

In the National Company Law Tribunal

Division Bench, (Court-II), Kolkata

IA (IB) No. 1753/ (KB) /2023

In CP(IB) No. 406/(KB) /2021

Application under section 30(6) and section 31(1) of the Insolvency & Bankruptcy Code, 2016 read with regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for approval of Resolution Plan.

In the Matter of:

Ganapati Stocks Private Limited

...Financial Creditor

And

Indus Integrated Information Management Limited

...Corporate Debtor

And

In the matter of:

Kamal Nayan Jain, Resolution Professional

....Applicant

Date of Pronouncement of order: 28.02.2024

Coram:

Smt Bidisha Banerjee : Member (Judicial)

Shri D. Arvind : Member (Technical)

Counsel appeared physically / through video Conferencing

Mr. Shaunak Mitra, Adv.] For the RP

Ms. MukulikaSaha, Adv.

Mr. Kamal Nayan Jain, RP

Mr. Sunil Kumar Gupta, Adv.] For the Applicant in IA(I.B.C)/1740(KB)2023 and

Mr. Subhankar Chatterjee, Adv.] IA(I.B.C)/1650(KB)2023

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Mr. Soumava Mukherjee, Adv.] For R-1 to R-6 and R-9 and R-12 in
] IA(I.B.C)/1811(KB)2023

O R D E R

Per Bidisha Banerjee, Member (Judicial):

1. Heard the Ld. Sr. Counsel / Ld. Counsel for the parties.
2. This application has been preferred to seek approval of Resolution Plan in its entirety along with its annexures, Schedule, Appendices and claims contained therein as submitted by Skill Tree Consulting Private Limited with reliefs and concessions sought for under the Plan. The Application has been preferred under Rule 34 of the NCLT Rules.
3. **Skill Tree Consulting Private Limited** was **approved** by the **CoC with 100% voting shares**. A copy of the Minutes of the Minutes of the 14th CoC meeting held on 04.10.2023 along with the physical voting results is annexed with the application as **Annexure -I**.
4. The Applicant issued **Letter of Intent** to the Successful Resolution Applicant on 07.10.2023. The Successful Resolution Applicant (**Skill Tree Consulting Private Limited**) in terms of Regulation 36B (4A) and RFRP has also submitted Performance Security of Rs. 25 Lakhs plus Rs. 10 Lakhs submitted as EMD converted into performance security, making the **total Performance Security deposit of Rs. 35 Lakhs being 10%** of the Resolution Plan as Performance Security.
5. **The CIRP process and Compliances**
 - a. The Corporate Debtor was admitted into CIRP vide order dated 15.06.2022 and Mr. Kamal Nayan Jain was appointed as the IRP of the Corporate Debtor.
 - b. The Applicant on 16.06.2022, in terms of Regulation 6 (1) of the CIRP Regulations made a public announcement to invite claims along with proof from the creditors of the Corporate Debtor.

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- c. The public announcement was also made in the website of the Corporate Debtor as well as the designated website of the IBBI in terms of the applicable provisions of the Code read with CIRP regulations.
- d. The Applicant convened and conducted 14 (Fourteen) meetings of the CoC as on the date of filing of this application. The Applicant had issued Form 'G' twice. Form 'G' was issued on 25th August, 2022 inviting Expression of Interest (EoI) and published by the Applicant in 'Form G' in leading widely circulated newspapers. The Applicant had received two Resolution Plans within the due date i.e. on or before 09.11.2022 from the two Resolution Applicants as stated below:
- i. Indus Edutrain Private Limited
 - ii. Skill Tree Consulting Private Limited
- e. The Applicant had shared both the Resolution Plans received with the CoC Members and the same was not vetted as per the IBC, 2016. The Applicant has also forwarded the queries with respect to the Resolution Plans to both the Resolution Applicants (RAs). Thereafter, the Applicant has requested both the Applicant to submit their modified Resolution Plans. Both the RAs has submitted their revised Resolution Plan with the revised value and after incorporating changes as proposed and the same was shared with the Member of CoC.
- f. The Applicant has found that both the revised Resolution Plan are compliant with the Section 29A and the other applicable provisions of IBC, 2016 and therefore, voting can be taken on the same.
- g. Evaluation Matrix as per the revised Resolution Plan submitted by Skill Tree Consulting Private Limited and Indus Edutrain Private Limited was circulated to the CoC Members through email. The final scoring of the Applicants is as below:

