

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

**IA (IB) No. 1524/ (KB) /2022
In CP(IB) No. 149/(KB) /2019**

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

In the Matter of:

Indian Bank

...Financial Creditor

And

City Mall Developers Private Limited (CIN No. U45209WB2005PTC101577)

....Corporate Debtor

And

In the matter of:

Mr. Kannan Tiruvengadam, Resolution Professional of M/s. City Mall Developers Private Limited, having its office at Netaji Subhas Villa, Flat No. 3c, 3rd Floor, 18 Karunamoyee Ghat Road, Near Dhara Para, Tollygunge, Kolkata – 700 082.

....Applicant

Date of Pronouncement of order: 05.09.2024

Coram:

Smt. Bidisha Banerjee

: Member (Judicial)

Shri Balraj Joshi

: Member (Technical)

Counsel appeared physically / through video Conferencing

Mr. Santosh Kr Ray, Adv.] For the Indian Bank
Ms. Rituparna Sanyal, Adv.]
Ms. Zeba Khan, Adv.]
Ms. Muskan Saha, Adv.]

Mr. Joy Saha, Sr, Adv.] For RP
Mr. Mainak Bose, Adv.]
Ms. A Rao, Adv.]
Ms. S Roy, Adv.]

Mr. Sanwal Tibrewal, Adv.] For the Suspended Management

Mr. Shaunak Mitra, Adv.] For GSRP

Ms. Sutapa Mitra, Adv.

ORDER

Per Bidisha Banerjee, Member (Judicial):

1. The Court convened through hybrid mode.
2. Ld. Counsel for the parties were heard at length.
3. This application has been preferred by the Resolution Professional of **City Mall Developers Private Limited** to seek approval of Resolution Plan in its entirety along with all annexures, Schedule, Appendixes including the claims contained therein as submitted by M/s. Gopal Sponge & Power Private Limited, the Successful Resolution Applicant (SRA in short) along with reliefs and concessions sought for under the Plan.
4. The CoC has approved the Resolution Plan of M/s. Gopal Sponge & Power Private Limited **by 77.53% vote and M/s. Gopal Sponge & Power Private Limited was declared as Successful Resolution Applicant (SRA)** in respect of the Corporate Debtor.
5. **Brief facts of the CIRP process are as submitted by the Resolution Professional:**
 - a. Vide its order dated 08.03.2022 this Adjudicating Authority was pleased to admit the petition numbered as **CP(IB) No. 149/(KB) /2019** and vide an order dated 12.05.2022 the Applicant Mr. Kannan Tiruvengadam was appointed as the Resolution Professional (“RP”) of the Corporate Debtor.
 - b. That pursuant to resolution passed in the CoC meeting, Form-G was published by the Applicant. As per Form-G published on 12.07.2022, the last date for receipt of Resolution Plan was September 10, 2022.
 - c. Pursuant to publication of Form G, four Prospective Resolution Applicant submitted EoI. The final list of eligible Resolution Applicants for submission of Resolution Plan pursuant to



Regulation 36A(12) of IBBI, Regulations 2016 was communicated to all CoC Members as well as to the eligible Resolution Applicants on 21st August, 2022.

- d.** The final list comprised of three applicants which are as follows:
 - i.** M/s Gopal Sponge & Power P. Ltd.
 - ii.** M/s Special Blasts Limited
 - iii.** M/s Sherisha Technologies Private Limited
- e.** M/s Sherisha Technologies Private Limited had neither submitted any Resolution Plan, nor made any query to the Applicant to pray for extending the timeline for submission of the Resolution Plan.
- f.** The Resolution Plans submitted by the other two RAs were opened in presence of the RP in the 7th CoC meeting dated 14th September, 2022. In the said meeting it was found that M/s Gopal Sponge & Power Private Limited has filed the Resolution Plan along with EMD for an amount of Rs. 5 Crores, while M/s Special Blasts Limited only submitted the Resolution Plan and desired that upon approval of the said Resolution Plan, they would submit the EMD amount.
- g.** Thereafter, during the 7th CoC Meeting, CoC decided to allow Special Blasts Limited to submit the EMD amount as per RFRP upon which the Plan of Special Blasts Limited may be accepted but they did not chose to submit the EMD before approval of the Resolution Plan and as such, CoC resolved to reject the Resolution Plan of Special Blasts Limited by 100% vote.
- h.** Thereafter, in the 8th Meeting, it was decided after detailed discussions on the Resolution Plan of Gopal Sponge & Power Private Limited in front of their representatives, that revised Resolution Plan be submitted with regard to the non-compliance of the provisions as per requirements. Therefore, the M/s. Gopal Sponge & Power Private Limited on October 20, 2022 submitted a revised Resolution Plan and on being satisfied with the said

