

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT-II**

IA. No. 3349/2022

In

CP(IB)No. 1845/MB/C-II/2019

**Application filed under section 30(6), r/w
Regulation 39(4) of the IBBI (Insolvency
Resolution Process for Corporate Persons)
Regulations, 2016,**

Filed by

**Mr. Sandeep Jawaharlal Singhal,
Resolution Professional
...Applicant**

In the matter of

**Indiabulls Properties Private Limited
...Operational Creditor**

Versus

**Brick Eagle Group Private Limited
...Corporate Debtor**

Order Pronounced on :- 21.02.2024

Coram:

**Anil Raj Chellan
Member (Technical)**

**Kuldip Kumar Kareer
Member (Judicial)**

Appearances:

For the Resolution Professional: - Adv. Avinash Khanolkar

ORDER

Per: Kuldip Kumar Kareer, Member (Judicial)

1. The present Interlocutory application is filed by **Mr. Sandeep Jawaharlal Singhal**, Resolution Professional (the Applicant herein) of **Brick Eagle Group Private Limited**, the Corporate Debtor seeking approval of the resolution plan under section 30(6) of the Insolvency and Bankruptcy Code, 2016 (Code) read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 submitted by Resolution Applicant Mrs. Vibha Singhi. The Plan was duly approved by 100% of the Committee of Creditors (CoC) in the 8th CoC meeting held on 18.10.2022.
2. The Applicant submits that the Operational Creditor, Indiabulls Properties Private Limited, filed an Application under section 9 of the Code seeking initiation of Corporate Insolvency Resolution process (CIRP) against the Corporate Debtor. The Bench was pleased to admit the petition vide order dated 12.05.2022 and appointed Mr. Sandeep Jawarhalal Singhal, the Applicant herein as the Interim Resolution Professional (IRP).
3. The IRP made public announcements in Form A inviting claims from the Creditors on 15.05.2022. The last date for submission of claim was 26.05.2022.
4. Pursuant to the Public Announcement, the Applicant received a claim from one Operational Creditor namely Singhi & Associates. The

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Applicant duly verified the said claim and constituted CoC and filed a report dated 04.06.2022 before the Tribunal certifying the said constitution.

5. The Applicant conducted the 1st CoC meeting on 11.06.2022 and laid out the work and function performed by him from the date of his appointment as IRP. As mandated by the provisions of the Code, the IRP submitted the resolution for ratification of the appointment of the IRP as the Resolution Professional (RP). However, the member of the CoC neither ratified the appointment of the RP nor suggested the name of other RP of the Corporate Debtor. The Applicant continued to act as the IRP.
6. In the 2nd CoC meeting, the members of the CoC resolved to replace the IRP but failed to take requisite steps to procure approval from the Tribunal. The Applicant continued to discharge its obligations in consonance with the Code till his replacement. Subsequent to the 2nd CoC meeting, the Applicant received a claim from an Operational Creditor namely BXIN Office Parks India Private Limited. The Applicant duly verified the claim and reconstituted the CoC.
7. In the 3rd CoC meeting, the members of the CoC deliberated upon the mandates such as Information Memorandum, (IM), Evaluation Matrix and Eligibility Criteria of the Prospective Resolution Applicants (PRAs). The members of the CoC also resolved to publish 'Form-G' inviting the Expression of Interest (EoI) from the PRAs. Accordingly, the Applicant published 'Form-G' on 26.07.2022. The last date for submission of the EoI was 10.08.2022 and the last date for submitting

the Resolution Plan was 24.09.2022.

