

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

**IA (IB) No. 473/KB/2021
and
IA (IB) No. 991/KB/2021
In
C.P. (IB) No. 638/KB/2019**

IA (IB) No. 473/KB/2021

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

And

In the matter of:

Punjab Goods Transport Private Limited [U60231WB1997PTC084752]

...Financial Creditor

Versus

Bhattacharyya Bottling Plant Private Limited [U15520WB1988PTC044954]

...Corporate Debtor

And

In the matter of:

Kamal Nayan Jain [Resolution Professional of Bhattacharyya Bottling Plant Private Limited]

... Applicant

IA (IB) No. 991/KB/2021

Application under section 60(5) of the Insolvency and Bankruptcy Code, 2016.

And

In the matter of:

The Regional Provident Fund Commissioner - II

...Applicant

Versus

Kamal Nayan Jain [Resolution Professional of Bhattacharyya Bottling Plant Private Limited]

...Respondent

Coram:

Shri Rohit Kapoor : Member (Judicial)

Shri Harish Chander Suri : Member (Technical)

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

*In Re. Resolution Plan of Bhattacharya Bottling Plant Private Limited
IA (IB) No. 473/KB/2021 and IA (IB) No. 991/KB/2021
in C.P. (IB) No. 638/KB/2019*

Appearances (via video conference):

Mr. Shaunak Mitra, Advocate : For RP
Mr. Kamal Nayan Jain, RP : Self

Order reserved on: 24.02.2022

Order pronounced on: 20.04.2022

ORDER

Per: Harish Chander Suri, Member (Technical)

1. This Court convened through video conferencing.
2. **IA (IB) No. 473/KB/2021** is an application filed by Mr. Kamal Nayan Jain, Resolution Professional of Bhattacharyya Bottling Plant Private Limited, under section 30(6) read with section 31(1) of the Insolvency and Bankruptcy Code, 2016 (**“Code”**) and regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (*CIRP Regulations*) for approval of the Resolution Plan in respect of Bhattacharyya Bottling Plant Private Limited, the Corporate Debtor.
3. The underlying Company Petition bearing CP (IB)No.638/ KB/ 2019 was filed by Punjab Goods Transport Private Limited against Bhattacharyya Bottling Plant Private Limited, (**“Corporate Debtor”**), under section 9 of the Insolvency and Bankruptcy Code 2016 which was admitted *vide* order dated 20 December, 2019 in CP (IB) No. 638/KB/2019.
4. Initially, Ms. Beena Jajodia (IBBI Reg. No. [IBBI/IPA-001/IP-P00630/2017-2018/11084] was appointed as the Interim Resolution Professional (**“IRP”**). However, the Committee of Creditors (**“CoC”**) in its meeting dated 28 January, 2020 proposed to replace the IRP and appoint Mr. Kamal Nayan Jain as the Resolution Plan (**“RP”**). Subsequently, *vide* order dated 12 February, 2020 confirmed the appointment of the RP.
5. Subsequent to Mr. Kamal Nayan Jain’s appointment as the RP, he issued Expression of Interest (**“EoI”**) in Form G on 04 March, 2020 but no EoI

was received. The RP again issued a revised EoI on 10 October, 2020, wherein one EoI was received by the RP.¹

6. The EoI submitted by the potential Resolution Applicant was processed and accepted. However, due to the pandemic situation the Calendula Commotrade Private Limited, Successful Resolution Applicant (“SRA”) requested for additional time to submit the Resolution Plan. The same was accepted by the CoC and the SRA submitted the plan on 06 March, 2021 and deposited Earnest Money Deposit (“EMD”) of Rs.50/- Lakh by way of RTGS.
7. The RP placed the Resolution Plan before the CoC on 24 March, 2021, i.e., 10th CoC Meeting. On perusal of the submitted Resolution Plan, the CoC further negotiated with the SRA and asked to make few changes. The revised Plan was submitted on 12 April, 2021, which was found to be compliant with the Code.
8. The revised Resolution Plan was placed before the CoC on 19 April, 2021, i.e., 11 CoC Meeting and the same was approved by the CoC by 100% voting shares.

