



**In the National Company Law Tribunal
Kolkata Bench, (Court-II), Kolkata**

IA (IB) No. 1117/ (KB) /2023

In CP(IB) No. 34/ (KB) /2022

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:

Rudraksh Dealcom Private Limited

....Corporate Debtor

And

Neeraj Jain, Resolution Professional of Rudraksh Dealcom Private Limited (under CIRP) having IBBI Regn. No. IBBI/IPA-001/IP-P01067/2017-2018/11758.

....Applicant/ Resolution Professional

Date of Pronouncement of order: 05.03.2024

Coram:

Smt Bidisha Banerjee : Member (Judicial)

Shri Balraj Joshi : Member (Technical)

Counsel appeared physically / through video Conferencing

1. Mr. Soumya Roy, Adv.] For the RP
2. Ms. Manju Bhuteria, Adv.
3. Mr. Aritra Deb, Adv.
4. Mr. Santosh Mahato, Adv.

O R D E R

Per Bidisha Banerjee, Member (Judicial):

1. Heard the Ld. Counsel appearing for the Resolution Professional at length.
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 **M/s. S2M2 Finserve Private Limited** with reliefs and concessions sought for under the Plan. The Application has been preferred under Rule 34 of the NCLT Rules.
3. **M/s. S2M2 Finserve Private Limited** was **approved** by the **CoC with 100% voting shares**. A copy of the Minutes of the Minutes of the 10th CoC meeting



held on 02.06.2023 along with the physical voting results is annexed with the application as **Annexure -L**.

4. M/s. S2M2 Finserve Private Limited / Successful Resolution Applicant in terms of Regulation 36B (4A) and RFRP has also submitted EMD of Rs. **7 Lakhs** along with EoI documents on March 12, 2023. **M/s. S2M2 Finserve Private Limited** / Successful Resolution Applicant further transferred a sum of **Rs. 50,000/- on 09th June, 2023 towards Performance Security.**

5. The CIRP process and Compliance:

- a. The Corporate Debtor was admitted into CIRP vide order dated 11.07.2022 and Mr. Neeraj Jain was appointed as the IRP and subsequently appointed as the Resolution Professional (RP) 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.
- c. The public announcement was also made in Form A on July 4, 2022 and also in the website of the IBBI in terms of the applicable provisions of the Code read with CIRP regulations.
- d. A total 10 CoC Meetings were held during the CIRP Period.
- e. The applicant has shared the details of valuation as required under Regulation 27 of CIRP Regulations, with the CoC members prior to the voting on Resolution Plan, after receiving confidentiality undertaking. The applicant has shared the Liquidation Value with the COC members through email. The CoC Meetings held and decisions / issues are as under:

The Date of Meeting	Details of CoC Meeting	Decisions / Issues
08.08.2022	1st CoC Meeting	The Applicant appointed as Resolution Professional (RP)
22.09.2022	2nd CoC Meeting	Approval of fees of Registered Valuers,

In the National Company Law Tribunal
Kolkata Bench, (Court-II), Kolkata

IA (IB) No. 1117/ (KB) /2023

In CP(IB) No. 34/(KB) /2022



The Date of Meeting	Details of CoC Meeting	Decisions / Issues
		Counsel, Transactions Auditor
11.10.2022	3rd CoC Meeting	Discussion about developments of Expression of Interest received from prospective Resolution Applicant.
12.11.2022	4th CoC Meeting	Discussion about Information Memorandum of Corporate Debtor.
14.12.2022	5th CoC Meeting	Extension of CIRP period for further 90 days
23.02.2023	6th CoC Meeting	Discussion about Information Memorandum and Valuation Report of Corporate Debtor and Voting on extension of Term of Engagement of Legal Counsel
20.03.2023	7th CoC Meeting	Discussion on Transactions Audit, Information Memorandum and Approval of RFRP



The Date of Meeting	Details of CoC Meeting	Decisions / Issues
		and Evaluation Matrix and approval of RFRP was shared with RP
02.04.2023	8th CoC Meeting	Extension of CIRP period by further 60 days was approved
01.05.2023	9th CoC Meeting	Resolution Plan and its various provisions and clauses submitted by SRA was discussed
02.06.2023	10th CoC Meeting	Resolution Plan was discussed and approved by 100% voting.

