

**NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(through web-based video conferencing platform)**

**CA No. 898/2019
In
CP (IB) No. 10/Chd/Hry/2018**

**Under Section 30 & 31 of the
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.**

In the matter of:-

Educomp Infrastructure
& School Management Limited ...Petitioner-Corporate Applicant

And in the matter of CA No. 898/2019:-

Mr. Ashwini Mehra,
Resolution Professional
C 1201, Salarpuria Magnificia,
Nr Tin Factory, Old Madras Rd,
Bangalore 560016

...Applicant

And

Committee of Creditors
through Axis Bank Limited
Axis House, I-14, Tower – 1,
4th Floor, Sector – 128,
Noida – 201034

...Respondent

Order delivered on: 14.12.2020

**Coram: HON’BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON’BLE MR. RAGHU NAYYAR, MEMBER (TECHNICAL)**

Present through Video Conferencing :-

For the Resolution Professional	1. Mr. Rohit Khanna, Advocate 2. Mr. Raghav Chadha, Advocate
For the Committee of Creditors	1. Ms. Munisha Gandhi, Senior Advocate 2. Mr. Nitin Kaushal, Advocate 3. Mr. Siddhant Kant, Advocate 4. Ms. Salina Chalana, Advocate 5. Ms. Charu Bansal, Advocate
For the Resolution Applicant	1. Mr. Aman Kashyap, Advocate 2. Mr. Arora Vishwas Kumar, Advocate

Per: Ajay Kumar Vatsavayi, Member (Judicial)

ORDER

The present application is filed by Resolution Professional (RP) under Section 30 & 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the Code) read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the **Regulations**) seeking sanction of resolution plan as approved through e-voting by Committee of Creditors on 23.09.2019.

2. It has been submitted that the insolvency petition was filed by M/s Educomp Infrastructure & School Management Limited (**Corporate Debtor**) under Section 10 of the Code for initiation of Corporate Insolvency Resolution Process (**CIRP**) in the case of Corporate Debtor and the same was admitted vide order dated 25.04.2018 and the CIRP of the Corporate Debtor was initiated. It is submitted that Mr. Manoj Maheshwari was appointed as Interim Resolution Professional (**IRP**) vide order dated 25.04.2018 and within

one day of the appointment order, the IRP issued a public announcement as per Regulation 6 of the Regulations read with Section 15 of the Code in Form A in two newspapers i.e. Business Standard, (English) and (Hindi), both dated 26.04.2018 and also on the website of the Corporate Debtor, thereby inviting claims from the creditors of the Corporate Debtor as envisaged in the Code.

3. It is submitted that pursuant to the public announcement, the IRP received claims of Rs. 11,98,26,06,870 lacs from 8 Financial Creditors and Rs. 6,93,99,975 from 27 Operational Creditors (including workmen, employees and statutory creditors) as on 08.10.2019 and based on the collated claims, the IRP constituted the Committee of Creditors (CoC) and their first meeting was held on 24.05.2018.

4. It is submitted that in the 2nd meeting of the CoC held on 01.06.2018, the CoC took notice of the inability of IRP to continue as Resolution Professional (RP) due to medical problems and resolved to replace Mr. Manoj Maheshwari (IRP) with the proposed RP i.e. Mr. Ashwini Mehra and appointed him as Resolution Professional (**RP**). The appointment of Mr. Ashwini Mehra as RP was further confirmed vide order dated 15.06.2018 in CA No. 227/2018 by this tribunal.

5. It is submitted that the applicant as RP had appointed two registered valuers namely; CBRE South Asia Pvt Ltd. and Ernst & Young Merchant Banking Services Pvt Ltd. to determine the fair value and liquidation value of the corporate debtor in accordance with Regulation 35 of the Regulations and the fair / liquidation value(s) as assessed on the basis of their reports as per unamended Regulation 35 is / are as follows:-

Report by Ernst & Young Merchant Banking Services Pvt Ltd.

