

DIVISION BENCH
COURT - I

Mentioning

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P. (IB) /533(KB)2018
IA (IB) 15/KB/2021

**CORAM: 1. HON'BLE MEMBER(J), SHRI RAJASEKHAR V.K.
2. HON'BLE MEMBER(T), SHRI BALRAJ JOSHI**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 09TH MARCH, 2022, 10:30 A.M

IN THE MATTER OF	Jain Constructions Private Limited VS Kariwala Designers Private Limited
UNDER SECTION	SECTION 7

Appearance (via video conferencing)

Ms. Ankit Baid, Advocate

Corrigendum Order

1. This matter is not on board today.
2. IA 15/KB/2021 in CP(IB) No. 533/KB/2021 was taken up after being mentioned by the learned counsel appearing for the Applicants/ Resolution Professional.
3. In the order dated 17.02.2022 the name of one of the Joint Resolution applicant has been mentioned as “**AMPL Finance Pvt. Ltd.**” instead of “**AMPI Finance Pvt. Ltd.**”, in Paras 4.2,4.3,6.1 and 7.1 of the order. The name shall accordingly stand corrected and be read as “**AMPI Finance Pvt. Ltd.**”
4. The rest of the order shall stand unchanged.

**Balraj Joshi
Member (Technical)**

**Rajasekhar V.K
Member (Judicial)**

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

**IA (IB) No.15/KB/2021
in
CP (IB) No.533/KB/2018**

In the matter of:

Application under section 30(6) and section 31(1) of the Insolvency and Bankruptcy Code, 2016 read with regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for approval of Resolution Plan.

And

In the matter of:

Jain Constructions Private Limited ... **Financial Creditor**

Versus

Kariwala Designers Private Limited
CIN: U74994WB2011PTC157676 ... **Corporate Debtor**

And

In the matter of:

Partha Pratim Ghosh,
Resolution Professional of
Kariwala Designers Private Limited ... **Applicant**

Coram:

Mr. Rajasekhar V.K. : **Member (Judicial)**
Mr. Balraj Joshi : **Member (Technical)**

Appearances (via videoconferencing):

For the Applicant/RP : Mr. Jishnu Chowdhury, Advocate
Ms. Ankita Baid, Advocate
Mr. Partha Pratim Ghosh, RP in person

For the CoC : Mr. Chayan Gupta, Advocate
Mr. Ajit Kumar Mishra, Advocate
Mr. Abhishek Acharya, Advocate

Date of hearing: 12 November, 2021

Date of pronouncement: 17 February, 2022

ORDER

Rajasekhar V.K., Member (Judicial)

1. Preamble

- 1.1. This Court convened through video conferencing.
- 1.2. IA (IB) No. 15/KB/2021 is an application filed by Mr. Partha Pratim Ghosh, Resolution Professional of Kariwala Designers Private Limited [CIN:U74994WB2011PTC157676], under section 30(6) read with section 31(1) of the Insolvency and Bankruptcy Code, 2016 and regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (*CIRP Regulations*) for approval of the Resolution Plan in respect of Kariwala Designers Private Limited, the Corporate Debtor.
- 1.3. The underlying company petition bearing CP (IB) No.533/KB/2018 was filed by Jain Constructions Private Limited against Kariwala Designers Private Limited, the Corporate Debtor, under section 9 of the Insolvency and Bankruptcy Code, 2016 which was admitted *vide* order dated 24.10.2019.
- 1.4. Initially, Mr. Chhedi Rajbhar having registration no. IBBI/IPA-001/IP-P00129/2017-18/10271 was appointed as the Interim Resolution Professional (*IRP*). The Committee of Creditors ("*CoC*") in its first meeting held on 20.11.2019 resolved to replace the IRP with Mr. Partha Pratim Ghosh. The IRP was replaced by Mr. Partha Pratim Ghosh having registration no. IBBI/IPA-001/IPA—00554/2017-2018/10984 *vide* order dated 03.02.2020 in IA (IB) No. 1609/KB/2019 passed by this Adjudicating Authority and appointed Mr. Partha Pratim Ghosh as the Resolution Professional ("*RP*") of the Corporate Debtor.
- 1.5. It is submitted that due to nationwide lockdown imposed, the in its seventh CoC meeting held on 22.08.2020 resolved to file an application for exclusion of 129 days from CIRP period from 25.03.2020 to 31.07.2020 and extension the CIRP for a further period of 90 days. Accordingly, the RP filed an application with this Adjudicating Authority for excluding the lockdown

period and also for approval of the extension of CIRP period by 90 days under section 12(2) of the Code. This Adjudicating Authority, *vide* order dated 09.10.2020 passed in IA (IB) No.800/KB/2020 and IA (IB) No.810/KB/2020, allowed the exclusion of lockdown period from 25.03.2020 to 09.10.2020 and also granted extension of CIRP period by 90 days from 09.10.2020.

2. Constitution of CoC

- 2.1. The IRP made public announcements on 03.11.2019 in *The Financial Express (English) and Aajkal (Bengali)* (Kolkata Editions) regarding initiation of CIRP and called for proof of claims from the financial and operational creditors, workers and employees of the corporate debtor in the specified forms till 06.11.2019.
- 2.2. The CoC was constituted with one Financial Creditor, *viz.*, Axis Bank Limited. A report of the constitution of CoC dated 15.11.2019, was filed before the Adjudicating Authority on 18.11.2019.
- 2.3. The Applicant states that total of nine CoC meetings have been held during CIRP period, as follows:

Particulars	Date of CoC Meeting
1 st CoC Meeting	20.11.2019
2 nd CoC Meeting	18.12.2019
3 rd CoC Meeting	27.01.2020
4 th CoC Meeting	13.02.2020
5 th CoC Meeting	18.03.2020
6 th CoC Meeting	03.07.2020
7 th CoC Meeting	22.08.2020
8 th CoC Meeting	01.09.2020
9 th CoC Meeting	09.12.2020

3. Collation of claims

- 3.1. The claims of financial creditors, operational creditors, workers, statutory authorities as existing as on the date of filing the present application is as follows:

Name of Creditor	Amount claimed	Amount admitted
Secured Financial Creditors	₹4,13,72,622/-	₹4,13,72,622/-
Unsecured Financial Creditors	₹3,12,19,180/-	₹2,33,44,398/-
Operational Creditors	₹25,28,908.64/-	₹23,12,161/-
Total	₹7,51,20,710.64/-	₹6,70,29,181/-

4. *CIRP and compliances*

- 4.1. The Applicant submits that in terms of the provisions of section 25(2)(h) of the Code read with regulation 36A (1) of CIRP Regulations, invitations in Form 'G' for Expressions of Interest ("EoI") from potential resolution applicants was issued on 30.01.2020 in **Business Standard** (English) and **Bartaman** (Bengali) Kolkata editions.
- 4.2. It is submitted that in response to the EoI published on 30.01.2020, the Applicant received an EoI from **ARSK Consultants Private Limited and AMPL Finance Private Limited (jointly)**. The Applicant submitted the list of final eligible prospective list of Resolution Applicants on 16.03.2020.
- 4.3. ARSK Consultants Private Limited and AMPL Finance Private Limited jointly submitted a Resolution Plan on 26.08.2020 which was opened and discussed at the 8th CoC meeting held on 01.09.2020. The Resolution Applicant was requested to submit a revised Resolution Plan.
- 4.4. The revised Resolution Plan dated 02.12.2020 was discussed in the 9th CoC meeting held on 09.12.2020, which was approved with 100% voting share.
- 4.5. The Successful Resolution Applicant has paid ₹50,000/- (Rupees fifty thousand only) as Earnest Money Deposit. Further, in compliance with regulation 36B(4A) of the CIRP Regulations, the Successful Resolution Applicant submitted Performance Bank Guarantee of ₹30,70,000/- (Rupees thirty lakh seventy thousand only), dated 19.12.2020.¹

¹ Annexure P at Page 115

5. *Compliance with statutory provisions*

- 5.1. The Applicant has filed a Compliance Certificate in prescribed form, *i.e.*, Form 'H' dated 03.12.2020² in compliance with regulation 39(4) of the CIRP Regulations.
- 5.2. The Successful Resolution Applicant has submitted an affidavit of eligibility under section 29A of the Code, which was affirmed on 15.02.2020³.
- 5.3. The Applicant has submitted details of various compliances which a Resolution Plan should adhere to as per the Code and the CIRP Regulations, which are reproduced hereunder:

I. Submission of Resolution Plan in terms of sub-section (2) of section 30 of the Code (as amended vide Amendment dated 16.08.2019):

