THE NATIONAL COMPANY LAW TRIBUNAL

COURT VI, NEW DELHI

I.A. 5070/2020

IN

Company Petition No. (IB) – 1551/(ND) /2019

Submission of Resolution Plan under Section 30(6) for approval under Section 31 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

Mr. Vijay Kumar Gupta

...Applicant/Resolution Professional

AND

In the matter of:

M/s Volga Estates Private Limited

....Financial Creditor

Vs.

M/s Wall Rock Infrahome Private Limited & Ors.

...Corporate Debtor

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Order delivered on: 18.05.2022

<u>Coram:</u>

<u>SHRI. P.S.N. PRASAD, Hon'ble Member (Judicial)</u>

<u>SHRI. RAHUL BHATNAGAR, Hon'ble Member (Technical)</u>

For the Resolution Applicant: Adv. Anurag Bhatt

For the Applicant: Mr Rakesh Kumar

<u>ORDER</u>

<u>PER-RAHUL BHATNAGAR, MEMBER(TECHNICAL)</u>

1. This is an application filed by the Resolution Professional under Section 30 (6) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code") seeking approval of the Resolution Plan under Section 31 of the Code read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)

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Regulations, 2016 in respect of the Corporate Debtor M/s Wall Rock Infrahome Private Limited.

2. The facts in brief necessary for disposal of the present application are that M/s Volga Estates Private Limited, one of the Financial Creditors, had preferred an application under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process against M/s Wall Rock Infrahome Private Limited ("Corporate Debtor"). The Company Petition (IB) 1551/(ND)/ 2019 was admitted on 17.12.2019 imposing moratorium under Section 14 of the Code and Mr. Vijay Kumar Gupta was appointed as an Interim Resolution Professional in respect of the Corporate Debtor M/s Wall Rock Infrahome Private Limited.

3. Thereafter, in terms of Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 ("CIRP Regulations"), the Interim Resolution Professional made a public announcement in Form-A in the newspapers, "Financial Express", in English

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and "Jansatta" in Hindi, on 10.01.2020 *inter alia* calling for the submission of claims of the creditors. Further, the IRP convened the first meeting of the CoC on 17.02.2020, wherein the CoC resolved to appoint the IRP, Mr. Vijay Kumar Gupta, as the Resolution Professional ("RP"), of the Corporate Debtor.

4. The Resolution Professional also took steps for appointment of valuers namely, Mr. Deepak Bansal & Mr. Pradeep Kumar Garg, for Land & Building and Mr. Abhay Kumar & Mr. Radhey Shyam Yadav, for Plant & Machinery, under Regulation 27 of the Regulations, to determine the Fair value and Liquidation value of the corporate debtor in accordance with Regulation 35. Besides, KVG Insolvency Advisors was appointed as Insolvency Professional entity to provide back office support. The CoC approved the same in its second meeting held on 29.02.2020.

5. The Resolution Professional published an invitation for expression of interest in requisite Form G on 01.03.2020 in Financial Express (English) and Jansatta (Hindi) editions of

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newspapers with 16.03.2020 being the last date for submission of EOI.

6. The third meeting of the Committee of Creditors was convened on 14.07.2020 for approval of the re-issuance of Form G for invitation of EOI. The same was approved by the CoC with 86.56% voting share. The Applicant further apprised the Members of CoC that as per Regulation 36A of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Applicant had received two Expression of Interests along with Demand Drafts from Prospective Resolution Applicants (PRAs). However, it was further apprised to the Members of the CoC that the Applicant could not take further steps due to unprecedented situation of Lockdown announced by the Central Government in the wake of Covid-19.

7. That in the fourth meeting of the CoC held on 21st July 2020, the agenda regarding approval of revised tentative timelines in connection of re-issuance of Form-G, Provisional List of Resolution Applicant, Objections to provisional list, Issue of

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Information Memorandum, Evolution Matrix & Request for Resolution Plan (RFRP), Final List of Resolution Applicants and receipt of Resolution Plan was put forth before the CoC. The same was approved by the CoC by 94.74% voting share. Further, the agenda for extension of the CIRP process by 90 days beyond 180 days from the date of admission of the application as provided in Section 12 of the Insolvency and Bankruptcy Code, 2016, was also put up before the CoC, which was also approved with 94.74% voting share.

8. It is observed that the Resolution Professional re-issued an invitation for expression of interest in requisite Form G in terms of Regulation 36A(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, on 25.07.2020 in Financial Express (English) and Jansatta (Hindi) editions of newspapers with 09.08.2020 being the last date for submission of EOI.

