



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-I
KOLKATA**

**I.A. (IB) No. 554/KB/2023
in
CP (IB) No. 119/KB/2021**

*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:

Meher Oil Industries Private Limited

... Operational Creditor

Versus

Swastik Oil Refinery Private Limited

... Corporate Debtor

And

In the matter of:

Tapan Chakraborty, Resolution Professional of
Swastik Oil Refinery Private Limited

... Resolution Professional/ Applicant

Date of pronouncement: 10 April 2024

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (via hybrid mode):

For the Applicant/RP

1. Mr. Shaunak Mitra, Advocate
2. Mr. Patita Paban Bishwal, Advocate
3. Mr. Tapan Chakraborty, Advocate



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For SRA : Ms. Urmila Chakraborty, Advocate
Mr. S. Chowdhury Advocate
For the Suspended Board of Directors : Mr. Rishav Banerjee, Advocate
Ms. Suranjana Chatterjee, Advocate
Ms. Prerna Shaha, Advocate

ORDER

Per: Balraj Joshi, Member (Technical)

1. This Court convened through hybrid mode.

Preliminary

2. I.A. (IB) No. 554/KB/2023 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 was filed by Mr. Tapan Chakraborty, Resolution Professional of **Swastik Oil Refinery Private Limited [CIN: U15142WB1997PTC084070]** 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 **Swastik Oil Refinery Private Limited (“Corporate Debtor”)**.
4. The underlying Company Petition in C.P. (IB) No. 119/KB/2021 was filed by Meher Oil Industries Private Limited the Operational Creditor against Swastik Oil Refinery Private Limited, the Corporate Debtor, to initiate Corporate Insolvency Resolution Process (“**CIRP**”), under section 9 of the



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Insolvency and Bankruptcy Code 2016, which was admitted *vide* order dated 15 March 2022.

5. Initially, Mr. Vishal Shekhar had been appointed as the Interim Resolution Professional. The Applicant herein was appointed as the Resolution Professional of the Corporate Debtor by this Adjudicating Authority *vide* order dated 22 July 2022 passed in I.A. 479/KB/2022¹.

Constitution of CoC

6. The IRP, pursuant to Regulation 6(1) of the CIRP Regulations, made public announcement² on 18 March 2022 published in **Financial Express** (“English”) and **Ekdin** (“Bengali”) newspapers, regarding initiation of Corporate Insolvency Resolution Process and called proof of claims from the financial and operational creditors, workers and employees of the corporate debtor in the specified forms. The last date of submission of claims was 29 March 2022.
7. The CoC was constituted on 07 April 2022, with the sole member being Union Bank of India. A report on the constitution of the CoC, was filed before the Adjudicating Authority. The list of creditors was updated from time to time and uploaded in the IBBI website.
8. The Applicant states that a total of thirteen CoC meetings have been held during CIRP period, as follows:

Particulars	Date of the CoC Meeting
1 st CoC meeting	16.04.2022
2 nd CoC meeting	26.05.2022

¹ Annexure A @ Pp. 25-26 of I.A.

² Annexure C @ Pp. 38-39 of I.A.



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Particulars	Date of the CoC Meeting
3 rd CoC meeting	18.06.2022
4 th CoC meeting	16.07.2022
5 th CoC meeting	11.08.2022
6 th CoC meeting	24.08.2022
7 th CoC meeting	20.09.2022
8 th CoC meeting	17.10.2022
9 th CoC meeting	20.10.2022
10 th CoC meeting	04.11.2022
11 th CoC meeting	28.11.2022
12 th CoC meeting	14.12.2022
13 th CoC meeting	05.01.2023
14 th COC meeting	30.08.2023
15 th CoC meeting	22.03.2024

Collation of claims

9. The amounts claimed and admitted are summarised below:

Amount in INR:

Nature of Creditor	Amount Claimed	Amount Admitted
Secured Financial Creditors	1,90,31,45,329/-	1,90,31,45,329/-
Unsecured Financial Creditor (Related party)	1,58,52,600/-	1,58,52,600/-
Operational Creditors – Related Party	3,72,37,183/-	3,72,37,183/-
Operational Creditors –	1,12,46,74,126/- ³	2,87,58,946/-

³ Including the claim of Assistant Commissioner of CGST & Central Excise, Junglepur Division, Haldia Commissionerate filed on 25.01.2023, not accepted by the RP as the last date of filing claims



