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

IA (IB) No.965/KB/2020
in
CP (IB) No.1493/KB/2018

Application under section 30(6) and section 31(1) 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:
Sree Tycofab Pvt Ltd
CIN: U51900WB1993PTC060947 … Operational Creditor

Versus

Serampore Belting Works Private Limited
CIN: U51102WB1947PTC015716 … Corporate Debtor

And

In the matter of:
Joydev Sengupta, Resolution Professional of
Serampore Belting Works Private Limited … Applicant

Date of hearing: 10 February 2022

Date of pronouncement: 19 April 2022

Coram:

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

Appearances (via video conference):

For the Applicant/RP	:	Mr. Joy Saha, Senior Advocate Mr. Patita Paban Bishwal, Advocate Mr. Joydev Sengupta, RP in person

ORDER

Rajasekhar V.K., Member (Judicial)

1. Preliminaries

1.1. This Court convened through video conferencing.

1.2. IA (IB) No.965/KB/2020 is an application filed by Mr Joydev Sengupta, Resolution Professional of Serampore Belting Works Private Limited (CIN:

U51102WB1947PTC015716), under section 30(6) of the Insolvency and Bankruptcy Code, 2016 ***("IBC" or "the Code")***, read with regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ***("CIRP Regulations")*** for approval of a Resolution Plan in respect of Serampore Belting Works Private Limited ***("Corporate Debtor").***

1.3. The underlying Company Petition in CP (IB) No.1493/KB/2018 was filed by Sree Tycofab Pvt Ltd, the Operational Creditor, against Serampore Belting Works Private Limited, the Corporate Debtor, under section 9 of the Code, which was admitted *vide* order dated 09 August 2019.

1.4. Mr. Joydev Sengupta, the Applicant herein, having Reg. No.IBBI/IPA-002/IP-N00405/2017-18/11177, was appointed as the Interim Resolution Professional (IRP). The Applicant was appointed as the Resolution Professional by the CoC in its 6th CoC meeting held on 13 December 2020.

1.5. The period of 90 days *i.e.,* from 05 February 2020 was extended *vide* order dated 03 February 2020 in IA (IB) No.119/KB/2020 for the purposes of the CIRP.

2. Constitution of CoC

2.1. The IRP made public announcement on 17 August 2019 regarding initiation of Corporate Insolvency Resolution Process **(CIRP)** and called proof of claims from the financial and operational creditors, workers and employees of the corporate debtor in the specified forms till 23 August 2019.

2.2. The CoC was constituted on 30 August 2019 and filed a report certifying the constitution of CoC on 02 September 2019. The CoC was further reconstituted on and a report of the re-constitution of the CoC dated 08 August 2020, was filed before the Adjudicating Authority.

2.3. The Applicant states that a total of thirteen CoC meetings have been held during CIRP period, as follows:

Particulars	Date of CoC meeting
1st CoC Meeting	06.09.2019
2nd CoC Meeting	24.09.2019
3rd CoC Meeting	25.10.2019
4th CoC Meeting	01.11.2019
5th CoC Meeting	28.11.2019
6th CoC Meeting	13.12.2019
7th CoC Meeting	27.12.2019
8th CoC Meeting	20.01.2020
9th CoC Meeting	10.02.2020
10th CoC Meeting	25.02.2020
11th CoC Meeting	25.06.2020
12th CoC Meeting	22.07.2020
13th CoC Meeting	06.08.2020
14th CoC Meeting	19.08.2020
15th CoC Meeting	13.11.2020
16th CoC Meeting	24.03.2021
17th CoC Meeting	30.03.2021
18th CoC Meeting	29.07.2021

3. *Collation of claims*

3.1. The amounts claimed and admitted are summarised below:

Sl. No	Name of Creditor	Amount Claimed	Amount Admitted	Voting percent
FINANCIAL CREDITORS				
1.	Punjab National Bank (Union Bank of India)	₹1,54,24,120/-	₹1,54,24,120/-	48.095
2.	Wellman Tie Up Pvt. Ltd.	₹30,43,844/-	₹30,43,844/-	9.491