Name of the Applicant	Scoring
Skill Tree Consulting Private Limited	90.20
Indus Edutrain Private Limited	25.28

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- h. Both the Resolution Plans were placed before the CoC Members for voting. Thereafter, the 14th CoC Meeting was convened and in terms of Regulation 39(2) before CoC Members as per regulation 25 of the Code, for their approval / rejection of the Resolution Plan. The CoC Members have attended the said meeting physically and voted on the Resolution Plans of Skill Tree Consulting Private Limited and Indus Edutrain Private Limited and the same was concluded on 04.10.2023 with approval of Resolution Plan of M/s. Skill Tree Consulting Private Limited with 100% CoC Members voted in favour of the Resolution Plan.
- i. The Applicant / Resolution Professional has also shared the summary of the fair and liquidation values of the Corporate Debtor through email with the CoC Members as per Regulation 35 (2) of the IBBI(CIRP) Regulation.
- j. The CoC Members authorized the Applicant / Resolution Professional to issue LoI to the Successful Resolution Applicant (SRA) in terms of RFRP and submit the Resolution Plan approved by the Committee to the Adjudicating Authority along with a compliance certificate in 'Form-H' and evidence of receipt of Performance Security required under sub-regulation (4A) of regulation 36B and as provided under RFRP.
- k. The Applicant / Resolution Professional has issued Letter of Intent to the Successful Resolution Applicant (SRA) and The Successful Resolution Applicant (SRA) has also submitted Performance Security Rs. 25 Lakhs plus Rs. 10 Lakhs submitted as EMD converted into performance security, making the **total Performance Security deposit of Rs. 35 Lakhs** as Performance Security.
- l. The approved Resolution Plan of **Skill Tree Consulting Private Limited being the Successful Resolution Applicant (SRA)** is in compliance to the Insolvency and Bankruptcy Code, 2016 and the Resolution Plan bears a compliance report is being attached as '**Form H**' as prescribed under the regulations containing all the details relating to the compliance. The compliance of mandatory provisions content as per Regulations 38 of the

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IBBI (CIRP) Regulation 2016 is attached with 'Form H' is annexed herewith and marked as "Annexure-J". A copy of Affidavit as per Regulation 39(1) (a) for eligibility criteria under Section 29A.

6. The **Skill Tree Consulting Private Limited** under this Resolution Plan, has provided for a total plan value for the Corporate Debtor of Rs. **7,30,00,000 Lakhs**. **The amount claimed, amount admitted and the amount provided under the Resolution Plan are enumerated below:**

Class of Creditors / Particulars	Amount Claimed (Amount in Lakhs)	Amount Admitted (Amount in Lakhs)	Amount provided under the Resolution Plan (Amount in Lakhs)
Secured Financial Creditors	-	-	-
Unsecured Financial Creditors	11,80,23,558	7,95,60,638	6,90,00,000
Operational Creditors	2,55,52,785	2,49,23,138	4,00,00,000
Other Debts and Dues	57,73,208	50,73,833	0
Grand Total	14,93,49,551	10,95,57,609	7,30,00,000

7. **Synopsis of mandatory Provisions / Sections / Regulations and their compliance are as under:**

Sl. No.	Section / Code / Regulation	Requirement	Compliance established
A. For Resolution Applicant			
1.	25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having	Yes

