

IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH  
CUTTACK

IA (IB) No.24/CB/2021  
in  
TP No.38/CTB/2019  
[Earlier CP (IB) No.1289/KB/2018]

*In the matter of:*

*An application under section 30(6) for approval of Resolution Plan  
under section 31(1) of the Insolvency and Bankruptcy Code, 2016*

and

*In the matter of*

TP No.38/CTB/2019  
[Earlier CP (IB) No.1289/KB/2018]

**Bank of India**, a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertaking Act, 1970) having its Head Office at Star House-1, C-5, G-Block, Bandra Kurla Complex, Bandra East, Mumbai, Maharashtra, and having its office at Bank of India, Bhubaneswar Zonal Office, Star House, Jaydev Vihar, Nayapalli, Bhubaneswar, Odisha-751015 and also at Branch Office at Ranihat Branch, Bajrakabati Road, Cuttack, Odisha-751015

... **Financial Creditor**

Versus

**Maa Durga Flour Mills Private Limited**, a company incorporated under the Provision of Companies Act, 1956 having its Registered office at Kairapari, Kotsahi (Tangi), Cuttack, Odisha-754022

...**Corporate Debtor**

and

*In the matter of:*

**IA (IB) No.24/CB/2021**

**Sambhulal Agarwal**, Resolution Professional of Maa Durga Flour Mills Private Limited

...**Applicant/Resolution Professional**

Sd

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*In res: Resolution Plan of Maa Durga Flour Mills Private Limited*

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**Coram:**

Shri Rajasekhar V.K. : Member (Judicial)  
Shri Satya Ranjan Prasad : Member (Technical)

**Appearances (through video conferencing):**

For the Applicant/RP : Mr. Patita Paban Bishwal, Adv.  
Mr Sambhulal Agarwal, RP in  
person

**Order reserved on: 22.09.2021**

**Order pronounced on: 01.11.2021**

**ORDER**

*Per: Rajasekhar V.K., Member (Judicial)*

1. This Court convened *via* videoconference.

***Introduction***

2. The present application has been filed by Mr. Sambhulal Agarwal, Resolution Professional ('RP') in the matter of Maa Durga Flour Mills Private Limited, under Corporate Insolvency Resolution Process ('CIRP'), under Section 30(6) of Insolvency and Bankruptcy Code, 2016 for approval of Resolution Plan in respect of the Corporate Debtor.
3. The Corporate Debtor is under CIRP *vide* Order dated 04.09.2019, and the present Applicant was initially appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor. The Applicant was confirmed as the (RP) at the 2<sup>nd</sup> meeting of the Committee of Creditors (CoC).

***Conduct of the CIRP***

Sd

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CUTTACK BENCH

IA No.24/CB/2021 in TP No.38/CTB/2019

[Earlier CP (IB) No.1289/KB/2018]

In res: Resolution Plan of Maa Durga Flour Mills Private Limited

4. On an application by the Resolution Professional, this Adjudicating Authority had, *vide* Order dated 02.03.2020, extended CIRP period by 90 days commencing from the same date, *i.e.*, 02.03.2020.
5. The Resolution Professional appointed two set of valuers as required under regulation 27. A summary of the valuation determined is as below-

<b>Class of Assets</b>	<b>Fair Value</b>	<b>Liquidation Value</b>
Land	1,83,00,000.00	1,46,40,000.00
Building	2,82,92,251.00	1,98,04,575.50
Plant & Machinery	64,58,000.00	45,26,500.00
Financial Assets	2,54,01,894.00	2,26,40,940.50
<b>Total</b>	<b>7,84,52,145.50</b>	<b>6,16,12,016.00</b>

6. During the course of the insolvency Resolution Process, twelve meetings of the CoC were conducted as follows:

<b>Sl No.</b>	<b>Meeting</b>	<b>Dated</b>
1.	1 <sup>st</sup>	01 <sup>st</sup> October, 2019
2.	2 <sup>nd</sup>	04 <sup>th</sup> November, 2019
3.	3 <sup>rd</sup>	16 <sup>th</sup> December, 2019
4.	4 <sup>th</sup>	17 <sup>th</sup> January, 2020
5.	5 <sup>th</sup>	19 <sup>th</sup> February, 2020
6.	6 <sup>th</sup>	10 <sup>th</sup> June, 2020
7.	7 <sup>th</sup>	25 <sup>th</sup> August, 2020
8.	8 <sup>th</sup>	14 <sup>th</sup> September, 2020

Sd

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CUTTACK BENCH

IA No.24/CB/2021 in TP No.38/CTB/2019  
[Earlier CP (IB) No.1289/KB/2018]

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SI No.	Meeting	Dated
9.	9 <sup>th</sup>	30 <sup>th</sup> September, 2020
10.	10 <sup>th</sup>	14 <sup>th</sup> October, 2020
11.	11 <sup>th</sup>	3 <sup>rd</sup> November, 2020
12.	12 <sup>th</sup>	25 <sup>th</sup> November, 2020

