

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

IA(IB)No.177/KB/2021

In

CP(IB)No.676(KB) 2019

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

In the matter of:

Reliance Home Finance Ltd.

...Financial Creditor

-Versus-

Starlite Infracon Pvt. Ltd.

... Corporate Debtor

And

In the matter of:

Niraj Kumar Agrawal, Resolution Professional in respect of Starlite Infracon Private Limited.

... Applicant

Date of hearing: 04.03.2022

Date of pronouncement of order: 06.07.2022

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Harish Chander Suri, Member (Technical)

Appearances (via video conference):

For the Applicant/RP:

1. Shaunak Mitra, Advocate
2. Saurav Jain, Advocate
3. Niraj Kumar Agrawal, RP in person

ORDER

1. This is an Application by Niraj Kumar Agrawal, Resolution Professional of STARLITE INFRACON PRIVATE LIMITED (CIN:U45400WB2013PTC189703), under section30(6)read with section 31(1) of the Insolvency and Bankruptcy Code,2016(“the Code”) for approval of Resolution Plan in respect of Starlite Infracon Private Limited, the Corporate Debtor (“CD”).
2. The underlying Company Petition being C.P. (IB) No. 676/KB/2019 was filed by Reliance Home Finance Ltd. against the Corporate Debtor, under section 7 of the Code which was admitted into Corporate Insolvency Resolution Process (“CIRP”) by an order dated 16.03.2020.
3. Mr. Niraj Kumar Agrawal was appointed as the Interim Resolution Professional (“IRP”), the Committee of Creditors (“CoC”) in its 1st meeting held on 22.07..2020, resolved to appoint Mr. Niraj Kumar Agrawal [IBBI/IPA-001/P-00949/2017-2018/11569] as the Resolution Professional (“RP”).
4. The CIRP timeline was extended from time to time with approval of this Adjudicating Authority due to exclusion of Lockdown period (Date of Expiry of initial 180 days Period of CIRP after exclusion of period granted by Hon’ble AA by orders dated 14.9.20 & 07.01.2021 is 20.03.2021.Extension of CIRP period by 90 days under 12(2)/12(3) of IBC is approved under IA/324/KB/2021 .
5. Invitation in Form ‘G’ for Expressions of Interest (“EoI”) from potential resolution applicants was published on 08.09.2020 for submission of resolution plans for the Corporate Debtor, in terms of the provisions of section 25(2)(h) of the Code read with regulation 36A(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.The last date for receipt of EOI was 05.10.2020. The time to submit Resolution Plans was thereafter extended by the CoC upto 31.12.2020.
6. The Applicant submits that 2 Persons namely ,D N P Heights Welfare Association & Harshvardhan Reddy were selected as Final resolution Applicants.
7. Pursuant to the invitation for EOI published on 08.09.2020, Resolution Plans were submitted to the Resolution Professional within the stipulated last date, by

the following applicant:-

NAME	PAN	ADDRESS
D N P Heights welfare Association	AAGAD2394B	11, Dr. B C Ray Road, Kolkata-700151

8. On 04.01.2021, the CoC at its 7th meeting, considered the plan. After discussion/negotiations with Resolution Applicants the CoC accepted the offer of Resolution Applicant in principle and the same was put up for approval by E voting from 08.01.2021 to 11.01.2021 . The CoC approved the Resolution Plan submitted by D N P Heights Welfare association with 100% vote share.

9. **Executive Summary of the Resolution Plan**

Stakeholders	Amount Admitted Rs.	As a % of Total Liability	Amount /Consideration Offered. Duration from effective date	Offered Amt. (Rs.)
CIRP Cost (IRP/RP)	-	-	40,00,000 (Approx.) within 2-3 Months	40,00,000/-
Financial Creditor- Class of Creditor - Home Buyers	10,00,29,258/- (Excluding Notional Int & Cancellation) (14,24,08,221/- - With Notional Interest)	63.59 %	Complete Construction of all the Flats of Block-A & B as per agreement of sales within 18 Months subject to as specified in clause 4.2 (f) ref page 86	Construction to be completed and handover on Receipt of Outstanding

