



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH,(COURT-II)
KOLKATA

I.A. (IB) No. 702/KB/2022

in

CP (IB) No. 2078/KB/2019

*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:

Trimurti Associates Private Limited

... Financial Creditor

Versus

BKM Industries Limited

... Corporate Debtor

And

In the matter of:

Pratim Bayal, Resolution Professional of

BKM Industries Limited

... Applicant

Date of pronouncement: 19 September 2023

Coram:

Smt. Bidisha Banerjee, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (via hybrid mode):

For the Applicant/RP

Mr. Rishav Banerjee, Advocate

Mr. A.K. Awasthi, Advocate

Mr. Rajarshi Banerjee, Advocate

Mr. Pratim Bayal, Resolution Professional

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ORDER

Per: Balraj Joshi, Member (Technical)

1. This Court convened through hybrid mode.

Preliminary

2. I.A. (IB) No. 702/KB/2022 is an application under section 30(6) of the Insolvency and Bankruptcy Code, 2016, after approval of the resolution plan by the Committee of Creditors (“CoC”).
3. This application has been filed by Mr. Pratim Bayal, Resolution Professional of BKM Industries Limited, by invoking the provisions of section 30(6) of the Insolvency and Bankruptcy Code, 2016 (“**the Code**” or “**IBC**”) read with regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**CIRP Regulations**) for approval of a Resolution Plan in respect of BKM Industries Limited (“**Corporate Debtor**”).
4. The underlying Company Petition in C.P. (IB) No. 2078/KB/2019 was filed by Trimurti Associates Private Limited, the Financial Creditor to initiate Corporate Insolvency Resolution Process (“**CIRP**”) against BKM Industries Limited, the Corporate Debtor, under section 7 of the Insolvency and Bankruptcy Code 2016, which was admitted *vide* order dated 30 December 2020.
5. Initially, Mr. Kanchan Dutta was appointed as the Interim Resolution Professional (“**IRP**”). At the 9th meeting of the CoC held on 01 December 2021, the CoC resolved to appoint Mr. Pratim Bayal (IBBI Reg. No. IBBI/IPA-003/IP-N00213/2018-19/12385) as the Resolution Professional (“**RP**”) by 90.15% voting share. I.A. (IB) No. 15/KB/2022 was filed under section 27 and section 60(5) of the Code, which was

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allowed by this Adjudicating Authority on 17 February 2022, thereby appointing Mr. Pratim Bayal as the Resolution Professional.

Constitution of CoC

6. The IRP made public announcement on 02 January 2021 in *Business Standard (English) (All India Edition)*, *Aajkal (Bengali) (West Bengal edition)*, *Jansatta (Delhi edition)*, *Daman Ganga (Silvassa edition)*, *Nav Telangana (Hyderabad edition)* and *Samyukta (Bangalore edition)* newspapers regarding initiation of Corporate Insolvency Resolution Process (**CIRP**) and called proof of claims from the financial and operational creditors, workers and employees of the corporate debtor in the specified forms till 14 January 2021.
7. The CoC was first constituted and a list certifying the constitution of Creditors dated 23 January 2021 was submitted before the Adjudicating Authority on 25 January 2021. The CoC was reconstituted from time to time and final list of CoC members comprised of eleven Financial Creditors was finalised. A report of the constitution of the CoC was filed before the Adjudicating Authority. The list of CoC members along with their voting share are as follows:

Sl. No.	Name of Financial Creditor	Voting share
1.	State Bank of India	30.1132%
2.	Indian Bank/Allahabad Bank	18.7741%
3.	Assets Care and Reconstruction Enterprises Limited	15.7869%
4.	ICICI Bank Limited	10.1007%
5.	IDBI Bank Limited	9.2069

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6.	J.P. Financial Services Private Limited	4.9344%
7.	Trimurti Associates Private Limited	4.9129%
8.	Bank of Baroda	4.9086%
9.	Manaksia Limited	0.6505%
10.	Vajra Machineries Private Limited	0.4846%
11.	Manaksia Steels Limited	0.1268%