7. The RP published Form G on 18.11.2019 in the “*The New Indian Express*” (English) and “*Sambad*” (Odia) newspapers, but no Expression of Interest (‘EoI’) was received. Again, the Applicant with the approval of the CoC republished Form G on 21.12.2019. No EoI was received till the last date of submission, *i.e.*, 11.01.2020. However, a belated EoI was received on 13.01.2020. The Applicant, with the approval of CoC republished Form- G on 22.01.2020. The last date for submission of the Resolution Plan was 23.03.2020.
8. The Applicant received EoI from one prospective Resolution Applicant. The prospective Resolution Applicant requested for extension of time for submission of resolution plan by another 15 working days from the last date of submission of resolution plan, *i.e.*, 23.03.2020.
9. Meanwhile, Prudent ARC Limited, having address at 611, D Mall, Plot No. A-1, Netaji Subhash Place Pitampura, New Delhi-110034, expressed its desire to submit EoI/ Submission of Resolution Plan for Maa Durga Flour Mills Pvt. Ltd, *vide* their mail dated 20.03.2020. The same was intimated to the CoC *vide* mail dated 20.03.2020. The majority members of the CoC, *vide* mail dated 21.03.2020, gave consent to extend time for submission of resolution plan till 05.05.2020, but subject to ratification of the same by the CoC.

54

IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH

IA No.24/CB/2021 in TP No.38/CTB/2019  
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10. The CoC, at its 6<sup>th</sup> Meeting held on 10.06.2020 approved with 100% voting rights to republish Form G inviting EoIs for submission of Resolution Plan Corporate Debtor. The applicant published Form G on 14.06.2020 and in pursuance to the same the applicant received three EoIs from the following persons within the time prescribed:

- (a) Prudent ARC Limited
- (b) SREI Multi Assets Investment Trust-Vision India Fund
- (c) Mrs. Lora Mitra Rath

However, no resolution plan was received within the last day of submission of plan i.e., 15.08.2020.

11. Thereafter, the applicant received a request from Mrs. Lora Mitra Rath to extend the time for submission of Resolution Plan till 12.09.2020. The matter was discussed at the 7<sup>th</sup> CoC Meeting held on 25.08.2020 and extended the time for submission of Resolution Plan upto 08.09.2020.

12. Mrs. Lora Mitra Rath submitted her Resolution Plan on 08.09.2020, which was opened on 8<sup>th</sup> COC Meeting held on 14.09.2020. The RP submitted compliance report under section 30(2) of Insolvency and Bankruptcy Code, 2016 on 23.09.2020.

13. On 30.09.2020, at the 9<sup>th</sup> CoC Meeting, the Resolution Plan was deliberated and discussed in detail and all Financial Creditors requested the resolution applicant to submit revised Resolution Plan.

14. On 04.10.2020, Mrs. Lora Mitra Rath submitted a revised Resolution Plan which was further revised on 05.10.2020 and 06.10.2020. The revisions were discussed at the 10<sup>th</sup> Meeting of the CoC on 14.10.2020. Thereafter, on 20.10.2020 and 21.10.2020, the Resolution Applicant submitted the revised resolution plan which was discussed at the 11<sup>th</sup> CoC meeting held on 03.11.2020. Subsequently, on 07.11.2020, there was a revision to the

Sd

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resolution plan at which placed an additional condition for release of personal and corporate guarantees by all the financial creditors (Bank of India, SREI Equipment Finance Ltd, Tata Capital Services Ltd).

15. At the 12<sup>th</sup> Meeting held on 25.11.2020, the CoC considered the Resolution Plan submitted by the Resolution Applicant Mrs. Lora Mitra Rath on 08.09.2020 as revised on 04.10.2020 and further revised on 05.10.2020, 06.10.2020 and 07.10.2020 (“the Resolution Plan”), and approved the same with 99.46% votes in favour.

***Plan salient features***

16. The salient features of the approved Resolution Plan are as follows: -
- (a) The Resolution Applicant proposes to pay entire CIRP cost to the extent unpaid in priority of any other payments, within 60 days from date of approval of Resolution Plan by the Adjudicating Authority. The Resolution Applicant has estimated the total Insolvency Resolution Process cost at ₹35.00 lakh.
  - (b) CIRP cost incurred till the date of approval of Resolution Plan by the Adjudicating Authority shall be apportioned in priority of any other payments out of total consideration.
  - (c) As per the Information Memorandum, no claims of workmen of employees have been admitted by the Resolution Professional, and therefore no payment is envisaged to them in the plan. The Resolution Applicant proposes to continue the services of all the workmen and employees as a going concern.
  - (d) With regard to Secured Financial Creditor, the Resolution Applicant proposes to make full and final settlement of dues to the extent of ₹758.38 lakh to the sole secured Financial Creditor, Bank of India, which has a voting share of 67.41% in the CoC.
  - (e) Resolution Applicant proposes to pay 25% of the resolution amount within a period of sixty days from the date of approval of the Resolution

