

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

CA- 1132(PB)/2019 in  
C.P. NO.IB-531(PB)/2017

**IN THE MATTER OF:**

State Bank of India

....Financial Creditor

vs.

ARGL Limited

....Corporate Debtor

**AND IN THE MATTER OF:**

Mr. Dinkar T. Venkatasubramanian  
Resolution Professional  
For ARGL Limited

..... Applicant

**SECTION: Under Section 30 (6) read with Section 31 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(s) : Mr. Abhinav Vashisth, Sr. Adv. With Ms.  
Ananaya Ghosh, Advs. For RP  
Ms. Misha, Mr. Vaijayant Paliwal, Ms. Charu  
Bansal, Advs. For CoC  
Mr. Abhijit Mittal, Ms. Nandini Aishwarya,  
Advs. For Deccan Value Investors  
Ms. Asmita Singh, Adv. For RA

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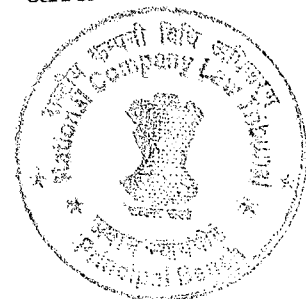


For the Respondent : Mr. Sumesh Dhawan, Ms. Vatsala Kak, Ms. Geetika Sharma, Advs.

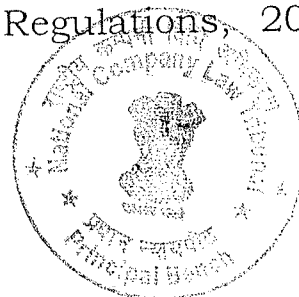
**ORDER**  
**M.M.KUMAR, PRESIDENT**

1. This order shall dispose of the C.A. No. 1132(PB)/2019 filed by the Resolution Professional (for brevity 'RP') under Section 30 & 31 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a principal prayer to approve and accept the resolution plan approved by the Committee of Creditors (for brevity 'CoC') submitted by the H1 Resolution Applicant namely Investment Opportunities IV Pte. Ltd. in the Corporate Insolvency Resolution Process (for brevity 'CIRP') of the Corporate Debtor.
2. Brief facts of the case necessary for disposal of the above mentioned applications may first be noticed. State Bank of India filed C.P. No. IB - 531(PB)/2017 in respect of ARGL Limited under Section - 7 of the Code. We admitted the petition under Section-7 of the Code on 16.03.2018. As a consequence, the CIRP commenced and moratorium in terms of Section - 14 was imposed.

CA-1132(PB)/2019 in CP No. IB-531(PB)/2017  
State Bank of India vs. ARGL Limited



3. In pursuance of Section - 15 of the Code the IRP made public announcement on 21.03.2018 inviting claims and IRP received claims from various financial creditors and operational creditors and constituted the Committee of Creditors in terms of Section 18 read with Section 21 of the Code. In the 1<sup>st</sup> meeting of the CoC held on 11.04.2018 it was resolved to confirm the IRP as RP as per the provisions of the Code. The IRP/RP has taken up various other processes as enjoined upon them under the Code. The RP has convened 26 meetings of the CoC upto 04.06.2019.
4. 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 namely - TR Chadha & Co. And Duff & Phelps to ascertain the fair value and liquidation value of the Corporate Debtor.
5. The applicant states that an Information Memorandum was prepared in accordance with Section 29 of the Code read with Regulation 36 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The



Information Memorandum was provided to the members of the CoC and the same was updated from time to time.

6. It is further submitted that the RP made a publication for calling of Expression of Interest (EoI) in Form-G on 19.04.2018 as prescribed under Section 25 of the Code read with Regulation 36A.(5) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The expression of interest were received from 13 potential investors. Thereafter the RP invited resolution plans as per the 'Process Note' in accordance with Section 25(2)(h) of the Code. The Process Note was sent to the potential resolution plan applicants on 18.05.2018 and the same was also uploaded in the virtual data room. It is further submitted that 5 prospective resolution plans were received by the last date and the same were placed before the CoC in the meeting held on 09.07.2018. Upon evaluation of each of the plans based on the criteria set out in the Process Note, the bid made by Liberty House Group Pte Ltd. (for brevity "Liberty") was found to be the highest. The final resolution plan submitted by Liberty was put to vote on 29.08.2018 and was

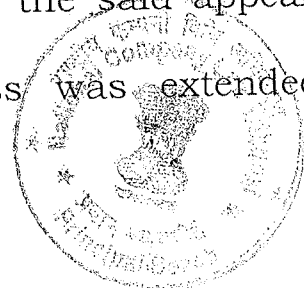


unanimously approved. A letter of intent ('LoI') was issued to Liberty and as per the process note Liberty was required to furnish a Performance Bank Guarantee of Rs. 60 Crores within 10 business days of the issuance of LoI.