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Nature of Creditor	Amount Claimed	Amount Admitted
Government		
Operational Creditors – Workmen	33,78,500/-	33,78,500/-
Other Operational Creditors	1,65,19,783/-	1,65,19,783/-
Total	3,10,08,07,521/-	2,00,48,92,341/-

CIRP and compliances

10. The Applicant submits that 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, invitations in Form ‘G’ for Expressions of Interest (“**EoI**”) from potential resolution applicants was issued on 24 June 2022 and 17 July 2022 in **Financial Express** (English) and **Ek Din** (Bengali) (Kolkata edition) newspapers wherein the last date of receiving EoI were 08 July 2022 and 31 July 2022 respectively. The notices were also published on the website of the Insolvency and Bankruptcy Board of India (**IBBI**).
11. The provisional list of prospective Resolution Applicants was issued on 11 August 2022 and the Final list of eligible Resolution Applicants containing five Applicants was issued on 26 August 2022. The RP shared the Information Memorandum, Evaluation Matrix and Request for Resolution Plan (“**RFRP**”) with the Prospective Resolution Applicants on 11 August 2022⁴. The last date of submission of

was 13.06.2022 and the IM was issued on 11.08.2022. No appeal has been filed with respect to the rejection of claim by the CGST Authorities.

⁴ Annexure V @ Pp. 222-223 of I.A.



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Resolution Plan was 15 September 2022 which was extended to 25 September 2022.

12. 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

13. The Resolution Professional received five (05) Resolution Plans from five Resolution Applicants *viz.* Ambo Agritec Pvt. Ltd., Uma Exports Ltd., Krishna Wax Pvt. Ltd., Pratishtha Commercial Pvt. Ltd. and Shreegopal Concrete Pvt. Ltd..The Resolution Plans were presented by the Resolution Professional in the 8th CoC meeting held on 17 October 2022. The Resolution Plans were scheduled to be discussed by the CoC in the 9th CoC meeting held on 20 October 2022.
14. On 20 October 2022, in the 9th CoC meeting, the first round of discussions took place between the prospective resolution applicants and the CoC. Therein, the applicability of the recent judgment of the Hon'ble Supreme Court in *State Tax Officer vs. Rainbow Papers Limited* [CA 1661/2020 and 2568/2020] was discussed.
15. In the 10th CoC meeting dated 04 November 2022, the members decided not to invoke the recent judgement *State Tax Officer vs. Rainbow Papers Limited* in the instant matter. The Resolution Professional and the CoC invited the prospective resolution applicants for the 2nd round of discussions wherein the prospective resolution applicants were given the opportunity to improve upon their offers. It was decided that the prospective resolution applicants would revert with improved offers by 11 November 2022 to the Resolution Professional.



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16. With regard to the non-invocation of the judgment of *Rainbow Papers* (supra), a clarification was sought from the Resolution Professional on 13 March 2024. The Resolution Professional has filed an affidavit on 04 April 2024, wherein the Resolution Professional has submitted that the case of *Rainbow Papers* (supra) does not apply in the present case since no Operational Creditor or Government Authority claimed to be a secured creditor in the present case. Further the Hon'ble Supreme Court *in Paschimanchal Vidyut Vitran Nigam Limited versus Raman Ispat Private Limited and Others* has held that the judgment of *Rainbow Papers* has to be confined to the fact of the case alone.
17. In the 11th CoC meeting held on 28 November 2022, the Resolution Professional presented a summary of the Resolution Plans to the CoC. Four out of the five Resolution Applicants had made improvements in the resolution pursuant to the negotiations with the CoC. Shreegopal Concrete Pvt. Ltd. intimated that they would not be revising the offer and requested for the refund of the EMD amount. However, as given in para 2(4) of the Invitation for Expression of Interest, the EMD would be refundable within 1 month from the date of approval or rejection of the Resolution Plans. Since no resolution Plan had been approved or rejected at that point, it was decided that the EMD would not be refunded to the said Resolution Applicant.
18. Representatives from Union Bank of India also presented that if any individual was interested in submitting a resolution plan at that point, such opportunity may be provided. The Representatives from Union Bank of India asked the matter to be put up for voting to decide upon whether a new participant may be allowed to participate as a Resolution Applicant. However, the CoC refrained from voting in the resolution directing the Resolution Professional to re-issue an invitation for EOI under Regulation 36A(1) of the CIRP Regulations.



