



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH, COURT-VI  
I.A. 5495/ND/2022  
IN  
C.P. No. IB-321/ND/2021**

**(Under Section 30 (6) and 31 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016))**

MS. SHIVANI GUPTA

.... PETITIONER

**VERSUS**

M/S H L BUILDWELL PVT. LTD.

..... RESPONDENT

**AND**

**AND IN THE MATTER OF:**

MR. VINAY KUMAR SINGHAL  
RESOLUTION PROFESSIONAL OF  
M/S. H L BUILDWELL PVT. LTD.

.... APPLICANT

**SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER  
(JUDICIAL)**

**SH. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**

**PRESENT**

**For the Resolution Professional:** Mr. Abhishek Anand, Mr. Karan Kohli, Mr. Sahil Chopra, Mr. Vaibhav Mendiratta, Advs.

**For the SRA:** Mr. Sunil Choudhary and Ms. Preeti Shah, Advs.



**ORDER**

**PER: BACHU VENKAT BALARAM DAS MEMBER (JUDICIAL)**

**ORDER DELIVERED ON: 17.08.2023**

The present application has been filed under Section 30(6) read with Section 31(1) of the Insolvency & Bankruptcy Code, 2016 ('the Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('Regulations') on behalf of Mr. Vinay Kumar Singhal Resolution Professional (RP) of M/s. H.L. Buildwell Private Limited ('Corporate Debtor'), seeking approval of the Resolution Plan submitted by M/s Prabhatam Infrastructure Limited ('Successful Resolution Applicant') as approved by the Committee of Creditors ('CoC') in its 7<sup>th</sup> CoC Meeting held on 10.10.2022.

2. Briefly stated, the facts as averred by the applicant in the application are as follows:

- a) That the Corporate Insolvency Resolution Process against the Corporate Debtor was initiated vide order dated 15.02.2022 and Mr. Deepak Kumar Garg was appointed as IRP in the matter.
- b) That the IRP prepared a list of Creditors after verification of claim received pursuant to the Public Announcement within 7 days from the last date of receipt of the claims and constituted Committee of Creditors.
- c) The IRP admitted the following claims of the creditors of the Corporate Debtor



S. No.	Type of Creditor	Amount Claimed (In Rs.)	Amount admitted (In Rs.)
1	Secured Financial Creditor	NIL	NIL
2	Unsecured Financial Creditor (other than related party)	18,51,86,082	18,51,86,082
3	Unsecured Financial Creditor (related party)	NIL	NIL
3	Operational Creditor	1,29,46,607	1,29,46,607
4	Claimed Statutory Dues	NIL	NIL
5	Contingent Liability towards Statutory Dues	NIL	NIL
6	Employees	NIL	NIL
7	Workers	NIL	NIL
	<b>Total</b>	<b>19,81,32,689</b>	<b>19,81,32,689</b>

- d) That the IRP convened the first Meeting of Committee of Creditors (“COC”) on 22.03.2022. In the said meeting, the COC resolved to appoint the Applicant i.e., Mr. Vinay Kumar Singhal as Resolution Professional which was subsequently confirmed by this Tribunal vide order dated 01.04.2022.
- e) That in the 3<sup>rd</sup> Meeting of CoC, the CoC resolved to publish Expression of Interest/ Form G to invite prospective resolution applicants for submission of Resolution Plan by 10.07.2022.
- f) That in the 4<sup>th</sup> Meeting of CoC, the applicant informed the members of CoC that the applicant received request timeline for submission of the Resolution Plan and the same was approved by the CoC with 100 % majority. Accordingly, the revised extended last date to submit the resolution plan was 25.07.2022.
- g) The RP received six EOI(s) from PRA(s) the details of the same are as under: -

S. No.	Name of Prospective Resolution Applicants	Entity Type
1.	RKG Asset Management LLP (RKG Fund I, a scheme of RKG Trust)	Limited Liability Partnership
2.	RKG International Private Limited	Private Limited Company
3.	KDM Media Private Limited	Private Limited Company
4.	Prabhatam Infrastructure Ltd.	Public Limited Company
5.	Chandra Laxmi Developers Private Limited	Private Limited Company
6.	One City Infrastructure Private Limited	Private Limited Company

- h) That out of the 6, only 2 prospective resolution applicants submitted the resolution plan.



