



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

**IA (IB) No. 237/ (KB) /2022
In CP(IB) No. 184/(KB) /2018**

Application under section 30(6) and section 31 (1) of the Insolvency & Bankruptcy Code, 2016 read with regulation 39 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:

Ram Ratan Modi, Resolution Professional of Duncans Industries Limited, having office at CFB F-1, 1st Floor, Paridhan Garment Park 19, Canal South Road, Kolkata – 700 015;

...Applicant

And

In the Matter of:

1. **Sangita Fiscal Services Private Limited**, a company within the meaning of the Companies Act, 2013 and having its registered office at 16, Bonfields Lane, Kolkata – 700 001;
2. **Navnita Tradefin Private Limited**, a company within the meaning of the Companies Act, 2013 and having its registered office at 16, Bonfields Lane, Kolkata – 700 001;
3. **Sudhir Credit Private Limited**, a company within the meaning of the Companies Act, 2013 and having its registered office at 16, Bonfields Lane, Kolkata – 700 001;
4. **Ruchi Trades and Holdings Private Limited**, a company within the meaning of the Companies Act, 2013 and having its registered office at 16, Bonfields Lane, Kolkata – 700 001;

....Financial Creditors

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Versus

In the matter of:

Duncans Industries Limited, a company within the meaning of the Companies Act, 2013 and having its registered office at “Duncans House”, 2nd Floor, 31, N.S. Road, Kolkata – 700 001;

....Respondent / Corporate Debtor

Date of Pronouncement of order: 18.10.2024

Coram:

Smt. Bidisha Banerjee : **Member (Judicial)**
Shri D. Arvind : **Member (Technical)**

Counsel appeared physically / through video Conferencing

Mr. Swatarup Banerjee, Adv.] For the Petitioner
Mr. Rajib Mallick, Adv.]
Mr. Biswaroop Ghosh, Adv.]

Ms. Arunima Lala, Adv.] For the Respondent No.7 in IA(I.B.C)/953(KB)2020
Ms. Natasha Roy, Adv.]
Mr. Kiran Sharma, Adv.] For the Respondent in IA(I.B.C)/953(KB)2020

Mr. Jishnu Saha, Sr. Adv.] For the Applicant in IA(I.B.C)/761(KB)2021
Mr. Avishek Guha, Adv.]
Mr. Ishaan Saha, Adv.]
Ms. Arunika Dutta, Adv.]
Mr. Kaustav De Sarkar, Adv.]

Mr. Rishav Banerjee, Adv.] For the Applicant in IA(I.B.C)/868(KB)2021 and
Mr. A.K. Awasthi, Adv.] IA(I.B.C)/494(KB)2023
Mr. Rajarshi Banerjee, Adv.]

Mr. Shaunak Mukhopadhyay, Adv.] For Applicant in IA(I.B.C)/258(KB)2022
Mr. Supriyo Gole, Adv.]

Mr. Joy Saha, Sr. Adv.] For the Resolution Professional
Ms. Urmila Chakraborty, Adv.]
Ms. Sanjana Nandi, Adv.]

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SMMr. Shaunak Mitra, Adv.] For the State of West Bengal
Mr. Dripto Majumdar, Adv.]

Mr. Vipul Kundalia, Adv.] For the CGST and CX Authority

ORDER

Per Bidisha Banerjee, Member (Judicial):

1. The Court convened through hybrid mode.
2. Heard the Counsel for the parties.
3. This application has been preferred by Resolution Professional of Duncan Industries Limited to seek approval of Resolution Plan in its entirety along with annexure, Schedule, Appendixes including the claims contained therein as submitted by **Uniglobal Papers Private Limited (Lead Partner)** along with reliefs and concessions sought for under the Plan.
4. The Committee of Creditors (CoC in short) has approved the Resolution Plan of **Uniglobal Papers Private Limited (Lead Partner) by majority shareholding of 99.20% vote and Uniglobal Papers Private Limited (Lead Partner) was declared as Successful Resolution Applicant (SRA)** in respect of the Corporate Debtor.
5. **Brief facts of the CIRP process are as submitted by the Resolution Professional:**

- a. Vide order dated 05.03.2020 M/s Duncan Industries Limited was admitted into CIRP and the Applicant was appointed as the Interim Resolution Professional. At the first meeting of the Committee of Creditors held on 25.06.2020, the Applicant herein was confirmed as the Resolution Professional (RP in short) of the Corporate Debtor.
- b. Pursuant to the admission order dated 05.03.2020, the Applicant / RP made a public announcement on 11.03.2020 in accordance with Section 15 of the Code read with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency

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Resolution Process for Corporate Persons) Regulations, 2016 (“CIRP Regulations”) thereby intimating the public regarding the initiation of CIRP of the Corporate Debtor / Duncan Industries Limited, in two widely circulated newspapers namely, Financial Express (English) and Duranta Barta (Bengali).

- c. At its Third Meeting held on 11.08.2020, the COC approved the publication of Form G and the detailed expression of interest under Regulation 36A of the CIRP Regulations and Request for Resolution Plan (“RFRP”) under Regulation 36B of the CIRP Regulations. The publication of Form G was made on 21.08.2020 followed by republication of revised Form G on 18.09.2020.
- d. In response to the invitation for Expression of Interest(EoI), 18 Prospective Resolution Applicants (“PRAs”) submitted their expression of Interest for the submission of Resolution Plan, the 18 PRAs being as under:

Sl. Nos.	Name of Prospective Resolution Applicant
1.	Narendra Tea Company Pvt. Ltd.
2.	IRC Natural Resources Pvt. Ltd.
3.	Western Carriers (India) Ltd.
4.	Sunil Garg, C/o. Asian Tea & Exports Ltd.
5.	Capri Global Holdings Pvt. Ltd.
6.	Jindal Mittal Graha Nirman Pvt. Ltd.
7.	Libra Projects Private Limited Peninsula Infra Properties Pvt. Ltd. Global Mercantile Private Limited
8.	Lalchand Madanlal
9.	PCM Cement Concrete Pvt. Ltd.
10.	Terai Tea Company Limited

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11.	Dewdrops Mercantiles Pvt. Ltd.
12.	Vikram Tea Processor Pvt. Ltd.
13.	Mexico Agro Industries Pvt. Ltd.
14.	Padam Kumar Agarwala
15.	Priority Commerce Pvt. Ltd.
16.	ISG Traders Ltd. (Related Party)
17.	Consortium of: Jindal Mittal Graha Nirman Pvt. Ltd. Libra Projects Pvt. Ltd. Global Mercantile Pvt. Ltd. Sugandh Tea Pvt. Ltd.
18.	Consortium of: Uniglobal Papers

- e. The eligibility of the PRAs was checked under Section 29A of the IB Code and the other applicable provisions of the Code. After complete verification of the documents, the provisional list of eligible Prospective Resolution Applicants (“PRAs”) as the Regulation 36A (10) of CIRP Regulations was issued to the CoC to all the PRAs.
- f. As per Regulation 36A (11) of the CIRP Regulations, the Final List of the PRAs was issued on 20.10.2020 as per Regulation 36A (12) of the CIRP Regulations, to the CoC and the PRAs.
- g. Thereafter, the PRAs were invited according to the eligibility criteria as mentioned in the invitation of Expression of Interest, through the Request for Resolution Plan format (hereinafter referred to as “RFRP”) as approved by the CoC, to submit Resolution Plan pursuant to Regulation 36A (3) (a) of the CIRP Regulations.
- h. Pursuant to the RFRP, only three Resolution Plans were received by the Applicant / RP i.e., **(1) Consortium led by**

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“M/s. Uniglobal Papers Private Limited”, (2) “Mr. Sunil Garg” and (3) “IRC Natural Resources Private Limited”, hereinafter referred to as **“RAs”**.