9. That in the fifth CoC Meeting held on 20th August 2020, it was apprised by the Applicant to the Members of the CoC that the

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Applicant had reissued an invitation for EOI on 25.07.2020 inviting EOI on or before 09.08.2020 from the Prospective Resolution Applicants in the CIRP process of the Corporate Debtor. Further, it was also apprised that in response to the said EOI, he had received certain EOI which were under consideration regarding fulfillment of the requirement of the Process Memorandum. It was also apprised that as per the Regulation 36A(10) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016, the Applicant shall also issue a provision list of eligible prospective Resolution Applicants within 10 days of the last date for submission of Expression of Interest to the CoC and to all Prospective Resolution Applicants who submitted the EOI and the same had been issued to them as per the requirement of the Insolvency and Bankruptcy Code, 2016 and regulations made thereunder. Further, the agenda was also put forth before the CoC for approval of Request for Resolution Plan (RFRP) including Evaluation Matrix to be issued to the Prospective Resolution Applicants in terms of Regulation 36B of the Insolvency and Bankruptcy Board of India (Insolvency

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Resolution Process for Corporate Persons) Regulations, 2016. The said agenda was approved by the CoC with 94.74% voting share.

10. That in the sixth CoC Meeting held on 23.09.2020, it was put forth before the Members of the CoC that the last date for submission of Resolution Plan was 23.09.2020 as per the timelines mentioned in the Form G issued on 25.07.2020. It was also apprised that the Applicant had already issued the Final List on 24.08.2020 containing the names of 4 Prospective Resolution Applicants as per the requirement of the Code. Out of the said 4 Prospective Resolution Applicants, the requests were made by the 3 Prospective Resolution Applicants through emails for extension of time for submission of the Resolution Plan by one month beyond 23.09.2020. The said Agenda of extension of timelines for submission of the Resolution Plan was approved by the CoC with 86.72% voting share and the last date for submission of Resolution Plan was extended by 20 days by the CoC which was computed to be 13.10.2020.

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11. The Applicant had filed an application under Section 12(3) of the I&B Code, 2016 bearing C.A. No. 4107/2020 before this Tribunal for seeking extension of 90 days period beyond 180 days in the CIRP process of the Corporate Debtor. The said application was allowed vide order 11.11.2020.

12. That in the seventh CoC Meeting held on 24th October 2020, the Applicant, with the permission of the CoC, admitted the First Resolution Applicant, namely Mr. Iqbal Singh Sodhi (for short **"PRA1")** and Second Resolution Applicant, namely M/s Glaze Packagers Private Limited in consortium with Mrs. Savita Aggarwal through its Authorized Representative Mr. Padam Aggarwal (for short **"PRA2")** for discussion and deliberation on the Resolution Plan. There were certain queries of the CoC Members from PRA1 and PRA2 with respect to the Resolution Plans submitted by them. The same were replied by them. The PRA1 and PRA2 were asked to submit their revised Resolution Plan. The CoC suggested putting the Resolution Plans for voting in the next CoC meeting post submission of the Revised Resolution Plans by 27th October 2020 at 3:00 P.M. by the

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PRA1 and PRA2. In addition to above, the ratification of the appointment of Registered Valuer Mr. Shiv Kumar Gupta under the asset class Land & Building was made in fulfillment of the requirement of the Regulation 35(1)(B) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 by the CoC with 91.98% voting share.

13. That the PRA2 had submitted its revised Resolution Plan on 27th October 2020. However, PRA1 had sought extension of 1 hour in submitting its revised Resolution Plan. The said revised Resolution Plan was submitted by the PRA1 with the Applicant on 27th October 2020.

14. That in the eighth CoC meeting held on 29th October 2020, the revised Resolution Plans being submitted by PRA1 and PRA2 on 27th October 2020 were submitted by the Applicant before the CoC for their consideration. The CoC discussed the Resolution Plans in length and deliberated that prima facie the Resolution Plan submitted by the PRA2 i.e. M/s Glaze Packagers Private

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Limited in consortium with Mrs. Savita Aggarwal had provided better value and also the projections submitted by them seem to be fine and hence the proposal seems to be feasible and viable. Finally, the Resolution Plan of PRA2 was approved by the CoC with 100% of voting share.

15. That in the ninth CoC meeting held on 3rd November 2020, the discussions were held for making the best estimate of the amount required to meet the liquidation cost and the best estimate of the Liquid Assets available to meet the Liquidation Costs and further for approval of a plan for contributing the difference where the estimated value of Liquid Assets is less than the Liquidation Costs in pursuance of Regulation 39 B of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which was approved by the CoC with 100% voting share. Further, it was also put forth before the CoC for consideration and recommendation, the sale of Corporate Debtor as a going concern/sale of business of the Corporate Debtor as a going concern in case a liquidation order is passed by the Hon'ble

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Tribunal and for identification and grouping of the assets and liabilities of the Corporate Debtor which ought to be sold by the CoC as going concern as per requirement of Regulation 39C of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The same was also approved by the CoC with 100% voting share.

