

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

**IA (IBC)(Plan)18/KB/2024
in
C.P. (IB)No. 346/KB/2021**

An application under Section 30(6) and Section 31 of the Insolvency & Bankruptcy Code, 2016 along with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;

In the matter of:

Subhadra Commercial Private Limited

...Operational Creditor

Versus

Purulia Metal Casting Private Limited

...Corporate Debtor

In the matter of:

Pratim Bayal of Resolution Professional of **Purulia Metal Casting Private Limited**

...Applicant

Date of pronouncement of order: 07.01.2025

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)

Appearances (via Video Conferencing/Physical)

Ms. Urmila Chakraborty, Adv.] For the Petitioner
Mr. Yash Dalmia, Adv.] In IA(I.B.C)/1966(KB)2024
Mr. Rahul Agarwal, PCS] and IA(I.B.C)/1967(KB)2024

Mr. Debasish Chakrabarti, Adv.] For the Respondent No. 2
Mr. Snehasish Chakraborty, Adv.]

Ms, Saurav Jain, Adv.] For the Respondent 12
] In IA(I.B.C)/1966(KB)2024]
] and IA(I.B.C)/1967(KB)2024

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Mr. Shaunak Mitra, Adv.] For the Resolution Professional
Mr. Siddhanth Makkar, Adv.]
Mr. Pratim Bayal] RP-in-Person
Mr. Patita Paban Bishwal, Adv.] For the Intervenor

O R D E R

Per D. Arvind, Member (Technical):

1. The Court congregated through a hybrid mode.
2. Ld. Sr. Counsels / Counsels for the parties were heard at length.
3. This application has been preferred to seek approval of Resolution Plan in its entirety along with annexure, Schedule, Appendixes including the claims contained therein as submitted by **DD International Private Limited** and reliefs and concessions sought for under the Plan.
4. The CoC has approved the Resolution Plan of **DD International Private Limited** by **87.16%** voting share in respect of the Corporate Debtor.

5. Brief facts of the Case:

- 5.1. The Corporate Debtor was admitted into CIRP vide CP (IB) No. 346/KB/2021 by an order of this Hon'ble Tribunal dated 18/10/2023 in Company Petition No. 346/KB/2021 and Mr. Jitendra Lohia (IP Registration No. IBBI/IPA-001/IP-P00170/2017-18/10339) was appointed as the Interim Resolution Professional. Subsequently, Mr. Jitendra Lohia was replaced by Mr. Pratim Bayal (IP Registration No. IBBI/IPA-

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003/IP-N00213/2018-2019/12385) as the new Resolution Professional as per the order of this Tribunal dated 22/02/2024.

5.2. Thereafter, this Interlocutory Application is being preferred and filed by Mr. Pratim Bayal, the Resolution professional(hereinafter referred to as the Applicant/Resolution Professional) in the matter of Purulia Metal Casting Private Limited (hereinafter referred to as the "Corporate Debtor") under Section 30 (6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code")inter alia seeking approval of the resolution plan submitted by **DD International Private Limited** as approved by the Committee of Creditors of the Corporate Debtor in the Corporate Insolvency Resolution Process (hereinafter referred to as the "CIRP").

5.3. Further, an appeal was filed before the Hon'ble NCLAT, New Delhi by Kunal Goswami, Suspended Board of Directors against the impugned order dated 18.10.2023 passed by the NCLT, Kolkata Bench. The said appeal was taken up for hearing on 07.11.2023, wherein the Hon'ble NCLAT had given interim direction to the undersigned for stay of the constitution of Committee of Creditor and the matter was finally heard on



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08.01.2024 by the Hon'ble NCLAT where the Appeal was dismissed, thus vacating the interim order.

- 5.4. Thereafter, a Publication of FORM "G" was made by the RP on 18.02.2024 wherein the last date to receive Expression of Interest (EOI) was on 04.03.2024. In terms with discussion and approval of the lead member of the CoC, the last date for submission of Expression of Interest (EOI) was extended till 19.03.2024 and public announcement to this effect was made again on 05.03.2024 by the applicant RP. RP had received 15 EOI's till last date i.e. 19.03.2024. Copy of Form G published on 05.03.2024 is attached as Annexure-2.
- 5.5. The applicant / RP verified the EOI submitted by the PRAs and after Verification of the EOI received by the Prospective Resolution Applicants and published the Final list of the prospective Resolution Applicants on 05.04.2024. All the documents like IM, RFRP, BID and all relevant information required for the preparation of the Resolution Plan was shared with the Prospective Resolution Applicants. The last date to submit resolution plan was on 09.05.2024. Copy of RFRP and IM on is attached as Annexure-3 with the application.



