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**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU**

**(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**I.A. No.258 of 2021 in
CP (IB) No.357/BB/2019
U/s 30(6) r/w Section 60(5) of I&B Code, 2016**

In the matter of IA No.258 of 2021:

Mr. Kanekal Chandrasekhar
Resolution Professional for
Southern Batteries Pvt. Ltd.

- Applicant / RP

In the matter of:

Allahabad Bank
(now Indian Bank)

- Financial Creditor/
Petitioner

Versus

Southern Batteries Pvt. Ltd.

- Corporate Debtor/
Respondent

Order delivered on: 24th June, 2022

Coram:

1. Hon'ble Shri Ajay Kumar Vatsavayi, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Present:

The RP / Applicant in
IA No.258 of 2021

: Shri Kanekal Chandrasekhar

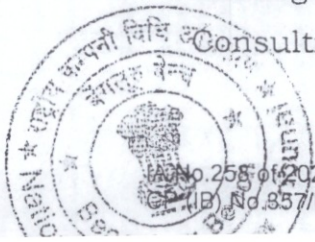
For the R.P.

: Shri Deep Roy, Adv.

ORDER

Per: Ajay Kumar Vatsavayi, Member (J)

1. This Application is filed by Mr. Kanekal Chandrasekhar (hereinafter referred to as 'Applicant / Resolution Professional') under Section 30(6) r/w Section 31 of the Insolvency and Bankruptcy Code, 2016 ('IBC/Code') seeking approval of the Resolution Plan submitted by Aharnisha Consultings Private Limited in consortium with Sri. R. Sreenivasan,

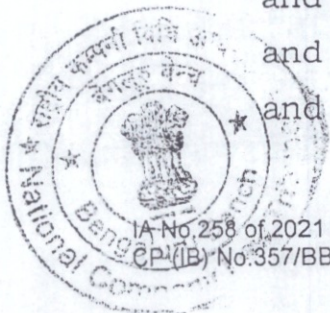


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Sri. R. Sudarshan and Sri. B. Radhakrishnan, (hereinafter referred to as the 'Resolution Applicant' or 'RA') along with the addendum dated 15.07.2021, which is annexed and marked as Annexure-A to the Application.

2. Brief facts of the case are given hereunder:

- (a) The main Company Petition bearing CP (IB) No.357/BB/2019 filed by the Financial Creditor i.e. Allahabad Bank (*now Indian Bank*) u/s 7 of the Code for initiation of the Corporate Insolvency Resolution Process (CIRP) in respect of Corporate Debtor, namely, M/s.Southern Batteries Private Limited, was admitted by this Adjudicating Authority, vide order dated 19.02.2020, and the CIRP of the Corporate Debtor was initiated by appointing Mr. Ramanahalli Shivanna Doddabyregowda as the Interim Resolution Professional and he was directed to take necessary actions in accordance with relevant provisions of the Code and Regulations made thereunder.
- (b) Pursuant to the aforesaid appointment, the IRP had issued public announcement on 26.02.2020 calling upon various creditors of the Corporate Debtor to submit their claims with proof on or before 09.03.2020. The IRP filed a report on 13.03.2020 certifying the constitution of the CoC of the Corporate Debtor. CoC in its 1st meeting held on 18.03.2020 *inter alia* resolved to appoint the aforesaid IRP as the Resolution Professional (RP) of the Corporate Debtor. Accordingly, this Adjudicating Authority approved the said appointment as the RP, vide order dated 16.06.2020 in IA No.188 of 2020.
- (c) It is stated that pursuant to the approval provided by the CoC members in the 2nd CoC meeting, the erstwhile RP appointed Kanti Karamsey & Co. and S.J. Ranganathan for registered valuer of Land and Building; Kanti Karamsey & Co. and Motappa Thimmaraya Swamy for registered valuer of Plant and Machineries; R. Srinivasan and Devarakonda Ravi Sankar as the registered valuer of Securities and Financial Assets, for the purpose of determining the Fair Value and Liquidation Value of the assets of the Corporate Debtor in

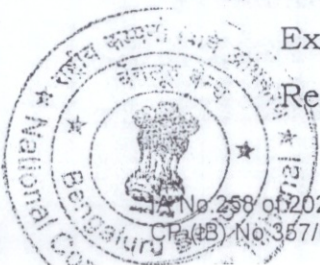


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accordance with Regulation 35 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations).