Particulars	Fair Value	Liquidation Value
Assets	Million	
Fixed Assets of EISML on standalone basis	8,623.6	3,858.9
Current Assets of EISML on standalone basis	111.5	72.4
EISML's Investments in subsidiaries	1,401.9	941.6
Enterprise Value	10,136.9	4,873.0
<i>Source: Calculation</i>		

Report by CBRE South Asia Pvt Ltd

Asset Class	Fair Value	Liquidation Value
Fixed and Intangible assets		
Land and Building	7,861.5	3,638.3
Fixed assets other than land and building	-	-
- Details Available	5.7	4.0
- Details not available	15.5	10.8
Capital work-in-progress	-	-
Investments	-	-
- Details Available	1,009.3	610.9
- Details Not available (financials)		Non-Quantifiable
- Details Not Available (individual assets in financials)	0.8	0.8
Loans and Other Financial Assets	-	-
Other assets	11.5	11.5
- Advance Tax	-	-
Trade receivables	-	-
- Other Assets	6.0	4.2
Cash and Cash equivalents	94.1	94.1
Total	9,004.8	4,374.7

6. It is stated that the respective shares of the members of CoC after incorporating all the claims of all creditors are as follows:-

SI No.	Name of Financial Creditor	Claim Amount (In lakhs)	Amount Admitted (In Crores)	Voting Share %
1	Andhra Bank	8602.73	6631.03	7.33
2	Axis Bank	33757.02	22770.93	25.16
3.	Bank Of India	12263.42	8878.94	9.81
4.	Corporation Bank	5744.23	4429.54	4.89
5.	Karnataka Bank	5786.15	4469.87	4.94
6.	Punjab National Bank	11953.65	9323.70	10.30
7.	State Bank Of India	28572.89	22191.81	24.52
8.	Yes Bank	13146	11798.14	13.04
	Total	1,19,826.09	90,493.96	100.00

7. It is submitted that the Expression of Interest (EOI) has been called from eligible resolution applicants on 18.07.2018 as prescribed in Regulation 36 (A) of the Regulations by publishing Form G in Business Standard, (English) and (Hindi).

8. It is stated that pursuant to the publication of the advertisement for calling EOI, 21 potential resolution applicants expressed their interest to submit resolution plans for Corporate Debtor and 14 also executed confidentiality undertakings with the Applicant along with payment of Virtual Data Room (VDR) fee. It is also stated that the RP prepared an information memorandum and

uploaded the same on the VDR, for ready reference and those 14 prospective resolution applicants sought access to the VDR, in order to carry out necessary due diligence of the Corporate Debtor.

9. It is further submitted that the CoC thereafter approved the process and evaluation criteria for evaluating a resolution plan in compliance with the requirements of the Code. It is also stated that the CoC appointed SBI Capital Markets as process advisor for the resolution applications and assessment of plans. It is stated that the process document dated 08.10.2018, as amended and clarified from time to time for submission of resolution plans for the Corporate Debtor was issued to the prospective resolution applicants by the Resolution Professional on behalf of the CoC.

10. It is submitted that the CoC in its fifth meeting held on 28.08.2018, unanimously resolved to extend the CIRP period to facilitate interested resolution applicants to submit the resolution plans for the Corporate Debtor by a period of 90 days and accordingly, the RP filed an application under Section 12(2) of the Code which was allowed by this tribunal vide order dated 20.09.2018 in CA No. 389 of 2018.

11. It is also submitted that the pursuant to the invitation uploaded on the VDR on 08.10.2018, for receipt of resolution plans from prospective resolution applicants as envisaged under Section 25(h) of the Code, the applicant has received three resolution plans on 05.03.2019. It is stated that the initial deadline for receipt of resolution plans was 05.11.2018 which has been extended from time to time, lastly to 05.03.2019, and the same was intimated to the potential resolution applicants through VDR.