Sl. No	Name of Creditor	Amount Claimed	Amount Admitted	Voting percent
3.	Vaishno Trade & Services Pvt. Ltd.	₹3,87,934/-	₹3,87,934/-	1.210
4.	Tulsi Vanijya Pvt. Ltd.	₹3,97,741/-	₹3,97,741/-	1.240
5.	Viky Marketing Services Pvt. Ltd.	₹2,60,221/-	₹2,60,221/-	0.811
6.	Seven Star Trade & Services Pvt. Ltd.	₹18,91,617/-	₹18,91,617/-	5.898
7.	Parichay Tradelinks Pvt. Ltd.	₹3,98,925/-	₹3,98,925/-	1.244
8.	Accurate Dealmark Pvt. Ltd.	₹6,75,022/-	₹6,75,022/-	2.105
9.	Bhagyalakshmi Trade Limks Pvt. Ltd.	₹35,46,416/-	₹35,46,416/-	11.058
10.	Seatco Mercantile Pvt. Ltd.	₹1,36,966/-	₹1,36,966/-	0.427
11.	ASP Transformers Products Pvt. Ltd.	₹45,00,206/-	₹45,00,206/-	----
12.	Day Lily Commotrade Pvt. Ltd.	₹5,00,677/-	₹5,00,677/-	1.561
13.	Raghubir Merchants Pvt. Ltd.	₹11,28,597/-	₹11,28,597/-	3.519
14.	Jamai Commercial Pvt. Ltd.	₹8,42,652/-	₹8,42,652/-	2.628
15.	Poonam Mercantiles Pvt. Ltd.	₹3,86,714/-	₹3,86,714/-	1.206
16.	Late Amitabha Lahiri	₹27,89,798/-	₹27,89,798/-	----
17.	Avik Lahiri	₹4,60,000/-	₹4,60,000/-	----
18.	Wonderful Infrastructure Management Pvt. Ltd.	₹12,19,536/-	₹12,19,536/-	3.803
19.	Amritadhara Builders Advisory Pvt. Ltd.	₹18,29,305/-	₹18,29,305/-	5.704
	TOTAL (A)	**₹3,98,20,291/-**	**₹3,98,20,291/-**	**100.00**

Sl. No	Name of Creditor	Amount Claimed	Amount Admitted	Voting percent
OPERATIONAL CREDITORS				
1.	Sree Tycofab Pvt. Ltd.	₹76,47,154.31/-	₹76,47,154.31/-	----
2.	Commissioner. Commercial Taxes, Govt. of West Bengal	₹41,33,670/-	₹41,33,670/-	---
3.	Commissioner of Commercial Taxes, Govt. of West Bengal	₹23,27,472/-	₹23,27,472/-	---
4.	KM Xavier & Co.	₹29,70,299/-	₹29,70,299/-	---
5.	K M Abraham & Co.	₹32,14,647/-	₹32,14,647/-	---
6.	Hindustan Rubber Trading Co.	₹58,680/-	₹58,680/-	---
7.	Ganga Dutt Vinod Kumar	₹2,11,969/-	₹2,11,969/-	---
8.	Karnika Fuels & Commodities Pvt. Ltd.	₹1,17,291/-	₹1,17,291/-	---
9.	K D Sales Corporation	₹3,40,239/-	₹3,40,239/-	---
10.	CESC Ltd	₹85,731.17/-	₹85,731.17/-	---
	TOTAL (B)	**₹2,11,07,152/-**	**₹2,11,07,152/-**	**---**
	TOTAL (A+B)	**₹6,09,27,443/-**	**₹6,09,27,443/-**	**----**

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 the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, invitations in Form 'G' for Expressions of Interest **(EoI)** from potential resolution applicants were published in ***Financial Express*** (English) (Kolkata Edition) on 02 November 2019 and in ***Aajkal*** (Bengali) (Kolkata Edition) on 03 November 2019. The last date for receipt of EoI was 18 November 2019.

