

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

CA- 715(PB)/2019 in
C.P. NO.IB-623(PB)/2017

IN THE MATTER OF:

Technology Development Board

....Financial Creditor

vs.

M/s. Logic Eastern (India) Pvt. Ltd.

....Corporate Debtor

AND IN THE MATTER OF:

Mr. Rajan Das Gupta

Resolution Professional

For M/s. Logic Eastern (India) Pvt. Ltd.

..... Applicant

**SECTION: Under Section 30 (6) of the Insolvency and
Bankruptcy Code, 2016**

Order delivered on: 02.12.2019

Coram:

CHIEF JUSTICE (RTD.) M.M. KUMAR
Hon'ble President

SHRI S.K. MOHAPATRA
Hon'ble Member (Technical)

PRESENTS:

For the Applicant : Mr. Rajan Das Gupta with Mr. Vineet
Sahitya & Ms. Tanushree, Advs.

For the Financial
Creditor : Mr. Lakshay Sawhney & Mr. Akshat Dabral,
Advocates



ORDER
M.M.KUMAR, PRESIDENT

1. This order shall dispose of C.A. No. 715(PB)/2019 which has been filed by the Resolution Professional (for brevity 'RP') under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a principal prayer to approve and accept the resolution plan as proposed by the Committee of Creditors (for brevity 'CoC') themselves collectively in the Corporate Insolvency Resolution Process (for brevity 'CIRP') of the Corporate Debtor.
2. Brief facts of the case necessary for disposal of the instant application may first be noticed. Technology Development Board filed C.P. No. IB – 623PB)/2017 against M/s. Logic Eastern (India) Pvt. Ltd. under Section – 7 of the Code. After issuance of notice and due consideration of the reply filed by the Corporate Debtor, we admitted the petition on 18.07.2018 (Annexure B). As a consequence, the CIRP commenced and moratorium in terms of Section – 14 was imposed. In pursuance of Section – 15 of the Code the IRP made public announcement inviting claims on 23.07.2018. In pursuance of the announcement made the



IRP initially constituted the CoC comprising of the petitioner-financial creditor. The Tribunal vide its order dated 30.08.2018 replaced the IRP and appointed Mr. Rajan Das Gupta as the RP to carry forward the corporate insolvency resolution process (Annexure A). The RP received claims from other financial creditors and reconstituted the CoC. The intimation to that regard was filed with the Tribunal on 10.09.2018. The IRP and RP have taken up various other processes as enjoined upon them under the Code. The RP has convened 9 meetings of the CoC upto 03.04.2019.

3. It is also pertinent to mention that RP issued an advertisement in Form G which was published on 08.10.2018 inviting prospective resolution applicants to submit their resolution plans in respect of the Corporate Debtor. The RP did not receive any expression of interest from any prospective resolution applicant and the CoC in its sixth meeting resolved for the extension of CIRP period for another 90 days. Accordingly, an application bearing no. CA-03(PB)/2019 was filed under Section-12 of the Code and the same was allowed vide order dated 02.01.2019



(Annexure C) extending the CIRP period beyond 14.01.2019 by 90 days.

4. In the 7th and 8th meetings of the CoC held on 22.01.2019 and 13.03.2019 respectively deliberated upon the issue regarding not receiving expression of interest from any prospective resolution plan applicant and unanimously resolved not to liquidate the corporate debtor as it will result in a complete loss to the creditors and about 100 people will get unemployed. Copies of the minutes of the meetings are placed on record [Annexure D(Colly)]. Subsequently in the ninth meeting of CoC held on 03.04.2019, the members of the CoC considered and discussed the resolution plan formulated by CoC itself. A copy of the Resolution Plan along with the relevant documents is placed on record (Annexure E). The RP then moved the resolution to approve the said plan and the CoC passed the following resolution unanimously:

***“RESOLVED THAT** pursuant to Section 30 and other applicable sections of the Insolvency and Bankruptcy Code, 2016 and regulations issued thereunder and subject to the approval of the Hon’ble National Company Law Tribunal, the approval of the Committee of Creditors be and is hereby accorded to the Resolution Plan, the signed copy of*



which was placed before the members of the meeting, as formulated by the members of the Committee of Creditors collectively for the resolution of the insolvency of the Corporate Debtor as per the provisions of the Insolvency and Bankruptcy Code, the terms of which are also acceptable to the Corporate Debtor.”