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- 5.6. However, the applicant states that the Applicant received emails from multiple PRAs to extend the date for submission of Resolution Plan citing a need for report from land surveyor which is required to understand the plot demarcation and identification.
- 5.7. In the 6th CoC Meeting held on 05.06.2024 and in the said meeting Resolution Plans were opened in front of the CoC Members that were received on 29.05.2024.
- 5.8. 7th CoC Meeting conducted on 24.06.2024; the CoC Members were of the opinion that in order to increase the competitiveness and maximize the value of assets of the Corporate Debtor revised financial bids must be called from the Resolution Applicants. The COC Members requested the RP to call for improved financial offers from the Resolution Applicants whose plans were opened in the 6th COC Meeting. It was deliberated and decided that after receiving the revised financial bids from the Resolution Applicants, the COC will decide the further bidding process wherein they may decide on a floor price and reserve the right to invite the H1, H2 and H3 bidders for Swiss challenge or decide and take up any other way to proceed in the

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matter. Copy of the Minutes of the 7th Meeting of the members of the CoC held on 24.06.2024 is annexed herein as Annexure-7.

5.9. That the 8th CoC Meeting was held on 06.07.2024 wherein the bidding process was conducted. After the successful completion of the bidding process, the **RP declared DD International Private Limited as the H1 bidder** and Emaar Alloys Private Limited as the H2 bidder to the CoC Members. Apart from H1 and H2 bidder, all other 5 PRAs had withdrawn themselves from the Resolution Process of the Corporate Debtor. Copy of the Minutes of the 8th Meeting of the members of the CoC held on 06.07.2024 is annexed herein as Annexure-8.


5.10. That in the 10th CoC Meeting conducted on 12.08.2024 the CoC Members invited both the H1 and H2 Bidders and informed them that they wanted to negotiate further with them and requested both the bidders to submit their final financial proposal along with the distribution sheet to the RP via email by 13.08.2024. Copy of the Minutes of the 10th Meeting of the members of the CoC held on 12.08.2024 is annexed herein as Annexure-9.

5.11. That the 11th CoC Meeting was conducted on 16.08.2024 wherein both the bidders were invited and was requested to



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present their final proposal to the CoC Members. After the presentation of both the bids, PNB, one of the secured further Financial Creditor requested the H1 bidder to increase their financial bid. After further negotiations, **the final revised bid was increased to Rs. 55.51 crores by the H1 Bidder.** Additionally, certain observations on the Resolution Plan were also shared with the bidders and both were requested to submit their Final Resolution Plan. That post the meeting, the RP also shared his observations on the Resolution Plan with the bidders to ensure its compliance with the provisions of the IBC, 2016. That the H2 bidder, Emaar Alloys Private Limited submitted their Final Resolution Plan on 23.08.2024 and H1 Bidder, DD International Private Limited submitted their Final Resolution Plan on 01.09.2024. The RP checked and verified both the plans and compliance of provisions of the IBC, 2016 and allied regulations and subsequently circulated to all the members of the CoC.

5.12. In the 12th CoC Meeting was held on 03.09.2024 and in the said meeting, the CoC discussed and decided that both the plans to be put for e-voting and the Resolutions were put for e-voting.

5.13. That the e-voting had to be started on 06.09.2024 on 3 pm and the same was concluded on 28.09.2024 at 6 pm. The CoC

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Members have e-voted and the Plan submitted by DD International Private Limited was approved by COC Members by 87.16% voting share and thereafter, **DD International Private Limited was declared as the Successful Resolution Applicant ("SRA")** in the CIRP of the Corporate Debtor.