8. The Applicant states that a total of sixteen CoC meetings have been held during CIRP period, as follows:

Particulars	Date of CoC meeting
1 st CoC Meeting	28.01.2021
2 nd CoC Meeting	12.03.2021
3 rd CoC Meeting	25.03.2021
4 th CoC Meeting	03.05.2021
5 th CoC Meeting	11.06.2021
6 th CoC Meeting	19.07.2021
7 th CoC Meeting	07.10.2021
8 th CoC Meeting	16.11.2021
9 th CoC Meeting	01.12.2021
10 th CoC Meeting	21.02.2022
11 th CoC Meeting	25.03.2022
12 th CoC Meeting	18.04.2022
13 th CoC Meeting	27.04.2022
14 th CoC Meeting	02.05.2022
15 th CoC Meeting	10.05.2022

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Particulars	Date of CoC meeting
16 th CoC Meeting	17.05.2022

Collation of claims

9. The amounts claimed and admitted as on 29 April 2022 are summarised below:

Amount in INR

Nature of creditor	Amount claimed	Amount admitted
Secured Financial Creditors	1,36,91,99,924/-	1,36,64,63,436/-
Unsecured Financial Creditors	17,07,77,311/-	17,07,77,311/-
Operational Creditors	5,53,37,805/-	2,67,35,569/-
Operational Creditors (Workmen and Employees)	16,01,49,988/-	8,71,06,904/-
Others	19,17,55,254/-	2,55,62,973/-
Total	1,94,72,20,282/-	1,67,66,46,193/-


CIRP and compliances

10. The Applicant submits that the erstwhile Resolution Professional, 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, invitation in Form 'G' for Expressions of Interest (**EoI**) from potential resolution applicants was issued on three occasions:

- a. 15 March 2021 in *Business Standard (English) (All India Edition)*, *Aajkal (Bengali) (West Bengal edition)*, *Daman Ganga Times- Gujarat (Silvassa edition)* and *Nav Telangana (Hyderabad edition)* newspapers.

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- b. 13 May 2021 in *Business Standard (English) (All India Edition)*, *Aajkal (Bengali) (West Bengal edition)*, *Daman Ganga Times- Gujarat (Silvassa edition)* and *Nav Telangana (Hyderabad edition)* newspapers.
- c. 30 July in *Business Standard (English) (All India Edition)*, *Aajkal (Bengali) (West Bengal edition)*, *Daman Ganga Times- Gujarat (Silvassa edition)* and *Nav Telangana (Hyderabad edition)* newspapers.
11. The notice was also published on the website of the Insolvency and Bankruptcy Board of India (**IBBI**).
12. The Applicant submits that in response to the invitation for the first EoI, EoIs were received but no Resolution Plan were submitted. The CoC had extended the timeline for submission of Resolution Plan under the invitation of EoI dated 30 July 2021 till 30 October 2021. One Resolution Plan was received on 10 November 2021, but the same was rejected by the CoC as the financial proposal was below the liquidation value and the Resolution Plan was submitted at a belated stage.
13. After appointment of the Resolution Professional, the Resolution Professional issued another invitation in Form 'G' for Expressions of Interest (**EoI**) from potential resolution applicants 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, on 25 February 2022.
14. The Applicant received five EoIs from prospective Resolution Applicants. The Final list of eligible Resolution Applicant was issued on 18 March 2022. The RP then shared the Information Memorandum, Evaluation Matrix and Request for Resolution Plan (**RFRP**) with the Prospective Resolution Applicants.

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15. As per regulation 35(2) of the CIRP Regulations, after receipt of the Resolution Plan, the RP informed the fair value and liquidation value of the Corporate Debtor to the CoC.