7. It is pertinent to mention that an application being C.A. No. 823(PB)/2018 was filed under Section 30(6) read with 31(1) seeking approval of the resolution plan submitted by Liberty. The resolution plan applicant- Liberty failed to submit the Performance Bank Guarantee in accordance with the Process Note and LoI despite several opportunities being granted by the Adjudicating Authority and subsequently it was submitted by Liberty that it would not be able to furnish the Performance Bank Guarantee. Thereafter the RP after being authorised by the CoC filed an application bearing no. C.A.-1220(PB)/2018 for withdrawal of the application being CA. No. 823(PB)/2018. The application was allowed to be withdrawn with directions to the RP to place the matter before the CoC to take further steps in accordance with law. The said order dated 05.12.2018 is placed on record along with the instant application (Annexure-1).



8. In compliance of the directions issued by the Adjudicating Authority-NCLT, the matter was placed before the CoC and it decided that fresh expression of interest must be invited from prospective resolution plan applicants. Accordingly the RP issued an advertisement dated 11.12.2018 and in pursuance of the same only one resolution plan was received by the applicant namely Raymond Limited.
9. In order to bring the corporate insolvency resolution process to its logical end, the CoC in its meeting held on 10.12.2018 resolved to apply for the extension of the period of the process by 90 days beyond 180 days. Accordingly the RP filed an application being CA no. 1338(PB)/2018 for extension of a further period of 90 days and the same was allowed vide order dated 17.12.2018 (Annexure - 2). It is also brought to our notice that Liberty had filed an appeal before the Appellate Tribunal against the order dated 05.12.2018 and the order in the appeal was passed on 08.03.2019. Further the Hon'ble Appellate Tribunal excluded the time taken in deciding the said appeal and the date of expiry of CIR process was extended till



06.06.2019. A copy of the order of the Appellate Tribunal is placed on record (Annexure – 3).

10. The CoC in its meeting held on 14.03.2019 decided to re-invite the prospective resolution plan applicants to submit their resolution plan since there was only one resolution plan received earlier and in furtherance of the same a Process Note was issued (Annexure – 4). The RP carried out advertisement in The Economic Times (English) and Navbharat Times (Hindi) on 19.03.2019. A copy of the said advertisements is attached with the application [Annexure – 5(Colly)]. In response to the advertisement issued Investment Opportunities IV Pte Ltd. (for brevity “IOPL”/ Successful Resolution Applicant) expressed its interest to submit a resolution plan and also submitted a confidentiality undertaking in order to access the virtual data room. The RP also issued a revised Process Note dated 03.04.2019 and revised Information Memorandum on 09.04.2019.

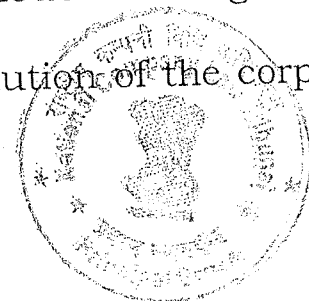
11. In furtherance of the same 25<sup>th</sup> CoC meeting was convened on 27.05.2019 and the resolution plan of IOPL

was presented before them by the RP after ensuring that



the plan conforms with the requirements of the Code and the corresponding Regulations. The CoC keeping in mind the commercial viability insisted upon both the resolution plan applicant to further revise its resolution plan and in accordance with the same IOPL submitted an addendum dated 28.05.2019. It is submitted by the RP that the resolution plan dated 27.05.2019 along with the addendum dated 28.05.2019 constitutes the 'Final Resolution Plan'. Detailed note on the resolution plan presented by the resolution professional is placed on record (Annexure - 6). In the same meeting the Final Resolution Plan as submitted by the resolution plan applicant- IOPL was put to vote and the plan garnered only 43.1% of the votes which is far less than the threshold of 66% as prescribed under the Code. The minutes of the 25<sup>th</sup> meeting of the CoC and the voting results are attached with the instant application (Annexure - 7).

