

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : COURT-IV

IA-1958/2023
in
C.P.(IB)-76/(MB)/2021

Under Section 30(6) of the Insolvency and
Bankruptcy Code, 2016.

Application moved by:

Mr. Udayraj Patwardhan

...Resolution Professional

In the matter of

Saraswat Co-op Bank Ltd.

...Financial Creditor

Vs.

**Orange Medicare and Research Centre
Private Limited**

...Corporate Debtor

Order Pronounced on : **23.06.2023**

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Applicant(s)

: Mr. Udayraj Patwardhan, RP
Ms. Vipasha Jain a/w Mr. Nikhil
Rajani, Ms. Apoorva Kulkarni,
Adv. (CoC), Mr. Yahya Batatawala a/w
Ms. Uma Chhatterjee, Adv. (RA).

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an Application under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'the Code') filed on 23.01.2023 by the Resolution Professional (RP) on behalf of the Committee of Creditors seeking approval of the Resolution Plan submitted by the Resolution Applicant, which is approved by 100% of the voting share of the members of the Committee of Creditors (hereinafter referred to as 'CoC') of the Debtor Company viz. Orange Medicare and Research Centre Private Limited (hereinafter referred to as 'Corporate Debtor').
2. The facts leading to the Application are as under:
 - i. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated vide an admission order dated 17.02.2022 of this Court in C.P.(IB)-76(MB)/2021 under Section 7 of the Insolvency and Bankruptcy Code 2016 filed by Saraswat Co-op Bank Ltd. (Financial Creditor) and Mr. Udayraj Patwardhan (Reg. No.: IBBI/IPA-001/IP-P-00024/2016-17/10057) was appointed as Interim Resolution Professional (IRP) and later on was confirmed as RP by CoC in its first meeting held on 06.04.2022.
 - ii. The IRP published a public announcement in Form-A on 10.03.2022 in newspapers viz. (i) 'Sakal' (*Marathi*) and (ii) 'Times of India' (*English*) inviting claims from the creditors, workers/employees of the Corporate Debtor and from government bodies. IRP constituted the Committee of Creditors (CoC) on 31.03.20122 based on the claims received by him.

- iii. The RP convened second CoC meeting on 04.05.2022 wherein the CoC resolved to approve the criteria for the invitation of Expression of Interest (EoI) for submission of Resolution Plan. However, due to non-cooperation of the members of the suspended board of directors of the Corporate Debtor, RP had to approach this Tribunal for appropriate directions time and again, and finally took over full control of the Corporate Debtor. Thereafter, RP published the Form G in the 'Times of India', 'Sakal' and 'Loksatta' newspapers on 03.06.2022.
- iv. The Resolution Professional received EoIs from seven (7) eligible Prospective Resolution Applicants. Thereafter, the third CoC meeting was held on 30.06.2022 in which Request For Resolution Plan (RFRP) and Evaluation Matrix (EM) were approved by the CoC.
- v. The Resolution Professional received two Resolution Plan(s) out of seven PRAs. The Resolution Applicants are – (i) Mr. Jitendra Bhandari and (ii) M/s. Sunrise Industries. It is stated by the RP that both the Resolution Plan(s) were not in compliance with the provisions of the Code. Upon the advice of the CoC, the same was conveyed to the Resolution Applicants to submit modified Resolution Plans. Thereafter, only one Applicant i.e. Mr. Jitendra Bhandari submitted modified Resolution Plan, which met the requirements of the Code as well as the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and also not in contravention of the provisions of Section 29A of the Code.
- vi. The Applicant states that the proposed resolution plan contained the mandatory contents of the resolution plan as provided under Regulation

- 38 of IBBI (IRP for Corporate Persons) Regulations, 2016 as per the Compliance Certificate placed before the CoC.
- vii. Thereafter, the CoC in its Seventh meeting held on 21st November 2022 decided that the Resolution Plan(s) be put for voting.
- viii. As per the Valuation Reports of the Registered Valuers, the Average Fair Value and Liquidation Value (given in Form H) as per Regulation 35 determined are as under:
1. Average Fair Value is ₹29,63,89,890.50
 2. Average Liquidation Value is ₹23,67,51,521.50
- ix. After ascertaining the feasibility and viability of the resolution plan submitted by the Resolution Applicant namely, Jitendra Bhandari, the sole CoC member with 100% voting rights in favour approved the Resolution Plan. The relevant resolution is reproduced below:

“RESOLVED THAT pursuant to sub-section (4) and sub-section (6) of Section 30 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 and other applicable provisions of Insolvency and Bankruptcy Code, 2016 and rules and regulations made thereunder, the Committee of Creditors do hereby approve the modified Resolution Plan dated November 17, 2022 read with Clarification dated November 21, 2022 submitted by Mr. Jitendra Bhandari, after considering its feasibility and viability, the manner of distribution proposed by the said Resolution Applicant in the said Resolution Plan, for the insolvency resolution of Orange Medicare And Research Centre Private Limited.

RESOLVED FURTHER THAT the Committee of Creditors do hereby authorize the Resolution Professional to submit the resolution plan as approved by the Committee of Creditors before the Hon'ble Adjudicating

Authority, by making necessary application under the applicable provisions of the Insolvency and Bankruptcy Code, 2016”.

- x. The RP issued Letter of Intent on 25.11.2022 in favour of the successful Resolution Applicant viz. Mr. Jitendra Bhandari and asked him to submit Performance Guarantee of ₹5,00,00,000/- (Rupees Rive Crores only). Performance Guarantee was submitted on 18.01.2023 due to various reasons.
 - xi. In the circumstances mentioned hereinabove, the Applicant has filed the Application seeking appropriate directions of this Tribunal approving the resolution plan submitted by the Resolution Applicant i.e. Jitendra Bhandari, which is in accordance with Section 30(2) and other provisions laid down under the Code.
3. The Resolution Applicant viz. Mr. Jitendra Bhandari is an individual and veteran Businessman in Pune, with interests in multiple businesses like real estate construction, land development, etc. He is B.E. in Civil Engineering. So far, he has completed 40 land development projects. He is a designated Partner in SPV (Yuga Health & Medicare LLP) having DIN: 10025394. He is residing at Martrucharan Banglow, Plot No. 95, SN 34/2 Road 10, F-1, Tangare Nagar, Near Pragati Garden, Vidya Nagar Haveli, Pune City, Pune – 411 032.
- 3.1 The Resolution Applicant has confirmed that -
- i. its connected persons are not disqualified under Section 29A of the Code and will continue to be not disqualified as of the Effective Date i.e. date

of NCLT order approving the plan. Also, a confirmation has been given by way of an affidavit annexed along with the Resolution Plan.

- ii. The Resolution Applicant or any of its related parties have not failed to implement or not contributed to the failure of implementation of any other resolution plan approved under the IBC 2016 by the Adjudicating Authority at any time in the past.
- iii. the Resolution Applicant or any of its connected persons has not withdrawn from any resolution plan after its approval by the relevant committee of creditors.
- iv. present Resolution Plan is not in contravention of provisions of the Applicable Laws for the time being in force and is in strict compliance with the IBC and the CIRP Regulations.

4. **Resolution Plan for the Corporate Debtor:**

4.1 *Summary of the Financial Proposal*

The Resolution Applicant proposes to take over the management and ownership control of the Company by acquiring 100% shareholding of the Corporate Debtor. The Resolution Applicant proposes a total consideration of ₹24,00,00,000/- (Rupees Twenty-four Crores only) to all the stakeholders to be paid within a period of **75 days** from the effective date of this resolution plan and has kept ₹6,00,00,000/- (Rupees Six Crores only) for **CAPEX** and **Margin** for Working Capital for operations of the Corporate Debtor.