8. The Applicant received a claim from Mr. Abheek Singhi on 10.08.2022 in the capacity of being Financial Creditor. After verifying, the Applicant admitted its claim and reconstituted the CoC.
9. Pursuant to the publication of Form-G, the Applicant published the provincial list of PRAs on 20.08.2022. After due verification, a final list of PRA's included (i) Nakshatra Corporate Advisors Limited, (ii) Mrs. Vibha Singhi. The Applicant issued a Request for Resolution Plan (RFRP) to the PRAs. The Applicant submits that only Mrs. Vibha Singhi submitted a Resolution Plan dated 23.09.2022.
10. In the fifth CoC meeting held on 24.09.2022, the Applicant placed the Resolution Plan before the members of the CoC and also informed that the Earnest Money Deposit (EMD) had been received from the PRA.
11. The Applicant brought to the Resolution Applicant certain discrepancies in the Resolution Plan and asked the Resolution Applicant to resubmit the Plan. The Resolution Applicant submitted the modified plan on 07.10.2022. The Applicant pointed out certain points in the Resolution Plan as they were conditional in nature and hence needed to be modified. The Resolution Applicant carried out the necessary modifications and submitted the Resolution Plan on 18.10.2022.
12. In the eighth CoC meeting held on 18.10.2022, the Resolution Plan was presented before the members of the CoC. The Applicant apprised

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the members of the CoC and the Resolution Applicant about Regulation 31A of the Insolvency and Bankruptcy Board of India {IBBI} (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, whereby Regulatory fee of 0.25% of the realisable value of the creditors under the plan is required to be paid to the IBBI. The Resolution Applicant undertook to comply the same.

13. The valuation report was received from two registered valuers. The summary of valuation is as follows :-

Name of the Valuer	Fair Value	Liquidation Value
Navin Khandelwal	Rs. 1,63,316/-	Rs. 1,10,544/-
G Tech Valuers Private Limited	Rs. 1,51,084/-	Rs. 1,14,563/-

14. The members of CoC deliberated upon the Resolution Plan. The members of the CoC also scrutinised the eligibility of the Resolution Applicant, commercial viability and the Plan was put to vote.
15. The Resolution Plan dated 23.09.2022 and modified on 18.10.2022, submitted by Mrs. Vibha Singhi was put to vote and was approved by the members of CoC with 100% majority.

16. **Brief Background of the Corporate Debtor**

- a. The Corporate Debtor Company was incorporated as a Private

Limited Company on 01.03.2013 under the provisions of the Companies Act, 1956.

- b. The Corporate Debtor is engaged in Real Estate activities with own or leased property. It is engaged in the business of advisory, consulting, brokering services, managing, developing and arranging funds for its clientele. However, there has been no business operations in the Company since 2019.

17. **Brief Background of the Resolution Applicant**

- (a) The Resolution Applicant is an Individual resident in India. The Resolution Applicant has done her Post Graduate Diploma in Marketing and Sales. The Resolution Applicant is fully capable with strong finance and advisory profile and possesses Human and management skills.
- (b) The Resolution Applicant is engaged in advisory business in the field of raising funds, including raising funds for Real Estate, business for more than 5 years. During the said tenure she has advised many clients.
- (c) The Resolution Applicant has a track record of successful project implementation by its in-house team, resulting in cost savings, faster implementation and better-quality control. The Resolution Applicant has a highly experienced project management team supported by a cross functional team with demonstrated experience of several expansion projects completed within the planned timelines at globally competitive costs.

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- (d) The Resolution Applicant has also a past record of turning around a distress Company into a revenue making Company. The Resolution Applicant had infused funds in the Company and the Company had successfully turned around.

SALIENT FEATURES OF THE APPROVED RESOLUTION PLAN

Sr. No.	Category	Amount Claimed	Amount Admitted	Amount Provided under the Plan
1.	Secured Financial Creditors	NIL	NIL	Not Applicable
2.	Unsecured Financial Creditors	1,65,00,000	1,65,00,000	1,65,000
3.	Statutory Dues	NIL	NIL	Not Applicable
4.	Other Operational Creditors	9,33,04,412.95	5,50,19,122.95	55209
	Total	10,98,04,412.95	7,15,19,122.95	220209

- I. The Resolution Applicant as per Section 30(2) (a) of the Code, will provide for the complete Insolvency Resolution Process Costs, in priority to the payments of the other debts of the Corporate Debtor. The CIRP cost plus Regulatory fees estimated to Rs. 13 Lakhs plus GST will be paid on actual basis. The amount shall be paid within 3 months or within T+ 44 Business Days from the date of the approval of the Plan Order passed by the Tribunal.
- II. **The payment to Secured Financial Creditors :-**
- a) There are no Secured Financial Creditors hence no amount is proposed to be paid to the Secured Financial Creditors.
- III. **The payment to Unsecured Financial Creditors :-**
- a) The Unsecured Financial Creditors shall be paid an amount of Rs. 1,65,000 (Debt Acquisition Amount) towards satisfaction of the dues owed by the Corporate Debtor to the Unsecured Financial Creditors.
- b) The Debt Acquisition Amount shall be paid to the Unsecured Financial Creditors by the Resolution Applicant on the payment Date after payment of the CIRP cost and Regulatory fees.