- i. Detailed discussions over the Resolution Plan were held and the observations were noted during the 9th, 10th, 11th and 13th meeting of the CoC held on 01.03.2021, 09.03.2021, 12.04.2021 and 27.04.2021 and 28.05.2021 respectively.
- j. M/s. IRC National Resources Pvt. Ltd., one of the Resolution Applicants stated that the changes suggested by the COC were not acceptable to them and therefore, they withdrew their Resolution Plan, the members of the CoC decided to proceed with the Resolution Plans submitted by the Consortium led by “M/s. Uniglobal Papers Private Limited” and “Mr. Sunil Garg”.
- k. Thereafter, the CoC provided an opportunity to the other RAs to revise within a given a timeline and resubmit their respective Resolution Plans to the Applicant / RP. The Resolution Applicants submitted their Revised Resolution Plans on 29.03.2021.
- l. In the 13th CoC Meeting held on 28.05.2021, the Applicant / RP placed the revised Resolution Plans before the members of CoC.
- m. The Applicant / RP filed an application vide IA No.47/KB/2021 against the two members of the CoC, to seek clarification whether such members of the CoC were related parties to the Corporate Debtor. Due to pendency of pronouncement of IA No.47/KB/2021, the applicant / RP advised the RAs to submit their revised resolution plan only after the disposal of IA/47/KB/2021 as approved by the CoC in the 17th Meeting.
- n. Vide order dated 25.11.2021, this Tribunal declared two members of the CoC as related parties of the Corporate Debtor and disposed of IA No.47/KB/2021. Where, the Resolution

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Applicants submitted their Final Resolution Plan on the last date i.e. 07.12.2021.

- o. Detailed discussions were held in the 18th CoC Meeting with regard to the last submitted Resolution Plans based on the evaluation matrix and marks were allotted to both the Resolution Plans.
- p. The CoC Members in the 19th Meeting held on 22.12.2021, unanimously decided to adopt the Challenge mechanism after several rounds of discussion considering the applicability of Regulation 39 (1A) of the CIRP Regulations, for maximization of value and completion of the CIRP process within the CIRP period, in a time bound manner.
- q. The Resolution Professional submitted Fair Market Value and Liquidation Value of the Corporate Debtor as per the Valuation Report which is as follows:

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Details of Fair Market Value and Liquidation Value			
Class of Assets	Name of Valuer	Fair Market Value (INR)	Liquidation Value (INR)
Land and Building	Resolute Valuers and Consultants Pvt.	109,63,19,000	87,92,53,000
	Anubhav Agarwal Anil Kr. Saxsena	111,03,00,000	88,61,00,000
	Average (A)	110,33,09,500	88,26,76,500
Plant and Machinery	Resolute Valuers and Consultants Pvt.	4,56,45,000	3,21,20,000
	Anubhav Agarwal Anil Kr. Saxsena	4,05,06,000	3,04,58,000
	Average (B)	4,30,75,500	3,12,89,000
Securities and Financials	Resolute Valuers and Consultants Pvt.	10,21,43,000	1,83,26,000
	Anubhav Agarwal Anil Kr. Saxsena	9,58,83,000	1,72,78,000
	Average (C)	9,90,13,000	1,78,02,000
Average Value		124,53,98,000	93,17,67,500

- r. The CoC Members of the 20th Meeting held on 24.12.2021, unanimously decided to fix the benchmark for the Creditors in the Challenge Mechanism as under:

Benchmark for the Challenge Mechanism as discussed in the 19th COC held on 22.12.2021		
Sl. Nos.	Category of Creditors	Amount proposed (Rs. in Cr.)
1.	Secured Financial Creditor	60
2.	Unsecured Financial Creditors (Non-related)	9.9
3.	Operational Creditors (Trade Creditors)	0.5

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4.	Operational Creditors (Employees)	6
	Total	76.40

- s. However, Mr. Sunil Garg, who had agreed to participate in the challenge Mechanism vide email dated 23.12.2021 on the first right to refusal basis, communicated their decision to refrain from revising the plan amount on the offer made by Uniglobal Papers vide his letter dated 24.12.2021 which was handed over during the CoC meeting and in the presence of all the CoC Members present in the said meeting.
- t. Thereafter, the Applicant sent an email dated 31.12.2021 requesting the resolution Applicants to submit an addendum to the resolution plan submitted by them on 07.12.2021 in response to the observation/queries/changes as suggested by the CoC members along with the revised financial offer as submitted in the 20th CoC meeting to consider the same for voting.
- u. The Resolution Applicants submitted the addendum of the resolution plans on 04.01.2022 which was then discussed in the 21st Meeting of the CoC. Further, the CoC also discussed on the Performance Bank Guarantee.
- v. In the 23rd meeting of the CoC which was held on 28.01.2022, the observations made by the unsecured creditors on the Resolution Plan of Uniglobal Papers Private Limited was put up for discussion. After discussions, representatives of SBI, ARCIL, Sangita Fiscal Services Pvt. Ltd., Sudhir Credit Private Limited, Navnita Tradefin Private Limited, Mhagujkar Agrecon Ltd. and Ruchi Trades & Holdings Pvt. Ltd., having voting shares of 91.72% agreed that both the resolution plans were feasible and viable and that they should be put for voting.

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- w. As per Section 30 (3) of the IBC, 2016, the RP placed the resolution plans for e-voting. The e-voting began on 01.02.2022 and voting window was kept operative for a period of 12 days as per the request of few of the CoC members. The e-voting process was due to end on 12.02.2022. Vide e-mails dated 07.02.2022 and 14.02.2022, certain members of the CoC sought for grant of extension of time for the process of e-voting. Upon consideration of the said requests, the RP granted such extension. The e-voting process came to an end on 24.02.2022, wherein the Committee of Creditors cast their votes and evaluated the Resolution Plans in accordance with Regulation 39 (3) of the CIRP Regulations.
- x. As per Section 30 (4) of the IBC, 2016, the members of the CoC approved the resolution plan of Consortium led by **M/s. Uniglobal Papers Private Limited**, by a vote of **99.20%** of majority.
- y. As per Regulation 39 (3B) of the CIRP Regulations, Uniglobal Papers Private Limited was declared as Successful Resolution Applicant and the RP issued the **Letter of Intent (LOI)** dated 01.03.2021. As per provisions of RFRP, M/s. Uniglobal Papers Private Limited deposited a **security deposit of Rs.15,38,00,000** (Rupees Fifteen crores thirty-eight lakhs) after adjusting the **Earnest Money Deposit amount of Rs.5,05,00,000** (Rupees Five crores five lakhs) previously deposited by them as per the RFRP Clause No.1.5.1.
- z. In compliance under Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Applicants hereby submitting the compliance certificate in **Form H**.