Stakeholders	Amount Admitted Rs.	As a % of Total Liability	Amount /Consideration Offered. Duration from effective date	Offered Amt. (Rs.)
a. Financial Creditors- Reliance Home Finance Limited (RHFL)	7,54,27,773/-	33.68 %	It is proposed that Realization out of following properties and assets to be paid to RHFL Unsold inventory of Block- A & B (List enclosed Annexure-II) or sell consideration of the same Minimum Expected amount 1.25 Cr and Sale consideration out of conversion of any space into commercial space if permitted out of Tower A & B and Realization from the suspended director pursuant to applications filed with NCLT on account of avoidable transaction application Under Sec 43 under IBC,2016. App amount 4.36 Cr.	5,61,00,000/- (1,25,00,000/- unsold inventory+ 4,36,00,000/- realization from avoidable transactions)

Stakeholders	Amount Admitted Rs.	As a % of Total Liability	Amount /Consideration Offered. Duration from effective date	Offered Amt. (Rs.)
			to be handed to RH making payment of CIRP cc payment to op creditor as proposed in the proportion to debt/claim outstanding secured Creditor and Home buyers who have cancelled their flats up to 50% Outstanding cancellation amount)	
b. Home Buyers cancellation amount	46,86,879/- (Excluding Notional Int) (61,03,176/- with notional Int)	2.73%	Home Buyers who have cancelled their flats (up to 50% of the Outstanding cancellation amount)	23,43,440/-
Operational Creditors	34,40,143/-		10% of the amount admitted i.e offered Rs. 3.44 Lakhs as full and final settlement in proportion to amount due Within 3 months	3,44,000/-
Workmen & Employees	0	0		
Workmen & Employees (ESI & PF)	0	0		

Stakeholders	Amount Admitted Rs.	As a % of Total Liability	Amount /Consideration Offered. Duration from effective date	Offered Amt. (Rs.)
Statutory Liabilities	0	0		
Other Creditors	1,02,59,765/-			0
Total	23,76,39,078/- (Excluding Notional Int)	100%		

10. Various compliances as envisaged by the Code and the CIRP Regulations which a Resolution Plan is required to adhere to, are as follows:-

I. Submission of Resolution Plan in terms of section 30(2) of the Code

The compliance of the Resolution Plan is as under:

Clause of s.30(2)	Requirement	How dealt within the Plan
(a)	Plan must provide for payment of CIRP cost in priority to repayment of other debts of CD in the manner specified by the Board.	Para 4 sub para 4.2(a), internal page 21 of the Resolution Plan.
(b)	Plan must provide for repayment of debts of Operational Creditors in such manner as may be specified by the Board which shall not be less than- (i) the amount payable to such creditors in the event of liquidation under section 53; or (ii) the amount that	4.1 & 4.2B, internal pages 21-22 of the Resolution Plan.

	<p>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</p> <p>(iii) provides for 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.</p>	<p>Resolution Plan approved with 100% votes of CoC</p>
(c)	<p>Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.</p>	<p>4.4, internal pages 26-28 of the Resolution Plan</p>
Clause of s.30(2)	Requirement	How dealt with in the Plan
(d)	<p>Implementation and Supervision.</p>	<p>4.5, internal pages 29 of the Resolution Plan.</p>
(e)	<p>Plan does not contravene any of the provisions of the law for the time being in force.</p>	<p>Part 2.1 (K), para 8, internal pages 15 of the Resolution Plan.</p>
(f)	<p>Confirms to such other requirements as may be specified by the Board.</p>	<p>No specific provision in the Plan. However, the Resolution Professional submits and confirms that the plan confirms to</p>

		requirements specified by the Board.
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II. Measures required for implementation of the Resolution Plan in terms of Regulation 37 of CIRP Regulations:

<i>Particulars</i>	<i>Relevant Provision of the Resolution Plan dealing with Regulation 37</i>
A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximization of value of its assets, including but not limited to the following:-	
Transfer of all or part of the assets of the corporate debtor to one or more persons;	Not proposed by the RA
(b) sale of all or part of the assets whether subject to any security interest or not;	Not proposed by the RA
(c) restructuring of the corporate debtor, by way of merger, amalgamation and demerger	Not proposed by the RA
(d) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	6.1(a) (b) internal page 39 of the Plan
(e) cancellation or delisting of any shares of the corporate debtor, if applicable;	6.1(a) page 102
(f) satisfaction or modification of any security interest;	Para 5, sub para 5.2, internal page 36-38 of the Plan
(g) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Not applicable.