51

IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH

IA No.24/CB/2021 in TP No.38/CTB/2019  
[Earlier CP (IB) No.1289/KB/2018]

*In res: Resolution Plan of Maa Durga Flour Mills Private Limited*

Plan by the Adjudicating Authority. The Balance Amount shall be paid in twenty-four monthly instalments commencing from 01.04.2021, as follows:

Repayment Plan	Percentage	Amount	Instalment
2020-21 (upfront)	25.00%	₹189.60 lakh	-
2021-22	37.50%	₹284.39 lakh	₹23,69,958
2022-23	37.50%	₹284.39 lakh	₹23,69,958

- (f) After Full Payment proposed under the plan, Bank of India will release the Personal and Corporate Guarantees extended by the Promoter Group.
- (g) Resolution Applicant proposes to pay interest @6.85% per annum to the Secured Financial Creditor from the cut-off date till 31.03.2021 and @7.85% from 01.04.2021 till the final payment on reducing balance method.
- (h) Interest payable from cut-off date till 31.03.2021 shall be charged to a separate account, which will be paid in twelve equal monthly instalments of ₹1,82,333/- from 01.04.2021 to 31.03.2022. Accumulated interest will carry interest @7.85% p.a.
- (i) Balance amount due to Secured Financial Creditor shall be waived on approval of Resolution Plan by the Adjudicating Authority.
- (j) With regard to unsecured Financial Creditors, the Resolution Applicant proposes to make full and final settlement of dues of the following unsecured creditors in the manner specified below:

Sl. No.	Financial Creditor	Amount to be paid	Voting Share
1.	SREI Equipment Finance Ltd	₹143.12 lakh	32.05%

Sd

IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH

IA No.24/CB/2021 in TP No.38/CTB/2019

[Earlier CP (IB) No.1289/KB/2018]

*In res: Resolution Plan of Maa Durga Flour Mills Private Limited*

2.	Tata Capital Finance Ltd	₹2.50 lakh	0.53%
Total		₹145.62 lakh	32.05%

- (k) Resolution Applicant proposes to pay 25% of the Resolution Amount to SREI within a period of 90 days from the date of approval of the Resolution Plan by Adjudicating Authority. The balance amount shall be paid in twenty-four monthly instalments commencing from 01.04.2021.

Repayment Plan	Percentage	Amount	Instalment
2020-21 (Within 90 Days)	25.00%	₹35.78 lakh	
2021-22	37.50%	₹53.67 lakh	₹4,47,250
2022-23	37.50%	₹53.67 lakh	₹4,47,250
<b>Total</b>	<b>100.00%</b>	<b>₹143.12 lakh</b>	

- (l) After full payment proposed under the plan, SREI Equipment Finance Ltd and Tata Capital Finance Ltd will release the personal and corporate guarantees extended by the promoter group.
- (m) The Resolution Applicant proposes to make payment of ₹2.50 lakh to Tata Capital Finance Limited against their admitted claim of ₹36.54 lakh, which shall be paid within six months from the date of approval of the resolution plan by the Adjudicating Authority.
- (n) No provision has been made under the plan for any payment to BMW Financial Services Ltd. against their disputed dues of ₹15.82 lakh and against which no claim has been received by the RP.
- (o) With regard to other unsecured Financial Creditor who are related parties, the Resolution Applicant does not propose any payment to

Sl

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CUTTACK BENCH

IA No.24/CB/2021 in TP No.38/CTB/2019

[Earlier CP (IB) No.1289/KB/2018]

*In res: Resolution Plan of Maa Durga Flour Mills Private Limited*

them. The entire dues shall be deemed to be waived on approval of plan by the Adjudicating Authority.

- (p) In respect of Operational Creditors, the Resolution Applicant proposes to pay amount of ₹30.57 lakh as full and final settlement of all the operational creditors, excluding statutory dues to be distributed on proportionate basis amongst all as per the claims admitted by the RP.
- (q) Balance amount due to operational creditors shall be waived on approval of Resolution Plan by the Adjudicating Authority.
- (r) In regard to statutory liabilities, the Resolution Applicant proposes to pay an amount of ₹14.69 lakh after reaching a settlement with the appropriate authorities within a period of twelve months from the date of approval of Resolution Plan by this Adjudicating Authority. The Applicant states that no claim has been received from the Statutory Authorities as per IM.