12. It is further stated that a total of 21 prospective resolution applicants expressed interest initially, but only three resolution plans were submitted by the resolution applicants (RAs) on 05.03.2019 namely (i) Parmjit Gandhi, (ii) Breez Builders and Developers Pvt Ltd (**Breez**) & (iii) Cerestra Advisors Private Limited acting on behalf of Cerestra Special Situations Real Estate Fund (**Cerestra**).

13. It is stated that the applicant had filed an application (CA No. 335 of 2018) under Section 19 of the Code to obtain information pertaining to the corporate debtor for value maximization. And in the meanwhile, exclusion of period spent over litigation in CA No. 335 of 2018 was sought by the Applicant from this tribunal and vide order dated 13.02.2019, this tribunal was pleased to exclude a period of 06.11.2018 to 15.02.2019 and the CIRP period stood extended up to 27.05.2019.

14. It is further stated that M/s Breez Builders & Developers Private Limited filed an application (CA No. 462 of 2018) seeking directions to replace the **RP**, Mr. Ashwini Mehra and to initiate disciplinary action against the **RP**, for carrying out various functions in the CIR Process in which the **RP** has beneficial interest. It was observed that M/s Breez Builders & Developers Private Limited has a remedy in filing compliant to the IBBI or other competent authority against the conduct of Resolution Professional but once the CoC has taken a firm decision on the representation made before it by the applicant, rejecting the same, this tribunal did not consider replacing the RP and in order to overcome any apprehensions expressed by the applicant, the following directions were issued:-

“(i) That the resolution plans may be submitted in sealed covers to the Resolution Professional and these be opened in the presence of the concerned applicant(s) and the Resolution Professional shall obtain their signatures at the time of opening of the plans, which be got properly page marked from the prospective Resolution Applicants and signed from them, for which the Resolution Professional shall make a note of the compliances.

(ii) A few of representatives of the CoC shall also be asked to be present at the time of opening of the sealed envelopes containing the resolution plans and to obtain their signatures.

(iii) The time for furnishing the resolution plan is extended by another 10 days from the date of receipt of copy of this order or such other time as may be fixed by CoC depending upon the decision of CA No.613 of 2018.”

15. On 04.07.2019, the sealed envelopes were opened by the Designated Registrar of this Tribunal in the presence of the applicant, Counsel for CoC, representatives of the banks and counsel for the resolution applicants, in compliance of the above mentioned directions.

16. It is stated that upon opening of the sealed covers, the Applicant was apprised of the fact that no decision was taken by the CoC since none of the plans were found compliant.

17. It is noticed that the CoC has raised two major objections with regard to the resolution plan submitted by Mr. Parmjit Gandhi, viz. i) objection in respect of letter of comfort issued by a bank, namely, Dene Bank and Trust (Sovereign Native International Trade Bank- Americas) and ii) objection in respect of personal guarantee in favour of the bank whether to be assigned to the Resolution Applicant.

18. It is further submitted that CA No. 424 of 2019 was filed by Mr. Parmjit Gandhi to consider the plan submitted by him on 25.05.2019. Mr. Parmjit Gandhi had given an undertaking that the objection in respect of submission of letter of comfort was going to be redressed by submitting another

letter issued by IndusInd Bank in addition to the letter of comfort, already issued. It was proposed that Mr Parmjit Gandhi was going to submit an addendum to the Resolution Plan of 25.05.2019 so as to cover the question of assignment of personal guarantees. In the light of the above, Learned Counsel representing the CoC raised no objections and submitted that the said proposal could be discussed in a meeting, if directed by this tribunal.

19. Vide order dated 12.07.2019, this tribunal directed the CoC to convene its meeting on 19.07.2019 and place the decision of the COC before this tribunal by 24.07.2019.

20. It is further submitted that the RP submitted its report on 24.07.2019 before this tribunal regarding the decision of the CoC on the plan submitted by Mr. Parmjit Gandhi, which was voted in favour by 60.28 % of the Members of CoC i.e. below the threshold of 66% as per the Code and hence, could not be considered.