12. Consequently another meeting of CoC was requisitioned on 04.06.2019 to consider the result of the voting that took place in the previous meeting and to deliberate a way forward on the resolution of the corporate

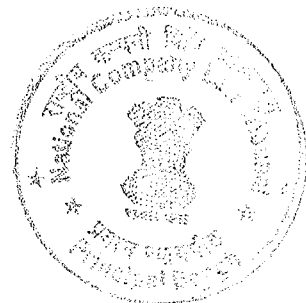




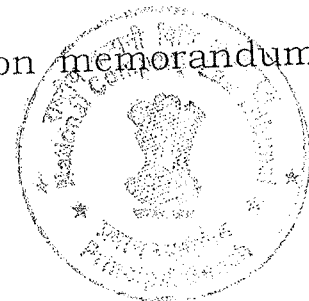
debtor. Accordingly it was resolved by the CoC to re-vote on the resolution plan taking into consideration the agenda proposed by the SBI, which holds 46.50% of voting share and had earlier voted against the Final resolution Plan. The resolution plan was approved by the CoC in the said meeting with a voting share of 66.29% votes. A copy of the minutes of the meeting held on 04.06.2019 along with the results of voting is placed on record (Annexure – 9).

13. Accordingly on the recommendation of the CoC, Investment Opportunities IV Pte Ltd. ("IOPL") was notified as the H1 Resolution Applicant in the CIR Process. Having been determined as the H1 Resolution Applicant, the CoC issued a Letter of Intent dated 04.06.2019 (Annexure-10) to the resolution applicant. The H1 Resolution Applicant also undertook to provide the Performance Bank Guarantee as contemplated under Regulation 36(4A) of the CIRP Regulations. The aforesaid resolution plan approved by the CoC has now been placed before us for seeking our acceptance and approval in terms of the Code and Regulations framed there under.

AP



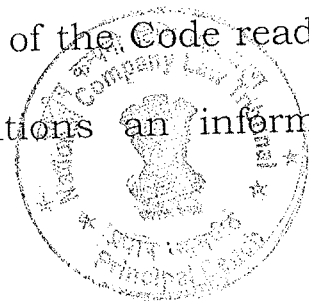
14. The Resolution Professional had appointed EYLLP to examine the eligibility of the Resolution Applicant in terms of Section 29A and to ascertain the eligibility of the Resolution Applicant to submit the resolution plan and to certify that it did not fall foul of the provisions of Section-29A. Also 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 along with a affidavit filed on 17.09.2019.
15. No objection has been raised to the plan submitted by H-1 resolution plan applicant by any of the stakeholders and the same has also been recorded in our orders dated 05.07.2019 and 19.09.2019.
16. Having heard the learned counsels for the Resolution Professional and the Resolution plan applicant we find that it would be first necessary to ascertain whether the requirements of the statute and subordinate legislation have been fulfilled or not.
17. 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.

18. As per the requirement of Section 29 of the Code read with

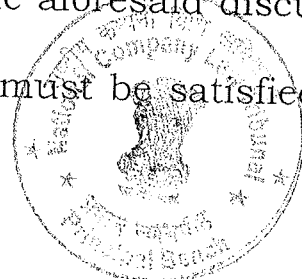
Regulation 36 of the CIRP Regulations an information



nemorandum prepared and a certification regarding the same was furnished by the RP to the CoC as well as before this Tribunal.

When the resolution plan as approved by the CoC is recorded 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



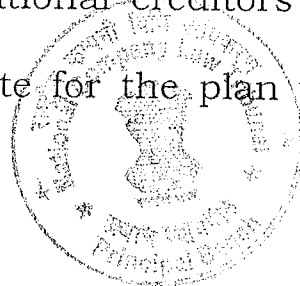
the resolution plan conforms to the requirements given in Section 30(2) of the Code.

20. 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. 1132(PB)/2019, the RP has placed on record a copy of the CoC approved resolution plan (Exhibit 1) of the highest bidder i.e. H1 Resolution Applicant – Investment Opportunities IV Pte. Ltd. Part III Clause 1 and Part IV(II) Clause 2 of the approved Resolution Plan provides for the payment of the CIRP cost in priority to the payment of any other debts of the company the same is in accordance with the provisions of Section 30(2) and Regulation 38 of the CIRP Regulations. The Plan identifies the specific sources of fund that would be used for such payment. Schedule 4 of the plan provides for its implementation. Therefore this condition stands satisfied.