IV. **The payment to Operational Creditors :-**

- a) The Operational Creditor of the Corporate Debtor shall be paid in aggregate, an amount of upto Rs. 55,019 on a pro-rata basis, in full and final satisfaction of all claims of all such Operational Creditors.
- b) The amount to the Operational Creditors shall be paid in priority over the payment of agreed amount to the Financial Creditors to the Operational Creditors.

V. **Payment towards Statutory Dues :-**

- a) Amount of Rs. 116/- shall be paid to income tax department for the outstanding TDS liability in priority over the payment of agreed of Financial Creditor towards settlement of statutory Dues and that shall be fully settled.
- b) Amount of Rs. 74 shall be paid to the GST department, in priority over the payment of agreed of Financial Creditor towards settlement of statutory Dues and shall be fully settled.

VI. **Formation of Special Purpose Vehicle (SPV)**

The SPV shall be formed within 14 business days with a total share capital of Rs. 1,00,000/- in the following manner:-

Sr. No.	Promoters	Shareholding	Percentage
1.	Mrs. Vibha Singhi	90,000	90%
2.	Mrs. Kanchan Devi Singhi	10,000	10%

The Directors in the SPV are proposed to be as under :-

- a. Mrs. Vibha Singhi
- b. Mr. Pankaj Lunawat

VII. Scheme of Amalgamation in Resolution Plan :

It is stated that the Resolution Plan envisage a Scheme of Amalgamation i.e. the SPV (“Transferor Company”) is to be amalgamated with the Corporate Debtor (“Transferee Company”). Section 30(2) (e) of the Code and Regulation 37(ba) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 permits the Successful Resolution Applicant to submit a plan envisaging a merger.

VIII. Rationale of the Scheme :

The proposed Scheme has been drawn up as an integral part of the Resolution Plan to revive the operations of the Transferee Company with the help of Transferor Company’s capital and management. The proposed amalgamation will enable Transferee Company to start on a clean slate and will have the following benefits as to simplification of holding structure and consequential savings in administrative and compliance costs.

IX. **Consideration in the Scheme:**

In consideration of and subject to other provisions of this Scheme, the Transferee Company shall, without any further application, act, deed, consent, instrument, issue and allot, to each shareholder of the Transferor Company whose name is recorded in the register of members of the Transferor Company and/or whose names appear as the beneficial owners of the share of the Transferor Company in the records of the depositories (or to such of their respective heirs, executors, administrators, or other legal representatives, or successors in title as may be recognized by the Board of the Transferee Company), as on the Scheme Effective Date in accordance with the terms of the Scheme, shares in the following proportion :

“1 (One) fully paid-up equity shares of INR 10 (Indian Rupees Ten) each of the Trasferee Company shall be issued and allotted, credited as fully paid up, for every 1 (One) equity share of INR 10 (Indian Rupees Ten) each held in the Transferor Company. “(Transferee Company New Equity Shares”).

X. **Infusion of fund into SPV:**

The Resolution Applicant shall infuse amount up to the Total Discharge Amount in one or more tranches in to the SPV, either by way of equity or debt or a combination of both as may be deemed suitable.

XI. **Further fund infusion:**

The Resolution Applicant shall make a capital investment of Rs. 1,00,000/- in the Corporate Debtor to improve the operations in the form of equity convertible instruments, within 90 days from the date of the Plan approval Order by NCLT.

XII. **Capitalization of the Corporate Debtor and reconstitution of Board**

(a) The SPV shall infuse up to INR 17,50,000 (Indian Rupees Seventeen Lacs Fifty Thousand only) or such more amount to ensure payment in one or more tranches into the Corporate Debtor in the manner as under:

- i. At least INR 1,00,000 (Indian Rupees One Lakh) towards subscription to new equity shares of the Corporate Debtor ("New Equity Shares"), and
- ii. Balance amount as debt or convertible securities or subordinate convertible loans or any other appropriate means as deemed fit by the SPV in order to undertake the transactions contemplated in this Resolution Plan, i.e., towards settlement of Other Obligation Discharge.

