

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD**

**IA No.868/2020**

**In CP (IB) No.186/9/HDB/2019**

Under section 30(6) of the IB Code, 2016

R/w regulations 39(4) of the IBBI (Insolvency Resolution for  
Corporate Persons) Regulations, 2016.

**In the matter of:**

Mr. Ramakrishnan Sadasivan  
Resolution Professional of  
M/s. Sujana Universal Industries Limited

...Applicant

**Date of Order: 24.12.2020.**

**Coram: Shri. K. Anantha Padmanabha Swamy, Member Judicial.  
Dr. Binod Kumar Sinha, Member Technical.**

**Parties/ Counsels Present:-**

For the Applicant:- Mr. Sadasivan, RP  
Mr. T. Ravichandran, counsel for RP

**Per: K. Anantha Padmanabha Swamy, Member Judicial.**

**ORDER**

1. The present Application bearing IA No.868/2020 is filed by the Resolution Professional under section 30(6) of the IB Code, 2016, R/w regulation 39(4) of the IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016, seeking the following prayers as under:-
  - a. Pass an order approving the resolution plan submitted by the Resolution Applicants in respect of the Corporate Debtor under Section 31(1) of the Code and declare that the same be binding on the Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.
  - b. Condone the delay of 14 days in filing the present application;

- c. Pass an order directing that, pending disposal of the present application by this Tribunal, the Resolution Professional shall continue to conduct its role as Resolution Professional of the Corporate Debtor and during such period shall have all powers, duties and protections as available to him as a Resolution Professional under the Code and regulations thereunder.
  - d. Pass an order directing the Resolution Applicants to implement the Resolution Plan in the manner set out in the resolution plan;
  - e. Pass an order approving the appointment of Monitoring Agent (MA) and Monitoring Committee ("MC") from the date of approval of resolution plan by this Adjudicating Authority until the date on which the Resolution Applicants acquire control of the Corporate Debtor i.e. Closing date under the Resolution Plan, and during such period extend protection to the MC (including extension of the protection of the moratorium against any suit, legal proceedings and investigations or have any liability with respect to anything which is done or intended to be done or omitted in good faith and in compliance with the Code, CIRP Regulations or any other applicable law) to enable it to monitor the Corporate Debtor as a going concern.
  - f. Pass an appropriate order in relation to the grant of concessions, reliefs and dispensations sought in the resolution plan; and
  - g. Pass an order directing all stakeholders to cooperate with the Resolution Applicants, monitoring Agent (MA) and the Monitoring Committee (MC) to keep the Corporate Debtor a going concern and to implement the Resolution Plan in the manner approved by this Tribunal.
2. Brief facts as stated by the counsel for the Applicant are as follows:-
- a. That CIRP of the Corporate Debtor was initiated by this Adjudicating Authority vide its order dated 20.06.2019 and Mr. Nethi Mallikarjuna Setty was appointed as the Interim Resolution Professional. Later, Mr. Ramakrishnan Sadasivan was appointed as RP.

- b. That the 2<sup>nd</sup> CoC meeting was held on 30.08.2019 and in the said meeting it was approved to publish Form G. Accordingly the IRP had issued Form G – Invitation for EoI on 05.09.2019. The last date for submission of EoI was 20.09.2019.
- c. That in the 3<sup>rd</sup> CoC meeting held on 27.09.2019, it was decided to extend the period of EoI by issuing a revised Form – G and accordingly on 01.10.2019 a revised Form G – Invitation for EoI was published by the Applicant herein, fixing the last date as 15.10.2019 for submission of EoI by the prospective resolution applicants.
- d. That the RP had lastly re-constituted the Committee of Creditors on 08.07.2020 with 11 Financial Creditors having an aggregate claim amounting to Rs.1956,74,92,296/- and 24 Operational Creditors with an aggregate claim of Rs.41,10,04,720/- totalling Rs.1997,84,97,016/-.
- e. That the Transaction Audit was done by M/s.PVR M & Associates to determine if there were any transactions falling within the purview of Section 43, 45, 50 and 66 of IBC, 2016, with a coverage of the period ranging from 01.04.2017 to 30.06.2019.
- f. That the 4<sup>th</sup> CoC meeting was held on 11.10.2019 and the 5<sup>th</sup> CoC meeting was held on 16.10.2019. The Applicant had placed the list of prospective resolution applicants before the CoC on 16.10.2019. The Applicant further submits that the Applicant received EoI from two foreign companies viz., M/s. Triterras Holdings Pte Limited, Singapore and M/s. Crown Beec General Trading LLC, Dubai. The EoI submitted by Crown Beec General Trading LLC was rejected on the grounds of certain material discrepancies apparently found on record and the other EoI submitted by M/s. Triterras Holdings Pte Limited was declared as the successful prospective Resolution Applicant.
- g. That the Applicant called the 6<sup>th</sup> CoC meeting on 19.11.2019 inter-alia to decide on the extension of the CIRP period as the 180 day period for CIRP was coming to end on 17.12.2019. Accordingly the

