

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 1842/KB/2023

In

Company Petition (IB) No. 1540/KB/2019

An Application under Section 30(6) and 31(1) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons), 2016.

IN THE MATTER OF:

Jai Kishore Gupta

... Operational Creditor.

Verses

Balaji Paper and Newsprint Private Limited ... Corporate Debtor.

And

IN THE MATTER OF:

Mrs. Rachna Jhunjunwala,

Resolution Professional of Balaji Paper and Newsprint Private Limited

... Applicant.

Date of Pronouncement: January 12, 2024.

CORAM:

SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)

SHRI D. ARVID, MEMBER (TECHNICAL)

APPEARANCE:

For the Resolution Professional:

Mr. Shaunak Mitra, Adv.

Mr. Pranay Agarwal, Adv.

Ms. Ankita Baid, Adv.

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C.P. (IB) No. 1540/KB/2019

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. This Court assembled through a blended.
2. Heard the Learned Counsel, Shri Saunak Mitra, appearing on behalf of the Resolution Professional of Balaji Paper and Newsprint Private Limited.

Prologue

3. This instant application has been preferred by the Resolution Professional of **Balaji Paper and Newsprint Private Limited**, Corporate Debtor, hereinafter referred to as “Applicant” under Section 30(6) and 31(1) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons), 2016 seeking the direction from this Adjudicating Authority to approve and final sanction of the Resolution Plan of the Corporate Debtor, as approved by the Committee of Creditors, hereinafter referred to as “CoC” in respect of the Corporate Insolvency Resolution Process of **Balaji Paper and Newsprint Private Limited**.
4. The Learned Counsel, Mr. Shaunak Mitra for the Applicant submits that the “Resolution Plan” dated July 12, 2023 (resubmission date September 19, 2023) submitted by **PINAX PAPER MILLS PRIVATE LIMITED AND PINAX STEEL INDUSTRIES PRIVATE LIMITED**, hereinafter referred to as Successful Resolution Applicant (for brevity “SRA”) was placed before the Committee of Creditors of the Balaji Paper and Newsprint Private Limited in its 13th Meeting, held on Sept 25,

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2023, and the CoC with 100% voting share, with e-voting conducted from 26.09.2023 – 07.10.2023 approved the Resolution Plan submitted by **Pinax Paper Mills Private Limited and Pinax Steel Industries Private Limited** (SRA).

5. Further, it is contended that the Letter of Intent (“LoI”) was issued on October 07, 2023, by the Resolution Professional on behalf of the CoC of the Corporate Debtor, annexed at pages 134-138 as Annexure “O” which was unconditionally accepted by the SRA and furnished the Performance Security of an amount of Rs. 5,40,00,000/- on 13.10.2023 through RTGS under the terms of Request for Resolution Plan, for brevity “RFRP” issued by the RP, and to the satisfaction of the Committee of Creditors and the Resolution Professional. The Copy of the Bank statement evidencing the furnishing of performance Security provided by the SRA is annexed at page 137 as Annexure “O” to the Application seeking approval of the Resolution Plan.

Particulars of the Corporate Debtor

6. Balaji Paper and Newsprint Private Limited (Corporate Debtor herein) is a company within the meaning of the Companies Act, 2013, having its registered address at 23, Brabourne Road, Kolkata 700001. The Corporate Debtor is a company is engaged in manufacture of paper and paper products. The registered office of the Corporate Debtor is located at 23, Brabourne Road, Kolkata-700001 and the Corporate Debtor at present has 84 acres of leasehold land the unit comprises about 40,000 sq. Ft double storied factory shed with entire plant and machinery along with 5

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well- constructed double storied buildings used as official Guest House and Senior Staff & Supervisory Quarter.

***Initiation of Corporate Insolvency Resolution Process of Balaji
Paper and Newsprint Private Limited***

7. Jai Kishore Gupta filed an application under Section 9 of the I&B Code, 2016, before the Adjudicating Authority for the initiation of Corporate Insolvency Resolution Process (for brevity “CIRP”) in respect of the Corporate Debtor and vide an Order dated 06.05.2022, this Adjudicating Authority has admitted the application and **Mr. Bijay Murmuria** was appointed as Interim Resolution Professional (IRP). In the first meeting of the CoC convened on 02/06/2022, the CoC unanimously decided to appoint Mr. Murmuria as the Resolution Professional (RP) of the Corporate Debtor.
8. Further, on 9th CoC meeting held wherein the CoC with 100% voting share resolve to replace the Resolution Professional with the Applicant herein as the new Resolution Professional and vide an Order dated 09.08.2023, this Adjudicating Authority allows **Mrs. Rachna Jhunhunwala** (Registration Number: IBBI/IPA-001/IP-P00389/2017-18/10707) as the new RP of the Corporate Debtor.