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The structure of the payment to the stakeholders is given hereunder:

(Amount in Rs. Lakh)

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	NIL/NA	NIL/NA	NIL/NA	NIL/NA
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	NIL/NA	NIL/NA	NIL/NA	NIL/NA
		(ii) who voted in favour of the resolution plan				
		Saraswat Co-Operative Bank Limited	2347.58	2347.58	2296	97.80%
		Total[(a) + (b)]	2347.58	2347.60	2296.00	97.80%
2.	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21				
		Anil Balkrishna Varpe	810.75	810.75	0	0.00%
		Vikas Jagannath Pol	246.6	128.07	0	0.00%
		Vitthal Laxman Bhujadi	380.02	233.85	0	0.00%
		Sadhana Rajkumar Gaikwad	100.00	100	0	0.00%
		Rajkumar Kuluram Gaikwad	608.77	607.77	0	0.00%
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	NIL/NA	NIL/NA	NIL/NA	NIL/NA
		(ii) who voted in favour of the resolution plan	NIL/NA	NIL/NA	NIL/NA	NIL/NA
		Total[(a) + (b)]	2146.15	1880.4	0.00	0.00%

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3.	Operational Creditors	(a) Related Party of Corporate Debtor	9001.02	2036.36	0.00	0.00%
		(b) Other than (a) above:				
		(i)Government	NIL/NA	NIL/NA	NIL/NA	NIL/NA
		(ii)Workmen	NIL/NA	NIL/NA	NIL/NA	NIL/NA
		(iii)Employees	NIL/NA	NIL/NA	NIL/NA	NIL/NA
		(iv) Operational Creditors (other than Workmen and Employees and Government Dues)	16.19	5.97	0.00	0.00%
		Total[(a) + (b)]	9017.21	2042.3	0.00	0.00%
4.	Other debts and dues	NIL	NIL/NA	NIL/NA	NIL/NA	NIL/NA
Grand Total			13510.94	6270.35	2296.00	

4.1.1 In addition to the above, CIRP cost of ₹1.04 crore will be paid by the RA within 30 days in priority to all other debts as provided under Section 30(2)(1) of the Code.

4.1.2 There is no Employee/Workmen and no claim received from any past Employees/Workmen. Further, the Plan does not propose any payment to the Operational Creditor(s). There is no claim for statutory dues and no dues is outstanding as per financial statements as at 31.03.2022. Accordingly, the priority of payment over financial creditors in terms of Regulation 38(1) of the CIRP Regulations is not necessitated. Since the Plan proposes resolution money of 24 crores which is equivalent to liquidation value and the claim of secured financial creditors together with CIRP cost exceeds this amount, no amount shall be payable to the

Operational Creditors in the event of liquidation of the corporate debtor under section 53.

4.1.4 The shares held by the existing shareholders of the Company shall be extinguished. In the estimate of the Resolution Applicant, the Liquidation Value that would be payable to the shareholders, would also be NIL. Accordingly, the existing shareholders, whether equity or preference, shall not be paid any amount for the transfer, cancellation or reduction of their share capital and any claims in relation thereto shall stand extinguished without any payment or recourse.

4.1.5 The Resolution Applicant has submitted that once the payments set aside in the Resolution Plan have been paid in full in terms of the said Plan -

- i. all claims, debts and dues of the Creditors pertaining or related to the period prior to the CIRP commencement date shall stand satisfied and extinguished, and no such existing claim, debt or due shall subsist against the Corporate Debtor and the Resolution Applicant by any Creditor(s) unless such Claims are specifically admitted by the Resolution Professional or covered under the CIRP Cost. It is also submitted that in the event any Claim of the Operational Creditors is not submitted to the Resolution Professional prior to the approval of the Resolution Plan by the NCLT or such claim is rejected by the Resolution Professional or such Claim raised subsequently, however, pertains or related to period prior to the approval of the Resolution Plan by the NCLT, such Creditors will not be entitled to receive payments, if any, under the Resolution Plan with respect to such claims.

- ii. All the litigations/ proceedings by the creditors, whether in relation to admitted claims or not (whether present or future litigations) against the Company for the period prior to the takeover of the control and management of the Company by the Resolution Applicant, shall stand quashed and the Corporate Debtor shall no longer be required to make any payments and have no liabilities in relation to such litigations/ proceedings.

4.2 *Effective Date*

The Effective Date of the Resolution Plan shall be the date when the Resolution Plan is approved by this Tribunal.

4.3 *Term of Resolution Plan*

The Resolution Plan is valid for a term of 75 days till all the payments are made to all the stakeholders as per the terms and conditions of the Resolution Plan. The obligations of the Resolution Applicant to implement the Resolution Plan shall become effective only from the Effective Date.