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Sl. No.	Section / Code / Regulation	Requirement	Compliance established
		regard to the complexity and scale of operations of business of the CD	
2.	Section 29A	The Resolution Applicant must be eligible to submit resolution plan.	Yes complied with Annexure ‘K’ of the Application /
3.	Section 30 (1)	The Resolution Applicant must submit an affidavit stating that it is eligible.	Yes complied with Annexure ‘K’ of the Application
4.	Regulation 39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Yes
5.	Regulation 39(4)	Resolution Applicant must provide details of Performance Security, as referred to Sub-Regulation (4A) of regulation 36B.	The Successful Resolution Applicant (SRA) has also submitted Performance Security Rs. 25 Lakhs plus Rs. 10 Lakhs submitted as EMD converted into performance security, making the total Performance Security deposit of Rs. 35 Lakhs as Performance Security

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Sl. No.	Section / Code / Regulation	Requirement	Compliance established
B. For Resolution Plan			
1.	Section 30 (2)(a)	Whether the Resolution Plan provides for payment of insolvency resolution process cost?	Yes complied with Clause IX (1) (a)
2.	Section 30 (2) (b)	Whether the Resolution Plan provides for payment to the Operational Creditors?	Yes complied with Yes complied with Clause IX. a.
3.	Section 30 (2)(c)	Whether the Resolution Plan provides for payment to the Financial Creditors who do not vote in favour of the Resolution Plan	Yes complied with Clause 3 of the Resolution Plan
4.	Section 30 (2)(d)	Whether the Resolution Plan provides for the Management of the affairs of the Corporate Debtor?	Yes complied with Clause 9 (IX) of the Resolution Plan
5.	Section 30 (2)(e)	Whether the Resolution Plan provides for implementation and supervision of the Resolution Plan?	Yes complied with Clause 9 (IX) of the Resolution Plan
6.	Section 30 (2)(f)	Whether the Resolution Plan	Yes complied with

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Sl. No.	Section / Code / Regulation	Requirement	Compliance established
		contravenes any of the provision of the law for the time being in force?	Clause 9 (IX) of the Resolution Plan
7.	Section 30 (4)	(a) Whether the Resolution Plan is feasible and viable, according to the CoC? (b) Whether the Resolution Plan has been approved by the CoC with 66% voting share?	Yes complied with Annexure -I of the Application
8.	Section 31(1)	The Resolution Plan must provide for its effective implementation plan, according to the CoC.	Yes. Clause 9 (IX) of the Resolution Plan
9.	Regulation 38 (1)	Whether the amount payable to the Operational Creditors under the resolution plan shall be given priority in payment over financial creditor?	Yes. Clause 9 (IX) of the Resolution Plan
10.	Regulation 38 (1A)	The resolution plan must include a statement as to how it has dealt with the interest of all stakeholders	Yes, Clause 9 (c) (j) of the Resolution Plan

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Sl. No.	Section / Code / Regulation	Requirement	Compliance established
11.	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.	No
12.	Regulation 38 (2)(a)	The Resolution Plan must demonstrate that it has provisions for its implementation schedule.	Yes, Clause 9 (IX) of the Resolution Plan
13.	Regulation 38 (2)(b)	The Resolution Plan must provide for management and its control of the business of the Corporate Debtor	Yes, Clause 9 (IX) of the Resolution Plan
14.	Regulation 38 (2)(c)	The Resolution Plan must provide for adequate means of supervising of its implementation	Yes, Clause 9 (IX) of the Resolution Plan
15.	Regulation 38 (3)(a)	The Resolution Plan must demonstrate that it addresses the cause of default.	Yes, Clause 9 (IX) of the Resolution Plan
16.	Regulation 38 (3)(b)	The Resolution Plan must demonstrate that it is feasible and viable	Yes, Clause 9 (IX) of the Resolution Plan
17.	Regulation 38 (3)(c)	The Resolution Plan must demonstrate that it has effective implementation provisions	Yes, Clause 9 (IX) of the Resolution Plan
18.	Regulation 38	The Resolution Plan must	Yes,