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Resolution Plan as compliant under Section 30 (2) of the Code and other provisions of Law, it was placed before the 9th CoC Meeting held on 1st November, 2022.

- i. It is further submitted that e-voting for approval of the Resolution Plan was opened on 01.11.2022 for 48 hours i.e. 03.11.2022. On request of Indian Bank, one of the CoC Members, that e-voting was extended by another 15 days i.e. upto 18.11.2022 and the same concluded on November 18, 2022. The Resolution Plan of M/s. Gopal Sponge & Power Private Limited was approved by 77.53% vote.
- j. The Resolution Professional / Applicant would further submit that the Plan value of **M/s. Gopal Sponge & Power Private Limited is for Rs. 30.95 Crores** which is higher than the average liquidation value of the Corporate Debtor of Rs. 29.49 Crores as arrived on the basis of valuation conducted by the two sets of registered Valuers. The summary of the valuation report is as under:

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ANNEXURE-3

SUMMARY OF VALUATION AS ON ICD (08.03.2022)				
SL. NO.	VALUERS	ASSET CLASS	FAIR VALUE	LIQUIDATION VALUE
1	Crest Valuation	Land & building	43,06,95,436.00	30,14,86,805.00
2	GN Fair	Land & building	33,59,79,000.00	25,84,49,400.00
	TOTAL		76,66,74,436.00	55,99,36,205.00
1	Crest Valuation	Plant & Machinery	76,32,210.00	65,71,970.00
2	GN Fair	Plant & Machinery	1,49,53,600.00	1,04,67,520.00
3	Asim Maity	Plant & Machinery	1,36,08,773.00	1,08,87,018.00
	TOTAL		2,85,62,373.00	2,13,54,538.00
1	Crest Valuation	Securities & Financial Assets	71,30,841.00	36,89,568.00
2	Gyaneshwar Sahai	Securities & Financial Assets	62,57,306.85	48,33,207.97
	TOTAL VALUE		1,33,88,147.85	85,22,775.97
	Average of Liquidation value			29,49,06,759.49



6. **The Successful Resolution Applicant namely M/s. Gopal Sponge & Power Private Limited**, under revised Resolution Plan dated 18.10.2024 has provided for a total plan value for the Corporate Debtor of **Rs. 30.95 Crores**. The amounts claimed, amount admitted and the amount provided under the Resolution Plan are as under:

(Amount INR)

Sl. No.	Category of Creditor	Sub-Category of Stakeholders	Amount of Claim (Amount in Lakh)	Claim Admitted (Amount in Lakh)	Amount provided in the Plan (Amount in Lakh)
1.	Secured Financial Creditor	(a) Creditors not having a right to vote under sub-section (2) of section 21	NIL	NIL	NIL
		(b) Other than (a) above:	-	-	-
		i. Who did not vote in favour of the resolution plan	11,644.31	11,644.31	668.52
		(ii) Who voted in favour of the resolution plan	23,670.56	23,670.56	1,358.69
		Sub-total	35,314.87	35,314.87	2,027.21
2.	Unsecured Financial Creditor	Creditors not having a right to vote under sub-section (2) of section 21	NIL	NIL	NIL
		Other than (a) above:	-	-	-
		Who did not vote in favour of the resolution plan	NIL	NIL	NIL
		(ii) Who voted in favour of the resolution plan	16,503.98	16,503.98	947.79
		Sub-total	16503.98	16503.98	947.79
3.	Operational Creditors	(a) Related party of Corporate Debtor	NIL	NIL	NIL
		(b) Other than (a) above	-	-	-