Constitution of CoC

9. The IRP made public announcements on 22 December, 2019 in *The Financial Express (English)* and *Ekdin (Bengali)* (Kolkata Editions) regarding initiation of CIRP and called for proof of claims from the financial and operational creditors, workers and employees of the corporate debtor in the specified forms till 03 January, 2020.
10. Pursuant to such publication the IRP received claims from the following financial and operational creditors, workers and employees of the corporate debtor;

<i>SI No.</i>	<i>Name of Creditor</i>	<i>Amount Claimed</i>	<i>Amount Admitted</i>
1.	Arihant Enterprise Limited (Financial Creditor)	10,00,000.00	10,00,000.00

¹ Annexure – C of the I.A

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

*In Re. Resolution Plan of Bhattacharya Bottling Plant Private Limited
IA (IB) No. 473/KB/2021 and IA (IB) No. 991/KB/2021
in C.P. (IB) No. 638/KB/2019*

2.	Minolta Finance Limited (Financial Creditor)	40,00,000.00	40,00,000.00
3.	Priya Purnima Credits Private Limited (Financial Creditor)	4,95,25,000.00 (Related)	4,95,25,000.00
4.	Punjab Goods Transport Private Limited. (Operational Creditor)	40,90,800.00	40,90,800.00
5.	Ankur Biochem Private Limited (Operational Creditor)	4,54,53,591.7	4,54,53,591.7
6.	Industrial Trade Corporation (Operational Creditor)	7,66,366.24	7,66,366.24
7.	National Securities Depository Limited (Operational Creditor)	21,830.00	---
8.	Joint Commissioner of Commerce Taxes, Esplanade Charge. (Operational Creditor)	66,93,224.00	---
9.	Claim from workmen and Employee (Operational Creditor)	7,97,55,625.79	---
10.	Amit Kumar Gangoly (Operational Creditor)	1,69,500.00	1,69,500.00
TOTAL		19,14,75,937.73	10,50,05,257.9

11. The CoC was constituted of two Financial Creditors, viz, Minolta Finance Limited and Arihant Enterprises Private Limited, having 80% and 20% of the percentage of vote, respectively.

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

*In Re. Resolution Plan of Bhattacharya Bottling Plant Private Limited
IA (IB) No. 473/KB/2021 and IA (IB) No. 991/KB/2021
in C.P. (IB) No. 638/KB/2019*

12. The applicant states that a total of eleven CoC meetings have been held during the CIRP Period and the eleventh was held on 19 April, 2021.

Compliances with Statutory provisions

13. The compliance of the Resolution Plan is as under:

<i>Section of the Code / Regulation No.</i>	<i>Requirement with respect to Resolution Plan</i>	<i>Clause of Resolution Plan</i>	<i>Application Page No</i>	<i>Compliance (Yes / No)</i>
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	
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	
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Attached	Yes	
Section 30(2)	Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process costs? (b) provides for the payment to the operational creditors?	Format VA- Part B Clause 1(1.1) Format VA- Part B Clause 1(1.3)	Yes	

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

In Re. Resolution Plan of Bhattacharya Bottling Plant Private Limited
IA (IB) No. 473/KB/2021 and IA (IB) No. 991/KB/2021
in C.P. (IB) No. 638/KB/2019

	(c) Provides for the payment to the financial creditors who did not vote in favour of the Resolution Plan (d) provides for the management of the affairs of the corporate debtor? (e) Provides for the implementation and supervision of the resolution plan? (f) Contravenes any of the provisions of the law for the time being in force?	Format VA- Part B Clause 1(1.5) Format VA- Part B Clause 3 Format VA- Part B Clause 4 Format VA- Part B Clause 10	
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (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	Whether the Resolution Professional made a determination if the corporate debtor has		No

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

In Re. Resolution Plan of Bhattacharya Bottling Plant Private Limited
IA (IB) No. 473/KB/2021 and IA (IB) No. 991/KB/2021
in C.P. (IB) No. 638/KB/2019

	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?		
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors	Format VA- Part B Clause 1(1.3)	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Format V, Schedule A	Yes
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising its	Format V, Clause - e Format VA, Part - B, clause – 3 Format VA, Part – B, Clause - 4	Yes