- (d) The erstwhile RP in the 3rd CoC meeting held on 20.06.2020 informed that due to country wide lockdown declared by the Govt. of India and State Govt., time bound activities could not be carried out as per the timelines of CIRP process of the Corporate Debtor and thus requested the CoC to take decision to exclude lockdown period from the CIRP period.
- (e) The erstwhile RP in the 4th CoC meeting held on 08.08.2020 requested the members of the CoC to consider and approve the appointment of Transaction Auditors and fixing their remunerations, and based on the voting results, NVA & Associates were appointed for conducting Transaction Audit of the Corporate Debtor.
- (f) Pursuant to the approval of the eligibility criteria of the prospective resolution applicants in the 5th CoC meeting held on 10.08.2020, the erstwhile RP published the invitation for Expression of Interest (EoI) in Form-G on 13.08.2020 in the '*Financial Express*' and '*Samyuktha Karnataka*' regional publications, wherein, the timeline for submission of EoIs was up to 09.09.2020.
- (g) Pursuant to Section 29 of the Code r/w Regulation 36(2) of the CIRP Regulations, an Information Memorandum ('IM') was prepared by the erstwhile RP in such form and manner as specified under the CIRP Regulations for formulating a Resolution Plan and the same has only been shared with the members who have provided a confidentiality undertaking as required under the Code and CIRP Regulations, and with the Prospective Resolution Applicants (PRAs).
- (h) It is stated that the Adjudicating Authority vide its order dated 02.09.2020 in IA No.321 of 2020, granted an exclusion of 116 days from the statutory period of 180 days.
- (i) Pursuant to the publication of the Form-G, the erstwhile RP received Expressions of Interest (EoI) from the PRAs. In accordance with Regulation 36A(10) of the CIRP Regulations, the erstwhile RP issued



the provisional list of PRAs on 09.09.2020, and then subsequently, in accordance with Regulation 36A(11) of the CIRP Regulations, there were objections received to the provisional list of PRA, thereby, the erstwhile RP brought to the notice of CoC that, as per the time norms, and provisions of Regulation 36B(1)(a) & (b) bid documents were issued to both PRA and the PRA that has contested the provisional list. Further, in accordance with the CIRP Regulations, the erstwhile RP issued the final list of PRAs along with the Request for the Resolution Plan ('RFRP'), IM and Evaluation Matrix ('EM') as approved in the 7th CoC meeting dated 23.09.2020.

- (j) The erstwhile RP in the 8th CoC meeting held on 07.11.2020 requested the members of the CoC to deliberate upon the Resolution Plan submitted by the consortium of the Promoters of the Corporate Debtor and Aharnisha Consultings Pvt. Ltd. It was observed that the Resolution Applicants are ineligible u/s 29A of the Code. The Promoters of the Corporate Debtor insisted that the Corporate Debtor is a Micro Small Medium Enterprise ('MSME') and also submitted the Certificate of Registration issued by Udyam Registration Certificate dated 29.09.2020, certified by the Deputy Director of MSME.
- (k) The CoC along with the erstwhile RP deliberated on the eligibility of the Promoters u/s 29A to Promoters. Additionally, the CoC was apprised by the fact that case u/s 43 and 66 of the Code is pending against the Promoters of the Corporate Debtor before the Tribunal, and also that the lenders expressly admitted that the loans sanctioned by them were not covered under MSME Scheme. Moreover, the consortium failed to submit the bond amount of Rs. 5 Crores. Thereby, because of the aforementioned reasons the Resolution Plan was rejected in the 8th CoC meeting and a resolution was passed by the CoC to allow erstwhile RP to call for fresh EoI.
- (l) CoC in its 9th meeting allowed the erstwhile RP to file an application for the exclusion of 119 days from the CIRP period. During the 10th CoC meeting held on 29.12.2020, the erstwhile RP apprised the members of the CoC that the IA filed before the Tribunal for extension



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/ exclusion of CIRP period is admitted and an order of exclusion of 77 days from the CIRP period was granted on 08.12.2020. The last date for submission for EoI was decided to be 23.11.2020. The CoC also decided on replacement of the erstwhile RP on an account of medical exigency and that he would be discharged from his duties.

- (m) The erstwhile RP in the 11th CoC meeting held on 28.01.2021 apprised the members of the CoC that the Valuers have submitted the Valuation Report. The Resolution Plan was submitted by Aharnisha Consultings Pvt. Ltd., the CoC was requested to deliberate upon the feasibility and viability of the Resolution Plan and was kept e-voting, thereby, the Plan was approved by 99.33% of the voting share.
- (n) Pursuant to the directions received from the CoC in the 12th meeting dated 08.02.2021, an application bearing IA No.91 of 2021 was filed by erstwhile RP before this Tribunal for the approval of Resolution Plan. It is stated that the Promoters of the Corporate Debtor ('Promoters') filed an application seeking intervention of the Tribunal to set aside the decision of the erstwhile RP of rejecting the Resolution Plan submitted by the Applicant in the 8th CoC meeting as the Corporate Debtor is a MSME under Udyam Registration Certificate. The Adjudicating Authority, vide its order dated 04.03.2021 in IA No.521 of 2020, allowed the Promoters to participate in the CIRP process as the Corporate Debtor is an MSME. It further directed the erstwhile RP to allow the Resolution Plan as submitted by the Applicant to be presented before the CoC and be considered and voted upon by the CoC.
- (o) During the 13th CoC meeting held on 17.03.2021, the Promoters were allowed by the RP to present their Resolution Plan, the discussions were held regarding its viability and feasibility and CoC requested the Promoters to present the modified resolution plan in the next meeting. Additionally, Shri Kanekal Chandrasekhar was appointed as a Resolution Professional as the erstwhile RP resigned due to some medical exigency. Upon filing an application, the Adjudicating



Authority, vide its order dated 09.04.2021 in IA No.110 of 2021, approved the appointment of Shri Kanekal Chandrasekhar as the RP of the Corporate Debtor.

