

NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH, GUWAHATI

I.A. NO.72 OF 2019  
IN  
CP (IB)/04/GB/2018

Under Section 7 of the Insolvency & Bankruptcy Code, 2016 read with  
Rule 11 of the Insolvency & Bankruptcy (Application to Adjudicating  
Authority) Rules, 2016.

In the matter of:

Bank of India : Financial Creditor  
-Versus-  
Maxim Infrastructure and Real Estate Pvt. Ltd. & Anr. : Corporate Debtors  
And  
Mr. Kamalesh Kumar Singhania, RP : Applicant

Order delivered on 25<sup>th</sup> October, 2019

Coram:

Hon'ble Shri Hari Venkata Subba Rao, Member (J)  
Hon'ble Shri Ashutosh Chandra, Member (T)

For the Financial Creditor	:	None
For the Corporate Debtor	:	None
RP in person	:	None
Advocate for RP	:	Mr. Rakeh Dube, Advocate Ms. A. B. Kayastha, Advocate

ORDER

Resolution Plan submitted by RP Mr. Kamalesh Kumar Singhania is approved vide  
separate order of date.

*sd/-*

Member (Technical)  
Adjudicating Authority

Dated, Guwahati the 25<sup>th</sup> day of October, 2019.

//DEKA/25-10-2019//

*sd/-*

Member (Judicial)  
Adjudicating Authority

**NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH**

CP(IB)/04/GB/2108

*Under Section 7 of the Insolvency & Bankruptcy Code, 2016 read with  
Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating  
Authority) Rules 2016.*

In the matter of:

Bank of India ... Financial Creditor

-Versus-

M/s Maxim Infrastructure & Real Estate Ltd. ... Corporate Debtor

**Coram:**

**Hon'ble Mr. Hari Venkata Subba Rao, Member (Judicial)  
Hon'ble Mr. Ashutosh Chandra, Member (Technical)**

For the Applicant/Financial Creditor	: Mr S. Dutta, Advocate
For the Respondent/Corporate Debtor	: Mr R Dubey, Advocate Mr. A B Kayastha, Advocate
Resolution Professional	Mr K K Singhanian,

**Date of Order: 25.10.2019**

**ORDER**

Per Sri Ashutosh Chandra, Member (Technical)

An Application was filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 (in short, the Code of 2016) read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules 2016 (in short, Rules of 2016) by the Bank of India, Financial Creditor (in short, FC) against M/s Maxim Infrastructure & Real Estate Pvt. Ltd., the Corporate Debtor (in short, CD), having its Registered Office at Vikash Enterprise, Lower Ground Floor, Salonsar Mansion, Police Bazar, Shillong, Meghalaya. On a consideration of all the facts and circumstances of the

issues at hand, this application seeking a Corporate Insolvency Resolution Process was admitted by this Bench vide Order dated 31.08.2018. Further, vide order dated 05.09.2018 Sri Kamalesh Kumar Singhania, was appointed as Interim Resolution Professional (subsequently confirmed as RP on 29.03.2019 in keeping with the proposal of the 1<sup>st</sup> COC meeting of 15.03.2019), and was directed to take necessary actions in accordance with the relevant provisions of the Code of 2016. On 29.03.2019 he was confirmed as the Resolution Professional (RP).

1.1 The Hon'ble High Court at Shillong, on an application filed by the Directors of the CD being CRP no. 13/2018, vide its order dated 06..09.2018, stayed the order of this Bench ordering the CIRP. However, on an application made by the FC, the Hon'ble Supreme Court of India stayed the operation of the order of the Hon'ble High Court at Shillong, vide order dated 25.01.2019 in CRP 13/2018. Thereafter, vide its order dated 15.02.2019, this Bench directed the IRP to proceed with the CIRP from the stage he was prevented from proceeding with the process.

2. As the CIRP was started and progressed, the RP has apprised us of the COC meetings and its deliberations, and reports were submitted from time to time, which have been taken on record. It is seen that the Public Announcement was published initially on 07.09.2018 in Meghalaya Times (Shillong), U Nongsain Hima (vernacular Daily at Shillong), North East Times (Guwahati), and Amar Assam (vernacular Daily at Guwahati). Immediately after order dated 08.02.2019, as directed by this Bench, Public Announcement was again published on 21.02.2018 in Meghalaya Times (Shillong), U Nongsain Hima (vernacular Daily at Shillong), North East Times (Guwahati), and Amar Assam (vernacular Daily at Guwahati).

