THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH
(through web-based vide conferencing platform)

IA No.159 of 2021
In
CP(IB) No.223/Chd/HRY/2018
(Admitted)
Under Section 30 (6) of the Insolvency and Bankruptcy Code, 2016

<u>In the matter of</u>:-
Amit Kansal …Operational Creditor

Versus

M/s R P Basmati Rice Ltd. …Corporate Debtor

<u>And in the matter of</u>:-

Mr. Ajit Kumar, Resolution Professional
(IBBI/IPA-003/IP-N00062/2017-18/10548)
M/s R P Basmati Rice Ltd.,
R/o 1-A, Sanskriti Apartment, Sector 56, GH-22, Gurugram
…Applicant/Resolution Professional

Order delivered on 22.04.2022

Coram: HON'BLE SHRI HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE SHRI SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

<u>Present through Video Conferencing</u> :-

For the Applicant	:-	Mr. Rakshit Gupta, Advocate
For the Resolution Applicant	:-	Mr. Arun Bansal, Advocate Mr. Anubhav Bansal, Advocate

<u>PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)</u>

<u>ORDER</u>

<u>IA No.159/2021</u>

The present application has been filed by the Resolution Professional of M/s R P Basmati Rice Limited (for short the '**corporate debtor**') under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (for short the '**Code**') read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency

Resolution Process for Corporate Persons) Regulations, 2016, (for short '**CIRP Regulations**') seeking approval of the Resolution Plan as approved in the meeting of the committee of creditors.

2. Brief facts necessary for adjudication of the present application are that Amit Kansal (for short the '**operational creditor**') had filed a petition bearing CP(IB) No.223/Chd/HRY/2018 under Section 9 of the Code before this Tribunal for initiation of Corporation Insolvency Resolution Process (for short the '**CIRP**') against the corporate debtor. This Tribunal, vide its judgment dated 16.11.2018 (Annexure A-1) admitted the petition filed by the operational creditor and vide order dated 29.11.2018 (Annexure A-1) imposed moratorium and appointed Mr. Harvinder Singh, as Interim Resolution Professional ('**IRP**'). After initiation of the CIRP, the IRP issued public announcement in prescribed Form-A dated 01.12.2018 (Annexure A-2) as contemplated under Section 15 of the Code read with Regulation 6 of Chapter III of the CIRP Regulations and invited claims from all the creditors. The aforesaid announcement was published in "Financial Express" and "Jansatta" dated 01.12.2018 and also on the website of the Insolvency and Bankruptcy Board of India and subsequent to the aforesaid publication, the IRP received the claims from the financial creditors as mentioned hereinbelow:-

S.No	Name of Financial Creditor	Amount Claimed by Creditor (Rs. Cr.)	Amount Admitted by RP	Voting Percent
1.	State Bank of India	228.29	228.29	69.20%
2.	Oriental Bank of Commerce	101.52	101.52	30.80%
	Total	329.21	329.21	100%

It is stated that in view of the receipt of the aforementioned claims, as per Section 21 of the Code, committee of creditors was constituted comprising of the financial creditors viz. State Bank of India and Oriental Bank of Commerce. It is further stated that statement of claims was verified and determined by the IRP on receipt of the claims in pursuance of Rule 13 of CIRP Regulations and thereafter, in pursuance of Regulation 17 of the CIRP Regulations, a report (Annexure A-3) certifying the constitution of committee of creditors and in pursuance of Regulation 13(2) (d), a list of creditors was filed before this Tribunal on 19.12.2018.

3. The IRP convened the 1st Meeting of the committee of creditors on 27.12.2018, wherein the first progress report by the IRP indicating the progress made so far in the CIRP was circulated and discussed. In the said meeting of the committee of creditors, it was, *inter alia*, deferred by the members of the committee of creditors to continue with the IRP as Resolution Professional, and thus, one of the financial creditors viz. State Bank of India moved an application under Section 22(3) (b) of the Code for the replacement of the IRP and consequently, this Tribunal vide order dated 29.01.2019 (Annexure A-4) allowed the application and appointed Mr. Ajit Kumar, as the Resolution Professional.