- (p) The Applicant, during the 14th CoC meeting held on 24.05.2021, informed the CoC that RP had received revised resolution plan by the Resolution Applicants and the said Plan after deliberations by the CoC requested the Resolution Applicant to make some final changes.
- (q) CoC in its 15th meeting held on 15.07.2021 deliberated upon the feasibility and viability of the Resolution Plan along with the addendum dated 15.07.2021 and subsequently the Plan along with the addendum was put for e-voting. The CoC approved the said Plan with 74% of voting shares. The full text of the approved Resolution Plan along with the addendum submitted by the Resolution Applicant, has been annexed to this Application as 'Annexure A'.
- (r) The Summary of the Financial Plan as stated in Page No.881 of the Application is as under:

Sr. No.	Particulars	Amount in Rs. Cr.
1.	CIRP Cost	0.50
2.	Financial Creditors Secured	113.54
3.	Financial Creditors Unsecured	0.20
4.	Employees	3.25
5.	Statutory Dues	1.26
6.	Operational Creditors	2.53
7.	Reserve Fund for Monitoring Committee	0.72
	Total	122.00

- (s) Pursuant to Regulation 39(4) of the CIRP Regulations, the Applicant has prepared the Compliance Certificate in Form-H and the same is placed on record as Annexure-V. Further, the Resolution Applicant submitted a Performance Security in the form of a Bank Guarantee dated 23.07.2021 and is annexed as Annexure W (Colly.).
- (t) It is certified by the RP in para 4 of Form-H that the said Resolution Plan complies with all provisions of the Insolvency & Bankruptcy



Code, 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP Regulations') and does not contravene any of the provisions of the law for the time being in force. It is also stated in para 4(ii) of Form-H that the Resolution Applicant (a) Mr. R. Sreenivasan (b) Mr. R. Sudarshan and (c) Mr. B.P. Radhakrishnan – all Ex-Promoters in consortium of M/s. Aharnisha Consulting Pvt. Ltd. has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility u/s 29A of the Code to submit Resolution Plan and that the contents of the said affidavit are in order.

- (u) In Part-A of the Resolution Plan (Page No.48 of the Application) it is stated that the aforesaid Consortium Members / Resolution Applicants have incorporated a Special Purpose Vehicle ('SPV'), a Company named as 'Southern Energy Investments Private Limited' ('SIEPL') to implement the Resolution Plan. It is also stated that the Resolution Applicants together have more than 120 years hardcore professional experience in successfully running battery manufacturing industry, which is by far one of India's most experienced group of individuals in the battery manufacturing domain.
- (v) Projected Profit & Loss Account for FY ending March, 2022, Projected Balance Sheet as on 31st March, 2022 and Projected Cash Flow Statement as on March, 2022 of the Corporate Debtor are annexed as Schedule – 8, 9 and 10 of the Resolution Plan dated 15.07.2021.
- (w) It is further stated that the Applicant has verified and confirmed that the Resolution Plan along with the addendum dated 15.07.2021, herein would be beneficial to the Corporate Debtor and its Creditors, and thus seeking to allow the present Application.

3. Heard Shri Kanekal Chandrasekhar, learned Resolution Professional, Shri Deep Roy, learned Counsel for the Applicant / Resolution Professional and carefully perused the pleadings on record.



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4. The Corporate Debtor herein, namely, M/s. Southern Batteries Private Limited was incorporated on 02.02.1996 and the CIRP proceedings were initiated against the Corporate Debtor by this Adjudicating Authority, vide order dated 19.02.2020 passed in C.P. (IB) No.357/BB/2019. The present application is filed for approval of the Resolution Plan submitted by Aharnisha Consultings Private Limited in consortium with Sri. R. Sreenivasan, Sri. R. Sudarshan and Sri. B. Radhakrishnan ('Resolution Applicant'). The approval has been sought under the provisions of Section 31(1) of the Code.
5. In pursuant to the public announcement inviting claims from the Creditors of the Corporate Debtor, the then IRP had constituted the Committee of Creditors. The list of Financial Creditors of the Corporate Debtor being Members of the CoC and distribution of voting share among them is as under (Para No.5 of Form H):-