6. **The Successful Resolution Applicant namely** Uniglobal Papers Private Limited, under this Resolution Plan, has provided for a total

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plan value for the Corporate Debtor of **Rs. 173.20 Crores**. It has been noted that as per Valuation Report, Fair Value of Corporate Debtor is for a sum of Rs. 124.53 Crores and Liquidation Value is for a sum of Rs. 93.17 Crores. Thus the Plan Value is more than the Fair Value determined. The amounts claimed, amount admitted and the distribution proposal in the Resolution Plan are as under:

(Amount in Crore)

Sr. No.	Category of Creditor	Amount of Claim	Claim Admitted	Amount provided in the Plan
1.	CIRP Cost	11.50	-	11.50
2.	Secured Financial Creditors	920.31	70.95	70.95
3.	Unsecured Financial Creditors	390.22	32.31	21.05
4.	Operational Creditor (Excluding PF/ESI/Superannuation Dues)	61.63	44.29	1.70
5.	Operational Creditor (PF/ESI/Superannuation Dues)	95.97	54.57	54.00
6.	Operational Creditors – Employees	20.51	11.36	6.00
7.	Operational Creditors – Workmen	4,175.64	-	8.00
8.	Related Party Creditors	87.11	72.60	0.00
9.	Creditors (Other than Financial and Operational)	5.52	5.52	0.00
10.	Total (1+2+3+4+5+6+7+8+9)	5768.41	291.60	173.20

7. Synopsis of mandatory Provisions / Sections / Regulations and their compliance are as under:

Sl. No.	Provisions	Requirement	Compliance established
A. For Resolution Applicant			
1)	25(2)(h)	The Resolution Applicant must meet the criteria approved by the CoC	Yes. Resolution Applicants (RA) has

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Sl. No.	Provisions	Requirement	Compliance established
		having regard to the complexity and scale of operations of business of the CD.	demonstrated in the Resolution Plan its capabilities to enhance the operations of Corporate Debtor as Resolution Applicant.
2)	Section 29A	The Resolution Applicant must be eligible to submit resolution plan.	Yes, The Resolution Professional has received affidavit stating and affirming that RA is eligible to submit the Resolution Plan u/s 29A of the IBC, 2016.
3)	Section 30 (1)	The Resolution Applicant must submit an affidavit stating that it is eligible.	Yes. Attached as annexure to the plan for Resolution Applicant.
B. For Resolution Plan			
1.	Section 30 (2)(a)	The Resolution Plan must provide for the payment of CIRP costs in priority to repayment to further debts of CD in the manner specified by the Board.	Yes. Clause 2.1.1 and 2.1.2 of para 2.1 (Part B) of the Resolution Plan

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Sl. No.	Provisions	Requirement	Compliance established
2.	Section 30 (2) (b) read with Regulation 38 (1)	<p>The Resolution Plan must provide for the payment to the Operational Creditors which shall not be less than-</p> <p style="margin-left: 40px;">(i) Liquidation value due to operational creditors in the event of a liquidation of the CD under Section 53 of the Code; or</p> <p style="margin-left: 40px;">(ii) The amount that would have been paid to operational creditors, if the amount distributed under the resolution plan had been distributed in accordance with order of priority under Section</p>	<p>It is our understanding that the liquidation value to the Operational Creditor is NIL.</p> <p>However, Resolution Plan provides for the payment of Operational Creditors.</p> <p>Clause 2.3.1 and 2.3.2 of Resolution Plan</p>

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Sl. No.	Provisions	Requirement	Compliance established
		<p style="text-align: center;">53(1) of the Code. Whichever is higher.</p> <p>The liquidation value due to the operational creditors under the Resolution Plan shall be given priority of payment over financial creditors.</p>	
3.	Section 30(2) (c) and Regulation 38(1) (b)	<p>The Resolution Plan Must provide for the payment to the Financial Creditors who do not vote in favour of the Resolution Plan, which shall not be less than the amount to be paid to such creditors under Section 53(1) of the Code in the event of liquidation of the corporate debtor.</p> <p>Resolution Plan must provide for payment to the financial creditors, who have right to vote under Section 21(2) of the Code</p>	Clause 2.5.6 and 2.5.7 of the Resolution Plan (Part B)

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Sl. No.	Provisions	Requirement	Compliance established
		and did not vote in favour of the resolution plan, in priority to financial creditors who voted in favour of the plan	
4.	Section 30 (2)(d)	The Resolution Plan must provide for the management of the affairs of the corporate debtor.	Clause 14, 15, 16, 17, & 20 (Adequate means for Implementation and Supervision)
5.	Section 30 (2) (e)	The Resolution Plan must provide for the implementation and supervision of the resolution plan.	
6.	Section 30 (2) (f)	The Resolution Plan should not contravene any of the provisions of the law for the time being in force.	Clause 23 of the Resolution Plan. Resolution Plan does not contravene any of the provisions of the law.
7.	Section 30 (4) (a)	The Resolution Plan is feasible and viable, according to the CoC.	Yes.
8.	Section 30 (4) (b)	The Resolution Plan has been approved by the CoC	Yes, The Resolution Plan has been approved by 99.20%

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Sl. No.	Provisions	Requirement	Compliance established
		with 66% voting share.	voting share.
9.	Section 31(1)	The Resolution Plan must provide provisions for its effective implementation plan, according to the CoC.	Yes, Clause 25.3 of the Resolution Plan
10.	Regulation 38 (1)	The amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors.	Yes, Clause 2.2, 2.3, 2.5.6 and 2.5.7
11.	Regulation 38(1A)	The resolution plan includes a statement as to how it has dealt with the interests of all stakeholders.	Yes, Clause 2 & 7 of the Resolution Plan.
12.	Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation	No. Clause 22 There has been no instance of any failure or any contribution towards failure of implementation of any other resolution plan approved by the Adjudicating

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Sl. No.	Provisions	Requirement	Compliance established
		<p style="text-align: center;">of any resolution plan approved under the Code.</p> <p style="text-align: center;">(ii) If, so whether the Resolution Applicant has submitted the statement giving details of such non-implementation?</p>	Authority at any time in the past by the Resolution Applicant, or any of its related parties.
13.	Regulation 38 (2)(a)	The Resolution Plan must provide for the term of the plan and its implementation schedule.	Yes, Clause 15, 19, 20 & 21 of the Resolution Plan.
14.	Regulation 38 (2)(b)	The Resolution Plan must provide for the management and control of the business of the corporate debtor during its term.	Yes, Clause 15, 19, 20 & 21 of the Resolution Plan.
15.	Regulation 38 (2)(c)	The Resolution Plan must have adequate means of supervising its implementation provision.	Yes, Clause 15, 19, 20 & 21 of the Resolution Plan.
16.	Regulation 38	The Resolution Plan	Yes, Part B (About the

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Sl. No.	Provisions	Requirement	Compliance established
	(3)(a)	should demonstrate that it addresses the cause of default.	Resolution Applicant) and Clause 4 to the Part B under heading “Turnaround Strategy” read with other sections / clauses of the Plan.
17.	Regulation 38 (3)(b)	The Resolution Plan should demonstrate that it is feasible and viable.	
18.	Regulation 38 (3) (c)	The Resolution Plan must demonstrate that it has provisions for its effective implementation.	
19.	Regulation 38 (3)(d)	The Resolution Plan must demonstrate that it has provisions for approvals required and the timeline for the same.	
20.	Regulation 38 (3)(e)	The Resolution Plan must demonstrate that the resolution Applicant has the capability to implement the Resolution Plan.	
C. For Resolution Professional			
21.	Regulation 39 (2)	The Resolution Professional should file applications in respect of transactions observed,	Yes.