3. During the course of the CIRP, an objection was received to the effect that the Resolution Plan submitted by H M Cements Pvt. Ltd. was incorrectly rejected on the ground that the CD did not fall within the definition of MSME. This application filed by H M Cements Pvt. Ltd. was dismissed, with reasons after giving due hearing. 2 interlocutory applications were filed by Mrs. Aditi Dass (Bezbaruah) and Mrs. Utpala Bezbaruah, being applications against the CD to protect their rights under 2 Development Agreements entered into by them with CD. (IA 59 and 60 of 2019). After

hearing the applicants and advocate of the RP, both the IAs were dismissed, as the matters therein did not fall within the jurisdiction of this Authority. IA filed by Mr. Pankaj Jhunjhunwala, as a Shareholder of the CD, Mr. Mahavir Prasad Jain, objecting to the process of shortlisting the RAs were also disposed off as the process was still under way, and the same were considered to be premature. However, leave was granted to the Applicants of the IAs to file fresh objections, if so required, when the process was completed and the Plan was submitted. However, on or till the date of submission of the Resolution Plan, no further objection was received. Hence, from records we also find that there is no litigation pending before NCLT against the CIRP, at the time of final submission of the Resolution Plan. Thus, the process gone through during the CIRP appears to be acceptable.

4. During the course of the CIRP, and till the finalisation of the Resolution Plan, the RP has filed several reports between 29.01.2019 and 01.10.2019, which were taken on record. As many as 14 COC meetings are reported to have taken place, copies of which have been submitted and perused. On 28.06.2019 this Bench passed an order extending CIRP Period by another 90 days from 18.07.2019.

5. It is seen from the reports submitted by the RP that 7 applicants had shown interest and submitted EOI in the matter within the last date disclosed in the public Announcement. RFRP in the matter was approved by the COC on 13.05.2019 and was shared with the eligible applicants. 4 Resolution Plans were received by the RP within 14.06.2019 which were opened before the COC on 15.04.2019. After submission of the Plans, COC continued negotiations with the Resolution Applicants, who have submitted compliant plans.

6. The RP has submitted that the 14<sup>th</sup> COC meeting was held on 26.09.2019. A Summary of the Proceedings at the COC meeting shows that the COC approved the Resolution Plan submitted by M/s Rare Asset Reconstruction Limited after deliberations and negotiations with the resolution applicants present at the meeting. It is stated that the Resolution Plan of M/s Rare Asset Reconstruction Ltd. was approved in preference to that of Mr. Mahavir Prasad Jain led consortium for the reasons that NPV value offered to creditors by Rare ARC was higher than that proposed by Mr. Mahavir Prasad Jain; the Plan period proposed by Rare ARC was shorter as against the proposal of Mr.

M. P. Jain; assignment of debt before full payment was not acceptable to COC; the payment through SR as proposed by Mr. M. P. Jain was not acceptable to the COC; and Payment in respect of Shillong land proposed to be made only after transfer of lease deed in favour of CD/RA was not acceptable to COC. The following resolution was then proposed to be passed by the meeting:

**"RESOLVED THAT** approval of the committee be and is hereby accorded to the Resolution Plan submitted by M/s. Rare Asset Reconstruction Limited and Mr. Kamallesh Kumar Singhania, Resolution Professional be and is hereby authorized to submit the approved Resolution Plan before the Hon'ble NCLT, Guwahati Bench, for approval and sanction."

The COC decided that voting on the resolution plan be done through e-voting and the RP was requested to conduct e-voting on 30.09.2019 to 01.10.2019. The resolution was approved through e-voting held on 30.09.2019 – 01.10.2019 with 100.00 % votes cast in favour of the resolution.

7. We may now examine, in brief, the Proposals contained in the Resolution Plan from the perspective of the specific provisions of the Code of 2016, as also the features of the commercial deal proposed therein. Section 30 of the Code of 2016 relates to Submission of the Resolution Plan, and the duties of the RP to examine various aspects thereof, as referred to in section 30(2) to 30(6), as also Regulations 37 and 38. It is seen from the Resolution Plan, that para 2 of the same gives detailed proposals of the Resolution Plan. Para 2.1 contains the proposals laid out in the Plan that are in compliance to these provisions of the Code of 2016 and the Regulations of the IBBI. The same are reported to be as under:

**"2.1 Compliance of Plan with various provisions**

*Details of status of compliance of the provisions of Section 30 of the Insolvency and Bankruptcy Code 2016 ("Code") and Regulation 37 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("Regulation"), is summarized as under:*

<b>Relevant Provision</b>	<b>Provisions of Section 30 of the Code/ Regulation</b>	<b>Reference</b>
Sec. 30 (2)(a) of the Code	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	The Resolution Plan provides for payment of resolution process cost on actual basis, currently estimated at Rs. 0.6408 crs, as also any other costs incurred till the NCLT approval date as may be incurred / payable on actual basis, pertaining to the Resolution Process, in manner as specified by the Board and in priority to payment of other debts of corporate debtor.
Sec. 30 (2) (b) of the Code	Provides for the repayment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debt or under section 53.	The dues of secured financial creditors are Rs. 165.10 Crs. Considering that the project is incomplete and requires about Rs 137 cr additionally for completion, the liquidation value is expected to be significantly lower compared to admitted claims of Financial creditors alone. In case of liquidation, the entire proceeds would be utilized/ recovered towards due of financial creditors and no amount would be expected to be paid / realised by operational creditors. Hence, even though no amounts are required to be paid to the Operational creditors, for their continued support in project implementation, an amount of Rs 0.93 cr is provided for payment of 25% of their dues (excluding dues of related parties).
Sec 30(2)(c)	Provides for the management of the affairs of the Corporate debtor after approval of the resolution plan	Rare ARC/investor would be having their nominee(s) on the Board to manage the company. Rare ARC / Investor's shall identify and appoint suitable professional to manage the affairs of the company on a day-to-day basis, with the support of the Key Managerial personnel of the Company and with guidance from the Board of Directors. It is clarified that, from the NCLT Approval Date till the implementation of the proposed transaction under the Resolution Plan i.e. payment of the committed amount to the Secured Financial Creditor (Lender), it is envisaged that an effective Implementation and Monitoring Committee shall supervise the functioning of the new Board of the Company, and the implementation of the Resolution Plan by the Resolution Applicant. This Committee shall include the Resolution professional, one nominee each from

		<p>Bank of India, and NEDFi representing the Financial creditors, to safeguard the concern/ interests of the Lender, One Representative from Resolution applicant (rare ARC) and Mr. Rajat Deorah and Mr. Ashish Jasrasaria, nominees from the Resolution Applicants. The Implementation and Monitoring Committee and the new Board shall be responsible for the supervision of the day to day affairs of the Corporate Debtor till the date on which the Resolution Applicant fulfils all its obligations as proposed under the Resolution Plan, including the entire payment to the Financial Creditors, and takes over management control of the Corporate Debtor, which should be not later than 90 days from the approval of the Resolution Plan by the Adjudicating Authority or as agreed with the Resolution Professional/ Committee Of Creditors ("Take Over Date"). The Implementation and Monitoring Committee and the new Board shall be responsible for operating the Corporate Debtor as a going concern.</p>
Sec 30 (2) (d) & Regulation 38(2)(c)	Term of the plan, implementation schedule and supervision of the resolution plan	<p>Rare ARC/ investors will ensure that the resolution plan is implemented and supervised suitably.</p> <p>Entire crystallised amount is proposed to be paid to financial creditors within 20 months from approval of NCLT.</p>
Sec. 30 (2) (e)	Does not contravene any of the provisions of the law for the time being in force	Rare ARC has prepared the Resolution Plan after taking into consideration compliance of all applicable laws and regulations and shall not contravene any of the provisions of the law for the time being in force.
Sec. 30 (2) (f)	Plan conforms to such other requirements as may be specified by the Board	The resolution plan has been prepared taking every aspect into consideration so as to conform with such other requirements as may be specified by Board.
Regulation 37 (a) & (b)	<ul style="list-style-type: none"> <li>• transfer of all or part of the assets of the corporate debtor to one or more persons;</li> <li>• sale of all or part of the assets whether subject to any security interest or not</li> </ul>	The Resolution Plan does not envisage transfer or sale of any of the assets of the Corporate Debtor, other than as specifically provided in the Resolution plan i.e. sale of immovable properties owned by the Corporate Debtor and immovable properties mortgaged by Guarantors to the lenders of the Corporate Debtor. Further,