Sr. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1.	Indian Bank.(Erstwhile Allahabad Bank)	64.64%	Voted for
2.	Dhanalaxmi Bank Ltd.	8.23%	Voted for
3.	BAJAJ Finance Limited	0.08%	Voted for
4.	Cholamandalam Investment & Finance Co. Ltd.	0.19%	Voted for
	Total	73.14%	
5.	Union Bank of India	24.84%	Dissented
6.	Indiabulls Consumer Finance Limited (Formerly VL Finance Limited)	0.13%	Dissented
	Total	24.97%	
7.	Hero Fin Corp Ltd.	1.35%	Abstained
	Total	1.35%	
8.	Daimler Financial Services Pvt. Ltd.	0.36%	Not voted
9.	IIFL Finance Ltd.	0.18%	Not voted
	Total	0.54%	
	Total Voting Share	100%	



6. The details of stakeholders and the amounts provided for them under the Resolution Plan given in Para No.11 of detailed Form-H filed on 03.02.2022 are as under:-

(Rupees in Lakhs)

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Admitted (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	0.00	0.00	0.00	0.00
		(b) Other than (a) above: (i) who did not vote in favour of the resolution plan (ii) who voted in favour of the resolution plan Total [(a) + (b)]	5,878.88	5,878.88	2,878.40	48.96%
			17,317.11	17,310.42	8,475.84	48.96%
			23,195.99	23,189.30	11,354.24	
2.	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21		NIL		
		(b) Other than (a) above: (i) who did not vote in favour of the resolution plan (ii) who voted in favour of the resolution plan Total [(a) + (b)]	97.38	89.19	13.38	15.00%
			45.26	45.26	6.78	15.00%
			142.64	134.45	20.16	
3.	Operational Creditors	(a) Related Party of Corporate Debtor	1,349.01	0.00	0.00	Contingent Liability (u/s.66)
		(b) Other than (a) above: (i) Government (ii) Workmen and Employees (iii) Other Operational Creditor Total [(a) + (b)]	4,770.12	1,898.56	125.50	6.60%
			468.97	325.24	325.24	100%
			3,564.02	1,683.98	252.59	15%
8,803.11	3,907.78	703.33				
4.	Other debts and dues	C & D Singapore	320.00	0.00	0.00	Contingent Liabilities
		CIRP Expenses	50.00	50.00	50.00	100%
		Total [(a) + (b)]	370.00	50.00	50.00	
Grand Total			32,496.70	27,281.54	12,127.74	44.45%

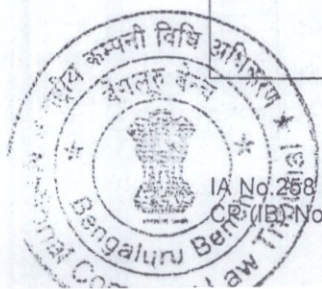


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Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.

7. The compliance of the Resolution Plan has been given in Para No.9 of Form-H as follows:-

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	Part 1 of the Resolution Plan provides that the net worth of the Resolution Applicant is Rs.53.04 Cr. whereas revised Form G provided for Rs.25.00 Cr. Hence complied.	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Declaration under Section 29A submitted by the RAs. The AA, by an order dated 4 th March 2021 has directed to allow the Resolution Plan as submitted by the Applicants to be presented before the COC and be considered and voted upon by COC.	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	The Resolution Applicants have submitted the affidavits, the same is verified and subjected to Due diligence.	Yes
Section 30(2)	Whether the Resolution Plan -		
	(a) provides for the payment of insolvency resolution process costs?	It provides for Payment in priority.	Yes
	(b) provides for the payment to the operational creditors?	The plan provides for partial payment to OCs.	Yes
	(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	It provides for payment as per Section 30(2) and Regulation 38(1)(b) of CIRP Regulations.	Yes
	(d) provides for the management of the affairs of the corporate debtor?	A monitoring committee is proposed for managing the affairs of the CD.	Yes
	(e) provides for the implementation and supervision of the resolution plan?	Provides for constitution of Monitoring Committee for supervision of the resolution plan.	Yes
	(f) contravenes any of the provisions of the law for the time being in force?	The Resolution Professional confirms that the plan is not in contravention of the provisions of any applicable law. (Page 48)	Yes
Section 30(4)	Whether the Resolution Plan		
	(a) is feasible and viable, according to the CoC?	The Plan provides for projected P&L statement and Cash Flow and Balance Sheet which	Yes