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19. In the 12th CoC Meeting held on 14 December 2022, the Resolution Professional stated that 4 of the 5 Resolution Applicants have submitted revised Resolution Plans. The Resolution Professional also intimated the CoC, that this was the 274th day of the CIRP and the extension application no. IA (IB) No. 1278/KB/2022 before the Adjudicating Authority would become infructuous on the next date of hearing being 21 December 2022, which shall be the 281st day of CIRP. Representatives from Union Bank of India represented that the allowable period of CIRP is 330 days.

20. The Resolution Professional represented that the limit of 330 days was instituted in case of any time-taking litigations. The CoC or the Resolution Professional did not have the authority to increase the time beyond 270 days. Hence, in order to comply with the timelines of the CIRP, the Resolution Professional was required to ask the members of the CoC to vote on the resolution plans or vote for liquidation of the Corporate Debtor.

21. Representatives from Union Bank of India expressed that voting on any Resolution Plans will require approval of the head office which will take at least 20 days. Hence, the CoC requested the Resolution Professional to defer the matter of voting to the next meeting of the CoC to be held on 17 December 2022 and the voting must be kept open for 20 days. Further, the CoC asked the Resolution Professional to ask the Resolution Applicants to submit their revised plans by 16 December 2022 morning which may be put up for voting during the meeting on 17 December 2022. The Resolution Professional advised that the time of 16 December 2022 might be too little for the Resolution Applicants to be able to submit revised plans. However, if the CoC still asked for this line of activity, the Resolution Professional will comply with the advice of the CoC.



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22. It is submitted that in the 13th CoC meeting held on 05 January 2023, the CoC approved the Resolution Plan of Uma Exports Limited on 16 December 2022 with 100% voting share on 23 February 2023⁵.
23. It is submitted in the Supplementary Affidavit dated 04 August 2023, that the Successful Resolution Applicant proposes to make upfront payment to all the stakeholders of the Corporate Debtor and hence did not provide any performance security. The Successful Resolution Applicant has submitted the Earnest Money Deposit of Rs.15,00,000/- which shall be adjusted towards payments due as per the approved Resolution Plan.

Compliance of the approved Resolution Plan with various provisions

24. The Applicant has filed a Compliance Certificate in prescribed form, i.e., Form 'H'⁶ in compliance with regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
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:

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 IV point 8 at Page 8 of the Resolution Plan.

⁵ Annexure C @ Pp. 10-12 of S.A dated 22.05.2023

⁶ Annexure Z @ Pp. 264-277 of I.A.



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Clause of s.30(2)	Requirement	How dealt with in the Plan
2.	<p>(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;</p> <p>(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 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 IV Point 5 at Page 7 and Annexure A of the Resolution Plan.</p> <p>Clause IV Point 5 at Page 7 and Annexure A of the Resolution Plan.</p> <p>Clause IV Point 6 at Page 7 of the Resolution Plan.</p>
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Clause V at Pages 8-10 of the Resolution Plan.
(d)	Implementation and Supervision	Clause V at Pages 8-10 of the Resolution Plan.
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Clause VI Point 1 at Page 10 of the Resolution Plan.



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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.	Clause VI Point 1 at Page 10 of 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.
(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;	Not proposed in 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;	Clause VIII Point 4 at Pages 11-13 of the Resolution Plan.



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Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
(ca) cancellation or delisting of any shares of the corporate debtor, if applicable;	Clause VIII Point 4 at Pages 11-13 of the Resolution Plan.
(d) satisfaction or modification of any security interest;	Not proposed in 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.
(f) reduction in the amount payable to the creditors;	Not proposed in 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 XVI Point 11 and Point 12 at Page 25 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.



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Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
(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.	Clause IX at Pages 13-14 of the Resolution Plan.
(m) sale of one or more assets of corporate debtor to one or more successful resolution applicants submitting resolution plans for such assets; and manner of dealing with remaining assets.	Clause V Point 8 at Page 9 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 IV Point 5 at Page 7 and Annexure A of the Resolution Plan.
38(1b)	The amount payable to the financial creditors, who have right to vote and did not vote in favour of the resolution plan, shall be paid in priority over	Not applicable in the Resolution Plan.