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(h) reduction in the amount payable to the creditors;	Para-4, sub para 4.2, internal page 21-24 of the Plan read with SECTION-2, para 2.2, internal page 15-16 of the Plan
(i) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	Settlement at Rs. 1.25 Crore on account of unsold flats (inventories) and Rs. 4.36 core to be paid if realized on account of application of Avoidable transaction. No maturity extension sought.
(j) amendment of the constitutional documents of the corporate debtor;	Not Applicable.
(k) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	Not Applicable.
(l) change in portfolio of goods or services produced or rendered by the corporate debtor;	Not proposed by the RA.
(m) change in technology used by the corporate debtor; and	Not proposed by RA.
(n) obtaining necessary approvals from the Central and State Governments and other authorities.	Clause 4 sub clause 4.2(8) ref page of application 88.

III. Mandatory contents of Resolution Plan in terms of Regulation 38 of CIRP Regulations:

<i>Reference to relevant Regulation</i>	<i>Requirement</i>	<i>How dealt within the Plan</i>

38(1)	<p>The amount payable to the operational creditors under a resolution plan shall be paid in priority over financial creditors.</p> <p>The amount payable to the Financial creditors under a resolution plan, who have a right to vote under section 21(2) and did not vote in favour of the resolution plan shall be paid in priority over financial creditors who voted in favour of the Plan.</p>	<p>4.1 & 4.2B, internal pages 21-22 of the Resolution Plan.</p> <p>Resolution Plan approved with 100% vote of CoC members</p>
38(1A)	<p>A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors of the corporate debtor.</p>	<p>Part-4 Para 4.2, internal page 21-24 of the Plan</p>

<i>Reference to relevant Regulation</i>	<i>Requirement</i>	<i>How dealt within the Plan</i>
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38(1B)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.	No such failure by the RA or any of its related parties. Part-3, para 3.4, internal page 18 of the Plan
38(2)	A resolution plan shall provide: (a) the term of the plan and its implementation schedule; (b) the management and control of the business of the corporate debtor during its term; and (c) adequate means for supervising its implementation.	Para 4 internal pages 24-26 of the Plan read with Part-5 para 5.1 internal Pg 32-33 4.4, internal pages 26-28 of the Resolution Plan. 4.5, internal pages 29 of the Resolution Plan.
38(3)	A resolution plan shall demonstrate that – It addresses the cause of default;	Part 4, para 4.6, internal page 29-30 of the Plan
	(b) it is feasible and viable;	Part 4, para 4.6, internal page 30 of the Plan
	It has provisions for its effective implementation;	Part 4, para 4.5, internal page 29 of the Plan

	(d) it has provisions for approvals required and the timeline for the same; and	Part 4 internal pages 24-26 of the Plan
	(e) the Resolution Applicant has the capability to implement the resolution plan.	Part 3, para 3.7 read with 3.6, internal page 19-20of the Resolution Plan

11. The successful Resolution Applicant has submitted a certificate of eligibility under section 29A of the Code.
12. A Compliance Certificate in prescribed form, *i.e.*, Form 'H' in compliance with regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, has been annexed. Evidence of receipt of performance security as required under Regulation 36B(4A) is disclosed.