4.2. The notice was also published on the website of the Insolvency and Bankruptcy Board of India (**IBBI**).

4.3. The Applicant submits that in response to the invitation for EoI, only one EoI was received from Mr. Ashis Baldwa. The RP then shared the Information Memorandum, Evaluation Matrix and Request for Resolution Plan **(RFRP)** with the prospective Resolution Applicants on 03 December 2019.

4.4. The RP published the final list of eligible prospective Resolution Applicant on 13 December 2019.

4.5. The last date for submission of Resolution Plan was 02 January 2020, which was extended at the request of the Resolution Applicant till 20 January 2020 and further till 03 February 2020.

4.6. The Resolution Applicant submitted his Resolution Plan on 03 February 2020 along with Earnest Money Deposit by way of demand draft for an amount of ₹20,00,000/- (Rupees twenty lakh only).

4.7. As per regulation 35(2) of the CIRP Regulations, after receipt of the Resolution Plan, the RP informed the fair value and liquidation value of the Corporate Debtor to the CoC between 11 February 2020 and 13 February 2020 and lastly on 04 August 2020.

5. Evaluation and voting

5.1. The Resolution Plan was placed for discussion before the CoC in the 10th CoC meeting held on 25 February 2020 and on 11th CoC meeting held on 25 June 2020, wherein the Resolution Applicant was requested to come up with a revised Resolution Plan.

5.2. The Resolution Applicant filed a revised Resolution Plan on 02 July 2020 which was discussed in the 12th CoC meeting held on 22 July 2020 and in the 13th CoC meeting held on 06 August 2020, the Resolution Applicant was once again requested to revise the Resolution Plan under consideration and was informed about the claim filed by CESC Ltd.

5.3. The Resolution Applicant updated the Resolution Plan dated 03 February 2020 on 06 August 2020. The revised Resolution Plan was placed for discussion before the CoC in its 13th CoC meeting held on 06 August 2020. The Resolution Plan dated 03 February 2020, modified on 02 July 2020 and 06 August 2020 submitted by Mr. Ashish Baldwa was unanimously approved by the CoC with 100% voting share.[1]

5.4. The Applicant issued the Letter of Intent on 22 August 2020.[2] In accordance with regulation 36B(4A) of the CIRP Regulations, the Successful Resolution Applicant has submitted the Performance Bank Guarantee (PBG) of ₹50,00,000/- (Rupees fifty lakh only) was drawn in favour of Punjab National Bank dated 26 August 2020.[3]

6. Compliance of the approved Resolution Plan with various provisions

6.1. The Applicant has filed a Compliance Certificate in prescribed form, *i.e.,* Form 'H',[4] in compliance with regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

6.2. The Applicant has submitted details of various compliances as envisaged within the Code and the CIRP Regulations which a Resolution Plan should adhere to, which is reproduced hereunder:

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[1] Annexure A-5 at Page 211 of the IA

[2] Annexure A-7 at Page 223 of the IA

[3] Annexure A-8 at Page 224 of the IA

[4] Annexure A-6 at Pages 212-222 of the IA

I. Submission of Resolution Plan in terms of sub-section (2) of section 30 of the Code (as amended vide Amendment dated 16 August 2019):

Clause of s.30(2)	Requirement	How dealt with in the Plan
1.	Plan must provide for payment of CIRP cost in priority to repayment of other debts of CD in the manner specified by the Board.	Clause IX (a) at Page 34 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;	Clause X(h)(step 3(B)) at Page 63 of the Resolution Plan
	(ii) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be not less than amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher;	Clause X(h)(step 3(B)) at Page 63 of the Resolution Plan
	(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.	Clause X(h)(step 3(C)) at Page 63 of the Resolution Plan.
(c)	Management of the affairs of the	Clause X (g)(2) and Clause