21. It is stated that in view of the above, an application under Section 33(1) of the Code (CA No. 683 of 2019) was filed by the Applicant on 09.08.2019 before this tribunal seeking directions for liquidation of the Corporate Debtor as a 'going concern' and the same was dismissed as infructuous as the present Company Application was filed with this tribunal seeking approval of the resolution plan vide order dated 30.10.2019.

22. Vide order dated 03.09.2019, the following directions were issued in CA No. 424/2019 :-

- i.) The Resolution Applicant may submit a revised plan, if desires so, however, within 3 days from today. The Resolution Professional is directed to convene a meeting*

of the COC within 15 days from today and the voting is to be conducted and the deliberations taken place, shall be recorded as per the provisions of the Code and the Regulations and Rules issued thereunder. All the members of the COC and the Resolution Applicant to attend the said meeting, where the Resolution Applicant shall be permitted to explain any of the queries, raised by any of the members of the COC, before the resolution plan or the revised plan is put to vote. The Resolution Applicant shall not have any voting rights. The decision and a report thereof is to be filed before the Registry of this Bench positively on or before 25.09.2019 with copy advance to the Resolution Applicant.

23. It is stated that a revised plan was submitted by Mr. Parmjit Gandhi on 06.09.2019 and further another revised plan was again submitted by Mr. Gandhi on 16.09.2019. It is further submitted that CoC in its meeting held on 17.09.2019, discussed the feasibility and viability of the revised resolution plan submitted by Mr. Gandhi and the same may be put to vote. It was also resolved that the voting lines will be kept open from 12 pm on 20.09.2019 to 12 pm on 23.09.2019, which was extended further up to 4 pm on 23.09.2019 upon request made by one of the CoC member i.e. Axis Bank.

24. It is further submitted that the e-voting results were declared on 23.09.2019 wherein the revised plan submitted by Mr. Parmjit Gandhi was approved by 100 % assenting vote of the CoC. Copy of the complete resolution plan is at Annexure-6 of the application. The applicant has thereafter filed its affidavit on 25.09.2019 bringing on record the decision of CoC regarding the approval of the above resolution plan submitted by Mr. Gandhi.

25. It is also submitted that CoC while accepting the bid had taken care of all the provisions and Regulations. It is prayed that the application may be allowed and resolution as approved by the CoC in the CIRP of the Corporate Debtor be approved.

26. The learned counsel for the RP submitted that as per the Form H (Annexure-6 of the application), all the provisions of the Code and Regulations were complied with and that the approval of the resolution plan was made by 100 % voting share of the financial creditors on 23.09.2019 through e-voting and therefore, resolution plan submitted by Mr. Parmjit Gandhi be approved.

27. We have carefully considered the submissions of the learned counsel for the RP and the learned Counsel for the resolution applicant and have also perused the record.

28. The corporate debtor was incorporated on 02.09.2006 and the CIRP proceedings were initiated under Section 10 of the Code by the corporate debtor by order delivered on 25.04.2018. The present application is filed for approval of the resolution plan submitted by Mr. Parmjit Gandhi (Successful Resolution Applicant). The approval has been sought under the provisions of Section 31 (1) of the Code.

29. We may first of all state that after receipt, verification and collation of claims as discussed above, the IRP constituted the CoC as per the provisions of Section 21 of the Code. The details of the financial creditors, the distribution of voting share among them and the position of voting for the resolution plan is as under (para No.5 of Form H):-

S. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1.	Andhra Bank	7.33	Voted for
2.	Axis Bank	25.16	Voted for
3.	Bank of India	9.81	Voted for
4.	Corporation Bank	4.89	Voted for
5.	Karnataka Bank	4.94	Voted for

6.	Punjab National Bank	10.30	Voted for
7.	State Bank of India	24.52	Voted for
8.	Yes Bank	13.04	Voted for

30. The details of stakeholders under the resolution plan given in Para 7 of Form H:-

(Amount in Rs . Crores)

	Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
1.	Secured Financial Creditors	1,198.26	904.94	499.88	41.7%
2.	Unsecured Financial Creditors	-	-	-	-
3.	Operational Creditors	6.81	4.96	1.00	14.7%
	Government	-	-	-	-
	Workmen	-	-	-	-
	Employees	0.13	0.11	0.11	84.6%
				
4.	Other Debts and Dues	-	-	-	-
5.	Total	1,205.20	910.01	500.99	

31. The compliance of the resolution plan has been given in Para No. 9 of Form H are as follows:-

Section of the Code - Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes -No)
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?	Yes. The Resolution Applicant meets Net Worth criteria as per Page No. 5 of the Resolution Plan.	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of	Yes, as per affidavit dt. 28-Feb-2019 and	Yes

Section of the Code - Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes -No)
		subsidiaries (as assets of the Corporate Debtor), by acquiring the entire shareholding of the Corporate Debtor in the manner laid down in the Resolution Plan.	
	(d) provides for the implementation and supervision of the resolution plan?	<p>Yes, at Page No 31-32 of the Resolution Plan.</p> <p>On and from the NCLT Approval Date, it is proposed that the Corporate Debtor will continue to be managed and controlled by the monitoring committee, comprising of upto a maximum of 8 nominees from the members of the CoC, the Resolution Professional and a representative of the Resolution Applicant.</p>	Yes
	(e) contravenes any of the provisions of the law for the time being in force?	<p>At Page No. 32 of the Resolution Plan, the Resolution Applicant stated that the plan does not contravene any of the provisions of the law for the time being in force.</p> <p>Resolution professional has reviewed the plan and is satisfied with the contents of the plan and confirms that the</p>	Yes

Section of the Code - Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes -No)
		<p>plan complies with the applicable laws.</p> <p>The Resolution Plan has been prepared in terms of the provisions of the Insolvency & Bankruptcy Code, 2016 and amendments thereon and does not contravene any provisions of the Act.</p>	
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the COC?	Feasibility and viability of the plan was discussed in detail in the CoC meeting held on 17.09.2019. Few issues were raised, which were then discussed with Resolution Applicant.	Yes
	(b) has been approved by the COC with 66% voting share?	Yes, kindly refer to the attached results of the e-voting conducted pursuant to the 19 th meeting of the CoC.	Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the COC?	Yes, at page No. 31-32 mechanism for Monitoring Committee has been defined for supervision and implementation of the Resolution Plan.	Yes

Section of the Code - Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes -No)
		The above resolution has been passed by 100 per cent, of the voting shares.	
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	The Resolution Professional had made the determination in this regard within 115 th day of CoC. However, due to lack of information, the Resolution Professional had filed an application under Section 19 of IBC before the NCLT. Hence, the Transaction Audit report dated 22.11.2018 was received by the Resolution professional, basis which he filed an Avoidance application at NCLT, Chandigarh on 25.11.2018.	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?	Yes, at Page 36 - 37 of the resolution plan.	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Yes, at Page No 20-21 of the Resolution Plan.	Yes
Regulation	i) Whether the Resolution Applicant or any of	No, at Page No. 32 of	Yes