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

*In Re. Resolution Plan of Bhattacharya Bottling Plant Private Limited
IA (IB) No. 473/KB/2021 and IA (IB) No. 991/KB/2021
in C.P. (IB) No. 638/KB/2019*

	implementation?		
Regulation 38(3)	Whether the resolution plan demonstrates that – (a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan?	Format VA, Part - B, clause – 2 Format VA, Part - B, clause – 2 Format VA, Part - B, clause – (e) Format VA, clause – e Format VA, Part - B, clause – 4	a)Yes b)Yes c)Yes d)Yes e)Yes
Regulation 39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?		NO
Regulation 39(4)	Provide details of performance security received , as referred to in sub – regulation (4A) of Regulation 36B		EMD of Rs. 50,00,000.00 has been received along with the Resolution Plan which is also PBG deposited

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

*In Re. Resolution Plan of Bhattacharya Bottling Plant Private Limited
IA (IB) No. 473/KB/2021 and IA (IB) No. 991/KB/2021
in C.P. (IB) No. 638/KB/2019*

14. List of claims admitted and amount proposed to be paid in the Resolution Plan:

<i>SI. No.</i>	<i>Name of Creditor</i>	<i>Amount Admitted</i>	<i>Amount proposed to be paid</i>	<i>Time frame</i>
a.	CIRP Cost	---	38,00,000	Within 30 days of receipt of certified order copy approving the Resolution Plan
b.	Workmen & Employees (Operational Creditor)	---	25,88,174.00	After getting the possession of the units of the Corporate Debtor and on the union or workers agreeing to sign the fresh agreement with the CD as per terms agreed by the Resolution Applicant
c.	Punjab Goods Transport Private Limited. (Operational Creditor)	40,90,800.00	4,09,080.00	10% of the admitted claim amount within 90 days of the receipt of the certified copy of order by this Adjudicating
d.	Ankur Biochem Private Limited (Operational Creditor)	4,54,53,591.70	45,45,359.00	
e.	Industrial Trade Corporation (Operational Creditor)	7,66,366.24	76,636.00	
f.	National Securities Depository	Nil	2,183.00	

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

*In Re. Resolution Plan of Bhattacharya Bottling Plant Private Limited
IA (IB) No. 473/KB/2021 and IA (IB) No. 991/KB/2021
in C.P. (IB) No. 638/KB/2019*

	Limited (Operational Creditor)			Authority Approving the Plan
g.	Amit Kumar Gangoly (Operational Creditor)	1,69,500.00	16,950.00	
h.	Joint Commissioner of Commerce Taxes, Esplanade Charge. (Operational Creditor)	Nil	Nil	Nil
i.	Minolta Finance Limited (Financial Creditor)	40,00,000.00	40,00,000.00	In priority within 90 days of the receipt of certified copy of the Order approving the Resolution Plan
j.	Arihant Enterprise Limited (Financial Creditor)	10,00,000.00	10,00,000.00	
k.	Priya Purnima Credits Private Limited (Financial Creditor) (Related)	4,95,25,000.00	81,78,750.00	Within 90 days of the receipt of certified copy of order by this Adjudicating Authority approving the Resolution Plan.

***Management and Control of the business of the Corporate Debtor after approval
/during the term of the Resolution Plan***

15. The Code has prescribed for monitoring the implementation of the approved Resolution Plan. Progress of the proposed Resolution Plan will be presented to the CoC by the Monitoring Committee and no deviation from the approved plan will be allowed till the full amount is paid to the Creditors.
16. When complete upfront payments are made to the creditors as envisaged in the Resolution Plan, no appointment would be done at KMP including board, without prior consent of the CoC or monitoring Committee formed for the purpose.
17. Monitoring Agency to be chaired by the Resolution Professional and will be represented by one nominee each of the CoC and the SRA
18. Term of the Monitoring Agency shall be upto implementation of the Resolution Plan or payments to the Financial Creditors as envisaged in the approved Resolution Plan.
19. Progress of the Proposed Resolution plan will be presented before the CoC and no deviation from the approved plan shall be allowed as per the Code, till the full amount is paid to the Creditors as envisaged under the Plan.
20. Cost and remuneration of the Monitoring Agency shall be paid by the Successful Resolution Applicant
21. Obtaining monthly/quarterly report or periodic inspection by independent industry experts or appointment of auditors to assess the progress of the Company vis-a-vis the Approved Resolution Plan.
22. The new board of directors and management will periodically report to the consortium of bankers/CoC in the prescribed format depicting the progress and implementation of the plan at regular intervals, till the creditors are paid their full dues as envisaged under the Resolution Plan.
23. During the period when the interim management is handed over to the SRA other statutory requirement such as appointment of the Company Secretary, Statutory Auditor and other professional would also be done for operations and transition of the management. However, post approval of the Resolution

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

*In Re. Resolution Plan of Bhattacharya Bottling Plant Private Limited
IA (IB) No. 473/KB/2021 and IA (IB) No. 991/KB/2021
in C.P. (IB) No. 638/KB/2019*

Plan and upto the Closing Date, responsibilities for all statutory Compliances and other management issues would solely vest with the monitoring Agency.