- f. In terms of 25(2)(h) of the Code read with Regulation 36A(1) of the IBBI Regulations, 2016, invitations in Form 'G' for EOI from potential Resolution Applicant was issued on 24th September, 2022, 13th October, 2022, 14th November, 2022, 15th December, 2022 and 25th February, 2023 in Kolkata edition of Business Standard and Bengali newspaper Aajkaal. The Ld. Counsel for the Applicant submits that after publication form G for the first, second and fourth time, no EoI was received. But after publication of Form G for the third time, one EoI was received but no EMD was submitted. Lastly, after publication of Form G for the fifth time, one EoI was received along with EMD of Rs. 7 Lakhs on the last date of submission of EoI i.e. on 12.03.2023.
- g. The Applicant had received one Resolution Plan from M/s. S2M2 Finserve Private Limited on 19th April, 2023. The last date of submission of EoI was on 12.03.2023. The Resolution Plan was placed for discussion

of CoC who reviewed and voted upon the plan in its 10th CoC Meeting held on 02nd June, 2023.

6. **M/s. S2M2 Finserve Private Limited** was **approved** by the **CoC with 100% voting shares**. A copy of the Minutes of the Minutes of the 10th CoC meeting held on 02.06.2023 along with the physical voting results is annexed with the application as **Annexure -L**.
7. **M/s. S2M2 Finserve Private Limited** (Successful Resolution Applicant- SRA) in terms of Regulation 36B (4A) and RFRP has also submitted Performance Security of Rs. **7 Lakhs as Earnest Money Deposit** along with EoI documents on March 12, 2022. **The SRA** further transferred a sum of **Rs. 50,000/- on 09th June, 2023 towards Performance Security as required in the letter of Intent**.
8. The **M/s. S2M2 Finserve Private Limited** under this Resolution Plan, has provided for a total plan value for the Corporate Debtor of Rs. **16,00,000 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)
CIRP Cost	11,00,000	11,00,000	11,00,000
Secured Financial Creditors	-	-	-
Unsecured Financial Creditors	5,00,000	5,00,000	5,00,000
Operational Creditors	-	-	-
Other Debts and Dues	-	-	-



Grand Total	16,00,000	16,00,000	16,00,000
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9. It has been stated that in the event the total CIRP cost exceeds Rs. 11 Lakh, the same shall be adjusted with payments to unsecured financial Creditors.
10. It has been further undertaken that as per the records made available, a sum of Rs. 2.34 Crore is due to the Income Tax Authorities. However, no claim was filed in this regard. For these dues, the Resolution Applicant has provided the following clause on page 21 of the Resolution Plan:

“However, for any further claims by the Income Tax department post-approval of the Resolution Plan by CoC and before approval of the said plan by the Adjudicating Authority, the resolution Applicant proposes a payment of Rs. 2.5 lacs to be paid in full & final settlement only in case of any legally valid claim by the Income Tax Department till the approval by the Adjudicating Authority and in such case the said Rs. 2.5 Lacs shall be adjusted from the Rs.5 lacs allotted to the Financial Creditor making the Financial Creditor’s revised allotment at Rs. 2.5 Lacs”.

11. 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 regard to the complexity and scale of operations of business of the CD	Yes, Clause 4.4A at page 13

**In the National Company Law Tribunal
Kolkata Bench, (Court-II), Kolkata**

IA (IB) No. 1117/ (KB) /2023

In CP(IB) No. 34/(KB) /2022



2.	Section 29A	The Resolution Applicant must be eligible to submit resolution plan.	Yes complied with Clause 4.6 at page 14
3.	Section 30 (1)	The Resolution Applicant must submit an affidavit stating that it is eligible.	Yes complied with Annexure 'K' of the Application / Stamp Affidavit executed on 19.04.2023
4.	Regulation 39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Yes No such transactions found and from CIRP 8 filed on 09.05.2023
5.	Regulation 39(4)	Resolution Applicant must provide details of Performance Security, as referred to Sub-Regulation (4A) of regulation 36B.	IMPS Transfer to the designated account for Rs. 50,000/-
B. For Resolution Plan			
1.	Section 30 (2)(a)	Whether the Resolution Plan provides for payment of insolvency resolution process cost?	Yes, Table 2 at page 20 of the Resolution Plan