Section of the Code - Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes -No)												
on 38(1B)	its related parties has failed to implement or contributed to the failure of implementation any Resolution Plan under the Code?	the Resolution Plan													
	ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	NA													
Regulation 38(2)	<p>Whether the Resolution Plan provides:</p> <p>(a) the term of the plan and its implementation schedule?</p>	<p>Yes, at Page No 14-17 of the Resolution Plan</p> <p>a) A total payment of Rs. 363.88 crores in cash as upfront payment to the Financial Creditors</p> <p>b) Rs. 136 crores will be converted to 0% Compulsory Redeemable Non Convertible Preference shares having a face value of Rs. 100/- per share issued at par and redeemable after 12th Years, 14th Year 16th Year and 20th Year at par as follows;</p> <table border="1" data-bbox="1029 1394 1304 1619"> <thead> <tr> <th>At the end of Year</th> <th>INR Cr</th> </tr> </thead> <tbody> <tr> <td>12th</td> <td>20.00</td> </tr> <tr> <td>14th</td> <td>41.00</td> </tr> <tr> <td>16th</td> <td>35.00</td> </tr> <tr> <td>20th</td> <td>40.00</td> </tr> <tr> <td>Total</td> <td>136.00</td> </tr> </tbody> </table>	At the end of Year	INR Cr	12 th	20.00	14 th	41.00	16 th	35.00	20 th	40.00	Total	136.00	Yes
At the end of Year	INR Cr														
12 th	20.00														
14 th	41.00														
16 th	35.00														
20 th	40.00														
Total	136.00														
	(b) for the management and control of the business of the corporate debtor during its term?	<p>Yes, at Page No 11 of the Resolution Plan.</p> <p>The Resolution Applicant proposes to acquire, directly or through a SPV, the</p>	Yes												

Section of the Code - Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes -No)
		ownership and management of the Corporate Debtor and consequently its shareholding in its subsidiaries (as assets of the Corporate Debtor), by acquiring the entire shareholding of the Corporate Debtor in the manner laid down in the Resolution Plan.	
	(c) adequate means for supervising its implementation?	Yes, at Page No 31-32 of the Resolution Plan. On and from the NCLT Approval Date, it is proposed that the Corporate Debtor will continue to be managed and controlled by the monitoring committee, comprising of upto a maximum of 8 nominees from the members of the CoC, the Resolution Professional and a representative of the Resolution Applicant	Yes
38(3)	Whether the resolution plan demonstrates that – (a) it addresses the cause of default?	Yes, at Page No. 21 of the resolution plan.	Yes
	(b) it is feasible and viable?	Yes, at Page No 30-31 (sources of funds) of the Resolution Plan.	Yes

Section of the Code - Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes -No)
		The Resolution Applicant has specified the sources of funding establishing how he proposes to make the payments specified in the resolution plan.	
	(c) it has provisions for its effective implementation?	Yes, at Page No 31 to 32 of the Resolution Plan. On and from the NCLT Approval Date, it is proposed that the Corporate Debtor will continue to be managed and controlled by the monitoring committee, comprising of upto a maximum of 8 nominees from the members of the CoC, the Resolution Professional and a representative of the Resolution Applicant	Yes
	(d) it has provisions for approvals required and the timeline for the same?	Yes, at Page No 35-38 of the Resolution Plan.	Yes
	(e) the resolution applicant has the capability to implement the resolution plan?	Yes, at Page No 30-31 (sources of funds) of the Resolution Plan. The Resolution Applicant has specified the sources of funding	Yes

Section of the Code - Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes -No)
		establishing how he proposes to make the payments specified in the resolution plan.	
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Transaction Audit report dated 22.11.2018 was received by the Resolution professional, basis which he filed an Avoidance application at NCLT, Chandigarh on 25.11.2018.	Yes
39(4)	Provide details of Performance Security received as referred to in Sub-regulation (4A) of Regulation 36B	Proposal Performance Guarantee dt. 9.10.2019 from HDFC Bank Limited has been provided by the Resolution Applicant. The Bank Guarantee is for an amount up to and not exceeding INR 38,20,00,000 and shall remain in full force and effect till 08.10.2020, with an additional claim period of 365 days thereafter.	Yes

32. The approval of the resolution plan has been sought under Section 31 (1) of the Code, reading as follows:-

If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government,

any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.

33. The conditions provided for in Section 31(1) of the Code for approval of resolution plan are therefore:-

- (a) *The Resolution Plan is approved by the CoC under Section 30(4) of the Code;*
- (b) *The Resolution Plan so approved meets the requirements as referred to in Section 30(2) of the Code;*
- (c) *The Resolution Plan has provisions for its effective implementation.*

The satisfaction of the conditions is discussed below.