Evaluation and voting

16. The Resolution Professional received two Resolution Plans from Uniglobal Paper Private Limited and G.S. Global Projects Private Limited. The Resolution Plans were placed and opened for discussion before the CoC in the 14th CoC meeting held on 02 May 2022. The Resolution Plans was minutely discussed in the said CoC meeting and the CoC requested the Resolution Applicants to revise the Resolution Plans to revise their financial plans. Uniglobal Papers Private Limited was amenable to comply with request whereas G.S. Global Projects Private Limited was not.
17. The members of the CoC decided that no additional time can be granted to G.S. Global Projects Private Limited in view of the constraints afflicting the CIRP. The CoC decided that both the said resolution applicants would be given a final opportunity to submit their best offer in writing in the 14th CoC Meeting itself and both the resolution applicants were informed that no further negotiations beyond this particular Meeting would be done to select the successful resolution applicant.
18. Thereafter, both the Resolution Applicants submitted their final financial offers which were opened before the CoC. The total resolution fund outlay total resolution amount offered by Uniglobal Papers Private Limited was enhanced by it to Rs. 36.40 Crore payable over 18 months of which Rs. 32 crore was offered to the secured creditors and Rs. 9.55 Crore was offered as up front payment within 90 (ninety) days of approval of such resolution plan by this Adjudicating Authority, whereas G. S. Global Projects Private Limited did not revise its earlier offer and only reduces the payment schedule. Further, before the 16th

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CoC meeting, G.S. Global Projects Private Limited withdrew its Resolution Plan through an official communication *via* email dated 17 May 2022.

19. The CoC had deliberated on the feasibility and viability of both the Resolution Plans as well as the revised Resolution Plan submitted Uniglobal Papers Private Limited incorporating the final negotiated financial offer in the course of the 14th, 15th and 16th CoC meetings held on the 02 May 2022, 10 May 2022 and 17 May 2022 respectively and held that both the Resolution Plans as well as the Revised Resolution Plan to be feasible and viable.
20. The revised Resolution Plan submitted by Uniglobal Papers Private Limited on 17 May 2022 was put up for voting by the CoC in the 16th CoC meeting held on 17 May 2022.
21. The voting started from 19 May 2022 to 09 June 2022. The Resolution Plan submitted by Uniglobal Papers Private Limited (**“Successful Resolution Applicant”**) was approved with 78.79% voting share¹.
22. The Applicant issued the Letter of Intent on 13 June 2022 to the Successful Resolution Applicant which was duly acknowledged by the Successful Resolution Applicant on 24 June 2022.
23. In accordance with regulation 36B(4A) of the CIRP Regulations, the Successful Resolution Applicant has deposited the Performance Bank Guarantee of Rs.3,54,00,000/- (Rupees Three Crore Fifty-Four Lakh only) *vide* two cheques on 04 July 2022 and the Earnest Money Deposit of Rs.10,00,000/- (Rupees Ten Lakh only).

Compliance of the approved Resolution Plan with various provisions

¹ Page 660 of the I.A.

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24. The Applicant has filed 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, 2016.²
25. The Applicant has submitted details of various compliances as envisaged within the Code and the CIRP Regulations which a Resolution Plan should adhere to, which is reproduced hereunder:

I. Submission of Resolution Plan in terms of sub-section (2) of section 30 of the Code (as amended vide Amendment dated 16 August 2019):

Clause of s.30(2)	Requirement	How dealt with in the Plan
1.	Plan must provide for payment of CIRP cost in priority to payment of other debts of CD in the manner specified by the Board.	Clause 2.1.4 of Part B at Page 45 of the Resolution Plan.
2.	(i) Plan must provide for payment of debts of OCs in such manner as may be specified by the Board which shall not be less than the amount payable to them in the event of liquidation u/s 53; (ii) Plan must provide for payment of debts of OCs in such manner as may be specified by the Board which shall not be not less than	Clause 2.2 of Part B at Pages 45-48 and Clause 2.3. of Part B at Pages 48-50 of the Resolution Plan. Clause 2.2 of Part B at Pages 45-48 and Clause 2.3. of Part B at Pages 48-50 of the Resolution Plan.

² Annexure A-14 at pages 665-674 of the I.A.