4. In the 2nd Meeting of the committee of creditors held on 20.02.2019, the Resolution Professional apprised the progress made so far in the CIRP to the members of the committee of creditors and on the basis of information available, an Information Memorandum (for short '**IM**') was prepared by the Resolution Professional and was subsequently shared with the members of the committee of creditors. However, it is stated that the complete data of the corporate debtor was not made available to the Resolution Professional by the suspended board of

directors and therefore, the IM was prepared on the basis of the limited data available and every effort was put forth to gather information from various sources. Subsequently, the applicant/Resolution Professional ratified the appointment of valuers for conducting the valuation of the assets of the corporate debtor in pursuance of Regulation 27 of the CIRP Regulations and transactional auditor for carrying out the audit under Section 43, 45, 49, 50 & 66 of the Code, which was appointed by the IRP. Thereafter, in pursuance to the approval in the 2nd meeting of the committee of creditors, the Resolution Professional published invitation for Expression of Interest (for short the '**EOI'**) (Annexure A-6) in the prescribed in Form-G in English and regional language in newspapers namely, "Business Standard" (Delhi and Chandigarh Edition) in pursuance of Regulation 36A(1) of the CIRP Regulations on 22.02.2019, wherein the last date for receipt of the EOI was kept as 09.03.2019. Further, in pursuance of Section 25(2)(h) of the Code and the Regulations thereto, the members of the committee of creditors resolved to fix the minimum eligibility criteria for the prospective applicants.

5. In the 3rd Meeting of the committee of creditors held on 08.03.2019, the Resolution Professional apprised the members of the committee of creditors that no expressions of interest were received, therefore, the members of the committee of creditors decided to extend the last date of invitation of expression from 09.03.2019 to 25.03.2019. Further, considering the non-cooperation from the suspended board of directors of the corporate debtor, the Resolution Professional moved an application bearing CA No.323 of 2019 under Section 19 of the Code, against the directors of the corporate debtor seeking issuance of necessary directions to the respondents therein to provide the requisite documents and to cooperate with the

Resolution Professional. Thereafter, the Resolution Professional also moved an application bearing CA No.321 of 2019, under Section 60(5) read with Section 68 of the Code against the suspended board of directors/respondents for willful concealment, mutilation and falsification and destruction of books of accounts and for fraudulently selling of property of the corporate debtor.

6. In the 4th Meeting of the committee of creditors, held on 18.04.2019, the Resolution Professional apprised the members of the committee of creditors about the status of work and action taken by him during the corporate insolvency resolution process. Thereafter, in the 5th meeting of the committee of creditors held on 17.05.2019, the Resolution Professional placed before the members of the committee of creditors, the EOI received from the CFM Assets Reconstructions Private Limited. However, the EOI was received after the expiry of the last date of submission, therefore, the committee of creditors decided to extend the period of the Form G for 15 days.

7. Subsequently, in the 6th meeting of the committee of creditors held on 17.08.2019, the Resolution Professional informed the committee of Creditors that he has received resolution plan dated 12.08.2019 with a co-applicant Mr. Arvind Kumar and CFM Asset Reconstruction Private Limited, as the main applicant. It is mentioned that the Expression of Interest was submitted by the CFM Asset Reconstruction Private Limited only, but the resolution plan was submitted by the co-applicant Mr. Arvind Kumar. Thereafter, the Resolution Professional apprised the committee of creditors that the Resolution Plan did not meet the Minimum Criteria, therefore, feasibility and viability of the Resolution Plan was not discussed in the said meeting. In the meantime, the committee of creditors directed the

Resolution Professional to seek a legal opinion in the said matter. In pursuance to the aforesaid direction, the Resolution Professional sought a legal opinion and subsequently, the Resolution Professional sought the modified Resolution Plan from the resolution applicant to be submitted within the last date i.e. 26.08.2019 as the CIRP period was going to expire. Therefore, the Resolution Professional moved an application being CA No. 684 of 2019 for exclusion of 60 days before this Tribunal for further consideration and deliberation of the resolution plan. However, vide order dated 18.11.2019 (Annexure A-8) passed by this Tribunal, this Tribunal directed to conduct a meeting of the committee of creditors for an appropriate resolution for liquidation of the corporate debtor in the absence of no valid resolution plan.