Applicant herein had filed an Application being IA No.1127/2019 in CP(IB)No.186/9/HDB/2019 seeking extension of CIRP period by 90 days beyond 180 days (which expired on 17.12.2019) and this Adjudicating Authority was pleased to allow the said application by orders dated 12.12.2019 and extended the CIRP period by 90 days, due to which the CIRP is extended upto 270 days.

- h. That on receipt of the Original Resolution Plan from the Resolution Applicant M/s. Triterras Holdings Pte Limited on 23.12.2019, the Applicant having satisfied himself that the said resolution plan prima facie is in compliance with the provisions of the Code as well as the Regulations, placed it before the CoC. Consequently, in 10<sup>th</sup> CoC meeting which was held on 04.03.2020, the CoC advised the Applicant to move an application before this Adjudicating Authority for seeking extension of CIRP period by 60 days as the 270 days was going to expire on 16.03.2020 and that the resolution plan was yet to be approved by the CoC. Accordingly, this Adjudicating Authority was pleased to allow the Applications filed by the Applicant being IA No.278/2020 vide orders dated 17.03.2020 and the CIRP period was accordingly extended upto 330 days.
- i. That while this being so, from 25.03.2020 onwards, all the CoC meetings were conducted through video conferencing due to the Covid Lock down announced by both the Central Government and State Government. In view of this, the discussion on the Resolution Plan was deferred by the CoC, as there was a difficulty in obtaining permissions from their respective Head Offices due to Lock down. Subsequently in the 21<sup>st</sup> CoC meeting held on 04.07.2020 the CoC advised the Applicant to move an application before this Adjudicating Authority seeking extension of CIRP period by 54 days as the 330 days had expired on 15.05.2020. Accordingly, this Adjudicating Authority was pleased to allow the said IA No.591/2020 in CP(IB)No.186/9/HDB/2019 vide order dated 03.09.2020, based on which the CIRP period was extended by a period of 54 days on

account of period which was lost during lock-down imposed by Government on account of Covid-19 pandemic.

- j. Finally, the Applicant received the Final Resolution Plan dated 16.07.2020 from the Resolution Applicant being Triterras Holdings Pte Ltd and Invent Assets Securitisation and Reconstruction Private Limited after making necessary modifications to the plan on 17.07.2020.
- k. The Applicant after satisfying himself that the Resolution Plan is in conformity with the provisions of the Code and the Regulations had circulated the same with the CoC Members via e-mail on 17.07.2020. The final Resolution Plan was put up for due consideration by CoC at the meeting which was held through video conferencing on 15.09.2020. The said Resolution Plan was approved by 80.64% of the voting share of CoC. The list of financial creditors of Sujana Universal Industries Limited being members of the CoC and distribution of voting share among them is as under:

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
	<b>SECURED FINANCIAL CREDITORS</b>		
1	Invent Assets Securitisation and Reconstruction Private Limited.	4.15	Voted for
2	Exim Bank	6.10	Voted for
3	Central Bank of India	13.02	Voted for
4	Punjab National Bank (erstwhile Oriental Bank of Commerce)	8.28	Voted for
5	Bank of India	18.45	Voted for
6	IDBI Bank Limited	9.09	Voted for
7	UCO Bank Limited	10.33	Dissented
8	Indian Overseas Bank	18.91	Voted for
	<b>UNSECURED FINANCIAL CREDITORS</b>		
9	Puissant towers India P. Ltd	2.64	Voted for