		<p>I. It is proposed that entire mortgaged land more specifically defined under Point no. 8 of this plan, and admeasuring 83984 sq. Ft at Guwahati, shall stand transferred to the corporate debtor and other land under development agreement / Power of Attorney admeasuring 28800 sq. ft at Guwahati shall stand transferred to the corporate debtor upon fulfillment of the terms of the development Agreement. Further, 8718 square feet in the name of Mrs. Aruna Bezbarua &amp; others, mortgaged to the bank, but, under development Agreement, dated 21-05-2011 will be transferred to the Corporate debtor upon fulfillment of the terms of the development Agreement. Please refer to point no. 8 hereinafter for concessions and reliefs sought under the resolution plan. .</p> <p>II. The Shillong property is leased by Meghalaya Urban Development Authority (MUDA) in favour of HM Cements Limited. HM Cements Limited has subleased the said land in favour of corporate debtor. M/s. HM Cements is key /main promoter of corporate debtor and is also Guarantor. The necessary order for the transfer of the lease deed to the demerged entity of Shillong to be passed. (Instead of HM Cements which is a promoter of CD), This lease deed dated 25-6-2010 shall be revived / extended, beginning for period of 30 years from Effective Date (deemed to be date of commencement of commercial operations) and be renewable for 2 identical terms as per the terms of the current lease.</p> <p>III. The encroached Land said to be outside the boundary walls of the Shillong property not handed over to the CD. Please refer to reliefs sought under clause 8 of this RP.</p> <p>IV. The assets of Hotel properties shall be evaluated in detail for project viability and suitable changes in the project can be made as per the viability assessment.</p>
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		Please also refer to para 8 (Concessions and Reliefs / Directions sought under the Resolution Plan)
Regulation 37 (c)	The substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor	Rare ARC, directly or through its Associates / Investors proposes to acquire 98.3% of the equity of the restructured capital of the company. Rare ARC and /or its friends / associates / investors propose to buy balance shares of all the existing shareholders (1.7%) at a nominal total price of Rs 21,532/- (i.e. Rs 0.00025 per share). In Case, the transaction does not work out for any legal restriction or in absence of order from NCLT, the shareholders can continue with their minority shareholding in the company, which will not give them any decision-making powers / responsibilities/ management or control rights. Please refer to para 2.5.2
Regulation 37 (ca)	Cancellation and delisting of any shares of corporate debtor	Rare ARC does not envisage cancellation and/or delisting of shares of corporate debtor.
Regulation 37 (d)	satisfaction or modification of any security interest	Charge is proposed to be modified in favour of Rare ARC on takeover of financial creditors loans (along with underlying securities) by Rare ARC (under Assignment). Accordingly, no satisfaction of the security interest is envisaged and charge, on execution of Assignment Agreement, shall be modified in favour of Rare ARC.
Regulation 37 (e)	curing or waiving of any breach of the terms of any debt due from the corporate debtor	The debts of various parties due from the Corporate Debtor are proposed to be settled / restructured / waived as provided separately under this Resolution Plan.
Regulation 37 (f)	reduction in the amount payable to the creditors	Please refer para 2.3
Regulation 37 (g)	extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor	Interest rate is proposed to be charged at an effective average rate of 4% p.a. under this resolution plan (for fresh borrowing from Investor / New Lender). For extension of maturity date and change in other terms of debt refer para 2.3.
Regulation 37 (h)	amendment of the constitutional documents of the corporate debtor	No amendment of the constitutional documents of the Corporate Debtor is proposed under the Resolution Plan, save and except as follows: a). Paid up equity capital will be reduced to Rs. 51.00 cr (including infusion of Rs 50.139 cr new equity by the Resolution Applicant) from Rs. 86.13 crores by