**In the National Company Law Tribunal
Kolkata Bench, (Court-II), Kolkata**

IA (IB) No. 1117/ (KB) /2023

In CP(IB) No. 34/(KB) /2022



Sl. No.	Section / Code / Regulation	Requirement	Compliance established
2.	Section 30 (2) (b)	Whether the Resolution Plan provides for payment to the Operational Creditors?	Page 21 & 22, Table 2
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	Table 2 at page 23 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, Part - D at page 32 of the Resolution Plan
5.	Section 30 (2)(e)	Whether the Resolution Plan provides for implementation and supervision of the Resolution Plan?	Yes, Part-E at page 34 of the Resolution Plan
6.	Section 30 (2)(f)	Whether the Resolution Plan contravenes any of the provision of the law for the time being in force?	Yes, Clauses 6.2 at page 18 of the Resolution Plan
7.	Section 30 (4)	(a) Whether the Resolution Plan is feasible and viable, according	Yes Annexure -L of the



Sl. No.	Section / Code / Regulation	Requirement	Compliance established
		to the CoC? (b) Whether the Resolution Plan has been approved by the CoC with 66% voting share?	Application / Minutes of the 10th CoC Meeting
8.	Section 31(1)	The Resolution Plan must provide for its effective implementation plan, according to the CoC.	Yes. Part D, Clause 9.1 at page 32
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. No claims from Operational Creditors have been filed.
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 8.2, Table 2 at page Nos. 20-23 of Resolution Plan

**In the National Company Law Tribunal
Kolkata Bench, (Court-II), Kolkata**

IA (IB) No. 1117/ (KB) /2023

In CP(IB) No. 34/(KB) /2022



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.	Yes, Clause 4.6, at page No. 14 of Resolution Plan
12.	Regulation 38 (2)(a)	The Resolution Plan must demonstrate that it has provisions for its implementation schedule.	Yes, Clause 11 of the Resolution Plan at page 35-37
13.	Regulation 38 (2)(b)	The Resolution Plan must provide for management and its control of the business of the Corporate Debtor	Yes, Clause 9.1 of the Resolution Plan at page 32
14.	Regulation 38 (2)(c)	The Resolution Plan must provide for adequate means of supervising of its implementation	Yes, Part 'E' at page 34 of Resolution Plan
15.	Regulation 38 (3)(a)	The Resolution Plan must demonstrate that it addresses the cause of default.	The causes of default of the CD is captured in Clause 2.2 (a) to (e).
16.	Regulation 38	The Resolution Plan must	



Sl. No.	Section / Code / Regulation	Requirement	Compliance established
	(3)(b)	demonstrate that it is feasible and viable	The networth of RA as mentioned in Clause 4.4 (I) (ii) and (iii) indicate the capability of the RA for effective implementation of the Plan and the same is feasible and viable since the acquiring company is having identical lines of activities.
17.	Regulation 38 (3)(c)	The Resolution Plan must demonstrate that it has effective implementation provisions	
18.	Regulation 38 (3)(d)	The Resolution Plan must demonstrate that it has provisions for approvals required and the timeline for the same	
19.	Regulation 38 (3)(e)	The Resolution Plan must demonstrate that the Resolution Applicant has feasibility and capability to implement the resolution plan	

12. Measures required for implementation of the Resolution Plan in terms of Regulation 37 of CIRP Regulations:

Particulars	Relevant page of the Revised Resolution Plan dealing with compliance with Regulation
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:	
a. Transfer of all or part of the assets of the	Clause 13.9 at page 43 of the Resolution