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Ref to relevant Reg.	Requirement	How dealt with in the Plan
	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 VI Point 2 at Page 10 and Annexure C 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 VI Point 3 at Page 10 of the Resolution Plan.
38(2)	A resolution plan shall provide:	
	(a) the term of the plan and its implementation schedule;	Annexure B of the Resolution Plan.
	(b) the management and control of the business of the corporate debtor during its term; and	Clause V at Pages 8-10 of the Resolution Plan.



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Ref to relevant Reg.	Requirement	How dealt with in the Plan
	(c) adequate means for supervising its implementation.	Clause V at Pages 8-10 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.	Letter dated 03 March 2023 ⁷ .
38(3)	A resolution plan shall demonstrate that –	
	(a) it addresses the cause of default;	Clause VII at Page 11 of the Resolution Plan.
	(b) it is feasible and viable;	Clause VIII at Page 11 of the Resolution Plan.
	(c) it has provisions for its effective implementation;	Clause V at Pages 8-10 of the Resolution Plan.
	(d) it has provisions for approvals required and the timeline for the same; and	Clause VIII at Page 11 of the Resolution Plan.

⁷ Page 259 of the I.A.



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Ref to relevant Reg.	Requirement	How dealt with in the Plan
	(e) the Resolution Applicant has the capability to implement the resolution plan.	Clause VIII at Page 11 of the Resolution Plan.

26. The Resolution Applicant has submitted affidavit dated 06 July 2022⁸ stating its eligibility under section 29A of the Code.

Details of Resolution Plan/Payment Schedule

27. The relevant information with regard to the amount admitted and the amount proposed to be paid by the Successful Resolution Applicant, *i.e.*, *Uma Exports Limited*, under the said Resolution Plan is tabulated hereunder:

Creditors	Amount Admitted (Rs. in Crore)	Amount Proposed (Rs. in Crore)	% of claim admitted	Payment Schedule
CIRP Cost	0	42,00,000/-	---	Within 60 days of NCLT approval
Secured Financial Creditors	1,90,31,45,329/-	14,00,00,000/-	7.36%	Within 60 days of NCLT Approval
Unsecured Financial Creditors	1,58,52,600/-	--	0%	
Operational Creditors	2,87,58,946/-	14,54,832/-	5.06%	Within 60 days of

⁸ Annexure Y @ Pp. 260-263 of I.A.



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Creditors	Amount Admitted (Rs. in Crore)	Amount Proposed (Rs. in Crore)	% of claim admitted	Payment Schedule
(statutory dues)				NCLT Approval
Operational Creditors (other)	5,37,56,966/-	5,37,570/-	1%	Within 60 days of NCLT Approval
Operational Creditors (Workman/Empl oyees)	33,78,500/-	5,06,775/-	15%	Within 60 days of NCLT Approval
Future Claims of employees and workmen	---	25,00,000/- ⁹	---	Within 60 days of NCLT Approval
Capex and working capital infusion	--	30,00,00,000/-	---	As and when required
TOTAL	2,00,48,92,341/-	44,91,99,177/-	--	---

28. On 13 March 2024, this Bench had sought a clarification with respect to the status of the claim of the Employees' Provident Fund Organisation ("EPFP"). The issue was discussed in the 15th CoC meeting wherein the Resolution Professional informed the COC that as per an email dated 20 September 2022, the EPFO placed an order dated 13 June 2022 citing the same to be its claim. The Resolution Professional did not accept the claim as in was not in proper format, the last date of filing claim was 13 June 2022

⁹ The figure of Rs.25Lakh is the maximum capping amount to be paid to workmen and employees who have not been able to furnish their claims in the same percentage as is being paid to the employees who have filed their claims.



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and claim was filed on 20 September 2022 and lastly an order against the Corporate Debtor passed on 13 June 2022 could not be taken into cognisance because of the moratorium during CIRP.

29. In the 15th CoC meeting, the Resolution Applicant proposed that in case the Adjudicating Authority orders so, the Resolution Applicant shall pay the entire dues of the EPFO i.e. as per the EPFO letter dated 08 March 2024 was Rs. 8,44,198/-, over and above the payments already mentioned in the resolution plan, without disturbing or changing any other clause or provision or payment in the Resolution Plan, within 60 days of the approval of the Resolution Plan.

