

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT-II**

**IA. No. 483/2021**

**In**

**C.P.(IB)No. 2231/MB/C-II/2019**

**Application filed under section 30(6) of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 r/w Rule 11 of the National Company Law Tribunal Rules, 2016.**

Filed by

**Mr. Sachin Rajendra Singhvi,**

Resolution Professional

of Skylark Highway Solutions Limited

**...Applicant**

*In the matter of*

**Skylark Highway Solutions Limited**

**...Operational Creditor**

Versus

**Topworth Infra Private Limited**

**...Corporate Debtor**

**Order Pronounced on: - 31.07.2024**

**Coram:**

**Anil Raj Chellan**

**Member (Technical)**

**Kuldip Kumar Kareer**

**Member (Judicial)**

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***Appearances:***

For the Resolution Professional : Adv. Khushboo Shah Rajani  
Resolution Professional (in person) : Mr. Sachin Rajendra Singhvi

**ORDER**

***Per: Anil Raj Chellan, Member (Technical)***

1. The present Interlocutory Application is filed by Mr. Sachin Rajendra Singhvi, the Resolution Professional of Topworth Infra Private Limited seeking approval of the Resolution Plan submitted by the R. K. Chavan Infrastructure Private Limited, (hereinafter referred to as 'Successful Resolution Applicant' or 'SRA') under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 ('the Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation ('the CIRP Regulations') duly approved by 99.60% of the Committee of Creditors ('CoC') in its 13<sup>th</sup> meeting held on 12.02.2020.
2. The Applicant submits that Skylark Highway Solutions Limited, the Operational Creditor initiated the Corporate Insolvency Resolution Process ('CIRP') against Topworth Infra Private Limited (hereinafter called 'the Corporate Debtor') under Section 9 of the Code. This Tribunal vide order dated 13.11.20219 initiated CIRP against the Corporate Debtor and appointed Ms. Mita Sanghavi, as the Interim Resolution Professional (IRP). However, in view of the inability of Ms. Mita Sanghavi to act as the IRP, the

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Operational Creditor filed an application bearing M.A No. 132/2020 seeking the appointment of Mr. Sachin Rajendra Singhvi as the IRP. The Tribunal vide Order dated 19.02.2020, was pleased to appoint the Applicant herein as the new IRP of the Corporate Debtor.

3. The Applicant made a Public Announcement inviting claims on 02.12.2019 in Form 'A' in the newspapers viz., Mumbai edition of Free Press Journal (English) and Navakal (Marathi) on 03.12.2019 and the last date specified for receipt of claims was 16.12.2019. In response to the advertisement, the Applicant received four claims from Financial Creditors and 16 claims from Operational Creditors. No claims were received from any employees or workers of the Corporate Debtor. Accordingly, the CoC was constituted on 27.12.2019 and filed a report with this Tribunal certifying the constitution of CoC on 31.12.2019.
4. The Applicant appointed registered valuers to determine the Liquidation Value and Fair Value of the Corporate Debtor for each class of assets. GAA Advisory LLP (Mr. Nitin A. Garg for financial assets and Mr. Nitin A. Garg for plant & machinery) and BKC Valuers Private Ltd (Mr. Ashutosh Dwivedi for financial assets and Mr. Sanjay Dayal for plant and machinery) were accordingly appointed.
5. On 14.02.2020, the Applicant published Form G in 'The Free Press Journal (English) and in 'Navakal' Marathi newspapers inviting Expression of Interest (EoI) till 07.04.2020. In response to the publication of Form G, the Applicant received five EoI.
6. The Applicant published the second Form G on 06.03.2020 in 'Free Press Journal' (English) and in 'Navakal' (Marathi) newspapers inviting EoI till

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17.04.2020. One more applicant i.e., M/s. N S Software submitted the EoI. However, since one of its connected persons was classified as a willful defaulter by RBI, the said applicant was not included in the list of Prospective Resolution Applicants (PRAs).