10	Prime Infoinvest Limited	0.18	Abstained (Did not vote)
11	Standard Bank (Mauritius) Limited	8.85	Abstained (Did not vote)
		<b>100</b>	

**Voted for – 80.64%**  
**Dissented – 10.33%**  
**Abstained – 9.03%**

- l. That the Applicant hereby submits the Compliance Certificate in Form H under Regulation 39(4) showing the compliances of the Resolution Plan with mandatory requirements under the Code and CIRP regulations.
- m. That the Transaction Audit for the Corporate Debtor was conducted for the period 01.04.2017 – 30.06.2019. In the 7<sup>th</sup> CoC meeting held on 24.12.2019, the RP informed the CoC members, that based on the Transaction Audit Report and pursuant to the opinion received from the legal counsel stating that “as there is no real outflow of money no useful purpose would be served by filing an application under section 43 as the transactions appeared to be in the ordinary course of business,” it was concluded that it would not be necessary to file any Application u/s. 43, 46 and 66 of the IBC, 2016.
- n. That from the date of commencement of CIRP till the date of filing the instant application, a total of 24 CoC Meetings were convened.
- o. That the CoC members have approved Rs.87,77,256/- towards the CIRP costs incurred from 20.06.2019 (commencement of CIRP) till 31.08.2020 and have also approved further expenses to be incurred from 01.09.2020 till the date of Order of Approval from this Adjudicating Authority, on actual basis. The same was also ratified by the CoC members representing 88.33% of the voting share, in the 24<sup>th</sup> CoC meeting held on 15.09.2020.
- p. That the Resolution Applicant had given an undertaking to furnish Bank Guarantee vide letter dated 22.09.2020 in 3 days. Bank Guarantee for a sum of Rs. 3,00,00,000/- (Rupees Three Three

Crores) issued by Successful Resolution Applicant (Triterras Holdings Pte Ltd) on 22.09.2020 has been submitted and forms part of record.

- q. It is stated by the Applicant that he has reasonably scrutinized the Resolution Plan and hereby confirms that Resolution Plan duly complies with the requirements of the Code and Regulations made thereunder.
- r. That pursuant to the approval of the Resolution Plan by the CoC u/s.30(4) of the Code as the Successful Resolution Plan, the Applicant filed the instant Application U/s.30(6) of the Code before this Adjudicating Authority seeking its approval in terms of Section 31(1) of the Code and Regulation 39(4) of the CIRP Regulations.

s. **Brief History of The Resolution Applicant:**

<b>Resolution Applicant</b>	<b>Triterras Holdings Pte Limited.</b>	<b>Invent Assets Securitisation and Reconstruction Private Limited.</b>
<b>Address</b>	9 Raffles Place, #23-02, Republic Plaza, Singapore 048619	Bakhtawar, Suite B, Ground Floor, Backbay Reclamation Scheme Block III, 229, Nariman Point, Mumbai – 400 021.
<b>Core Business</b>	Rhodium Group's core business specializes in physical trading of commodities and trade logistics	The company with its appropriate credentials offers a wide array of services to help banks and financial institutions in channelizing resources and realize value out of NPAs locked with them.
<b>Net worth</b>	Group Network of USD 286.67 Million as of 28th February, 2019.	Rs. 158,00,00,000/- (Rupees One Hundred and Fifty Eight Crores only) as on March 31, 2019.

t. **Funds dispensation proposed under the Resolution Plan:**

<b>Category of Stakeholder</b>	<b>Amount claimed (Rs. in lakhs)</b>	<b>Amount admitted (Rs. in lakhs)</b>	<b>Amount provided in Plan (in lakhs)</b>	<b>% of Amount provided to amount admitted (in lakhs)</b>