		shows the feasibility and viability of the Plan	
	(b) has been approved by the CoC with 66% voting share?	The COC has approved the Resolution Plan with 74% voting share.	Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	The Plan provides for constitution of Monitoring Committee for effective implementation of the plan.	Yes
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	From the Forensic Audit report, transaction of the nature covered by Sections 43 and 66 were observed. Resolution Professional has filed IA No.320 of 2020 in NCLT and the same is yet to be adjudicated by the AA.	Yes
Regulation 38(1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	The Resolution Applicant, as required under section 30, undertakes to pay OCs at least the amount to be paid as per section 53 and distribute in accordance with order of priority in sub-section (1) of section 53.	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	The plan states at item 1.6 of Page 4, that to the extent possible taken into account the interest of all stake holders and believes it will create a sustainable structure to continue as a "going concern"	Yes
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code.	The Resolution Applicant confirms that neither it nor any of its related parties have failed to implement or contributed to the failure of implementation of any other Resolution Plan approved by the NCLT at any time in the past. (Point 10 on Page 48)	No
	(ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	NA	NA
Regulation 38(2)	Whether the Resolution Plan provides: (a) The term of the plan and its implementation schedule?	The term of the plan is one year from the effective date and 180 days for payment of Resolution amount.	Yes
	(b) For the management and control of the business of the corporate debtor during its term	Plan provides for appointment of Monitoring Committee for management and	Yes



	(c) Adequate means for supervising its implementation?	control of the business of CD. Plan provides for adequate means for supervising its implementation.	Yes
38(3)	Whether the resolution plan demonstrates that- (a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan?	The plan explains the causes of default, and how the same is addressed in the Plan. P&L Statement, Balance Sheet and Cash Flow provided. COC has voted the plan with 74% voting in favour of the plan. Monitoring Committee proposed for the effective implementation of the Plan. The plan has provisions for approvals required and timeline for the same. Members of Consortium provided proof of net worth and experience	Yes Yes Yes Yes Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Application filed for transactions observed, found and determined by RP and is yet to be adjudicated by the Adjudicating Authority	Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of Regulation 36B.	Performance Guarantee for Rs.5.00 Crs. is submitted by Resolution Applicant in favour of beneficiary RP/Lead Bank (Indian Bank)	

8. The approval of the resolution plan has been sought under Section 31(1) of the Code, which reads as under:

"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.



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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.”

9. The conditions provided for in Section 31(1) of the I&B Code, 2016 for approval of Resolution Plan are therefore:

- (a) The Resolution Plan is approved by the CoC under Section 30(4) of the Code;
- (b) The Resolution Plan so approved meets the requirements as referred to in Section 30(2) of the Code;
- (c) The Resolution Plan has provisions for its effective implementation.

The satisfaction of the conditions is discussed below.

10. It is submitted by the RP that, the CoC in its 15th Meeting held on 15.07.2021 has approved the Resolution Plan along with the addendum dated 15.07.2021 submitted by Aharnisha Consultings Private Limited in consortium with Sri. R. Sreenivasan, Sri. R. Sudarshan and Sri. B. Radhakrishnan with 74% of voting shares and therefore, the conditions provided for by Section 30(4) of the Code are satisfied.

11. The provisions of Section 30(2) of the I&B Code, 2016 are as follows:

“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 3 [payment] of other debts of the corporate debtor;*
- (b) *provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-*
 - i.) *the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or*
 - ii.) *the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,*



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whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

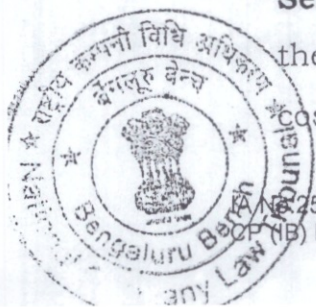
Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

- (i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;
 - (ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or
 - (iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;
- (c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;
- (d) The implementation and supervision of the resolution plan;
- (e) does not contravene any of the provisions of the law for the time being in force
- (f) conforms to such other requirements as may be specified by the Board.”

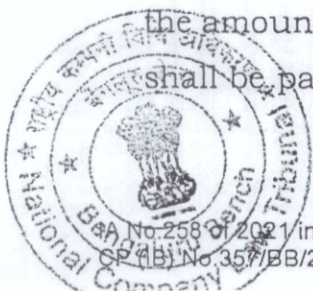
12. The compliance of Section 30(2) of the Code is given in Para No.9 of Form-H (supra). The same is being further examined as under:

Section 30(2)(a): The Resolution Plan in Part III-Mandatory Provisions of the Plan (Page No.89 of the Application) stated that the CIRP costs and the Cost of Monitoring Committee shall be paid in priority to any other



Creditors of the Corporate Debtor, in the manner set forth in Part II – Financial Proposal of the Resolution Applicant (Page No.77 of the Application), wherein, it is *inter alia* stated that the Resolution Applicant expects that the total CIRP costs would approximately be Rs.50,00,000/- (Rupees Fifty Lakhs only). The same shall be paid by the RA in priority over all other debts and the same has been considered in the Plan. However, the RA undertakes if the actual cost exceeds the estimates, RA shall fund the additional amount.