7. During the 7<sup>th</sup> CoC meeting held on 16.09.2020, the CoC authorized the RP to issue the Request for Resolution Plan ('RFRP') to the PRAs appearing in the final list of PRAs. The RFRP stipulated 21.10.2020 as the last date for submission of the Resolution Plan and specified the requirement to furnish an unconditional and irrevocable guarantee of Rs. 75.00 Lakhs by the successful resolution applicant.
8. In the 8<sup>th</sup> CoC meeting held on 22.10.2020, the Applicant informed the CoC that he had received only one Resolution Plan from M/s. R. K. Chavan Infrastructure Private Limited on 21.10.2020 (the last date specified) in a sealed envelope.
9. On 28.10.2020, during the 9<sup>th</sup> CoC meeting, M/s. R. K. Chavan Infrastructure Private Limited presented its Resolution Plan and discussed its financial and other relevant aspects. The CoC proposed certain amendments to the Resolution Plan which the Resolution Applicant agreed to include and submit the Revised Resolution Plan with the amendments by 05.11.2020.
10. In the 10<sup>th</sup> CoC meeting held on 06.11.2020, the Revised Resolution Plan submitted by M/s. R. K. Chavan Infrastructure Private Limited was discussed. After deliberation, the CoC members again requested the PRA to reconsider certain other commercial terms to further improve the plan and maximize value.

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11. In the 11<sup>th</sup> CoC meeting held on 14.12.2020, the Revised Resolution Plan of M/s. R. K. Chavan Infrastructure Private Limited (initially received on 5.11.2020 and subsequently revised on 10.11.2020), was discussed in the presence of the Applicant. Certain additional information was also requested from the Resolution Applicant.
12. Again, during the 12<sup>th</sup> CoC meeting held on 28.01.2021, the consolidated final Resolution Plan dated 18.01.2021 from M/s. R. K. Chavan Infrastructure Private Limited was discussed and deliberated. After elaborate deliberation, it was decided to put up the final Resolution Plan for voting in the next CoC meeting. Accordingly, the CoC after considering the feasibility and viability of the final Resolution Plan was put to vote in the 13<sup>th</sup> CoC meeting held on 12.02.2021.
13. The CoC has approved the Resolution Plan submitted by M/s. R. K. Chavan Infrastructure Private Limited with 99.60% votes. A Letter of Intent was issued to M/s. R. K. Chavan Infrastructure Private Limited on 24.02.2021 which has accepted and a bank guarantee for Rs.75 lakhs as per RFRP was also furnished.

14. **Brief background of the Corporate Debtor:**

14.1 The Corporate Debtor is engaged mostly in the construction of Road, directly and through its subsidiaries handling various infrastructure projects viz. Topworth Tollyways (Satna) Private limited (74% stake), Topworth Tollyways (Ujjain) Private limited (74% stake), Topworth Tollyways (Mangawan) Private limited (70% stake),

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Topworth Tollyways (Bela) Private limited (70% stake) and Yamunotri Project Company Private Limited (74% stake).

14.2 The reasons stated for the defaults, as assessed by the Resolution Applicant are as under:

- The project of TT Ujjain could not generate the expected toll collection right from inception. The less-than-projected toll collection was not sufficient to cater to the operational and maintenance needs of the road and meet the payments/repayments to the lenders.
- Arbitrary termination of the project of four laning of Mangawan MP/UP Boarder Project on BOT basis awarded to Topworth Tollways (Mangawan) Private Limited, another subsidy of the Corporate Debtor. The termination of the project midway resulted in decreased cash-flow.
- Termination of project of four laning of Satna-Bela section on BOT basis, awarded to Topworth (Bela) Private Limited another subsidy of the Corporate Debtor. The termination of the project midway resulted in cash-flow issues.