Constitution of Committee of Creditors

9. The IRP made the publication of a public announcement in Form “A” and pursuant to the publication of Form “A”, inviting the claims from the creditors, the CoC was constituted having two Secured Financial Creditors being Indian Overseas bank having

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41.38% voting share and Indian Bank, having 58.62% voting share.

The First meeting of the CoC was held on 02/06/2022.

- 10.** It is submitted that total number of meetings of CoC held is 13. In the 13th CoC meeting held on 26.09.2023, the Resolution Plan submitted by the SRA has been approved with a 100% voting share in favour of the Plan.
- 11.** The List of final position of the Financial Creditors reflecting the amount of admitted claim, percentage of exposure in terms of voting share in the CoC is here under:

SN	Name of the Financial Creditor	Amount of claim admitted	Voting shares
1.	Indian Bank	Rs. 34,76,98,014/-	58.62%
2.	Indian Overseas bank	Rs. 24,54,16,505/-	41.38%
	Total	Rs. 59,31,14,519/-	100%

Collations of Claims

- 12.** The amount claimed and admitted are summarised below:

SN	Name of the Creditors	Amount claimed	Amount admitted	Percentage of the Claim
1.	Secured Financial Creditor			
	- Indian Bank	Rs. 34,83,98,014	Rs. 34,76,98,014	33.70%

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	- Indian Overseas Bank	Rs. 25,13,93,953	Rs. 24,54,16,505	23.79%
2.	Unsecure Financial Creditor	Rs. 7,10,07,791	-	-
3.	Operational Creditors	Rs. 49,89,18,914	Rs. 43,84,80,083	42.51%
4.	Employee	-	-	-
5.	Government Dues	-	-	-
6.	Other than Workmen, Employee and Government Dues	-	-	-
6.	Other Creditors	-	-	-
7.	Other than Financial Creditors and Operational Creditors	-	-	-

Corporate Insolvency Resolution Process and Compliance

- 13.** The Learned Counsel for the RP submits that Form G inviting Expression of Interest (EoI) was first published on 16.07.2022 and till the last date to submit EoI i.e., 10.08.2022 (as extended from 31.07.2022), eleven (11) EoIs were received by the RP. The last date to submit plan was further extended and kept till 26.11.2022, as approved by the CoC and till such date only two resolution plans were received.

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- 14.** Further, it is submitted that the CoC held various discussions and deliberations with the two PRAs and advised them to revise their plan outlay and remove the conditions in their plan. However, no revised plan was received. As such the RP put forward the resolution for liquidation of the CD in the 8th CoC meeting held on 09.01.2023 with e voting concluded on 04.02.2023, but the said resolution could not be passed with the required majority as Indian Bank, having 58.62% voting share, voted against the resolution for liquidation and Indian Overseas Bank, having 41.38 % voting share, voted in favour of the resolution.
- 15.** Further, it is submitted that the RP was also directed to publish Form G for inviting fresh EOIs in the interest of the Corporate Debtor as one EOI Applicant i.e., Nippon Ispat Pvt. Ltd. and Madanco Trexim Pvt. Ltd. vide its application being IA 549/KB/2023 sought condonation of delay in submitting its plan.
- 16.** It is further submitted that the RP published Second Form G on 23.05.2023 wherein till the last date to submit EoI, three valid EoIs are received from Eco Tech Papers, Nippon Ispat Pvt. Ltd. & Mandaco Trexim Pvt. Ltd. and Pinax Papers Mills Pvt. Ltd. & Pinax Steel Industries. Later another EoI applicant, i.e., Bhagwati Vintrade Pvt. Ltd. were allowed to submit its EoI.
- 17.** It is further contended that upon allowing the extension of 104 days by this Adjudicating Authority, till the last date to submit Plans, four Resolution Plans were received and placed in the 10th CoC meeting held on 23.08.2023.