8. In the 7th Meeting of the committee of creditors held on 30.11.2019, subsequent to the issuance of the notice dated 27.11.2019, wherein the Resolution Professional had placed the agenda with respect to liquidation before the members of the committee of creditors, thereafter, the resolution pertaining to the liquidation of the corporate debtor was passed by the members of the committee of creditors and the Resolution Professional was authorized to file the application for the liquidation of the corporate debtor before this Adjudicating Authority. Furthermore, it was resolved to liquidate the corporate debtor since one EOI was received from prospective resolution applicant, but the resolution plan submitted by the prospective Resolution Applicant and after scrutinizing the plan, the Resolution Professional ascertained that the Expression of Interest was submitted by CFM Asset Reconstruction Private Limited only, but the resolution plan was submitted by the co-applicant Mr. Arvind Kumar. Thereafter, the Resolution Professional apprised

the committee of creditors that the Resolution plan does not meet the Minimum Criteria, therefore, feasibility and viability of the Resolution Plan was not discussed in the said meeting.

9. Thereafter, in pursuance to the approval of the resolution for liquidation of the corporate debtor by the committee of creditors in the 7th meeting of the Committee of creditors, the Resolution Professional filed an application under Section 33 and Section 34 of Code, being IA No. 1175 of 2019 before this Tribunal. In the meantime, the Unsuccessful Resolution Applicant i.e. Mr. Arvind Kumar also filed an application under section 60(5) of the Code, 2016, being IA No. 24 of 2020, for reconsideration of the Resolution Plan. Accordingly, this Tribunal after hearing the both applications at length, allowed the application of the Unsuccessful Resolution Applicant and vide order dated 09.12.2020 (Annexure A-10) directed the committee of creditors and the Resolution Professional to reconsider the resolution plan of the Unsuccessful Resolution Applicant and further dismissed the liquidation application filed by the Resolution Professional.

10. In the 8th Meeting of the committee of creditors held on 29.12.2020, Resolution Professional informed the members of the committee of creditors that Mr. Arvind Kumar and Mr. Bhupendra Singh have jointly submitted the revised resolution Plan on 14.12.2020 and the Addendum to the Resolution Plan on 22.12.2020 and after the Resolution Professional directed the Resolution Applicants for recommended changes, the revised Addendum was submitted on 23.12.2020. Further, the Applicant placed the Resolution Plan and the Addendum to the Resolution Plan before the members of the committee of creditors and the same was discussed. The Resolution Professional also apprised the members of the

committee of creditors qua the shortcomings in the Resolution Plan and the CoC consented for those changes and requested the representatives of the resolution applicants to make the desired changes in the revised resolution plan.

11. In the 9th Meeting of the committee of creditors, held on 05.01.2021, the Resolution Professional placed the revised Resolution Plan before the members of the committee of creditors for their perusal and for their active consideration. The members of the committee of creditors after perusing the resolution plan, further advised the Resolution Applicants to revise the Resolution Plan so that maximization of value of the assets of the corporate debtor can be achieved which will be in the best interest of the all the stakeholders, as a result, the said plan can be considered by the committee of creditors. In view of the aforesaid, the committee of creditors directed the Resolution Applicants to submit the revised Resolution plan by 06.01.2021. The Resolution Professional instructed the Resolution Applicants to expedite the payment of 10% upfront Earnest Money Deposit payment immediately. The Resolution Professional further informed the members of the committee of creditors that in the said Resolution Plan, *inter alia*, the maximization of value of the assets of the corporate debtor and the interest of all the stakeholders has been taken into consideration.

12. It is stated that as per the Request for Resolution Plan (for short '**RFRP'**) upon approval of the resolution plan by the committee of creditors, the Resolution Applicants ought to submit the Performance Bank Security of Rs.4.563 Crore to the Resolution Professional within 15 days. Therefore, the Resolution Professional had sent an email dated 13.02.2021 (Annexure A-14) to the Resolution Applicants to

furnish the performance security deposit within stipulated time as mentioned in RFRP.

13. It is stated that the Resolution plan is as per the requirement of Regulation 39(1) and the Resolution Plan provide for payment of each stakeholder, as under:-

S.No.	Particulars	Amount Provided in the Resolution plan (Rs. In Crores)	Voting in favour of the Resolution Plan
1.	CIRP Cost	1.43	
2.	Amount to be provided to the Dissenting Secured creditor. Punjab National Bank	1.71	30.80%
3.	Amount provided in Resolution Plan for Secured Financial Creditors- State Bank of India	3.79	69.20%
4.	Operational Creditors	0.01	Nil
5.	Statutory Dues	0.08	Nil
6.	Provident Fund Dues	NA	
7.	Workmen and Employees	NA	
Total		7.02	

It is mentioned that one of the secured financial creditors i.e. Oriental Bank of Commerce (presently Punjab National Bank, after the merger of banks) had dissented the resolution plan therefore, as per Section 30(2)(b)(ii) of the Code, the amount to be paid to the creditor who do not vote in favour of the resolution plan shall be paid in accordance with the order of priority as per sub section (1) of Section 53 of the code i.e. in the event of a liquidation.