- i) That the Applicant convened the 5<sup>th</sup> CoC meeting wherein the resolution plans submitted by the two PRA's being Prabhatam Infrastructure Limited and RKG Asset Management LLP were deliberated by the CoC. The CoC after considering the Resolution Plan submitted by both the PRA's advised the Applicant to obtain legal compliance report in respect of both the Resolution Plans.
- j) That the Applicant convened the 6<sup>th</sup> CoC meeting of the Corporate Debtor on 24.08.2022 wherein the Resolution Plans of both the PRA's were discussed and in view of the legal compliance report both the PRA's were requested to submit their respective addendum and or revised plan in order for their plan to become legally compliant.
- k) That the Applicant convened the 7<sup>th</sup> CoC meeting of the Corporate Debtor on 10.10.2022 wherein the Applicant informed the members that the Applicant has received a revised version of Resolution Plan from both the PRA(s). After detailed discussion and deliberation on the Resolution Plan, both the Resolution Plans were put to vote and the Resolution Plan of Prabhatam Infrastructures Limited was approved by the members of CoC 86.93%. Details of the same is reproduced as under: -

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1.	Shivani Gupta	86.93%	Voted for
2.	M/s Naman Infradevelopers Pvt. Ltd.	6.63%	Absent
3.	M/s Prabhatam Investments Pvt. Ltd.	6.44%	Absent

- l) That up to the date of filing of the present application, a total of 7 (Seven) Meetings of Committee of Creditors have been conducted.

Details of which are as under



S. NO.	PARTICULARS	DATE
1.	1 <sup>st</sup> CoC	22.03.2022
2.	2 <sup>nd</sup> CoC	22.04.2022
3.	3 <sup>rd</sup> CoC	10.05.2022
4.	4 <sup>th</sup> CoC	09.07.2022
5.	5 <sup>th</sup> CoC	04.08.2022
6.	6 <sup>th</sup> CoC	24.08.2022
7.	7 <sup>th</sup> CoC	10.10.2022

m) That in terms of Regulation 27 of the CIRP Regulations, the Resolution Professional appointed two registered valuers for each class to determine the Fair & Liquidation value of the Corporate Debtor in accordance with Regulation 35 of the CIRP Regulations. The average fair value and liquidation value of Corporate Debtor is Rs. 10.41 crores and Rs. 7.65 crores respectively. Summary of the valuation of assets are reproduced as under: -

CLASS OF ASSETS: PLANT & MACHINERY					
Sr. No.	Name of Registered Valuer	Fair Value (In Rs.)	Liquidation Value (In Rs.)	Average Fair Value (In Rs.)	Average Liquidation Value (In Rs.)
1.	Ompal Singh	24,86,829	18,65,122	27,01,275	20,71,695
2.	Naresh Kumar	29,15,722	22,78,269		
CLASS OF ASSETS: LAND & BUILDING					
1.	Sudhir Kumar	9,69,06,955	7,26,80,216	9,51,96,167	7,13,97,125
2.	Asheesh Mittal	93485380	70114035		
CLASS OF ASSETS: SECURITIES & FINANCIAL ASSETS					
1.	Mukesh Chand Jain	62,88,272	27,89,301	62,87,775	30,71,669
2.	Suman Kumar Verma	62,87,278	33,54,038		
<b>TOTAL</b>				<b>10,41,85,217</b>	<b>7,65,40,489</b>



- n) That the Resolution Applicant has proposed an amount of Rs. 9.25 Crore including the CIRP Cost.
- o) The Resolution Applicant proposes to implement the Resolution Plan within a period of 180 days months from the date of approval of the Resolution Plan by this Tribunal
- p) That the RP prayed for various Reliefs and Concessions as mentioned in page 191-194, Volume II.
- q) That Successful Resolution Applicant has submitted performance bank guarantees of Rs. 50,00,000/- to COC/Resolution Professional.

3. We have heard the submissions made by the Ld. Counsel for the applicant and have gone through the documents produced on record.

4. That some key features of the Resolution Plan are as follows:

- i. That the Resolution Applicant has proposed an amount of Rs. 9.25 Crore including the CIRP Cost. The Financial outlay and Implementation Schedule as proposed in the Resolution Plan is as follows: -