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Evaluation and Voting

- 18.** It is further submitted that upon request of the Resolution Applicant, in 11th CoC meeting, it was resolved to allow Nippon Ispat Pvt. Ltd. & Mandaco Trexim Pvt. Ltd. to withdraw its Plan.
- 19.** It is further submitted that the CoC, in its 13th meeting, held on 25.09.2023 evaluated the three plans to be feasible and viable as per the evaluation matrix. The Voting line were remained opened from 26.09.2023 at 7 P.M. to 07.10.2032 at 7 P.M. After evaluation of the plans submitted, the CoC unanimously decided to approve the Resolution Plan dated July 12, 2023 (Resubmission date": September 19, 2023) submitted by Pinax Papers Mills Pvt. Ltd. & Pinax Steel Industries by 100% voting share.

Compliances of the Resolution Plan submitted by the SRA with various provisions

- 20.** The Applicant has submitted that in terms of Regulation 39(4) of the Insolvency and Bankruptcy Code (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, she has filed a Compliance Certificate in prescribed form i.e., Form "H", annexed at Page 259 to the Application as Annexure "T".
- 21.** It is submitted that the Resolution Applicant has met the criteria approved by the CoC having regard to the complexity and scale of operations of the business of the Corporate Debtor in terms of Section 25(h)(2) of the I&B Code.
- 22.** Further is it submitted that the Resolution Applicant is eligible to submit a resolution plan in terms of Section 29A of the I&B Code and accordingly, an affidavit has also been furnished by the SRA.

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- 23.** It is further submitted that the Resolution Applicant has submitted an affidavit stating its eligibility in terms of Section 30(1) of the I&B Code, 2016.
- 24.** Further, it is submitted that details of various compliances as envisaged within the I&B Code and the CIRP Regulations to which a Resolution Plan should adhere to, have been complied.
- 25.** It is further submitted that in terms of **Section 30(2) of the I&B Code, 2016**, (as amended vide Amendment dated August 16, 2019) the Resolution Plan provides the compliance as under:

Section of the Code /Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes/ No)
25 (2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?		Yes
Section 29 A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Affidavit annexed at Page 247-251 to the application.	Yes

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Section 30 (1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?		Yes
Section 30 (2)	Whether the Resolution Plan –		
	(a) Provides for the payment of insolvency resolution process costs?	Point 8.1	Yes
	(b) Provides for the payment to the operational creditors?	Point 8.4 and 8.5	Yes
	(c) Provides for the payment to the financial creditors who did not vote in favour of the resolution plan?		Yes
	(d) Provides for the management of the affairs of the corporate debtor?		Yes
	(e) Provides for the implementation	Point 9	Yes

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	and supervision of the resolution plan? (f) Contravenes any of the provisions of the law for the time being in force?		Yes
Section 30 (4)	Whether the Resolution Plan (a) is feasible and viable, according to the Coc? (b) Has been approved by the CoC with 66% voting share?	At Page 121-134 to the Application (13 th CoC Minutes)	Yes As per CoC
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Point 9	Yes
Regulation 38(1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Point no. 8.3,8.4,9.2 & 9.3	Yes
Regulation 38 (1A)	Whether the resolution plan includes a statement	Points: 8.1, 8.2, 8.4,	Yes

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	(a) the term of the plan and its implementation schedule?	Point no 9	Yes
	(b) For the management and control of the business of the corporate debtor during its term?	Point no 8 & 9	Yes
	(c) adequate means for supervising its implementation?	Point no 2	Yes
Regulation 38(3)	Whether the resolution plan demonstrates that – (a) it addresses the cause of default? (b) It is feasible and viable? (c) It has provisions for its effective implementation? (d) It has provisions for approval required and the timeline for the same?		Yes Yes Yes Yes

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	(e) The resolution applicant has the capability to implement the resolution plan?		Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?		Yes
Regulation 39 (4)	Provide details of performance security received, as referred to in sub- regulation (4A) of regulation 36 B.		5.40 Crores

26. It is contended in point 4.5 at page 16 of the Resolution Plan as approved by the CoC that the surplus cash and amounts as maybe recovered from the ex-promoters pursuant to the NCLT Orders on the Preferential transaction/ Avoidance application of the Resolution Professional shall be available to the committee of creditors and any recovery such transaction by the order of the NCLT shall accrue to Financial Creditors in proposition to the amount as proposed in the Resolution Plan. It is further clarified that any application pending on respect of such transaction maybe continued by the Financial Creditors or as may be decided by the Committee of Creditors and any legal expenditure or the

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associated cost related to PUFF application, shall be borne by the said financial creditors or as may be decided by the CoC.