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Sl. No.	Section / Code / Regulation	Requirement	Compliance established
	(3)(d)	demonstrate that it has provisions for approvals required and the timeline for the same	Clause 9 (IX) of the Resolution Plan
19.	Regulation 38 (3)(e)	The Resolution Plan must demonstrate that the Resolution Applicant has feasibility and capability to implement the resolution plan	Yes, Clause 9 (IX) of the Resolution Plan

8. In course of hearing, it was submitted by the Ld. Counsel for the Applicant that the Resolution Plan is in compliance of the provisions of under Section 30 of IBC read with relevant Regulations of the CIRP Regulations and has been approved by CoC and the Plan if approved, would result in maximization of the value of assets of the Corporate Debtor and avoid corporate death due to liquidation by reviving it from financial crisis.
9. **Reliefs and Concessions** sought by the Resolution Applicant from this Adjudicating Authority are enumerated below for successful implementation of the Resolution Plan:

1)	<p>Shareholders' approval under the 2013 Act</p> <p>Under the 2013 Act, various actions which are proposed to be undertaken pursuant to this Resolution Plan, such as (i) reduction/extinguishment of the equity and preference share capital of the Corporate Debtor (ii) increase in or reclassification of the authorized share capital of the Corporate Debtor (iii) Issuance of securities by the Corporate Debtor to the Resolution Applicant</p> <p>However, as per general Circular No. IBC/01/2017 dated October 25,</p>
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	<p>2017 released by the Ministry of Corporate Affairs (MCA) ("October 25 Circular") it has been clarified that "the approval of Shareholders/ members of the corporate debtor/company for a particular action required in the resolution plan for its implementation, which would have been required under the Companies Act, 2013 or any other law if the resolution plan of the company was not being considered under the Code is deemed to have been given on its approval by the Adjudicating Authority"</p> <p>The purpose of the October 25, 2017 Circular was to prevent shareholders of a company under the CIRP from obstructing the implementation of a Resolution Plan.</p> <p>Accordingly, in light of the October 25, 2017 Circular, the requirement of procuring approval of the shareholders of the Corporate Debtor has been dispensed with for any of the actions proposed to be undertaken pursuant to this Resolution Plan. Also, the Resolution Applicant prays to the NCLT to provide under the NCLT Approval Order that once the NCLT Approval Order is issued, no other approval or procedure under Applicable Law would be required to be complied with for the purpose of (i) reduction/extinguishment of the equity and preference share capital of the Corporate Debtor (ii) increase in or reclassification of the authorized share capital of the Corporate Debtor (iii) Issuance of securities by the Corporate Debtor to the Resolution Applicant</p>
2)	<p>Tax & Stamp Duty Exemptions</p> <p>The Resolution Applicant also prays to the NCLT to grant an exemption from the Obligation to pay taxes and stamp duty in respect of actions undertaken pursuant to the approval of the Resolution Plan by the NCLT, since such taxes and duties, if required to be paid, will render the Resolution Plan unviable for the Resolution Applicant in monetary terms. Without prejudice to the generality of the foregoing, the</p>