Clause of s.30(2)	Requirement	How dealt with in the Plan
	Corporate Debtor after approval of the Resolution Plan.	X (h)(step 2) at Pages 60-63 of the Resolution Plan.
(d)	Implementation and Supervision	Clause X(e) at Pages 53-54 of the Resolution Plan.
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Clause II at Page 5 and Clause X(g) at Page 60 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 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: -	
(a) transfer of all or part of the assets of the corporate debtor to one or more persons;	Not proposed in the Resolution Plan.
(b) sale of all or part of the assets whether subject to any security interest or not;	Not proposed in the Resolution Plan.
(c) restructuring of the corporate debtor, by	Not proposed in the

Particulars	**Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation**
way of merger, amalgamation and demerger;	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 X(c)(3) at Page 51 of the Resolution Plan.
(e) cancellation or delisting of any shares of the corporate debtor, if applicable;	Clause X(c) at Pages 51-52 of the Resolution Plan.
(f) satisfaction or modification of any security interest;	Clause X(h)(step 4) at Pages 63-64 of the Resolution Plan.
(g) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Not proposed in the Resolution Plan.
(h) reduction in the amount payable to the creditors;	Clause X at Pages 34-36 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;	Page 59 in the Resolution Plan.
(j) amendment of the constitutional documents of the corporate debtor;	Clause XII(d) at Pages 52-53 of Resolution Plan.

Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
(k) issue of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	Not proposed in the Resolution Plan.
(l) change in portfolio of goods or services produced or rendered by the corporate debtor;	Not proposed in the Resolution Plan.
(m) change in technology used by the corporate debtor; and	Clause VI(f) at Page 15 of the Resolution Plan.
(n) obtaining necessary approvals from the Central and State Governments and other authorities.	Not proposed in the Resolution Plan.

III. Mandatory contents of Resolution Plan in terms of regulation 38 of CIRP Regulations:

Ref to relevant 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.	Clause XII(h)(step 3) at Page 63 of the Resolution Plan.

Ref to relevant Reg.	**Requirement**	**How dealt with in the Plan**
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors of the corporate debtor.	Clause XIII at Pages 65-67 of the Resolution 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.	Page 69 of the Resolution Plan. (Table under clause XIV)
38(2)	A resolution plan shall provide:	
	(a) the term of the plan and its implementation schedule;	Clause XII(f) at Pages 54-59 of the Resolution Plan.
	(b) the management and control of the business of the corporate debtor during its term; and	Chapter XII(g) and Clause XII(h) at Pages 60-62 of the Resolution Plan.
	(c) adequate means for supervising its implementation.	Clause XII(e) at Pages 53-54 of the Resolution Plan.
38(3)	A resolution plan shall demonstrate that –	

Ref to relevant Reg.	Requirement	How dealt with in the Plan
	(a) it addresses the cause of default;	Clause VII at Pages 17-18 of the Resolution Plan.
	(b) it is feasible and viable;	Page 70 of the Resolution Plan.
	(c) it has provisions for its effective implementation;	Clause VIII at Page 32 of the Resolution Plan.
	(d) it has provisions for approvals required and the timeline for the same; and	Page 71 of the Resolution Plan.
	(e) the Resolution Applicant has the capability to implement the resolution plan.	Clause XV at Page 73 of Resolution Plan.

6.3. The Resolution Applicant has submitted affidavit of eligibility under section 29A of the Code, affirmed on 03.02.2020.

7. Details of Resolution Plan/Payment Schedule

7.1. The Applicant submits that the Resolution Applicant had filed a Resolution Plan on 03 February 2020 which was further amended on 02 July 2020 and 06 August 2020.