PARAMETERS	CONTENTS OF RESOLUTION PLAN
Revised Total Value of Resolution Plan	<b>Rs. 9.25 Crores as per detail below (Clause 5, Page No. 183, Volume II):</b> <b>CIRP Cost at Actuals:</b> Within 60 days from the approval of Resolution Plan <b>Financial Creditor:</b> Rs. 7.70 Crores within 180 days from the approval of Resolution Plan (Clause 5.3 Page No. 185, Volume II) <b>Operational Creditor:</b> Rs. 0.15 Crores within 150 days from the approval of Resolution Plan (Clause 5.2 Page No. 183, Volume II) <b>Government Dues (PF Dues):</b> Rs. 0.76 Crores within 150 days from the approval of Resolution Plan (Clause 5.5 Page No. 186, Volume II) <b>Homebuyers/ Interest Free Maintenance Security fee (IFMS) :</b> Rs. 0.64 Crores within 150 days from the approval of Resolution Plan (Clause 5.3.2 Page No. 186, Volume II)
Capital Expenditure amount as and when required	NIL
Capital Infusion	NIL
Other Proposal	Successful Resolution Applicant undertakes to perform development work in the village Khizrabad for the fulfillment of requirements as stated under the Remediation Plan for the Environment/ Clearance of the project "Homeland Heights".



- ii. The average fair value and liquidation value of Corporate Debtor is Rs. 10.41 crores and Rs. 7.65 crores respectively
- iii. During the course of the hearing, the Counsel for the RP appeared before this Tribunal and submitted that they have received a letter from the EPFO Department. The letter states that assessment proceedings regarding the Corporate Debtor are underway, and as a result, the department cannot currently determine the exact demand amount. Consequently, they have requested a stay on the approval of the resolution plan. The Learned Counsel for the Resolution Applicant has stated that a provision of Rs. 76 lakhs have already been made in the Resolution Plan to cover the EPFO claims. However, since the EPFO has indicated ongoing assessment proceedings that might lead to a higher crystallized amount later, he requires instructions from his client on whether to accept the liability for that potential amount while continuing with the implementation of the resolution plan. Therefore, this Tribunal directed the RP to file an affidavit in this regard. Accordingly, the RP submitted an affidavit dated 11.03.2023, attaching a copy of the letter issued by the EPFO Department. Furthermore, they mentioned that the EPFO Department has not filed any claim before the Resolution Professional and that the tentative dues according to the department amount to Rs. 41,79,36,505/-. We are of the view that the payment of EPFO dues is a statutory liability that falls under the responsibility of the establishment's management. As the management of the Corporate Debtor transitions from the Suspended Directors to the Resolution Professional ("RP") upon the commencement of the Corporate Insolvency Resolution Process ("CIRP"), the RP is tasked with making payments for EPF dues during the course of the CIRP. Once a Resolution Plan has been received, the Resolution Applicant must include provisions for outstanding EPF dues in the Resolution Plan. However, in the present case, no claim has been submitted by the



EPFO Department. According to the Books of Accounts of the Corporate Debtor, the amount indicated is Rs. 76,00,000.

- iv. The Resolution Professional has relied on the judgment of the Hon'ble NCLAT in the matter of *Employee Provident Fund Organisation v. Fanendra Harakchand Munot & Anr, Company Appeal (AT) (Insolvency) No. 427 of 2023 (dated 19.04.2023)*, wherein the Appellate Authority dismissed the application filed by the EPFO department. The Authority held that the EPFO department's claim was filed after the approval of the Resolution Plan by the CoC, and since the Resolution Plan has been approved, no claim can survive. Furthermore, the RP relied on the judgment of the Hon'ble NCLAT in the matter of *Regional P.F Commissioner v. Vivek Raheja & Anr, Company Appeal (AT) (Insolvency) No. 429 of 2023 (dated 19.04.2023)*, wherein the Resolution Plan was approved on 17.01.2020 by the CoC. However, the Department submitted its claim on 21.12.2021, and the Department never filed any application before the Adjudicating Authority for the admission of the claim. As a result, the Adjudicating Authority approved the Resolution Plan without considering the claim of the Department which was confirmed by the Appellate Authority."
- v. In light of the above judgments, we are of the considered view that as the Resolution Applicant has already provisioned for the EPFO dues, which amount to 76 Lakhs (100% as per the Books of Accounts of the Corporate Debtor), there is no reason to interfere with the provision made by the Resolution Applicant in the Resolution Plan. Therefore, we proceed further with the Resolution Plan.
- vi. The amount provided for the stakeholders under the Resolution Plan is reproduced as under: -





Sl. No	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(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	NIL	NIL	NIL	NIL
		(b) Other than (a) above:	NIL	NIL	NIL	NIL
		(i) who did not vote in favour of the resolution Plan				
		(ii) who voted in favour of the resolution plan				
		<b>Total[(a) + (b)]</b>	<b>NIL</b>	<b>NIL</b>	<b>NIL</b>	<b>NIL</b>
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21				
		(b) Other than (a) above:	18,51,86,082/-	18,51,86,082/-	7,70,00,000/-	41.58
		(i) who did not vote in favour of the resolution Plan				
		(ii) who voted in favour of the resolution plan				
		<b>Total[(a) + (b)]</b>	<b>18,51,86,082/-</b>	<b>18,51,86,082/-</b>	<b>7,70,00,000/-</b>	<b>41.58</b>
3	Operational Creditors	(a) Related Party of Corporate Debtor				