30. Addition of the same would raise the **total resolution amount to Rs.45,00,43,375/- (Rupees Forty Five Crore Forty Three Thousand Three Hundred and Seventy Five only).**

31. This Bench had also enquired the timeline or mechanism of the infusion of the CAPEX amount of Rs.30,00,00,000/- (Rupees Thirty Crore only). In the 15th CoC meeting the Successful Resolution Applicant submitted the following:

“The Resolution Applicant clarified that the infusion of capex and working capital would be made in an outer timeline of 3 years from the date of order of approval by the Adjudicating Authority.

The Resolution Applicant further explained that the reconstituted board of the Corporate Debtor post approval of the plan will oversee the infusion of capex and working capital within the projected timeline. The CoC consented with the same.”

32. The Resolution Plan defines **“Effective Date”** as **“Date of approval of the resolution plan by the Adjudicating Authority u/s 31(1) of the Code”**.



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Relinquishment/Waiver of liabilities and Approvals

33. 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 Resolution Applicant clarifies in its letter dated 23 February 2023¹⁰ stated that in the Resolution Plan is unconditional.

Sr. No.	Relief, concessions and approvals sought
1.	The Resolution Applicant also reserves the right to retain, modify, or cancel any agreement that would have been executed for the smooth operations of the Company or material supply between the Company and any other party
2.	All dues pertaining to any period prior to the Closing Date under the provisions of Income Tax Act, 1961, VAT, Customs, Central Excise Act, Service Tax, Goods and Service Tax, Commercial Tax, any amount payable under the Companies Act 2013/ 1956, or any other statutory / government agency including taxes, duty, penalties, interest, fines, cesses, unpaid Tax Deducted at Source / Tax Collected at Source, whether admitted or not, due or contingent, whether part of above the claims/ liabilities or not, whether part of due diligence finding or not, assessed or under assessment or assessed and under dispute, crystallised or un-crystallised, known or unknown, secured or unsecured, disputed or undisputed, shall stand extinguished by virtue of the order of the Adjudicating Authority approving this Resolution Plan and the Company would not be liable to pay any amount against such

¹⁰ Annexure A @ Page 7 of S.A. dated 04.08.2023



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Sr. No.	Relief, concessions and approvals sought
	<p>demand. All notices, demand, assessments / appellate or other proceedings pending in case of the Company, on the date of the order of Adjudicating Authority relating to the period prior to the Closing Date, shall stand terminated and all consequential liabilities, if any, should be treated as waived / written off and should be considered to be not payable by the Company by virtue of the order on the Adjudicating Authority. All notices proposing to initiate any proceedings against the company in relation to the period prior to the Approval date and pending on that date, shall be considered non-est in law / cancelled / recalled and should not be proceeded with. Post the order of the Adjudicating Authority, no assessment/ re-assessment / revision or any other proceedings under the provisions of the Income Tax Act, VAT, Customs, Central Excise Act, Service Tax, GST or any other Statutory Authority should be initiated against the Company in relation to period prior to the Approval Date and any consequential demand should be considered non- est in law and would not be payable by the Company. Any proceedings which were kept in abeyance in view of process under the Code or otherwise should not be revived post the order of Adjudicating Authority.</p>
3.	<p>The Resolution Applicant will acquire control over the Company pursuant to the order of the NCLT and not pursuant to the usual acquisition process which would ordinarily include a detailed due diligence and representation, warranties and indemnities in relation to the affairs of the Company from its Existing Promoters. The Resolution Applicant may take some time to discover all the non-compliances that may exist in relation to the Company on the date</p>



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	<p>of acquisition of control by the Resolution Applicant over the Company. As such the Resolution Applicant may take some time to identify such non-compliances and to address them. In light of this, the Resolution Applicant prays to the NCLT to grant it immunity from any actions and penalties (of any nature) under any laws for any non-compliance of laws in relation to the Company or by the Company, which was existing as on the date of acquisition of control by the Resolution Applicant over the Company and which continues for a period of upto 12 (twelve) months after the acquisition of control by the Resolution Applicant over the Company. The Resolution Applicant undertakes to cause the Company to expeditiously identify such non-compliances, evaluate the steps required to address such non-compliances and take steps to remedy such non-compliances to the extent practically possible. No penalty to be charged while complying with the irregularity.</p>
4.	<p>All inquiries, investigations, cases, 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 affairs of the Corporate Debtor, pending or threatened, present or future which includes the list as provided under Schedule 4 below (including without limitation, any investigation, action proceeding, prosecution, whether civil or criminal, by the Central Bureau of Investigation, the Enforcement Directorate or any other enforcement agency), in relation to any period prior to the Completion Date or arising on account of the acquisition of control by the Resolution Applicants over the</p>