Sl. No.	Category of Creditor	Sub-Category of Stakeholders	Amount of Claim (Amount in Lakh)	Claim Admitted (Amount in Lakh)	Amount provided in the Plan (Amount in Lakh)
		(i) Government	79.92	79.92	4.60
		(ii) Workmen			
		(iii) Employees	-	-	-
		(iv) Suppliers	210.71	210.71	5.40
		Sub-total	290.63	290.63	10.00
4.	Other debts and dues	CIRP Cost	-	-	100.00
5.	Contingencies	OC-SD in line with SC matter	-	-	10.00
Grand Total – (1+2+3+4+5)			52,109.48	52,109.48	3095.00

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

Sl. No.	Provisions	Requirement	Compliance established
A. For Resolution Applicant			
1)	25(2)(h)	The Resolution Applicant must meet the criteria approved by the CoC having regarding to the complexity and scale of operations of business of the CD.	Yes.
2)	Section 29A	The Resolution Applicant must be eligible to submit resolution plan.	Yes, Appendix 10
3)	Section 30 (1)	The Resolution Applicant must submit an affidavit	Yes, Appendix 10



Sl. No.	Provisions	Requirement	Compliance established
		stating that it is eligible.	
B. For Resolution Plan			
1.	Section 30 (2)(a)	The Resolution Plan must provide for the payment of CIRP costs.	Yes, Clause 5.5 of the Resolution Plan
2.	Section 30 (2) (b)	The Resolution Plan must provide for the payment to the Operational Creditors.	Yes, Clause 5.7 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, Clause 5.8 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, Clause 7.4.3 of the Resolution Plan
5.	Section 30 (2) (e)	The Resolution Plan must provide for the implementation and supervision of the resolution plan.	Yes, Clause 6 & 7.5 of the Resolution Plan
6.	Section 30 (2) (f)	The Resolution Plan should not contravene any of the provisions of the law for the time being	Yes, Clause 2.5 of the Resolution Plan



Sl. No.	Provisions	Requirement	Compliance established
		in force.	
7.	Section 30 (4) (a)	The Resolution Plan is feasible and viable, according to the CoC.	Yes, refer Evaluation matrix – 9 th CoC Meeting
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 77.53% voting.
9.	Section 31(1)	The Resolution Plan must provide provisions for its effective implementation plan, according to the CoC.	Yes, Clause 6 & 7.5 of the Resolution Plan
10.	Regulation 38 (1)	The amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors.	Yes, Clause 5.2 & 5.7 of the Resolution Plan
11.	Regulation 38(1A)	The resolution plan includes a statement as to how it has dealt with the interest of all stakeholders.	Yes, Clause 5 of the Resolution Plan
12.	Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to	The RA has declared that it has never failed in implementation in



Sl. No.	Provisions	Requirement	Compliance established
		<p>implement or contributed to the failure of implementation of any resolution plan approved under the Code.</p> <p>(ii) If, so whether the Resolution Applicant has submitted the statement giving details of such non-implementation?</p>	<p>any Resolution Plan.</p> <p>N.A.</p>
13.	Regulation 38 (2)(a)	The Resolution Plan must provide for the term of the plan and its implementation schedule.	Yes, Clause 7 of the Resolution Plan.
14.	Regulation 38 (2)(b)	The Resolution Plan must provide for the management and control of the business of the corporate debtor during its term.	Yes, Clause 7 of the Resolution Plan.
15.	Regulation 38 (2)(c)	The Resolution Plan must have adequate means of supervising its implementation provision.	Yes, Clause 7 of the Resolution Plan.