The minutes of the 9th meeting of the Committee of Creditors alongwith approval from the petitioner-financial creditor is attached with the application (Annexure F).

5. The RP has further disclosed that in compliance of Regulation 27 read with Regulation 35 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, he appointed two registered valuers to ascertain the fair value and liquidation value of the Corporate Debtor.
6. It is further submitted by the RP that the compliances under Section 29A is not applicable in the present case as there is no external resolution plan applicant. It is stated in the affidavit that the corporate debtor is registered as a small enterprise under the Micro, Small and Medium Enterprises Development Act, 2006 vide Udyog aadhar Number DL01B0001810 and hence the resolution applicants are exempt from applicability of clauses (c) and



(h) of Section 29A as the provisions of Section-240A(1) will apply. Also as per Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 a compliance certificate in FORM – H has been placed on record (Annexure D with the amended resolution plan filed on 14.06.2019).

7. As per our order dated 30.05.2019 we directed the learned counsel to make certain amendments to the plan and the same was complied with by filing an amended resolution plan on 14.06.2019.

8. No reply or objections have been received from any stakeholder to the instant application filed for the approval of the resolution plan before the Adjudicating Authority – NCLT. The same has also been recorded in our dated 23.10.2019 and the same reads as under:

“We have heard the arguments and perused the amended resolution plan approved by the CoC. Mr. B.N. Mishra- financial creditor in the CoC has raised no objection. Likewise, Mr. Vineet Wadhwa- Ex_Director/Promoter has also raised no objection to the resolution plan. It has been specifically brought to our notice that Kanika Investments Ltd. also filed an affidavit dated 09.07.2019 supporting the



resolution plan and thereby accepting the 30% of the admitted claim in the category of unsecured creditor although on account of typographical; error it is shown as secured creditor. There is no other objection raised.”

9. Having heard the learned counsel for the Resolution Professional and the petitioner we find that it would be first necessary to study the provisions of the Code and CIRP Regulations in order to find out whether the requirements of the statute and subordinate legislation have been fulfilled. Section 30 and 31 of the Code are set out in ex tenso which reads as under :-

“Section 30

Submission of resolution plan. (1) A resolution applicant may submit a resolution plan along with an affidavit stating that he is eligible under section 29A to the resolution professional prepared on the basis of the information memorandum.

(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 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;

(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) conforms 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.

(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).

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

the Board:



Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 (Ord. 7 of 2017), where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section.

Provided also that the eligibility criteria in Section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 (Ord. 6 of 2018) shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.

(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered:



Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.

(6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority.”

“Section 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 conform 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 (12 of 2003), 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.

10. According to the scheme of the Code a resolution applicant is required to submit a resolution plan to the RP prepared on the basis of information memorandum. The information memorandum is a document envisaged under Section 29 and it is required to contain such relevant information as may be specified by the Insolvency and



Bankruptcy Board of India. Accordingly, in Regulation 36 of the CIRP Regulations details have been provided with regard to the contents of information memorandum. On the submission of resolution plan the RP is under mandatory obligation to examine each resolution plan received by him under Section 30(2) of the Code and he is to confirm that each resolution plan provides for all item listed under Section 30(2) (a) to (f). If the aforesaid conditions as envisaged by Section 30(2) are fulfilled then such a resolution plan is to be presented to the CoC. The CoC may then 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 along with other requirements as may be specified by Board. Under Section 30(6) the RP is obliged to submit the resolution plan as approved by the CoC to the Adjudicatory Authority.

11. As per the requirement of Section 29 of the Code read with Regulation 36 of the CIRP Regulations an information memorandum prepared and a certification regarding the same was furnished by the RP to the CoC as well as before this Tribunal.



12. When the resolution plan as approved by the CoC is placed before the Adjudicatory Authority-NCLT then it is to record its satisfaction as per the requirement of Section-31(1) of the Code as to whether the conditions as referred to in sub-section 2 of section 30 have been fulfilled. On its satisfaction the Adjudicatory Authority-NCLT is to approve the resolution plan which is to be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. As per section 31(3) of the Code a further provision has been made that after the approval of a resolution plan the moratorium order passed under Section 14 would cease to have effect and the RP is under obligation to forward the whole record relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Insolvency and Bankruptcy Board of India to be recorded on its database. The conclusion of the aforesaid discussion is that Adjudicatory Authority-NCLT must be satisfied that the resolution plan conforms to the requirements given in Section 30(2) of the Code.