**In the National Company Law Tribunal
Kolkata Bench, (Court-II), Kolkata**

IA (IB) No. 1117/ (KB) /2023

In CP(IB) No. 34/(KB) /2022



Particulars	Relevant page of the Revised Resolution Plan dealing with compliance with Regulation
corporate debtor to one or more persons;	Plan [Page 219 of IA]
B. Sale of all or part of the assets whether subject to any security interest or not;	Not proposed by RA
c. Restructuring of the corporate debtor, by way of merger, amalgamation and demerger	Not proposed by 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;	Clause 13.16 at page 44 of the Resolution Plan [Page 221 of IA]
e. Cancellation or delisting of any shares of the corporate debtor, if applicable;	Clause 13.15 at page 44 of the Resolution Plan [Page 221 of IA]
f. Satisfaction or modification of any security interest;	Not proposed by RA
g. Curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Clause 13.19 and 13.20 at page 45 of the Resolution Plan [Page 222 of IA]
h. Reduction in the amount payable to the creditors;	Clause 8.2 at pages 20-31 of the Resolution Plan [Page 197-208 of IA]
i. Extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor	Not proposed by RA
j. Amendment of the constitutional	Not proposed by RA



Particulars	Relevant page of the Revised Resolution Plan dealing with compliance with Regulation
documents of the corporate debtor	
k. Issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	Clause 13.16 at page 44 of the Resolution Plan [Page 221 of IA]
l. Change in portfolio of goods or services produced or rendered by the corporate debtor	Not proposed by 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 13.1 and 13.14 at pages 39 and 44 of the Resolution Plan [Pages 216 and 221 of IA]

13. In the 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.

14. **Reliefs and Concessions** sought by the Resolution Applicant from this Adjudicating Authority are enumerated below for successful implementation of the Resolution Plan:

1)	As per Information Memorandum no Claim has been received from any Government and Statutory Authorities. Accordingly, NIL payment proposed to be made to Government and Statutory Authorities in
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	compliance Section 30(2)(b) of the Code read with Regulation 38 of the CIRP Regulations (i.e. Government and Statutory Authority Payments)
2)	<p>For abundant clarity, any and all dues payable to Government and Statutory Authorities shall be treated as follows-</p> <p>(i) all Claims or demands made by, or liabilities or obligations owed or payable to or assessed by, any Government and Statutory Authority, in relation to any dues, direct Taxes (including for any previous or current assessment year(s)), indirect Taxes, duties (including stamp duties), penalties, fees, interest, fines, levies, cesses, assessments or additions or any other charges or payments whatsoever on the Corporate Debtor or in relation to the Corporate Debtor, whether or not such Claims or demands are admitted, due or contingent, asserted or unasserted, crystallised or uncrystallised, assessed or unassessed, known or unknown, secured or unsecured, disputed or undisputed,</p> <p>(ii) any liabilities in relation to any consent, permission, privilege, entitlement, exemption, benefit, license or approval granted to the Corporate Debtor, or in relation to the Corporate Debtor, whether or not such consent, permission, privilege, entitlement, exemption, benefit, license or approval is subsisting, lapsed or expired,</p> <p>(iii) all financial liabilities and prosecution that may be inflicted on Corporate Debtor due to acts and deed of its erstwhile Promoter, Director or personnel (including without limitation, for any penalty, interest, fines or fees) and other liabilities and obligations which may have a financial impact on the Corporate Debtor, in relation to (i) any investigation, inquiry, show-cause, notices, causes of action, suits, claims, disputes, litigation, arbitration or other judicial or regulatory or administrative proceedings whether civil or criminal against, or in relation to, or in connection with the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, including any proceedings that may be initiated under the provisions of the Code ("Proceedings");</p>