7.2. The relevant information with regard to the amount claimed, amount admitted and the amount proposed to be paid by the Resolution Applicant, *i.e.,* Ashish Baldwa under the said Resolution Plan is tabulated as under:

Sl. No.	Name of Claimant	Claim admitted	Amount proposed	Amount provided (%)
1.	CIRP Costs *(approx.)*	---	--	100%
2.	Financial Creditors *(Punjab National Bank)*	₹1,54,24,120/-	₹1,54,24,120/-[5]	100%
3.	Financial Creditors *(Unsecured Financial Creditors)*	₹2,43,96,171/-	₹2,19,56,553/-	90%
4.	Operational Creditors	₹2,10,21,421/-	₹21,02,142/-[6]	10%
5.	Employees/Workmen	Nil	Nil	----
6.	Capex & Working Capital	Nil	₹1,01,00,000/-	----
Total		₹6,08,41,712/-	₹4,95,82,815/-	----

7.3. Summary of the financial proposal/payment under the Resolution Plan dated 03.02.2020 revised on 02.07.2020 and 06.08.2020, is tabulated hereunder:

Particulars	Amount
Admissible Debt to be paid as CIRP costs.	Upfront payment within 10 days from the date of approval of the Resolution Plan by this Adjudicating Authority.
Admissible Debt to be paid to the Secured Financial Creditors: *Punjab National Bank*	**<u>Total payment proposed in the Resolution Plan:</u>** (1) ₹1,54,24,120/- with simple interest @7.60% p.a. (2) 40% Upfront payment *i.e.,* ₹61,69,648/- along with simple interest within 30 days of approval of the Resolution Plan by this Adjudicating Authority; (3) 30% claim *i.e.,* ₹46,27,236/- along with simple interest within six months of approval of the Resolution Plan by this Adjudicating Authority; (4) 30% claim *i.e.,* ₹46,27,236/- along with simple

[5] with simple interest @7.60% p.a

[6] 10% of the admitted claim of CESC to be paid.

Particulars	**Amount**
	interest within twelve months of approval of the Resolution Plan by this Adjudicating Authority.
Admissible Debt to be paid to the Unsecured Financial Creditors:	Total payment proposed in the Resolution Plan is ₹2,19,56,553/- Payment timeline (where X = date of approval of Resolution Plan by this Adjudicating Authority)

Instalment	Amount (₹)	Timeline
1st Instalment	12,19,808.50	X + 90 days
2nd Instalment	12,19,808.50	X + 180 days
3rd Instalment	12,19,808.50	X + 270 days
4th Instalment	12,19,808.50	X + 360 days
5th Instalment	12,19,808.50	X + 450 days
6th Instalment	12,19,808.50	X + 540 days
7th Instalment	12,19,808.50	X + 630 days
8th Instalment	12,19,808.50	X + 720 days
9th Instalment	12,19,808.50	X + 810 days
10th Instalment	12,19,808.50	X + 900 days
11th Instalment	₹12,19,808.5	X + 990 days
12th Instalment	12,19,808.50	X + 1080 days
13th Instalment	12,19,808.50	X + 1170 days
14th Instalment	12,19,808.50	X + 1260 days
15th Instalment	12,19,808.50	X + 1350 days
16th Instalment	12,19,808.50	X + 1440 days
17th Instalment	12,19,808.50	X + 1530 days
18th Instalment	12,19,808.50	X + 1620 days
Total	**2,19,56,553.00**	

Admissible Debt to be paid to Operational Creditors, including Govt dues.	₹21,02,142/- to be paid **within 20 days** from the date of approval of the Resolution Plan by this Adjudicating Authority.

7.4. The Resolution Plan defines ***"Approval Date"*** as "*The date on which Resolution Plan is approved by the Adjudicating Authority i.e. NCLT*".

8. Details on Management/Implementation and Reliefs as per the Resolution Plan – Salient Features

8.1. The Resolution Plan also provides for –

(a) Management of company after resolution in Clause XII (b) at Pages 50-51 of Resolution Plan.