13. It is pertinent to notice the mandatory requirements of Section 30(2) of the Code for a resolution plan to fulfil. Firstly, the resolution plan approved by the CoC must provide for payment of insolvency resolution process cost in a manner specified by the Board in priority to the payment of other debts of the corporate debtor. With the application i.e. C.A. No. 715(PB)/2019, the RP has placed on record a copy of the CoC approved resolution plan (Annexure E) alongwith the amended resolution plan formulated by the CoC itself. At Clause 6 B point 1 under the title 'Terms of Repayments/Financial Proposal' the RP has clarified that in accordance with the provisions of Section 30(2) and Regulation 38 of the CIRP Regulations, the Resolution Plan provides for the payment of the CIRP cost in priority to the payment of any other debts of the company. The Plan identifies the specific sources of fund that would be used for such payment. Therefore this condition stands satisfied.
14. Secondly the resolution plan must provide for payment of the debts of operational creditors in such a manner as may be specified by the Board which are not to be less than the amount to be paid to the operational creditors under



Section-53 in the event of liquidation of the corporate debtor; or 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 under Section 53(1), whichever is higher. The resolution plan should also provide for the payment of debts of the financial creditors who did not vote in favour of the resolution plan which shall not be less than the amount to be paid to such creditors in accordance with Section 53(1) in the event of liquidation of the corporate debtor. It is appropriate to mention that Section 53 of the Code envisaged the waterfall and the priorities in which distribution of assets of a Corporate Debtor is to take place in case of liquidation. The RP in the amended FORM H filed on 25.06.2019 has clarified that resolution plan provides for the payment to operational creditors and the financial creditors who did not vote for the plan which is not less than liquidation value. It is submitted that none of the financial creditors voted against the resolution plan and one financial creditor which remained absent has been dealt with. The plan also identifies the specific sources of



funds which are to be used for such payment. It further declares that Regulation 38 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 is complied with in as much as priority is accorded to Operational Creditors in making payments over Financial Creditors. In this regard reference may be made to Clause 6 B point-2 & 3 of the Resolution Plan. The same read as under:

B. Terms of Repayment/Financial Proposal

2. The outstanding remuneration of Workmen and Employees as on date is Rs.27,82,409/- approximately.

3. An amount of INR 49,52,761/- (70% of the admitted claim) shall be paid to the Operational Creditor i.e Laxmi Remote India Pvt. Ltd. who has submitted a claim. The same would be paid upon the approval of this resolution plan by the Adjudicating Authority before any payment is made to Financial Creditors.

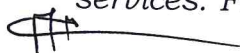
The aforesaid provisions made in Resolution Plan for payment of dues of the corporate debtor makes it evident that the resolution plan complies with the provisions of Regulation 38(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, requiring a Resolution Plan Applicant that the 'amount due to



operational creditors under a resolution plan is to be given priority in payment over financial creditors.’

15. It would also be appropriate to emphasize here that there is no rule of law laying down the proposition that an ‘operational creditor’ is to be treated at par with the ‘financial creditor’. On the contrary the challenge to the Constitutional validity for treating ‘operational creditors’ and ‘financial creditors’ differently has been repelled in the case of **Swiss Ribbons Private Limited & Anr. Vs. Union of India & Ors. (2019) 4 SCC 17**, because they constitute two distinct classes. The pertinent observation are extracted below:

50. According to us, it is clear that most financial creditors, particularly banks and financial institutions, are secured creditors whereas most operational creditors are unsecured, payments for goods and services as well as payments to workers not being secured by mortgaged documents and the like. The distinction between secured and unsecured creditors is a distinction which has obtained since the earliest of the Companies Acts both in the United Kingdom and in this country. Apart from the above, the nature of loan agreements with financial creditors is different from contracts with operational creditors for supplying goods and services. Financial creditors generally lend finance on a term loan



or for working capital that enables the corporate debtor to either set up and/or operate its business. On the other hand, contracts with operational creditors are relatable to supply of goods and services in the operation of business. Financial contracts generally involve large sums of money. By way of contrast, operational contracts have dues whose quantum is generally less. In the running of a business, operational creditors can be many as opposed to financial creditors, who lend finance for the set-up or working of business. Also, financial creditors have specified repayment schedules, and defaults entitle financial creditors to recall a loan in totality. Contracts with operational creditors do not have any such stipulations. Also, the forum in which dispute resolution takes place is completely different. Contracts with operational creditors can and do have arbitration clauses where dispute resolution is done privately. Operational debts also tend to be recurring in nature and the possibility of genuine disputes in case of operational debts is much higher when compared to financial debts. A simple example will suffice. Goods that are supplied may be substandard. Services that are provided may be substandard. Goods may not have been supplied at all. All these qua operational debts are matters to be proved in arbitration or in the courts of law. On the other hand, financial debts made to banks and financial institutions are well documented and defaults made are easily verifiable.



51. Most importantly, financial creditors are, from the very beginning, involved with assessing the viability of the corporate debtor. They can, and therefore do, engage in restructuring of the loan as well as reorganisation of the corporate debtor's business when there is financial stress, which are things operational creditors do not and cannot do. Thus, preserving the corporate debtor as a going concern, while ensuring maximum recovery for all creditors being the objective of the Code, financial creditors are clearly different from operational creditors and therefore, there is obviously an intelligible differentia between the two which has a direct relation to the objects sought to be achieved by the Code.

15. The third requirement is that resolution plan must provide for the management of the affairs of the corporate debtor after approval of the resolution plan. There is specific provision made for the management and control of the company after the approval of the resolution plan by the Adjudicating Authority. A detailed mechanism regarding the management & control is discussed at Clause 6 A under the heading "The Ownership, Management and Supervision". The plan provides that after the approval of the plan the suspended Board of directors shall be replaced by one Director each to be appointed by M/s technology



Development Board and M/s ISF Limited. Therefore, the third condition stand fully complied with.

16. The fourth condition envisaged by Section 30(2) is that it must provide for implementation and supervision of the resolution plan. A reference in that regard has been made to Clause 6.A of the amended resolution plan. Thus, the fourth condition also stands satisfied. Further it is also submitted in the resolution plan that the directors of the corporate debtor must ensure that appropriate action plan is drawn up and implemented within a period of three months from the date of approval of the resolution plan.

17. The fifth condition requires the RP to confirm that the resolution plan did not contravene any of the provisions of the law for the time being in force. In FORM-H (Annexure D) submitted by the RP as per the requirements of Regulation 39(4) of the CIRP Regulations it has been certified that the resolution plan did not contravene any of the provisions of the law for the time being in force and is in compliance with the provisions of the Code and the CIRP Regulations.



18. The resolution applicant also confirms that the resolution applicant and its connected person are not disqualified under Section 29A of the Code to submit a resolution plan and any other law applicable which further shows that the resolution plan conforms to the provisions of the law for the time being in force and did not contravene any such provision. The RP in the FORM-H submitted by him has certified the same.
19. The sixth requirement is that it conforms to all such requirements which may be specified by the Insolvency and Bankruptcy Board. The aforesaid statement has been made by the RP in Form-H submitted along with the amended resolution plan. In view of the above 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 has been contravened. Our satisfaction is fortified by the fact that despite notices issued no objection has been filed by any one nor anyone has appeared before us to raise any objection.
20. However, it is necessary to refer to the provisions of Regulation 38 & 39 of CIRP Regulations to conclude that



the requirements specified therein are also fulfilled and the same reads as under:-

Regulation 38

Mandatory contents of the resolution plan.

(1) The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.

(1A) A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.

(1B) A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.

(2) A resolution plan shall provide:

(a) the term of the plan and its implementation schedule;

(b) the management and control of the business of the corporate debtor during its term; and

(c) adequate means for supervising its implementation.

(3) A resolution plan shall demonstrate 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; and

(e) the resolution applicant has the capability to implement the resolution plan.

Regulation 39

Approval of resolution plan.