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Clause of s.30(2)	Requirement	How dealt with in the Plan
	<p>amount that 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;</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>Clause 2.4.7 and 2.4.8 of Part B at Pages 55-56 of the Resolution Plan.</p>
(c)	<p>Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.</p>	<p>Clause 14 of Part B at pages 91-92 of the Resolution Plan. Clause 20 at Page 105 of the Resolution Plan.</p>
(d)	<p>Implementation and Supervision</p>	<p>Clause 19 of Part B at Page 104 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>Clause 23 at Page 106 of the Resolution Plan.</p>

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Clause of s.30(2)	Requirement	How dealt with in the Plan
(f)	Conforms to such other requirements as may be specified by the Board.	Not stated in the Resolution Plan

II. 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 aforesaid compliance with Regulation
A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximisation of value of its assets, including but not limited to the following: -	
(a) transfer of all or part of the assets of the corporate debtor to one or more persons;	Not proposed in the Resolution Plan.

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Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
(b) sale of all or part of the assets whether subject to any security interest or not;	Not proposed in the Resolution Plan.
(ba) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	Pages 39-40 of the Resolution Plan. Clause 15.1.4. (j) and (g) at Pages 97, 99 of the Resolution Plan.
(c) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	Page 39 of the Resolution Plan.
(ca) cancellation or delisting of any shares of the corporate debtor, if applicable;	Clause 2.7 of Part B at Page 66 of the Resolution Plan. Clause 15.1.3 of Part B at Page 93 and Clause 15.1.4 at Pages 94-99 of the Resolution Plan.
(d) satisfaction or modification of any security interest;	Clause 15.1.6 of Part B at Page 101 of the Resolution Plan.
(e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Not proposed in the Resolution Plan.

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Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
(f) reduction in the amount payable to the creditors;	Clause 22 at Page106 of the Resolution Plan.
(g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	Not proposed in the Resolution Plan.
(h) amendment of the constitutional documents of the corporate debtor;	Clause 15.1.4. (I) of Part B at Page 97 of the Resolution Plan.
(i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	Not proposed in the Resolution Plan.
(j) change in portfolio of goods or services produced or rendered by the corporate debtor;	Not proposed in the Resolution Plan.
(k) change in technology used by the corporate debtor; and	Not proposed in the Resolution Plan.
(l) obtaining necessary approvals from the Central and State Governments and other authorities.	Page 102 of the Resolution Plan and Clause 24 at Pages 106-107 of the Resolution Plan.

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Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
<p>(m) sale of one or more assets of corporate debtor to one or more successful resolution applicants submitting resolution plans for such assets;</p> <p>and manner of dealing with remaining assets.</p>	Page 40 of the Resolution Plan.

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

Ref to relevant Reg.	Requirement	How dealt with in the Plan
38(1a)	The amount payable to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.	Clause 2.2 of Part B at Pages 45-48 and Clause 2.3. of Part B at Pages 48-50 of the Resolution Plan.
38(1b)	The amount payable to the financial creditors, who have right to vote and did not vote in	Clause 2.4.7 and 2.4.8 of Part B at Pages 55-56 of the Resolution Plan.

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Ref to relevant Reg.	Requirement	How dealt with in the Plan
	favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.	
38(1A)	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.	Clause 2 of Part B of the Resolution Plan.
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.	Clause 22 at Page106 of the Resolution Plan.
38(2)	A resolution plan shall provide:	

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Ref to relevant Reg.	Requirement	How dealt with in the Plan
	(a) the term of the plan and its implementation schedule;	Clause 21 at Pages 105-106 of the Resolution Plan.
	(b) the management and control of the business of the corporate debtor during its term; and	Clause 14 of Part B at pages 91-92 of the Resolution Plan. Clause 20 at Page 105 of the Resolution Plan.
	(c) adequate means for supervising its implementation.	Clause 19 of Part B at Page 104 of the Resolution Plan.
	(d) Provides for the manner in which proceedings in respect of avoidance transactions, if any, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed.	Not proposed in the Resolution Plan.
38(3)	A resolution plan shall demonstrate that –	