<b>Nature of Liability</b>	<b>Amount Due</b>	<b>Amount proposed</b>
EPF	₹7.44 lakh	₹7.44 lakh
ESI	₹1.89 lakh	₹1.89 lakh
VAT	₹2.92 lakh	₹2.92 lakh
PT	₹0.10 lakh	₹0.10 lakh
TDS	₹2.34 lakh	₹2.34 lakh
<b>Total</b>	<b>₹14.69 lakh</b>	<b>₹14.69 lakh</b>

- (s) The Resolution Applicant proposes waiver of all interest and penalties levied by the Authorities in respect of the above dues. The Resolution Applicant further proposes that all other dues in respect of statutory liabilities till the date of approval plan by this Adjudicating Authority shall be waived.
- (t) In regard to Equity Shareholders, the existing shareholding of the company shall be reduced to ₹45,38,200/- by way of reducing paid value

Sd

IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH

IA No.24/CB/2021 in TP No.38/CTB/2019

[Earlier CP (IB) No.1289/KB/2018]

*In res: Resolution Plan of Maa Durga Flour Mills Private Limited*

of equity share from ₹100/- per share to ₹20/- per share and thereafter, by issue of One Fresh Equity share of ₹100/- for every five Equity Shares held by the existing shareholders.

- (u) With respect to payment to dissenting Financial Creditors, the Resolution Applicant proposes to arrange payment of such amount which shall not be less than liquidation value to dissenting Financial Creditors and such funds will be brought in separately by Resolution Applicant over and above upfront amount proposed under the plan.

***Plan snapshot***

17. The summary of the resolution amounts payable under the Plan is as follows:

*(Rupees in lakhs)*

Particulars	Admitted Claims	Final Resolution Amount	Within 60 days	On or before 31.03.2021	On or before 31.03.2022	On or before 31.03.2023
<b>CIRP Cost</b>	-	35.00	35.00	-	-	-
<b>Secured financial creditors</b>	4636.48	758.38	189.60	-	284.39	284.39
<b>Unsecured Financial Creditors</b>	2241.05	145.62	35.78	-	56.17	53.67
<b>Other unsecured creditors – related parties</b>	0.00	170.42	-	-	-	-
<b>Workmen and Employee Dues</b>	0.00	0.00	-	-	-	-

Sd

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CUTTACK BENCH

IA No.24/CB/2021 in TP No.38/CTB/2019

[Earlier CP (IB) No.1289/KB/2018]

*In res: Resolution Plan of Maa Durga Flour Mills Private Limited*

Particulars	Admitted Claims	Final Resolution Amount	Within 60 days	On or before 31.03.2021	On or before 31.03.2022	On or before 31.03.2023
<b>Operational Creditors</b>	0.00	30.57	-	30.57	-	-
<b>Statutory dues</b>	0.00	14.69	-	-	14.69	-
<b>Total</b>	<b>6877.53</b>	<b>984.26</b>	<b>260.38</b>	<b>30.57</b>	<b>355.25</b>	<b>338.06</b>

***Statutory compliances***

18. The Resolution Applicant has submitted an Affidavit dated 19.07.2021 under section 29A confirming her eligibility to submit a Resolution Plan.
19. The compliance of the resolution plan with the various statutory provisions is mapped as follows:

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Application Page No	Compliance (Yes / No)
Section 25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	Para 4.3 Pg no-11	52	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?			Yes

Sd

IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH

IA No.24/CB/2021 in TP No.38/CTB/2019

[Earlier CP (IB) No.1289/KB/2018]

*In res: Resolution Plan of Maa Durga Flour Mills Private Limited*

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Application Page No	Compliance (Yes / No)
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Para 12 Pg-28	69	Yes
Section 30(2)	Whether the Resolution Plan-			
	(a) provides for the payment of insolvency resolution process costs?	Para-9.1 Page-21	62	Yes
	(b) provides for the payment to the operational creditors?	Para-9.2 Page-21	63	Yes
	(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Para-9.7 at Page-22	62	Yes
	(d) provides for the management of the affairs of the corporate debtor?	Para-9.3 at Page-21	62	Yes
	(e) provides for the implementation and supervision of the resolution plan?	Para-9.4 at page 21	62	Yes

Sd

IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH

IA No.24/CB/2021 in TP No.38/CTB/2019

[Earlier CP (IB) No.1289/KB/2018]

*In res: Resolution Plan of Maa Durga Flour Mills Private Limited*

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Application Page No	Compliance (Yes / No)
	(f) contravenes any of the provisions of the law for the time being in force?	Para-9.5 Page-22	63	Yes
Section 30(4)	Whether the Resolution Plan –			
	(a) is feasible and viable, according to the CoC?			YES
	(b) has been approved by the CoC with 66% voting share?			YES
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?			YES
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	24.12.2019		NO
Regulation 38 (1)	Whether the amount due to the operational creditors under the	Para-11.1 Page-24	65	YES

51

IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH

IA No.24/CB/2021 in TP No.38/CTB/2019  
[Earlier CP (IB) No.1289/KB/2018]