14. It is further stated that Resolution Professional has also submitted compliance certificate in Form H (Annexure A-16) certifying that the resolution plan as approved by the members of the committee of creditors, complies with all the provisions of the Code and CIRP Regulations. Thus, it submitted that in accordance

with the mandatory provisions of the Code and CIRP Regulations, the resolution plan has been duly approved by the committee of creditors by a majority of 69.20% and thus, required to be approved.

It is further submitted that Resolution Plan would not be prejudicial to interest of any the stakeholders of the corporate debtor and the resolution plan submitted by the Resolution Professional is in absolute consonance with the object and intention of the Code. The Resolution Professional has also affirmed that the Resolution Plan is in compliance with Section 30(2) of the Code, as it provides for both 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 and for the payment of debts of operational creditors in the manner laid under section 53 of the Code.

Thus, approval of the resolution plan as per Section 31(1) of the Code, has been prayed for.

15. The Resolution Applicant has submitted undertaking and affidavit stating that the Resolution Applicant is eligible under Section 29A of the Code. Copy of undertaking and affidavit submitted by the Resolution Applicant under Section 29A of the Code and Regulation 39(1) of CIRP Regulations, 2016, are also annexed with the application as Annexure A-15.

16. The list of financial creditors of the corporate debtor, being members of the Committee of Creditors and distribution of voting share among them, as given in Para 5 of Form H, along with details of claims summary is as under :-

S.No.	Name of the Creditor	Voting Share %	Voting for Resolution Plan (Voted For/Dissented/ Abstained)
1.	State Bank of India (Secured) Amount of Claim: (Rs.229.29 Crores)	69.20	Assented
2.	Punjab National Bank (Secured) Amount of Claim: (Rs.101.52 Crores)	30.80	Dissented

17. It is submitted that Section 30(6) of the Code mandates the applicant as a Resolution Professional to submit the resolution plan as approved by the Committee of Creditors to the Adjudicating Authority for approval under Section 31(1) of the Code. Accordingly, as the resolution plan submitted by the resolution applicants has been duly approved by the members of the committee of creditors by a voting share of 69.20% which is more than the requisite voting share required i.e. 66%, the Resolution Professional has thus, filed the present for approval of the resolution plan before this Adjudicating Authority.

18. It is also submitted that Committee of Creditors while accepting the bid and as per Form H (Annexure A-16) had taken care of all the provisions and regulations of the Code. Thus, it is prayed that the instant application for approval of resolution plan, as approved by the Committee of Creditors, in the matter of corporate debtor be approved.

19. We have heard Mr. Rakshit Gupta, learned counsel for the applicant/Resolution Professional. We have also gone through the record before us and have carefully considered the submissions made by learned counsel for the Resolution Professional.

20. The CIRP proceedings under Section 9 of the Code, against the corporate debtor were initiated vide order dated 16.11.2018, moratorium was declared on 29.11.2018 and Committee of Creditors was constituted on 19.12.2018.

21. The Resolution Plan includes a statement under Regulation 38(1A) of the CIRP Regulations as to how it has dealt with interests of all stakeholders in compliance with the Code and Regulations made thereunder. The amounts provided for the stakeholders under the Resolution Plan, as given in Para 7 of Form H, is are as under:-

(Amount in Rs.)

Sr. No.	Category of Stakeholder	Amount Claimed (in Rs.)	Amount Admitted (in Rs.)	Amount Provided under the Plan#	Amount provided to the amount claimed (%)
1.	Dissenting Secured Financial Creditors (Punjab National Bank) (Page No.149 of the application of the Resolution Plan)	101,52,00,000	101,52,00,000	1,71,45,829	1.69%
2.	Other Secured Financial Creditors (State Bank of India) (Page No.134-136 of the application of the Resolution Plan)	228,29,00,000	228,29,00,000	3,78,54,171	1.66%
3.	Dissenting Unsecured	N.A.	N.A.	N.A.	N.A.