15. **Brief background of the Resolution Applicant:**

- The Resolution Applicant is a Civil Contractor for Industrial, Residential, IT & Commercial Buildings Projects, Water supply and Irrigation Scheme, Construction of Roads, Bridges, Engineering Procurement, Construction/Turnkey Contractor for

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Water Supply Scheme, Drainage Systems, Builders & Developers for Land and Real Estate, Developers of Infrastructure Projects on Contract basis and/or Built operate Transfer Basis.

- The Resolution Applicant was appointed as sub-contractor by the Corporate Debtor vide agreement dated 02.09.2016 for the execution of the project 'Rehabilitation and upgradation of Chilpi to Kawardha section of NH-12A to two-lane with the paved shoulder in the State of Chattisgarh. The contract is ongoing as per the agreement as on the date of submission of the Resolution Plan.

16. **Salient features of the approved Resolution Plan:**

**a. Settlement Plan**

<b>Category of Creditors</b>	<b>Claim filed</b>	<b>Claim admitted</b>	<b>Amount proposed</b>	<b>% of the admitted claim</b>
CIRP cost	-	-	20,00,000	100%
Financial Creditors	1,34,14,95,977.42	83,74,34,312.69	4,19,86,496	5%
Operational Creditors	4,27,66,18,726.13	2,49,89,65,774.00	10,00,000	0.04%

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Employees and Workmen	1,13,504	1,13,504	1,13,504	100%
Working capital infusion	-	-	25,00,000	-
Capital Expenditure	-	-	10,00,00,000	-
<b>Total</b>	<b>5,618,228,207.55</b>	<b>3,336,513,590.69</b>	<b>14,76,00,000</b>	

**b. Timeline of Payment of the Proposed under the Resolution Plan**

The sum of Rs. 14.76 Crores is proposed to be paid in the following tranches by the Resolution Applicant: -

Sr. No.	Particulars	Timelines	Amount (in Crores)
1.	CIRP Cost	Within 30 days from the Effective Date	20,00,000
1.	Secured Financial Creditors	a. Rs. 1.04 Cr. – within 30 days of the Effective Date, b. Balance amount of Rs. 3.16 Cr. – within 90 days from the Effective Date	4,19,86,496
3.	Operational	30 days from the Effective Date	10,00,000



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	Creditors excluding Employees and workmen		
4.	Employees and workmen	30 days from the Effective Date	1,13,504
5.	Working Capital Infusion	Within one year of the Effective Date	25,00,000
6.	Capital Expenditure	5.0 crores in 1st and 2 <sup>nd</sup> year and another 5.0 crore in 3 <sup>rd</sup> year	10,00,00,000
<b>Total</b>			<b>14,76,00,000</b>

c. **Sources of Funds:**

The Resolution Applicant proposes a resolution amount of Rs. 14.76 Crores for the Corporate Debtor. Out of this, Rs. 4.51 crores shall be raised from the internal accruals of the Resolution Applicant which would be infused as equity in Corporate Debtor, the remaining Rs. 10.25 crores for working capital and capital expenditure will be funded through borrowings from financial institutions, or other investors, as deemed appropriate by the Resolution Applicant in consultation with the Monitoring Committee. The Applicant has ongoing EPC contracts with an estimated revenue of Rs. 129.15 crores over the next three months. The Applicants' net worth is Rs. 27.54 crores as of March 2020, with its promoters having a combined net worth of Rs. 7.96 crores.

d. **Financial Proposal of the Resolution Applicant**

I. **CIRP costs:**

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The amount payable towards CIRP cost is Rs. 20 Lakhs. The CIRP costs will be paid out in priority on approval of the Resolution Plan. Any increase/decrease in the CIRP cost (over and above estimated above) shall be adjusted from the financial creditor payment proposed in the Resolution Plan. The Information Memorandum provided by the RP mentioned that the CoC members have contributed towards the CIRP expenses pro rata to their voting share. The said contribution carries interest at 18% per annum from the date of payment till the date of repayment. The said contribution forms part of the CIRP costs.