*In res: Resolution Plan of Maa Durga Flour Mills Private Limited*

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	resolution plan has been given priority in payment over financial creditors?			
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Para-11.4 Page-24 Chapter 13 of Pg No. 29, 30, 31, 32	65 70-73	YES
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code.	Para-11.5 Page-24	65 -	No
	(ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?			NA
Regulation 38(2)	Whether the Resolution Plan provides:			
	(a) the term of the plan and its implementation schedule?	Para-11.6.1 Page-24 Chapter 17 Page-39,40	65	Yes

Sd

IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH

IA No.24/CB/2021 in TP No.38/CTB/2019

[Earlier CP (IB) No.1289/KB/2018]

*In res: Resolution Plan of Maa Durga Flour Mills Private Limited*

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	(b) for the management and control of the business of the corporate debtor during its term?	Para-11.6.2 Page-25	80, 81	Yes
	(c) adequate means for supervising its implementation?	Para-11.6.3 Page-25	66	Yes
38(3)	Whether the resolution plan demonstrates that –			
	(a) it addresses the cause of default?	Para 11.7.1 Pages 25 & 26	66, 67	Yes
	(b) it is feasible and viable?	Para-11.7.2 Page-26	67	Yes
	(c) it has provisions for its effective implementation?	Para-11.7.3 Page-27	67	Yes
	(d) it has provisions for approvals required and the timeline for the same?	Para-11.7.4 Page-27	68	Yes
	(e) the resolution applicant has the capability to implement the resolution plan?	Para-11.7.5 Page-27 & Para 5 of Pg-12 and 13	68 and 53,54	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?			Yes

54

IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH

IA No.24/CB/2021 in TP No.38/CTB/2019

[Earlier CP (IB) No.1289/KB/2018]

*In res: Resolution Plan of Maa Durga Flour Mills Private Limited*

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Application Page No	Compliance (Yes / No)
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	Para 4.6 pg-11 and the same approved at the 12 <sup>th</sup> CoC	52	Yes

***Concessions, reliefs and dispensations sought:***

20. The Resolution Applicant has sought for the following concessions, reliefs and dispensations, upon each of which orders are passed as follows:

Sl. No.	Waivers, Reliefs and Exemptions sought from the Adjudicating Authority	Orders thereon
<b>1. Waiver of statutory liabilities</b>		
	(a) Waiver of the statutory liabilities/ contingent liabilities incurred and accrued / disputed liabilities (Whether assessed or unassessed) due to statutory authorities viz. VAT, Sales Tax, GST, Income Tax, Excise, Customs, REMA & Export Obligation etc.	Granted in terms of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited</i> . <sup>1</sup>
<b>2. Withdrawal of suits</b>		
	(a) All the legal suits filed by the financial creditors/operational	Granted, but only to the extent it involves the

<sup>1</sup> 2021 SCC Online SC 313 dated 13.04.2021

Sd

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IA No.24/CB/2021 in TP No.38/CTB/2019

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Sl. No.	Waivers, Reliefs and Exemptions sought from the Adjudicating Authority	Orders thereon
	creditors till date which are pending before various court/quasi-judicial bodies shall be withdrawn upon sanction of the resolution plan and no action shall be taken by the financial creditors/ operational creditors against the company /promoters.	corporate debtor, and not its erstwhile promoters.
	(b) The legal suits include the suits/proceeding initiated by financial creditors. It will be only logical that once NCLT approves the Resolution Plan, the financial creditors who are also a part of the plan should withdraw the suits filed by them with the respective judicial authorities, otherwise it will defeat the very purpose of the Resolution Plan.	Granted
	(c) In as much as suits initiated by other operating creditors are concerned, once the Resolution Plan is approved, the company will be individually settling with all of them as provided in the Plan and as a part of the settlement process the company will insist, they have to withdraw the suits.	Granted
<b>3. Waivers in regard to income tax – Central Board of Direct Taxes</b>		
	(a) The waiver of interest and penalty charged against the dues of the Income Tax Authority till date and	

Sd

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CUTTACK BENCH

IA No.24/CB/2021 in TP No.38/CTB/2019

[Earlier CP (IB) No.1289/KB/2018]

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	no additional interest/penalty shall be charged for the dues till date. The said dues shall be repaid as per the Resolution Plan	This is for the appropriate authorities to consider.
	(b) Applicability of Provision of Section 41(1), Section 79 and Section 115 JB of the Income Tax Act, 1961 shall be exempted	
	(c) Interest and Penalty charged u/s 271C, 272A (2), 201, 206, 234A, 234B,234C,234D, and 234E of the Income Tax Act, 1961 for various assessment years till date shall be waived	
<b>4. Waiver with reference to PF &amp; ESI</b>		
	(a) With respect to PF and ESI Authorities Exemption/Immunity for the payment of penalty and damages and future criminal proceedings shall be granted	This is for the appropriate authorities to consider
<b>5. Electricity</b>		
	(a) Minimum Demand Charges accrued as on the cut-off date and for a subsequent period of 5 Years from the cut-off date shall be waived.  (b) Exemption from power cut for a period of 5 years from the cut-off date shall be considered.	Dues as on the insolvency commencement date as collated by the Resolution Professional shall be settled as part of the Resolution Plan.