Reliefs, exemptions, waivers, and liabilities

24. The Reliefs, Exemptions and Waivers sought by the Resolution Applicant from the Adjudicating Authority are set out below for the successful implementation of the Resolution Plan. The orders thereon are indicated against each:

<i>SI No.</i>	<i>Ref to clause</i>	<i>Relief, Concessions and approval sought</i>	<i>Order there on</i>
1.	2.2 (a)(C)	Capital Reduction and Cancellation of the Existing Equity Capital - The cancellation shall be pursuant to the order of the NCLT and shall not require any other procedure as required under the Companies Act, including that under Section 66 of the Companies Act or regulations of the SEBI;	Yes, as per the law and applicable Regulations.
2.	2.2 (a)(D)	Capital Reduction and Cancellation of the Existing Equity Capital - Shall not require the consent of any of the creditors of the Corporate Debtor or approval of the shareholders of the Corporate Debtor, as the Resolution Plan, upon being approved by the NCLT shall be binding on the Corporate Debtor and its stakeholders (including its creditors and shareholders), and in addition in accordance with the October 25 Circular, approval of the shareholders/ members of the Corporate Debtor/ company, which would have been required under Companies Act, 2013 or	Yes, as per the law and applicable Regulations.

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

*In Re. Resolution Plan of Bhattacharya Bottling Plant Private Limited
IA (IB) No. 473/KB/2021 and IA (IB) No. 991/KB/2021
in C.P. (IB) No. 638/KB/2019*

		any other law if the Resolution Plan was being considered outside the scope of the Code, shall not be required for cancellation and issuance of shares and any other action under the Resolution Plan for its implementation. On approval of the Resolution Plan by the NCLT, the approval of the shareholders shall be deemed to have been given as per explanation of Sec30(2) of the Code for effecting cancellation of capital, revision of agreements, constitutional documents such as Memorandum of Association, Articles of Association and for implementation of any other actions under the Resolution Plan;	
3.	2.2 (a)(G)	Capital Reduction and Cancellation of the Existing Equity Capital - For effecting change in the share capital (in case of increased in authorised capital) and change in registered address of BBPL, consequent amendment to the constitutional documents shall be required. As per Regulation 37 of the CIRP Regulations, the Resolution Plan may provide for amendment of the Constitutional documents of the Corporate Debtor. Accordingly, as an integral part of the Resolution Plan, on the closing Date, the constitutional documents of BBPPL shall stand replaced with the new constitutional documents as provided by the Resolution	Yes, as per the law and applicable Regulations.

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

*In Re. Resolution Plan of Bhattacharya Bottling Plant Private Limited
IA (IB) No. 473/KB/2021 and IA (IB) No. 991/KB/2021
in C.P. (IB) No. 638/KB/2019*

		Applicant, including to reflect the change in registered address and increase in authorized equity share capital of BBPPL, without any further act, instrument, or deed by BBPPL and without any liability for payment of any fees or stamp duty in respect of such change. The Resolution Applicant further confirms that any procedural requirements in relation to effecting such change shall be undertaken by him and making filings with the relevant ROCs shall be undertaken by it.	
4.	2.2 (8)(o)	State Excise Department: RA shall on approval of the Resolution Plan shall after determining the status of Finished goods quality shall make suitable application to the State Excise for re-processing permission and approval for label registration. State Excise authorities on such application shall grant approval on payment of the requisite fees without demanding any additional penalty or past dues. Further State Excise Department shall also renew the license on application being made by the Resolution Applicant and shall not demand any old outstanding existing as on the date of approval of the Resolution Plan for such renewal.	Yes, granted.
5.	2.2 (8)(c)	West Bengal State Electricity Board, Calcutta Electric Supply Corporation and Damodar Valley Corporate (DVC) or other Electricity Board or	Yes. Granted, subject to payment of requisite