Clause	Requirement	How dealt with in the Plan
.	Plan must provide for payment of CIRP cost in priority to repayment of other debts of CD in the manner specified by the Board.	Part III at Page 2A of the Resolution Plan.
2.	(i) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than the amount payable to them in the event of liquidation u/s 53;	Part III at Page 31 of the Resolution Plan. (Operational creditors shall be paid ₹1,25,000/- on <i>pro rata</i> basis)
	(ii) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than amount that would have been paid to such creditors, if the amount to be distributed under the resolution	Part III at Page 31 of the Resolution Plan. (Operational creditors shall be paid ₹1,25,000/- on <i>pro rata</i> basis)

² Annexure O at Pages 110-114

³ Annexure N at Pages 104-109

Clause	Requirement	How dealt with in the Plan
	plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher;	
	(iii) provides for payment of debts of financial creditors who do not vote in favour of the resolution plan, in such manner as may be specified by the Board.	Not applicable to the Resolution Plan.
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Clause 4 of Part II at Pages 23-25 of the Resolution Plan.
(d)	Implementation and Supervision	Clause 5 of Part I at Page 21 of the Resolution Plan.
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Clause 6 of Part II at Page 26 of the Resolution Plan.
(f)	Conforms to such other requirements as may be specified by the Board.	-----

II. Measures required for implementation of the Resolution Plan in terms of regulation 37 of the CIRP Regulations:

Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximisation of value of its assets, including but not limited to the following: -	

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Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
(a) transfer of all or part of the assets of the corporate debtor to one or more persons;	Clause 10.1 of Part I at Page 22 of the Resolution Plan.
(b) sale of all or part of the assets whether subject to any security interest or not;	Clause 10.1 of Part I at Page 22 of the Resolution Plan.
(c) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	Clause 10.1 of Part I at Page 22 of the Resolution Plan.
(d) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	Clause 10.1 of Part I at Page 22 of the Resolution Plan.
(e) cancellation or delisting of any shares of the corporate debtor, if applicable;	Clause 8.1 of Part III at Page 32 of the Resolution Plan
(f) satisfaction or modification of any security interest;	Clause 14.8 of Part III at Page 34 of the Resolution Plan.
(g) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Clause 14.8 of Part III at Page 34 of the Resolution Plan.
(h) reduction in the amount payable to the creditors;	Part III of the Resolution Plan.
(i) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	Not provided for in the Resolution Plan.

Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
(j) amendment of the constitutional documents of the corporate debtor;	Clause 1.1 of Schedule 2 at Page 46 of the Resolution Plan.
(k) issue of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	----
(l) change in portfolio of goods or services produced or rendered by the corporate debtor;	Clause 3.2 of Part I at Page 16 of the Resolution Plan.
(m) change in technology used by the corporate debtor; and	Clause 3.2 of Part I at Page 16 of the Resolution Plan.
(n) obtaining necessary approvals from the Central and State Governments and other authorities.	Clause 4.2.1 of Part II at Page 25 of the Resolution Plan.

III. Mandatory contents of Resolution Plan in terms of regulation 38 of the

CIRP Regulations:

Reg.	Requirement	How dealt with in the Plan
38(1)	The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.	Point 4.5 of Schedule 2 at Page 48 of the Resolution Plan.
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders.	Clause 5.1. of Part II at Page 26 of the Resolution Plan.

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Reg.	Requirement	How dealt with in the Plan
38(1B)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.	Clause 9 of Part II at Page 26 of the Resolution Plan.
38(2)	A resolution plan shall provide:	
	(a) the term of the plan and its implementation schedule;	Clause 3 of Part II at Page 23 of the Resolution Plan.
	(b) the management and control of the business of the corporate debtor during its term; and	Clause 4.1.6. of Part II at Page 25 of the Resolution Plan.
	(c) adequate means for supervising its implementation.	Clause 4.2. of Part II at Pages 25-26 of the Resolution Plan.
38(3)	A resolution plan shall demonstrate that –	
	(a) it addresses the cause of default;	Clause 3.3.1. of Part 1 at Page 16 of the Resolution Plan.
	(b) it is feasible and viable;	Clause 3 in Part I at Pages 15-16 of the Resolution Plan.
	(c) it has provisions for its effective implementation;	Clause 3.3.2 in Part I at Page 16-17 of the Resolution Plan.
	(d) it has provisions for approvals required and the timeline for the same; and	Clause 10.4 in Part II at Page 27 of the Resolution Plan.

Reg.	Requirement	How dealt with in the Plan
	(e) the Resolution Applicant has the capability to implement the resolution plan.	Clause 10.5 in Part II at Page 27 of the Resolution Plan.

6. Details of Resolution Plan/ Payment Schedule

6.1. The Applicant submits the relevant information with regard to the amount claimed, amount admitted, and the amount proposed to be paid by the Successful Resolution Applicant, *i.e.*, **ARSK Consultants Private Limited and AMPL Finance Private Limited (jointly)** under the said Resolution Plan is tabulated as under:

Sl. No	Name of Claimant	Claim admitted	Amount proposed	Amount provided (%)
1.	Corporate Insolvency Resolution Process Cost	-----	₹15,00,000/-	100.00
2.	Secured Financial Creditors	₹4,13,72,622/-	₹3,40,00,000/-	82.20
3.	Unsecured Financial Creditors	₹2,33,44,398/-	NIL	0.00
4.	Operational Creditors	₹23,12,161/-	₹1,25,000/-	5.40
5.	Kolkata Municipal Corporation	---	₹50,000/-	---
6.	Srijan Welfare Association	---	₹25,000/-	---
7.	Capex	---	₹25,00,000/-	---
8.	Working Capital	---	₹50,00,000/-	---
Total		₹6,70,29,181/-	₹4,32,00,000/-	---

7. Resolution Plan Snapshot

7.1. The summary of the financial proposal/payment under the Resolution Plan of

ARSK Consultants Private Limited and AMPL Finance Private Limited (jointly) is tabulated hereunder:

Particulars	Amount
Admissible Debt to be paid as CIRP costs.	₹15,00,000/- (Rupees fifteen lakh only).
Admissible Debt to be paid to Secured Financial Creditor:	Payment of ₹3,40,00,000/- (Rupees three crore forty lakh only) to be made within thirty days from the approval of the plan.
Admissible Debt to be paid to Operational Creditors	Payment of ₹1,25,000/- (Rupees one lakh twenty-five thousand only) to be made on a <i>pro rata</i> basis.
Admissible Debt to be paid to Kolkata Municipal Corporation	Payment of ₹50,000/- (Rupees fifty thousand only)
Admissible Debt to be paid to Srijan Welfare Association	Payment of ₹25,000/- (Rupees twenty-five thousand only)
Capex	Payment of ₹25,00,000/- (Rupees twenty-five lakh only) shall be infused within a period of two years from the Closing date or as may be required as per the needs of the business of the Corporate Debtor.
Working Capital	Payment of ₹50,00,000/- (Rupees fifty lakh only) shall be infused within a period of two years from the Closing Date or as may be required as per the needs of the business of the Corporate Debtor.

7.2. In the Implementation Schedule,⁴ the Successful Resolution Applicant has proposed to make payment to all the Creditors within T⁵+30 days.

⁴ Point 4.5 at Page 48 of the Resolution Plan.

⁵ "T"- NCLT Approval Date.

7.3. The Resolution Plan defines “**Effective Date**” means the date being - (i) the date falling 2 (two) Business Days after completion of the last of the conditions to the implementation of the Plan specified in Paragraph 8 of **Part I** (Business Plan of the Resolution Applicant in relation to the Corporate Debtor); or (ii) such other date as may be decided by the Committee of Creditors and the Resolution Applicant, being the date on which the provisions for the implementation of the Plan shall be operative.

8. Details on Management/ Implementation and Reliefs as per the Resolution Plan:

8.1. The Resolution Plan also provides for the following:

(a) Management of company after resolution in Clause 4 in Part II at Pages 23-25 of the Resolution Plan.

(b) Term of the resolution plan in Clause 3 in Part II at Page 23 of the Resolution Plan.

(c) Implementation and Supervision of the resolution plan in Clause 4.2 in Part II at Pages 25-26 of the Resolution Plan.