34. It is submitted by the RP that the resolution plan has been approved by a vote of 100% of voting share of the financial creditors and therefore, the conditions provided for by Section 30(4) of the Code are satisfied.

35. The provisions of Section 30(2) of the Code are as follows:-

The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—

- (a) *provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor;*
- (b) *provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than—*
 - (i) *the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53;*
 - or*
 - (ii) *the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than*

the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1.—For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2.—For the purposes of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor—

– *(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;*

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]”

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) the implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force;

(f) confirms to such other requirements as may be specified by the Board.

36. The compliance of Section 30(2) of the Code is given in para No.9 of Form H (*supra*). The same is being further examined as under:-

(a) **Section 30(2)(a):** The resolution plan (Page 72 of the application and Clause 3.2.1 of the Resolution Plan) states that any unpaid CIRP costs will be first met out from the available cash balance of the Corporate Debtor and then from the contribution of the Resolution Applicant up to Rs. 2 crores and the remaining liability if any from the Financial Creditor Settlement Amount.

(b) **Section 30(2)(b):** From the resolution plan (Page 77 of the application and Clause 3.2.4 of the Resolution Plan) it could be seen that the Liquidation Value does not even cover the outstanding debt of Secured Financial Creditors. Therefore, in the event of Liquidation, there would be no sum payable to the Operational Creditors (other than Workmen & Employee) or Liquidation

value for them would be NIL. It is stated that in the plan that the Resolution Applicant shall pay Rs. 1.00 Crore towards the verified claims of the operational creditors of the Corporate Debtor (other than employees and government agencies), henceforth referred to as the “Operational Creditors Settlement Amount”, which is in compliance with amended Section 30(2)(b) of IBC.

(c) **Section 30(2)(c):** Under Clause 2.2 of the resolution plan (page 70 of the application), The Resolution Applicant proposes to acquire, directly or through a SPV, the ownership and management of the Corporate Debtor and consequently its shareholding in its subsidiaries (as assets of the Corporate Debtor), by acquiring the entire shareholding of the Corporate Debtor in the manner laid down in the Resolution Plan. It is also stated that the synergy for the Resolution Applicant, which is both into real estate and education is to enhance its presence in the education sector with good operational management and ability to create school infrastructure for third parties.

(d) **Section 30(2)(d):** Under Clause 9 of the resolution plan (Page 90 of the application), It is proposed that the Corporate Debtor will be managed and controlled by the monitoring committee, constituted by the CoC, comprising of one nominee of Resolution Applicant, which shall monitor the implementation of the Resolution Plan after the approval of the same by this tribunal. It is also stated that the monitoring committee shall supervise the management of affairs of Corporate Debtor by the Resolution Professional and implementation of the Resolution Plan, including ensuring settlement of claims of Financial Creditors/ Operational Creditors and preparation of any report required to be filed under the Code during the interim period i.e. from the date of approval of Resolution Plan

till the takeover of the management and control of the Corporate Debtor by the Resolution Applicant.

(e) **Section 30(2) (e):** In Clause 10 of the Resolution Plan (Page No.91 of the application), it is stated that the Resolution Applicant declares that Resolution Plan does not contravene any of the provisions of the law for the time being in force.

37. We are now examining the compliance of the proviso to Section 31(1) of the Code that the resolution plan has provisions for its effective implementation. Clause 9 of the resolution plan discusses Supervision & implementation of the Resolution Plan. It is stated that the Resolution Applicant proposes the constitution of a monitoring committee by the CoC which committee shall include one nominee of the Resolution Applicant, which committee shall monitor the implementation of the Resolution Plan after approval of the same by this Tribunal. It is also stated that the Monitoring Committee so constituted shall supervise the management of affairs of Corporate Debtor by the Resolution Professional and implementation of the Resolution Plan, including ensuring settlement of claims of Financial Creditors/Operational Creditors and preparation of any report required to be filed under IBC including to the Insolvency and Bankruptcy Board of India, during the “Interim Period”, i.e. from the date of approval of the Resolution Plan (“Approval Date”) till the takeover of management and control of the Corporate Debtor by the Resolution Applicant (“Completion Date”).