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

*In Re. Resolution Plan of Bhattacharya Bottling Plant Private Limited
IA (IB) No. 473/KB/2021 and IA (IB) No. 991/KB/2021
in C.P. (IB) No. 638/KB/2019*

		Authority: Resolution applicant has envisaged in the plan that liquidation value due to the OC is expected to be Nil. Since electricity connection is main requisition for effective revival of the unit, although liquidation value due against the pending electricity charges are expected to be Nil and further no claims has been received by any such operational creditors. As such CESC, WBSEB, DVC or the other Electricity Board or authority is required to provide immediate re-connection of electricity to the Corporate Debtor, without seeking additional securities or payment towards the revival of the Corporate Debtor once application being made in this regards. Resolution applicant further reserves its right to apply for the electricity connection with other utility in addition to the existing connection with DVC and that no prior permission for the same would be required.	charges.
6.	2.2 (8)(1)	Anti-corruption provisions and immunity Upon perusal of the Resolution Plan by the NCLT, immunity shall be deemed to have been granted to the Corporate Debtor and its new management, from any actions and penalties (of any nature) under any laws for any non-compliance of laws in relation to the Corporate Debtor	Granted

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

*In Re. Resolution Plan of Bhattacharya Bottling Plant Private Limited
IA (IB) No. 473/KB/2021 and IA (IB) No. 991/KB/2021
in C.P. (IB) No. 638/KB/2019*

		or by the Corporate Debtor, which was existing as on the IC Date.	
7.	2.2 (8)(m)	Inquiries, investigations etc. Upon approval of this Resolution Plan by the NCLT, all inquiries, investigations and proceedings (including before the BIFR), whether civil or criminal, notices, causes of action, suits, claims, disputes, litigation arbitration or other judicial, regulatory or administrative proceedings against, or in relation to, or in connection with the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future, (including without limitation, any investigation, action, proceeding, prosecution, whether civil or criminal, by the Economic Offence Wing (EOW), Central Bureau of Investigation, the Enforcement Directorate or any other regulatory or enforcement agency), in relation to any period prior to the IC Date or arising on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan, including in relation to any Stock Exchange and Securities and Exchange Board of India, shall stand withdrawn or dismissed and all liabilities or obligations in relation thereto, whether or not set out in the balance sheets of the Corporate Debtor or the profit and loss	Yes. Granted, strictly as per the provisions of the Code/ Regulations and interest of the Resolution Plan.

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

*In Re. Resolution Plan of Bhattacharya Bottling Plant Private Limited
IA (IB) No. 473/KB/2021 and IA (IB) No. 991/KB/2021
in C.P. (IB) No. 638/KB/2019*

		account statements of the Corporate Debtor, will be deemed to have been written off in full and permanently extinguished 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 notwithstanding any adverse order that maybe passed in respect of the same by any authority prior to or after the Closing Date. Upon approval of this Resolution Plan by the NCLT, all new inquiries, investigations, whether civil or criminal, notices, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings will be deemed to be barred and will not be initiated or admitted against the Corporate Debtor in relation to any period prior to the acquisition of control by the Resolution Applicant over the Corporate Debtor or on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan.	
8.	2.2 (8)(n)	Dispensation is also sought from all the cases whether listed or not in the Information Memorandum and not proposed to be settled as per the Resolution Plan.	Yes. Granted
9.	2.2 (9)	West Bengal Beverage Corporation On approval of the Resolution Plan West Bengal State Beverages	Yes. Granted

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

*In Re. Resolution Plan of Bhattacharya Bottling Plant Private Limited
IA (IB) No. 473/KB/2021 and IA (IB) No. 991/KB/2021
in C.P. (IB) No. 638/KB/2019*

		Corporation Ltd shall release all payments due to the Corporate Debtor immediately on instruction of the successful Resolution Applicant, without seeking any further orders or instruction in this regards from any court or authorities. Further any stock and inventory lying at the locations under the control of West Bengal State Beverages Corporation Ltd or with it, shall be released immediately on approval of the Resolution Plan, without seeking any payments or further documents in this regard.	
10.	2.2 (11)	The Resolution Applicant envisage that they will pay the license fees pertaining to the current year in order to restore the operation and all the previous dues will be deemed settled without any payment in respect of the previous year dues, which is relating to the period prior to the effective date. It is further envisaged that liquidation value due against all such pending license fees is expected to be Nil and that no claim has been filed in respect of the outstanding fees. In terms of the provision of Insolvency and Bankruptcy Code, 2016 all such licensing authorities shall renew the license on application being made by the Resolution Applicant and shall not demand any old outstanding	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

² 2021 SCC OnLine SC 313 decided on 13.04.2021.