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Sl. No.	Provisions	Requirement	Compliance established
		found or determined by him.	
22.	Regulations 39 (4)	The Resolution Professional must provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	Yes. Clause No.1.5.1 of the Resolution Plan

8. Before examining the approvals, reliefs, waivers and extinguishments sought by the Successful Resolution Applicant (SRA), it is essential to understand the status of the various Tea Gardens purported to be owned by the Corporate Debtor on freehold or on Lease hold basis.
9. As per Information Memorandum, there are 16 Tea Gardens out of which, two Tea Gardens are freehold' owned by the Corporate Debtor and balance 14 Tea Gardens are claimed to be owned on Lease basis. The Information Memorandum clearly provide the status of the Tea Gardens in the form of Table.
10. Details of the Tea Gardens owned and the Tea Gardens owned and claimed to be owned on Lease basis in the table is reproduced hereunder:

Sl. No.	Garden Name	Grant Area (In Hectare)	Ownership Status
1.	Birpara	1529.40	Leasehold
2.	Lankapara	1276.25	Leasehold
3.	Dumchipara	1049.31	Leasehold

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Sl. No.	Garden Name	Grant Area (In Hectare)	Ownership Status
4.	Hantapara	1044.09	Leasehold
5.	Nagaisuree	941.13	Leasehold
6.	Gungaram	928.46	Leasehold
7.	Ganganda	746.81	Leasehold
8.	Tulsipara	758.70	Leasehold
9.	Killcotte	636.46	Leasehold
10.	Bagracote – III & IV	569.84	Leasehold
11.	Runglee	409.94	Leasehold
12.	Marybong	395.08	Leasehold
13.	Bagracote – I	124.89	Leasehold
14.	Bagracote-II	116.32	Leasehold
15.	Terai Land	1486.00	Leasehold
16.	Madarihat	270.00	Leasehold

11. According to the abovementioned table only three out of 14 Lease of Leasehold assets are alive and for the balance Tea Gardens, Lease period have expired long back. The table showing the same is reproduced hereunder:

Sl. No.	Garden Name	Valid Upto
1.	Birpara	26.06.2008
2.	Lankapara	21.06.2006
3.	Dumchipara	12.09.2004
4.	Hantapara	02.12.2004

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Sl. No.	Garden Name	Valid Upto
5.	Nagaisuree	30.10.2002
6.	Gungaram	06.08.2008**
7.	Ganganda	18.09.2026*
8.	Tulsipara	17.04.2004
9.	Killcotte	23.08.2025*
10.	Bagracote – III & IV	31.03.2011
11.	Runglee	08.02.2000
12.	Marybong	08.02.2000
13.	Bagracote – I	22.05.2028
14.	Bagracote-II	03.08.2000

12. It has been mentioned in the Information Memorandum that even in respect of three Tea Gardens where the Lease is alive. Tea Gardens situated in Garganda is in possession of M/s. Marico Agro Industries Pvt. Ltd. and Bagracote Tea Garden is not in operation, rest of the Tea Gardens are either in the possession of M/s. Maroco Agro Industries Pvt. Ltd. or not in operation on in operation as per the table reproduced hereunder:

Sl. No.	Garden Name	Status	Address	District
1.	Birpara	Non in Operation	P.O. Birpara – 735204, Dist. Alipurduar, WB	Alipurduar
2.	Hantapara	Merico Agro Industries P. Ltd.	P.O. Madarihat – 735220, Dist. Alipurduar, WB	Alipurduar

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Sl. No.	Garden Name	Status	Address	District
3.	Dumchipara	Merico Agro Industries P. Ltd.	P.O. Ramjhora – 735228, Dist. Alipurduar, WB	Alipurduar
4.	Lankapara	Not in Operation	P.O. Ramjhora – 735228, Dist. Alipurduar, WB	Alipurduar
5.	Ganganda	Merico Agro Industries Pvt. Ltd.	P.O. Ramjhora – 735228, Dist. Alipurduar, WB	Alipurduar
6.	Killcotte	Operational	P.O. Matelli – 735223, Dist. Jalpaiguri, WB	Jalpaiguri
7.	Nagaisuree	Operational	P.O. Matelli – 735223, Dist. Jalpaiguri, WB	Jalpaiguri
8.	Bagracote	Not in Operation	P.O. Bagracote-734501, Jalpaiguri, WB	Jalpaiguri
9.	Gungaram	Not in Operation	P.O. Bagdogra-734222, Darjeeling, WB	Darjeeling
10.	Runglee	Running	P.O. Runglee Rungliot – 734226, Dist. Darjeeling, WB	Darjeeling
11.	Marybong	Nagri Farm Tea Co. Ltd.	P.O. Ghoom – 734102, Dist. Darjeeling, WB	Darjeeling

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Sl. No.	Garden Name	Status	Address	District
12.	Terai Land	Not in Operation	P.O. Asharu – Busty – 733207, Dist. Uttar Dinajpur, WB	Uttar Dinajpur
13.	Madarihat	Not in Operation	P.O. Birpara – 735204, Dist. Jalpaiguri, WB	Jalpaiguri
14.	Tulsipara	Merico Agro Industries Pvt. Ltd.	P.O. Ramjhora – 735228, Dist. Alipurduar, WB	Alipurduar

13. Thus we find that Information Memorandum is very clear on the status of several Tea Gardens owned on Freehold or purportedly as Leasehold basis the Corporate Debtor.

14. Apart from the freehold gardens mentioned in Serial No. 15 & 16 and the Table mentioned in para 10 of this Order, there are disputes in regard to the other Tea Gardens on;

- a. Validity of Lease Period
- b. Possession of Gardens (some of which are under the possession of M/s. Merico Agro Industries Pvt. Ltd. and one Tea Garden is with Nagri Farm Tea Co. Ltd.

15. In relation to the disputes, several orders have been passed by this Adjudicating Authority in the past, all of which were challenged before the Hon'ble NCLAT. Hon'ble NCLAT vide its order in Company Appeal (AT) (Insolvency) No. 593 of 2022 & IA No. 3712 of 2022, Company Appeal (AT) (Insolvency) No. 628 of 2022, Company Appeal (AT) (Insolvency) No. 754 of 2022, Company Appeal (AT) (Insolvency)

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No. 672 of 2022 & Company Appeal (AT) (Insolvency) No. 907 of 2022 has passed detailed orders.

16. The judgement of Hon'ble NCLAT, Principal Bench, New Delhi passed on 02.08.2024, in the matter of **Company Appeal (AT) (INS) No. 593 of 2022 & IA No. 3172 of 2022 (Ram Ratan Modi, Resolution Professional of Duncans Industries Limited Versus Sammellan Tea and Beverages Pvt. Ltd. & Ors.)** elaborates as under:

“...120. In view of the foregoing discussions and conclusions, we held that leasehold rights of the Corporate Debtor subsists in three Tea Gardens, namely – Garganda, Kilcott and Bagracote, where the lease had been renewed and valid as follows:

Sl. No.	Tea Estate	Valid Upto
1.	Garganda	08.09.2026
2.	Kilcott	23.08.2025
3.	Bagarcote Div. I	22.05.2028

121. The orders rejecting the IAs of RP insofar as the aforesaid Tea Gardens are concerned are unsustainable and deserve to be set aside. In view of the above, all the Appeal(s) are disposed of in following manner:

- I. Company Appeal (AT) (Insolvency) No. 672 of 2021 is partly allowed. The order dated 28.05.2021 passed in IA No. 1256/KB/2020 is partly allowed, insofar as Garganda Tea Garden is concerned. The order of the Adjudicating Authority with respect to other Tea Gardens i.e., Hantapara, Tulsipara and Dumchipara is affirmed.
- II. II. Company Appeal (AT) (Insolvency) No. 593 of 2022 is partly allowed. Order dated 21.04.2022 in IA No. 1111/KB/2021 set aside, insofar as it relates to Tea Garden Kilcott. Rest of the order is affirmed.

