply of RP in Intervention Petition (IBC)/1(KOB)2025 as follows: -**

22. The applicants have filed an application in response to a counter affidavit dated 11.06.2025. They contest the inclusion of assets of two subsidiary companies, FF International Ltd. and Pacific Refractories Ltd., in the liquidation estate of the Corporate Debtor. The applicants argue that such inclusion contravenes Sections 18 and 36(4) of the Insolvency and Bankruptcy Code (IBC) and against principles of natural justice. Furthermore, they claim that it breaches Regulation 9A of the CIRP Regulations due to the lack of notice and opportunity given to the subsidiaries. The applicants argue that the inclusion of these assets in the resolution plan is unlawful and merits rejection under Section 30(2)(e) of the IBC for non-compliance with laws in force, and seek relief of being heard and exclusion of third-party assets from the plan.
23. Further, the applicants submitted that the subsidiaries' assets were included in the resolution plan without notice or opportunity for the subsidiaries to participate. According to the applicants, this action breaches the principles



of natural justice and Regulation 9A of the CIRP Regulations. The applicants argue that the ownership of these assets lies with the subsidiaries, which is supported by documentary evidence such as statutory filings. Therefore, the inclusion of these assets in the resolution plan is unlawful. The applicants seek exclusion of third-party assets from the plan. They also argue that the moratorium under Section 14 of the IBC does not apply to third-party property. The applicants submit that the Tribunal must determine the lawfulness of including subsidiary assets in the resolution plan and assess its compliance with the Insolvency and Bankruptcy Code (IBC) and CIRP Regulations.

**FINDINGS: -**

24. The petitioners have approached this Adjudicating Authority under Section 60(5) of the Code, seeking certain reliefs regarding specific assets and a prohibition order against Respondent No. 1, to not proceed against certain assets during the Corporate Insolvency Resolution Process (CIRP) initiated against M/s Furnace Fabrica Limited. The applicants have banked upon their claim and reliefs claimed in the application on the alleged MoU dated 01.03.2014, followed by addendum MoUs dated 09.09.2014 and 09.11.2020.
25. It is the case of the applicants that two groups having shareholdings in different companies mutually agreed to restructure ownership of M/s Furnace Fabrica (India) Limited due to differences and accordingly signed an MoU dated 01.03.2014 outlining a re-organisational plan.
26. It is further pleaded that the respondent Nos. 2 to 6 somehow delayed the implementation and execution of the said MoU despite repeated insistence. It is further pleaded that even Kandla SEZ transferred the business to the applicant No. 4 vide approval dated 28.08.2018, and the applicant No. 4



obtained fresh GST registration after the cancellation of GST registration of M/s Furnace Fabrica (India) Limited. Whereas respondent No. 1 submitted that the company's assets are subject to a security interest charge in favor of the Financial Creditor and have been duly registered with the Registrar of Companies.

27. The dispute as raised by the applicants is a serious dispute. So, to address the issue involved therein, we have to look into the documents executed by the Corporate Debtor M/s Furnace Fabrica (India) Limited in its ordinary course of working to obtain loans from Financial Creditor.

28. The Corporate Debtor company executed, first supplemental working capital consortium agreement dated 14.08.2017, between Furnace Fabrica India Limited and State Bank of India, Standard Chartered Bank, Axis Bank, Export Import Bank of India, i.e, the SBI consortium for the credit facilities to the tune of Rs. 281 Crores. The said credit facility was secured by a primary security of pari-passu charge by way of hypothecation of all assets of the Morocco project and the Calcutta project of KEIIP, and collaterally secured by fixed assets of the Morocco projects and the Calcutta project of KEIIP, and mortgage over seven properties. Apart from unconditional personal guarantees of Mr. A. Basheerudain, Shri. Badri Prasad, Smt. Sudha Prasad and Smt. Nezee Basheeruddin and the corporate guarantee of Ms. Furnace Fabrica (India) Limited.

29. If there was restructuring, demerger, or bifurcation of business, how and under what circumstances did the applicant No. 1 and Mrs. Suda Prasad agree to stand as guarantors for the due repayment of said loan? Further, the respondent No. 1 has placed on record the balance sheet and books of accounts from the year 2017 to 2021 in their reply affidavit. In the notes forming part of financial statements as of 31.03.2017, the following persons



have been shown as shareholders of the company having voting rights in the list of related parties.

- i. Mr.A.Basheeruddin (Director and Shareholder)
- ii. Dr.B.Prasad (Director and Shareholder)
- iii. Mr.Shashikiran Prasad (Director and Shareholder)
- iv. Mr.Raiz Basheeruddin (Director and Shareholder)
- v. Mrs. Nezee Basheeruddin (Director and Shareholder)
- vi. Mr. K Palariiswamy upto 31/10/2015 (Director Finance)
- vii. Mr. Avadhesh Chandra Mathur (Director)
- viii. Mis.Sudha Prasad (Wife of Dr.B.Prasad)
- ix. Mrs.Archana Prasad (Daughter of Dr.B.Prasad)
- x. Dr.Sanam Basheerudin (Daughter of Mr.A.Basheeruddin)
- xi. Mrs Sapna Prasad (Wife of Shashikiran Prasad)

30. So, on the one hand, the applicants are claiming restructuring and demerger, claiming complete segregation of assets among the two groups. On the other hand, in the financial statements, they have been shown as directors and equity shareholders. In the balance sheet, the assets allegedly claimed as assets of the applicants under the restructuring plan have been shown as assets of the Corporate Debtor Company. So, it creates suspicion about the alleged claim as made in the application. The applicant and the alleged companies did not follow procedures prescribed under the Companies Act, 2013. So that carries no value in the eyes of the law.