	Financial Creditors				
4.	Other Unsecured Financial Creditors	N.A.	N.A.	N.A.	N.A.
5.	Operational Creditors (Page No.137-138 of the application of the Resolution Plan)	5,55,47,444	2,67,18,122	1,00,000	0.37%
	Statutory Dues (Page No.138 of the application of the Resolution Plan)	16,37,00,000	16,37,00,000	8,00,000	0.49%
	Workmen	N.A.	N.A.	N.A.	N.A.
	Employees	N.A.	N.A.	N.A.	N.A.
	……	N.A.	N.A.	N.A.	N.A.
6.	Other debt and dues	N.A.	N.A.	N.A.	N.A.
Total		351,73,47,444	348,85,18,122	5,59,00,000	1.60%

22. The compliance of resolution plan has been given in Para 9 of the Form H, which is as under:-

Section of the Code/ Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes/No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	Page No.221-222 & Page No.173-176 of the application of Resolution Plan	Yes, RP has done Due Diligence and the Net Worth on Page No,98 & 99 of the Resolution Plan is higher than the requirement of Rs.10 Crore

			as per Minimum Eligibility Criteria. RA also met other requirements of Minimum Eligibility Criteria. Also RA has provided the Affidavit of eligibility u/s 25(2)(h) on Page No.50-53 of Resolution Plan.
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Page No.169-172 of the application of Resolution Plan	Yes, Applicant is eligible and has submitted the Affidavit on Page 46-51 of the Resolution Plan.
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Page No.169-172 of the application of Resolution Plan	Yes
Section 30(2)	Whether the Resolution Plan-		
	(a) provides for the payment of insolvency resolution process	(a) Chapter 3 Page No.133-134 of the application of Resolution Plan	(a) Yes
	(b) provides for the payment of debts of operational creditors?	(b) Chapter 3 Page No.137-138 of the application of Resolution Plan	(b) Yes
	(c) provides for the management of the affairs of the corporate debtor?	(c) Chapter 3 Page No.153 of the application of Resolution Plan	(c) Yes
	(d) provides for the Implementation and	(d) Chapter 3	(d) Yes

	supervision of the Resolution plan? (e) Contravene any of the provisions of the law for the time being in force?	Page No.153-155 of the application of Resolution Plan (e) -	 (e) No
Section 30(4)	Whether the Resolution Plan		
	(a) is feasible and viable, according to the CoC?		(a) Yes
	(b) has been approved by the CoC with 66% voting share?		(b) Yes, by 69.20% Page No.225-227 of the application of resolution plan
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Page No.153-155 of the application of Resolution Plan	Yes
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under Sections 43, 50 or 66 before the one hundred and fifteenth day of insolvency commencement date, under intimation to the Board?	IA No.685 of 2019. The matter is sub-judiced and is pending before Hon'ble NCLT Chandigarh	Yes
Regulation 38(1)	Whether the Resolution Plan identifies specific sources of funds that will be used to pay the – (a) Insolvency resolution costs? (b) liquidation value due to operational creditors?	a, b, c) Page No.151-153 of the application of Resolution Plan	(a) Yes (b) Yes (c) Yes

	(c) liquidation value due to dissenting financial creditors?		
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Page No.151-153 of the application of Resolution Plan	Yes
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of business of the corporate debtor during its term? (c) adequate means for supervising its implementation?	(a) Chapter-3 Page No.136 of application of Resolution Plan (b) Chapter-3 Page No.153 of application of Resolution Plan (c) Chapter-3 Page No.153, of application of Resolution Plan	(a) Yes (b) Yes (c) Yes
38(3)	Whether the resolution plan demonstrates that- (a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) It has provisions for approvals required and the timeline for the same?	(a) Chapter 3 Page No.128-129 of Application of Resolution Plan (b) Chapter 3 Page No.152-153 of Application of Resolution Plan (c) Chapter 3 Page No.153-154 of Application of Resolution Plan (d) Chapter 3 Page No.136-137 of Application of Resolution Plan	(a) Yes (b) Yes (c) Yes (d) Yes

	(e) the resolution applicant has the capability to implement the resolution plan?	(e) Chapter 3 Page No.221-223 of Application of Resolution Plan	(e) Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	IA No.685 of 2019. The matter is sub-judiced and is pending before Hon'ble NCLT, Chandigarh.	Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	As per RFRP, Resolution Applicant shall deposit 65% of the NPV of the total plan value within 15 days of the approval of Resolution Plan by the COC (Page No.121 of the application of Resolution Plan	

23. The approval of the Resolution Plan has been sought under Section 31 of the Code, which reads as under:-

31. Approval of resolution plan. -

(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, [including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan.