21. 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 17.09.2019 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. Part IV, Clause 5 of the resolution plan provides for the payment to be made to the financial creditors. 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 Part III, Clause 2 and Part IV (II), Clause 3 & 4 of the resolution plan. The Clause which provides for the sources of funds reads as under:

### **3. Operational Creditors**

#### **3.2 Source of funds:**

**3.2.1** The operational Creditors (which includes Governmental Authorities but excluded Employees and Workmen) of the Corporate Debtor shall be paid an aggregate amount of INR 2,00,00,000 (the "Operational Creditors Settlement Amount"), in full and final satisfaction of all Claims of such Operational Creditors and in the manner and proportion determined by the Resolution Applicant, to provide an equitable solution for all Operational Creditors (including





Governmental Authorities, but excluding Employees and Workmen) of the Corporate Debtor.

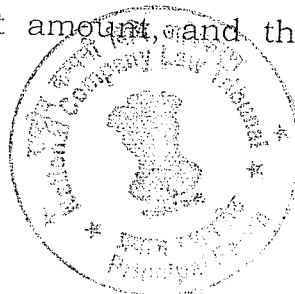
#### **4. Workmen Dues and Employee Dues**

**4.2 Source of Funds:** Based on the information provided, the Resolution Applicant understands that other than the Verified Amounts in relation to the Employees/Workmen of the corporate debtor, the salary and other related outstanding dues to the Employees and Workmen are being regularly paid out of the internal accruals of the corporate debtor, and the Resolution Applicant assumes that all such dues (other than the Verified Amounts in relation to the Employees/Workmen of the corporate debtor) shall be paid in full as of the Closing date. Accordingly, no payment is required to be, or proposed to be, made pursuant to this Plan towards Employees and Workmen dues. However, if any payments are required to be made Employees and/or Workmen based on the Liquidation Value, such payments shall be made in the following manner:

**4.2.1** first, out of the internal accruals of the Corporate Debtor. The Resolution Applicant believes that this is a reasonable requirement to ensure timely payment to Workmen and Employees and to ensure that the corporate debtor continues to function as a going concern during CIRP and immediately thereafter; and

**4.2.2** if the internal accruals are not sufficient, such amounts shall be paid out of the Repayment amount, and the Repayment

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Amount to be paid to the Financial Creditors shall stand reduced accordingly.

22. 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. The mechanism regarding the management & control is discussed in Part II, Clause 6 and Part III, Clause 4.1 and 4.2 of the plan. The resolution applicant has provided for the appointment of the Board and various other professionals under Clause 6. Further Clause 4.1 and 4.2 of Part III provides for a detailed mechanism regarding the management and control of the corporate debtor between the NCLT Approval Date and the closing date; and on and from the Closing date. The relevant Clause reads as under:

**4.1. Management and control of the Corporate Debtor  
between the NCLT Approval Date and the Closing Date:**



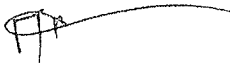


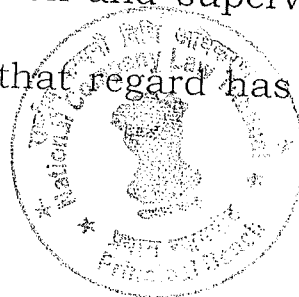
4.1.1. On and from the NCLT Approval Date and until the Closing date, EY Restructuring LLP shall act as the "Managing Agency" of the Corporate Debtor in order to supervise, manage and control all the business and operations of the corporate debtor in accordance with this Plan, subject to Clause 4.1.5 of Part III (Mandatory provisions of the Plan). The powers of the Board shall remain suspended until the Closing Date and shall be exercised by the Managing Agency. It is clarified that until the Closing Date, the Managing Agency shall have the same functions, powers and protection as possessed by the Resolution Professional during the CIRP of the Corporate Debtor, under the provisions of the Code.

**4.2. Management and control of the Corporate Debtor on and from the Closing Date:**

On and from the Closing Date, (i) the Resolution Applicant and its nominees shall be the sole shareholders of the Corporate Debtor, (ii) the Corporate Debtor shall be owned, controlled, operated and managed solely as determined by the Resolution Applicant in its sole discretion, (iii) the Managing Agency shall cease to exist, and (iv) the reconstituted Board as appointed pursuant to Clause 4.1.5 above shall assume the management and control of the Corporate Debtor.