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		<p>reducing the face value of equity share from Rs. 10 to Rs. 0.10.</p> <p>b). To give impact of the Demerger of the two assets as given in point no. 2.5 below.</p> <p>c). Change in the Articles of Association.</p>
Regulation 37 (i)	Issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests or other appropriate purpose.	Fresh equity shares would be issued as part of the Resolution Plan.
Regulation 37 (j)	Change in portfolio of goods or services produced or rendered by the corporate debtor.	No amendment or change in the portfolio of goods or services produced or rendered by the corporate debtor is envisaged/ proposed at this stage. In case of any change in end use of the project, the RA shall be allowed to make such changes at appropriate time/ stage.
Regulation 37 (k)	Change in the technology used by the corporate debtor.	There is no change in the technology proposed.
Regulation 37 (l)	Obtaining necessary approvals from the Central and State Governments and other authorities.	<p>Certain necessary approvals of the Central and State Governments are already in place for the operation of the business. However, the approvals in the name of the corporate debtors have to be in the name of the demerged entity.</p> <p>Approvals from Central and State government given in the plan to be enabled (Details given in Para 8).</p> <p>In case of expiry of approval, such approval shall be extended by government agencies in time bound manner. Since MIRPL is a Private limited company, approvals of authorities like SEBI and RBI are not required.</p>
Regulation 38(1)	The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors	Operational creditors dues (other than related parties to the corporate debtor) are proposed to be paid 25% of their dues, within 30 days of approval of the Scheme by NCLT. As against this, Secured financial creditors are being paid their dues in instalments, over 20 months, resulting in Operational creditors getting priority in payment over financial creditors.
Regulation 38 (1A)	Dealing with interests of all stake holders including financial creditors and operational creditors	The estimated outstanding dues of the Secured Financial Creditors is approx. Rs. 165.10 Crs which is proposed to be assigned to Rare ARC at a consideration of Rs. 118.39 Crs on 100% cash basis. The payment of entire crystallised amount

		<p>to the original secured financial creditors is proposed within period of 20 months.</p> <p>Other stake holders are proposed to be paid/ settled as under:</p> <ol style="list-style-type: none"> <li>I. Unsecured financial creditors (related parties to the Corporate Debtor) with dues of Rs 0.40 cr – proposed to be waived.</li> <li>II. Operational Creditors (Trade payables Rs. 4.63 cr); are proposed to be paid an amount, of Rs. 0.93 cr in aggregate within 30 days of approval of resolution plan by NCLT, as per list enclosed in para 2.3,4. The amounts of related party of the promoters / guarantors of the CD is proposed to be waived.</li> <li>III. Workmen and employee dues are Nil. Hence no payments or waivers under this head.</li> <li>IV. Statutory dues (part of other current liabilities) proposed to be paid in full (Rs 0.18 cr) to be paid within 30 days.</li> <li>V. Other current liabilities (related party dues of Rs 0.18 cr) shall be waived.</li> <li>VI. The equity of the existing equity holders to be reclassified with equity share face value being reduced from Rs 10 to Rs 0.10 per share.</li> </ol> <p>For details including quantification of reliefs and concessions proposed / Directions sought under the Resolution Plan, kindly refer para 2.3</p>
Regulation 38 (2) (a)	Term of plan and its implementation schedule	<p>Rare ARC proposes to make payment to financial creditors as under (Crystallised amount of Rs 118.39cr, which is interest-free during the payment period):</p> <ul style="list-style-type: none"> <li>• 47.39 Crs of crystallised amount is proposed to be paid within 30 days of NCLT approval.</li> <li>• Out of the Balance, Rs. 31 Crs is proposed to be paid in the 12<sup>th</sup> month of NCLT approval.</li> </ul>

		<ul style="list-style-type: none"> <li>• The balance Rs. 40 Crs is proposed to be paid in the 20th month of the NCLT Approval.</li> <li>• Resolution process cost on actual basis (estimated at Rs. 0.6408 crs.) is proposed to be paid in priority to payment for other debts.</li> <li>• Operational creditors are proposed to be paid Rs 0.93 cr within 30 days of approval of resolution plan. Statutory Liabilities of Rs. 0.18 Crs would be paid within 30 days of NCLT approval.</li> <li>• Contingent liabilities, if any to be waived.</li> <li>• Workmen / employee dues are Nil.</li> <li>• Rare ARC/ Investors will ensure that the resolution plan is implemented and supervised suitably.</li> </ul>
Regulation 38 (2) (b)	Management and control of the business of corporate debtor during term of resolution plan	Rare ARC/ investor shall identify and appoint suitable professional to manage the affairs of the company on a day-to-day basis, with the support of the Key Managerial personnel of the Company and with guidance from the Board of Directors.
Regulation 38(3)	<p>A resolution plan shall demonstrate that –</p> <p>(a) it addresses the cause of default;</p> <p>(b) it is feasible and viable;</p> <p>(c) it has provisions for its effective implementation;</p> <p>(d) it has provisions for approvals required and the timeline for the same; and</p> <p>(e) the resolution applicant has the capability to implement the resolution plan</p>	<p>The reason for default / losses can be attributed to incomplete project, consequent to change in scope of the project, requiring additional funding for which financial closure could not be achieved.</p> <p>The resolution plan has addressed the causes of default. We have, thereafter, prepared a viable and workable resolution plan. Rare ARC, the resolution applicant, has the capability/ appropriate resources for effective implementation.</p>