31. The applicants' stand is premised on the MOU dated 01.03.2014 and two subsequent addendums to such MOU, dated 09.09.2014 and 09.11.2020, and has put forth the claim that there was restructuring of ownership as reduced in the said documents. As per the settlement reduced into MOU, Mr. A Basheeruddin and his family became the sole owners of the Corporate Debtor Company, while the applicants became the owner of the other companies. The personal guarantees were to be replaced with guarantees from the family of Mr. A. Basheeruddin in respect of the Corporate Debtor



Company. The said MOU is an unregistered document on plain paper, and it was never reported to any statutory authority soon after its alleged execution.

32. The MOU and the addendums were executed subsequent to the execution of the guarantee agreement. The scope of Part III of the Insolvency and Bankruptcy Code (IBC), 2016 is limited. But prima facie we have gathered that the said MOU and the addendums are shrouded by suspicious circumstances, and it appears that the said documents have come into existence just to avoid and ward off the consequences of the guarantee agreement. It would not be judicious and prudent to give any benefit of the said documents to the applicants. The said documents are liable to be ignored.
33. The MOU dated 01.03.2014 and the addendum MOUs dated 09.09.2014 & 09.11.2020 cannot be considered for various reasons, primarily of the following issues: -
- a. There is no reference to any resolution passed by the Board of Directors, as no AGM of the alleged companies was held for the restructuring or demerger.
  - b. No resolution to authorise the applicants to act on behalf of the company.
  - c. The said MOU has been signed by the applicants in their individual capacity.
  - d. The applicants could not act on behalf of the company, and any such action, even otherwise, would not be binding on the company.
  - e. No creditor of the alleged companies has been informed, and no concurrence of creditors has been taken for the demerger



or restructuring. There was no compliance with various provisions of the Companies Act, 2013, for the demerger.

- f. The said MOU was not reported to any statutory authorities soon after its execution. So, the reliance made by the applicants on the MOU is misconceived.
- g. There has been no intimation to RoC, and no changes have been made to the shareholding pattern consummating the alleged MOUs
- h. There are no documents to pay stamp duty or tax liability arising out of the said resolution.

34. Moreover, the said arrangement of restructuring, merger, and demerger is not in line with the provisions of the Companies Act, 2013. If at all, there was restructuring and exchange of assets among two groups of companies, there must have been compliance with the provisions of the Income Tax Act, 1956, in respect of capital gains, if any. But the applicants have failed to produce any documentary proof about the capital gains tax on the assets they received under the alleged restructuring through takeovers. Thus, it creates suspicion about the process followed for restructuring itself. The respondent and the alleged companies did not follow the procedures prescribed under the Companies Act, 2013, so that carries no value in the eyes of the law.

35. The loan documents were initially executed by the Corporate Debtor in favor of a consortium of lenders on 13.05.2010, and further mortgage/hypothecation/charges were created by the Corporate Debtor on movable and immovable assets on 13.05.2010. Wherein the alleged memorandum as claimed was allegedly executed on 01.03.2014, any memorandum of understanding purporting to transfer the assets of the Corporate Debtor, which were already under the lien of creditors, would not



be legally enforceable unless and until the Corporate Debtor obtains the concurrence or no objection from the creditors to implement the scheme of merger or change in the capital structure of the Corporate Debtor. Any such arrangement behind the backs of creditors, especially through unregistered documents, has no legal sanctity in the eyes of the law to the detriment of the Financial Creditor.

36. The consortium agreement dated 14.08.2017, annexed as Annexure-R2 with the reply affidavit, carries a list of properties furnished as collateral security with the creditors, and out of such properties, one is a plot and building at Vashi, Navi Mumbai. If, as per the memorandum of understanding, that property was of the applicants, under what circumstances a security interest was created on it remains unanswered. It creates doubt about the alleged claim made by the applicants in their application.
37. The respondent has annexed a comparative table of assets and liabilities of respondent No. 1 from the year 2013 to 2021 as Annexure R6. Perusal of the so-produced table reflects that, barring minor variations, the value of all assets remains the same. If there was a bifurcation of business, there would have been a considerable change in the said values. So, it appears that the alleged MOU is merely a table exercise, apparently intended to jeopardize and delay the CIRP process in a friendly match between the suspended Directors of the board. The comparative table of assets and liabilities of respondent No. 1 from the year 2013 to 2021, annexed as Annexure R6, along with the reply affidavit of R1, is reproduced here as under:

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOCHI BENCH

IA(IBC)/93/KOB/2024 & Ivn Petition(IBC)/1/KOB/2025  
In the matter of M/s Furnace Fabrica (India) Limited