(1) A prospective resolution applicant in the final list may submit resolution plan or plans prepared in accordance with the Code and these regulations to the resolution professional electronically within the time given in the request for resolution plans under regulation 36B along with

(a) an affidavit stating that it is eligible under section 29A to submit resolution plans; (b)[***]

(c) an undertaking by the prospective resolution applicant that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency resolution process, forfeit any refundable deposit, and attract penal action under the Code.

(1A) A resolution plan which does not comply with the provisions of sub-regulation (1) shall be rejected.]

(2) [The resolution professional shall submit to the committee all resolution plans which comply with the requirements of the Code and



regulations made thereunder along with the details of following transactions, if any, observed, found or determined by him:-

- (a) preferential transactions under section 43;
- (b) undervalued transactions under section 45;
- (c) extortionate credit transactions under section 50; and
- (d) fraudulent transactions under section 66, and the orders, if any, of the adjudicating authority in respect of such transactions.

(3) The committee shall evaluate the resolution plans received under sub-regulation (1) strictly as per the evaluation matrix to identify the best resolution plan and may approve it with such modifications as it deems fit:

Provided that the committee shall record the reasons for approving or rejecting a resolution plan.

(3A) [***]

(4) The resolution professional shall endeavour to submit the resolution plan approved by the committee to the Adjudicating Authority at least fifteen days before the maximum period for completion of corporate insolvency resolution process under section 12, along with a compliance certificate in 62[Form H of the Schedule and the evidence of receipt of performance security required under sub-regulation (4A) of regulation 36B.

(5) The resolution professional shall forthwith send a copy of the order of the Adjudicating Authority approving or rejecting a resolution plan to the participants and the resolution applicant.



(6) A provision in a resolution plan which would otherwise require the consent of the members or partners of the corporate debtor, as the case may be, under the terms of the constitutional documents of the corporate debtor, shareholders' agreement, joint venture agreement or other document of a similar nature, shall take effect notwithstanding that such consent has not been obtained.

(7) No proceedings shall be initiated against the interim resolution professional or the resolution professional, as the case may be, for any actions of the corporate debtor, prior to the insolvency commencement date.

(8) A person in charge of the management or control of the business and operations of the corporate debtor after a resolution plan is approved by the Adjudicating Authority, may make an application to the Adjudicating Authority for an order seeking the assistance of the local district administration in implementing the terms of a resolution plan.

(9) A creditor, who is aggrieved by non-implementation of a resolution plan approved under sub-section (1) of section 31, may apply to the Adjudicating Authority for directions.

21. A perusal of Regulation 38 would clearly show that by virtue of mandatory contents of the resolution plan as discussed in the preceding paras in relation to Section 30 and 31 of the Code the requirement of Regulation 38 stand



fulfilled. Even the requirement of Regulation 39 has been satisfied as the RP has submitted the resolution plan as approved by the CoC to this Tribunal along with the compliance certificate in FORM-H as per the requirements of Regulation 39(4) of the CIRP Regulations. The resolution plan meets all requirements of the Code and the CIRP Regulations and it has been duly approved by the CoC. There is no scope for argument left that shareholder, or parties to joint venture agreement or anyone holding similar document need to accord sanction in view of the provisions of Regulation 39(6) of the CIRP Regulations. Regulation 39 (6) clarifies that the resolution plan as approved by the CoC must take effect notwithstanding the requirement of consent of the members or partners of the Corporate Debtor under the terms of the constitutional documents of the Corporate Debtor, shareholders' agreement, joint venture agreement or other document of a similar nature.

22. In view of the above we accept and approve the CoC formulated and approved resolution plan subject to few directions.



23. As a sequel to the above discussion we pass the following directions:-

- i. We accept and approve the CoC formulated and approved resolution plan for the corporate debtor by allowing C.A. No. 715(PB)/2019 filed by the Resolution Professional.
- ii. The Resolution Professional shall forward all records relating to the CIR Process and the Resolution Plan to IBBI to be recorded at its data base in terms of Section-31(3)(b) of the Code.
- iii. The approved 'Resolution Plan' shall become effective from the date of passing of this order.

Sd- .12.2019
(M.M.KUMAR)
PRESIDENT

Sd-
(S.K. MOHAPATRA)
MEMBER (TECHNICAL)

02.12.2019
VIDYA