(b) Subsequent to infusion of amounts towards the New Equity Shares of the Corporate Debtor as above, or such earlier date (which shall be referred to as the "Transfer Date") as may be agreed, the nominees of the Resolution Applicant shall be appointed as the

directors of the Corporate Debtor and the existing Board shall stand discharged.

(c) The authorized share capital of the Corporate Debtor shall stand increased to such an amount as may be required by the Resolution Applicant and/or SPV, to accommodate the issuance of New Equity Shares (as defined below) to the Resolution Applicant and/or the SPV in the manner set out below, and the capital clause of the memorandum of association of the Corporate Debtor shall stand accordingly amended.

XIII. **Capital Reduction**

- a) Upon issuance of the New Equity Shares, the entire issued, subscribed and paid-up equity share capital of the Corporate Debtor (excluding the New Equity shares allotted to the SPV) shall stand extinguished in full without payment of any consideration.
- b) The Equity share capital of the Corporate Debtor posts reduction shall be as follows :-

Name of the Shareholder	Shareholding
SPV (and/or its nominees)	100%

- c) The proposed reduction of equity share capital neither involves diminution of any liability in respect of unpaid share

capital nor payment to any shareholder of any paid-up share capital. Accordingly, there is no outflow of/pay-out of funds from the Corporate Debtor and hence the interests of creditors are not adversely affected.

XIV. **Cancellation of Existing Equity Shares of the Transferee Company**

Upon the Scheme becoming effective, all Equity Shares held by the Transferor Company in the share capital of the Transferee Company (held either directly or through its nominees), shall stand cancelled, without any further act or deed as an integral part of this Scheme and in lieu thereof no allotment of any new shares in the Transferee Company shall be made to any person whatsoever.

XV. **Merger of SPV with the Corporate Debtor :**

a) Immediately upon implementation of the aforesaid steps and as an integral part of the Resolution Plan, the SPV (Transferor Company) will merge with the Corporate Debtor (Transferee Company) ("Merger"). The broad contours of the Scheme are as under :-

- i. Any and all assets, liabilities, rights and obligations of the SPV, as the Transferor Company, will be transferred to and vested in the Corporate Debtor, as the assets, liabilities, rights and obligations of the Corporate Debtor, as the transferee company.
- ii. Upon Merger, Inter-company loans and advances will be cancelled and difference on account of the same will

be credited either to the Capital Reserve or debited to the goodwill, as the case may be.

- iii. The authorized share capital of the SPV, as the transferor company, will be merged with the authorized share capital of the Corporate Debtor, as the transferee company. The Corporate Debtor will be entitled to take the benefit of the stamp duty and registration fees already paid by the SPV, as the transferor company, on its authorized share capital.
- iv. The SPV, as the transferor company, will stand dissolved without winding up.
- v. In consideration of the Merger, the Corporate Debtor, as the transferee company shall issue its equity shares to the equity shareholders of the SPV in accordance with the following share exchange ratio for every 1 equity share having face value of INR 10 each held in the SPV, the equity shareholders of the SPV will be issued 1 equity share of the Corporate Debtor having face value of INR 10 each held in the SPV.
- vi. Further, in terms of the IBC, approval of the shareholders of the Corporate Debtor to the transactions contemplated under the plan including the Merger shall be deemed to have been given on the Approval Date.

b. The Resolution Applicant along with its nominee/or relative will hold 100% of the total equity share capital of the Corporate Debtor

(i.e. the amalgamated entity) upon effectiveness of the Capital Reduction and the Merger.

XVI. **Implementation of the Resolution Plan :**

The Resolution Applicant and/or SPV seeks a time period of 90 Business days from the Plan approval Order date by NCLT to implement the Resolution Plan.

XVII. **Recoveries from Preferential/Undervalued/Fraudulent/Extortionate Transactions**

Any receivables received in respect of applications filed under Sections 25, 26, 43-51, 65 and 66 of the Code shall be vested in the Corporate Debtor and shall be for the benefit of the Corporate Debtor.