16. It was submitted that pursuant to approval of the Resolution Plan by the CoC the Applicant issued a Letter of Intent by way of email, dated 03.11.2020 to the Resolution Applicant inter-alia, informing the resolution applicant that the revised resolution plan as submitted before the CoC was approved. The Request for Resolution Plan (RFRP) was issued to the Resolution Applicant on 24th August 2020. As per the Clause 1.9.3 of the RFRP, the performance guarantee @ 10% of the total bid amount which was coming Rs.1,45,00,000/- (Rupees One Crore Forty Five Lakhs) was to be submitted by the Resolution Applicant. The Resolution Applicant had given the

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performance security of Rs. 1,45,00,000/- (Rupees One Crore and Forty Five Lakhs).

17. Resolution professional has also placed on record a copy of the resolution plan as approved by CoC, stated to have been signed by the authorised representative of the resolution applicant being M/s Glaze Packagers Private Limited in consortium with Mrs. Savita Aggarwal.

18. The Compliance Certificate filed by the Resolution Professional in Form H under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 has also been placed on record.

19. That brief contours of the Resolution Plan of M/s Wall Rock Infrahome Private Limited & Ors. as approved by the CoC along with the amounts(in Lakhs) provided for the stakeholders under the Resolution Plan is detailed herein below: -

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Category of Stakeholder	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount provided under the Plan	Amount provided the amou claimed
1.Secured Financial creditor Alchemist Asset Reconstruction Company Private Limited	a) Creditors not having a right to vote under sub-section 2 of section 21	NIL	NIL	NIL	NIL
	b) Other than above:- i) who did not vote in favour of the resolution plan	NIL	NIL	NIL	NIL
	ii) who voted in favour of the resolution plan	1956.39	1936.57	1005.00	51.37%
	Total (a+b)	1956.39	1936.57	1005.00	51.37%

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2.Unsecured Financial Creditors	a) Creditors not having a right to vote under sub-section 2 of Section 21	NIL	NIL	NIL	NIL
	b) Other than above:- i. who did not vote in favour of the resolution plan ii. who voted in favour of resolution plan	NIL 352.33	NIL 334.18	NIL 282.42	NIL 80.16%
	Total (a+b)	352.33	334.18	282.42	80.16%
3.Operational creditors	a) Related Party of Corporate Debtor	NIL	NIL	NIL	NIL
	b) Other than above:- i) Government Dues ii) Workmen iii) Employees iv) Operational	NIL NIL NIL 351.63	NIL NIL NIL 277.05	NIL NIL NIL 116.00	NIL NIL NIL 32.70%
	Total (a+b)	351.63	277.05	116.00	32.99%

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4.Other debts & dues	i) Creditors in class who have not submitted their claims ii) Other creditors who have not submitted their claims	NIL NIL	NIL NIL	22.01 1.00	NIL NIL
Grand Total	-	**2660.35**	**2547.71**	**1426.43**	**53.62%**

20. In terms of Section 30 (6) of the Code read with Regulation 39 of the CIRP Regulations, 2016 the Resolution Professional has submitted the Resolution Plan for seeking an order under Section 31(1) of the Code for approval of the resolution plan passed by the committee of creditors under sub-section (4) of Section 30 with *100%* voting share.

21. Section 31 of the Insolvency and Bankruptcy Code, deals with the approval or rejection of a resolution plan by the Adjudicating Authority. Approval of the resolution Plan is accorded under the provisions of Section 31(1) of the Code.

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22. Sub-section 2 of Section 30 casts a duty on the Resolution Professional to examine the Resolution Plan received by him and to confirm that such Resolution Plan provides for the payment of insolvency resolution process costs, provides for the payment of the debts of the operational creditors and financial creditors in such manner as specified, provides for the management of the affairs of the corporate debtor after approval of the Resolution Plan; the implementation and supervision of the Resolution Plan, that the Resolution Plan does not contravene any of the provisions of the law, and that the Resolution Plan conforms to such other requirements as may be specified by the Board.

23. The Resolution Professional has filed compliance certificate in Form H and *inter alia,* has confirmed that he has examined and verified the Resolution Plan approved by the CoC of Wall Rock Infrahome Pvt. Ltd, in the light of the requirements of the Code and Regulations and that it is compliant to the relevant provisions of the Code and Regulations.