Details of the Financial Proposal and Payment Schedule in the Resolution Plan

27. The summary of the proposed plan is given at page 14 and 34 of the Resolution Plan submitted by the SRA, provide in nutshell her under:

S N	Categor y of Stakehol der	Sub- Categor y of Stakehol der	Amount Claimed	Amount Admitted	Amount provided under the Plan	Amount provided/a mount admitted (%)
1	2	3	4	5	6	7
A	CIRP COST (unpaid CIRP cost to be paid at actuals)		Rs. 1,27,45,51 5/-		Rs. 1,50,00,00 0/-	100%
B	Payment Towards Claims					
1.	Secured financial creditor		Rs. 59,97,91,9 67/-	Rs. 59,31,14,5 19/-	Rs. 52,40,00,0 00/-	88.35%

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2	Unsecured financial creditor		Rs. 7,10,07,791/-	-	-	0%
3.		Employee	-	-		
4	Operational	Government Dues	-	-		
5	Creditors	Other than Workmen, Employee & Govt. Dues	Rs. 49,89,18,914/-	Rs. 43,84,80,083/-	Rs. 10,00,000/-	0.23%
6		Other than FC & OC	-	-	-	0%
	TOTAL (Rupees Fifty-Four Crores Only)				Rs. 54,00,00,000/-	
	Working Capital				Rs. 10,00,00,000/-	
	Capital Expenditure				Rs. 10,00,00,000/-	
	Total Plan Amount				Rs. 74,00,00,000/-	

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Reliefs and Waivers

SN	Clause	Reliefs and Waivers
i.	10.1	Any stamp duty liabilities or tax liability which arise, pursuant to the transactions contemplated under this Resolution Plan shall be exempted or waived off.
ii	10.2	Hon'ble NCLT be pleased to give or issue necessary directions and or instructions to all relevant Governmental Authorities to provide all the license, to the restricted Corporate Debtor to run the plant(s) smoothly and successfully transfer the existing License if any in the name of the Resolution Applicant, if required, in the future. The RA shall file any application, if the same is required to be done for getting any such licenses.
iii	10.3	Hon'ble NCLT be pleased to give or issue necessary directions and / or instructions to Income Tax department to carry forward business loss, short term capital loss, Unabsorbed Depreciation of the Restructured Corporate Debtor.
iv.	10.4	Hon'ble NCLT be pleased to give or issue necessary directions and / or instructions to all relevant Governmental Authorities including the ROC that the Restructured Corporate Debtor , its directions and its key managerial personnel, officers and employees appointed after the NCLT Approval Date not be held liable in respect of all statutory / regulatory non- compliances having occurred prior

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		to the NCLT Approval Date, including with respect to various provisions of Applicable Laws including but not limited to the Companies Act, 1956 and/ or Companies Act, 2013 and/ or the Taxation Laws and also of non-preparation and no approval of financial statements for any of the financial years prior to the Effective Date. To allow amendment in the Memorandum of Association and Article of Association without approaching the Central Government and grant exemption to the Restructure Corporate Debtor for holding Annual General Meeting of the members and other formalities. To provide for/ to be complied with the terms and conditions stipulated in this scheme without calling the General Meeting of shareholders the Corporate Debtor.
v	10.5	Hon'ble NCLT be pleased to give or issue necessary directions, instructions to all relevant Governmental Authorities to waive off all penalties, charges, fees, etc. arising out of any non-compliances having occurred prior to the Effective Date with respect to various provisions of the Applicable Laws including but not limited to the property laws, labour laws i.e. the Employee State Insurance Act, the Provident Fund Act, the Industrial Disputes Act, the Payment of Bonus Act, the Contract Labour Act, the Minimum Wages Act, the Equal Remuneration Act, the