CIRP Costs*					
• Agreed by RA		60.00	60.00	60.00	100%
• CIRP Costs adjusted on allocation to FCs		30.00	30.00	30.00	
Secured Financial Creditors					
Dissenting Financial Creditors		20,307	20,221	441.80	2.18%
Assenting Financial Creditors		1,52,914	1,52,623	9,644.66	6.32%
<b>Total Secured Financial Creditors</b>		<b>1,73,221</b>	<b>1,72,844</b>	<b>10,086.46</b>	<b>5.84%</b>
Unsecured Financial Creditors					
Dissenting Financial Creditors		17,671	17,671	---	----
Assenting Financial Creditors		5,160	5,160	33.54	0.65%
<b>Total Unsecured Financial Creditors</b>		<b>22,831</b>	<b>22,831</b>	<b>33.54</b>	<b>0.15%</b>
Operational Creditors		35,304	4,110	25.00	0.61%
Employees and Workmen		130	Nil	1.00	---
<b>Total</b>		<b>2,31,576</b>	<b>1,99,875</b>	<b>10,236</b>	<b>5.12%</b>

*\*Note: The CIRP Costs incurred till 31/08/2020 is Rs. 87.77 lakhs (approx.). The total CIRP Expenditure including further CIRP expenses to be incurred till the date of NCLT Order on approval of the Resolution Plan is estimated to be around Rs. 90 lakhs. The above figures may change subject to the actual CIRP Expenditure incurred.*

u. **Reliefs sought under the Resolution Plan:**

The Resolution Applicant has also considered that by virtue of the order of the Adjudicating Authority approving this Resolution Plan and since the Resolution Applicant would acquire the Company on a 'going concern' basis, all consents, licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Company or to which the

Company is entitled or accustomed to shall, notwithstanding any provision to the contrary in their terms, be deemed to continue without disruption for the benefit of the Company and the Resolution Applicant from the NCLT Approval Date.

v. The critical reliefs sought by the Resolution Applicant as provided in Page 41 of the Final Resolution Plan are as follows:

- i. *“the NCLT shall have approved this Plan in accordance with its terms;*
- ii. *Without prejudice to the rights available to the Corporate Debtor to otherwise carry forward its accumulated Tax losses, the Corporate Debtor shall have been allowed the right to carry forward and set off the losses incurred in any year prior to the NCLT Approval Date against the income of the any of the present and future years after NCLT Approval Date, in terms of Section 79(2)(c) of the Income Tax Act, 1961.*

*Towards this end, while filing the application for approval of the Plan with the NCLT under Section 30(6) of the IBC, the Resolution Professional shall make a written request to the NCLT to issue notice to the Principal Commissioner or Commissioner having jurisdiction over the Corporate Debtor, and to provide such Principal Commissioner or Commissioner with an opportunity of being heard (“Section 79(2)(c) Notice”). If no representation is received from the Principal Commissioner or Commissioner pursuant to issuance of the Section 79(2)(c) Notice by the date of the NCLT Order, it shall be deemed that the Principal Commissioner or Commissioner have no objections to the Corporate Debtor carrying forward its Tax losses.*

- iii. *No event or circumstance shall have occurred or be continuing that, in the opinion of the Resolution Applicants (acting reasonably) has a Material Adverse Effect. For the purpose of this Section, a “Material Adverse Effect” means the following acts, events, circumstances or causes: (a) acts of God including lightning strikes, earthquake, cyclones, floods, storms, epidemics, pandemics and any natural disaster; and (b) acts of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, terrorism, riots, resulting in material adverse effect on the business, operations, assets or financial condition of the Company and the ability of the Resolution Applicants to implement the Plan in accordance with its terms;*

*Upon the occurrence of any Material Adverse Effect prior to the Effective Date, the CoC and the Resolution Applicants shall*

*mutually discuss and agree on suitable modifications to the Resolution Plan to reflect the revised scenario of the Corporate Debtor or any other related aspect. Further, it is clarified that, in case any Material Adverse Effect occurs post the Effective Date, i.e., during the implementation phase (including upto the last tranche payment to Financial Creditors), this Plan may be subjected to change, refinement and modification as the Resolution Applicant may deem suitable upon discussion with the COC in order to reflect the revised scenario of the Corporate Debtor and the Resolution Applicant reserve the right to renegotiate with the Financial Creditors on the Financial Creditors Settlement Amount.*