The Resolution Plan shall become binding on the Corporate Debtor and its employees, members, creditors, guarantors, Central Government, any State Government(s), any local authority and other stakeholders involved in the Resolution Plan on the Effective Date.

- 4.4 The Resolution Applicant has sought various reliefs and concessions as set out in the Resolution Plan.

- 5 The Applicant has submitted that the present Resolution Plan has been examined and the Resolution Plan:

- a. provides for payment of Insolvency Resolution Process Costs in a manner specified by the board in priority to the payment of other debts of Corporate Debtor;
- b. provides for management of the affairs of the Corporate Debtor after the approval of the Resolution Plan; and
- c. does not contravene any of the provisions of the law for the time being in force.

5.1 The Applicant/Resolution Professional further submits that the Resolution Plan is not subject to any contingency and is filed before the expiry of the period of CIRP provided in Section 12 of the Code, as this Bench had granted an extension in the CIRP period vide its order dated 09.02.2023.

5.2 The Resolution Professional has stated at clause 10 of Form-H that no transaction could be identified and determined under regulation 35(A) of IBBI (Insolvency Resolution Process for Corporate Persons), Regulations, 2016.

5.3 The Applicant has filed application along with Form 'H' prescribed under Regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and has appended a tabular summary of Applicant's determination of compliance of the Resolution Plan with various provisions and regulations under the Code and CIRP Regulations.

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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?	Ref clause 4 at page no. 11 and 12	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?	Affidavit in Format III submitted.	Yes
Section 30)1(	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Affidavit in Format III submitted and Ref clause 4 at page no. 11 and 12	Yes
Section 30)2(	Whether the Resolution Plan-		
	(a) provides for the payment of insolvency resolution process costs?	Ref clause 6.1 at page no. 15	Yes
	b) provides for the payment to the operational creditors?	Ref clause 6.1 at page no. 17 to 21	Yes
	(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Ref clause 6.1 at page no. 16 and 17	Yes
	d) provides for the management of the affairs of the corporate debtor?	Ref clause 6.3.1 at page no. 25,26 and clause 6.3.2 at page no. 26 and 27	Yes
	(e)provides for the implementation and supervision of the resolution plan?	Ref clause 6.2 at page no. 25 and clause 6.4 at page no. 28	Yes
	(f)contravenes any of the provisions of the law for the time being in force?]	Ref Clause 4.1 at page no. 11 and clause named as Declaration of compliance with Applicable law at page no. 45	Yes
Section 30)4(	Whether the Resolution Plan		
)a(is feasible and viable, according to the CoC?	Ref resolution no. 2 of the minutes of 7 th meeting of CoC and record of summary of decision of e-voting of 7 th meeting of CoC resolution	Yes
)b(has been approved by the CoC with 66% voting share?		Yes

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		no. 2	
Section 31)1(Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Ref resolution no. 2 of the minutes of 7 th meeting of CoC and record of summary of decision of e-voting of 7 th meeting of CoC resolution no. 2	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?	Ref clause 6.1 at page no. 17 to 21	Yes
Regulation 38)1A(	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Ref clause 6.1 at page no. 15 to 22 and clause 6.3.2 at page no. 26 and 27	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.	Ref clause 4 para 3 at page no. 11 and para 7 at page no. 12	Yes (RA has intimate d that it has not failed or contributed to such failure)
	(ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	NA	NA
Regulation 38)2(	Whether the Resolution Plan provides:		
	(a) the term of the plan and its implementation schedule?	Ref clause 6.4 at page no. 28	Yes
	(b) for the management and control of the business of the corporate debtor during its term?	Ref 6.3.1 at page no. 25,26 and 6.3.2 at page no. 26 and 27	Yes
	(c) adequate means for supervising its implementation?	Ref 6.2 at page no. 25 and clause 6.4 at page no. 28	Yes
38)3(	Whether the resolution plan demonstrates that –		
	)a(it addresses the cause of default?	Ref clause 6.7 at page no. 30	Yes
)b(it is feasible and viable?	Techno-Economic viability report provided with the	Yes