(b) Term of the resolution plan in Clause XII (f) at Pages 54-55 of Resolution Plan and addendum dated 02 July 2020 and 06 August 2020.

(c) Implementation and supervision of the resolution plan in Clause XII (e) and Clause XII (f) at Pages 53-54 of the Resolution Plan.

9. Reliefs, exemptions, waivers and approvals sought by Resolution Applicant

9.1. The reliefs, exemptions, waivers and approvals sought by the successful Resolution Applicant from the Adjudicating Authority for implementation of the Resolution Plan are set out below. The orders thereon are indicated against each.

Ref to Clause	Relief, concessions and approvals sought	Orders thereon
XVI (a)	**Waiver of the statutory liabilities/ contingent liabilities incurred and accrued / disputed liabilities (Whether assessed or unassessed) due to statutory authorities viz. VAT, Sales Tax, GST, Income Tax, Excise, Customs, REMA & Export Obligation etc.:**	
1.	All unadmitted, unclaimed, unaccounted, disputed, continent, unassessed liabilities (if any) to be considered to be treated as	Granted in terms of the *Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd,* [7]

[7] 2021 SCC OnLine SC 313 decided on 13.04.2021

Ref to Clause	Relief, concessions and approvals sought	Orders thereon
	waived off and nothing to be payable by Corporate Debtor against the same over and above what is proposed to be paid as per this Resolution Plan.	wherein the Hon'ble Supreme Court has held in paragraph 95 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 section 31 could be continued.
2.	Further to the same, the Resolution Applicant would like to revive the Corporate Debtor with complete peace and certainty; therefore, any other statutory dues, taxes, penalties, penal interest, demands, including interest, penalties and late fees arising out of the non-filling or late filling of any of the GST Returns or any return/detail with any government department or body including ROC etc. other than for which the claim is received and admitted ,incurred for the period till the final approval of the Resolution Plan by the Resolution Professional /Adjudicating Authority/ NCLT and pursuant to implementation of this Resolution Plan to be considered as fully waived off and it needs to assured to the Resolution Applicant that no such claim from any person or authority shall disturb the process of revival of the corporate Debtor.	

<table>
<tr><th>Ref to Clause</th><th>Relief, concessions and approvals sought</th><th>Orders thereon</th></tr>
<tr><td>3.</td><td colspan="2">On approval of Resolution Plan by the adjudication authority, income Tax Authority to:</td></tr>
<tr><td>(i)</td><td>allow reversal or withdrawal of all the disallowances and additions made in the income tax assessment proceeding in the preceding eight years and returns as submitted to be treated as assessed and all carry forward losses and depreciation to be treated as allowed; and</td><td rowspan="3">The objective of the IBC is to resolve the insolvency of the corporate debtor and to enable the corporate debtor on a clean state. Therefore, while the reliefs sought in these clauses are for the appropriate Tax authorities to consider the same in accordance with the relevant law, they are requested to deal with the same keeping in mind the judgment of the Hon'ble Supreme Court in Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd, [8] wherein the Hon'ble Supreme Court has held in paragraph 95 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</td></tr>
<tr><td>(ii)</td><td>allow the filling of Income Tax returns for any preceding financial year, if not filed as on date, on approval of Resolution Plan and Income tax Department to allow waiver of the penalty an interest for late filling of the said returns /unpaid tax liability / demand. Further to allow the entire business loss and carry forward business and depreciation loss of the aforesaid year for a fresh period of 8 years;</td></tr>
<tr><td>(iii)</td><td>The Central Board Of Direct Taxes shall (a) consider that the change in shareholding of the Corporate Debtor pursuant to the Plan shall not lead to lapse of brought forward losses of the</td></tr>
</table>