9. Reliefs, exemptions and waivers sought and orders passed thereon

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

Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
1.	4.12	<u>No action by Persons</u> Pending the occurrence of the Closing Date, no stakeholder and no Person shall be entitled to institute or continue any suits or proceedings including the	Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , ⁶ wherein the Hon'ble Supreme Court has held in para 95(i) that once

⁶ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or authority against the Corporate Debtor or take any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property (including any action under SARFAESI).	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. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be

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Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
			continued.
2.	4.13	<p>Liabilities in relation to the Promoter Group</p> <p>The Corporate Debtor, the Resolution Applicant, Affiliates of the Resolution Applicant, Key Personnel of the Resolution Applicant (including Representatives of the Resolution Applicant) and, on and from the Closing Date, Key Personnel of the Corporate Debtor, shall not in any manner be implicated in, or in any manner be adversely affected by, or have any liability, or incur any disqualification under Applicable Law (including section 164(2) of the 2013 Act), in relation to any investigations, proceedings, orders or any matters, whether known or unknown, relating to the Promoter Group or holding companies, subsidiary companies, associate companies and / or group companies of the Corporate Debtor.</p>	This is already embodied in section 32A of the Code.
3.	4.15	Without prejudice to the rights available to the Corporate Debtor to otherwise carry forward its accumulated Tax losses, the Corporate Debtor shall be	This is for the appropriate taxing authorities to consider the same in accordance with the relevant law.

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Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		permitted recourse to Section 79(2)(c) of the Income-tax Act, 1961.	
4.	3.5.1	All relevant Governmental Authorities to grant relief from payment of stamp duty, registration charges and applicable fees (including fees payable to the jurisdictional registrar of companies) for (i) successful implementation of the Plan (including for increase in authorised share capital, any capital reduction, issuance or transfer of shares or debentures, provision of loan and related security interest, the release of security interest, acquisition of Acquired Debt, issuance of the New Equity Shares, and (ii) all documents that may be executed by the Resolution Applicant and/or the Corporate Debtor in respect of the transactions contemplated under the Plan.	Not granted. The Resolution Plan cannot be in violation of any law for the time being in force. Therefore, if there are any documents on which stamp duty is required to be paid, or in respect of which non-registration will have adverse consequences, they shall apply with full force and no waiver can be granted in this regard.
5.	3.5.2	The Registrar of Companies, West Bengal to take on record and implement the Plan, upon approval of the Plan by the NCLT in accordance with Part I (<i>Business Plan of the Resolution Applicant in</i>	This singularly demonstrates that the Plan in its entirety has perhaps not been perused either by the RP or by the CoC. It cannot be the RoC's duty to take on record and implement the Plan. This is

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Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		<i>relation to the Corporate Debtor</i>), without any further compliances required of any Person.	the duty of the Successful Resolution Applicant. The various changes in the corporate debtor, like replacement of the Board of Directors, any restructuring of the share capital, etc. can be recognised and taken on record by the RoC only when the requisite forms along with the prescribed filing fee are filed by the RoC.
6.	3.5.3	All Governmental Authorities to waive the Non-Compliances of the Corporate Debtor prior to the Closing Date (including Non-Compliances under Companies Act, 2013, Contract Labour (Regulation and Abolition Act), 1970, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and other Applicable Laws, and Non-Compliances in relation to non-payment of any outstanding charges and dues by the Corporate Debtor (including stamp duty, registration fee and property Taxes)	Stamp Duty and Registration Fees – not granted. Property Taxes – granted.
7.	3.5.4.	The Central Board of Direct Taxes / relevant Tax authorities and its enforcing	Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss</i>

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Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		<p>officers and/or agencies (including but not limited to the Assessing Officer, Commissioner of Income Tax, Commissioner of Income Tax (Appeals) and Income Tax Appellate Tribunal) to: (i) not void or take any other actions with respect to the transactions contemplated under this Plan under Section 281 of the IT Act; (ii) exempt the Resolution Applicant from any liability to Taxes including but not limited to those under Sections 56 and 170 of the IT Act; and (iii) not levy any Tax (including but not limited to Sections 56(2)(x), 41(1) and 28 of the IT Act and minimum alternate Tax) arising as a result of giving effect to, or otherwise in relation to, the Plan, in the hands of the Corporate Debtor or the Resolution Applicant. The Central Board of Excise and Customs to not void or take any other actions with respect to the transactions contemplated under this Plan under Section 81 of the Central Goods and Service Tax Act, 2017 and not impose any successor</p>	<p><i>Asset Reconstruction Company Ltd,</i>⁷ wherein the Hon'ble Supreme Court has held in para 95(i) 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. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no</p>

⁷ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		liability on the Resolution Applicant or the Corporate Debtor	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.
8.	3.5.5.	<p>Since the Resolution Applicant could get limited information due to the Covid-19 situation in relation to the Business Permits and their current status, it is probable that certain of the Business Permits of the Corporate Debtor has lapsed, expired, suspended, cancelled, revoked or terminated or the Corporate Debtor has Non-Compliances in relation thereto. Accordingly, all Governmental Authorities to provide 6 (six) months after the Closing Date, if required, in order for the Resolution Applicant to assess the status of these Business Permits and ensure that the Corporate Debtor is compliant with the terms of such Business Permits and Applicable Law without initiating any investigations, actions or proceedings or imposing any costs in relation to such Non-Compliances and</p>	<p>It was for the Resolution Applicant to undertake proper due diligence, and not thrust its carelessness on the Adjudicating Authority and expect concessions in this regard.</p> <p>Having said that, it is up to the Resolution Applicant to make necessary applications to the concerned regulatory or statutory authorities for renewal of such business permits in terms of section 31(4) of the Code, and such authority shall also consider the same keeping in mind the objectives of the Code.</p>

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Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		permit the Resolution Applicant to continue to operate the businesses of the Corporate Debtor.	
9.	3.5.6	All Governmental Authorities (including RBI) to grant any relief, concession or dispensation as may be required for the implementation of the transactions contemplated under the Plan in accordance with its terms and conditions, and to waive the Non-Compliances of the Corporate Debtor prior to the Closing Date	Granted, subject to the condition that this is not in violation of any statute. Such authorities such keep in mind the objectives of the Code in mind which considering grant of reliefs, which is to enable the corporate debtor to start on a clean slate enabling a fresh start.
10.	3.5.7.	All assets (including properties, whether freehold, leasehold or license basis) of the Corporate Debtor to be vested, free and clear of all Encumbrances and disputes;	A fundamental premise of company law is that the company can own properties in its own name. Therefore, if the corporate debtor owns any movable and immovable property, it shall continue to do so and there is no question of any special vesting of rights as a result of approval of the Resolution Plan. What is there, is there, and what is not there, cannot be vested by virtue of the Resolution Plan or its approval.
11.	3.5.8.	Given the limited time available for due diligence conducted by the Resolution Applicant on the	Granted.

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Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		Corporate Debtor due to the COVID-19 related pandemic situation or otherwise and all information and questions requested by the Resolution Applicant during the due diligence exercise but not accurately, adequately or completely provided, any inaccuracy in the information disclosed to the Resolution Applicant should not prejudice the Resolution Applicant, the Corporate Debtor, or the resolution and rehabilitation of the Corporate Debtor contemplated in this Plan in any manner.	
12.	4 (Part III)	Following the approval of the Resolution Plan by the NCLT, any and all claims or demands made by, or liabilities or obligations owed or payable to, (including any demand for any losses or damages, or interest, back wages, compensation, penal interest, liquidated damages already accrued/ accruing or in connection with any third party claims, or any claims made by any person who may claims to be a creditor by way of exercise of rights	Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd.</i> ⁸ wherein the Hon'ble Supreme Court has held in para 95(i) 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,

⁸ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		<p>under Applicable Laws or equity) any present or past, direct or indirect, permanent or temporary employee and/or workman of the Corporate Debtor, whether admitted or not, due or contingent, asserted or unasserted, crystallized or uncrystallized, known or unknown, secured or unsecured, disputed or undisputed, present or future, whether or not set out in the Information Memorandum, the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor, in relation to any period prior to the Closing Date pursuant to this Resolution Plan, will be written off full and shall be, and be deemed to be, permanently extinguished with effect from the NCLT Approval Date by virtue of the order of the NCLT approving this Resolution Plan. The Corporate Debtor or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto</p>	<p>creditors, including the Central Govt, any State Govt or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.</p>
13.	5.1 (Part	<p>Further, upon payment of the settlement amount as</p>	