51

IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH

IA No.24/CB/2021 in TP No.38/CTB/2019  
[Earlier CP (IB) No.1289/KB/2018]

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	(c) Such relief and concession of Govt. of Odisha to sick units for expeditious revival of the unit shall also be considered from time to time.	There shall be no other waiver
<b>6. MSME Concessions</b>		
	(a) Relief and Concession shall be available to MSME Sector as per MSME Policy of Govt. Of Odisha to sick units for revival and rehabilitation of such units	The appropriate department of the Govt of Odisha is requested to consider the same keeping in view the letter and spirit of the Insolvency & Bankruptcy Code, which is to enable a fresh start for the corporate debtor.
<b>7. Waivers in respect of Companies Act compliances</b>		
	(a) Company shall be exempted for taking permission/approval of capital reduction proposed in the scheme.  (b) Company shall be exempted from the compliance of the provisions of the Act for reduction in equity shares capital of the company as envisaged in the scheme and be allowed the conversion of the existing 4 equity share into one equity share of ₹100 each	While permissions required internally by the corporate debtor such as shareholder approval etc. shall be waived once this Resolution Plan is approved, all filings and other compliances shall be carried out by the corporate debtor under the successful resolution applicant, by filing the requisite filing fee to the Registrar of Companies.

Sd

IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH

IA No.24/CB/2021 in TP No.38/CTB/2019

[Earlier CP (IB) No.1289/KB/2018]

*In res: Resolution Plan of Maa Durga Flour Mills Private Limited*

<b>Sl. No.</b>	<b>Waivers, Reliefs and Exemptions sought from the Adjudicating Authority</b>	<b>Orders thereon</b>
		There shall be no exemption in this regard
<b>8. Renewal of licences</b>		
	(a) All licenses and Government Approvals granted to company whether lapsed. Expired, cancelled, revoked etc. shall be renewed for the period for which they were originally granted without any additional fees, Charges or penalty or interest and the company shall be permitted to continue to operate its business and asset in the manner that all approvals and licenses are valid until renewal/ extension of such licenses and approvals and be treated as the company is compliant with them without initiating any investigation, action or proceeding in relation to such non-compliance	Once the resolution plan is approved by this Adjudicating Authority, the corporate debtor under new management shall have one year in terms of section 31(4) of the Insolvency & Bankruptcy Code, 2016, within which to obtain the requisite approvals. The appropriate authorities are requested to consider the same expeditiously and favourably since the object of the Insolvency & Bankruptcy Code, 2016, is to enable a fresh start for the corporate debtor
	(b) All licenses and Government Approvals granted to company whether lapsed. Expired, cancelled, revoked etc. shall be renewed for the period for which they were originally granted without any additional fees, Charges or penalty or interest and the company shall be permitted to continue to operate its	While the appropriate authorities are requested to consider the same expeditiously and favourably since the object of the Insolvency & Bankruptcy Code, 2016, is to enable a fresh start for the corporate

51

IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH

IA No.24/CB/2021 in TP No.38/CTB/2019

[Earlier CP (IB) No.1289/KB/2018]

*In res: Resolution Plan of Maa Durga Flour Mills Private Limited*

Sl. No.	Waivers, Reliefs and Exemptions sought from the Adjudicating Authority	Orders thereon
	business and asset in the manner that all approvals and licenses are valid until renewal/extension of such licenses and approvals and be treated as the company is compliant with them without initiating any investigation, action or proceeding in relation to such non-compliance.	debtor, the licence fee, etc. shall be paid by the Corporate Debtor. However, the appropriate authorities are requested to consider waiver of penal charges etc.
<b>9. Transfer charges etc.</b>		
	(a) All demand or notice of demand by all Government Authorities in relation to making payments towards the transfer charges or unearned amount that may be applicable in relation to the properties of the company on account of the Transaction contemplated in this Resolution Plan shall be waived.	Not granted
	(b) Penalties, Taxes, Dues, Charges, Levies and cess on past non-compliance of the company under applicable law shall be waived by Government Authorities and the Resolution Applicant shall not be liable for any non-compliance under these applicable laws for the period prior to the cut-off date	The appropriate authorities are requested to consider the same favourably. However, the resolution applicant is in any case not liable for past non-compliance in terms of section 32A of the Insolvency & Bankruptcy Code, 2016
<b>10. Regularisation of non-compliances</b>		

Sd

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CUTTACK BENCH

IA No.24/CB/2021 in TP No.38/CTB/2019

[Earlier CP (IB) No.1289/KB/2018]