(ii) any non-compliance of provisions of any laws, rules, regulations, directions, notifications, circulars, guidelines, policies, approvals, consents or permissions under the Applicable Law (including any tax liability arising for payment of tax as a result of any transaction characterized as an impermissible avoidance arrangement under the provisions of the Income Tax Act, 1961 entered by Corporate Debtor prior to the Effective Date or liability on account of any penalties imposed or to be imposed in respect of any dues arising out of any short supply of power/unfulfilled contracts/quality issues in supply in the past or till the Effective Date); (iii) cross subsidies availed by the Corporate Debtor; and (iv) any and all actual or potential rights and entitlements of the central government, the state government, any regulatory or local authority or body or any agency or instrumentality thereof or any other party or entity (under any agreement, lease, license, approval, consent, permission or privilege) which may have a financial impact on the Corporate Debtor; and (v) any payment of any dues, charges, fees, fines, commissions, penalties and such other payment to any Person including any Government and Statutory Authority for the ownership and continued use of the underlying lands and such other properties or shares used by the Corporate Debtor for the conduct of its business, whether admitted or not, due or contingent, asserted or unasserted, crystallised or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, present or future, whether or not such Claim, demand, liability is set out in the Information Memorandum, the balance sheets or the profit and loss account statements of the Corporate Debtor, in relation to any period up till the Effective Date shall be reduced to Nil and shall be, and be deemed to be, permanently extinguished by virtue of the order of the NCLT approving this Resolution Plan and the Resolution Applicant or the Corporate Debtor shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto. It is clarified that the Resolution Applicant shall make or cause to be made, on behalf of the Corporate Debtor, such

**In the National Company Law Tribunal
Kolkata Bench, (Court-II), Kolkata**

IA (IB) No. 1117/ (KB) /2023

In CP(IB) No. 34/(KB) /2022



	applications for abatement, withdrawal or dismissal of such suit or proceedings, wherever required.
3)	It is specifically mentioned that all Claims or demands made by, or liabilities or obligations owed or payable to or assessed by, any Government and Statutory Authority, in relation to any dues, direct Taxes (including for any previous or current assessment year(s), Indirect Taxes, duties (including stamp duties), penalties, fees, interest, fines, levies, cess, assessments or additions or any other charges or payments whatsoever on any Subsidiary, joint venture or associate of the Corporate Debtor where such liability imposes financial obligation on the Corporate Debtor, or whether or not such Claims or demands are admitted, rejected or kept under verification, due or contingent, asserted or unasserted, crystallised or uncrystallised, assessed or unassessed, known or unknown, secured or unsecured, disputed or undisputed in relation to any period up till the Effective Date shall be reduced to Nil and shall be, and be deemed to be, permanently extinguished by virtue of the order of the NCLT approving this Resolution Plan and the Resolution Applicant or the Corporate Debtor shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.
4)	Without prejudice to the generality of the above and in accordance with Section 32A of the Code, notwithstanding anything to the contrary contained in the Code or any other law for the time being in force, the liability of the Corporate Debtor for an offence committed prior to the commencement of the CIRP, if any, shall cease, and neither the Corporate Debtor nor the Resolution Applicant shall be prosecuted for any such offence on and from the NCLT Approval Date. If a prosecution has been instituted during the CIRP against the Corporate Debtor, the Corporate Debtor shall stand discharged from the NCLT Approval Date.