5.14. Further, the RP has annexed a Valuation Report of the Corporate Debtor in the Plan Application and the same is marked as Annexure 16 (colly). The Valuation Report is reproduced as under:

VALUATION SUMMARY								
Name	I & B		SFA		P&M		Average FV	Average LV
	FV	LV	FV	LV	FV	LV		
Sushant Agarwal					34,60,00,000.00	26,00,00,000.00	65,16,09,689.50	48,43,29,334.00
Pranav Ambaselkar					36,95,00,000.00	27,94,00,000.00		
Sekh Tarik Anwar	28,33,08,000.00	21,24,81,000.00						
Pritam Kumar Nag	28,10,31,000.00	20,02,44,000.00						
Rashmi Chawcharla			1,20,33,668.00	1,20,33,668.00				
Gyaneshwar Sahal			1,13,46,711.00	4500000				
Total	28,21,69,500.00	20,63,62,500.00	1,16,90,189.50	82,66,834.00	35,77,50,000.00	26,97,00,000.00		

5.15. Further, the Resolution Professional issued Letter of Intent to the SRA on 28.09.2024 in accordance with the terms of the Request for Resolution Plan ("RFRP"). The SRA was also to submit the performance security of Rs.5.56 Crores (Being 10%

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of the total Plan Value of amounting Rs.55.51 Crores) as provided under the RFRP within 7 days of receiving this LOI.

6. Further, it is submitted that SRA accepts the **LOI and an amount of Rs.5.56 crores was deposited by the SRA**, by way of RTGS in the CIRP bank account of the Corporate Debtor. Copy of the Letter of Intent dated 28.09.2024 along with the copy of Bank statement showing the receipt of the Performance Guarantee amount is annexed herewith and marked as **Annexure 13 (Colly) with the Plan application.**

7. The **Successful Resolution Applicant / DD International Private Limited under this Resolution Plan** has provided for a total plan value for the Corporate Debtor of Rs. **55,51,00,000 (Rupees Fifty-five Crores Fifty-one Lakh only)**. The amount claimed, amount admitted and payout to creditors as provided under the Resolution Plan, is enumerated below:

(In INR)

Sl. No.	Category Stakeholders	Sub-Category of Stakeholders	Amount claimed	Amount Admitted	Amount provided under the plan
1.	CIRP cost (Unpaid CIRP cost to be paid on actuals)		-	-	2,39,00,000.00
2.	Financial Creditor	Secured Financial Creditor	82,77,46,633.95	79,79,62,334.52	51,40,66,591.00
		Unsecured Financial Creditor	37,79,78,415.82	21,15,07,375.70	20,00,000.00
3.	Operational Creditors-	Employees (being related party)	24,77,278.00	24,77,278.00	50,000.00
		EPFO	83,409.00	83,409.00	83,409.00

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Sl. No.	Category Stakeholders	Sub-Category of Stakeholders	Amount claimed	Amount Admitted	Amount provided under the plan
	Including Statutory Dues and other OC	Government Dues	2,05,09,31,225.64	1,70,78,74,234.64	25,00,000.00
		Other than workmen, employees and Government Dues unrelated other than FC and OC	2,14,56,78,291.97	1,78,40,21,536.62	1,25,00,000.00
6.	Grand Total(1+2-3)		5,40,48,95,254.00	4,50,39,26,168.00	55,51,00,000.00

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

Sl. No.	Provisions	Requirement	Compliance established
A. For Resolution Applicant			
1)	25(2)(h)	The Resolution Applicant must meet the criteria approved by the CoC having regarding to the complexity and scale of operations of business of the CD.	Yes. Chapter 3 of the Resolution Plan
2)	Section 29A	The Resolution Applicant must be eligible to submit resolution plan.	Yes. Chapter 4 – Clause 4.1 of the Resolution Plan
3)	Section 30 (1)	The Resolution Applicant must submit an affidavit stating that it is eligible.	Yes. Chapter 4 of the Resolution Plan

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Sl. No.	Provisions	Requirement	Compliance established
B. For Resolution Plan			
1.	Section 30 (2)(a)	The Resolution Plan must provide for the payment of CIRP costs.	Yes. Chapter 7 – Clause 7.2.2(b) of the Resolution Plan
2.	Section 30 (2) (b)	The Resolution Plan must provide for the payment to the Operational Creditors.	Yes. Chapter 7 – Clause 7.1, 7.4.2, 7.5.1, 7.6.19 of the Resolution Plan
3.	Section 30 (2)(c)	The Resolution Plan Must provide for the payment to the Financial Creditors who did not vote in favour of the Resolution Plan.	Yes. Chapter 11 of the Resolution Plan
4.	Section 30 (2) (d)	The Resolution Plan must provide for the management of the affairs of the corporate debtor.	Yes. Chapter 11 –of the Resolution Plan
5.	Section 30 (2) (e)	The Resolution Plan must provide for the implementation and supervision of the resolution plan.	Yes. Chapter 4 – Clause 4.2 of the Resolution Plan