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- III. *Company Appeal (AT) (Insolvency) No. 754 of 2022 is partly allowed. Order dated 09.05.2022 passed in IA No. 665/KB/2021, insofar as it relates to Bagracote Div. I is set aside. Rest of the order is affirmed.*
- IV. *Company Appeal (AT) (Insolvency) No. 628 of 2022 and Company Appeal (AT) (Insolvency) No. 907 of 2022 are dismissed.*
- V. *it is held that Tea Gardens of Garganda, Kilcott and Bagracote are assets of the Corporate Debtor, to which the RP was entitled to be handed over the possession. However, in sequence of the events and facts that these three Tea Gardens having been run by Merico and Sammelan and in the Tea Gardens, thousands of workers are working, we are of the view that ends of justice will be served in holding that RP shall be deemed to be in possession of the aforesaid Tea Gardens and operation of these three Tea Gardens shall henceforth be under the supervision and control of the RP till the CIRP continues.”*

17. The said order, thus confirms that Leasehold rights of Corporate Debtor are subsisting in three Tea Gardens only namely Garganda, Kilcott and Bagarcote Div. I, where the Lease has been renewed and are valid as follows:

Sl. No.	Tea Estate	Valid upto
1.	Garganda	08.09.2026
2.	Kilcott	23.08.2025
3.	Bagarcote Div. I	22.05.2028

18. Therefore, we make it clear that apart from these three Tea Gardens, Two Tea Gardens whose freehold ownership has not been

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disputed namely Terai Land and Madarihat, the SRA will not be automatically be entitled to claim those as assets of Corporate Debtor. In regard to the rest of the Tea Gardens, for which lease period has expired or the Tea Gardens are in possession with others, SRA is free to take steps for renewal of the Leases and get the possession of the same, if granted. This is as per orders are passed by Hon'ble NCLAT dated 02.08.2024.

19. We have noted that in Para 384 of the Application (Page 53 of the Resolution Plan), the SRA has declared as under:

“By virtue of the order of the NCLT approving this Resolution Plan, all consents, leases & licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Company by the Government of West Bengal or any other authority, shall be deemed to continue without disruption for the benefit of the Company and the Resolution Applicant, in accordance with S. 31(4) of IBC or the time period set out in the relevant applicable law, whichever is later. It is further envisaged that on approval of the Resolution Plan lease tenure which has already expired on the CIRP commencement date would be renewed by the respective State Authority within the period of 1 year from the effective date. No payments are envisaged against any dues which are pertaining to the period prior to the CIRP commencement date except for lease renewal charge to be incurred for renewal of the lease. However, the said effects shall not form part of the Condition Precedents for implementation of the said Resolution Plan.” In light of the above, we proceed to examine the Resolution Plan, and in particular, the waivers, reliefs and approvals sought.

20. The approvals, waivers and extinguishments sought by the Resolution Applicant from this Adjudicating Authority are enumerated below for successful implementation of the Resolution Plan:

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Sl. No.	Referred Clause	Reliefs & Concessions sought for	Our inference	Status
1)	9.1	Consents and approvals, authorizations etc.		
2)		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, leases & 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.	Whatever the immunity is granted is strictly under Section 32A of the I&B Code.	Granted. Subject to our directions in the para 18 (supra) and other paras.
3)	9.2	Licenses/ Approvals/Contractual Rights and Benefits		
4)	9.2.1	The Resolution Applicant has assumed that upon approval of this Resolution Plan by the NCLT all subsisting consents, 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	Whatever the immunity is, it is granted strictly under Section 32A of the I&B Code.	Granted in accordance with law to the extant permissible. For the Tea Gardens, where the

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Sl. No.	Referred Clause	Reliefs & Concessions sought for	Our inference	Status
		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 96 months and till such time, the Resolution Applicant will apply for fresh licenses.		Lease period has expired, it is open for SRA to make application to the Lessor or if renewal application has already been made, pursue the same.
5)	9.2.2	For the avoidance of doubt, it is hereby clarified that all consents, 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 Closing Date, shall be deemed to continue without disruption for the benefit of the Corporate Debtor for a period of 96 months or until renewed by the relevant authorities, whichever is later.	All regulatory compliances and, the payment of filing fees on documents etc. will have to be complied with. The authorities cannot be expected to grant suo moto approval for such activities	Not Granted. Approach the Appropriate Forum / Authority for the same.

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Sl. No.	Referred Clause	Reliefs & Concessions sought for	Our inference	Status
		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, 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 steps required to address the same and take steps to remedy the same to the extent practically possible.	without the forms being filed or necessary compliances being done on behalf of the corporate debtor.	
6)	9.2.3	It is further clarified that on approval of the resolution plan by NCLT, the District Magistrate/Land & Land Reforms Department of Government of West Bengal/Tea Board/any other relevant authority shall be bound to continue and renew the lease of all the Tea Gardens of the Corporate Debtor. Resolution Applicant would make necessary	All regulatory compliances and, the payment of filing fees on documents etc. will have to be complied with. The authorities cannot be	Not Granted. Approach the Appropriate Forum / Authority for the same.

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Sl. No.	Referred Clause	Reliefs & Concessions sought for	Our inference	Status
		application/ representation before the District Magistrate/Tea Board/Land & Land Reforms Department of Government of West Bengal/any other relevant authority for implementation of the Resolution Plan wherever required.	expected to grant suo moto approval for such activities without the forms being filed or necessary compliances being done on behalf of the corporate debtor.	
7)	9.2.4	For the sake of clarity, it is further clarified that on approval of the resolution plan, relief will be provided to the Corporate Debtor under the control of the Resolution Applicant from any action taken by Tea Board in respect of any SPTF Loan, interest, penalty, or any other charges for the period prior to insolvency commencement date. Tea Board has already filed their claims with the RP which has been admitted by RP. Any	Whatever the immunity is granted strictly under Section 32A of the I&B Code.	Granted in accordance with law to the extant permissible.

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Sl. No.	Referred Clause	Reliefs & Concessions sought for	Our inference	Status
		<p>payment in respect of such claims shall be dealt with as envisaged under this Resolution Plan and all such claims/liabilities of Tea Board shall be deemed to be settled upon payment of amounts as envisaged in this Resolution Plan. Further after approval of the Resolution Plan by NCLT, the Tea Board shall accept, grant and/or sanction any application made towards TCMCO license, development proposals, transfer, subsidies, etc, related to the tea gardens held by the Corporate Debtor under the control of the Resolution Applicant.</p>		
8)	9.2.5	<p>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.</p>	<p>Whatever the immunity is granted strictly under Section 32A of the I&B Code.</p>	Granted in accordance with law.