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Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
	III)	aforesaid, any and all rights and entitlements of any actual or potential Secured Financial Creditors (including any person who may claim to be such a creditor by way of exercise of rights under Applicable Laws or equity) of the Corporate Debtor, whether such claims are or entitlements have been filed before the Resolution Professional or not, whether admitted by the Resolution Professional or not, and whether or not set out in the Information Memorandum, the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor, being due or contingent, asserted or unasserted, crystallized or crystallized, known or unknown, disputed or undisputed, present or future, in relation to any period prior to the Closing Date shall be deemed to be immediately, irrevocably and unconditionally stand abated, settled and extinguished as on the date of approval of this Plan by the NCLT, by virtue of the order of the NCLT approving the Resolution	

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Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		Plan. The Corporate Debtor or the Resolution Applicant, as the case may be, shall at no point of time, directly or indirectly, have any obligation, liability or duty in relation thereto	
14.	5.2. (Part III)	Further, any and all rights and entitlements of any actual or potential Unsecured Financial Creditors (including any person who may claim to be such a creditor by way of exercise of rights under Applicable Laws or equity) of the Corporate Debtor, whether such claims are or entitlements have been filed before the Resolution Professional or not, whether admitted by the Resolution Professional or not, and whether or not set out in the Information Memorandum, the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor, being due or contingent, asserted or unasserted, crystallized or crystallized, known or unknown, disputed or undisputed, present or future, in relation to any period prior to the Closing	Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd.</i> ⁹ wherein the Hon'ble Supreme Court has held in para 95(i) 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. 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

⁹ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		Date shall be deemed to be immediately, irrevocably and unconditionally stand abated, settled and extinguished as on the date of approval of this Plan by the NCLT, by virtue of the order of the NCLT approving the Resolution Plan. The Corporate Debtor or the Resolution Applicant, as the case may be, shall at no point of time, directly or indirectly, have any obligation, liability or duty in relation thereto.	respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.
15.	6 (Part III)	Further, upon payment of the settlement amount as aforesaid, any and all rights and entitlements of any actual or potential Operational Creditors (including any person who may claim to be such a creditor by way of exercise of rights under Applicable Laws or equity) of the Corporate Debtor, whether such claims are or entitlements have been filed before the Resolution Professional or not, whether admitted by the Resolution Professional or not, and whether or not set out in the Information Memorandum, the balance sheets of the Corporate Debtor or the profit and loss account	

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Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		statements of the Corporate Debtor, being due or contingent, asserted or unasserted, crystallized or crystallized, known or unknown, disputed or undisputed, present or future, in relation to any period prior to the Closing Date shall be deemed to be immediately, irrevocably and unconditionally stand abated, settled and extinguished as on the date of approval of this Plan by the NCLT, by virtue of the order of the NCLT approving the Resolution Plan. The Corporate Debtor or the Resolution Applicant, as the case may be, shall at no point of time, directly or indirectly, have any obligation, liability or duty in relation thereto.	
16.	7 (Part III)	Except for the mandatory payments that accrue to any Governmental Authority, all dues payable to Governmental Authorities shall be written off in full and shall be, and be deemed to be, immediately, irrevocably and unconditionally stand abated, settled and extinguished as on the date	Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , ¹⁰ wherein the Hon'ble Supreme Court has held in para 95(i) that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as

¹⁰ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		of approval of this Plan by the NCLT or such other date as may be agreed. Notwithstanding anything contained herein and without prejudice to the rights of the Corporate Debtor, it is clarified that the Resolution Applicant reserves the right to enter into one-time settlement arrangements with certain Governmental Authorities if considered necessary by the Resolution Applicant.	provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt, any State Govt or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.
17.	14.1. (Part III)	Other than Persons receiving settlements as per the <i>Financial Proposal of the Resolution Applicant</i> ,	Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction</i>

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Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		no other payments or settlements (of any kind) shall be made to any other person in respect of Claims filed under the CIRP or otherwise, and all Claims (including any unverified portion of their Claims) against the Corporate Debtor (including any demand for any losses or damages or in connection with any third-party claims) by or to any other stakeholder (including any other actual or potential creditor, if any or any counter-party, including any subsidiary, joint venture or associate) along with any related legal proceedings (whether or not mentioned in the Information Memorandum), including arbitration proceedings, proceedings pertaining to title to the assets (including immovable fixed assets) of the Corporate Debtor, proceedings in relation to eviction and / or mesne profits, criminal proceedings and all legal proceedings as set out in the Information Memorandum or otherwise pending	<i>Company Ltd.</i> ¹¹ wherein the Hon'ble Supreme Court has held in para 95(i) 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. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of

¹¹ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		against the Corporate Debtor, shall immediately, irrevocably and unconditionally stand fully and finally settled, discharged, abated and extinguished in perpetuity.	such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.
18.	14.2. (Part III)	All contingent liabilities and all contingent Claims, including Tax Claims, shall be deemed provided for with NIL settlement payment, and accordingly, all Claims including all indebtedness of and Claims against the Corporate Debtor which are not due as of the Insolvency Commencement Date but relate to the period prior to the Closing Date, shall stand irrevocably and unconditionally extinguished in perpetuity.	<p>Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i>,¹² the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.</p> <p>The provisions of section 32A of the Code will also apply.</p> <p>Therefore, the reliefs sought for are granted, but shall be ringfenced by the said judgment of the Hon'ble Supreme Court in so far as extinguishment of liabilities that are not part of the resolution plan, and non-extinguishment of personal guarantees are concerned.</p>
19.	14.3. (Part III)	All liabilities, claims, demands, capital contributions, or any other form of financial	Approval of the resolution Plan leads to extinguishment of liabilities except and to the extent and

¹² 2021 SCC OnLine SC 313 decided on 13.04.2021.

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Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		commitment, including but not limited to pledge of shares or any security interest created or provided, whether guaranteed or contractually agreed in writing or otherwise, by the Corporate Debtor on behalf of or for its associate companies, group companies and/or their respective Affiliates, shareholders/associates, as the case may be, which are in existence prior to the Closing Date, shall stand irrevocably and unconditionally waived and extinguished.	manner specified in the Resolution Plan. Para 95 of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd.</i> ¹³ lays down that when the resolution plan is approved by NCLT, 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 and 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.
20.	14.4. (Part III)	All obligations and liabilities of the Corporate Debtor in relation to the Investment Companies shall be irrevocably and unconditionally extinguished, without any adverse impact on the Corporate Debtor or the Resolution Applicant.	The provisions of section 32A of the Insolvency & Bankruptcy Code, 2016 shall also apply.

¹³ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
21.	14.5.	The payment to Persons contemplated in the <i>Financial Proposal of the Resolution Applicant</i> shall be each of Corporate Debtor's and Resolution Applicant's full and final performance and satisfaction of all its obligations to such Persons and all Claims (including any unverified portion of their Claims) of such Persons against the Corporate Debtor shall stand irrevocably and unconditionally abated, settled and extinguished in perpetuity.	Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , ¹⁴ wherein the Hon'ble Supreme Court has held in para 95(i) 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. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any
22.	14.6. (Part III)	Accordingly, the Resolution Applicant and the Corporate Debtor shall have no responsibility or liability in respect of any past, present or future Claims against the Corporate Debtor attributable to the period prior to the Closing Date other than any payments to be made under the <i>Financial Proposal of the Resolution Applicant</i> and all such Claims along with any related legal proceedings, including arbitration proceedings and criminal proceedings, shall stand	

¹⁴ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		irrevocably and unconditionally abated, settled and extinguished in perpetuity. It is clarified that with regard to (A) Claims that are permitted to be filed with the Resolution Professional under Applicable Law, (B) Claims that have been filed with the Resolution Professional as of the Closing Date, and (C) Claims relating to (i) matters which are under verification by the Resolution Professional, and (ii) contingent liabilities of the Corporate Debtor, shall be deemed to have been filed and admitted by the Resolution Professional in accordance with Applicable Law and consequently have been settled in terms of the Plan with no further payments required.	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.
23.	14.7. (Part III)	Upon the approval of the Plan by the NCLT under Section 31 of the Code, all pending proceedings relating to the winding-up of the Corporate Debtor shall stand irrevocably and unconditionally abated in perpetuity, and all violation or breach of any agreement of the Corporate Debtor shall stand condoned or	Granted.