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	<p>Corporate Debtor pursuant to this Resolution Applicants over the Corporate Debtor pursuant to this Resolution Plan shall be deemed to be 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 account statements of the Corporate Debtor, will be deemed to have been written off in full and permanently extinguished by virtue of the order of the NCLT approving this Resolution Plan and the Company or the Resolution Applicants shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto. By virtue of the order of the NCLT approving this Resolution Plan 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 Applicants over the Company or on account of the acquisition of control by the Resolution Applicants over the Corporate Debtor pursuant to this Resolution Plan.</p>
5.	<p>The Resolution Applicants also prays to the NCLT that the Sale of the Corporate Debtor shall be binding on all stakeholders including the utility providers and all the utility providers shall continue to supply the utilities as may be required for survival of the Corporate Debtor.</p>
6.	<p>The Resolution Applicants also prays to the NCLT that all existing contracts and arrangements, if any, with the Existing Promoters/ Directors and Related Parties of the Corporate Debtor shall stand</p>



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	terminated on and from the date of NCLT Order.
7.	The Resolution Applicants also prays to the NCLT that the Resolution Applicant shall be allowed to reconstitute the Board of Directors of the Corporate Debtor as may be required by the Resolution Applicant.
8.	The Resolution Applicants also prays to the NCLT that write back/written down liabilities of the Corporate Debtor shall not be treated as taxable income of the Corporate Debtor/Applicant under the Income Tax Act, 1961 and any write-offs shall be allowed as a tax deduction in the year of such write off.
9.	The Resolution Applicants also prays to the NCLT to allow setting off of losses and unabsorbed depreciation for the purpose of computation of book profit as permitted under section 115JB of Income Tax Act, 1961. Exemption from any tax liability in terms of Section 115JB of the Income Tax Act, 1961.
10.	The Resolution Applicants also prays to the NCLT to grant waiver of any income-tax and Minimum Alternate Tax (MAT) liability or consequences (including interest fine, penalty, etc) on Corporate Debtor, Applicant and its shareholders, including but not limited to liabilities if any under Section 41 (1), Section 56, Section 43, Section 43 B, Section 28, Section 115JB and Section 79 of the Income-tax Act, 1961.
11.	The Resolution Applicants also prays to the NCLT that any non-compliance of provisions of any laws rules, regulations, directions, notifications, circulars, guidelines, policies, licenses, approvals, consents or permissions including any suspension, cancellation, revocation or termination, prior to the Date of Order shall be



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	deemed to be extinguished and,/or regularised automatically, as the case, may be, on the Order Date. Any Non-Compliance(s) of the Corporate Debtor under the Companies Act, 1956 and,/or Companies Act, 2013 and/ or the notifications, circulars, rules and regulations enacted /notified thereunder, prior to the Order Date shall stand compounded without imposition of any penalty, fees,charges etc.
12.	The Resolution Applicants also prays to the NCLT that the approval of Resolution Plan by NCLT will treated as waiver of the requirements of the Valuation of Pricing of Shares by Registered Valuer under any Act, Law, Statute, Rules, Regulations etc applicable or in vogue for computation to issue Equity Shares or equivalent instruments through Preferential Allotment as well as Debt Instruments to RA, Investors, KMP, Employees etc for a period of 24 Months. The request for such waiver is due to the fact that current valuation of the Company basis Book Value or Net Assets Value basis Realisable Valuation of Assets adjusted to Current Liabilities or Discounted Cash Flow of the Business will be “Negative”, whereas the RA is paying Premium over Face Value considering the Future Potential of the Business
13.	The Resolution Applicants also prays to the NCLT to grant an exemption from the obligation to pay taxes and stamp duty in respect of actions undertaken pursuant to the approval of the Resolution Plan by the NCLT, since such taxes and duties, if required to be paid, will render the Resolution Plan unviable for the Resolution Applicants in monetary terms.
14.	The Department of Registration and Stamps, Government of West