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

*In Re. Resolution Plan of Bhattacharya Bottling Plant Private Limited
IA (IB) No. 473/KB/2021 and IA (IB) No. 991/KB/2021
in C.P. (IB) No. 638/KB/2019*

		existing as on the date of approval of the Resolution Plan for such renewal.	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
--	--	--	--

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

*In Re. Resolution Plan of Bhattacharya Bottling Plant Private Limited
IA (IB) No. 473/KB/2021 and IA (IB) No. 991/KB/2021
in C.P. (IB) No. 638/KB/2019*

			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
--	--	--	--

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

*In Re. Resolution Plan of Bhattacharya Bottling Plant Private Limited
IA (IB) No. 473/KB/2021 and IA (IB) No. 991/KB/2021
in C.P. (IB) No. 638/KB/2019*

			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.
11.	2.2 (12)	After submission of the Resolution Plan or approval of the plan by the CoC / Adjudicating Authority but before handover of the management to Resolution Applicant, if the CIRP is stayed by any court then the CoC would immediately release any amount paid in terms of the Resolution Plan to the Resolution Applicant after receiving undertaking to the effect that the amount would again be deposited without any interest after such stay is withdrawn or the case is decided. Any non-compliance to	Cannot be granted at this stage.

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

*In Re. Resolution Plan of Bhattacharya Bottling Plant Private Limited
IA (IB) No. 473/KB/2021 and IA (IB) No. 991/KB/2021
in C.P. (IB) No. 638/KB/2019*

		the Resolution Plan in such eventuality or other unforeseen external factor should not be treated as non-performance by the Resolution Applicant for forfeiture or payment made or invocation of guarantee given under this Resolution Plan.	
12.	2.2 (12)	Resolution Applicant also reserves the right to review, rescind or terminate any contract, agreement or understandings that have been entered into by the BBPPL prior to the cut-off date. It is assumed that all the material contracts been posted or made available to the Resolution Applicant on or before the submission of this Resolution Plan and it shall not be liable to pay any damages or charges or penalty for any breach of all such contracts or agreements which has not been provided before the submission of the Resolution Plan. Prayer is being hereby made to the Adjudicating Authority for passing necessary order with respect to the above clause while approving the Resolution Plan placed before it.	Cannot be granted at this stage.
13.	2.2 (12)	Any person (including the Existing or earlier Promoter Group) that has provided any form of security for and on behalf of, and / or in order to secure any obligations of the Company (whether by way of hypothecation, pledge, mortgage, guarantee or otherwise) shall not	Granted.

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

*In Re. Resolution Plan of Bhattacharya Bottling Plant Private Limited
IA (IB) No. 473/KB/2021 and IA (IB) No. 991/KB/2021
in C.P. (IB) No. 638/KB/2019*

		be entitled to exercise any subrogation rights in respect of such arrangement and they shall have no rights or claims against the Company. All obligations, Liabilities, claims or proceedings against the Company in this regard shall be deemed to be owed and due as of the Insolvency Commencement Date and shall immediately, irrevocably and unconditionally stand extinguished, waived, withdrawn and abated on and from the Closing Date.	
14.	2.2 (12)	The Company shall have no Liabilities towards the persons currently classified as promoter or promoter group (including the Existing Promoter Group), persons acting in concert with promoters, holding companies, subsidiary companies, associate companies, Group Companies and / or their respective Affiliates / associates). However, it is clarified that all claims of the Company against such related parties (and all Liabilities of such related parties towards the Company) shall remain outstanding due and payable to the Resolution Applicant in accordance with their terms.	Yes. Granted, subject to provisions of the law and the Regulations.
15.	2.2 (12)	Any Liabilities, claims, demands, capital contributions or any other form of financial commitment; including but not limited to pledge of shares or any security interest create or provided, whether	Granted