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Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		waived, and such agreements shall be treated as if no violation or breach has ever been committed.	
24.	14.8. (Part III)	Notwithstanding anything contained in the RFRP, all Encumbrances, security interest, liens and/or attachments in respect of any assets or securities of the Corporate Debtor whether by contract or by Applicable Law (including but not limited to Sections 281 of the Income-tax Act, 1961 and Sections 81, 82 and 83 of the Central Goods and Services Tax Act, 2017) whether or not by or in favour of Persons receiving settlements under this Plan or those who have provided debt to any third party, shall stand unconditionally and irrevocably released and all enforcement proceedings commenced by any Person over any of the assets of the Corporate Debtor or any securities of the Corporate Debtor shall stand released and reversed, without the requirement of any further deed or action on part of the Resolution Applicant or the Corporate Debtor.	Granted.
25.	14.9.	The guarantors, indemnity	In <i>Lalit Kumar Jain v</i>

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Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		<p>providers and like Persons that have provided guarantees, indemnities or like arrangements for and on behalf of the Corporate Debtor, including in order to secure the Debt availed of by the Corporate Debtor, shall not be entitled to exercise or enforce any subrogation rights (or any other rights whatsoever) in respect of such arrangements, even where such rights have already been exercised, provided however that this will not impact rights of the Financial Creditors to enforce such guarantees or take any other action available under such guarantees and such guarantees (including personal guarantees and corporate guarantees) shall continue.</p> <p>It is clarified for the avoidance of doubt that the Financial Creditors' recourse against the guarantees as set out above shall be free from any subrogation rights of the guarantors. This Paragraph 14.9 shall in no way or manner permit the</p>	<p><i>Union of India & ors,</i>¹⁵ the Hon'ble Supreme Court held in para 133 that sanction of a resolution plan and finality imparted to it by section 31 does not <i>per se</i> operate as a discharge of the guarantor's liability.</p> <p>The provisions of section 32A of the IBC will also apply.</p>

¹⁵ 2021 SCC OnLine SC 396 decided on 21.05.2021.

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		<p>guarantors to claim any right of subrogation, indemnity, security, recompense or any Claim of whatsoever nature (whether under contract, equity or Applicable Law) against the Corporate Debtor or the Resolution Applicant, and all such rights and obligations stand irrevocably and unconditionally extinguished in perpetuity.</p> <p>All rights and Claims (whether contingent or otherwise) of whatsoever nature of every member of the Promoter Group against the Corporate Debtor (including subrogation or similar rights) shall stand irrevocably and unconditionally extinguished in perpetuity. However, all Claims of the Corporate Debtor against the Promoter Group (and all liabilities of the Promoter Group payable to the Corporate Debtor) shall remain outstanding, due and payable in accordance with their terms.</p>	
26.	14.10. (Part III)	All the outstanding negotiable instruments issued by the Corporate Debtor or by any person on behalf of the Corporate	Granted.

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		Debtor including demand promissory notes, post-dated cheques and letters of credit, shall stand terminated and the Corporate Debtor's liability under such instruments shall stand extinguished.	
27.	14.11 (Part III)	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, other securities or loan capital of the Corporate Debtor, whether on a change of control or otherwise, shall stand unconditionally and irrevocably extinguished.	Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , ¹⁶ wherein the Hon'ble Supreme Court has held in para 95(i) 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. 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

¹⁶ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
			continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.
28.	14.12 (Part III)	The Resolution Applicant and the Corporate Debtor shall not be liable for any actions or omissions of the Resolution Professional which are not in compliance with Applicable Law.	This is neither here nor there.
29.	14.13 (Part III)	All liabilities (whether contingent or crystallised) in relation to and all corporate guarantees, indemnities and all other forms of credit support provided by the Corporate Debtor (including but not limited to the corporate guarantees and bank guarantees provided by the Corporate Debtor and the other contingent liabilities	Granted in terms of the <i>Ghanashyam Mishra and</i>

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Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		of the Corporate Debtor disclosed in the audited financial statements of the Corporate Debtor as of 31 March 2019), and all contingent liabilities disclosed in the annual audited financial statements of the Corporate Debtor and liabilities which are not in notice of Corporate Debtor or not acknowledged by the Corporate Debtor, shall stand abated, settled and extinguished and discharged.	<i>Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd,</i> ¹⁷ wherein the Hon'ble Supreme Court has held in para 95(i) 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. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall
30.	14.14 (Part III)	All securities convertible or exchangeable into Equity Shares and all rights to subscribe to Equity Shares, including Preference Shares, convertible debentures, convertible preference shares, convertible loans (whether compulsorily or partially convertible or not), warrants, subscription rights under shareholders' agreements, shall stand immediately extinguished and settled.	
31.	14.15 (Part III)	All Claims that may be made or arising against the Corporate Debtor in relation to any payments required to	

¹⁷ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		<p>be made by the Corporate Debtor under Applicable Law, or in relation to any breach, contravention or Non-Compliances of any Applicable Law (whether or not such Claim was notified to or Claimed against the Corporate Debtor), shall be deemed to be owed and due by the Corporate Debtor and shall immediately, irrevocably and unconditionally stand abated, settled and extinguished. No Governmental Authority shall have any further rights or claims against the Corporate Debtor, in respect of the period prior to the Closing Date.</p>	<p>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.</p>
32.	14.16 (Part III)	<p>All Claims (whether contingent or crystallised and whether or not filed) of Governmental Authorities in relation to all Taxes which the Corporate Debtor was or may be liable to pay (including with respect to Financial Years under assessment) and all obligations to deduct and withhold Taxes on any payment as required under Applicable Law and pertaining to the period</p>	<p>Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i>,¹⁸ wherein the Hon'ble Supreme Court has held in para 95(i) that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of</p>

¹⁸ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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IA (IB) No. 15/KB/2021 in CP (IB) No. 533/KB/2018

Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		prior to the Closing Date shall stand extinguished.	section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt, any State Govt or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.
33.	14.17 (Part III)	Upon approval of this Plan by the NCLT, all dues under the provisions of IT Act, including Taxes, duty, penalties, interest, fines, cesses, unpaid Tax deducted at source / Tax collected at source, whether admitted or not, due or contingent, whether part of the above claim of income Tax authorities or not, asserted or unasserted, crystallised or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, present or future), in relation to any period prior to the Closing Date, shall stand abated, settled and extinguished and the Corporate Debtor shall not be liable to pay any amount against such demand. All assessments/appellate or other proceedings pending against the Corporate Debtor, relating to the period the Closing Date, shall stand terminated and all consequential liabilities, if any, stand abated and should be considered to be not payable by the Corporate Debtor. All	

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Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		<p>notices proposing to initiate any proceedings (including any search, seizure, prosecution proceedings) against the Corporate Debtor in relation to the period prior to the Closing Date and pending on the Closing Date, shall stand abated and should not be proceeded against. Post the order of the NCLT, no re-assessment / revision or any other proceedings (including any prosecution proceedings) under the provisions of the IT Act shall be initiated on the Corporate Debtor in relation to period prior to the Closing Date and any consequential demand/action should be considered non-existing and as not payable by the Corporate Debtor. Any proceedings which were kept in abeyance in view of the insolvency process or otherwise shall not be revived post the NCLT Order.</p>	
34.	14.118(Part III)	<p>Upon approval of this Plan by the NCLT, all dues under the provisions of all the indirect Taxes, including but not limited to,</p>	<p>Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i>,¹⁹ wherein the</p>

¹⁹ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		<p>the Central Excise Act, 1944, the Finance Act, 1994 (Service Tax), the Customs Act, 1962, the Central Sales Tax Act, 1956, the various states' value added tax acts and any other indirect Tax laws, including Taxes, duty, penalties, interest, fines, cesses, charges, unpaid Tax deducted at source / Tax collected at source (to the extent applicable), the Electricity Act, 2003, the Central Goods and Services Tax Act, 2017 (as amended from time to time and including the rules made thereunder), State Goods and Service Tax Act, 2017 (as amended from time to time and including the rules made thereunder), Integrated Goods and Service Tax Act, 2017 (as amended from time to time and including the rules made thereunder), including entry taxes, electricity duty, cross subsidy on electricity duty, sales tax deferral liabilities, duties, penalties, interest, fines, cesses, charges, unpaid tax deducted at source or tax collected at source, Octroi tax, stamp duty, local body tax, municipal taxes (including but not restricted</p>	<p>Hon'ble Supreme Court has held in para 95(i) 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. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority</p>

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		to the Kolkata Municipal Corporation), or other fiscal incentives duties (including stamp duties), electricity dues and duties, water resource department related dues, enterprise social commitment fund in relation to environment, penalties, fees, interest, fines, levies, cesses, royalties, assessment whether admitted or not, due or contingent, whether part of the above mentioned contingent liability schedule dues or not, whether claimed by the Tax authorities or not, asserted or unasserted, crystallised or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, present or future, in relation to any period prior to the Closing Date, shall stand extinguished and the Corporate Debtor will not be liable to pay any amount against such demand. Upon approval of this Plan by the NCLT, all outstanding litigations/demands, assessments/appellate or other proceedings, including but not limited to any audits, investigations, search and seizure, against	grants its approval under section 31 could be continued.