Sl. No.	Provisions	Requirement	Compliance established
16.	Regulation 38 (3)(a)	The Resolution Plan should demonstrate that it addresses the cause of default.	Yes, Clause 4.1 & Clause 7 of the Resolution Plan
17.	Regulation 38 (3)(b)	The Resolution Plan should demonstrate that it is feasible and viable.	Yes, Clause 4.1 & Clause 7 of the Resolution Plan
18.	Regulation 38 (3)(c)	The Resolution Plan must demonstrate that it has provisions for its effective implementation.	Yes, Clause 4.1 & Clause 7 of the Resolution Plan
19.	Regulation 38 (3)(d)	The Resolution Plan must demonstrate that it has provisions for approvals required and the timeline for the same.	Yes, Clause 4.1 & Clause 7 of the 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, Clause 4.1 & Clause 7 of the Resolution Plan

C. For Resolution Professional

21.	Regulation 39 (2)	The Resolution Professional should file applications in respect of transactions observed,	NA
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Sl. No.	Provisions	Requirement	Compliance established
		found or determined by him.	
22.	Regulations 39 (4)	The Resolution Professional must provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	Yes. RTGS in CD's Account of IRN 619 Lakhs on 19 th November, 2022

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

Sl. No.	Referred Clause	Reliefs & Concessions sought for	Our inference	Status
1)	9.1.1	Under the Companies Act, 2013, various actions which are proposed to be undertaken pursuant to this Resolution Plan, such as: (i) issuance and allotment of the Equity Shares to the Resolution Applicant; and (ii) the Issuance and allotment of shares to the Financial Creditors towards unsustainable debts and (iii) subsequent Capital Reduction would require approval of the shareholders of the Corporate	As far as meetings of shareholders for the issue of such new equity shares and for cancellation of existing equity shares of the corporate debtor are concerned,	Granted in accordance with law.

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Sl. No.	Referred Clause	Reliefs & Concessions sought for	Our inference	Status
		<p>Debtor Company.</p> <p>However, as per explanation to Section 30(2) of the Insolvency and Bankruptcy Code, 2016, it has been clarified that "if any approval of shareholders is required under the Companies Act, 2013(18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law."</p> <p>The purpose of the explanation to section 30(2) of the Code is to prevent shareholders of a company under the CIRP from obstructing the implementation of a resolution plan which was duly approved by the Adjudicating Authority under the provisions of the Code.</p> <p>Accordingly, the requirement of</p>	<p>approval to the Resolution Plan accorded by this Adjudicating Authority shall be deemed to be requisite approval for all such meetings or dispensation from conducting meetings of shareholders only in accordance with law and upon compliances of all regulatory compliances such as filing with the RoC and relevant authorities,</p>	

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Sl. No.	Referred Clause	Reliefs & Concessions sought for	Our inference	Status
		procuring approval of the shareholders of the Company has been dispensed with for any of the actions proposed to be undertaken pursuant to this Resolution Plan.	payment of filing fees on documents etc.	
2)	9.1.2	Income Tax and Statutory Reliefs:		
3)	9.1.2.1	The requirement of obtaining a no objection certificate under section 281 of the Income-tax Act, 1961 and provisions of taking over its predecessor's Tax liability under section 170 of the Income-tax Act, 1961 shall not be applicable. Similarly, any requirements to obtain waivers from any Tax authorities including in terms of section 79 and section 115JB of the Income-tax Act, 1961, is deemed to have been granted upon approval of this Resolution Plan and with effect from the Approval Date.	All regulatory compliances and, the payment of filing fees on documents etc. will have to be complied with. The authorities cannot be expected to grant suo moto approval for such activities without the forms being filed or necessary	Not Granted

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Sl. No.	Referred Clause	Reliefs & Concessions sought for	Our inference	Status
			compliances being done on behalf of the corporate debtor.	
4)	9.1.2.2	The change in the shareholding of the Corporate Debtor pursuant to this Resolution Plan approved by the Adjudicating Authority shall not result in lapse of any losses of the Corporate Debtor that are brought forward under the provisions of section 79 read with section 2(18) Income-tax Act, 1961. Furthermore, the scheme of merger and amalgamation as proposed shall not result in lapse of any losses of the Corporate Debtor that are brought forward under the provisions of section 79 read with section 2(18) Income-tax Act, 1961.	The relief shall be dealt with as per the provisions of the Resolution Plan subject to the applicable laws.	Allowed in accordance with applicable laws.
5)	9.1.2.3	The Central Board of Excise and Customs to not to void the transactions contemplated under the Resolution Plan (including a potential sale of Assets) under section 81 of the Central Goods	This is not the appropriate forum to consider.	Not Granted. Approach the Appropriate Forum /