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	Bengal and Jharkhand, ROC and the MCA are to exempt the Resolution Applicant and the Company, from the levy of any stamp duty and fees applicable in relation to this Plan and its implementation.
15.	Accordingly, upon the Resolution Plan being approved by the NCLT, the actions undertaken pursuant to the implementation of the Resolution Plan shall be deemed to be exempt from any tax obligation under various taxing statutes, including but not limited to Sections 50B, 50V, 50CA, 56 and 115JB under the Income-tax Act as well as Central/State Goods and Service 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.
16.	Any award/order/judgement/decree in any court of law/forum / panel of arbitrators or any other adjudicating authority in India as well as outside India against the company shall stand discharged. No execution proceeding for any such award/order/judgement/decree shall remain pending or can be given effect to or allowed against the company in India or elsewhere.’
17.	Any pledges, guarantees, securities created by the Corporate Debtor created for securing the debt of any other entity except mentioned specifically in this Resolution Plan shall stand satisfied, cured, waived, and extinguished and claims in respect thereof can ever be made on the Corporate Debtor after the Approval Date.
18.	Any change in the members managing the Company shall not affect the validity and enforceability of any agreement, lease deed, contract, etc executed by the Company with various parties,



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	authorities, companies, etc.
19.	Any agreement entered with any party by the erstwhile members of the Board of Directors or by the existing shareholders or by the existing promoters of the Corporate Debtor, prior or post the Approval Date and not disclosed to the Resolution Professional or the Resolution Applicant (“ Undisclosed Agreements ”) shall cease to have effect, subject to explicit approval of the Resolution Applicant and / or the new management of the Corporate Debtor post CIRP. Further, the Resolution Plan envisages that the Resolution Applicant shall not be held liable for any such Undisclosed Agreement and shall not be under any obligation to perform the duties or to meet any financial liabilities mentioned in such Undisclosed Agreements.
20.	The Code and the CIRP Regulations entitle all types of creditors of a corporate debtor to submit their claims to the Resolution Professional on or prior to the date on which the Resolution Plan gets approved by the CoC. In the event any other creditors of the Company submit their claims to the Resolution Professional on or prior to the date of approval of the Resolution Plan by the CoC, no amount is liable to be paid to such other creditors who had no claims pending on the date of commencement of the corporate insolvency resolution process
21.	No interest shall be paid on any claims subsequent to the insolvency commencement date.
22.	All claims that may arise in the future, post the Transfer Date, including any claims from any financial creditor, operational creditor, statutory creditor or any other creditor, and pertaining to



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	the period prior to the Transfer Date, shall not sustain and shall be deemed to have been written off / deleted from the books of the Corporate Debtor.
23.	The Resolution Applicant shall thus be under no obligation to make any payment to any creditor for any amount apart from what has been proposed and envisaged in this Resolution Plan
24.	The Resolution Applicant and the Corporate Debtor shall be entitled to share certified copy of this Resolution Plan and the order of the Adjudicating Authority approving this Resolution Plan with third parties, including Governmental authorities.
25.	The Memorandum of Association of the Corporate Debtor shall stand revised. The amendment to the Memorandum of Association, including the revisions to the capital clause therein, shall be pursuant to the order of the Adjudicating Authority and shall not require any additional approval from the shareholders or otherwise
26.	The Resolution Applicant may cause amendments to the Articles of Association of the Corporate Debtor, upon the authorised persons who will be part of managing and operating the affairs of the Company are identified
27.	Any creditor may assign its rights under this Resolution Plan, subject to the transferee unconditionally agreeing to be bound by the terms of this Resolution Plan
28.	The Resolution Applicant has provided for the distribution of amounts in the Resolution Plan as per the various provisions of the Code. Thus, the other unpaid creditors, shareholders and other stakeholders would have nil liquidation value towards the existing and future liabilities. The Resolution Applicant seeks complete



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	exemption from both pecuniary and non-pecuniary liabilities arising out of any act done prior to the Effective Date so as to limit its liability to the extent of amounts proposed in the Resolution Plan.

Orders

34. On hearing the submissions made by the Resolution Professional, and perusing the record, we find that the Resolution Plan filed by **Uma Exports Limited** has been approved by the CoC 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 Resolution Professional and the Resolution Applicant for making the plan effective after approval by this Bench.