		(b) Other than (a) above:	12,946,607	12,946,607	15,00,000	11.58
		(i)Government	-	-	76,00,000	(100% as per books of accounts)
		(ii)Workmen	-	-	-	
		(iii)Employees	-	-	-	
		(iv)Home Buyers/Interest Free Maintenance Securities (RWA)	-	-	64,00,000	(100% as per books of accounts)
		<b>Total[(a) + (b)]</b>	<b>12,946,607</b>	<b>12,946,607</b>	<b>1,55,00,000</b>	
4	Other debts and dues		-	-	-	-
Grand Total			<b>19,81,32,689/-</b>	<b>19,81,32,689/-</b>	<b>9,25,00,000/-</b>	

\*If there are sub-categories in a category, please add rows for each sub-category.



vii. That the final resolution plan submitted by Prabhatam Infrastructures Limited meets the requirements of Section 30(2) of the Code as under: -

Section	Provisions under Section 30(2) of the Code	Compliance under Resolution Plan
30(2)(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;	Yes, Para 5.1, page 12
30(2)(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	Yes Para 5.4, 5.5, page 15



	in sub-section (1) of section 53	
30(2)(c)	provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan;	Yes Para 5.3.1, Page 15
30(2)(d)	the implementation and supervision of the resolution plan;	Yes Para 18, Page 6
30(2)(e)	does not contravene any of the provisions of the law for the time being in force	Yes Para 15, Page 24 and Para 20, Page 26
30(2)(f)	conforms to such other requirements as may be specified by the Board.	Yes Para 3.5 Page 10

viii. That the RA has provided the indicative timeline of events for implementation of the Resolution Plan at page 26 which is reproduced as under: -

Event / Milestone	Tentative timeline (from effective date)
Constituting the monitoring committee	Within 7 days of the effective date
Appointment of the board of directors	Within 15 days of the constitution of Monitoring committee
Transfer of Shares of Existing Shareholders of Corporate Debtor to Resolution Applicant	Within 30 days of the appointment of board of directors.
Payment of CIRP Cost	Within 60 days from the approval of the Resolution Plan
Payment to Operational Creditors	Within 150 days from the approval of the Resolution Plan
Payment to Government dues	Within 150 days from the approval of the Resolution Plan
Payment to Home Buyer//	Within 150 days from the approval of the Resolution Plan

Interest Free Maintenance Security fee (IFMS)	
Payment to Financial Creditors	Within 180 days from the approval of the Resolution Plan



x. Mandatory Contents as specified under Regulation 38 of IBBI CIRP Regulations 2016 are as under: -

Regulation	Provisions under Regulation 38 of IBBI CIRP Regulations 2016.	Compliance under Resolution Plan
38(1)(a)	The amount payable under a resolution plan – (a) to the operational creditors shall be paid in priority over financial creditors; and (b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.]	Yes Para 5.2, Page 12-13, Para 5.3.2, 5.4, 5.5 Page 15
38(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.]	Yes Para 5, Page 11-12
38(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.]	Yes Para 3.6, Page 10
38(2)(a)	A resolution plan shall provide the term of the plan and its implementation schedule;	Yes Para 20, Page 26-27
38(2)(b)	A resolution plan shall provide the management and control of the business of the corporate debtor	Yes Para 16, Page 25



	during its term; and	
38(2)(c)	A resolution plan shall provide adequate means for supervising its implementation	Yes Para 15.2 to Para 15.7 Page 24
38(2)(d)	provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed:	Not applicable since no avoidance application is filed before this Tribunal
38(3)(a)	A resolution plan shall demonstrate that – it addresses the cause of default;	Yes Para 2.9, Page 8
38(3)(b)	A resolution plan shall demonstrate that – it is feasible and viable;	Yes Para 3.8, Page 10
38(3)(c)	A resolution plan shall demonstrate that – it has provisions for its effective implementation;	Yes Para 3.8, Page 10
38(3)(d)	A resolution plan shall demonstrate that – it has provisions for approvals required and the timeline for the same; and	Yes Para 20.2 & 20.3 page 26 & 27, para 15.1 page 24
38(3)(e)	A resolution plan shall demonstrate that – the resolution applicant has the capability to implement the resolution plan.]	Yes Para 12, Page 20

- x. There are no objections to the Resolution Plan by any of the stakeholders.
- xi. With respect of compliance regarding Regulation 39(4) of the CIRP Regulations, the applicant has filed compliance certificate in Form-H



certifying that the Resolution Plan submitted by the successful resolution applicant meets the requirements as laid down in various sections of the Code and the CIRP Regulations and there are sufficient provisions in the Plan for its effective implementation as required under the Code. Further, an affidavit has been obtained from the Successful Resolution Applicant stating that he is not ineligible under the provisions of Section 29A of the Code, 2016.