**FURNACE FABRICA (INDIA) Limited**  
**YEAR WISE COMPARISON OF ASSETS & LIABILITIES**

(₹ in Crores)

PARTICULARS	POSITION AS AT 31ST MARCH								
	2013	2014	2015	2016	2017	2018	2019	2020	2021
	(AUDITED)								
<b>ASSETS</b>									
<b>Non-Current Assets</b>									
(a) Property, Plant and equipment									
(i) Tangible Assets	87.86	83.66	78.78	76.45	86.89	95.55	88.79	81.71	71.93
(ii) Intangible Assets	1.21	0.93	0.66	0.40	0.45	0.37	0.40	0.28	0.14
(iii) capital work -in-progress	0.14	0.15	5.41	9.00	12.39	-	-	-	-
(iv) Intangible assets under development	-	-	-	-	-	-	-	-	-
(b) Non-Current investment	4.37	4.38	4.38	5.39	5.39	5.48	5.47	5.47	5.15
(c) Long Term Loans and Advance	5.25	6.15	2.12	3.06	5.01	5.84	6.27	8.66	12.52
<b>Current Assets</b>									
(a) Current Investments	7.40	7.86	6.30	6.10	6.20	6.02	6.09	6.38	6.82
(b) Inventories	133.84	156.95	216.68	179.28	118.07	119.56	115.87	163.16	98.17
(c) Trade Receivables	77.43	56.97	51.13	35.89	75.68	62.29	80.33	100.48	105.02
(d) Cash and Cash Equivalent	58.61	52.72	29.57	57.67	42.97	37.74	29.96	33.81	23.47
(e) short Term Loans and Advances	33.99	38.81	46.13	34.61	47.74	69.94	71.74	73.94	84.69
(f) Other Current Assets	0.34	3.09	3.52	0.77	0.40	0.63	0.39	0.47	0.65
<b>LIABILITIES</b>									
<b>Non-Current Liabilities</b>									
(a) Long Term Borrowings	28.76	16.36	10.54	5.12	11.30	7.73	0.31	26.25	32.40
(b) Deferred Tax Liabilities (Net)	5.09	8.89	9.04	10.16	11.24	12.20	12.44	10.40	11.30
(c) Long Term Provisions	0.34	0.24	0.64	0.72	1.05	0.96	1.31	2.17	2.20
<b>Current Liabilities</b>									
(a) Short Term Borrowings	41.69	29.44	29.54	35.76	31.49	61.73	64.20	60.20	50.28
(b) Trade Payables	80.17	101.26	147.31	116.06	125.88	75.34	64.64	78.02	86.58
(c) Other current Liabilities	116.35	112.75	98.15	83.85	51.63	66.42	74.62	102.21	70.46
(d) Short Term Provisions	16.99	7.17	6.09	3.16	2.21	0.46	0.88	1.24	1.41



38. Further, the list of hypothecated and secured assets of loan and security documents executed in favour of Financial Creditors includes assets over which the applicants claim ownership and seek exclusion. Any private arrangement between the Corporate Debtors, Borrowers, and Guarantors would not bind the financial institutions unless they are parties to the arrangement and have given their absolute concurrence and acceptance. If a private arrangement affects the rights and securities of a financial creditor, it has the option to either continue with the financial arrangement despite such changes or withdraw its financial credit facilities immediately. If such an arrangement was not brought to the notice of the financial creditor at the relevant time, the corporate debtor, borrower, or guarantor cannot claim any benefit out of the alleged arrangement to the detriment of the financial creditor. Therefore, the alleged exclusion claimed by the applicants to the discredit of the financial creditors is not tenable at this stage.

39. This Adjudicating Authority has already recorded detailed findings in IA(IBC)/93/KOB/2024 filed by Applicant No. 1 herein, claiming relief on the basis of the alleged MoU referred to in this case. The CIRP is to be initiated against the Corporate Debtor only, and the Financial Creditor has legal remedies against the guarantors under Chapter III of the Insolvency and Bankruptcy Code, 2016. The Financial Creditor cannot proceed against individual shareholders. If the applicants are guarantors, the bank will proceed against them under the relevant provisions, and their presence as shareholders in other companies would not make them necessary parties in the CIRP initiated against the Corporate Debtor. Therefore, the intervenors have no right or locus standi to be impleaded as parties in IA(IBC)(PLAN)/1/KOB/2025. Consequently, the application merits dismissal and is accordingly dismissed.



40. Accordingly, the application **IA(IBC)/93/KOB/2024** **IN CP(IBC)/14/KOB/2023** and **Intervention Petition (IBC)/1/KOB/2025** **IN IA(IBC)(PLAN)/1/KOB/2025** are **dismissed**.

41. The Registry is directed to send e-mail copies of the order to the party and their learned counsel for information and to take necessary steps.

42. A Certified Copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**SD/-**  
**MADHU SINHA**  
**(MEMBER TECHNICAL)**

**SD/-**  
**VINAY GOEL**  
**(MEMBER JUDICIAL)**

Signed on this the 22<sup>nd</sup> day of August, 2025.

*Steno\_4*