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

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1), -

(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and

(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

[(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law

for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later:
Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.]

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

a. The Resolution Plan is approved by the Committee of Creditors under Section 30(4) of the Code;

b. The Resolution Plan so approved meets the requirement as referred to in Section 30(2) of the Code;

c. The Resolution Plan has provisions for its effective implementation.

25. It is submitted by learned counsel for the Resolution Professional that the resolution plan has been approved by a vote of 69.20 % voting share of the financial creditors, therefore, the conditions provided for by Section 30(4) of the Code are satisfied.

26. The provisions of Section 30(2) of the Code are as under:-

30. Submission of resolution plan

xxx xxx xxx

"(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan -
(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the [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.
Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.
Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-
(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;
(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or
(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]
(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;
(d) The implementation and supervision of the resolution plan;
(e) does not contravene any of the provisions of the law for the time being in force
(f) confirms to such other requirements as may be specified by the Board.
[Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013(18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]"

27. The compliance of Section 30(2) of the Code is given in Para 9 of Form H (supra), the same is being examined further as under:-

i.) Section 30(2)(a): The resolution plan at Part B (Page 10 of the Resolution Plan) states that insolvency resolution process costs which has been estimated at an amount of Rs.1.43 Crores, which includes payment to the IRP and/or Resolution Professional during the CIRP period to the extent duly ratified or approved by the committee of creditors shall be paid in priority to all other debts by R.P. Basmati Rice Limited after approval of the resolution plan this adjudicating authority. It is further stated that any shortfall of CIRP cost over and above Rs.1.43 Crores shall be borne by the Resolution Applicant separately and amount if any, remain left out of Rs.1.43 Crores for CIRP cost, shall be paid by the resolution applicant separately. The amount of unpaid CIRP cost shall be paid by resolution applicant within 21 days from approval of the resolution plan by this adjudicating authority.

ii.) Section 30(2)(b): The resolution plan at Part D (Page 14 of the resolution plan) states that the amount due to the operational creditors of the corporate debtor as per information memorandum (other than government and statutory dues), against the total claim received to the tune of Rs.5,55,47,444/- an amount of Rs.2,67,18,122/- which include any additional claim on whatsoever account and whatsoever nature would be settled by the resolution applicant. It is stated that the information memorandum does not specify the liquidation value due to the operational creditor as required under Section 30(2)(b) of the Code read with Regulation 38(1) of the CIRP Regulations, 2016. Further, it is mentioned that assuming the liquidation value due to the corporate creditor as NIL as charge of the secured financial creditors does not satisfy in full, resolution applicant proposes to pay 0.05% of total amount admitted amount to the operational creditors i.e. Rs.0.01% Crores against full and final settlements of their claims and the amount of Rs.0.01 Crores shall be paid within 21 days from the date of approval of resolution plan by this adjudicating authority. Still further, it is mentioned in the resolution plan that liquidation value due to the financial creditors is not known to the resolution applicant. Hence, in case, any of the financial creditor who has right to exercise its vote, do not vote in favour of the resolution plan, committee of creditors shall take care that such financial creditor shall get atleast liquidator value due to them in priority of other financial creditors, who have voted in favour of the resolution plan. In no case, the resolution applicant shall modify or prepone or bring any additional fund for the payment as envisage under the resolution plan towards any creditors and liquidation value due to the dissenting financial creditors, if any, shall be paid from the upfront amount deposited/payable as envisaged under the resolution plan.

iii.) Section 30(2)(c): In Part L of the resolution plan (page 30 of the resolution plan), it is stated that the management and control of the corporate debtor shall be handed over to the persons nominated by the Board of Directors of resolution applicant for proper running and operational of the business of the corporate debtor subject to approval of committee of creditors and this adjudicating authority. Further, it is mentioned that the resolution applicant shall appoint requisite number of workers/employees/KMPs to run the business of the corporate debtor as well as restarting of the commercial operations of the plant. Still further, it is mentioned that the resolution applicant shall do necessary compliance with MCA and other concerned and applicable authorities as per applicable laws.