**II. Payments to the Operational Creditors:**

The Resolution Applicant proposes to pay an amount of Rs.10,00,000/- to the Operational Creditors.

**III. Secured Financial Creditors:**

(a) The Resolution Applicant proposes to pay an amount of Rs. 4,19,86,496/- to the Secured Financial Creditors.

(b) The Corporate Debtor has received an arbitral award of Rs.12.40 crore in the Arbitration against M/s. Dilip Buidcon Ltd in October 2019 and an appeal is pending before the Hon'ble Bombay High Court. In another matter, the Corporate Debtor has given a performance bank guarantee of Rs.3.5 crore to Uttarakhand Tourism Development Board on behalf of its subsidiary Yamunotri Project Company Private Limited. The said performance bank guarantee was issued by Allahabad Bank

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against a fixed deposit of Rs.87,50,000/- created on 06.04.2013. The above project was subsequently terminated and a challenge to the termination is pending before the Dehradun Court. If there is any recovery from the above matters, the Resolution Applicant shall, within 7 working days, share with the Financial Creditor (in the ratio of voting share) 40% of the final amount received after deducting the legal expenses. Any event of default will be construed as an event of default in the implementation of the Resolution Plan.

**IV. Payments to Employees and Workmen:**

The Resolution Professional has received only one claim of Rs.1,13,504 from an employee which has been admitted by the RP. The Resolution Applicant proposes to pay the full amount of Rs. 1,13,504/- to the employee.

**V. Working Capital Infusion**

The Resolution Applicant proposes to infuse Rs. 25,00,000/- towards working capital in the First year for continuing existing operations of the Corporate Debtor and Rs. 10 Crores for CAPEX for improving the efficiency of the Corporate Debtor from its own sources and debt.

**VI. Capital Expenditure**

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The Resolution Applicant proposes to pay Rs. 10.00 crores towards capital expenditure to improve the operational efficiency to be infused over a period of 3 years.

**VII. Amount of fresh equity**

The Resolution Applicant proposes to pay 4.51 crores towards the settlement of claims which shall be infused into the Corporate Debtor through equity participation, while Rs. 10.25 crores for working capital and capital expenditure will be provided through a combination of equity and debt.

**e. Monitoring Committee:**

The Resolution Applicant proposes to form an Implementation and Monitoring Committee comprising two representatives of the CoC, two representatives from the Resolution Applicant, and the Resolution Professional to monitor and supervise the implementation of the Resolution Plan from the Effective Date and up to the Transfer Date (the date on which all the claims of the Financial Creditors are settled by the Resolution Applicant as per the Resolution Plan).

**f. Implementation of the Resolution Plan:**

The Resolution Applicant proposes to implement the Resolution Plan immediately from the Effective Date and the term of the plan shall be a period of 90 days from Effective Date or the date when Financial Creditors are settled as proposed in the Resolution Plan.

**g. Implementation Schedule of the Resolution Plan:**

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<b>Action</b>	<b>Timeline</b>
Capital Reduction of the existing equity share capital to zero,	Within 90 days from the Effective Date
Subscribing to equity shares amounting to INR 4.51 crores	Within 90 days from the Effective Date
Payment to the Financial Creditors, Operational Creditors, and Statutory Dues (except for contingency releasable in Arbitration matter of M/s. Dilip Buildcon Ltd and Release of Fixed Deposit from Allahabad Bank)	Within 90 days from the Effective Date
Working Capital to continue operations of the Corporate Debtor	Within 1 year of the Effective Date
Capex	Within 3 years of the Effective Date

**Timeline of actions**

<b>Step</b>	<b>Process</b>	<b>Timeline</b>
1.	Constitution of the Implementation and Monitoring Committee for implementation of the Resolution Plan from the NCLT Approval Date	After the approval of the Resolution Plan by the Adjudicating Authority X