Section 30(2)(b): The Resolution Plan in Part III-Mandatory Provisions of the Plan (Page No.89 of the Application) *inter alia* stated that as required u/s 30 of the Code, the Resolution Applicant undertakes to pay the operational creditors, at least (i) the amount to be paid to such creditors in the event of a liquidation of the Corporate Debtor u/s 53 of the Code; or (ii) the amount that would have been paid to such creditors, if the amount to be distributed under the Plan (i.e., the Resolution Amount) had been distributed in accordance with the order of priority in sub-section (1) of section 53 of the Code. Further, the Resolution Plan at Part II-Financial Proposal of the Resolution Applicant (Page No.79 of the Application) *inter alia* stated that the verified amount of the admitted claims of the workmen and employees is Rs.3,25,24,207/- (Rupees Three Crore Twenty-Five Lakh Twenty-Four Thousand Two Hundred and Seven only) and shall be paid the entire 100% amount admitted as per the Implementation Provision in Schedule 2. As regards the Statutory Dues, the RA restricts the payment of Statutory Dues only to the extent of provident fund claims of the workmen and staff amounting to Rs.1,25,50,000/- (Rupees One Crore Twenty-Five Lakh and Fifty Thousand only) and the same shall be paid as per the Implementation Provision in Schedule 2. The other Operational Creditors shall be paid an amount of Rs.2,52,59,761/- (Rupees Two Crore Fifty-Two Lakh Fifty-Nine Thousand Seven Hundred and Sixty-One only) be paid on a pro-rata basis as per their verified amounts. Provided that, the amount payable under the Resolution Plan to the Operational Creditor shall be paid in priority over the Financial Creditor.



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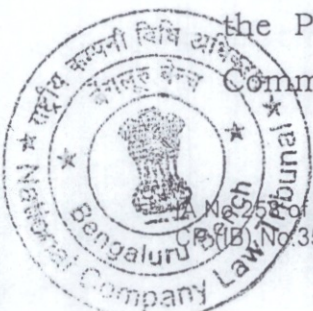
Further, as regards the payment of amount to Dissenting Creditors, it is stated at Page 89 of the Application that in terms of Section 30(2) of the Code, the Dissenting Financial Creditors shall not be paid less than the amount payable to them in accordance with sub-section (1) of section 53 of the Code in the event of a liquidation of the Corporate Debtor. In terms of Regulation 38(1)(b) of the CIRP Regulations, the payment to the Dissenting Financial Creditors shall be made prior to any payment to the Consenting Financial Creditors.

Section 30(2)(c): The Resolution Plan in Part III-Mandatory Provisions of the Plan (Page No.89 to 93 of the Application), *inter alia* stated that pursuant to the approval of the Plan by the NCLT and effective until the Payment Date, a Committee comprising of the following shall be the members of the Monitoring Committee:

- i. *The Resolution Professional – Chairperson*
- ii. *1 representative from Indian Bank – Secured Financial Creditor*
- iii. *1 representative from Union Bank of India – Secured Financial Creditor*
- iv. *1 representative from Dhanalaxmi Bank – Secured Financial Creditor*
- v. *2 representatives from Resolution Applicant.*

The Monitoring Committee shall manage and control the Corporate Debtor as a going concern in the ordinary course of business, in trust and for the benefit of the creditors of the Corporate Debtor in furtherance of the resolution of the Corporate Debtor by the Resolution Applicant, and for the benefit of no other Person or stakeholder. Taking of any action by the Corporate Debtor and any decision by the Monitoring Committee shall be majority of the members of the Monitoring Committee. The Monitoring Professional shall *inter alia* have the responsibility of coordination amongst the stakeholders for smooth implementation of the Plan. The term of the Resolution Plan will be one year from the Effective Date.

Section 30(2)(d): The Resolution Plan in Part III-Mandatory Provisions of the Plan (Page No.93 of the Application) stated that the Monitoring Committee shall supervise the implementation of the Plan until the



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Payment Date. The monitoring professional on behalf of the Monitoring Committee will sign all applications on behalf of the Corporate Debtor that are proposed to be made to any Governmental Authority, based on the resolution passed by the Monitoring Committee and the monitoring professional shall make such applications in order to obtain the necessary approvals for implementation of this Plan in a timely manner. The mechanism for supervision of the payments to stakeholders of the Corporate Debtor after the Effective Date, in the manner contemplated in this Plan, shall be supervised by the Monitoring Committee.

Further, the RP stated that the Monitoring Committee will conduct and supervise the sale of release assets as per the process provided in Schedule 5 of the Resolution Plan along with the addendum dated 15.07.2021. Additionally, the charge created over the release assets will be released by the creditors only after receiving the complete payment.

Section 30(2)(e): The Resolution Plan at Page Nos.53 and 94 of the Application stated that the Resolution Applicants expressly confirm that the Resolution Plan being submitted does not contravene any of the provisions of law for the time being in force.