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24. In terms of Section 31(1) of the Code, the Adjudicating Authority has also to examine whether the requirements of sub-section (2) of Section 30 have been complied with or not.

25. It has been submitted in the application and in Form H duly certified by RP that the final Resolution Plan approved by *100%* vote share of the members of the Committee of Creditors meets the requirements as laid down in various clauses of Section 30 (2) of the Code.

26. In respect of compliance of Section 30(2)(a) of the Code, it is seen that there is a provision in the resolution plan at Chapter VI which provides for payment of CIRP costs in priority over payments to any other creditors from the upfront amount brought in by the RA. The Resolution Professional has also confirmed in the compliance certificate given in Form H that the Resolution Plan provides for the payment of Insolvency Resolution Process costs. *Be that as it may it is made clear that Insolvency Resolution Process cost shall be paid in its entirety by*

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the resolution applicant in priority to other debts of the corporate debtor.

27. As regards compliance of clause (b) of Section 30 (2) of the Code, the Resolution Professional has certified that the resolution plan provides for the payment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under Section 53.

28. There appears to be no discrimination in the resolution plan in respective class of creditors, as same treatment is provided to similarly situated class of creditors. As a sequel to the aforesaid discussion it is seen that clause (b) of sub-section (2) of Section 30 of the Code stands satisfied.

29. In terms of Section 30(2)(c), the Resolution Plan provides for management of affairs of the corporate debtor after approval of the Resolution Plan. The management of the affairs and control of the business of the corporate debtor after approval of the

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Resolution Plan has been provided at *Chapter XI at page 44* of the Resolution plan. The Resolution Professional has confirmed in the compliance certificate given in Form H that the Resolution Plan provides for the management and control of the business of the corporate debtor.

30. The fourth requirement envisaged by Section 30(2)(d) is that it must provide for the implementation and supervision of the resolution plan. The Resolution Professional has confirmed in the compliance certificate given in Form H that *Clause 10.4* of the Resolution Plan provides for adequate means for supervising its implementation. It has been stated that one representative of Resolution Applicant, one representative of Financial Creditors/Allottees and Resolution Professional shall constitute the monitoring agency.

31. The fifth and sixth conditions in terms of clause (e) & (f) of sub-section (2) of Section 30 of the Code provide to ensure that the Resolution Plan does not contravene any of the provisions of the law and conforms to such other requirements as may be

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specified by the Board. In this regard the resolution professional has certified that the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016, the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and does not contravene any of the provisions of the law for the time being in force. *Be that as it may in terms of clause (e) & (f) of sub-section (2) of Section 30 of the Code, we make it clear that the Resolution Applicant shall comply with all applicable laws under the proposed Resolution Plan, whether or not specifically provided therein.*

32. It is pertinent to state here that Section 29A of the Code prescribes certain eligibility criteria and disqualifications for persons who submit a resolution plan. Resolution Applicant has given adequate declaration and undertaking on their eligibility to submit the Resolution Plan. At para 4(ii) of Form H Resolution Professional has also certified that *the Resolution Applicant, which is a consortium of M/s Glaze Packagers Private Limited in consortium with Mrs. Savita Aggarwal* is eligible to

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submit resolution plan and does not fall under any of the categories as mentioned in Section 29A of the Code.

33. Regulation 36B(4A) of the CIRP Regulations requires that the Resolution Applicant shall provide a performance security. Resolution professional has certified that the Resolution Applicant has submitted Performance security of Rs. 1,45,00,000/- (Rupees One Crore and Forty Five Lakhs) i.e., 10% of the amount of the resolution plan as stipulated in RFRP in compliance of Regulation 36B(4A) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

34. As to the Reliefs and Concessions stated in Chapter XII Clause 1 of the Resolution Plan, the exemption as sought for in relation to the payment of registration charges, stamp duty, taxes and fees arising out of the implementation of the Resolution Plan is not granted. The other reliefs and concessions as sought for which exempt the Corporate Debtor from holding them liable for any offences committed prior to the commencement of CIRP as stipulated under Section 32A of IBC, 2016 are granted to the

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Resolution Applicant. With regard to other concessions and reliefs, most of them are subsumed in the reliefs above granted. Whichever is beyond the reliefs granted above shall not be construed as granted. Regarding exemptions, if any sought in violation of any law in force, it is hereby clarified that such exemptions shall be construed as not granted. In view of the same, this plan is hereby **approved**.

35. In the light of the aforesaid discussions we are satisfied that all the requirements of Section 30(2) are fulfilled and no provision of the law for the time being in force appears to have been contravened.