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Ref to relevant Reg.	Requirement	How dealt with in the Plan
	(a) it addresses the cause of default;	Clause 4 of Part A at Pages 37-38 of the Resolution Plan.
	(b) it is feasible and viable;	Part A of the Resolution Plan.
	(c) it has provisions for its effective implementation;	Clause 19 of Part B at Page 104 of the Resolution Plan
	(d) it has provisions for approvals required and the timeline for the same; and	Clause 24 at Pages 106-107 of the Resolution Plan.
	(e) the Resolution Applicant has the capability to implement the resolution plan.	Clause 2 of Annexure G annexed to the Resolution Plan and Clause 2.6 of Part A at Page 23 of the Resolution Plan.

26. The Resolution Applicant has submitted affidavit of eligibility under section 29A of the Code³.

Details of Resolution Plan/Payment Schedule

27. The Applicant submits that the Resolution Applicant had filed a Resolution Plan dated 12 March 2022 along with the addendum dated 13 May 2022.

³ Pages 636-638 of the I.A.

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28. Summary of the financial proposal/payment under the Resolution Plan dated 12 March 2022 along with the addendum dated 13 May 2022, is tabulated hereunder:

Category of creditors	Amount admitted (Rs./Crore)	Amount proposed (Rs./Crore)	%
Secured Financial Creditors	136.65	32.00	23.42%
Unsecured Financial Creditors	17.08	0.10	0.59%
Operational Creditors (other than workmen and employees dues) including statutory dues	5.23	0.05	16.50%
Operational Creditors- Employees and Workmen Dues	8.71	2.25	
Total	1.67	36.40	—

29. The payment schedule as proposed in the Resolution Plan is given hereunder:

Particulars	Amount
Admissible Debt to be paid as CIRP costs.	Rs.2,00,00,000/- (Rupees Two Crore only) to be paid within 90 days of the approval by the Adjudicating

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Particulars	Amount
	Authority. In the event the final CIRP cost shall exceed Rs.2,00,00,000/-, then the Resolution Applicant shall pay the excess amount on actual basis over and above the Resolution Plan.
Admissible Debt to be paid to the Financial Creditors	Rs.32,10,00,000/- (Rupees Thirty Two Crore Ten Lakh only) to be paid within 15 months of approval by the Adjudicating Authority.
Admissible Debt to be paid to Operational Creditors including statutory dues (other than Workmen and Employee dues)	Rs.5,00,000/- (Rupees Five Lakh only) to be paid within 90 days of approval by the Adjudicating Authority.
Admissible Debt to be paid to Operational Creditors including Workmen and Employee dues	Rs.2,25,00,000/- (Rupees Two Crore Twenty Five Lakh only) to be paid within 90 days of approval by the Adjudicating Authority.
Capital Expenditure and Working Capital	Rs.25,00,00,000/- (Rupees Twenty Five Crore only) as and when required.
Total	Rs.61,40,00,000/-

Details on Management/Implementation and Reliefs as per the Resolution Plan – Salient Features

30. The Resolution Plan also provides for –

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- a. Management of company after resolution in Clause 14 and Clause 15 of Part B at Pages 91-93 of the Resolution Plan.
- b. Term of the resolution plan in Clause 21 at Pages 105-106 of the Resolution Plan.
- c. Implementation and Supervision of the resolution plan in **Clause 19 of Part B at Page 104 of the Resolution Plan.**

Relinquishment/Waiver of liabilities and Approvals

31. 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 Successful Resolution Applicant has stated that however, such reliefs, dispensations, waivers and concessions shall not form part of the Condition Precedents for the implementation of the Resolution Plan by the Resolution Applicant.