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		<p>the Corporate Debtor relating to the period prior to the Closing Date, shall stand terminated and all consequential liabilities, if any, will stand abated and shall be considered to be not payable by the Corporate Debtor. All notices proposing to initiate any proceedings against the Corporate Debtor in relation to the period prior to the Closing Date and pending on the Closing Date, shall be considered withdrawn and shall not be proceeded against. Post the NCLT Order, no re-assessment / revision or any other proceedings under the provisions of any of the indirect Tax laws should be initiated on the Corporate Debtor in relation to the period prior to Closing Date and any consequential demand shall be considered non-existing and as not payable by the Corporate Debtor. Any proceedings which were kept in abeyance in view of insolvency process or otherwise shall not be revived post the NCLT Order.</p>	
35.	14.19 (Part	Approval of the Resolution Plan will be treated as	Granted in terms of the <i>Ghanashyam Mishra and</i>

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	III)	waiver and closure approval by NCLT for any cases pending before any judicial authority in India, including but not limited to industrial court, labour court, civil court or criminal court or appellate tribunals relating to any litigations/ claims/ demands, assessments or lawsuits, corporate disputes under any Act or law enforceable in India including the Companies Act, 2013, operational creditors dues, unpaid wages and other type statutory dues, dismissal of workers, inaccurate water and electricity bill as well as any other cases, which are in process or may arise after the approval of Resolution Plan against the Corporate Debtor related to acts before the commencement of CIRP.	<i>Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd,</i> ²⁰ wherein the Hon'ble Supreme Court has held in para 95(i) 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. 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
36.	14.20 (Part III)	In preparing this Plan and the financial proposals contained herein, the Resolution Applicant has relied solely upon the information expressly and fairly disclosed in the Information Memorandum and the in the Disclosure Schedule Documents. In the	continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall

²⁰ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		<p>event there are any differences between the information expressly and fairly disclosed in the Information Memorandum and the Disclosure Schedule Documents, and information from any source, including information in the annual reports or books or records of the Corporate Debtor, as the case may be, the information expressly and fairly disclosed in the Information Memorandum and the Disclosure Schedule Documents shall prevail, and any amounts reflected as due from the Corporate Debtor to any Person in such other sources shall immediately, irrevocably and unconditionally stand abated, settled and extinguished, and no Person shall have any further rights or claims against the Corporate Debtor with respect to such liabilities, whether accrued or not.</p>	<p>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.</p>
37.	14.21 (Part III)	<p>All Claims that may be made or arising against the Corporate Debtor in relation to amounts payable by the Corporate Debtor in connection with the</p>	<p>Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i>,²¹ wherein the Hon'ble Supreme Court has</p>

²¹ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		<p>corporate insolvency resolution processes or liquidation processes of any other Person and pursuant to Sections 43 to 51 (both inclusive) and Section 66 of the Code (“Avoidance Pay-out Amounts”) shall immediately, irrevocably and unconditionally stand abated, settled and extinguished, and no Person shall have any further rights or claims against the Corporate Debtor with respect to the Avoidance Pay-out Amounts. This is essential since (i) the Resolution Applicant has not received information in relation to any potential Avoidance Pay-out Amounts to ascertain its impact on the Plan, and (ii) the Resolution Applicant is submitting this Plan for the restructuring, rehabilitation and insolvency resolution of the Corporate Debtor as a going concern.</p>	<p>held in para 95(i) 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. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under</p>
38.	14.22 (Part III)	<p>Any and all liabilities (statutory or otherwise) arising from any contractual arrangements entered into by the Corporate Debtor shall be deemed to be terminated and any claims or liabilities arising or having crystallized shall be</p>	

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		deemed to be cancelled and written-off in full, and be, and be deemed to be, permanently extinguished.	section 31 could be continued.
39.	14.23 (Part III)	Unless expressly agreed to by the Corporate Debtor, by way of a written consent after the NCLT Approval Date, all properties of the Corporate Debtor in the possession of the Promoters or the Related Parties of the Promoters shall be immediately vacated, released and transferred in fit and proper condition to the Corporate Debtor. All rights and interests of the Promoters and related parties of the Promoters whether accrued or outstanding or otherwise, as shareholders of the Corporate Debtor, shall be and stand extinguished in terms of this Resolution Plan.	This should be on as is where is basis . Granted.
40.	14.24 (Part III)	It is clarified that the existing promoters, shareholders, managers, directors, officers, or such other person in charge of the affairs and management of the Corporate Debtor (including any person who was an 'officer in default' or 'occupier') prior to the Closing Date shall continue	Granted. The provisions of section 32A of the IBC will also apply.

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IA (IB) No. 15/KB/2021 in CP (IB) No. 533/KB/2018

Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		<p>to be responsible and liable for all the liabilities, claims, demand, obligations, penalties etc. arising out of any (i) proceedings, inquiries, investigations, orders, show causes, notices, suits, litigation etc. (including those arising out of any orders passed by the NCLT pursuant to Sections 43, 45, 49, 50, 66, 68, 70, 71, 72, 73 or 74 of the Code) or any acts or omissions in breach of Applicable Law which occurred prior to the Closing Date or (ii) that may arise out of any proceedings, inquiries, investigations, orders, show cause, notices, suits, litigation etc. (including any orders that may be passed by the NCLT pursuant to Sections 43, 45, 49, 50, 66, 68, 70, 71, 72, 73 or 74 of the Code). Further, for the avoidance of doubt and without prejudice to the generality of the foregoing, it is expressly clarified that if any criminal proceedings initiated against the officers of the Corporate Debtor prior to the Closing Date cannot be disposed of by the NCLT under Applicable Law, the same shall</p>	

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Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		continue against such officers. However, any liability accruing to the Corporate Debtor in relation to such criminal proceedings against the officers of the Corporate Debtor shall be deemed to have been permanently extinguished by the NCLT order approving the Resolution Plan.	
41.	1.3. (Sched ule 2)	The approval of this Plan by the NCLT shall be deemed compliance with all procedural requirements in terms of Section 61, Section 64, Section 179, Section 180(1)(a), Section 180(1)(c), Section 186(3), Section 185, Companies (Share Capital and Debenture) Rules, 2014, other applicable provisions of the 2013 Act and other Applicable Laws, for such increase.	All internal approvals from shareholders etc. shall be deemed to have been granted. However, wherever applicable, the company shall file necessary forms along with applicable fee with the Registrar of Companies.
42.	1.6. (Sched ule 2)	The approval of the NCLT in accordance with Section 31 of the Code and approval of the Committee of Creditors in accordance with Section 30(4) of the Code shall constitute adequate approval for issuance and subscription of the New Equity Shares in accordance with Section 42,	Granted, however, wherever applicable the company shall file necessary forms along with applicable fee with the Registrar of Companies.

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Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		<p>Section 62(1)(c) and other applicable provisions of the 2013 Act, and other Applicable Law.</p> <p>Accordingly, no approval or consent shall be necessary from any other Person / Governmental Authority in relation to either of these actions under any agreement, the constitutional documents of the Corporate Debtor or under any Applicable Law.</p>	
43.	1.8. (Sched ule 2)	<p>The approval of the Plan shall be deemed compliance with all requirements under Applicable Law in relation to infusing such New Debt and no approval or consent will be required from any Person or Governmental Authority in relation to this action including without limitation, under Section 186, Section 180(1)(c), Section 179 or any other provisions of the 2013 Act or Applicable Law.</p>	Granted.
44.	2.2. (Sched ule 2)	<p>The approval of this Plan by the NCLT shall be deemed compliance with all requirements in terms of Section 66, NCLT (Procedure for Reduction of Share Capital) Rules, 2016, other applicable provisions of the 2013 Act and</p>	Granted, however, wherever applicable the company shall file necessary forms along with applicable fee with the Registrar of Companies.

Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		Applicable Law. Pursuant to the reduction of share capital as set out in this Paragraph 2, the face value of the share capital reduced shall be reflected as 'capital reserve' in the financial statements of the Corporate Debtor, and such capital reserve shall be available to accommodate future impairment or write off of assets or the Corporate Debtor.	