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		Factories Act, the Gratuity Act, etc. and to withdraw all/any pending Proceedings in case of such labour laws or property laws against the Restructured Corporate Debtor for any period prior to the Effective Date.
v	10.6	Hon'ble NCLT be pleased to give or issue necessary directions, instructions to the effect that all proceedings, inquiries, investigations, orders, show causes, notices, suits, litigation etc. in respect of the Restructured Corporate Debtor, whether civil or criminal, pending before any authority, court, Tribunal or other forum prior to the Effective Date shall stand abated , withdrawn , settled and/or extinguished , and the restricted Corporate Debtor shall have no liability in respect of such proceedings, investigations, orders, show causes, notices, suits, litigation etc. relating to the period prior to the NCLT Approval Date. However, all proceedings, inquiries, investigations, orders, show causes, notices, suits, litigation etc. initiated by the Corporate Debtor in respect of claiming any amount shall remain outstanding, and the restructured Corporate Debtor shall be entitled to pursue the same for recovery of scu amounts claimed.
vi	10.7	On and from the Effective Date, all accounts of the Restructured Corporate Debtor shall stand regularized, and their asset classification shall be

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		<p>"standard" for the purposes of all Applicable Laws and the creditors shall issue necessary directions to the respective Credit Rating Agencies or any other agency for the time being to regularize and classify account as standard one. Secured Financial Creditor shall issue NOC (No objection certificate) for satisfaction of charge and sign relevant forms for satisfaction of charge registered with ROC.</p>
vii.	10.8.	<p>Hon'ble NCLT be pleased to allow:</p> <p>10.8.1. Upon the approval of the plan by the NCLT under section 31 of the IBC, all violation or breach of any agreement(s) of the CD shall stand condoned or waived on the Corporate Debtor or the RA, and such agreements shall be treated as if no violation or breach has ever been committed, however director of the suspended board or existing promoters of the CD shall continue to remain liable for any such violation, breach or non-compliance.</p> <p>10.8.2. On the NCLT Approval Date, the guarantors that have provided guarantees for and on behalf of Corporate Debtor and in order to secure the Debt availed by the Corporate Debtor, shall not be entitled to exercise any subordinate rights in respect of such guarantees.</p>

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		<p>10.8.3. On the NCLT Approval Date, all the outstanding negotiable instruments issued by the Corporate Debtor or by any Person acting on behalf of the Corporate Debtor including demand promissory notes, post-dated cheques and letter of credit shall stand terminated and the restructured Corporate Debtor's liability under such instruments shall stand extinguished.</p> <p>10.8.4. On the NCLT Approval Date, the rights of any person (whether exercisable now or in the future and whether contingent or not) to call for the allotment, issue, sale, or transfer of shares or loan capital of the Corporate Debtor, whether on a change of control, or otherwise, shall stand unconditionally and irrevocably extinguished.</p> <p>10.8.5. On the NCLT Approval Date, the right of any person or company claiming to be the owner of any land /plant and machinery at factories owned by Corporate Debtor and on any of the assets of the Corporate Debtor which as per information provided by the RP is in the name of the Corporate Debtor or, shall stand unconditionally and irrevocable extinguished.</p>
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		<p>10.8.6. That upon the approval of the plan by the NCLT under section 31 of the IBC, all pending proceedings relating to the following departments against the CD shall stand irrevocably and unconditionally abated in violation or breach of any agreement of the CD shall stand condoned or waived, and such agreements shall be treated as if no violation or breach has ever been committed by the Corporate Debtor, however director of the suspended board or existing promoters of the CD shall continue to remain liable for any such violation, breach or non-compliance.</p> <ul style="list-style-type: none">- Central Bureau of Investigation (CBI) cases if any against the corporate debtor.- Enforcement Directorate (ED) cases if any against the corporate debtor.- Recovery suitcases under Debt Recovery Tribunal (DRT) if any against the corporate debtor.- Employee State Insurance Corporation (ESI) suits if any against the corporate debtor.- Vigilance & Enforcement Department (Govt. of West Bengal) cases if any against the corporate debtor.- Pollution department cases if any against the corporate debtor.
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		<ul style="list-style-type: none">- Labour department cases if any against the corporate debtor- Case for non-fulfilling of export obligation/ EPCG/ DEPB license by directorate of Revenue Intelligence against the corporate debtor.- Other Civil, criminal cases and local body taxes if any against the corporate debtor.
viii	10.9	<p>In order to revive and resume operations of Balaji Paper & Newsprint Private Limited, Hon'ble NCLT be pleased to provide the following additional Relief & Concessions:</p> <p>10.9.1. To give the exemption to the restructured Corporate Debtor of 1 years from electricity duty from the effective date.</p> <p>10.9.2. To waive minimum demand charges on electricity Restructured E Corporate Debtor for a period of 1 years from the effective date.</p> <p>10.9.3. To extinguish all the past municipal taxes on the land on plant(s) of the Corporate Debtor is built that may be pending outstanding as of the date of approval of this Resolution Plan by the Hon'ble NCLT.</p>