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Sl. No.	Referred Clause	Reliefs & Concessions sought for	Our inference	Status
9)	9.3	Tax and stamp duty exemptions		
10)	9.3.1	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.	This is for the relevant and / or appropriate authority to consider, and not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority.	Not Granted. We suggest to approach the appropriate forum / Authority.
11)	9.3.2	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,	This is for the relevant and / or appropriate authority to consider, and not in the nature of a waiver, concession or relief to be	Not Granted. We suggest to approach the appropriate forum / Authority.

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Sl. No.	Referred Clause	Reliefs & Concessions sought for	Our inference	Status
		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 DIL pursuant to the acceptance of this Resolution Plan. Further direction be issued to the state authorities for suitably amending all the licenses and 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.	granted by this Adjudicating Authority.	
12)	9.3.3	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 50B, 50C, 50CA, 56 and 115JB under	This is for the relevant and / or appropriate authority to consider, and not in the nature of a waiver, concession or	Not Granted. We suggest to approach the appropriate forum / Authority.

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Sl. No.	Referred Clause	Reliefs & Concessions sought for	Our inference	Status
		the Income-tax Act as well as the Central 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.	relief to be granted by this Adjudicating Authority.	
13)	9.4	Dispensation from all the cases whether listed or not in the Information Memorandum and not proposed to be settled as per the Resolution Plan.		
14)		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	Whatever the immunity is granted strictly under Section 32A of the I&B Code.	Granted in accordance with law as laid down b Hon'ble Apex Court in Ghanshyam Mishra in CA 8129 of 2019.

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Sl. No.	Referred Clause	Reliefs & Concessions sought for	Our inference	Status
		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.		
15)	9.5	Restoration of Essential Services including electricity and water		
16)		It has come to the knowledge of the Resolution Applicant that some of the essential services including but not limited to electricity and water has been disconnected/discontinued in the Tea Gardens. Accordingly, 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 CESC, WBSEB, WBSEDCL,	Whatever the immunity is granted strictly under Section 32A of the I&B Code.	Granted in accordance with law.

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Sl. No.	Referred Clause	Reliefs & Concessions sought for	Our inference	Status
		WBPDCL, etc. 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 Tea Gardens of the Corporate Debtor.		
17)	9.6	Payment of PF/ESI/Superannuation Dues		
18)		Detailed garden wise bifurcation of the claims by the Operational Creditors (OC) - PF/ESI/Superannuation Dues (namely dues of EPFO Darjeeling, DAIL Provident Institution, DIL Provident Fund, EPFO Jalpaiguri, DAIL Senior Staff Superannuation Fund and EPFO Siliguri as enumerated in Information Memorandum), though not available as per the Information memorandum, but has separately been provided by the Resolution	Whatever the immunity is granted strictly under Section 32A of the I&B Code.	Granted strictly in accordance with law permissible to that extant and subject to the compliance of order passed by Hon'ble NCLAT on

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		Professional. It is assumed that the possession/control of all such tea gardens which were with the Resolution Professional as on the CIRP commencement date will revert back to the Corporate Debtor subsequent to the order by the Adjudicating Authority approving the Resolution Plan of the Resolution Applicant. As such, in case any admitted claims in relation to PF/ESI/Superannuation dues specifically pertains to the tea gardens which are operated and managed by third parties then the said claims shall be paid after the said tea gardens (which are being operated and managed by third parties) come back into the possession/control of the Resolution Applicant.		02.08.2024 in Company Appeal (AT) (INS) No. 593 of 2022 & IA No. 3172 of 2022 (Ram Ratan Modi, Resolution Professional of Duncans Industries Limited Versus Sammelan Tea and Beverages Pvt. Ltd. & Ors.) and outcome of all the pending IAs, if any.
19)	9.7	Cancellation of the act of taking over possession of 94.17 acres of Land resumed of Gungaram Tea Estate by Land and Land reform, Phansidewa, Govt. of West Bengal		
		Upon approval of the Resolution	Whatever the	Not

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Sl. No.	Referred Clause	Reliefs & Concessions sought for	Our inference	Status
		<p>Plan, the take-over/resumption/vesting/ acquisition of 94.17 acres of land of Gungaram Tea Estate by Land and Land reform, Phansidewa, Govt of West Bengal shall be deemed to be cancelled since the same has been carried out during the CIRP period. Insolvency & Bankruptcy Code, 2016 is an overriding act and supersedes all prevalent acts and no take-over/resumption/vesting/ acquisition of land can happen during the CIRP period. Accordingly, subsequent to the approval of Resolution Plan the said land of 94.17 acres of Gungaram's Tea Estates shall be returned to the possession of the Corporate Debtor under the management of Resolution Applicant.</p> <p>In the event that the Resumption notice and possession notice cannot be cancelled by the Govt of West Bengal due to the requirement of expansion of the</p>	<p>immunity is granted strictly under Section 32A of the I&B Code.</p>	<p>Granted.</p> <p>We suggest to approach the appropriate forum / Authority.</p> <p>Refer para 17 of the order.</p>

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		Bagdogra Airport, then Land & Land Reforms Dept, Govt of West Bengal shall pay for acquisition compensation under the RTFCLARR Act of 2013 for the 100% market value of land, tea bushes, trees and structure, including solatium to be assessed by the Land Acquisition Collector Office within 3 months and make payment of the same within 6 months of the approval of the Resolution Plan.		
20)	9.8	Regularisation/Renewal of Tea Garden Leases & Licenses and Reclaiming of possession of all Tea Gardens. The following directions are required from the Adjudicating Authority in the favour of Resolution Applicant which are of paramount importance to help sustain the Corporate Debtor-as a going concern entity. These points have been covered elsewhere in the plan but are being reiterated here again to imply the necessity of these directions for the survival of the Corporate Debtor going forward.		
21)		On approval of the resolution plan by NCLT, the District Magistrate/Land & Land Reforms Department of Government of West Bengal/Tea Board/ any	This is for the relevant and / or appropriate authority to consider, and	Not Granted. We suggest to approach

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		other relevant authority shall be bound to continue and renew the lease of all the Tea Gardens of the Corporate Debtor irrespective of their validity status. The Adjudicating Authority is further requested to pass an order stating that no detrimental action be taken by the State Government or any other authority against the lease of the Tea Gardens of the Corporate Debtor resulting in the loss of the possession and/or control of the Tea Gardens by the Corporate Debtor. Further it is clarified that the Resolution Applicant would make necessary application/ representation before the District Magistrate/Tea Board/Land & Land Reforms Department of Government of West Bengal/any other relevant authority for implementation of the Resolution Plan wherever required.	not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority.	the appropriate forum / Authority. Refer para 17 of this order.
22)		Upon approval of the Resolution Plan by NCLT, all the Operation and Management Agreements in	This is for the relevant and / or appropriate	Not Granted.