8. The Resolution Plan also contains different clauses with details of the manner and the extent to which the liabilities will be discharged. A snapshot of the same is provided at para 7 of the Plan, and is as under:

**“7. Snapshot of the Resolution Plan:**

**(Rs in crs)**

Sl. No.	Claim Type	Amount Due/ Admitted	Treatment under proposed Resolution Plan		Clause in Resolution Plan where discussed
			Payment Proposed	Terms of Payment	

1	Corporate Insolvency Resolution Process Cost	0.64	0.64	Proposed to be paid in full on actual basis (estimated at Rs 0. 64 cr) in priority to payment for other debts of CD.	Clause 3
2	Secured Financial Creditors	235.69	118.39	Payment would be Rs 118.39 cr (100% cash within 20 months without interest) Crystallised amount is proposed to be paid as mentioned in para 2.2.1	Clause 2.2.1
3	Unsecured Financial Creditors (Related parties)	0.40	0.00	Proposed to be waived	Clause 2.3.2
4	Operational Creditors – Trade payables	4.63	0.93	25% of the dues of non-related party operational creditors (i.e. Rs 3.71 cr) proposed to be paid under the Scheme, within 30 days of approval of the Scheme by NCLT.	Clause 2.3.4
6	Due towards Workmen / Employees	0	0	No dues from workmen / employees	Clause 2.3.9
7	Other Current liabilities / Statutory dues	0.36	0.18	Related party dues of Rs 17.50 lakh to be waived. All other payments, as disclosed in IM, to be made in full without waivers, within 1 month of approval of the Scheme by NCLT.	Clause 2.3.4.2
8	Contingent liabilities, including corporate guarantees, if any	2.89	0.00	Proposed to be waived.	Clause 2.3.4.3
	SUB-TOTAL (Payments to Creditors and others)	244.61	120.14		
9	Infusion of funds towards payment to financial creditors and others / start up / working capital and capex	-	210.00	Comprises Loan funds of Rs 137 cr for project completion and balance to meet part of the payments to creditors and others.	Clause 2.4
10	Equity / Preference shareholders	86.13	50.14	Revision in face value of equity share from Rs 10 per share to Rs 0.10 per share.	Clause 2.5.2

				Rare ARC and /or its / associates / investors propose to buy the shares of all the existing shareholders at a nominal total price of Rs 21,532/- (i.e. Rs 0.00025 per share). In such event, an amount of Rs 21,532 would be paid to existing shareholders. Fresh infusion of Rs 50.14 cr towards equity by Rare ARC and its Associates / Investors. This fund would meet balance payments to creditors and others.	
	<b>SUB-TOTAL (Total Funds Infusion)</b>	<b>86.13</b>	<b>260.14</b>		

As regards the proposals for the payment of Financial debts, the Plan also contains a payment schedule, which is as under:

(Rs cr)						
Particulars		Admitted Claims	Final Resolution	30 days	12 months	20 months
Banks		235.69	118.39	47.39	31.00	40.00
CIRP Costs			0.6408	0.6408		
Operational Creditors			0.93	0.93		
Statutory Dues			0.18	0.18		
Shareholders						
Contingencies						
Lease rent to Shillong Municipal Board				-		
Total		235.69	120.1408	49.1408	31.00	40.00
<i>Note: The payments will be made to secured Financial creditors directly in proportion to their admitted claim and to others payments will be made by the Monitoring committee on receipt of the upfront payment or Tranche of the upfront payment.</i>						

9. It is further seen from the Resolution Plan of M/s Rare Asset Reconstruction Limited, as submitted by the RP, that:

"Resolution Applicant hereby confirms that, to the best of its knowledge, the resolution plan complies with the various laws and regulations governing the terms and conditions of the resolution plan and does not contravene any of the provisions of the law for the time being in force. Further, if any provision of this Resolution Plan is held to be non-compliant, illegal, invalid, or unenforceable under Applicable Law, and cannot be modified to make the same compliant, (a) such provision will be fully severable; (b) this Resolution Plan will be construed as if such non-compliant, illegal, invalid, or unenforceable provision had never comprised a part thereof; and (c) the remaining provisions of the Resolution Plan will remain in full force and effect and will not be affected by the non-compliant, illegal, invalid, or unenforceable provision or by its severance therefrom".