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	<p>Resolution Applicant requests for grant of specific exemptions in relation to the following actions which may be undertaken, should this Resolution Plan be approved:</p> <p>(1) Exemption from payment of stamp duty and government fees on increase in the authorized share capital of the Company,</p> <ul style="list-style-type: none">• Exemption from payment of stamp duty on issue of equity shares; <p>Exemption from payment of income tax, including but not limited to, minimum alternate tax, on any profits or book profits arising from write-off of the unpaid/waived/extinguished dues of the Financial Creditors. Operating Creditors, governmental authorities (towards Statutory Dues) and/or otherwise;</p> <p>Accordingly, upon the Resolution Plan being approved by the NCLT, the actions, undertaken pursuant to the implementation of the Resolution Plan shall be deemed to be exempt from any tax obligation under various taxing statutes, including but not limited to Sections 28, 41(1), 50B, 500, 50CA, 56, 115JAA and 115JB of the Income Tax Act, 1961, the relevant provisions of the Central Goods and Service Tax Act, 2017 (as amended from time to time) and the provisions of the Indian Stamp, Act 1899 as amended from time to time) and other laws relating to payment of stamp duty & taxes applicable in any state.</p>
3)	<p>The Department of Registration and Stamps, Government of India along with various State Governments and the Ministry of Corporate Affairs to exempt the Resolution Applicant and the Corporate Debtor, from the levy of stamp duty and fees, if applicable, including but not limited to increase of authorized share capital of the Corporate Debtor to give effect to this Resolution Plan and its implementation;</p>
4)	<p>All Central/ State Governments and statutory authorities to waive the Non- Compliance of the Corporate Debtor prior to the Effective Date:</p>

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5)	All Governmental Authorities to provide reasonable after the Trigger Date in order for the Resolution Applicant to assess the status of the Business Permits and ensure that the Corporate Debtor is compliant with the terms of such Business Permits and Applicable Law without initiating any investigations, actions or proceedings in relation to such non-compliance;
6)	The Central Board of Direct Taxes to provide an exemption to the Corporate Debtor to enable it to continue getting the benefit of carry forward and set-off of losses from previous years in light of the provisions of section 79 of the Income Tax Act, 1961 and the benefit of carry forward and set-off of the previous year losses shall continue to be available to the Corporate Debtor even after the acquisition of shareholding and control by the Resolution Applicant pursuant to this Resolution Plan;
7)	The Central Board of Direct Taxes to exempt the company from applicability of section 41 (1) as also section 28 (iv) of Income Tax Act, 1961 with respect to deemed income/capital gain/benefit arising as a result of the settlement of the dues of the creditors under the resolution plan by way of waiver/write-off/ remission of their liabilities;
8)	All Governmental Authorities to grant any relief, concession or dispensation as may be required for implementation of the transactions contemplated under the plans in accordance with this Resolution Plan;
9)	All assets (including properties, whether freehold, leasehold, or license basis) of the Corporate Debtor shall continue to remain vested in the restructured Corporate Debtor free and clear from all encumbrances.
10)	The Bank guarantee issued by the RA in terms of the CIRP Process, shall be released in favor of the RA on successful payment of the upfront amount payable as per the RP.

10. This tribunal has sought for a clarification in the order dated 11.12.2023, regarding Provident Fund and Gratuity to the Workman and Employees, Ld.

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Counsel for the RP confirms that the information regarding same would be provided within a period of two weeks, but till date of pronouncement of the subject order, no information / clarification has been received in the above subject matter and therefore, we have no option but to go ahead with the question of approval of Resolution Plan as sought for.

11. A bare perusal of the extracts / excerpts from the Plan establishes that the **Resolution Plan has been approved with 100% voting share**. As per the CoC, the plan meets the requirement of being viable and feasible for revival of the Corporate Debtor. By and large, all the compliances have been mentioned by the RP and the Resolution Applicant for effective implementation of the Resolution Plan.
12. On perusal of the documents on record, supported by an affidavit of the Resolution Professional, we accord our satisfaction that the Resolution Plan as approved by the CoC, is in accordance with sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, as enumerated supra.
13. We have also perused the reliefs, waivers and concessions as sought and as given in **Para VII** (Reliefs and Concessions) of page 147 to 148 of the Resolution Plan. While some of the reliefs, waivers and concessions sought by the Resolution Applicant come within the purview of the Code and the Companies Act 2013, many others fall under the power and jurisdiction of different government authorities/departments. This Adjudicating Authority has power to grant reliefs, waivers and concessions only with respect to the reliefs, waivers and concessions that are directly in relation to the Code and the Companies Act 2013 (within the powers of the NCLT), and these are granted keeping in mind the object of the Code. Reliefs, waivers and concessions that fall within the domain of other government department/authorities are not granted.
14. However, the reliefs, waivers and concessions that pertain to other governmental authorities/departments may be dealt with the respective competent authorities/forums/offices, Government or Semi Government of the State or Central Government with regard to the respective reliefs, waivers and

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concessions, whenever sought for, in the spirit of the code, which is the revival of the Corporate Debtor.