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		<p>respect of tea gardens entered into by the Corporate Debtor with Merico Agro Industries Private Limited, Nagrifarm Tea Company Ltd or any other third party, whether expired or running, shall be deemed to be cancelled. Accordingly, the concerned parties including but not limited to Merico Agro Industries Private Limited and Nagrifarm Tea Company Ltd would be liable to vacate/release the tea gardens and revert back the tea gardens to the Corporate Debtor's possession and control. The specific Operation and Management Agreements that shall be deemed to be cancelled, presently under the knowledge of the Resolution Applicant have been listed out in this Clause for clarity purpose, however, any other agreement entered into prior to the Closing Date which subsequently come to knowledge of the Resolution Applicant shall also be deemed to be cancelled. Agreements</p>	<p>authority to consider, and not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority.</p>	<p>We suggest to approach the appropriate forum / Authority.</p>

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		<p>currently under the knowledge of Resolution Applicant are</p> <p>(1) Agreement dated 29th January, 2018 for Garganda and Hantapara Tea Estates with Merico Agro Industries Pvt. Ltd. for limited period of 5 years;</p> <p>(2) Agreement dated 20th July, 2018 for Tulsipara Tea Estate with Merico Agro Industries Pvt. Ltd. for limited period of 5 years:</p> <p>(3) Agreement dated 19th August, 2019 for Dumchipara Tea Estate with Merico Agro Industries Pvt Ltd. for limited period of 10 years; and</p> <p>(4) Agreement dated 5th July, 2013 for Marybong Tea Estates with Nagrifarn Tea Company Ltd. for period of 3 years which has already been expired. The Monitoring Committee (on behalf of the Corporate Debtor) shall cancel terminate all such agreements including those specifically specified herein and</p>		

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		shall reclaim possession of the said tea gardens under the control of the Corporate Debtor on approval of the Resolution Plan by Adjudicating Authority.		
23)		In case the Operations and Management Agreements that are currently ongoing & have not expired and cannot be cancelled by the Adjudicating Authority, then the Adjudicating Authority is requested to pass an Order directing the third party to return possession of the Tea Garden to the Corporate Debtor upon expiry of the validity period of the Agreement. The Agreements which are currently valid are as follows: 1) Agreement dated 29th January, 2018 for Garganda and Hantapara Tea Estates with Merico Agro Industries Pvt. Ltd. for limited period of 5 years; 2) Agreement dated 20th July, 2018 for Tulsipara Tea Estate with Merico Agro Industries Pvt. Ltd. for limited period of 5 years; and 3) Agreement dated 19 th August,	Whatever the immunity is granted strictly under Section 32A of the I&B Code.	Granted strictly in accordance with law permissible to that extant and subject to the compliance of order passed by Hon'ble NCLAT on 02.08.2024 in Company Appeal (AT) (INS) No. 593 of 2022 & IA No. 3172 of 2022 (Ram Ratan Modi,

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Sl. No.	Referred Clause	Reliefs & Concessions sought for	Our inference	Status
		2019 for Dumchipara Tea Estate with Merico Agro Industries Pvt Ltd. for limited period of 10 years. Accordingly, the said Third Parties be directed to return possession of the Tea Gardens to Corporate Debtor upon expiry of the respective Agreement and the respective District Magistrate be directed to ensure such peaceful handover.		Resolution Professional of Duncans Industries Limited Versus Sammelan Tea and Beverages Pvt. Ltd. & Ors.).
24)		That on expiry or cancellation of the Agreements, no claims/contentions of the current Agreement holders will be entertained and no claims will be paid on account of the period of investments made during their current Management. Further upon handover and peaceful possession of the above mentioned Tea Gardens, a forensic audit of all assets and liabilities will be made by a forensic auditor and subsequently claims will be submitted for payment of pilferage of assets and or unpaid liability of	Whatever the immunity is granted strictly under Section 32A of the I&B Code.	Granted in accordance with law to the extant permissible. Refer para 17 of this order.

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Sl. No.	Referred Clause	Reliefs & Concessions sought for	Our inference	Status
		Wages/Creditors/Statutory, if any, by the current Agreement holders. Pursuant to the approval of the Resolution Plan by the NCLT, Agreement holders to pay any claims made by the RA/CD for use/pilferage/misappropriation of any assets of the CD in relation to the respective tea gardens.		
25)		In light of the new information surfaced before the Resolution Applicant it is seen that the Birpara, Bagracotte, Nagaisuree, Killcott and Runglee Tea Gardens have been illegally occupied by third parties (namely Merico Agro Industries Pvt Ltd and Sammellan Tea & Beverages Pvt Ltd) and the said third parties have initiated illegal business activity in the said tea gardens subsequent to the initiation of CIRP proceedings without any authority. Accordingly, the Adjudicating Authority is MAR PAUL requested to pass an order directing such third parties holding illegal	This is for the relevant and / or appropriate authority to consider, and not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority.	Not Granted. We suggest to approach the appropriate forum / Authority.

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Sl. No.	Referred Clause	Reliefs & Concessions sought for	Our inference	Status
		possession/occupancy on Birpara, Bagracotte, Nagaisuree, Killcott and Runglee Tea Gardens to vacate the tea gardens and release such illegal possession back to the Corporate Debtor and specific order to this extent is passed by the Hon'ble NCLT Kolkata bench while approving the resolution plan and restoring the possession back to the Corporate Debtor, which was existing as on the CIRP commencement date. On approval of the Resolution Plan by the Adjudicating Authority, it shall be binding on the State Government through its Labour Department and Land & Land Revenue Department and/or any other Government Body to issue appropriate Orders in favour of the Resolution Applicant which will assist in vacating the aforementioned tea gardens and get the possession of the same for successful implementation of the Resolution Plan. The respective		

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Sl. No.	Referred Clause	Reliefs & Concessions sought for	Our inference	Status
		District Magistrate to ensure that peaceful possession of the said Tea Gardens are immediately handed back to the Corporate Debtor.		
26)		That on above handover, no claims/contentions of the current illegal occupants will be entertained and no claims will be paid on account of the period of investments made during their current illegal occupation. Further upon handover and peaceful possession of the above mentioned Tea Gardens, a forensic audit of all assets and liabilities will be made by a forensic auditor and subsequently claims will be submitted for the payment of pilferage of assets and or unpaid liability of Wages/Creditors/Statutory, if any, by the current illegal occupants. On approval of the resolution plan such illegal occupants on any claims made by the RA/CD will have to pay for use/pilferage/misappropriation of	This is for the relevant and / or appropriate authority to consider, and not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority.	Not Granted. We suggest to approach the appropriate forum / Authority.

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Sl. No.	Referred Clause	Reliefs & Concessions sought for	Our inference	Status
		any assets of the CD.		
27)		It is further re-iterated that any statutory liability or government dues, by whatever name called, as on the CIRP commencement date is part of OC dues and all such liabilities gets settled with approval of the plan which is also binding on all the stakeholders.	Whatever the immunity is granted strictly under Section 32A of the I&B Code.	Granted.
28)		RA do not agree to provide any additional funds towards any liabilities either on or after the approval of the plan and that the payments envisaged in the Resolution Plan considers the settlement of all the liabilities relating to the period prior to Closing Date.		Granted.

21. Arguments have been advanced that Provident Fund and Gratuity dues have to be paid in full. Reference to that effect is made to **Jet Aircraft Maintenance Engineers Welfare Association Vs. Ashish Chhawchharia, Resolution Professional of Jet Airways (India) Ltd. & Ors. (2022) SCC Online NCLAT 418**, where the Hon'ble NCLAT has held that:

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“132. With regard to payment of gratuity to the workmen and employees, we are of the view that workmen and employees are entitled to gratuity payments, due to them before the insolvency commencement date. Any claim towards gratuity payment after insolvency commencement date is not admissible, since the workmen and employees having demerged into AGSL and their services were not deemed to have been terminated. Thus, gratuity payment under the provisions of Payment of Gratuity Act, 1972 is confined only to the date of insolvency commencement date and Successful Resolution Applicant is also liable to make the said payment. It goes without saying that with regard to payment of gratuity to workmen, any amount towards gratuity paid under the Resolution Plan is liable to be deducted and adjusted.