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		modified Resolution Plan and Ref clause 6.6 at page no. 29 and 30 i.e. source of funds under Resolution Plan	
	(c) has provisions for its effective implementation?	Ref clause no. 6.2 at page no. 25	Yes
	(d) it has provisions for approvals required and the timeline for the same?	Ref clause 6.5 at page no. 29 and Format XI of RFRP submitted by the Resolution Applicant along with the modified resolution plan	Yes
	(e) the resolution applicant has the capability to implement the resolution plan?	Ref clause 4.1 at page no. 11 and 12 and clause 6.6 at page no. 29 and 30 and Techno-Economic viability report provided alongwith the modified Resolution Plan	Yes
39)2(Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Clause no. 6.1, note xvi at Page 24 of the Resolution Plan read with the Clarification dated 21-11-2022 has provided for the manner in which proceedings in respect of avoidance transaction will be pursued after approval of Plan and distribution, if any, thereof. The RP states that <i>“any amount recovered under any avoidance applications relating to the Corporate Debtor being allowed by the Adjudicating Authority shall first be used to satisfy the claims of the beneficiaries, as may be directed by the Adjudicating Authority, after netting off the expenses incurred while pursuing avoidance application before the Adjudicating Authority and the balance amount, if any, after distribution to beneficiaries as may be directed by Hon’ble Adjudicating Authority, shall inure unto the</i>	NA To be read with Note

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		<i>benefit of the Resolution Applicant and Resolution Applicant/Corporate Debtor and on approval of the Resolution Plan by the Adjudicating Authority Resolution Applicant will pursue the avoidance application till its finality"</i>	
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	Performance Bank Guarantee no. 00730100000531 dated 06-01-2023 of Rs. 5,00,00,000/- issued by Axis Bank Limited, Bundgarden, Pune Branch, in favor of Saraswat Co-operative Bank Limited, submitted by Mr. Jitendra Bhandari in soft copy on 06-01-2023 and in Hard Copy on 09-01-2023. However, there was the typographical error in the date mentioned in the said Bank Guarantee submitted by SRA, the same has been corrected by issuing bank i.e. Axis Bank Limited on 17-01-2023 and hard Copy of the same was received on 18-01-2023.	Yes

6. The Resolution Plan submitted by Mr. Jitendra Bhandari and filed by the RP vide IA-1958/2023, is hereby **approved**. It shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, 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 is due, guarantors and other stakeholders involved in the Resolution Plan.

- 6.1 The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- 6.2 The moratorium under Section 14 of the Code shall cease to have effect from this date.
- 6.3 The Monitoring Committee, to be constituted in accordance with clause 6.2 of the Plan, shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its implementation before this Authority from time to time, preferably every quarter.
- 6.5 The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to compliance with procedure and approval by the Authorities concerned in accordance with the law applicable to such authority, subject to the provisions of this Code. However, the authorities shall not deny any relief or waiver, which is otherwise permissible in accordance with the law applicable to them read with the provisions of this Code, on account of settlement of dues of such authority at less than their claim amount.
- 6.6 In terms of the judgement of Hon'ble Supreme Court in the matter of *Ghanshyam Mishra and Sons Private Limited v. Edelweiss Asset*

Reconstruction Company Limited, “on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in, respect to a claim, which is not part of the resolution plan.”

“95. (i) Once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;

(ii) 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the Code has come into effect;

(iii) consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.”

6.7 In view of the above judgement, the applicant is entitled to waivers/concessions/reliefs as expressly provided under the Code and under any other law for the time being in force. Further, any application for renewal or extension or restoration of any license or approval or connection from any

authority shall be subject to payment of prescribed fee and/or deposit(s) and adherence to the procedure stipulated by such authority, however such authority shall not refuse/deny approval/extension/restoration merely on ground of previous defaults/non-compliance of the Corporate Debtor.

- 6.8 The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
- 6.9 The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
7. With the above directions, the Resolution Plan of the Applicant is hereby **approved**. Accordingly, IA-1958/2023 in CP(IB)-76(MB)/2021 is hereby **allowed and disposed** of.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)

23.06.2023/pvs