[8] 2021 SCC OnLine SC 313 decided on 13.04.2021

Ref to Clause	Relief, concessions and approvals sought	Orders thereon
	Corporate Debtor and (b) provide relief to the Corporate Debtor from all past litigations pending at different level and provide waiver from all Tax dues including interest and penalty on such litigation pending prior to the Insolvency commencement date.	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.
4.	Further all claims by and Proceedings before any Government authority to be allowed to be updated in future, any claims and Proceeding may be allowed to be withdrawn and abated / vacated. All Government Authority to release the Property including Bank accounts attached, if any.	The objective of the IBC is to resolve the insolvency of the corporate debtor and to enable the corporate debtor on a clean state. Therefore, while the reliefs sought in these clauses are for the appropriate Tax authorities to consider the same in accordance with the relevant law, they are requested to deal with the same keeping in mind the judgment of the Hon'ble Supreme Court in *Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset*
5.	Any income Tax demands any TDS liabilities to be treated as waived off along with any	

Ref to Clause	Relief, concessions and approvals sought	Orders thereon
	penalties and interest thereon.	*Reconstruction Company Ltd,* [9] wherein the Hon'ble Supreme Court has held in paragraph 95 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
6.	Any income Tax liabilities which may arise due to recognizing any deemed or notional income in the books of account pursuant to preparation of accounts and financial statements in accordance with the applicable Accounting Standards to be allowed as waived off in totality.	
	All Claims raised or to be raised or Proceeding initiated/ filed in any form including any charges, levy, duty, interest, penalties, etc. by any Governmental Authority, including but not limited to Income Tax Authorities, Tribunals, Courts, Sales tax / Goods and Service Tax authorities, Excise and Custom department, Electricity Department, Pollution Control Board, Food safety and Standards Authority of India, Directorate General of Foreign trade ("DGFT") (Ministry of Commerce),West Bengal Fire & Emergency Services and any other private or Government authority in any or all the courts of India or Overseas as on date to	

9 2021 SCC OnLine SC 313 decided on 13.04.2021

Ref to Clause	Relief, concessions and approvals sought	Orders thereon
	be allowed to be waived off in totality.	the Adjudicating Authority grants its approval under section 31 could be continued.
	To allow waiving of any Claims and Proceeding by DGFT and other Government Authority, whether existing as on the date hereof or which may arise in future in respect of any period prior to implementation of Resolution Plan, including waiving of pending export obligation in cases of pending export obligation not fulfilled, release of export guarantees provided by Corporate Debtor.	
XVI(b)	**Waivers of Minimum Alternate Tax ("MAT") liability arising on account of write back of loans in case of the Corporate Debtor:**	
1.	The Resolution Plan envisages the write off of liabilities, if any, after paying the consideration for the Corporate Debtor. The write Back of this liability is expected to represent a notional profit/ income in the Profitability statement of corporate Debtor. Such Notional Profit may also attract the provisions pertaining to Minimum Alternate tax (MAT) U/S 115JB of the Income Tax Act, 1961. The MAT would also	The objective of the IBC is to resolve the insolvency of the corporate debtor and to enable the corporate debtor on a clean state. Therefore, while the reliefs sought in these clauses are for the appropriate Tax authorities to consider the same in accordance with the relevant law, they are requested to deal with the same keeping in mind the judgment of the Hon'ble Supreme Court in *Ghanashyam Mishra and Sons*

Ref to Clause	Relief, concessions and approvals sought	Orders thereon
	bring a substantial amount of liability on the corporate Debtor and impact the liquidity position.	*Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd,* [10] wherein the Hon'ble Supreme Court has held in paragraph 95 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
2.	Any potential MAT liability occurring on account of write-back of the liability, in terms of this Resolution Plan is requested to be treated as waived off.	