iv.) Section 30(2)(d): In Part M of the Resolution Plan (Page 30 of the resolution plan), it is stated that subject to the approval of committee of creditors and adjudicating authority, a monitoring committee shall be established consisting of 1) Existing Resolution Professional (Chairperson); 2) Representative of Financial Creditors; 3) Representatives/Person nominated by Resolution Applicant. It is mentioned that the committee formed under this clause shall supervise the implementation and execution of resolution plan and the resolution applicant shall submit quarterly progress report in the format suggested by the committee of creditors to appraise them about the supervision of the implementation of the resolution plan. It is further mentioned that the resolution applicant shall pay such amount of fees to the resolution professional on monthly basis as decided by the members of the monitoring committee, but not more than Rs.50,000/-.

v.) Section 30(2) (e): In Chapter VII, Other Clauses of Resolution Plan, (Page No.163 of the resolution plan) it is stated that the resolution plan does not contravene any of the provisions of the law for the time being in force.

28. We are now examining the compliance of the proviso to Section 31(1) of the Code that the resolution plan has provisions for its effective implementation. The resolution plan in Part M of the Resolution Plan (Page 153 of the resolution plan) states that the supervision of the resolution plan as finally approved by the Adjudicating Authority is proposed to be done by the Monitoring Committee which shall comprise of the Existing Resolution Professional (Chairperson), representative of financial creditors, and representative/person nominated by the resolution

applicant. The term of the plan and its implementation schedule for payment to the financial creditor, operational creditors and statutory dues/liabilities and other persons as envisaged in this resolution plan, shall commence from effective date and ends in 30 days. It is stated in the resolution plan that after approval of committee of creditors and subsequently, by this Tribunal, pursuant to General Circular No.IBC/01/2017 dated 25.10.2017 issued by the Ministry of Corporate Affairs and Section 31 of the Code read with Regulation 39(6), if resolution plan is approved by this adjudicating authority, there is no requirement for obtaining approval of shareholders/members of the corporate debtor during the process and it shall be binding on all the affected parties who shall be bound to undertake the actions set out in the plan. It is further stated that the value of the corporate debtor proposed to be acquired, as assessed by the resolution applicants is less than the proposed amount under resolution plan. As per Section 53 of the Code, upon distribution of assets, the payments shall be made 1) CIRP Cost, 2) equally among, workmen's dues for the period of 24 months preceding the liquidation commencement date; and debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in Section 52. It is still further stated that in the event of any conflict, repugnancy or inconsistency this resolution plan shall prevail for all purpose and to all intents and till the amount due to the financial creditors as per this Resolution Plan is paid, they shall have the right to seek copies of audited annual report prepared in accordance to the applicable standards of accounting. The balance sheet of the corporate debtor as on appointed date shall stand restructured in terms of the Scheme as enumerated under the Resolution plan.

29. We have discussed above that the requirements under Section 31(1) of the Code are satisfied in the present case. In para No.4 of Form H (page 228 of the Application), the Resolution Professional has certified that the resolution plan complies with all the provisions of the Code and Regulations and does not contravene any of the provisions of the law for the time being in force. The Resolution Professional has also certified that the resolution applicants Mr. Arvind Kumar and Mr. Bhupendra Singh (joint resolution applicants) have submitted affidavits dated 12.12.2020 (page 169-172 of the Application) pursuant to Section 30(1) of the Code confirming their eligibility under Section 29A of the Code to submit the resolution plan and the contents of the said affidavit are in order. The Resolution Professional has submitted that the resolution plan has been approved by the Committee of Creditors with 69.20% voting share in accordance with the provisions of the Code and CIRP Regulations made thereunder and after considering the feasibility and viability and other requirements specified by the CIRP Regulations.