- xii. The applicant has prayed for number of waivers in the Resolution Plan. As to the relief and concessions sought in the resolution plan, by taking into consideration the decision of the Hon'ble Supreme Court in the matter of **Embassy Property Development Private Limited v. State of Karnataka & Ors. in Civil Appeal No. 9170 of 2019**, we direct the Successful Resolution Applicant to file necessary application before the necessary forum/ authority in order to avail the necessary relief and concessions, in accordance with respective laws. The relevant part of the judgement is reproduced herein below:-

*39. Another important aspect is that under Section 25 (2) (b) of IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings. Section 25(1) and 25(2)(b) reads as follows:*

*“25. Duties of resolution professional –*

*(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.*

*(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions:-*

*(a).....*

*(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi judicial and arbitration proceedings.”*

*This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot*



*short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).*

*40. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.”*

5. In so far as the approval of the resolution plan is concerned, this Adjudicating Authority is duty bound to follow the judgement of the **Hon’ble Supreme Court in the matter of K.Sashidhar v. Indian Overseas Bank (2019) 12 CC 150**, wherein the scope and interference of the Adjudicating Authority in the process of the approval of the Resolution Plan is elaborated as follow:-

*35. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan “as approved” by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides : (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of*



*the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.*

6. Also the Hon'ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors., Civil Appeal No. 8766-67 of 2019, vid its judgement dated 15.11.2019** has observed as follows:

*“38. This Regulation fleshes out Section 30(4) of the Code, making it clear that ultimately it is the commercial wisdom of the Committee of Creditors which operates to approve what is deemed by a majority of such creditors to be the best resolution plan, which is finally accepted after negotiation of its terms by such Committee with prospective resolution applicants.”*

7. Thus, from the judgements cited supra, it is amply clear that only limited judicial review is available to the Adjudicating Authority under Section 30(2) read with Section 31 of the Code, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the committee of the creditors.
8. Therefore, in our considered view, there is no impediment in giving approval to the Resolution Plan. Accordingly, we hereby **approve the Resolution Plan**, which shall be binding on the corporate debtor and its employees, shareholders of corporate debtor, creditors including the Central Government, any State Government or any local authority to whom statutory dues are owed, guarantors, successful resolution applicant and other stakeholders involved. In view of the above, **I.A. 5495 /ND/2022 stands allowed.**





It is declared that the moratorium order passed by this Adjudicating Authority under Section 14 of the Code shall cease to have effect from the date of pronouncement of this order.

10. However, the resolution plan shall not be construed as waiver to any statutory obligations/liabilities arising out of the approved resolution plan and the same shall be dealt in accordance with the appropriate authorities concerned as per relevant laws. We are of the considered view that if any waiver is sought in the resolution plan, the same shall be subject to approval by the concerned authorities. The same view has been held by the Hon'ble Supreme Court in **Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited and Embassy Property Development case (supra)**.
11. Accordingly, MoA and AoA of the corporate debtor shall be amended and filed with the RoC for information and record as prescribed. While approving the 'resolution plan' as mentioned above, it is clarified that the resolution applicant shall pursuant to the resolution plan approved under section 31(1) of the Code, 2016, obtain all the necessary approvals as may be required under any law for the time being in force within the period as provided for such in law.
12. The Resolution Professional shall forward all records relating to the Corporate Insolvency Resolution Process of the corporate debtor and the Resolution Plan to IBBI to be recorded at its database in terms of Section 31(3)(b) of the Code. The Resolution Professional is further directed to handover all the records, premises, properties of the corporate debtor to the Successful Resolution Applicant to ensure a smooth implementation of the resolution plan.
13. The approved 'Resolution Plan' shall become effective from the date of passing of this order. The Approved Resolution Plan shall be part of this order.



Let the copy of the order be served to the parties

**SD/-**

**(RAHUL BHATNAGAR)**  
**MEMBER TECHNICAL**

**SD/-**

**(BACHU VENKAT BALARAM DAS)**  
**MEMBER JUDICIAL**