Details of Resolution Plan/Payment Schedule

13. The relevant information with regard to the amount claimed, amount admitted and the amount proposed to be paid by the Resolution Applicant, *i.e.*, D N P Heights Welfare Association, under the said Resolution Plan is tabulated as under:

Sl. No	Creditor	Amount Claimed (in Rs.)	Amount Admitted (in Rs.)	% share in COC	Amount proposed in Resolution Plan (in Rs.)
Financial Creditors					
1	Financial Creditor- Class of Creditor - Home Buyers	10,84,48,616/- (Excluding Notional Int & Cancellation) (287940967/- With Notional Interest)	10,00,29,258/- (Excluding Notional Int & Cancellation) (14,24,08,221/- with notional Interest)	63.59%	Construction to be completed and handover on Receipt of Outstanding

2	a. Financial Creditors-Reliance Home Finance Limited (RHFL)	8,72,28,798/-	7,54,27,773/-	33.68%	5,61,00,000/- (1,25,00,000/- unsold inventory+ 4,36,00,000/- realization from avoidable transactions)
	b. Home Buyers cancellation amount	47,64,370/- (Excluding Notional Int) (73,56,194/- with notional Int)	46,86,879/- (Excluding Notional Int) (6103176/- with notional Int)	2.73%	23,43,440/-
	c. Other Home Buyers	3,37,65,262/- (Excluding Notional Int) (34467766/- with Interest)	NIL		NIL
Operational Creditors					
1	Workmen and Employees	N/A	N/A	N/A	---
2.	Other operational creditors	2,11,77,995/-	34,40,143/-	---	3,44,000/-
3	Government's dues	NIL	NIL	---	NIL
4	Other Creditors (Shareholder & Related Party advances)	2,00,69,765/-	102,59,765/-	-	NIL

	TOTAL	45,82,41,485/- (With Notional Interest)	23,76,39,078/- (With Notional Interest)		
CIRP Cost					
1	CIRP Cost (Estimated)	40,00,000	40,00,000	N/A	40,00,000

14. The total plan is of Rs.366.90 lakhs inclusive of the Capital Expenditure and Working Capital for development of the assets and operation of the Corporate Debtor,

Sl.No.	Type of debts	Amount Proposed (Rs. Lakhs)
1.	Estimated CIRP Cost	40.00
2.	Secured Financial Creditors	125.00
3.	Workmen and Employees	0.00
4.	Unsecured Financial Creditors (Cancellation amount of Home Buyers)	23.46
5.	Others Unsecured Financial Creditors (Related Parties)	0.00
6.	Operational Creditors (other than Statutory)	3.44
7.	Statutory Liabilities	0.00
8.	Shareholders	0.00
9.	Contingent to Govt Department	0.00
10.	Contingent/Unforeseen Cost	0.00
	Total payment to creditors	191.90
	Capital Expenditure and Working Capital for development of the Assets and operations of the CD	175.00

	Additional sum fo repayment to workmen/employees	0.00
	Total Plan Outlay	366.90

15. Majority of Homebuyers, has submitted an affidavit confirming that they have understood and agreed to all terms of the Proposed Resolution Plan including in particular the following clauses: -

Clause 3.7

The resolution applicant is in the capacity to manage and fund for completion of construction work estimated cost is 1.5-2 cr. (Approx).

Clause 4.2 (F)

Construction of House property in Block A & B and handover possession and Registration as per transfer of Property act and other applicable act subject to payment of outstanding receivable amount along with proportionate extra cost of construction and services (including Transformer) of respective Block and Common area cost to be shared by both the block and Registration charges as applicable need to be paid afresh by the respective home Buyers to get registration.

16. Summary of the financial proposal/payment under the Resolution Plan is tabulated hereunder:

Particulars	Amount
Admissible Debt to be paid to the CIRP Expenses	Rs 40,00,000/- or actual amount whichever is higher with 2 to 3 months of Approval date
Admissible Debt to be paid to the Operational Creditors	Rs 3,44,000/- or actual amount whichever is higher with 2 to 3 months of Approval date

Admissible Debt to be paid to Financial Creditors	
Reliance Home Finance ltd.	Value of Unsold inventories (Flats) Rs. 1,25,00,000/- within 4 to 60 months and Rs. 4,36,00,000/- only on realization of avoidable transactions (Immediately on realization)
Home Buyers (Cancellation Amount)	Rs. 23,46,000/- within 4 to 60 months of Approval date
Home Buyers Handover Constructed Flats	Within 4 to 60 th Months

17. Details on Management/ Implementation and Reliefs as per the Resolution Plan-

The Resolution Plan also provides for-

- a. Management of Company after resolution in Part 4, Para 4.4 at internal page No. 25 of the Plan;
- b. Term of the resolution plan as per Part 4 at internal page No. 24 of the Plan;
- c. Indicative timelines of events for implementation in Part 4 Page-88-89 read with Part 5 at internal pages 95-96 and 41 of the Plan; and
- d. Implementation and Supervision of the resolution plan in Para 4, Sub Para 4.5 .