10. In view of the foregoing, and other details mentioned in the Resolution Plan, as approved by a 100% vote by the COC, this Adjudicating Authority holds that the Resolution Plan of M/s Rare Asset Reconstruction Limited, as submitted by the RP is in conformity with the purposes and objects of the IBC, and all Rules and Regulations. The same meets the requirements of provisions of Section 30 of the Code of 2016 and Regulations 37 and 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Plan not only appears to be viable but also takes care of all stakeholders, notably the Unsecured Financial creditors, Operational creditors, Workmen and employees, Other Current Liabilities and Contingent Liabilities. It appears that with the appointment of an Acquisition and Resolution Committee, of key personnel for the management of the Hotel project, and with periodical infusion of funds would ensure that the project, presently at a standstill, will get completed. It is also seen from the Plan, at Para 2.4 that the Hotel project requires total funding of Rs 257 crore (payment to secured creditors Rs 118.39 cr, for project completion Rs 137 cr, for operational creditors Rs 0.93 cr, other liabilities Rs 0.18 cr, and CIRP costs Rs 0.50 cr) for being completed whereas the infusion of funds through equity and additional funding comes to Rs 260.14 crore, ie a surplus of Rs 3.14 crore, which is kept for contingencies. A chart showing the projections of performance is also a part of the Plan.

11. Therefore, and in view of the above, the Adjudicating Authority records its satisfaction for granting approval to the final Resolution Plan. It also believes that it would be in the best interest of the FCs, its employees, OC, and all stake holders to accept the final Resolution Plan.

12. It is seen that the Resolution Plan seeks several approvals and waivers, but however, it is mentioned thereunder, as follows:

"It is declared that the Approvals/Waivers/Reliefs sought from the NCLT are in the nature of requests and are not conditions under this resolution plan, EXCEPT that the Guwahati land and Shillong Lease matters in para 8 above are critical requests and essential to keep project on going concern basis and for Plan implementation. The Crystallised amount mentioned in Para 2.2.1.2 will be honoured by RA as per the proposed schedule."

This Adjudicating Authority holds that it is beyond its scope to grant any concessions/waivers etc. in respect of any dealings/transactions between the different parties, and/or as regards any statutory obligations / liabilities that are visualised or may arise subsequently while giving effect to the Plan, as the same would be dealt with by the RA. No further comments are, therefore, offered on the same.

13. The Adjudicating Authority, therefore, orders as under:

- (a) The Final Resolution Plan as submitted by M/s Rare Asset Reconstruction Limited, which has been approved by the COC in its 14<sup>th</sup> meeting dated 26.09.2019 vide e-voting held on 30.09.2019 to 01.10.2019 with 100 % votes in terms of Section 31(1) of the IBC, is hereby approved.
- (b) The Approved Final Resolution Plan shall come into force with immediate effect.
- (c) The moratorium Order passed under Section 14 shall cease to have effect.
- (d) All relevant parties in relation to the Final Resolution Plan are bound by the terms and conditions mentioned therein in accordance with Section 31(1) of the IBC 2016.
- (e) All relevant parties are directed to extend full cooperation to M/s Rare Asset Reconstruction Limited, to carry out the terms and conditions of the Final Resolution Plan, failing which the concerned parties/entities



will be liable for punishment as per Chapter 7 (Offences and Penalties) of the IBC, 2016.

- (f) The Resolution Professional shall forward all records relating to the conduct of the Corporate Insolvency Resolution Process and the Final Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded on its database.
- (g) Accordingly, these proceedings in C.P No. CP(IB)/04/GB/2108 along with connected IAs/objections filed till the submission of the Resolution Plan are disposed of in terms of the approval, as indicated above.
- (h) None of the directions or observations, made above, shall be treated as exempting the RA/CD from paying any fee etc. that may lawfully be charged/levied/realizable from the RA/CD.
- (j) All the concerned parties are hereby directed to strictly comply with the resolution plan approved by the Adjudicating Authority. If there is any deviation in implementing the Resolution Plan, the concerned parties/entity will be liable for punishment as per Chapter 7 (Offences and Penalties) of IBC.

14. C.P. No. CP(IB)/04/GB/2108 is disposed of as above. A copy of this order be filed with the Registrar of Companies, Shillong.

sd/-  
Member (Technical)

sd/-  
Member (Judicial)