- iv. *NCLT shall have directed the CBDT to grant the relief under Section 28(iv), Section 41(1), Section 56, Section 115 JB, and Section 170 or any other applicable provision, against any Income Tax liability arising due to Capital Reduction in the Corporate Debtor, write off/ write down/ write back of Outstanding Financial Debt and various other liabilities, including liabilities pertaining to all the Financial Creditors, Workmen and Employees, Operational Creditors, Other Creditors, etc. (to the extent applicable under Applicable Laws) without any impact on carried forward loss and waive all liabilities whether crystallised or not in respect of Taxes (including interest and penalty) with respect to the period prior to the NCLT Approval Date.*
- v. *NCLT shall have directed the CBDT/DOR to grant the following exemptions / waivers: (i) from applicability of Section 281 of the Income Tax Act, 1961 including obtaining no-objection certificate from income tax authorities in respect of all the pending proceedings and dues (including interest and penalty) of the Company arising for periods up to the NCLT Approval Date (including such proceedings and dues for periods prior to the NCLT Approval Date that may crystallize subsequent to the NCLT Approval Date). Further, CBDT/DOR shall restrict/restrain from treating any transactions contemplated in this Plan as being void or non-compliant with any provisions of the Income Tax Act, 1961; and (ii) from all Tax Liabilities (including interest and penalty) and Tax proceedings arising in respect of periods up to the NCLT Approval Date, including such Liabilities/ proceedings for periods up to the NCLT Approval Date that may crystallize subsequent to the NCLT Approval Date in respect of on-going or potential income Tax litigations at all levels.*
- vi. *The Resolution Applicants shall be permitted to apply and obtain fresh Goods and Services Tax (GST) registration Number or any other new registration (including but not limited to ESI, PF, Importer Exporter Code (IEC), TAN, Professional Tax) or*

*new license for the Corporate Debtor, as may be required, in place of the existing GST registration, or any other existing registrations or existing licenses. Any pending proceedings / dues (including interest and penalty) towards GST liability, or any other Statutory Liability/Dues, which shall be considered to have been waived/ exempted in the manner prescribed in the above Clause.*

- vii. *No application / petition / appeal shall have been filed by any of the Financial Creditor or pending before any judicial forum including the National Company Law Tribunal, National Company Law Appellate Tribunal, High Courts, Supreme Court etc. which may impact the implementation of this Resolution Plan inter alia including with respect to any dispute / litigation inter-se between the Financial Creditors of the Corporate Debtor;*
- viii. *NCLT shall have directed that the licenses and approvals held by the Company, which expire prior to the NCLT Approval Date or within a period of 12 (Twelve) months thereafter (as more particularly set out in Annexure 11), shall be renewed / extended by the relevant Governmental Authorities, and the Company shall be permitted to continue to operate its business and assets in the manner operated prior to submission of this Plan.*
- ix. *The Resolution Applicants shall not be liable for any litigation/inquiry/investigation/dispute etc. initiated against the Corporate Debtor prior to NCLT Approval Date including any such action initiated after the Insolvency Commencement Date till NCLT Approval Date."*
- x. *No order shall have been passed / operative, which requires the Resolution Applicants to pay any amount in excess of the Total Financial Outlay with respect to implementation of the Plan"*
- w. **Summary of valuation and comparison between valuation and Resolution Plan:**

During the conduct of CIRP, two valuers were appointed, to determine the liquidation value of the corporate debtor in accordance with Regulation 27 read with Regulation 35 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The details of average fair value and average liquidation value are as depicted in the following table:-

S. No	Description	Rs. in Crs
1	Liquidation Value	38.69
2	Fair Value	67.28

- x. It is observed from the above table that as against the liquidation value of the assets and properties of the Corporate Debtor arrived at Rs. 38.69 Crores, the successful RA has undertaken in the resolution plan to accept and discharge the following liabilities:-

S. No	Nature of stakeholders	Rs. (in Crs)
1	CIRP Costs	0.60
2	Operational Creditors	0.25
3	Employees	0.01
4	Financial Creditors	101.50
	<b>Total</b>	<b>102.36</b>