Waivers, Reliefs and Exemptions

18. In Part 6 of the Plan para 6.2, internal page 43-51, Resolution applicant has prayed below mentioned waivers, reliefs and exemptions for the effectiveness or implementation of the Resolution Plan:-

Sl. No.	Waivers, Reliefs and Exemptions sought from Hon'ble NCLT	Orders thereon

1.	Waiver of the Statutory Liabilities/ Contingent Liabilities incurred and accrued / due to statutory authorities viz. VAT, Sales Tax, GST, Income Tax, Excise, Customs, FEMA & Export Obligation, etc.:	This is for the appropriate taxing authorities to consider the same in accordance with the relevant law.
2.	Waivers of MAT liability arising on account of write off of loans	This is for the appropriate taxing authorities to consider the same in accordance with the relevant law.
3.	Waiver of the dues of the Operational Creditors and other current liabilities and any other operational liability accrued and incurred before Insolvency (CIRP) commencement date other than one expressly included in the resolution Plan	Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd,</i> ¹ wherein
4.	Waiver of all liabilities incurred and accrued before Insolvency (CIRP) commencement date towards Workmen and Employees	the Hon'ble Supreme Court has held in para 95(i) that once a resolution plan is duly
5.	Waiver of any liability incurred and accrued before Insolvency (CIRP) commencement date on account of Financial Debt owed to Unsecured Creditors other than one expressly included in the resolution Plan	approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the resolution plan shall
6.	Waiver of all the Contingent Liabilities arising out of any acts or actions of the company done before the Insolvency	stand frozen and will be binding on the Corporate Debtor and

¹ 2021 SCC OnLine SC 313 decided on 13.04.2021.

	(CIRP) commencement date other than one expressly included in the resolution Plan	its employees, members, creditors,
7.	Waiver from all Corporate Guarantees given by the company before the Insolvency (CIRP) commencement date	including the Central Govt, any State Govt or any local authority,
8.	No recourse on corporate debt or against any amount recovered from personal guarantors (erstwhile guarantors) or corporate guarantors, if any	guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. 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

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		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.
9.	Waivers for any/all liabilities arising under Companies Act 1956/ Companies Act 2013/FEMA Regulations/Labor Laws, etc	Granted.
10.	For unknown liabilities/off balance sheet transactions	Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd,</i> ² wherein the Hon'ble Supreme Court has held in para 95(i) 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,

² 2021 SCC OnLine SC 313 decided on 13.04.2021.

		<p>members, creditors, including the Central Govt, any State Govt or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. 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</p>
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		the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.
11.	Exclusion of time period of CIRP if any committed under any ongoing contract/Agreement/Joint Venture/Demand raised by electricity authority or any other department for supply of services or goods after approval of the Proposed Resolution Plan	Cannot be granted at this stage as the Resolution Professional was under duty to manage the affairs of the Corporate Debtor during CIRP.
12.	The newly appointed Board of director shall execute material agreements as required under the plan, initiate approvals and process to subscribe to equity shares of the Company and infuse funds as required under the Proposed Plan. The newly appointed Board of director by Resolution Applicant shall be treated as authorized signatory for all material agreement ongoing or to be entered into by company	Granted.
13.	That the claims or properties/assets for which applications are made under Avoidable Transactions or any other application is made to NCLT/NCLAT or any other Tribunal and court would only be discharged after decision of the adjudicating authorities	The same shall be with respect to the order passed in the application for the Avoidable Transactions.
14.	That post approval of Resolution Plan	Granted.