23. 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 Part II, Clause 5 and 7, Part III, Clause 3 and 4.3 and Schedule 4. The relevant clause as provided in the plan reads as under:

**4.3 Manner of Supervision And Implementation of the Plan**

**4.3.1.** The Resolution Applicant and the Managing Agency shall jointly supervise the implementation of this Plan until the Closing Date. The Resolution Professional or Managing Agency (as the case may be) will sign all applications on behalf of the Corporate Debtor that are proposed to be made to the RBI or any other Governmental Authority, and the Resolution Applicant and the Resolution Professional or Managing Agency (as the case may be) shall jointly make such applications in order to obtain the necessary approvals for implementation of this Plan in a timely manner. It is clarified that any legal costs that may be incurred by the Managing Agency in relation to supervising the implementation of this Plan shall be borne by the Resolution Applicant provided that the Managing Agency acts in consultation with the Resolution Applicant at all times.

**4.3.2** The mechanism for supervision of the payments to stakeholders of the Corporate Debtor after the Closing Date, in the manner contemplated in this Plan, shall be supervised by an officer of the Resolution Applicant.

Thus, the fourth condition also stands satisfied.



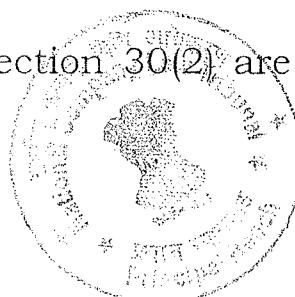


24. The fifth condition requires the RP to confirm that the resolution plan did not contravene any of the provisions of the law for the time being in force. In the amended FORM-H submitted by the RP as per the requirements of Regulation 39(4) of the CIRP Regulations it has been certified that the resolution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

25. The resolution applicant also confirms that it is 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.

26. 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. In view of the above we are satisfied that all the requirements of Section 30(2) are fulfilled and

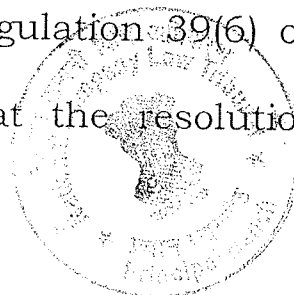




no provision of the law for the time being in force has been contravened.

27. 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. 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 all the requirements of Regulation 38 stand fulfilled. Even the requirement of Regulation 39 has been satisfied as the RP has submitted that the resolution plan of H1 resolution applicant 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 meet all requirements of the Code and the CIRP Regulations and that the resolution plan 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 which clarifies that the resolution plan as

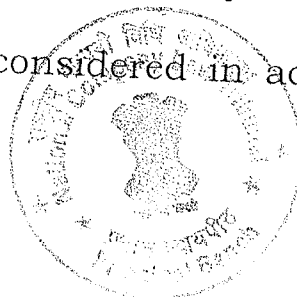


approved by the CoC must take effect notwithstanding the requirement of consent of the members or partners of the Corporate Debtor under the terms of the constitutional documents of the Corporate Debtor, shareholders' agreement, joint venture agreement or other document of a similar nature.

28. In view of the above we accept and approve the CoC approved resolution plan of H1 Resolution Applicant – Investment Opportunities IV Pte. Ltd. subject to few directions.

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

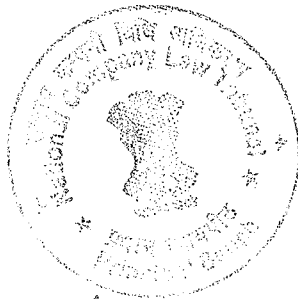
- (i) C.A. No. 62(PB)/2019 – The application filed by the Resolution Professional for accepting the resolution plan approved as by the CoC submitted by Resolution Applicant- Investment Opportunities IV Pte. Ltd. is accepted. The Resolution Applicant- Investment Opportunities IV Pte. Ltd. may file appropriate applications before the Public Authorities/Government Authorities and it is needless to say that their applications would be duly considered in accordance



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with law. We make it clear that we are not expressing any opinion on the claim concerning reliefs and concession nor any part of this order shall be understood in that spirit.

- (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.
- (iv) C.A. No. 1132(PB)/2019 stands disposed of in above terms.
- (v) C.A. No. 1110(PB)/2019 shall be taken up on 07.01.2020.



*[Signature]* 05/12/19  
Deputy Registrar  
National Company Law Tribunal  
CGO Complex, New Delhi-110003

*[Signature]*  
(M.M.KUMAR)  
PRESIDENT

2.12.2019

*[Signature]*  
(S.K. MOHAPATRA)  
MEMBER (TECHNICAL)

02.12.2019  
VIDYA