Section 30(2)(f): It is stated by the Resolution Professional in Form-H at para 3 that he has examined the Resolution Plan dated 15.07.2021 received from the Resolution Applicants (a) Mr. R. Sreenivasan (b) Mr. R. Sudarshan (c) Mr. B. Radhakrishnan – all Ex-promoters in consortium of M/s. Aharnisha Consultings Pvt. Ltd. and approved by CoC of the Corporate Debtor. He further certified at para 4 of Form-H that the said Resolution Plan complies with all the provisions of the Code, the IBBI (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 and that the Resolution Applicant has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility u/s 29A of the Code to submit resolution plan.

13. We are now examining the compliance of the proviso to Section 31(1) of the I&B Code, 2016 that the Resolution Plan has provisions for its effective

implementation. The Resolution Plan at Page No.94 of the Application stated that the steps for completion and effective implementation of the transactions contemplated in the Plan are set out in Schedule 2 (Implementation Provisions). The Resolution Applicant, the Corporate Debtor, the Monitoring Committee shall take all relevant actions as may be required for (i) implementing the steps and for (ii) effecting the payments to the relevant stakeholders of the Corporate Debtor, as set out in Part-II – Financial Proposal of Resolution Applicants, thereby achieving effective implementation of the Plan.

14. As regards the Sources of Funding, at Page No.68 of the Application, it is stated that the Resolution Applicants from their own resources and/or through tie up with identified strategic investor such as V R Facilities, shall bring in an amount of Rs.55,00,00,000/- (Rupees Fifty-Five Crores only) as specified in fund pattern amplified in Schedule-10 of the Resolution Plan. The Resolution Applicants have already tied up with investor, for infusion of funds. Further, the Resolution Applicant expects to generate an amount of Rs.12.53 Crores from internal generations / accruals as set out in Schedule-9 of the Resolution Plan. The Resolution Applicant expects to generate an amount of Rs.67,50,00,000/- (Rupees Sixty-Seven Crores and Fifty Lakhs only) from sale of Released Asset as set out in Schedule-10. Sources of infusion of funds are detailed in Schedule-11 of the Resolution Plan. The Resolution Applicant however specifically undertakes that it shall infuse any shortfall from any of the above sources either by way of equity or debt or a combination of both.
15. We have discussed above that the requirements under section 31(1) of the Code are satisfied in the present case. In para 4 of Form H, the Resolution Professional has certified that the Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code, 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force. The RP has also certified that the Resolution Applicant (a) Mr. R. Sreenivasan



No.258 of 2021 in
CP (IB) No.357/BB/2019

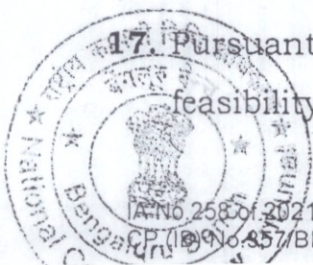
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(b) Mr. R. Sudarshan (c) Mr. B. Radhakrishnan – all Ex-promoters in consortium of M/s. Aharnisha Consultings Pvt. Ltd. have submitted respective affidavits pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit the Resolution Plan and the contents of the said Affidavit are in order. Copy of the Affidavits of the Resolution Applicant regarding its eligibility u/s 29A have been annexed from Page Nos.251 to 262 of the Application. The RP has submitted that the Resolution Plan has been approved by the CoC with 74% voting share in accordance with the provisions of the Code and CIRP Regulations made thereunder and after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

16. Pursuant to Regulation 38(3)(a) of the CIRP Regulations regarding whether the Resolution Plan demonstrates that it addresses the cause of default, it is *inter alia* stated in Part I of the Resolution Plan (Page Nos.61 and 62 of the Application) that the Joint Venture with M/s. C&D Technologies USA which was launched with a huge capital expenditure, collapsed on account of change of management of the JV partner. The new management of the JV dumped the focus on India. The exemplary achievement of growth in the last decade could not be sustained because of lack of timely working capital arrangements. The time taken for securing NOCs inter-se the CD's bankers did cost huge drain on the CD's resources leading to crisis financial management and also due to delay in implementing the new technological advancements.

The Resolution Applicant has studied the issues faced by the Corporate Debtor and plans to turnaround the Corporate Debtor *inter alia* by deploying appropriate capital into the business to make it financially sustainable, which involves investing in working capital and certain amount of capital expenditure, deploying necessary tools to achieve the turnaround Plan, engaging skilled management team, etc., and confirms that the Plan addresses the cause of default by the Corporate Debtor.