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		<p>10.9.4. To extinguish any dues pending with Land Revenues in relation to the land on which the plant(s) of the Corporate Debtor are situated.</p> <p>10.9.5. To provide all the essentials approvals and licences such as Fire NOC, Police Approvals for running the plant smoothly and efficiently, on application being made in this regard.</p> <p>10.9.6. Apart from the relief and concessions mentioned above, Government of West Bengal may also consider providing from time to time such relief and concession of admissible to sick units for expeditious revival of the unit.</p> <p>10.9.7. <u>Waiver of valuation of pricing of shares by registered valuer:</u> Approval for resolution plan by NCLT will be treated as waiver of the requirements of the valuation of pricing of shares by registered valuer to be computed for issuance of equity shares through preferential allotment applicant as well as any other financial investors. Request for such waiver is due to the fact that current valuation of the company basis book value on net asset value basis realizable valuation of assets adjust to the current liabilities discounted cash flow of the business will be negative, whereas</p>
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		<p>the applicant is paying premium over face value considering the future potential of the business.</p> <p>10.9.8. <u>Waiver exemption from requirement of no objection certificate:</u></p> <p>Approval of the resolution plan by NCLT will be treated as approval under section 281 of the Income Tax Act 1961 by the selling shareholders and provision of taking over predecessors' tax liability under section 170 of the Income Tax Act 1961 and specific order for treating such transactions as void under section 281 of the Income Tax payable by Act 1961 for any claims in respect of tax or any other sum</p> <p>the selling shareholders.</p>
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Our Inference

- 28.** Upon hearing, the submission made by the Learned Counsel, Shri Shaunak Mitra appeared on behalf of the Resolution Professional of the Balaji Paper and Newsprint Private Limited, Corporate Debtor herein and perusing the record and/or documents placed before this Adjudicating Authority, we find that the “Resolution Plan” dated July 12, 2023 (resubmission date September 19, 2023) submitted by **PINAX PAPER MILLS PRIVATE LIMITED AND PINAX STEEL INDUSTRIES PRIVATE LIMITED**, Successful Resolution Applicant (for brevity “SRA”) was placed before the

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Committee of Creditors of the Balaji Paper and Newsprint Private Limited in its 13th Meeting, held on Sept 25, 2023, and the CoC with 100% voting share, with e-voting conducted from 26.09.2023 – 07.10.2023 approved the Resolution Plan. As per the CoC, the plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. Preponderantly, all the compliances have been done by the Resolution Applicant for making the plan effective after approval by this Adjudicating Authority.

- 29.** In the course of the hearing, Ld. Counsel, further submitted that the Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code, 2016, read with relevant Regulations of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and does not contravene any of the provisions of law for the time being in force.
- 30.** Upon perusal of the documents on record and/or documents, we are satisfied that the Resolution Plan submitted by the consortium of **“PINAX PAPER MILLS PRIVATE LIMITED AND PINAX STEEL INDUSTRIES PRIVATE LIMITED”**, is in accordance with sections 30 and 31 of the I&B Code, 2016 and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- 31.** 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

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date of this order, as prescribed under section 31(4) of the I&B Code.

- 32.** We have perused the reliefs, waivers and concessions as sought and as provided in the Resolution Plan. It is evident that some of the reliefs, waivers and concessions sought by the Resolution Applicant come within the ambit of the I&B Code and the Companies Act 2013, while many others fall under the power and jurisdiction of different government authorities/departments. This Adjudicating Authority has the power to grant reliefs, waivers and concessions only concerning the reliefs, waivers and concessions that are directly with the I&B Code and the Companies Act (within the powers of the NCLT). The reliefs, waivers and concessions that pertain to other governmental authorities/departments may be dealt with by the respective competent authorities/forums/offices, Government or Semi-Government of the State or Central Government concerning the respective reliefs, waivers and concession, whenever sought for. The competent authorities including the Appellate authorities may consider granting such reliefs, waivers and concessions keeping in view the spirit of the I&B Code, 2016 and the Companies Act, 2013.
- 33.** 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 the 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

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the same keeping in mind the objectives of the Code, which is essentially the resolving the insolvency of the Corporate Debtor.