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<b>Sl. No.</b>	<b>Waivers, Reliefs and Exemptions sought from the Adjudicating Authority</b>	<b>Orders thereon</b>
	(a) Non Compliance of the company prior to cut-off dates including but not limited to Companies Act, 2013 Industrial Dispute Act, 1947, Labour Laws, Income Tax Act, 1961, VAT, Service Tax Act, GST , Sales Tax, The Relevant shops and Establishment Act and rules, circulars, regulation of each of the above legislation shall be waived and relief shall be provided to the company from all litigation pending at different level and tax dues including interest and penalty on such litigation shall be waived.	Granted in terms of the judgment of the Hon'ble Supreme Court in Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.
	(b) Relief, Concession or dispensation for implementation of the transaction contemplated under the Resolution Plan in accordance with its terms and conditions shall be granted by all Governmental Authorities.	The appropriate authorities are requested to consider the same expeditiously and favourably since the object of the Insolvency & Bankruptcy Code, 2016, is to enable a fresh start for the corporate debtor
<b>11. With regard to existing shareholders</b>		
	(a) Reduction in equity share capital by 80% and the present two equity shares of ₹100/- each shall be swapped against fresh issue of one equity shares of ₹100/- each without calling for any meeting of	While permissions required internally by the corporate debtor such as shareholder approval etc. shall be waived once this Resolution Plan is

Sd

IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH

IA No.24/CB/2021 in TP No.38/CTB/2019

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<b>Sl. No.</b>	<b>Waivers, Reliefs and Exemptions sought from the Adjudicating Authority</b>	<b>Orders thereon</b>
	any class of shareholder/ creditors etc. shall be allowed and company be exempted to comply with further formalities under the Companies Act, 2013	approved, all filings and other compliances shall be carried out by the corporate debtor under the successful resolution applicant, by filing the requisite filing fee to the Registrar of Companies. There shall be no exemption in this regard.
	(b) In respect of Resolution Fraction of Share, No Fractional certificates shall be issued by the company upon capital reduction in respect of the fractional entitlements, if any to which the shareholders of the company may be entitled to and the directors of the company shall instead consolidate all such fractional entitlements and allot shares in lieu thereof to a Director or an Authorized Officer of the company with the express understanding that such Directors or the officer shall sell the same at the best available price in one or more lots and by private sale/placement or by auction as deemed fit and decision of such director or the officer as to the timing and method of sale and the price shall be final and pay the sale proceeds to the company. The net sale proceeds shall be distributed	This is not in the nature of a concession, waiver or dispensation. Therefore, no orders are necessary in this regard.

Sd

IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH

IA No.24/CB/2021 in TP No.38/CTB/2019

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Sl. No.	Waivers, Reliefs and Exemptions sought from the Adjudicating Authority	Orders thereon
	among the shareholder in proportion of their Fractional entitlements of the shares of the company.	
<b>12. With respect to Promoters –</b>		
	(a) The Resolution Applicant, their friends and relatives including group companies and strategic investors shall bring ₹200.00 lakh for making upfront payment under the plan by way of additional equity/quasi-equity/ unsecured loan without calling for any meeting of any class of shareholders and company be exempted from complying with any other formalities under the Companies Act, 2013 and A sum of ₹550.00 lakh will be brought to restart the unit including working capital requirement.	This is not in the nature of a concession, waiver or dispensation. Therefore, no orders are necessary in this regard.
	(b) The Managing Director, Mr. Prasant Chandra Rath, who is also Promoter Director shall be allowed to draw managerial remuneration as per the Resolution Plan from the cut-off date and this remuneration shall be reviewed as on 31.03.2021 and that can be increased appropriately matching with the increased level of performance and operation of the company.	This is not in the nature of a concession, waiver or dispensation. Therefore, no orders are necessary in this regard.

Sd

IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH

IA No.24/CB/2021 in TP No.38/CTB/2019

[Earlier CP (IB) No.1289/KB/2018]

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<b>13. Right to amendment prior to CoC approval</b>		
	(a) The Resolution Applicant's Right to amend or modify any waiver or conditions sought in the present plan after approval of the same by COC at any time before the plan is submitted for consideration of the NCLT shall be reserved with a clarification that no such amendment and modification would have any impact on the right of COC under the plan and it has been undertaken by COC that no such modification or amendment shall entitle them to withdraw their approval for the plan.	This does not survive for consideration at this stage, since the resolution plan has already been approved by the CoC.

***Performance Bank Guarantee***

21. The Successful Resolution Applicant, Mrs. Lora Mitra Rath, has deposited Performance Bank Guarantee of ₹50 lakh issued By Bank of India, Sambalpur Branch. A copy of the Performance Bank Guarantee that has been submitted and marked as Annexure-J.

***Objections to the Resolution Plan***

22. On hearing the submissions made by the Learned Authorised Representative for the Resolution Professional, and perusing the record, we find that in the revised resolution plan dated 07.11.2020 the Resolution Applicant put an additional condition for release of personal and corporate guarantee by all the financial creditors (Bank of India, SREI Equipment

Sd

IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH

IA No.24/CB/2021 in TP No.38/CTB/2019

[Earlier CP (IB) No.1289/KB/2018]

*In res: Resolution Plan of Maa Durga Flour Mills Private Limited*

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Finance Ltd, Tata Capital Services Ltd), which is extended by promoter group, keeping other terms and conditions same of the revised plan dated 05.10.2020 and 06.10.2020.