35. On perusal of the documents on record and the replies to the clarifications sought by us, we are satisfied that the Resolution Plan is in accordance with sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

36. As far as the question of granting time to comply with the statutory obligations or seeking approvals from authorities is concerned, the Resolution Applicant is directed to do so within one year from the date of this order, as prescribed under section 31(4) of the Code.

37. Further, in Clause V at Page 9 of the Resolution Plan, it has been envisaged that “*the newly appointed board of directors of the Corporate Debtor shall submit a report to the Resolution Professional on a monthly basis regarding*



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the progress of implementation of the Resolution Plan. The remuneration of the Resolution Professional during this period will be the same as his monthly fee for the period of CIRP”.

38. We have perused the reliefs, waivers and concessions as sought and as given in Clause XIV at Pages 18-22 and Clause XVI at Pages 23-26 of the Resolution Plan, in this regard, we refer to section 31 of the Code and rely upon **the** law laid down by the Hon’ble Supreme Court in **Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd**,¹¹ 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.

The relevant part of the **Ghanshyam Mishra judgment(supra)** in this regard is given below:

61. All these details are required to be contained in the information memorandum so that the resolution applicant is aware, as to what are the liabilities, that he may have to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure, that the Corporate Debtor is revived and made a running establishment. The legislative intent of making the resolution plan binding on all the stake-holders after it gets the seal of approval from the Adjudicating Authority upon its satisfaction, that the resolution plan approved by CoC meets the requirement as referred to in sub-section (2) of Section 30 is, that after the approval of the resolution plan, no surprise claims should be flung on the successful

¹¹2021 SCC OnLine SC 313 decided on 13.04.2021.



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resolution applicant. The dominant purpose is, that he should start with fresh slate on the basis of the resolution plan approved.

62. This aspect has been aptly explained by this Court in the case of Committee of Creditors of Essar Steel India Limited through Authorised Signatory (supra).

“107. For the same reason, the impugned NCLAT judgment [Standard Chartered Bank v. Satish Kumar Gupta, 2019 SCC OnLine NCLAT 388] in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with “undecided” claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count.”

39. We also place reliance on the recent 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,



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Corporate, Statutory and others stand extinguished and no demand can be raised for the period prior to the specified date.”

40. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.
41. With respect to the waivers sought in relation to guarantors, the judgment of *Lalit Kumar Jain v Union of India & ors*,¹² 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.
42. In view of the above position of law, the Resolution Plan approved by CoC and being approved by this Adjudicating Authority shall be binding on the Corporate Debtor and other persons, authorities etc. as specified in section 31 of the Code.
43. 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.
44. The Resolution Plan has to 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

¹² 2021 SCC OnLine SC 396 decided on 21.05.2021.



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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 and enabling the Corporate debtor to stand on its feet again.

45. In case of non-compliance of this order or withdrawal of Resolution Plan, the payments already made by the Resolution Applicant shall be liable for forfeiture. Since the plan envisages infusion of Capex and as decided in the 15th CoC meeting a definitive plan shall be put in place by the reconstituted board & implementation ensured. The reconstituted board of the Corporate Debtor shall be responsible for infusion of the capex proposed in the plan as envisaged.
46. Subject to the observations made in this Order, the Resolution Plan is hereby **APPROVED** by this Bench. **The Resolution Plan shall form part of this Order and shall be read along with this order for implementation.** The Resolution Plan thus approved shall be binding on the Corporate Debtor and other stakeholders involved in terms of section 31 of the Code, so that revival of the Debtor Company shall come into force with immediate effect.
47. The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
48. The Resolution Professional shall submit copies of 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.
49. Liberty is hereby granted for moving any application if required in connection with implementation of this Resolution Plan.
50. A copy of this Order is to be submitted to the Registrar of Companies, West Bengal.
51. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except the duties envisaged in the Resolution Plan.



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52. 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 and premises of the corporate debtor through the Resolution Professional to finalise the further line of action required for starting of the operation.
53. In view of the above the **I.A. (IB) No. 554/KB/2023 in C.P. (IB) No. 119/KB/2021 shall stand disposed of accordingly.**
54. C.P. (IB) No. 119/KB/2021 shall be listed on **15-05-2024** along with other IA.
55. The Registry is directed to send e-mail copies of the order forthwith to all the parties for information and for taking necessary steps.
56. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Order signed on the 10th day of April 2024.

SM_LRA/GGRB_LRA