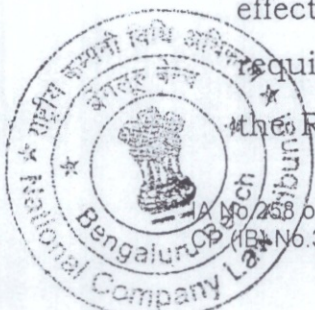
17. Pursuant to Regulation 38(3)(b) of the CIRP Regulations regarding the feasibility and viability of the Resolution Plan, it is stated in Page No.95 of



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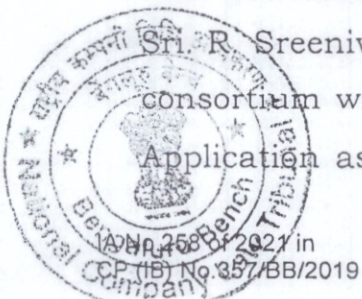
the Application, wherein, the Resolution Applicant confirms that the Plan is feasible and viable.

18. Pursuant to Regulation 38(3)(c) of the CIRP Regulations regarding whether the Resolution Plan has provisions for its effective implementation, it is *inter alia* stated in the Resolution Plan (Page No.94 of the Application) that the steps for completion and effective implementation of the transactions contemplated in this Plan are set out in Schedule 2 (Implementation Provisions) of the Resolution Plan dated 15.07.2021.
19. Pursuant to Regulation 38(3)(d) of the CIRP Regulations regarding whether the Resolution Plan has provisions for approvals required and the timeline for the same, it is *inter alia* stated in the Resolution Plan (Page No.71 of the Application) that other than the approval of the NCLT approving this Plan, no other governmental, statutory or regulatory approvals are required for the implementation of and payments under this Plan as the RA is taking over the CD as a going concern. In the event any of the licenses required for running the business of CD have expired or new licenses are required, or new renewals are required, RA will make necessary applications for reinstatement of such licenses, etc. It is envisaged that RA shall obtain such approvals within a period of 1 year after the approval of the Resolution Plan.
20. Pursuant to Regulation 38(3)(e) of the CIRP Regulations regarding whether the Resolution Applicant has the capability to implement the Resolution Plan, it is stated in the Resolution Plan (Page No.95 of the Application) that the Resolution Applicant has the capability to implement the Plan. Further, Time Schedule for payment of Resolution Debt is given under Schedule 12 of the Resolution Plan.
21. According to Regulation 39(4) of the CIRP Regulations, the Resolution Applicant shall furnish evidence of receipt of performance security as required under sub-regulation (4A) of Regulation 36B which came into effect from 24.01.2019. In this regard, the Applicant stated that as required under the terms of the Code, the CIRP Regulations and the RFRP, the Resolution Applicant has, upon being issued the Letter of Intent (as



defined in the RFRP), and within the timelines and in the manner specified in the RFRP, submitted a performance security in the form of a bank guarantee dated 23.07.2021 numbered 00061G210000009 ('Bank Guarantee') for an amount of Rs.5 Crores issued by Indian Bank, with a Validity Date up to **15.04.2022**. Copy of the Bank Guarantee and accepted Letter of Intent have been placed on record as Annexure-W (Colly.) of the Application.

- 22.** Pursuant to the directions given by this Tribunal on 12.11.2021, the Applicant/RP vide Diary No.437 dated 03.02.2022 has filed an Affidavit enclosing the detailed Compliance Certificate (Form-H) and the same is taken on record.
- 23.** It is stated that the Applicant had conducted a check in order to identify transactions of the Corporate Debtor which are preferential, undervalued, extortionate or fraudulent in nature, and have identified such transactions. Accordingly, an application bearing I.A. No.320 of 2020 for avoidance of the said transactions has been filed by the RP and is pending before the Tribunal.
- 24.** In respect of the reliefs and concessions, it is declared that whatever reliefs and concessions entitled by the Resolution Applicant by virtue of the approval of the Plan, are entitled to it in accordance with Law. In respect of the remaining, it is not possible for us to issue any direction except to say that the Resolution Applicant may take appropriate steps in accordance with Law in respect of the said reliefs and concessions and the public authorities / government authorities / any other party would duly consider the said requests / applications of the Resolution Applicant in accordance with Law.
- 25.** In the circumstances and for the aforesaid reasons, the instant IA bearing I.A. No.258 of 2021 is allowed and accordingly, the Resolution Plan along with the Addendum dated 15.07.2021 ('Resolution Plan') submitted by Sri. R. Sreenivasan and Sri. R. Sudarshan and Sri. B. Radhakrishnan in consortium with Aharnisha Consultings Private Limited (annexed to the Application as Annexure-A) is hereby approved. The Resolution Plan so



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approved 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. Under the provisions of section 31(3) of the Code, we also direct as under:

- (a) The Bank Guarantee referred in para 21 above, shall be extended till the complete implementation of the Resolution Plan.
- (b) The moratorium order passed by this Adjudicating Authority under Section 14 of the Code on 19.02.2020 in the main CP shall cease to have effect; and
- (c) 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.

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(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

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(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)



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