23. Mr. Patita Paban Bishwal, Ld Counsel appearing on behalf of the Resolution Professional submitted that Bank of India, SREI Equipment Finance Ltd and Tata Capital Services Ltd have not agreed to release of personal and corporate guarantee given to the Corporate Debtor.
24. It is stated that Bank of India requested to the applicant to put the matter before the Adjudicating Authority for a decision regarding the release of personal and corporate guarantee given to the Corporate Debtor and accordingly the applicant decided to mention the fact before the Adjudicating Authority and also request to adjudicate on the above issue.
25. The applicant submitted that the Resolution Plan was put to vote at the 12<sup>th</sup> CoC meeting held on 25.11.2020 with the above stated observation.

***Issue for determination***

26. The only question for consideration is whether an approved Resolution Plan can extinguish personal and corporate liabilities in the teeth of the objections of the guarantee-holder.

***Analysis and orders***

27. In so far as the extinguishment of personal guarantees provided by Directors or other third parties on behalf of the Corporate Debtor are concerned, we are bound by the decision of the Hon'ble Supreme Court in ***Lalit Kumar Jain v Union of India & others***,<sup>2</sup> where it has been held in para 133 that sanction

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<sup>2</sup> 2021 SCC OnLine SC 396 decided on 21.05.2021.

IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH

IA No.24/CB/2021 in TP No.38/CTB/2019

[Earlier CP (IB) No.1289/KB/2018]

*In res: Resolution Plan of Maa Durga Flour Mills Private Limited*

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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.

28. Therefore, we **do not** grant explicit waiver of the personal guarantees provided by the directors or other third parties on behalf of the Corporate Debtor.
29. On hearing the submissions made by the Learned Authorised Representative for the Resolution Professional, and perusing the record, we find that the Resolution Plan has been approved with 99.46% majority by the CoC, as against the minimum threshold of approval by 66% majority of the CoC.
30. As per the CoC, the Resolution Plan meets the requirement of being viable and feasible for revival of the Corporate Debtor. By and large, all the compliances have been done by the RP and the Resolution Applicant for making the plan effective after approval by this Bench. There is no opposition from any quarter as regards the Resolution Plan.
31. On perusal of the documents on record, we are satisfied that the Resolution Plan 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 **except in so far as extinguishment of personal and corporate guarantees are concerned.**
32. As far as the question of granting time to comply with the statutory obligations or 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.

Sd

IN THE NATIONAL COMPANY LAW TRIBUNAL  
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IA No.24/CB/2021 in TP No.38/CTB/2019

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33. Any relief sought in the Resolution Plan, where any contract, agreement, understanding, proceeding, action, notice etc. not specifically identified, or is for a future contingency, is, at this point of time, rejected.
34. Therefore, subject to the observations made in this Order, we hereby accord our approval to the Resolution Plan. The Resolution Plan shall form part of this Order.
35. The Resolution Plan as approved is binding on the Corporate Debtor and other stakeholders involved so that the revival of the Corporate Debtor can come into force with immediate effect.
36. The Moratorium imposed under section 14 shall cease to have effect from the date of this order.
37. In case of non-compliance of this order or withdrawal of Resolution Plan, the performance guarantee amount already paid by the Resolution Applicant shall stand forfeited, in addition to the Resolution Applicant being liable for any other action as per law.
38. The RP shall stand discharged from his duties with effect from the date of this Order. He shall, however, perform his duties in terms of the Resolution Plan as approved by this Adjudicating Authority.
39. The Resolution Applicant shall have access to all the Corporate Debtor's records, documents, assets and premises with effect from the date of this Order, to finalise the further line of action required for starting the business operations of the Corporate Debtor.
40. Liberty is hereby granted for moving applications, if required, in connection with implementation of this Resolution Plan.

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CUTTACK BENCH

IA No.24/CB/2021 in TP No.38/CTB/2019  
[Earlier CP (IB) No.1289/KB/2018]

*In res: Resolution Plan of Maa Durga Flour Mills Private Limited*

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41. The Resolution Applicant shall file a copy of this Order with the Registrar of Companies, Cuttack, *inter alia* for updating the status of the Corporate Debtor.
42. The Application being IA No.24/CTB/2021 along with Company Petition bearing TP No.38/CTB/2019 [earlier, CP (IB) No.1289/KB/2018] are disposed of accordingly.
43. 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.
44. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Sd

**Satya Ranjan Prasad**  
**Member (Technical)**

Sd

**Rajasekhar V.K.**  
**Member (Judicial)**

Signed this 1<sup>st</sup> day of November 2021.

Ravijeet \_P.S.