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Sl. No.	Referred Clause	Reliefs & Concessions sought for	Our inference	Status
		and Service Tax Act, 2017 and not to impose any subsequent liability on the Resolution Applicant and/or the Corporate Debtor.		Authority for the same.
6)	9.1.2.4	The losses already lapsed / not lapsed, as shown in the books of accounts as on the date of approval of the Resolution Plan shall be allowed to be carried forward for a period of eight (8) Assessment Years from the Financial Year relevant to the Assessment Year in which Resolution Plan is approved.	The relief shall be dealt with as per the provisions of the Resolution Plan subject to the applicable laws.	Allowed in accordance with applicable laws.
7)	9.1.2.5	Act as necessary directions to Central Board of Direct Taxes: i) For exemption from the provisions of Income Tax Act, 1961, including but not limiting to the provisions of Minimum Alternate Tax, arising as a result of giving effect to the Resolution Plan, including write-back of liabilities. ii) For Claim set-off of the entire Minimum Alternate Tax (MAT) credit as available to the Corporate Debtor, against the	All regulatory compliances and the payment of filing fees etc. will have to be complied with.	Not Granted.

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		normal income-tax as would be payable by the Corporate Debtor post the Approval Date, i.e. no normal taxation should be applicable until the MAT credit is adjusted/utilized in full.		
8)	9.1.2.6	There arising no liability of the Resolution Applicant in respect of any reassessment, reopening, revision, review or other proceedings under the Income-tax Act, 1961, or any other law or statute for any period prior to the Effective Date.	Whatever the immunity is granted strictly under Section 32A of the I&B Code.	Granted in accordance with law.
9)	9.1.2.7	All Relevant Authorities (including RBI) to waive and close matters and not to raise any fresh assessment/demand pertaining to any and all non-compliances/default/dues of the Corporate Debtor prior to the Effective Date, including but not limited to those relating to Income Tax, Service Tax, Goods and Service Tax, Customs and Excise Act, Foreign Exchange Management Act, Prevention of Money Laundering Act, Tax/Value	The law laid down in Ghanashyam Mishra (Infra), that once a resolution Plan is duly approved by the Adjudicating Authority under Section 31(1), the claims as	Granted in accordance with law.

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Sl. No.	Referred Clause	Reliefs & Concessions sought for	Our inference	Status
		Added Tax Acts of the relevant State or the Central Government, Real Estate Regulatory Act of the relevant States or the Central Government). All penalties, liabilities and claims by whatever name called, shall in relation to the aforesaid non-compliances/demand/defaults/ dues shall stand extinguished permanently.	provided in the Resolution Plan shall stand frozen and will be binding on the corporate debtor and its employees, members, including 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	

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Sl. No.	Referred Clause	Reliefs & Concessions sought for	Our inference	Status
			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.	
10)	9.1.2.8	All Governmental Authorities (including but not limited to Income Tax Authority, Service tax Department, VAT Department and GST Department) to waive the non-compliances of the Corporate Debtor or further claims of the Governmental Authorities on the Corporate Debtor arising out of or in relation to the past claims, and/or actions, deed/s or thing/s prior to the Insolvency Commencement Date.	This is for the relevant and / or appropriate authority to consider, and not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority.	Not Granted. We suggest to approach the appropriate forum / Authority.
11)	9.1.3	That all the assets of the corporate debtor including but not limited to the current assets,	The law laid down in Ghanashyam	Granted strictly in accordance

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Sl. No.	Referred Clause	Reliefs & Concessions sought for	Our inference	Status
		bank balances and fixed deposits will vest to the benefit of the Corporate Debtor and under control of the Resolution Applicant. Any attachment and/or freezing order against the assets of the Corporate Debtor by any authority, including but not limited to IT, GST will stand vacated and the Corporate Debtor will be free to use the assets to its benefits to ensure that the unit continues to be a going concern.	Mishra (Infra), shall be applicable.	with law to the extent permissible.
12)	9.1.4	On the date of Adjudicating Authority order approving, the resolution plan, all Encumbrances, Security Interest, liens and/or attachments (including pursuant to applicable law) created or suffered to exist over the assets of the Corporate debtor, whether by contract or by Applicable law shall be allowed to exist only to the extent of the balance amount as contemplated in the resolution plan due to the creditors and commenced by any person over any assets of the Corporate debtors or over any	This is for the relevant and / or appropriate authority to consider, and not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority.	Not Granted. We suggest to approach the appropriate forum / Authority.