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

*In Re. Resolution Plan of Bhattacharya Bottling Plant Private Limited
IA (IB) No. 473/KB/2021 and IA (IB) No. 991/KB/2021
in C.P. (IB) No. 638/KB/2019*

		guaranteed or contractually agreed in writing or otherwise by the Company on behalf of or for its subsidiary companies, associate companies, Group companies and / or their respective Affiliates, shareholders / associates; as the case may be, which are in existence prior to the Closing Date and which may be invoked prior to the Closing Date or at any time thereafter, shall stand irrevocably and unconditionally waived and extinguished.	
--	--	---	--

IA. No.991/KB/2021

25. This is an interlocutory Application filed under section 42 of the Code by the Regional Provident Fund Commissioners-II, Employees Provident Fund Organisation (Ministry of Labour and Employment, Govt. of India), Regional Office, Barrackpore, Kolkata – 700120 (***‘Applicant’***) against the RP *inter alia* praying for the following reliefs;

- (i) Condonation of delay caused in lodging of claim as in annexure ‘C’ before the RP with condonation of the delay as prescribed under section 42 of the Code.
- (ii) Necessary direction granting post facto leave for accepting the claim of the Applicant dated 15 December, 2021 submitted on 15 December, 2021.
- (iii) To set aside the impugned order in letter dated 24 February, 2021 sent by email dated 24 July, 2021 issued by the office of the RP.
- (iv) To add the name of the Applicant in the list of Creditors and not to distribute dividend/money’s among the existing creditors till the disposal of this Application.

The Applicant submits as follows:

26. The Corporate Debtor made a default in payment of Provident Fund contribution and allied dues to the tune of Rs.2,04,036/- and interest under

section 7Q of the EPF & MP Act, 1952 to the tune of Rs.96,059/- and damages under section 14B of the EPF & MP Act, 1952 to the tune of Rs.1,06,369/- aggregating to a sum of Rs.4,06,464/-

27. The Applicant *vide* its letter dated 15 February, 2021 submitted its claim in Form – B³ to RP. On 20 July, 2021, the Applicant again wrote a letter of reminder to the RP stating that since the dues payable under EPF & MP Act, 1952 ultimately owing to the workers are statutory in nature and the said dues are to be kept out of clutches of the liquidation process.⁴
28. Pursuant to such reminder, the RP in his letter dated 24 July, 2021, along with letter dated 24 February, 2021, intimated to the applicant about his inability to accept the claim of the Applicant. The RP also stated that the said claim is being filed out of time and not in format as per Regulation 12(1) and 12(2) of the Code.
29. Due to sudden lockdown declared by both Central and State Governments, there were admitted disturbances and restrictions affected the normal function of the Applicant. There were shortages of employees as well. It is also pertinent to mention that the announcement published in the news paper escaped the attention of the Applicant because of which the claim could not be filed within the last date i.e. **20 January, 2021**.
30. Since, the Applicant has submitted the claim in an appropriate format the RP is not empowered to pass the impugned order dated 24 February, 2021.

Findings:

31. In **IA (IB) No.473/KB/2021** the delay is condoned and the Applicant is directed to file its claim. Further, the Monitoring Committee is directed to collate and verify the claim and if accepted, the claim of the Applicant then it will be added to the list of Operational Creditor. Accordingly, claim shall be paid in accordance with section 53 of the Code. Further, the Respondent in the said IA had not filed the pleadings in e-filing portal.

³ Page 36 – 57 of the I.A.

⁴ Annexure – D of the I.A.

32. 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.
33. 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 IBC and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
34. 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.
35. 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.
36. 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.**
37. 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.
38. The Moratorium imposed under section 14 shall cease to have effect from the date of this order.
39. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for the record and also unto the Resolution Applicant or New Promoters.
40. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

*In Re. Resolution Plan of Bhattacharya Bottling Plant Private Limited
IA (IB) No. 473/KB/2021 and IA (IB) No. 991/KB/2021
in C.P. (IB) No. 638/KB/2019*

41. Liberty is hereby granted for moving any Application if required in connection with implementation of this Resolution Plan.
42. A copy of this Order is to be submitted in the Office of the Registrar of Companies, West Bengal.
43. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.
44. 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.
45. **IA (IB) No. 473/KB/2021, IA (IB) No. 991/KB/2021 and** the main Company Petition i.e. CP(IB)No. 638/KB/2019 shall stand disposed of accordingly.
46. 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.
47. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
48. File be consigned to the record.

Order signed on April 20, 2021

(Harish Chander Suri)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

SA, LRA