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	up to the Transfer Date. Receipt of the Certified Copy of the order of the NCLT sanctioning the Resolution Plan and fulfillment of conditions prescribed, if any, by NCLT in its said order.	
2.	The Resolution Applicant shall reconstitute the Board of Directors of the Corporate Debtor.	Within X+30
3.	Submission of the Performance Bank Guarantee	Within 5 days from the issuance of the Letter of Intent to the successful Resolution Applicant as per terms of the Resolution Plan
4.	Payments of other amounts and discharge of other obligations of the Corporate Debtor/ Resolution Applicant	As per terms of the Resolution Plan
5.	Release of Performance Bank Guarantee given by the Resolution Applicant	As per RFRP

**h. Management of the Corporate Debtor**

Upon approval of the Resolution Plan by the Adjudicating Authority in favour of the Successful Resolution Applicant, the existing directors of the Corporate Debtor shall resign, and the new directors as proposed in the Resolution Plan shall be appointed as directors of the Corporate Debtor to manage the affairs of the Corporate Debtor. The management of the Corporate Debtor shall be managed by the duly constituted Board of Directors of the Corporate Debtor.

**i. Recoveries from Preferential/Fraudulent Transactions:**

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Any proceeds received from the transactions in terms of Sections 43 and 66 of the Code, shall ensure to the benefit of the approving Secured Financial Creditors.

j. **Performance Guarantee:**

In accordance with regulation 36B (4A) of the CIRP Regulations, the Resolution Applicant has provided performance security by way of a bank guarantee dated 02.03.2021 issued by Union Bank of India for a sum of Rs. 75,00,000/- (Rupees Seventy-Five Lakhs only).

k. **Eligibility of the Resolution Applicant under Section 29A of the Code:**

The Resolution Applicant has provided an affidavit dated 08.10.2020 confirming eligibility u/s. 29A of the Code to submit the Resolution Plan.

1. **Relief and Concessions**

The Successful Resolution Applicant has sought various reliefs and concessions based on the clean slate concept laid down by the Hon'ble Supreme Court in various judgements, reliefs which are necessary to keep the Corporate Debtor as going concern, release it from all liabilities/ proceedings, disputes, and noncompliance prior to the NCLT Approval Date and extended period for renewal or revival of licenses for running the business of the Corporate Debtor.

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**Observations of the Adjudicating Authority:**

19. We have heard the Counsel for the Applicant and perused the Resolution Plan and related documents submitted along with the Application.
20. As referred to in the above summary of the Resolution Plan, we are satisfied that all the requirements of Section 30(2) are fulfilled and no provision of law for the time being in force appears to have been contravened.
21. Section 30(4) of the Code 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 subsection (1) of Section 53, including the priority and value of the security interest of a secured creditor and such other requirement or may be specified by the Board.’
22. Section 30(6) of the Code enjoins the Resolution Professional to submit the Resolution Plan, as approved by the CoC to the Adjudicating Authority. Section 31 of the Code deals with the approval of the Resolution Plan by the Authority if it is satisfied that the Resolution Plan as approved by the CoC under section 30(4) meets the requirements provided under section 30(2) of the Code. Thus, it is the duty of the Adjudicating Authority to satisfy itself that the Resolution Plan as approved by the CoC meets the above requirements.
23. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:



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- a. Payment of CIRP cost as specified under Section 30(2)(a) of the Code;
- b. Payment of debts of the Operational Creditors as specified under Section 30(2) (b) of the Code;
- c. For the management of the affairs of the Corporate Debtor after approval of the Resolution Plan; and
- d. The implementation and supervision of the Resolution Plan by the RP and the CoC as specified under Section 30(2) (d) of the Code.