**In the National Company Law Tribunal
Kolkata Bench, (Court-II), Kolkata**

IA (IB) No. 1117/ (KB) /2023

In CP(IB) No. 34/(KB) /2022



	<p>Further, no action shall be taken against the Assets of the Corporate Debtor, including attachment, seizure, retention or confiscation of such Assets under the Applicable Laws, in relation to an offence committed prior to the commencement of the CIRP of the Corporate Debtor.</p>
5)	<p>All dues under the provisions of the Income tax Act, 1961 (as amended from time to time) ("Income-tax Act"), including taxes, duties, penalties, interest, fines, cesses, charges, unpaid tax deducted at source or tax collected at source whether claimed or unclaimed, admitted or not, due or contingent, whether or not set out in the provisional balance sheet, the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor or the List of Creditors, asserted or un-asserted, assessed or not, whether a demand has been raised or not, crystallised or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, present or future, in relation to any period prior to the Effective Date and full and final satisfaction and discharge of the Admitted Other Operational Creditor Debt and any dues in relation to Workmen and Employees and Government and Statutory Authorities pursuant to this Resolution Plan or arising on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan, shall stand extinguished with effect from the Effective Date, by virtue of the order of the NCLT approving this Resolution Plan and the Resolution Applicant or the Corporate Debtor shall not be liable to pay any amount against such dues, and such amounts shall be written off.</p>
6)	<p>All notices, assessments (whether commenced or not), appellate or other proceedings pending or threatened in relation to the pecuniary liabilities for Corporate Debtor, in relation to any period prior to the Effective Date or arising on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan or on account of the measures contemplated under this Resolution Plan, shall stand terminated and withdrawn and all</p>



	<p>consequential liabilities, if any, shall stand extinguished and be considered as not payable by the Corporate Debtor by virtue of the order of the NCLT approving this Resolution Plan and any re-assessment, revision or other Proceedings under the provisions of the Income-tax Act would be deemed to be barred in relation to any period prior to the Effective Date, by virtue of the order of the NCLT approving this Resolution Plan and the Corporate Debtor or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto. Accordingly, the income-tax authority shall not have any right against the Corporate Debtor, under Section 281 of the Income-tax Act. It is clarified that the Resolution Applicant shall make or cause to be made, on behalf of the Corporate Debtor, such applications for abatement, withdrawal or dismissal of such Proceedings, wherever required on account of resolution of monetary liabilities relating to such Proceedings under the Plan.</p> <p>The Corporate Debtor or the Resolution Applicant shall not, at any point of time, be held financially liable under the provisions in relation to the liability of the Corporate Debtor as per Section 170 of the Income-tax Act, 1961 in respect of any transaction carried out before the Effective Date or contemplated under the Resolution Plan or on account of any action taken pursuant to this Resolution Plan including acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan.</p>
7)	The Corporate Debtor shall be entitled to carry forward and set off all the brought forward book losses and unabsorbed depreciation as shown in the books of account and considered in the returns filed under the Income-tax Act. Further, credit in respect of minimum alternate tax paid



by the Corporate Debtor shall continue with the Corporate Debtor on a 'going concern' basis and shall be available for the benefit of the Resolution Applicant or the Corporate Debtor, as the case may be.

Further, specifically, all actual and potential dues and liabilities under the provisions of any indirect tax laws, including but not limited to, the Central Excise Act, 1944, the Finance Act, 1994 (Service Tax), the Customs Act, 1962, the Value Added Tax Act, 2005, the Central Sales Tax Act, 1956, the CENVAT Credit Rules, 2004, the Central Goods and Services Tax Act, 2017, the Integrated Goods and Services Tax Act, 2017 and the respective State Goods and Services Tax Act, 2017, (each as amended from time to time and including the rules made thereunder) including entry taxes, sales tax deferral liabilities, duties, penalties, interest, fines, cesses, charges, unpaid tax deducted at source or tax collected at source, octroi tax, stamp duty, local body tax, municipal taxes, or other fiscal incentives whether claimed or unclaimed aimed, admitted or not, due or contingent, whether or not set out in the provisional balance sheet, the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor or the List of Creditors, asserted or un-asserted, crystallised or uncrystallised, known or unknown, assessed or not, whether a demand has been raised or not, secured or unsecured, disputed or undisputed, present or future, in relation to any period prior to the Effective Date, or arising on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan, shall stand extinguished by virtue of the order of the NCLT approving this Resolution Plan and the Corporate Debtor shall not be liable to pay any such Claim, and such amounts shall be written off. All notices, assessments (whether commenced or not), appellate or other Proceedings pending or threatened in relation to the Corporate Debtor, in relation to any period prior to the Effective Date or arising on