Sl. No.	Relief, concessions and approvals sought
Consents and approvals, authorizations etc	
1.	Upon approval of this Resolution Plan by the NCLT, all actions stated in this Resolution Plan shall be deemed to be approved to make the Resolution Plan effective. Accordingly, any action or implementation of this Resolution Plan shall not be a ground for termination of any consents, approvals, lease & licenses, concessions, authorizations, permits or the like that has been granted to the Corporate Debtor or for which the Corporate Debtor has made an application for renewal or grant
Licenses/ Approvals/Contractual Rights and Benefits	

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Sl. No.	Relief, concessions and approvals sought
2.	<p>The Resolution Applicant has assumed that upon approval of this Resolution Plan by the NCLT all subsisting consents, lease & licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled or accustomed to (whether applied for renewal by the Corporate Debtor or not) shall, notwithstanding any provision to the contrary in their terms, be deemed to continue without disruption for the benefit of the Corporate Debtor for a period of 36 months and till such time, the Resolution Applicant will apply for fresh licenses.</p>
3.	<p>For the avoidance of doubt, it is hereby clarified that all consents, lease & licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled or accustomed to, which have expired as of the Effective Date, shall be deemed to continue without disruption for the benefit of the Corporate Debtor for a period of 36 months or until renewed by the relevant authorities, whichever is later. Without any liability for the non-compliance during the time specified above, the Resolution Applicant undertakes to cause the Corporate Debtor to expeditiously identify such expired consents, lease & licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled or accustomed to evaluate the</p>

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Sl. No.	Relief, concessions and approvals sought
	steps required to address the same and take steps to remedy the same to the extent practically possible.
4.	It is further clarified that on approval of the resolution plan, the Resolution Applicant would make necessary application/representation before the relevant judicial/government authority for implementation of the Resolution Plan wherever and if required.
Tax and stamp duty exemptions	
5.	Upon the approval of this Resolution Plan by the NCLT, an exemption shall be deemed to have been granted to the Resolution Applicant from the obligation to pay any taxes and any stamp duty or salami on transfer in respect of actions including demerger as envisaged undertaken pursuant to the approval of the Resolution Plan by the NCLT, since such taxes and duties, if any required to be paid, will render the Resolution Plan unviable for the Resolution Applicant in monetary terms.
6.	It is envisaged that, dispensation/ waiver be given by the State Governments, Central Governments or any other authorities, from payment of any stamp duty on transfer of land, salami on transfer, transfer fees on account of change in shareholdings pursuant to this plan, Khazana, land taxes, conversion of land including interest, penalty or other charges/fees relating to the transfer/takeover of assets or state levies which may arise in the event of change in management of BKMIL pursuant to the acceptance of this Resolution Plan. Further direction be issued to the state authorities for suitably amending all the licenses and

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	rights pursuant to the change of management on acceptance of the Resolution Plan. Any subsidies or entitlements, which are accruing to the corporate debtor either before or after the approval of the resolution plan, are to be continued.
7.	Accordingly, upon the Resolution Plan being approved by the NCLT, the actions undertaken pursuant to the implementation of the Resolution Plan shall be exempt from any tax obligation under various taxing statutes, including but not limited to Sections 28, 41, 50B, 50C, 50CA, 56 and 115JB under the Income-tax Act as well as the Goods and Services Tax Act, 2017 (as amended from time to time) and the provisions of the Indian Stamp Act, 1899 (as amended from time to time) and other laws relating to payment of stamp duty applicable in any state.
8.	Dispensation from all the cases whether listed or not in the Information Memorandum and not proposed to be settled as per the Resolution Plan. Dispensation from fresh initiation of any case or proceedings including for decreed cases, against the corporate debtor or the resolution applicant relating to any period prior to the Insolvency Commencement date, no amount would be paid to any creditor or authority under any circumstance relating to the period prior to the insolvency commencement date except as specifically provided under this resolution plan and that any such amount would consequently qualify as “operational debt” (as defined under the IBC) and therefore the full amount of such Liabilities shall be deemed to be owed and due as of the Insolvency Commencement Date and therefore no amount is payable in relation thereto.
9.	Restoration of Essential Services including electricity and water