133. In view of forgoing discussions, we have found that nonpayment of full provident fund amount to the workmen and employees and the gratuity payment till the insolvency commencement date amounts to noncompliance of provisions of Section 30(2)(e) of the Code. However, in the facts of the present case, all other parts of the Resolution Plan have not been found to infirm in any manner, we do not find any case for interfering with the order approving the Resolution Plan. The ends of justice will be served in issuing direction to Successful Resolution Applicant to make payment of provident fund and gratuity to the workmen and the employees as directed above.”

22. We would rely on the judgment of **Hon’ble Apex Court in Sunil Kumar Jain Vs. Sundaresh Bhatt, reported in (2022) 7 SCC 540**, wherein it has been held as follows:

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“Considering Section 36(4) of IBC and when the provident fund, gratuity fund and pension fund are kept out of the liquidation estate assets, the share of the workmen’s dues shall be kept outside the liquidation process and the workmen / employees concerned shall have to be paid the same out of such provident fund, gratuity fund and pension fund, if any, available and the Liquidator shall not have any claim over such funds.”

23. Further in **Savan Godiwala v. Apalla Siva Kumar reported in 2020 SCC OnLine NCLAT 191**, the Hon'ble NCLAT has observed as under:

“Thus it is the settled position of law, that the provident fund, the pension fund and the gratuity fund, do not come within the purview of 'liquidation estate' for the purpose of distribution of assets under Section 53 of the Code. Based on this, the only inference which can be drawn is that Pension Fund, Gratuity Fund and Provident Fund can't be utilised, attached or distributed by the liquidator, to satisfy the claim of other creditors. Sec 36(2) of the IB Code 2016 provides that the Liquidator shall hold the Liquidation Estate in fiduciary for the benefit of all the Creditors. The Liquidator has no domain to deal with any other property of the corporate debtor, which is not the part of the Liquidation Estate.

24. We also note the decision rendered by Hon'ble NCLAT in C.A. 575 of 2023, the relevant para of the judgment is reproduced for reference:

“When we peruse the records, we find that the Appellant did not file its claims within the period which was stipulated in the Public Announcement. Nor did it file its claims within the period of 90 days from the insolvency commencement date.

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From a plain reading of the CIRP Regulations, RP can accept claims as per extended period as provided in Regulation 12(1) of CIRP Regulations. After the lapse of extended period of 90 days of the insolvency commencement date, the RP is not obliged to accept any claim. Prima facie, the said CIRP regulation does not provide any discretion to RP for admitting their claim after the extended period."

25. We have thus noted that resolution professionals cannot accept any claim including that of Authorities like EPFO, after the lapse of stipulated period as per public announcement or any subsequent extended period, if granted by this Adjudicating Authority, whichever is later.
26. Arguments have also been advanced that PF dues should be paid in full along with accrued interest and damages.
27. Section 36 (a) (iii) states that all sums due to any workman or employees from the Provident Fund, Gratuity Fund and Pension Fund need to be excluded. Sums due are liabilities of the corporate debtor and obviously Section 36 (4) which deals with assets that are required to be kept out of the liquidation assets may not be talking about liabilities that are and required to be kept out of liquidation assets.
28. Therefore, this provision contemplates availability of funds from which sums are required to be paid out. If no funds are available, the question of keeping Provident Fund, Gratuity Fund and Pension Fund outside the purview of the liquidation assets does not arise. Therefore, considering the judgments passed by the Appellate Forums we direct as under:
- a. Resolution plan should provide for full payment of PF and Gratuity from funds, if any available, earmarked separately, regardless of delay in filing claim.
 - b. If funds are not available, claims made within the stipulated period as per public announcement or any subsequent extended

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period, if granted by this Adjudicating Authority, whichever is later, str to be paid in full.

- c. If claims contain damages imposed under Section 14(b) of EPF Act, after the initiation of CIRP the same need not be paid.
- d. If the claims contain damages imposed prior to the initiation of CIRP of the corporate debtor, the same may be waived off by the Central Board under Section 32(b) of the EPF Scheme, 1952 if applied for;

29. A bare perusal of the extracts / excerpts from the Plan establishes that the **Resolution Plan has been approved with 99.20% 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 its approval.

30. On perusal of the documents on record, supported by an affidavit of the Resolution Professional, we accord our satisfaction that the Resolution Plan as approved by the CoC, is in accordance with sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, as enumerated supra.

31. We have also perused the reliefs, waivers and concessions as sought and as given in **Paragraph 9 at page 428 to 435** of the Resolution Plan of the Resolution Plan. While some of the reliefs, waivers and concessions sought by the Resolution Applicant come within the purview of the Code, 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

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mind the object of the Code. No reliefs, waivers and concessions that fall within the domain of other government department/authorities, are granted. However, the reliefs, waivers and concessions that pertain to other governmental authorities/departments may be dealt with the respective competent authorities/forums/offices, Government or Semi Government of the State or Central Government with regard to the respective reliefs, waivers and concessions whenever sought for.

32. It is almost trite and fairly well settled that the Resolution Plan must be consistent with the extant law. The Resolution Applicant shall make necessary applications to the concerned regulatory or statutory authorities for renewal of business permits and supply of essential services, if required, and all necessary forms along with filing fees etc. and such authority shall also consider the same keeping in mind the objectives of the Code, which is essentially the resolving of the insolvency of the Corporate Debtor.
33. 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.
34. 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 Private Limited vs. Edelweiss Asset Reconstruction Company Limited reported in MANU/SC/0273/2021: (2021)9SCC657: [2021]13SCR737**, wherein the Hon'ble Apex 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...*"
35. 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, Civil**

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Writ Petition No. 6048/2020 with 6204/2020 reported in (2023) ibclaw.in 42 HC 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.*”

36. 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.
37. 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 reported in MANU/SC/0352/2021: (2021) 9 SCC 321: (2021) ibclaw.in 61 SC**, wherein the Hon’ble Apex 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.
38. 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.
39. As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities

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is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.

40. 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.
41. Subject to the compliance of decisions of Hon'ble NCLAT Principal Bench, New Delhi passed on 02.08.2024, in the matter of **Company Appeal (AT) (INS) No. 593 of 2022 & IA No. 3172 of 2022 (Ram Ratan Modi, Resolution Professional of Duncans Industries Limited Versus Sammelan Tea and Beverages Pvt. Ltd. & Ors.)** made in the said Order and compliance of directions in Para 17 & Para 24 (supra), the Resolution Plan in question is hereby **APPROVED** by this Bench. The Resolution Plan shall form part of this Order.
42. 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.
43. The Moratorium imposed under section 14 shall cease to have effect from the date of this order.
44. 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.
45. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.
46. Liberty is hereby granted for moving any Application if required in connection with implementation of this Resolution Plan.
47. A copy of this Order is to be submitted in the Office of the Registrar of Companies, West Bengal.
48. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.

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49. The Resolution Professional is further directed to handover all records, premises/factories/documents to the Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records/premises/factories/documents through the Resolution Professional to finalise the further line of action required for starting of the operation.
50. 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.
- 51. The Interlocutory Application being IA (IB) No. 237/ (KB) /2022 shall stand disposed of accordingly.**
52. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee,
Member (Judicial)**

Signed on this, the 18th day of October, 2024

M. Jana (P.S.)