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Sl. No.	Provisions	Requirement	Compliance established
6.	Section 30 (2) (f)	The Resolution Plan should not contravene any of the provisions of the law for the time being in force.	Yes. Chapter 4 – Clause 4.2 of the Resolution Plan
7.	Section 30 (4) (a)	The Resolution Plan is feasible and viable, according to the CoC.	Yes. Chapter 7 – Clause 16 of the Resolution Plan
8.	Section 30 (4) (b)	The Resolution Plan has been approved by the CoC with 66% voting share.	Yes. The same has been passed by CoC with 87.16% voting.
9.	Section 31(1)	The Resolution Plan must provide provisions for its effective implementation plan, according to the CoC.	Yes. Chapter 12 of the Resolution Plan
10.	Regulation 38 (1)	The amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors.	Yes. Chapter 7 – Clause 7.3 of the Resolution Plan
11.	Regulation 38(1A)	The resolution plan includes a statement as to	Yes. Chapter 13 of the

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Sl. No.	Provisions	Requirement	Compliance established
		how it has dealt with the interests of all stakeholders.	Resolution Plan
12.	Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	Yes. Chapter 4 – Clause 4.5 of the Resolution Plan
13.	Regulation 38(2)(a)	The Resolution Plan must provide for the term of the plan and its	Yes. Chapter 12 of the

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Sl. No.	Provisions	Requirement	Compliance established
		implementation schedule.	Resolution Plan
14.	Regulation 38 (2)(b)	The Resolution Plan must provide for the management and control of the business of the corporate debtor during its term.	Yes. Chapter 11 of the Resolution Plan
15.	Regulation 38 (2)(c)	The Resolution Plan must have adequate means of supervising its implementation provision.	Yes. Chapter 11 of the Resolution Plan
16.	Regulation 38 (3)(a)	The Resolution Plan should demonstrate that it addresses the cause of default.	Yes. Chapter 7-16 of the Resolution Plan
17.	Regulation 38 (3)(b)	The Resolution Plan should demonstrate that it is feasible and viable.	Yes. Chapter 7-16 of the Resolution Plan
18.	Regulation 38 (3)(c)	The Resolution Plan must demonstrate that it has provisions for its effective implementation.	Yes. Chapter 7-16 of the Resolution Plan
19.	Regulation 38 (3)(d)	The Resolution Plan must demonstrate that it has provisions for approvals	Yes. Chapter 7-16 of the

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Sl. No.	Provisions	Requirement	Compliance established
		required and the timeline for the same.	Resolution Plan
20.	Regulation 38 (3)(e)	The Resolution Plan must demonstrate that the resolution Applicant has the capability to implement the Resolution Plan.	Yes. Chapter 7-16 of the Resolution Plan
C. For Resolution Professional			
21.	Regulation 39 (1)	An undertaking by the Resolution Applicant that every information and records provided in connection with or in the Resolution Plan is true and correct and discovery of any false information and record at any time will render the applicant ineligible, forfeit the BSBG and attract penal action under the IBC.	Yes.
22.	Regulation 39 (2)	Whether the RP has filed applications in respect of transactions observed,	Yes.

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Sl. No.	Provisions	Requirement	Compliance established
		found or determined by him?	
23.	Regulations 39 (4)	The Resolution Professional must provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	Yes. The same has been provided in the CIRP Account of the Corporate Debtor which is 10% of the Plan Value.

9. A bare perusal of the extracts / excerpts from the Plan establishes that the **Resolution Plan has been approved with 87.16% voting share**. As per the CoC, the plan meets the requirement of being viable and feasible for revival of the Corporate Debtor. By and large, all the compliances have been done by the RP and the Resolution Applicant for making the plan effective after its approval.

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

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11. We have also considered whether the reliefs, waivers and concessions have been sought for and as such given in the Resolution Plan. We would note that this Adjudicating Authority has power to grant reliefs, waivers and concessions only with respect to the reliefs, waivers and concessions that are directly in relation to the Code and the Companies Act 2013 (within the powers of the NCLT), and these are granted keeping in mind the object of the Code. No reliefs, waivers and concessions that fall within the domain of other government department/authorities are granted. However, The reliefs, waivers and concessions that pertain to other governmental authorities/departments may be dealt with the respective competent authorities/forums/offices, Government or Semi Government of the State or Central Government with regard to the respective reliefs, waivers and concessions whenever sought for.