	<p>account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan, or on account of the measures contemplated under this Resolution Plan shall stand terminated and withdrawn and all consequential liabilities, if any, shall stand extinguished and be considered as not payable by the Corporate Debtor by virtue of the order of the NCLT approving this Resolution Plan and any re-assessment, revision or other proceedings under the provisions of an indirect tax law would be deemed to be barred in relation to any period prior to the Effective Date, by virtue of the order of the NCLT approving this Resolution Plan and the Corporate Debtor or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto. It is clarified that the Resolution Applicant shall make or cause to be made, on behalf of the Corporate Debtor, such applications for abatement, withdrawal or dismissal of such Proceedings, wherever required.</p>
8)	<p>Following the payment, write-off, cancellation and extinguishment (as applicable) of the Admitted Other Operational Creditor Debt and dues in relation to Workmen and Employees and Government and Statutory Authorities in accordance with this Resolution Plan, no amounts shall be payable to any Operational Creditors whether or not set out in the Information Memorandum, balance sheets or the profit and loss account statements of the Corporate Debtor. Further, any and all rights and entitlements of any actual or potential Operational Creditors (including any Person who may claim to be such a Creditor by way of exercise of rights under Applicable Laws or equity) of the Corporate Debtor, whether such Claims, rights or entitlements (including any demand for any losses or damages, principal, interest, compound interest, penal interest, liquidated damages, and other charges already accrued/accruing or in connection with any third party claims) have been submitted to the Resolution Professional or not, whether admitted</p>



	<p>by the Resolution Professional or not, and whether or not set out in the Information Memorandum, the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor, being due or contingent, asserted or un-asserted, crystallised or uncrystallised, known or unknown, disputed or undisputed, till the Effective Date shall be deemed to be permanently extinguished upon payment of the Total Resolution Amount on the Effective Date, on and with effect from the NCLT Approval Date, by virtue of the order of the NCLT approving this Resolution Plan. The Resolution Applicant shall at no point of time, directly or indirectly, have any obligation, liability or duty in relation thereto. For the removal of doubt, it is clarified that any Claim (as determined and verified in accordance the Code) in respect of any debt that is in the nature of Operational Debt (as defined under Section 5 (21) of the Code), whether claimed or unclaimed, whether admitted or unadmitted, whether crystallized or uncrystallised, on the NCLT Approval Date shall be deemed to constitute Admitted Other Operational Creditor Debt for the purposes of this Resolution Plan, and shall be accorded such treatment as is proposed under this Resolution Plan.</p>
9)	<p>Given that the Resolution Applicant will acquire control of the affairs of the Corporate Debtor on the Effective Date, all Government and Statutory Authorities (as they are Operational Creditors) shall waive any financial penalties, or any other financial liabilities and dues that may arise from any defaults or non-compliances by the Corporate Debtor prior to the Effective Date of Applicable Laws, including but not limited to the provisions of the Companies Act, guidelines/notifications etc., all relevant and applicable direct and indirect tax laws, the relevant stamp acts of the different States of India, relevant environmental laws and any other government instrumentality. The Corporate Debtor or the Resolution Applicant, as applicable, will file the order of the NCLT approving this Resolution Plan, wherever</p>



	required.
10)	Without prejudice to anything set out in this Resolution Plan, for any breaches or non-compliances relating to period on or before NCLT Approval Date with the provisions of Applicable Law; or any litigations, investigations or disputes, arising as a result of an alleged breach of contract, Applicable Law or otherwise prior to the Effective Date; which have not been settled, cured and are continuing, and which if not settled, cured or remedied may have a material impact on the Business, the Resolution Applicant will investigate as to veracity of such allegations and if so required, take or cause to be taken remedial actions in this regard within a reasonable period of time, during which time the related litigations/proceedings/investigations should be kept in abeyance and no coercive action will be taken against the Resolution Applicant or the Corporate Debtor. The Resolution Applicant will require a period of 24 (twenty four) months from the Effective Date to remedy such underlying breaches or non-compliances. The Resolution Applicant be granted a minimum of 24 (twenty four) months or any subsequent date permitted under such Applicable Law to make compliance with such laws. For the avoidance of doubt, the Resolution Applicant, the Corporate Debtor and the persons in management of the Corporate Debtor after Acquisition of control by the Resolution Applicant shall not be liable for any liabilities which arise pursuant to such breaches.
11)	Under Applicable Law and as directed by the Hon'ble NCLT, the implementation of the Resolution Plan may require approval from various authorities. The Implementation and Monitoring Committee shall send intimation / file applications with various authorities as required for implementation of the Resolution Plan, in a form and manner agreed with the Resolution Applicant.
12)	The Resolution Applicant shall be granted liberty to (1) recast/216