10. Analysis and Orders

- 10.1. The objection by a member of the suspended Board which was filed in I.A. (IB) No. 20/KB/2021 has been considered and rejected by this Adjudicating Authority *vide* order dated 17 February 2022 in I.A. (IB) No. 20/KB/2021, which has been pronounced separately today. No circumstances now exist that militate against grant of approval of the Resolution Plan approved by the CoC.
- 10.2. On hearing the submissions made by the Resolution Professional, and perusing the record, we notice that the Resolution Plan has been approved with 100% voting share. As per the CoC, the Resolution Plan meets the requirement of being viable and feasible for revival of the Corporate Debtor. By and large, all compliances have been made by the Resolution Professional and the Successful Resolution Applicant for effective implementation of the Resolution Plan after its approval by this Adjudicating Authority.
- 10.3. On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the CIRP Regulations.
- 10.4. As far as the question of granting time to comply with the statutory obligations

- or seeking approvals from authorities is concerned, the Successful 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.
- 10.5. In case of non-compliance of this order or withdrawal of Resolution Plan, the payments already made by the Successful Resolution Applicant shall be liable for forfeiture.
- 10.6. Subject to the observations made in this Order, the Resolution Plan dated 02.12.2020 is hereby **APPROVED** by this Bench. **The Resolution Plan shall form part of this Order.**
- 10.7. The Resolution Plan thus approved shall be binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect.
- 10.8. The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
- 10.9. The Resolution Professional shall submit copies of the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record with copies to the Successful Resolution Applicant or New Promoters.
- 10.10. The Resolution Professional shall stand discharged from his duties with effect from the date of this order.
- 10.11. The Resolution Professional is further directed to handover all records, and properties to the Successful Resolution Applicant to finalise the further line of action required for starting of the operation. The Successful Resolution Applicant shall have access to all the records and premises of the Corporate Debtor through the Resolution Professional, to finalise the further line of action required for restarting the operations of the Corporate Debtor.
- 10.12. Liberty is hereby granted for moving applications, if required, in connection with the implementation of the approved Resolution Plan.

- 10.13. The Applicant shall file a copy of this order with the Registrar of Companies, West Bengal, *inter alia* for updating the status of the Corporate Debtor.
- 10.14. The application bearing **IA (IB) No.15/KB/2021** along with the Company Petition bearing **CP (IB)No.533/KB/2018** are disposed of accordingly.
- 10.15. Additionally, the Registry shall send a copy of this order to the Registrar of Companies, West Bengal, Kolkata, for updating the status of the Corporate Debtor.
- 10.16. Certified copy of this order be issued on demand to the concerned parties, upon due compliance.

Balraj Joshi
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

17 February, 2022

GGRB[LRA]

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

I.A. (IB) No. 20/KB/2021

in

CP (IB) No. 533/KB/2018

In the matter of:

Under section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with rule 11 of the National Company Law Tribunal Rules, 2016.

And

In the matter of:

Jain Constructions Private Limited

... Financial Creditor

Versus

Kariwala designers Private Limited

CIN: U74994WB2011PTC157676

...Corporate Debtor

And

In the matter of:

Anand Kariwala

... Applicant

versus

1. Mr. Partha Pratim Ghosh, Resolution Professional

2. The Committee of Creditors of Kariwala Designers Private Limited

... Respondent

Coram:

Mr. Rajasekhar V.K.

: Member (Judicial)

Mr. Balraj Joshi

: Member (Technical)

Appearances (via videoconferencing):

For the Applicant

: Ms. Swapna Chaubey, Advocate

Mr. Sidhartha Sharma, Advocate

Ms. Ujjaini Chatterjee, Advocate

Ms. Shalini Basu, Advocate

For the Resolution Professional

: Mr. Jishnu Chowdhury, Advocate

Ms. Ankita Baid, Advocate

Mr. Partha Pratim Ghosh, R.P.

For the CoC

: Mr. Chayan Gupta, Advocate
Mr. Ajit Kumar Mishra, Advocate

Date of hearing: 12 November, 2021

Date of pronouncement: 17 February, 2022

Date of corrigendum: 24.02.2022

CORRIGENDUM ORDER

1. In the order dated 17 February, 2022, in the appearance column, the name of Mr. Ajit Kumar Mishra has been given as “Mr. Ajit Kumar Gupta, Advocate”. The name “**Mr. Ajit Kumar Gupta, Advocate**” in the appearance column shall be substituted and read as “**Mr. Ajit Kumar Mishra, Advocate**”.
2. The rest of the order shall remain as it is.

Balraj Joshi
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

24 February, 2022

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

**I.A. (IB) No. 20/KB/2021
in
CP (IB) No. 533/KB/2018**

In the matter of:

Under section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with rule 11 of the National Company Law Tribunal Rules, 2016.

And

In the matter of:

Jain Constructions Private Limited

... Financial Creditor

Versus

Kariwala designers Private Limited

CIN: U74994WB2011PTC157676

...Corporate Debtor

And

In the matter of:

Anand Kariwala

... Applicant

versus

- 1. Mr. Partha Pratim Ghosh, Resolution Professional**
- 2. The Committee of Creditors of Kariwala Designers Private Limited**

... Respondent

Coram:

Mr. Rajasekhar V.K. : Member (Judicial)

Mr. Balraj Joshi : Member (Technical)

Appearances (via videoconferencing):

For the Applicant : Ms. Swapna Chaubey, Advocate
Mr. Sidhartha Sharma, Advocate
Ms. Ujjaini Chatterjee, Advocate
Ms. Shalini Basu, Advocate

For the Resolution Professional : Mr. Jishnu Chowdhury, Advocate
Ms. Ankita Baid, Advocate
Mr. Partha Pratim Ghosh, R.P.

For the CoC : Mr. Chayan Gupta, Advocate
Mr. Ajit Kumar Gupta, Advocate

Date of hearing: 12 November, 2021

Date of pronouncement: 17 February, 2022

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. Preamble

- 1.1. This Court convened through videoconferencing.
- 1.2. The present I.A. has been filed under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (“Code”) by a member of the suspended Board of Director of the Corporate Debtor.
- 1.3. This Adjudicating Authority *vide* order dated 24 October, 2019 admitted the Corporate Debtor into Corporate Insolvency Resolution Process (“CIRP”) on an application made by Jain Construction Private Limited appointed Mr. Chhedi Rajbir as the Interim Resolution Professional (“IRP”).

2. Submissions of Ms. Swapna Choubey, learned Counsel appearing on behalf of the Applicant

- 2.1. The Applicant received notices for the first, second and third Committee of Creditors (“CoC”) meetings held on 20 November, 2019, 18 December, 2019 and 27 January, 2020. The IRP was replaced by the Respondent No. 1 and the Applicant did not receive any notice for CoC meetings.
- 2.2. Thereafter in the month of September, 2020, the Applicant received a notice for handing over the vehicle of the Corporate Debtor. It was only after the receipt of such notice that it came to the knowledge of the Applicant that several CoC meetings were held and the Applicant was not given any notice of such meetings.
- 2.3. On enquiry, the Applicant was informed that a Resolution plan had been received and the same was under consideration before the CoC.

- 2.4. The respondent No. 1 refused to share the Resolution Plan, upon such denial, the Applicant approached the Adjudicating Authority for direction upon the Respondent No. 1 to serve the Resolution Plan upon the Applicant. The Respondent No. 1 shared the Resolution Plan and issued notice for the 9th CoC meeting.
- 2.5. On perusal of the Resolution Plan, the Applicant observed that the Resolution Applicant had submitted a Plan for Rs.4,32,00,000/- (Rupees Four Crore Thirty-Two Lakh only), whereas the Corporate Debtor had an immovable asset i.e. the show room situated at 188B, Manicktala Road, Kolkata- 700054 that had been assessed for a Circle Rate of Rs.4,32,00,000/- (Rupees Four Crore Thirty-Two Lakh only) for 4162 square feet and an additional sum of Rs.32,03,955/- (Rupees Thirty-Two Lakh, Three Thousand Nine Hundred and Fifty-Five only) for 748 square feet for car parking space.
- 2.6. It is submitted that the market rate of a property is always much higher than the circle rate and in the present case the market rate could be above Rs.6Crore.
- 2.7. The Resolution Applicant has proposed to make a payment of Rs.3,40,00,000/- (Rupees Three Crore Forty Lakh only) to the sole Financial Creditor and had ignored the very essence of the Code i.e. maximisation of the value of the assets of the Corporate Debtor and to balance the interest of all the stakeholders completely.
- 2.8. The Resolution Applicant is a financial consultancy firm and have no prior knowledge of experience of the business of the Corporate Debtor.
- 2.9. The Resolution Plan is faulty and biased and apart from the secured Financial Creditor all the other Creditors are being deprived of their dues.
- 2.10. The sale of the immovable property of the Corporate Debtor could fetch approximately Rs.5,00,00,000/- but the Corporate Debtor is being transferred as a going concern at a lesser sum.
- 2.11. That the Resolution Plan is being submitted in order to hand over the Corporate Debtor to Mr. Sanjay Kariwala, who claims to be the 100% shareholder of the Corporate Debtor and a Petition under section 240-241 of the Companies Act, 2013 is pending.