24. In *K Sashidhar vs. Indian Overseas Bank and Ors. (Civil Appeal No. 10673/2018 decided on 05.02.2019) (2019)* the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by the 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. On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan, as approved by the CoC, meets the requirements specified in Section 30(2). The Hon'ble Apex Court further observed that the role of the NCLT is 'no more and no less'. The Hon'ble Apex Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to the scrutiny of the Resolution Plan 'as approved' by the requisite percentage of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is with reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements. The legislature, consciously, has not provided any ground to challenge the

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commercial wisdom of the individual financial creditors or their collective decision before the Adjudicating Authority.

25. In CoC of *Essar Steel India Limited vs. Satish Kumar Gupta and Ors (2020) 8 SCC 531* the Hon'ble Apex Court clearly held that the Adjudicating Authority would not have the power to modify the Resolution Plan which the CoC in their commercial wisdom has approved. In para 42, the Hon'ble Court observed as under:

*'Thus, it is clear that the limited judicial review available which can in no circumstances trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, in so far as the Adjudicating Authority is concerned and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar (supra).'*

26. The Hon'ble Supreme Court in the matter of Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited, (Civil Appeal No. 8129 of 2019 decided on 13.04.2021) held that on the date of the approval of the 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 a part of the Resolution Plan.
27. In view of the discussions and the law thus settled, we are of the considered view that the instant Resolution Plan meets the requirements of Section 30(2) of the Code and the Regulations 37, 38, 38(1A), and 39(4) of the CIRP

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Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. We, therefore, allow the Application in the following terms:

**ORDER**

28. The Application **IA. No. 483 of 2021 in C.P.(IB) 2231 of 2019** is allowed and the Resolution Plan submitted by “M/s. R. K. Chavan Infrastructure Private Limited” 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, and 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.
29. Accordingly, no person or authority will be entitled to initiate or continue any proceedings with respect to a claim prior to the approval of the Resolution Plan which is not a part of the Resolution Plan.
30. The approval of the Resolution Plan shall not be construed as a waiver of any future statutory obligations/liabilities of the Corporate Debtor and shall be dealt with by the appropriate authorities in accordance with law. Any waiver sought in the Resolution Plan relating to the period after the date of this order, more particularly licenses and approvals for keeping the Corporate Debtor as a going concern, shall be subject to approval by the Authorities concerned and this Tribunal will not deter such Authorities from dealing with any of the issues arising after effecting the Resolution Plan. This Tribunal, however, recommends due consideration of the revival of the Corporate Debtor. The

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Corporate Debtor may obtain necessary approval required under any law for the time being in force from the Appropriate Authority within a period of one year from the date of approval of the Resolution Plan.

31. If any application(s) relating to preferential/fraudulent transactions under Sections 43 and 66 of the Code is pending before the Tribunal, the Financial Creditors, as mentioned in the Resolution Plan, shall have exclusive right over such recoveries through those proceedings.
32. All the equity shares and preference shares of the Corporate Debtor would stand extinguished by way of a reduction in the capital of the Company without any payment to the shareholders holding such shares without the requirement of writing the words 'and reduced'. Such reduction of share capital shall not require any further approval, act, or action as required under the Companies Act, 2013 including Section 66 of the Companies Act, 2013 and such cancellation shall not require the consent of any of the creditors or shareholders of the Corporate Debtor.
33. The Monitoring Committee as proposed in Section XIV (b) of the Resolution Plan shall be constituted to supervise and implement the Resolution Plan.
34. Other reliefs and concessions not covered in the aforesaid paragraphs including exemption from levy of stamp duty, fees, and registration charges that may be applicable in relation to this Resolution Plan and its implementation are not granted.
35. The moratorium declared under Section 14 of the Code shall cease to have effect from this date.

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36. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with a copy of this order for information.
37. The Applicant shall forthwith send a certified copy of this order to the CoC and the Resolution Applicant respectively for necessary compliance.

**Sd/-**

**ANIL RAJ CHELLAN  
MEMBER (TECHNICAL)**

//Chandrika, LRA//

**Sd/-**

**KULDIP KUMAR KAREER  
MEMBER (JUDICIAL)**