30. We shall now discuss the requirements of Regulation 39(4) of the Regulations. According to the learned counsel for the Resolution Professional, the compliance of Section 39(4) has also taken care of as the performance security as provided in sub-regulation 4(a) of Regulation 36(b) has been complied with inasmuch as the performance security of Rs.4.563 Crores has been submitted by the resolution applicant and the same was placed on record vide IA No.131 of 2021, which was allowed vide order dated 14.07.2021 passed by this Tribunal. In an affidavit of applicant/Resolution Professional filed in IA No.131 of 2021, it is mentioned that in a meeting of the committee of creditors, the Resolution Professional submitted the Request for Resolution Plan pursuant to the approval of

the resolution plan by the committee of creditors stating that the resolution applicants ought to submit the performance bank security of Rs.4.563 Crores to the Resolution Professional within 15 days from the date of approval dated 12.02.2021 and therefore, the applicant/Resolution Professional had sent an e-mail dated 13.02.2021 to the resolution applicants to furnish the performance security deposit within stipulated time as mentioned in RFRP. Thus, accordingly, the Resolution Applicants have duly submitted the performance security in compliance of the Regulation 36B(4A) of the CIRP Regulation, 2016, to the bank account as directed by the members committee of creditors.

31. It has been observed that in the Resolution Plan which has been submitted by Resolution Applicant there is change in management and control of the corporate debtor and such change satisfies the conditions stipulated under Section 32A of the Code, therefore the benefit of immunity under Section 32A of the Code will be applicable to the Resolution Applicant.

32. In this regard, it relevant to refer to the judgment of the Hon'ble Supreme Court in the matter of ***Manish Kumar v. Union of India & Anr***. in ***Writ Petition (C) No. 26 of 2020***, wherein the Petitioner challenged the constitutional validity of Section 32A of the Code. The Hon'ble Supreme Court held that there is no case made out to seek invalidation of Section 32A.

33. Since in the Resolution Plan which has been submitted by Resolution Applicant there is change in management and control of the corporate debtor and such change satisfies the conditions stipulated under Section 32A of the Code,

therefore the benefit of immunity under Section 32A of the Code will be applicable to the Resolution Applicant.

34. It is directed that any relief sought for in the resolution plan, where the contract/agreement/understanding/proceedings/actions/notice etc. is not specifically identified or is for future and contingent liability, is at this moment rejected.

35. It is further directed that the resolution applicant, on taking control of the corporate debtor, shall ensure compliance under all applicable law for the time being in force. The resolution applicant shall obtain the necessary approval required under any law for the time being in force within one year from the date of this order or within such period as provided for in such law, whichever is later.

36. We shall clarify here that resolution applicant shall take over the corporate debtor with all its assets and liabilities as per terms of the approved resolution plan. If any relief concerning any identified liability of the corporate debtor is required, then that needs to be specifically mentioned and sought for in the resolution plan. This bench cannot allow any general power to any resolution applicant absolving him of liability of the corporate debtor without knowing about the liability against which such exemption is sought. In other words, reliefs/exemptions from only existing liabilities which are specifically identified can be sought and allowed in the resolution plan.

37. It is seen that the Resolution Plan seeks several dispensations, concessions and waivers. Approval of Resolution Plan does not mean automatic waivers. The Resolution Applicant on approval of the Plan may approach those competent

authorities/courts/legal forms/office(s) Government or Semi-Government/State or Central Government for appropriate relief(s) sought in the plan.

38. The resolution plan provides that in case of reversal of preferential transactions under Section 43 of the Code, and/or undervalued transactions under Section 45 of the Code and/or extortionate credit transaction under Section 50 of the Code and/or any fraudulent and wrongful trading under Section 66 of the Code in respect of transaction carried out by existing corporate debtor effectuated by order of this Tribunal in future only the secured financial creditors shall have the right to the benefits of such reversal transactions or order even if the same is after the effective date.

39. In view of the above discussions, the resolution plan submitted by the Resolution Applicants- Mr. Arvind Kumar and Mr. Bhupinder Singh, as approved by the Committee of Creditors under Section 30(6) of the Code read with regulation 39 of the CIRP Regulations, 2016, is hereby approved subject to comments made above regarding performance security. The resolution plan so approved shall be binding on the corporate debtor and its employees, members, creditors including the Central Government, State Government or 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 owned, guarantors and other stakeholders involved in the resolution plan.

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

a. The moratorium order passed by the Adjudicating Authority under Section 14 of the Code on 29.11.2018 shall cease to have effect; and

b. The Resolution Professional shall forward all records relating to the conduct of the CIRP and the resolution plan to the Board to be recorded on its database.

Thus, IA No.159 of 2021 is disposed of.

Sd/-	Sd/-
(Subrata Kumar Dash)	(Harnam Singh Thakur)
Member (Technical)	Member (Judicial)

April 22nd, 2022
MK