15. It is trite and fairly well settled that the Resolution Plan must be consistent with the extant law. The Resolution Applicant shall make necessary applications to the concerned regulatory or statutory authorities for renewal of business permits and supply of essential services, if required, and all necessary forms along with filing fees etc. and such authority shall also consider the same keeping in mind the objectives of the Code, which is essentially the resolving the insolvency of the Corporate Debtor and putting the Corporate Debtor back on its feet.
16. The reliefs sought with respect to subsisting contracts/agreements cannot be granted, in the absence of the parties to these contracts and agreements and these shall have to be dealt with on terms and conditions of these contracts by the parties themselves.
17. With respect to the waivers with regard to extinguishment of claims which arose Pre-CIRP and which have not been claimed are granted in terms of **Ghanashyam Mishra and Sons Pvt Ltd Vs. Edelweiss Asset Reconstruction Company Ltd**, wherein the Hon'ble Supreme Court has held that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt, any State Govt or any local authority, guarantors and other stakeholders.
18. In this regard we also rely on the judgement of Hon'ble High Court of Rajasthan in the matter of **EMC v. State of Rajasthan** wherein it has been inter-alia held that : *“Law is well-settled that with the finalization of insolvency resolution plan and the approval thereof by the NCLT, all dues of creditors, Corporate, Statutory and others stand extinguished and no demand can be raised for the period prior to the specified date.”*
19. Thus on the date of approval of resolution plan by the Adjudicating Authority, all such claims, which do not form a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to

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- a claim, which is not part of the resolution plan as per the law laid down by the Hon'ble Supreme Court in Ghanashyam Mishra (supra).
20. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.
 21. With respect to the waivers sought in relation to guarantors, we seek to place reliance on the judgment of **Lalit Kumar Jain v Union of India & ors. [(2021) 9 SCC 321]**, wherein the Hon'ble Apex Court held that "*sanction of a resolution plan and finality imparted to it by Section 31 does not per se operate as a discharge of the guarantor's liability*".
 22. With respect to the reliefs and waivers sought for all inquiries, litigations, investigations and proceedings shall be granted strictly as per the section 32A of the Code and the provisions of the law as may be applicable.
 23. As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.
 24. In case of non-compliance of this order or withdrawal of Resolution Plan, the CoC shall have the right to forfeit the EMD amount already paid by the Resolution Applicant.
 25. Subject to the observations made in this Order, the Resolution Plan in question is hereby **APPROVED** by this Bench. The Resolution Plan shall form part of this Order.
 26. The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect.
 27. The Moratorium imposed under section 14 shall cease to have effect from the date of this order.

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28. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters.
29. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.
30. Liberty is hereby granted for moving any Application if required in connection with implementation of this Resolution Plan.
31. A copy of this Order is to be submitted in the Office of the Registrar of Companies, West Bengal.
32. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.
33. The Resolution Professional is further directed to handover all records, premises/factories/documents to the Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records/premises/factories/documents through the Resolution Professional to finalise the further line of action required for starting of the operation.
34. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
35. The Application being **IA (IB) No. 1753/KB/2023 along with main Company Petition vide CP (IB) No. 406/KB/2021 shall stand disposed of** accordingly.
36. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee,
Member (Judicial)

Signed on this the 28th day of February, 2024

M. Jana, PS