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	<p>Upon approval of this Resolution Plan by the NCLT, all essential services including electricity and water connection required by the Corporate Debtor to continue operations as a going concern shall be restored to the Corporate Debtor on the Effective Date by the relevant authorities including the Electricity Distribution companies in the State of West Bengal, Telangana and the Union Territory of Dadra & Nagar Haveli or any other authority without seeking payment of any outstanding amount pertaining to a period prior to Effective Date except payment, if any, as envisaged under this Resolution Plan. It is further clarified that there shall be no demand for any Security Deposit or other such charges for new / reconnection of electricity at the Factories / Units of the Corporate Debtor.</p>																		
10.	<p>Mutation of Factory Land</p> <p>As per the information available in the Information Memorandum, the title deeds/lease deeds of immovable properties included in the Balance Sheet of the Corporate Debtor are held in the name of the Company except the title deeds/lease deeds pending for mutation of immovable properties are given below:</p> <table border="1" data-bbox="459 1525 1284 1861"><thead><tr><th>Particulars</th><th>Location</th><th>Title Owner</th></tr></thead><tbody><tr><td>Freehold Land</td><td>Hyderabad</td><td>Manaksia Crowns Pvt Ltd</td></tr><tr><td>Freehold Land</td><td>Hyderabad</td><td>Manaksia Crowns Pvt Ltd</td></tr><tr><td>Freehold Land</td><td>Belur</td><td>Hindustan Seals Limited</td></tr><tr><td>Freehold Land</td><td>Silvassa</td><td>Manaksia Crowns Pvt Ltd</td></tr><tr><td>Land</td><td>Liluah</td><td>Manaksia Containers Ltd</td></tr></tbody></table>	Particulars	Location	Title Owner	Freehold Land	Hyderabad	Manaksia Crowns Pvt Ltd	Freehold Land	Hyderabad	Manaksia Crowns Pvt Ltd	Freehold Land	Belur	Hindustan Seals Limited	Freehold Land	Silvassa	Manaksia Crowns Pvt Ltd	Land	Liluah	Manaksia Containers Ltd
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	<p>Upon approval of the Resolution Plan by NCLT, the pending mutations of the said factory land parcels under the name of the Corporate Debtor shall be deemed to be approved. It is further envisaged that dispensation/ waiver be given by the State Governments, Central Governments or any other authorities, from payment of any mutation charges, mutation fees, stamp duty on transfer of land, salami on transfer, Khazana, land taxes, conversion of land including interest, penalty or other charges/fees relating to the said pending mutations. The Resolution Applicant shall make requisite applications to the relevant authorities for carrying out the mutation paperwork.</p>
11.	<p>Continuation of Lease for Leasehold Land</p> <p>As per the information provided by the Resolution Professional, the Haripal (Hooghly) Unit of the Corporate Debtor is situated on a leasehold land measuring about 3.38 Acres and which has been taken on lease vide lease agreement dated 02/08/2011 for a period of 20 years and expiring on 31/07/2031. Upon approval of the Resolution Plan, the said Lease Agreement shall be further renewed for 20 years from the date of expiry on the same lease rent on the existing terms and conditions of the present lease agreement.</p>
12.	<p>Continuation of Office Premises</p> <p>The tenancy rights / usage rights relating to the registered office of the Corporate Debtor which is on the 3rd floor of the Bikaner Building, 8/1, Lal Bazar Street, Kolkata 700 001 shall be protected and continued. Similarly, the tenancy rights / usage rights for offices of the Corporate Debtor at New Delhi and</p>