XVIII. **Performance Security :**

The Resolution Applicant has provided Earnest Money Deposit (EMD) for an amount of Rs. 3,00,000/-. Further, the EMD deposited by the Resolution Applicant shall be retained by the CD/RP and shall be construed to be a compliance of the Personal Bank Guarantee as required in the RFRP and then it shall be adjusted against the final payment.

XIX. **Eligibility under Section 29A of the Code :**

The Resolution Applicant has submitted an Affidavit dated 18.09.2022 confirming the eligibility under Section 29A of the Code

to submit the Resolution Plan.

XX. **Monitoring Committee for Supervision and Implementation of the Plan**

- a) Further, for the supervision of the Resolution Plan, a Monitoring Committee shall be formed comprising of one representative of the CoC and one representative of the Resolution Applicant and one Insolvency Professional as decided by the CoC upto a maximum limit of fess of Rs. 10,000 per month, to be constituted within 1 day of the Plan approval Order by the Tribunal. The chairman of the Monitoring Committee will be a representative of the CoC.
- b) The Monitoring Committee shall manage and control the Corporate Debtor as a going concern with business in good health, in trust and for the benefit of the Creditors of the Corporate Debtor in furtherance of sale of the Corporate Debtor to the Resolution Applicant and no other person or stakeholder. All fees payable to the Monitoring Committee (including any reasonable legal costs which have arisen or may arise out of or in connection with the CIRP of the Corporate Debtor) shall be met out of the internal accruals of the Corporate Debtor and to the extent the internal accruals are not sufficient to meet the aforesaid costs and expenses, the same shall be paid by the Resolution Applicant and/or SPV as consideration for fulfilling their respective obligations.

XXI. **Employees :**

On the Scheme becoming effective, all employees of the Transferor Company in service, shall be deemed to have become employees of the Transferee Company without any break in their service and on the basis of continuity of service and the terms and conditions of their employment.

XXII. **Reliefs sought by the Applicant**

The Resolution Applicant has sought the following reliefs and concessions:-

- a) Grant of relief from payment of stamp duty, registration charges and applicable fees including fees payable to the Registrar of Companies (RoC).
- b) Grant of relief from RoC with respect to additional fees and pending compliances and also to take on record and implement the Plan upon approval by the Tribunal without any further actions or compliances.
- c) All Government Authorities to waive the non-compliances of the Corporate Debtor prior to closing date and the Resolution Applicant shall be eligible to avail any amount/credit balances lying with the Government Authorities.
- d) Activation of the cancelled GST registration within one month from the receipt of intimation without any deed or application.

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The revocation of the cancellation shall be effective from the date of cancellation and the Corporate Debtor shall be allowed to take credit lying in the ledger on the date of cancellation without any further act or deed.

- e) Reserve Bank of India to waive Non-Compliances in relation to making requisite filings including the Annual Performance Report.
- f) The Central Board of Direct Taxes and relevant Tax authorities/agencies, Commissioner of Income Tax to exempt the Resolution Applicant from any liability pursuant to Section 56 and 170 of the Income Tax Act, not to levy any Tax (including minimum alternate Tax) arising as a result of giving effect or otherwise in relation to the Plan in the hands of the Corporate Debtor or the Resolution Applicant.
- g) The Government authorities to grant 12 months' time period after the closing date for the Resolution Applicant to assess the status of the Business permits and the Corporate Debtor is compliant with such business permits without initiating any investigations, actions, proceedings or imposing any costs or penalties to such non-compliances and to permit the Resolution Applicant to continue to operate the business of the Corporate Debtor during such period.
- h) The existing contracts with the customers of the Corporate Debtor and the operations to continue post the closing date

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and any non-compliances on the ground for termination arisen under such contracts to be waived and no claims, damages, costs shall be payable under such contracts by the Corporate Debtor.