38. We have discussed above that the requirements under Section 31(1) of the Code are satisfied in the present case. In para 4 of Form H the RP has

certified that the resolution plan complies with all the provisions of the Code and Regulations and does not contravene any of the provisions of the law for the time being in force. The RP has also certified that Mr. Parmjit Gandhi, the resolution applicant has submitted an affidavit (Annexure -7) pursuant to Section 30(1) of the Code confirming its eligibility under Section 29A of the Code to submit the resolution plan and the contents of the said affidavit are in order. The RP has submitted that the resolution plan has been approved by the CoC with 100% voting share in accordance with the provisions of the Code and CIRP Regulations made there under and after considering the feasibility and viability and other requirements specified by the CIRP Regulations.

39. We shall now discuss the requirements of Regulation 39(4) of the Regulations. As per the requirement of performance security, it is stated in Form H that the Performance Guarantee dated 09.10.2019 from HDFC Bank Limited has been provided by the Resolution Applicant. It is also stated that in Form H that the Bank Guarantee is for an amount up to and not exceeding INR 38,20,00,000 and shall remain in full force and effect till 08.10.2020, with an additional claim period of 365 days thereafter. Copy of Extended Bank Guarantee dated 29.09.2020 issued by HDFC Bank for an amount of INR 38,20,00,000/- has been furnished by the RP (Annexure 2 of Diary No. 00302/4 dated 01.10.2020).

40. It is also stated that the Resolution Professional has formed an opinion that transactions have been discovered or determined in the case of the Corporate Debtor under Sections 43,45,50, and 66 of the Code based on the Transaction Audit Report 22.11.2018 and he has already filed an application before this tribunal on 25.11.2018.

41. The Learned Counsel representing the Resolution Applicant has also placed on record the Copy of the minutes of the meetings of the CoC held on 17.09.2020 & 30.09.2020 wherein the viability and feasibility of the present resolution was discussed, as directed, vide Diary No. 00302/5 dated 09.10.2020.

42. I.A No. 486/2020 was filed by the Successful Resolution Applicant (Mr. Gandhi) seeking extension of time of 30 days to submit the letter of comfort/sanction letters from financial institution beyond 28.09.2020.

43. On 21.10.2020, while hearing of the above I.A., 14 days' time was granted to the successful Resolution Applicant to submit the letter of comfort. It was also directed that the Resolution Professional shall file a fresh affidavit within 3 days from the receipt of the Letter Of Comfort, recording his satisfaction or otherwise with the said Letter of Comfort.

44. In compliance of the above directions, the Resolution Professional has filed sanction letter dated 09.10.2020 of Kotak Mahindra Bank for a loan amount of Rs. 210 Crores and sanction letter dated 03.11.2020 of Kalptaru Fincap Limited for a loan amount of Rs. 75 Crores vide Diary No. 00302/6 dated 10.11.2020. The Resolution Professional has also filed an undertaking for fulfilling all filing requirements in the present Company Application which is also a part of Diary No. 00302/6 dated 10.11.2020.

45. In view of the above discussion, the resolution plan as approved by the CoC under Section 30 (4) of the Code is hereby approved. The resolution plan so approved shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law

for the time being in force such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the Resolution Plan.

46. Under the provisions of Section 31 (3) of the Code, we also direct as under:-

- a) The moratorium order passed by the Adjudicating Authority under Section 14 of the Code on 25.04.2018 shall cease to have effect; and
- b) The RP shall forward all records relating to the conduct of the CIRP and the resolution plan to the Board to be recorded on its database.

CA No. 898/2019 is disposed of.

(Raghu Nayyar)
Member (Judicial)

Sd/-
(Ajay Kumar Vatsavayi)
Member (Technical)

December 14th , 2020
YP