- 34.** The reliefs sought for subsisting contracts/agreements can be granted, and no blanket orders can be granted in the absence of the parties to the contracts and agreements.
- 35.** Concerning the waivers with regard to the extinguishment of claims which arose prior to the initiation of the CIR Process and which have not been claimed are granted in terms of the law laid down by the Hon'ble Apex Court in ***Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited*** reported in **MANU/SC/0273/2021: (2021)9SCC657: [2021]13SCR737** 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 Government, any State Government or any local authority, guarantors and other stakeholders. 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.” (Emphasis Added)
- 36.** Further, the relevant part of the ***Ghanashyam 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

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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 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] 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*

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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.”

(Emphasis Added)

- 37.** In this regard we also rely on the judgement of the Hon’ble High Court of Rajasthan in the matter of **EMC v. State of Rajasthan**, Civil 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.”

(Emphasis Added)

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- 38.** Thus, on the date of approval of the resolution plan by the Adjudicating Authority, all such claims, that are not a part of the 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 of India further laid down 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 before the date on which the Adjudicating Authority grants its approval under Section 31 could be continued.
- 39.** Concerning the waivers sought in relation to guarantors, the Hon'ble Apex Court held in ***Lalit Kumar Jain v. Union of India*** reported in **MANU/SC/0352/2021: (2021) 9 SCC 321: (2021) ibclaw.in 61 SC** that *the 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. As to the nature and extent of the liability, much would depend on the terms of the guarantee itself.*
- 40.** Further, we would rely upon the judgment rendered by the NCLAT in ***Roshan Lal Mittal v. Rishabh Jain*** reported in **(2023) ibclaw.in 803 NCLAT** that:
- “The Resolution Plan does not absolve the personal guarantors from their guarantee. The law well settled by the Hon'ble Supreme Court in the matter of “Lalit Kumar Jain vs. Union of India & Ors. – (2021) 9 SCC 321), that by approval of resolution plan the guarantees are not ipso facto discharged.”*

(Emphasis Added)

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- 41.** For the reliefs and waivers sought for all inquiries, litigations, investigations and proceedings shall be granted strictly as per section 32A of the I&B Code, 2016 and the provisions of the law as may be applicable.
- 42.** 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.
- 43.** In case of non-compliance with this order or withdrawal of the Resolution Plan, the payments already made by the Resolution Applicant shall be liable for forfeiture.
- 44.** Subjected to the directions made above, the Resolution Plan dated May 15, 2022, (as amended and restated vide amendment dated September 03, 2022, along with the clarifications and annexures), submitted by the consortium of **“PINAX PAPER MILLS PRIVATE LIMITED AND PINAX STEEL INDUSTRIES PRIVATE LIMITED”** is hereby **APPROVED** and **FINALLY SANCTIONED** by this Adjudicating Authority. 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 the revival of the Corporate Debtor Company shall come into force with immediate effect.
- 45.** The Moratorium imposed under section 14 of the Code by virtue of the order dated May 25, 2022, shall cease to have effect from the date of this order.

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46. 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 them to the Resolution Applicant or New Promoters.
47. Liberty is hereby granted for moving any application if required in connection with the implementation of this Resolution Plan.
48. A copy of this Order is to be submitted to the Registrar of Companies, West Bengal by the RP.
49. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.
50. The Resolution Professional is further directed to hand over all records, premises/factories/documents to the Resolution Applicant to finalise the further line of action required for starting 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 the operation.
51. The **Registry of this Adjudicating Authority** is directed to send e-mail copies of the order forthwith to all the parties and their Learned Senior Counsels/ Learned Counsels for information and for taking necessary steps.
52. In terms of the view above, the interlocutory application being **I.A. (IB) No. 1842/KB/2023** in the main Company Petition being **C.P. (IB) No. 1540/KB/2019** shall stand **disposed of** accordingly.

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- 53.** Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.
- 54.** File be consigned to the record.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This Order is signed on the 12th Day of January, 2024.

Bose, R. K. [LRA]/ Tiwari, V. [LRA]