- y. Reiterating the above, counsel for the Applicant prayed to allow the instant Application as sought for.
3. Heard and perused the record.
  4. First of all, we need to examine whether the Resolution Plan was approved by the CoC within time, as the RP has sought condonation of delay of 14 days in submitting the instant application.
  5. In the instant case CIRP was initiated on 20.06.2019 and the original period of 180 days was completed on 17.12.2019. This Adjudicating Authority granted further extension of 90 days and subsequently allowed to complete the CIRP in 330 days, which would have been completed on 15.05.2020. However, due to introduction of Regulation 40C, time lost during Covid-19 Pandemic Lockdown period is not to be counted. The said period is deemed to be w.e.f 25.03.2020 and upto 31.08.2020. Thus the CIRP deemed to be extended for a period of 54 days (25.03.2020 to 15.05.2020) w.e.f. 01.09.2020 and up to 24.10.2020. The Resolution Plan was approved by CoC on 15.09.2020 in their 24th Meeting. The instant IA was filed on 25.09.2020.
  6. Section 30(2) of the Code as amended w.e.f. 06.08.2019 enjoins upon the resolution professional to examine each resolution plan received by him to confirm that such plan –

- a) Provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment 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.
  - c) Provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;
  - d) Provides for 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 , and
  - f) Confirms to such other requirements as may be specified by the Board.
7. Section 30(4) of the Code as it stands at present after the amendment reads as follows: -

*“(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six percent. of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board.”*

8. Section 30(6) of the Code enjoins the resolution professional to submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority. Section 31 of the Code deals with the approval of the resolution plan by the Adjudicating Authority, if it is satisfied that the resolution plan as approved by the committee of creditors under section 30(4) meets the requirements as referred to in section 30(2).
9. Thus, before approving the Resolution plan, it is the duty of the Adjudicating Authority that it should satisfy itself that the Resolution plan as approved by the COC meets the requirements as referred to in sub-section (2) of Section 30.
10. On perusal of the Resolution Plan, this Adjudicating Authority has observed that the Resolution plan placed for consideration provides for the following:
  - a) Payment of CIRP Cost as specified U/s 30(2)(a) of IBC, 2016.
  - b) Repayment of Debts of Operational Creditors as specified U/s 30(2)(b) of IBC, 2016.
  - c) Provides for management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified U/s 30(2)(c) of IBC, 2016.
  - d) The implementation and supervision of Resolution Plan shall be done by Insolvency Resolution Professional and by the COC as specified U/s 30(2)(d) of IBC, 2016.
  - e) The Resolution Plan is not in contravention to any of the provisions of Law, for the time being in force, as specified U/s 30(2)(e) of IBC, 2016.
  - f) The Resolution plan conforms to such other requirements specified by the Board.
11. In terms of Regulation 27 of CIRP Regulations, Liquidation value as well as Fair Value was ascertained through two registered valuers, and the Resolution Plan offers not only more than the average liquidation value but also more than the average Fair Value of the Corporate Debtor .

12. The RP has complied with the code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of CIRP regulations.
13. The identity of the Resolution Applicants have been duly verified by the RP and affidavit as per section 30(1) of the Code has been obtained from the Resolution Applicants stating that they are not ineligible U/s 29A of the IB Code, 2016.
14. The Plan also provides for keeping the Company as a going concern and operate in its normal course of business upon implementation of Resolution Plan. There is no objection filed by any other person in this regard.
15. Copy of Form-H (Compliance Certificate) filed by the RP along with the Plan has been perused and considered. The RP inter-alia has certified as under:
  - i. *"The said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.*
  - ii. *The Resolution Applicant M/s. Triterras Holdings Pte Limited along with Invent Assets Securitisation and Reconstruction Private limited has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.*
  - iii. *The said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 80.64 % of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.*
  - iv. *I sought vote of members of the CoC by electronic voting system which was kept open from 21/09/2020 from 4 PM – 22/09/2020 till 7 PM for at least for 24hours as per the regulation 26."*
16. The Resolution Plan includes a statement under regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interest of the stakeholders in compliance with the Code and Regulations thereunder.