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	<p>Bangalore shall be protected and continued. Any modification /cancellation/ execution of tenancy/usage agreement which have been made during the period from the initiation of current legal proceeding before the Hon'ble Adjudicating Authority which has culminated in to this CIRP shall become null and void and revert back to the original agreement.</p>
13.	<p>Cancellation of Agreement and Return of Asset</p> <p>As per the information provided by the Resolution Professional asset namely PONTOON 18MTR X 82MTR X .25MTR X 1.550MTR 600MM 25, having gross block of Rs. 16,12,661.3/- has been rented to Mitali Marine Services. RP has during the CIRP period made repetitive request to Mitali Marine Services to return the PONTOON back to the possession of the Corporate Debtor. However, the possession has still not been received and an application in this regard has also been filed with the Adjudicating Authority.</p> <p>Pursuant to the approval of the Resolution Plan, the rental agreement entered into by the Corporate Debtor with Mitali Marine Services shall be deemed to be cancelled/terminated. Further, the Hon'ble Adjudicating Authority is requested to pass an order directing Mitali Marine Services to return the said asset, being PONTOON 18MTR X 82MTR X .25MTR X 1.550MTR 600MM 25, back to the possession of the Corporate Debtor. Further Mitali Marine Services be directed to pay to the Corporate Debtor entire rent amount due and outstanding as on the date of approval of this Resolution Plan.</p>
14.	<p>Listing Status</p> <p>Upon approval of this Resolution Plan by the NCLT, the Corporate Debtor having ISIN : INE831Q01016 will continue to remain a listed company on both the stock exchanges namely NSE (having Symbol : BKMINDST) and BSE (having Code : 539043). The listing status of the Corporate Debtor shall continue without holding liable the Resolution Applicant or its nominees under any circumstances for any non-compliance or</p>

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	defaults or non-filing on part of the erstwhile management/promoters of the company upon the approval of the Resolution Plan. Any such non-compliance on part of the Corporate Debtor is deemed to be complied with on approval of the Resolution Plan. Any fees, penalty, charges or liability pertaining to a period prior to the Effective Date shall either form part of the Operational Creditor Claim or be claimed as CIRP cost. The Resolution Applicant shall undertake all actions post approval of the Resolution Plan as are required to comply with the SEBI LODR Regulations to continue keeping the Corporate Debtor a listed company, however, the Resolution Applicant will not be required to pay any liability pertaining to a period prior to Effective Date. The Resolution Applicant shall have the option to change the Registrar and Transfer Agent without having to serve any notice for the same as part of this Resolution Plan.

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32. On hearing the submissions made by the Ld. Counsel for the Resolution Professional, and perusing the record, we find that the Resolution Plan submitted by Uniglobal Papers Private Limited has been approved with 78.79% 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 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.
34. We have perused the reliefs, waivers and concessions as sought and as given in Clause 9 at Pages 75-80 of the Resolution Plan. While some of

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the reliefs, waivers and concessions sought by the Resolution Applicant come within the purview of the Code while 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. No reliefs, waivers and concessions that fall within the domain of other government department/authorities are granted. The reliefs, waivers and concessions that pertain to other governmental authorities/departments shall 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. The competent authorities including the Appellate authorities may consider grant such reliefs, waivers and concessions keeping in view the spirit of the Code.

35. The Resolution Plan should be consistent with 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 of the insolvency of the Corporate Debtor.
36. The reliefs sought with respect to subsisting contracts/agreements can be granted, and no blanket orders can be granted in the absence of the parties to the contracts and agreements.
37. 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 v Edelweiss Asset Reconstruction Company Ltd**,⁴ wherein the Hon'ble Supreme Court has

⁴ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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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.

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.


Thus 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 as per the law laid down by the Hon'ble Supreme Court in **Ghanashyam Mishra supra.** 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.

38. 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*,⁵ wherein 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 per se operate as a discharge of the guarantor's liability shall apply.

⁵ 2021 SCC OnLine SC 396 decided on 21.05.2021

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39. 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.
40. 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.
41. 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.
42. 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.**
43. 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.
44. The Moratorium imposed under section 14 shall cease to have effect from the date of this order.
45. 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.
46. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.
47. Liberty is hereby granted for moving any Application if required in connection with implementation of this Resolution Plan.
48. A copy of this Order is to be submitted in the Office of the Registrar of Companies, West Bengal.
49. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.
50. The Resolution Professional is further directed to handover all records, premises/factories/documents to the Resolution Applicant to finalise the

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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.

51. **IA (IB) No. 702/KB/2022 in the main Company Petition i.e., CP (IB) No. 2078/KB/2019** shall stand disposed of accordingly.
52. 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.
53. 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)

Order signed on the 19th day of September 2023.

GGRB_LRA