36. The Resolution Professional has further certified that the Resolution Plan has been approved by *100%* of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the Code and CIRP Regulations.

37. The Hon'ble Supreme court in **K. Sashidhar v. Indian Overseas Bank & Ors** (2019) 12 SCC 150, which involved a

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critical question on the scope of judicial scrutiny over a commercial decision taken by the CoC to approve or reject a Resolution Plan held that the legislature, while enacting the IBC, has consciously not provided any ground to challenge the commercial wisdom of the individual financial creditors or the collective decision of the CoC before the NCLT/NCLAT and that the decision of CoC's commercial wisdom has been made non-justiciable. The Court held that neither the NCLT nor the NCLAT has the jurisdiction to reverse the commercial wisdom of the dissenting financial creditors and clarified that the amendment made to Section 30 (4) of the IBC - which came into force w.e.f. June 6, 2018 vide the IBC (Second Amendment) Act, 2018 and introduced the requirement for the CoC to consider the feasibility and viability of a Resolution Plan before its approval - was simply a restatement of the factors that the CoC is required to bear in mind while considering approval of a Resolution Plan.

38. The Hon'ble Supreme Court in **Committee of Creditors of Essar Steel India Ltd v. Satish Kumar Gupta & Ors** (2020) 8

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SCC 531, had again re-emphasized the primacy of the commercial wisdom of the CoC by holding that the scope of judicial review by NCLT while approving a Resolution Plan was required to be within the parameters of Section 30 (2) of the IBC and with respect to the NCLAT, it must be within the parameters of Section 32 read with Section 61 (3) of the IBC. The SC further observed that the NCLT/NCLAT can under no circumstance trespass upon a commercial decision of the majority of the CoC.

39. Hon'ble NCLAT in the case of Darshak Enterprise Pvt Ltd Chhaparia Industries Pvt. Ltd & Ors. Passed in Civil Appeal (AT) (Ins) No.327 of 2017 has held that:

> *"In absence of any discrimination or perverse decision, it is not open to the Adjudicating Authority or the Appellate Tribunal to modify the plan."*

40. In the present case the resolution plan has been unanimously approved with *100%* voting share much above the statutory requirement of 66 % in terms of Section 30 (4) of the Code and

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has the requisite statutory voting share. Besides, the decision of CoC is a reasoned and self-speaking one as required under proviso to Regulation 39(3) of the CIRP Regulations, 2016.

41. It is a well settled proposition of law that commercial and business decisions of CoC are not open to judicial review. Adjudicating Authority cannot enquire into the commercial wisdom of CoC. The ground for rejection is limited to the matter specified under Section 30(2). It is however reiterated that the resolution plan in question meets the requirements specified in Section 30(2) of the Code.

42. In the facts we are satisfied that the requirements as per the Code and regulations have been complied with. Moreover, the Resolution Plan has been approved by *100%* voting share of the members of CoC and has been submitted in compliance of Section 30 of the Code for approval. In view of the aforesaid discussions and as no infirmity have been brought out upon screening of the Resolution Plan; *we hereby approve the Resolution Plan under sub-section (1) of Section 31 of the Code.*

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43. We also approve appointment of 'Monitoring Committee'. We grant liberty to the Monitoring Committee to apply to the Tribunal for any further direction in order to ensure effective implementation of the plan, if such a necessity arises.

44. In respect of reliefs and concessions sought for in the Plan which are beyond the jurisdiction of this Tribunal, the Monitoring committee can make such claim before the authorities which shall be considered in accordance with law.

45. The resolution applicant shall obtain the necessary approval required under any law for the time being in force within a period of one year from the date of this order or within such period as provided for in such law, whichever is later.

46. It is clarified that Section 30 (2) (f) of the Code mandates that the resolution plan should not be against any provisions of the existing law. The Resolution applicant therefore, shall adhere to all the applicable laws for the time being in force under the proposed Resolution Plan, whether or not specifically provided therein.

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47. We hereby exclude the period spent under adjudication and it is declared that the moratorium order passed by this Bench under Section 14 of the Code shall cease to have effect from the date of this order.

48. The Resolution Professional shall forward all records relating to the CIR Process and the Resolution Plan to IBBI to be recorded at its database.

49. The approved 'Resolution Plan' shall become effective from the date of passing of this order.

50. I.A. 5070/ 2020 in CP No. (IB) 1551 (ND)/ 2019 is allowed.

Let the copy of the order be served to the parties.

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(SH.RAHUL BHATNAGAR)

MEMBER (TECHNICAL)

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(SH. P.S.N. PRASAD)

MEMBER (JUDICIAL)