- i) All the relevant Tax authorities to not subject income or gain or profits arising as a result of giving effect to the Plan including minimum alternate Tax in the hands of the Corporate Debtor.
- j) The Resolution Applicant and the acquisition SPV in terms of Section 32A of the Code, the Governmental authorities being the Enforcement Directorate, Central Bureau of Investigation and the Serious Fraud Investigation Office not to initiate any actions including attachment of properties against the Corporate Debtor, the Acquisition SPV or the Resolution Applicant for any past actions which have been undertaken by the Corporate Debtor or its employees, directors, promoters, including but not limited to Money Laundering Act, 2002, prevention of Corruption Act, 1988, the Indian Penal Code or any other similar applicable laws.
- k) All exemptions and immunities available to the persons including the Resolution Professional during the CIRP period to continue to remain valid and available for the benefit of the Resolution Applicant, the Acquisition SPV and the Monitoring Committee until the closing date.

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- 1) If the Regulatory approvals and other conditions precedent to the implementation of the Plan are not met to the satisfaction of the Resolution Applicant by the Long stop date (the date of expiry of 90 days from the date of NCLT Order approving the Resolution Plan) the Plan shall not be effective or operative as against the Resolution Applicant and the Resolution Applicant shall have no obligations whatsoever under the Plan or otherwise to any person including having no obligation with respect to any earnest money deposit guarantee, performance guarantee to be returned to the Resolution Applicant.

- m) All the relevant persons including the Financial Creditors shall deliver to the Resolution Applicant/Acquisition SPV/its affiliates, all documents (including loan agreements, security documents, title deeds, lease deeds, lease agreements, demand promissory notes, post-dated cheques, other negotiable instruments, encumbered with the Financial Creditors) and/or collateral in relation to such assets that are in possession or deposited with such creditors or any other persons for the benefit of the creditors of the Corporate Debtor. Each of the Creditor of the Corporate Debtor shall execute or issue discharge certificate, no-objection certificates and all other documents and take all such actions as may be reasonably required by the Corporate Debtor, Acquisition of SPV or the Resolution Applicant for the release of the encumbrances, security interests and charges.

- n) On or prior to the payment date, the Resolution Applicant shall cause replacement/substitution of the Bank guarantees issued on behalf of the Corporate Debtor as a result of which all liability of the Corporate Debtor in relation to such Bank guarantees shall stand extinguished. Upon substitution/replacement of the Bank guarantees, the margin money pertaining to such bank guarantees to be released by the respective banks and such margin money to be treated as the cash balance of the Corporate Debtor and shall be for the benefit of the Corporate Debtor. Further, the excluded collateral will not to be replaced, substituted or extinguished.
- o) The requisite, consent approval or permission of statutory or regulatory authorities, if any, which by law may be necessary for the implementation of this Scheme being obtained.

XXIII. The Applicant further submits that the Resolution Plan submitted is in compliance with **Section 30 (2) of the Code and Regulation 38 (A) of the CIRP Regulations**. The RP has provided a compliance certificate in “**FORM H**” as mandated under the Code for seeking approval of the Resolution Plan from this Bench.

OBSERVATIONS OF THE ADJUDICATING AUTHORITY

18. We have heard the Applicant and perused the Resolution Plan and related documents submitted along with Application.

19. As referred to the above summary of the Resolution Plan, we are satisfied that all the requirements of Section 30 (2) are fulfilled and no provision of the law for the time being in force appears to have been contravened. The Resolution Plan is feasible and viable.

20. Further, it is observed that Section 30 (2) of the Code as amended up to date enjoins upon the Resolution Professional to examine each Resolution Plan received by him to confirm that such plan,

- a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;
- b) provides for the payment of 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, 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 - For the purpose of this section –

- (i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients if the proceeds are insufficient to meet the debts in full; and
- (ii) the term “workmen’s dues” shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013).

- c) Provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;
 - a) The implementation and supervision of the resolution plan;
 - b) Does not contravene any of the provisions of the law for the time being in force;
 - c) Confirms to such other requirements as may be specified by the Board.

21. Section 30 (4) of the Code reads as follows:

“(4) The committee of creditors may 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, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section

(1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board.

22. Section 30(6) of the Code enjoins the Resolution Professional to submit the Resolution Plan as approved by the CoC to the Adjudicating Authority. Section 31 of the Code deals with the approval of the Resolution Plan by the Authority, if it is satisfied that the Resolution Plan as approved by the CoC under section 30(4) meets the requirements provided under section 30(2) of the Code. Thus, it is the duty of the Adjudicating Authority to satisfy itself that the Resolution Plan, as approved by the CoC meets the above requirements.

23. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:

- a) Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.
- b) Repayment of Debts of Statutory dues.
- c) For management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified u/s 30(2)(c) of the Code.
- d) The implementation and supervision of the Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.

24. The RP has certified through affidavit that the Resolution Plan is not in contravention to any of the provisions of law, for the time being in force, as specified u/s 30(2)(e) of the Code.

25. The Average Fair value is Rs. 1,57,200/- and Liquidation value is Rs. 1,12,554/-.
26. The RP has complied with the requirements of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of the Regulations.
27. The RP has filed Compliance Certificate in Form-H along with the Plan. On perusal, the same is found to be in order. The Resolution Plan includes a statement under regulation 38(1A) of The Regulations as to how it has dealt with the interest of the stakeholders in compliance with the Code and the Regulations.
28. The Resolution Plan has been approved by the CoC in the with 100% votes in terms of Section 30(4) of the Code.
29. In *K Sashidhar v. Indian Overseas Bank & Others (in Civil Appeal No.10673/2018 decided on 05.02.2019)* the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan, as approved by CoC, meets the requirements specified in Section 30(2). The Hon'ble Apex Court further observed that the role of the NCLT is 'no more and no less'. The Hon'ble Apex Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite

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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.

30. In *CoC of Essar Steel (Civil Appeal No. 8766-67 of 2019 decided on 15.11.2019)* the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom has approved. In para 42 Hon'ble Court observed as under:

“Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar (supra).”

31. In view of the discussions and the law thus settled, we are of the considered view that the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39 (4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. We are thus, inclined to allow the Application in the following terms.

ORDER

- (i) **The Application IA No. 3349 of 2022 in CP 1845 of 2019 be and the same is allowed.** The Resolution Plan in the form of Scheme of Amalgamation of the Special Purpose Vehicle as the Transferor Company with Brick Eagle Group Private Limited as the Transferee Company submitted by Mrs. Vibha Singhi is hereby approved. It shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, 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 is due, guarantors and other stakeholders involved in the Resolution Plan.
- (ii) The Reliefs as sought by the Resolution Applicant in Clause XXII [(a) to (o)] above are not granted and declined. However, in accordance with Section 32A of the Code in respect of the liability of the Corporate Debtor for any offence committed prior to the commencement of the CIRP shall cease, and the Corporate Debtor shall not be prosecuted for such an offence committed prior to the commencement of CIRP from the date of this order. Any waiver sought with respect to stamp duty or tax liability, registration fees, fees arising out of the implementation of the Resolution Plan is not granted. The Resolution Applicant shall be at liberty to apply for the said concession and exemptions to the relevant Authorities who shall decide the same as per law.
- (iii) Any exemption as sought from in relation to the payment of Income Tax Return, waivers from applicability of any section under the

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Income Tax Act, 1961, the Central Goods and Services Tax Act, 2017 and other Indirect Taxes arising out of the implementation of the Resolution Plan is not granted.

- (iv) The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, permissions, licenses from the concerned authorities under any law for the time being in force, within such period as may be prescribed.
- (v) Further, no person will be entitled to initiate or continue any proceedings in respect to a claim which is not a part of the Resolution Plan.
- (vi) The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/liabilities of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned.
- (vii) All the existing Equity Shares shall stand cancelled without any further act or deed as part of the Scheme and in lieu thereof there will be no allotment of any new shares.
- (viii) The exemptions, if any, sought in violation of any law in force, it is hereby clarified that such exemptions shall be construed as not granted.
- (ix) Further, in terms of the Judgment of Hon'ble Supreme Court in the

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matter of *Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited (Civil Appeal No. 8129 of 2019 decided on 13.04.2021)* the Hon'ble Apex Court on the date of the approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of the Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which are not a part of the Resolution Plan.

- (x) The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the concerned Registrar of Companies (RoC), for information and record.
- (xi) The moratorium under Section 14 of the Code shall cease to have effect from this date.
- (xii) The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
- (xiii) The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

Sd/-

ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)