3. *Submission of Mr. Jishnu Chowdhury, learned Counsel appearing on behalf of the Resolution professional*

- 3.1. It is submitted that the Applicant was informed of the appointment of the Respondent No. 1 on the email address 'sharadkariwala@gmail.com'. That Mr. Sharad Kariwala is the Applicant's son who had attended the first CoC meeting but it was found that Mr. Sharad Kariwala was not a member of the suspended Board of Directors and hence he was not permitted to attend the other CoC meetings.
- 3.2. The other members of the suspended Board of Directors *viz.* Mr. Sanjay Kariwala and Mohit Kariwala attended the CoC meetings and notices were circulated to all the suspended Board of Directors and notice was also sent to registered email address of the Corporate Debtor.
- 3.3. The Resolution Plan was shared with the Applicant after the Applicant submitted the Non-Disclosure Agreement.
- 3.4. With regard to the Circle Rate of the Manictala Asset of the Corporate Debtor. The valuations were obtained from following sources:
- 3.4.1.** valuation of land and building were obtained from Sekh TArIk Anowar and Prodipto Das;
- 3.4.2.** Valuations of plant and machinery were obtained from Shyamal Kumar Chakraborty and Gautam Kumar Jain;
- 3.4.3.** Valuations of security and financial assets were obtained from Santanu Brahma and Pijush Karmakar;
- 3.4.4.** Further, in view of a disparity between two valuers in respect of security and financial assets, valuation was also obtained from Debayan Patra.
- 3.5. Immovable properties, moveable properties and financial assets were separately valued by two registered valuers and the average of the two valuations were considered as the fair value/liquidation value. The fair value and liquidation value were worked on after the CoC was informed of the valuation reports. The Circle Rate cannot be the only factor for calculating the calculation of immovable properties.

- 3.6. The Resolution Plan is not faulty or biased and that the interests of the stakeholders have been balanced.
- 3.7. It is denied that the CIRP has been conducted in a fraudulent manner or in order to transfer the business of the Corporate Debtor from the present promoters to a group controlled by Sanjay Kariwala.
- 3.8. The learned Counsel submitted that a Resolution Plan need not match with the liquidation value. In support of his contention, the learned Counsel has placed reliance on **Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others**¹ (paragraph 26-27) and **State Bank of Inida v. Accord Life Spec Private Limited & Ors.**²
4. **Submissions of Mr. Chayan Gupta, learned Counsel appearing on behalf of the Committee of Creditors.**
- 4.1. The Applicant has no locus standi to file the I.A. The CoC has approved the Resolution Plan and the commercial wisdom of the CoC cannot be questioned by an Applicant, who is a member of the suspended Board of Directors of the Corporate Debtor.
- 4.2. The present I.A. has been filed due to the disputes and differences between the members of the suspended Board of Directors of the Corporate Debtor.
- 4.3. The I.A. has been filed with the malafide intention of driving the Resolution Applicant away so that the Corporate Debtor is sent into Liquidation.
- 4.4. Notices of all the CoC meetings were given to the members of the suspended Board of Directors including the Applicant and it was the Applicant who chose not to appear in the meetings of the CoC. The email address provided by the Applicant was that of Sharad Kariwala who was not a member of the suspended Board of Directors, hence notices for the meetings were not sent to him as Mr. Sharad Kariwala would not have been prejudiced.
- 4.5. The learned Counsel has relied on **Burdwan Central Cooperative Bank & Anr. v. Asim Chatterjee & Ors.**³ and **Om Prakash Mann v.**

¹ MANU/SC/0066/2020 dated 22 January 2020

² MANU/Sc/0461/2020 dated 28 February 2020

³ (2012) 2 SCC 641 dated 18 January 2012

*Director of Education (Basic) and Ors.*⁴ wherein it has been held that unless a person is deprived of his rights the principle of natural justice is not violated.

4.6. The Corporate Debtor is not a manufacturing concern and is only into trading and retailing of sarees, which is not considered to be entailing skills requiring high level of technical or business expertise hence, the contention that the Resolution Applicant does not have any prior knowledge or experience in the line of business of the Corporate Debtor is ill-founded.

4.7. The Resolution Applicant has proposed to infuse Rs.75,00,000/- (Rupees Seventy-Five Lakh only) as working capital.

4.8. The commercial wisdom of the CoC in approving the Resolution Plan cannot be challenged by the Applicant or any other person, as laid down by the Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Others*⁵ (paragraphs 54 to 94 and 141 to 147)

5. *Reply of the Applicant to the submissions made by the Respondents*

5.1. The learned Counsel for the Applicant submitted that in the judgment of *Maharashtra Seamless (supra.)*, the Resolution Applicant had agreed to clear the dues of the Operational Creditors at par with the Financial Creditors and had complied with section 30(2)(b) of the Code.

5.2. But in the instant case, the Resolution Plan did not comply with section 30(2) and (4) of the Code. The Operational Creditors and the unsecured Financial Creditors were deprived of their legitimate dues.

6. *Analysis and Findings*

6.1. The main issues to be considered are:

6.1.1. Whether the Applicant has a *locus standi* to object against the approval of the Resolution Plan?

6.1.2. Whether the Adjudicating Authority can interfere with the commercial wisdom of the CoC?

⁴ (2006) 7 SCC 558 dated 29 August 2006

⁵ (2020) 8 SCC 531 dated 15 November 2019

- 6.2. Firstly, after the admission of the Corporate Debtor into Corporate Resolution Insolvency Process, the Board of Directors of the Corporate Debtor are suspended and their powers are transferred to the Interim Resolution Professional as envisaged in section 17(1)(b) of the Code. Thereafter, the Interim Resolution Professional/Resolution Professional takes over the reins of the Corporate Debtor and manages the Corporate Debtor for its benefit. The function of the suspended Board of Directors is limited to assisting and cooperating with the Interim Resolution Professional/Resolution Professional for the smooth resolution of the Corporate Debtor.
- 6.3. But this limited function does not bar the suspended Board of Directors to object the act of the Resolution Professional if the act of the Resolution Professional is prejudicial to the Corporate Debtor, or is in violation of any law or procedural requirement.
- 6.4. Now in regard to the issue of the commercial wisdom of the CoC and whether the Adjudicating Authority has authority to interfere with the same, there is a catena of judgments that rule in the negative. The Adjudicating Authority is bound to act within the four corners of section 30(2) of the Code.⁶
- 6.5. We have perused the Resolution Plan submitted by ARSK Consultants Private Limited and AMPI Finance Private Limited. The Resolution Plan is in compliance with section 30(2) of the Code and hence the Resolution Plan has been approved by this Adjudicating Authority.
- 6.6. The Applicant raised a contention that the Resolution Plan does not maximise the assets of the Corporate Debtor and thereby violating the object of the Code and hence the Resolution Plan should be rejected. The Applicant has failed to consider that the object of the Code in totality that is not only to maximise the assets of the Corporate Debtor but the primary objective is to give the Corporate Debtor a new lease of life. That is why the stress is given in reviving the Corporate Debtor as a going concern, if possible and the liquidation followed by the dissolution is supposed to be the last resort.
- 6.7. Further, the Hon'ble Supreme Court in its judgment **Ebix Singapore (P) Ltd. v. Committee of Creditors of Educomp Solutions**

⁶ Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another, (2021) 10 SCC 401 dated 10 March, 2021

Limited⁷ held that inordinate delays cause commercial uncertainty, degradation in the value of the Corporate debtor and makes the insolvency process inefficient and expensive.

- 6.8. Hence, when a Resolution Plan has been submitted to revive the Corporate Debtor as a going concern and is in compliance of the Code, there is no reason to reject the same, and certainly it cannot be done on the basis of a perceived grievance by a member of the Suspended Board who has not taken any positive step to participate in the meetings of the CoC.
7. Under the aforementioned circumstances, we are not inclined towards granting the prayers. Resultantly, we dismiss the **IA No. 20/KB/2021**.
8. 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.
9. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

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Digitally signed
by Rajasekhar V.K
Date: 2022.02.17
20:40:12 +05'30'

Rajasekhar V.K.
Member (Judicial)

17 February, 2022

GGRB (LRA)

⁷ 2021 SCC OnLine SC 707 dated 13 September, 2021