**In the National Company Law Tribunal
Kolkata Bench, (Court-II), Kolkata**

IA (IB) No. 1117/ (KB) /2023

In CP(IB) No. 34/(KB) /2022



	resubmit the financial statements and accounts of the Corporate Debtor for earlier years and (i) file return or revised income tax returns of the Corporate Debtor for the financial years to the relevant Government and Statutory Authorities.
13)	It is assumed that all the information relating to the corporate debtor has been disclosed in the information memorandum. The resolution applicant shall not be responsible for any liabilities that arises post resolution due to any non-disclosure of information in the Information Memorandum.
14)	In the event of any of the Creditors assigning its dues either partially or fully to any other Person/entity at any time post the approval of COC, this Resolution Plan shall be binding on the assignee in the same manner.
15)	On and from the Effective Date, the Resolution Applicant shall be entitled to transfer/ assign the Assets/ Undertaking of the Corporate Debtor to any group company of the Resolution Applicant and/or to such other entity as it deems fit.
16)	From the date of the NCLT order approving the Resolution Plan, all the rights and obligations of each of the existing Shareholders under, in relation to or in respect of any such Shareholders Agreement shall terminate and shall be of no force and effect and no party thereto shall have any further rights or claims against, or obligations to, the Corporate Debtor in respect thereof and their respective liabilities and obligations shall be irrevocably and unconditionally released and all such rights and obligations shall cease to exist from the date of approval of the Plan by the Adjudicating Authority.
17)	Upon approval of the resolution plan, all shares held by the existing shareholders shall be cancelled and new shares shall be issued to the Resolution Applicant or to anyone decided by the Resolution Applicant



	on its behalf in accordance with the provisions of the applicable law for the time being in force.
18)	The Corporate Debtor and/or the Resolution Applicant and the affiliates of the Resolution Applicant shall not in any manner be implicated in, or in any manner be adversely affected by, or have any liability in relation to, any investigations, proceedings, orders or any matters, whether known or unknown, relating to the Group Stakeholders, Promoter Group or holding companies, subsidiary companies, associate companies and/or group companies of the corporate debtor.
19)	Pending the occurrence of the effective date, no person shall be entitled to institute or continue any suits or proceedings including any attachment or property or investigation or execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or authority against the Corporate Debtor or take any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property.

15. 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.
16. 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.
17. We have also perused the reliefs, waivers and concessions as sought and as given in **page 23 to 45 (Reliefs and Concessions)** 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.

18. 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 concessions, whenever sought for, in the spirit of the code, which is the revival of the Corporate Debtor.
19. 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.
20. 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.
21. 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.

22. 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.”*
23. 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 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).
24. 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.
25. 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”*.
26. 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.
27. 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.



28. 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.
29. 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.
30. 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.
31. The Moratorium imposed under section 14 shall cease to have effect from the date of this order.
32. 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.
33. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.
34. Liberty is hereby granted for moving any Application if required in connection with implementation of this Resolution Plan.
35. A copy of this Order is to be submitted in the Office of the Registrar of Companies, West Bengal.
36. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.
37. 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.
38. 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.

**In the National Company Law Tribunal
Kolkata Bench, (Court-II), Kolkata**

IA (IB) No. 1117/ (KB) /2023

In CP(IB) No. 34/(KB) /2022



39. The Application being **IA (IB) No. 1117/KB/2023 along with main CP(IB) No. 34/KB/2022 shall stand disposed** of accordingly.
40. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee,
Member (Judicial)

Signed on this the 05th day of March, 2024

M. Jana, PS