	Resolution Applicant would authorize the newly appointed Board of Directors of the corporate Debtor to pursue, represent, make application if required as Respondent or Applicant in place of Resolution Professional in all matters pertaining to Corporate Debtors	
15.	Approval of Resolution Plan should not be treated as closure of all application made by the Resolution Applicant which are not yet disposed of by the concerned authorities and Resolution Applicant would continue proceedings till final disposal of the matter for protection & maximization of assets of the Corporate Debtor	Such a relief cannot be granted at this stage.

19. Extinguishment of Claims / Entitlements as follows:-

Sl. No.	Extinguishment of Claims / Entitlements	Orders thereon
1.	The Resolution Professional issued a notice inviting all potential claimants to submit their proofs of Claim. This was published in newspapers in accordance with Applicable Law. Pursuant to this notice the Resolution Professional may have received letters from Persons whose Claims have not been crystallised as of the Insolvency Commencement Date. The Plan is being proposed in order to	Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , ³ wherein the Hon'ble Supreme Court has held in para 95(i) that once a resolution plan is duly approved by the Adjudicating Authority

³ 2021 SCC OnLine SC 313 decided on 13.04.2021.

<p>restructure the assets and liabilities of the Corporate Debtor and for the best interests of stakeholders of the Corporate Debtor to the extent possible. With this objective, the Resolution Applicants assumes that all Persons that have any Claims against the Corporate Debtor have filed their Claims and the verifiable Claims have been admitted by the Resolution Professional and disclosed in the Information Memorandum. Accordingly, the Resolution Applicants and the Corporate Debtor shall have no responsibility or liability in respect of any Claims against the Corporate Debtor attributable to the period prior to the date of implementation of the resolution plan other than any payments to be made as specifically agreed under the plan. The Resolution Applicants undertakes to pay the creditors the amount committed under this plan to take-over the Corporate Debtor. The Corporate Debtor or the Resolution Applicants shall not be held liable to pay any amount to the creditors pursuant to the invocation by the creditor of any Collateral security/ Personal Guarantee/ Corporate Guarantee offered to them to secure the debt availed by the Corporate Debtor either but not limited to by the Promoter/Directors/Any other third parties, Associate/Subsidiary</p>	<p>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. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. 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,</p>
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	/Group/ Related Concern or from any other entities but not from the Corporate Debtor and Resolution Applicants towards recovery of balance claim amount."	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.
2.	On and with effect from the date of implementation of the resolution plan, the guarantors, indemnity providers and like persons that have provided guarantees, indemnities, co-borrowing or like arrangements for and on behalf of the Corporate Debtor, including in order to secure the Debt availed of by the Corporate Debtor, shall not be entitled to exercise or enforce any subrogation rights (or similar rights) in respect of such arrangements, even where such rights have already been exercised. On and with effect from the date of implementation of the resolution plan, all rights and claims (whether contingent or otherwise) of what so ever nature of the Existing Promoters against the Corporate Debtor shall stand irrevocably and unconditionally extinguished in perpetuity.	In <i>Lalit Kumar Jain v Union of India & ors</i> , ⁴ the Hon'ble Supreme Court held in para 133 that sanction of a resolution plan and finality imparted to it by section 31 does not <i>per se</i> operate as a discharge of the guarantor's liability. The provisions of section 32A of the IBC will also apply.
3.	As of the date of implementation of the resolution plan, any Debt owed by the Corporate Debtor which is barred by limitation under Applicable Law, shall immediately, irrevocably and	Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , ⁵ wherein the

⁴ 2021 SCC OnLine SC 396 decided on 21.05.2021.

⁵ 2021 SCC OnLine SC 313 decided on 13.04.2021.