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Sl. No.	Referred Clause	Reliefs & Concessions sought for	Our inference	Status
		securities of the corporate debtors shall stand irrevocably released and reversed upon full and final settlement of the dues of the secured financial creditors as contemplated in the resolution plan without the requirement of any further deed or actions on part of the Resolution Applicant		
13)	9.1.5	The approval of resolution Plan by Adjudicating Authority shall constitute adequate and final approval of the Adjudicating Authority for: (a) cancellation of the share capital of the Corporate Debtor (as may be agreed upon) including the shares issued on conversion of unsustainable debt to the Financial Debtors in terms of section 66 and other provisions of the Companies Act, 2013 and other Applicable Law without any compliance of any provisions of the Act which shall stand exempted without any further actions on part of any Party; (b)for issuance of new Equity	As far as meetings of shareholders for the issue of such new equity shares and for cancellation of existing equity shares of the corporate debtor are concerned, approval to the Resolution Plan accorded by this Adjudicating	Granted in accordance with law.

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		Shares/preference shares and/or convertible securities as may be considered appropriate to issue in terms of the Section 42 and Section 62(1)(c) of the Companies Act, 2013 and other Applicable Law and accordingly; and (c) the amount infused by the Resolution Applicant in the Corporate Debtor for payment of dues of financial creditors as per this Resolution Plan shall not be termed as deposits under section 73 to 76 of the Companies Act, 2013 and the rules made thereunder, shall be effective without following the provisions of the Companies Act, 2013, and that no approval/ consent shall be necessary from any other Person in relation to any of these actions including under any agreement, the constitution documents of the Corporate Debtor or any Applicable Law.	Authority shall be deemed to be requisite approval for all such meetings or dispensation from conducting meetings of shareholders only in accordance with law and upon compliances of all regulatory compliances such as filing with the RoC and relevant authorities, payment of filing fees on documents etc.	

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Sl. No.	Referred Clause	Reliefs & Concessions sought for	Our inference	Status
14)	9.1.6	The Resolution Applicant (and its Affiliates) and any future buyers of the Assets of the Corporate Debtor shall not be liable, in any way, for any criminal proceedings or actions that have been initiated against the Corporate Debtor or its existing or former promoters, shareholder or directors, employees, officers, at any point of time, before or after the Approval Date.	The law laid down in Ghanashyam Mishra (Infra), shall be applicable.	Granted in accordance with law.
15)	9.1.7	The Department of Registration and Stamps and any other relevant authorities of State Governments where the Corporate Debtor or the Resolution Applicant carries on its business and operations or where its Assets are located, shall exempt the Resolution Applicant and the Corporate Debtor from the levy of stamp duty and fees, applicable in relation to this Resolution Plan and its implementation, including issuance of Equity Shares as provided in this Resolution Plan.	All regulatory compliance and the payment fees etc. will have to be complied with.	Not Granted.
16)	9.1.8	All creditors (including but not	The law laid	Granted in

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		<p>limited to the Financial Creditors and other Operational Creditors) of the Corporate Debtor shall withdraw all legal proceedings commenced against the Corporate Debtor in relation to Claims, including proceedings commenced against the Corporate Debtor under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Recovery of Debt and Bankruptcy Act, 1993 within a period of 90(ninety) days of the Approval Date, and in the meanwhile the creditors shall not pursue the legal and other actions taken by any and/or all of them against the Corporate Debtor.</p>	<p>down in Ghanashyam Mishra (Infra), shall be applicable. In respect of withdrawal of litigation, the concerned authority to whom the litigations have been preferred to, may deal with the same keeping in view of the sprit of the I&B Code and Companies Act, 2013.</p>	<p>accordance with law.</p>
17)	9.1.9	<p>For the purpose of consolidation of the books of the Corporate Debtor with Resolution Applicant, the Effective Date shall be treated as the date on which Corporate Debtor shall issue its equity</p>	<p>Whatever the immunity is granted strictly under Section 32A of the I&B Code.</p>	<p>Granted in accordance with law.</p>