17. It is also evident that the Resolution Plan placed before this Adjudicating Authority, was approved by the Committee of Creditors in its 24<sup>th</sup> CoC meeting dated 15.09.2020 with 80.64% votes cast in favour of Approval of Resolution Plan.
18. In K Sashidhar Vs. Indian Overseas Bank & Others, decided on 05.02.2019 in Civil Appeal No.10673/2018 with CA Nos.10719/2018, 10971/ 2018 and SLP(C) No.29181/2018, the Hon'ble Supreme Court, noticing the provisions of section 30(4), held that if the CoC had approved the resolution plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the resolution professional to submit the same to the adjudicating authority (NCLT). On receipt of such a proposal, the adjudicating authority (NCLT) is required to satisfy itself that the resolution plan as approved by CoC meets the requirements specified in Section 30(2). No more and no less.
19. In the said judgment, in para 35, the Hon'ble Supreme Court held that the discretion of the adjudicating authority is circumscribed by Section 31 and is limited to scrutiny of the resolution plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2) when the resolution plan does not conform to the stated requirements.
20. In view of the discussions in the foregoing paragraphs, the 'Resolution Plan' filed with the Application meets the requirements of Section 30(2) of the I&B Code, 2016 and Regulations 37, 38, 38(1A) and 39 (4) of IBBI (CIRP) Regulations, 2016. The 'Resolution Plan' is also not in contravention of any of the provisions of Section 29A. Hence, this Adjudicating Authority is satisfied that the Resolution Plan is in accordance with Law. Therefore, the 'Resolution Plan' annexed with Application bearing IA No. 868 of 2020 filed in CP(IB)No. 186/9/HDB/2019 is hereby approved, which forms part of this Order and 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.

21. Counsel for RP filed a memo dated 09.11.2020 and 24.11.2020, enclosing proof of service of notices sent to the Principal Commissioner of Income Tax through email and through speed post. However, there was no representation on their behalf. Section 79 of the Income Tax Act, 1961 provides that carry forward and set off of losses in a closely held company shall be allowed only if there is a continuity in the beneficial owner of the shares carrying not less than 51 % of the voting power, on the last day of the year or years in which the loss was incurred. However, clause (c) of sub-section (2) to the said section provides that nothing contained in this section shall apply to a company where a change in the shareholding takes place in a previous year pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner. In the instant case, notices were served to the Principal Commissioner of Income Tax through email and through speed post, but there has been no response. We, therefore, hereby direct that in terms of Section 79(2)(c) of the Income Tax Act, 1961, assessed tax losses of the Corporate Debtor shall be allowed to be carried forward as per provisions of law.

22. However, the Resolution Plan approved shall not construe any waiver to any statutory obligations/liabilities arising out of the approved Resolution Plan and same shall be dealt in accordance with the appropriate Authorities as per relevant Laws. This Adjudicating Authority is of the considered view that if any waiver is sought in the Resolution Plan, the same shall be subject to approval by the concerned Authorities. The same view has also been held by Hon'ble Principal Bench, NCLT in the case of Parveen Bansal Vs. Amit Spinning Industries Ltd. in CA No.360 (PB) 2018 in CP No (IB) 131 (PB)/ 2017.

23. Accordingly, the MoA and AoA shall be amended and filed with the RoC for information and record as prescribed. While approving the 'Resolution Plan', as mentioned above, it is clarified that the Resolution Applicant shall pursuant to the Resolution Plan approved under Sub-Section (1) of Section 31 of the I&B Code, 2016, obtain all the necessary approvals as may be required under any law for the time being in force within the period as provided for in such law.
24. This Adjudicating Authority orders for the constitution of Monitoring Committee consisting of Mr. Ramakrishnan Sadasivan, RP, two members of CoC and two representatives nominated by the Resolution Applicants to supervise the implementation of the Resolution Plan and further Resolution Professional is directed to file status of implementation of Resolution Plan before this Adjudicating Authority from time to time.
25. The order of moratorium passed by this Adjudicating Authority under Section 14 of I&B Code, 2016 shall cease to have effect from the date of passing of this Order.
26. The approved 'Resolution Plan' shall become effective from the date of passing of this Order.
27. The Resolution Professional shall forward all record relating to the conduct of the CIRP and the 'Resolution Plan' to the IBBI along with Copy of this Order, so that the Board may record the same on its data-base.
28. The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant.
29. Accordingly, IA No. 868 of 2020 is disposed of as allowed.

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**Dr. BINOD KUMAR SINHA**  
**MEMBER TECHNICAL**

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**K. ANANTHA PADMANABHA SWAMY**  
**MEMBER JUDICIAL**