<p>unconditionally stand extinguished, waived, and withdrawn on and from the date of implementation of the resolution plan and no Person shall have any further rights or Claims against the Corporate Debtor in this regard. The Resolution Applicants undertakes to pay the creditors the amount committed under this plan to take over the Corporate. The Corporate Debtor or the Resolution Applicants shall not be held liable to pay any amount to the creditors pursuant to the invocation by the creditor of any Collateral Security/Personal Guarantee/Corporate Guarantee offered to them to secure the debt availed by the Corporate Debtor either but not limited to by the Promoter/Directors/Any other third parties, Associate/Subsidiary /Group/ Related Concern or from any other entities but not from the Corporate Debtor and Resolution Applicants towards the recovery of the balance claim amount.</p>	<p>Hon'ble Supreme Court has held in para 95(i) 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. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues</p>
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		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.
4.	Any Encumbrance, whether over immovable, movable assets, fixed deposits or cash or any other rights or privileges and including without limitation, security, letter of credit, bank guarantee or pledge provided by Corporate Debtor to the financial creditors, that was created/granted/arranged in connection with any Financial Debt or Operational Debt or any other debt or obligation of the Corporate Debtor, at any time prior to the Approval Date, shall automatically be released and all liabilities and obligations of the Corporate Debtor in relation to such Encumbrance or other form of collateral (including those created/arranged by the Corporate Debtor as a	Granted.

	<p>guarantor or a third party security provider in relation to its subsidiaries, joint ventures, related parties or associates, if any) shall stand permanently extinguished and released on the approval of this Resolution Plan by the NCLT.</p> <p>All title deeds and other documents (including charge documents, if any) held by the Financial Creditors or any trustee/agent on their behalf in relation to the Existing Encumbrances shall be immediately returned to the Corporate Debtor as per the terms set out in Part-5 Page No-100 sub clause (III). No existing Encumbrance shall be enforced by any creditor after Approval Date or otherwise and all existing proceedings /enforcement action shall be immediately withdrawn.</p> <p>The Resolution Applicants undertakes to pay the creditors the amount committed under this plan to take over the Corporate Debtor. The Corporate Debtor or the Resolution Applicants shall not be held liable to pay any amount to the creditors pursuant to the invocation by the creditor of any Collateral security/Personal Guarantee/Corporate Guarantee offered to them to secure the debt availed by the Corporate Debtor either but not limited to by the Promoter/Directors/Any other third parties, Associate/Subsidiary /Group/</p>	
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	Related Concern or from any other entities but not from the Corporate Debtor and Resolution Applicants towards recovery of balance claim amount.	
5.	All liabilities (whether contingent or crystallized) in relation to any corporate guarantees, indemnities and all other forms of credit support including those availed by Corporate Debtor on a co-borrower arrangement, along with, any third party provided by the Corporate Debtor prior to the Implementation Date, and all contingent liabilities disclosed in the annual audited financial statements of the Corporate Debtor and liabilities which are not in notice of Corporate Debtor or not acknowledged by the Corporate Debtor, shall stand extinguished and discharged on and with effect from the Implementation Date, at a Nil value. The Resolution Applicants undertakes to pay the creditors the amount committed under this plan to take-over of the Corporate Debtor. The Corporate Debtor or the Resolution Applicants shall not be held liable to pay any amount to the creditors pursuant to the invocation by the creditor of any Collateral security/Personal Guarantee/Corporate Guarantee offered to them to secure the debt availed by the Corporate Debtor	Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , ⁶ wherein the Hon'ble Supreme Court has held in para 95(i) 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. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not

⁶ 2021 SCC OnLine SC 313 decided on 13.04.2021.

	<p>either but not limited to by the Promoter/Directors/Any other third parties, Associate/Subsidiary /Group/ Related Concern or from any other entities but not from the Corporate Debtor and Resolution Applicants towards recovery of balance claim amount."</p>	<p>a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. 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.</p>
<p>6.</p>	<p>The payment to Persons contemplated - Proposal for all kinds of Creditors of the Corporate Debtor shall be the Corporate Debtor's and Resolution Applicant's full and final performance and satisfaction of all its obligations to such Persons and all Claims (including, for the avoidance of doubt, any unverified portion of their Claims) of such Persons against the Corporate Debtor shall stand irrevocably and unconditionally settled and extinguished in perpetuity upon such discharge. The Resolution Applicant undertakes to pay the creditors the amount committed under this plan for taking over the Corporate Debtor. The Corporate Debtor or the Resolution Applicant shall not be held liable to pay any amount to the creditors pursuant to the invocation by the creditor of any Collateral security/Personal Guarantee/Corporate The guarantee offered to them to secure the debt availed by the Corporate Debtor but not limited to by the Promoter/Directors/Any other third</p>	<p>a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. 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.</p>

*IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH*

*IA(IB)No.177/KB/2021 In
CP(IB)No.676(KB) 2019*

	parties, Associate/Subsidiary /Group/ Related Concern or from any other entities but not from the Corporate Debtor and Resolution Applicant towards the recovery of balance claim amount."	
7.	On and with effect from the date of implementation of the resolution plan, all the outstanding negotiable instruments issued by the Corporate Debtor or by any Person on behalf of the Corporate Debtor including demand promissory notes, post-dated cheques and letters of credit, shall stand terminated and the Corporate Debtor's liability under such instruments shall stand extinguished. The Resolution Applicant undertakes to pay the creditors the amount committed under this plan for takeover of the Corporate Debtor. The Corporate Debtor or the Resolution Applicant shall not be held liable to pay any amount to the creditors pursuant to the invocation by the creditor of any Collateral security/Personal Guarantee/Corporate Guarantee offered to them to secure the debt availed by the Corporate Debtor either but not limited to by the Promoter/Directors/Any other third parties, Associate/Subsidiary /Group/ Related Concern or from any other entities but not from the Corporate Debtor and Resolution Applicant towards recovery of balance	Granted.

	claim amount.	
8.	Upon the approval of the Plan by the NCLT under Section 31 of the Code, all pending proceedings relating to the winding-up of the Corporate Debtor shall stand irrevocably and unconditionally abated in perpetuity.	Granted.
9.	On and with effect from the Implementation Date, all securities convertible or exchangeable into Equity Shares and all rights to subscribe to Equity Shares, including convertible debentures, convertible preference shares, convertible loans (whether compulsorily or partially convertible or not), warrants, subscription rights under shareholders agreements entered into by the Existing Promoters if any, shall stand immediately extinguished and settled.	Granted.

FINDINGS

20. On hearing the submissions made by the Ld. Counsel for the Resolution Professional, and perusing the record, we find 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 done by the RP and the Resolution Applicant for making the Plan effective after approval by this Bench.
21. On perusal of the documents on record, we are also satisfied that the Resolution Plan is in accordance with sections 30 and 31 of the Code and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. No circumstances exist that militate against grant of approval for the Resolution Plan.

22. 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.
23. Therefore, 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.**
24. The Resolution Plan is binding on the Corporate Debtor, its employees, members, and all its creditors including but not limited to secured, unsecured, financial and operational creditors, guarantors, government and statutory and local authorities and other stakeholders involved so that revival of the Corporate Debtor can come into force with immediate effect.
25. The Moratorium imposed under section 14 shall cease to have effect from the date of this order.
26. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order. However, he shall perform his duties in terms of the Resolution Plan as approved by this Adjudicating Authority.
27. 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.
28. The Resolution Professional is further directed to handover all records, documents and properties of the Corporate Debtor to the Resolution Applicant to enable the Resolution Applicant to finalize the further line of action required for starting of the operations.
29. In case of non-compliance of this order or withdrawal of Resolution Plan, the CoC shall forfeit the EMD amount already paid by the Resolution Applicant.
30. Liberty is hereby granted for moving any Application if required in connection with implementation of this Resolution Plan.
31. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.
32. A copy of this Order is to be submitted by the Resolution Applicant in the Office of the Registrar of Companies , West Bengal.
33. The Registry is directed to send e-mail copies of the order forth with to all the

parties and their Ld. Counsel / Authorized Representatives for information and for taking necessary steps.

34. **IA (IB) No. 177/KB/2021 shall** and **CP(IB)No.676(KB) 2019** stand disposed of accordingly.
35. Certified copy of this order may be issued, if applied for, upon compliance of requisite formalities.

Harish Chander Suri
Member (Technical)

Rohit Kapoor
Member (Judicial)

The order is pronounced on the 6th day of July, 2022.

SA (LRA)/GGRB[LRA]