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Sl. No.	Referred Clause	Reliefs & Concessions sought for	Our inference	Status
		shares to the Resolution Applicant against full payment to the Financial Creditors in terms of this Resolution Plan, which eventually results in takeover of the Corporate Debtor by the Resolution Applicant on that day.		
18)	9.1.10	The Adjudicating Authority be pleased to direct all relevant government authorities to provide/extend to the Corporate Debtor all licenses, permits and approvals required by the Resolution Applicants for implementation of the terms of this Resolution Plan and for an efficient functioning of the business of the Corporate Debtor. Further, all licenses and permits required by the Corporate Debtor shall be continued to be made available to the Corporate Debtor.	This is for the relevant and / or appropriate authority to consider, and not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority.	Not Granted. We suggest to approach the appropriate forum / Authority.
19)	9.1.11	That the Concerned Registrar of Companies do waive off the Fees as may be payable in course of implementation of the Resolution Plan including but not limiting to Fees and charges payable for	All regulatory compliance and the payment fees etc. will have to be complied	Not Granted.



Sl. No.	Referred Clause	Reliefs & Concessions sought for	Our inference	Status
		increase in the Authorized Capital of the Corporate debtor in course of allotment of shares to Financial Creditors for the unsustainable Debts and also increase in authorized capital as may be required in course of equity infusion by the Resolution Applicant.	with.	
20)	9.1.12	The change in ownership of the Corporate Debtor shall not be construed as a breach of legal obligation or as an event of default by any government/ statutory authority and the same shall not be used as a reason for non-grant/denial of extension of any no objection/permission/license as was granted to or is required to be granted to the Corporate Debtor, as the case may be.	Whatever the immunity is granted strictly under Section 32A of the I&B Code.	Granted in accordance with law.

9. A bare perusal of the extracts / excerpts from the Plan establishes that the **Resolution Plan has been approved with 77.53% 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 complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, as enumerated supra.
11. We have also perused the reliefs, waivers and concessions as sought and as given in **Paragraph 9 at page 43 to 47** of the Resolution Plan of the Resolution Plan. While some of the reliefs, waivers and concessions sought by the Resolution Applicant come within the purview of the Code, many others fall under the power and jurisdiction of different government authorities/departments. This Adjudicating Authority has power to grant reliefs, waivers and concessions only with respect to the reliefs, waivers and concessions that are directly in relation to the Code and the Companies Act 2013 (within the powers of the NCLT), and these are granted keeping in 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.




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.*"

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.

16. With respect to the waivers sought in relation to guarantors, we seek to place reliance on the judgment of **Lalit Kumar Jain v. Union of India reported in MANU/SC/0352/2021: (2021) 9 SCC 321: (2021) ibclaw.in 61 SC**, wherein the Hon'ble Apex Court held in para 133 that sanction of a resolution plan and finality imparted to it by section 31 does not per se operate as a discharge of the guarantor's liability shall apply.
17. With respect to the reliefs and waivers sought for all inquiries, litigations, investigations and proceedings shall be granted strictly as per the section 32A of the Code and the provisions of the law as may be applicable.
18. 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.
19. 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.
20. 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.
21. 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.
22. The Moratorium imposed under section 14 shall cease to have effect from the date of this order.
23. 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.



24. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.
25. Liberty is hereby granted for moving any Application if required in connection with implementation of this Resolution Plan.
26. A copy of this Order is to be submitted in the Office of the Registrar of Companies, West Bengal.
27. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.
28. 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.
29. 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.
30. The Interlocutory Application being **IA (IB) No. 1524/ (KB) /2022 along with main Company Petition vide CP(IB)No.149/(KB)/2019 shall stand disposed of accordingly.**
31. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee,
Member (Judicial)

Signed on this, the 05th day of September, 2024

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

**IA (IB) No. 1524/ (KB) /2022
In CP(IB) No. 149/(KB) /2019**



M. Jana(P.S.)