12. It is almost trite and fairly well settled that the Resolution Plan must be consistent with the extant law. The Resolution Applicant shall make necessary applications to the concerned regulatory or statutory authorities for renewal of business permits and supply of essential services, if required, and all necessary forms along with filing fees etc. and such authority shall also consider the same keeping in mind the objectives of the Code, which is essentially the resolving of the insolvency of the Corporate Debtor.

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- 13.** The reliefs sought with respect to subsisting contracts/agreements can be granted, and no blanket orders can be granted in the absence of the parties to the contracts and agreements.
- 14.** With respect to the waivers with regard to extinguishment of claims which arose Pre-CIRP and which have not been claimed are granted in terms of **Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited reported in MANU/SC/0273/2021: (2021)9SCC657: [2021]13SCR737**, wherein the Hon'ble Apex Court has held that "*once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt., any State Govt. or any local authority, guarantors and other stakeholders.*"
- 15.** In this regard we also rely on the judgement of Hon'ble High Court of Rajasthan in the matter of **EMC v. State of Rajasthan, Civil Writ Petition No. 6048/2020 with 6204/2020 reported in (2023) ibclaw.in 42 HC** wherein it has been inter-alia held that "*Law is well-settled that with the finalization of insolvency resolution plan and the approval thereof by the NCLT, all dues of creditors, Corporate, Statutory and others stand extinguished and no demand can be raised for the period prior to the specified date.*"

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- 16.** Thus on the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan as per the law laid down by the Hon'ble Supreme Court in **Ghanashyam Mishra** supra. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.
- 17.** With respect to the waivers sought in relation to guarantors, we seek to place reliance on the judgment of **Lalit Kumar Jain v. Union of India reported in MANU/SC/0352/2021: (2021) 9 SCC 321: (2021) ibclaw.in 61 SC**, wherein the Hon'ble Supreme Court held in para 133 that sanction of a resolution plan and finality imparted to it by section 31 does not per se operate as a discharge of the guarantor's liability shall apply.
- 18.** With respect to the reliefs and waivers sought for all inquiries, litigations, investigations and proceedings shall be granted strictly as

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per the section 32A of the Code and the provisions of the law as may be applicable.

- 19.** As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.
- 20.** In case of non-compliance of this order or withdrawal of Resolution Plan, the CoC shall have the right to forfeit the EMD amount already paid by the Resolution Applicant.
- 21.** Subject to the observations made in this Order, the Resolution Plan in question is hereby **APPROVED** by this Bench. The Resolution Plan shall form part of this Order.
- 22.** The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect.
- 23.** The Moratorium imposed under section 14 shall cease to have effect from the date of this order.



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- 24.** The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters.
- 25.** Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.
- 26.** Liberty is hereby granted for moving any Application if required in connection with implementation of this Resolution Plan.
- 27.** A copy of this Order is to be submitted in the Office of the Registrar of Companies, West Bengal.
- 28.** It is not on record that whether the Financial Creditors have invoked Personal Guarantees or not. It is essential for the purpose of maximization for wealth of the Corporate Debtor, personal guarantees need to be invoked. Therefore, we direct the Financial Creditors to invoke Personal Guarantees, if not already done.
- 29.** The Resolution Professional may stand discharged from his duties with effect from the date of this Order, however, he is required to comply with our direction mentioned in Para 30 of the order subject to comply the direction, which the creditors should bear in mind.

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- 30.** The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.
- 31.** The Resolution Professional is further directed to handover all records, premises/factories/documents to the Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records/premises/factories/documents through the Resolution Professional to finalise the further line of action required for starting of the operation.
- 32.** 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.
- 33.** The Interlocutory Application being **IA (IB)/(PLAN)/18(KB)2024 along with main Company Petition vide CP(IB) No. 346(KB) /2021 shall stand disposed of** accordingly.
- 34.** Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

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**D. Arvind
Member (Technical)**

**Bidisha Banerjee,
Member (Judicial)**

Signed on this, the 07th day of January, 2025

M. Jana (P.S.)