[10] 2021 SCC OnLine SC 313 decided on 13.04.2021

Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.
3.	The proposed balance sheet as presented and enclosed to be accepted by all the authorities including Ministry of Corporate affairs, Registrar of Companies, Income Tax Authority as the balance sheet as on date of approval of Resolution Plan as a Reconstructed Balance Sheet without any Income tax liability or demand, as it's a fresh investment from the perspective of Resolution Applicant.	Granted.
4.	Any potential MAT liability arising due to due to recognizing any deemed or notional income in the books of account pursuant to preparation of accounts and financial statement in accordance with the applicable Accounting Standards is requested to be treated as waived off.	The objective of the IBC is to resolve the insolvency of the corporate debtor and to enable the corporate debtor on a clean state. Therefore, while the reliefs sought in these clauses are for the appropriate taxing authorities to consider the same in accordance with the relevant law, they are requested to deal with the same keeping in mind the judgment of the Hon'ble Supreme Court in *Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd,* [11]

[11] 2021 SCC OnLine SC 313 decided on 13.04.2021

Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		wherein the Hon'ble Supreme Court has held in paragraph 95 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 section 31 could be continued.

Ref to Clause	Relief, concessions and approvals sought	Orders thereon
XVI(c)	**Waivers for any / all liabilities arising with SEBI Regulations/ companies Act 1956 and 2013/ FEMA regulation / Labour Laws/RBI/any other Laws**	
1.	Any liability in excess of provision made in the Resolution Plan for settlement, arising with SEBI Regulations/ Companies Act 2013/ Companies Act 1956 / FEMA regulation for the period prior to the CIRP date and till the date of final approval of the Resolution Plan by the Adjudicating Authority/ NCLT to be allowed as waived off/ extinguished.	The objective of the IBC is to resolve the insolvency of the corporate debtor and to enable the corporate debtor on a clean state. Therefore, while the reliefs sought in these clauses are for the appropriate taxing authorities to consider the same in accordance with the relevant law, they are requested to deal with the same keeping in mind the judgment of the Hon'ble Supreme Court in *Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd,* [12] wherein the Hon'ble Supreme Court has held in paragraph 95 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
2.	All the penalties , charges, fees, etc. arising out of non-compliance of the requirement if any of SEBI Regulations/ Companies Act / FEMA, Labour Laws, etc and their respective Regulations, Rules, Circulars, Notification, etc. for the period prior to the CIRP date and till the dated of final approval of the Resolution Plan by the Adjudicating Authority to be allowed as waived off / extinguished	
3.	All the penalties, charges, fees,	

[12] 2021 SCC OnLine SC 313 decided on 13.04.2021

Ref to Clause	Relief, concessions and approvals sought	Orders thereon
	etc. arising out of non-compliance of the requirements of any of companies Act, FEMA, RBI, Labour Laws, Employee State Insurance Act,1948, Provident Fund Act, 1952, Payment of Bonus Act, 1956,Contract Labour Act, 1973, The Minimum Wages Act, 1948, Equal Remuneration Act, 1776, Factories Act, 1948, Gratuity Act, 1972, etc. and their respective Rules, Circulars, Notifications, etc. for the period prior to the CIRP date and till the date of final approval of the Resolution Plan by the Adjudicating Authority/NCLT to be allowed to be treated as waived off/ extinguished.	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.
4.	Upon implementation of this resolution plan all rights, titles and benefits relating to the movable and immovable properties of the corporate debtor shall be vested in the corporate debtor free of any title defects and encumbrances.	The Resolution Plan cannot be used as a vehicle to remove imperfections in title. Whatever was vested in the Corporate Debtor prior to commencement of the CIRP shall alone be available.
5.	All liabilities (whether contingent or crystallised) in relation to any forms of credit support provided to the corporate debtor and	Granted.

Ref to Clause	Relief, concessions and approvals sought	Orders thereon
	corporate guarantees, indemnities provided by the Corporate Debtor and Corporate guarantees, indemnities provided by the Corporate Debtor prior to the date of implementation of the resolution plan shall stand extinguished.	
6.	The Corporate Debtor or RA shall not be liable to pay any amount to the creditors pursuant to the invocation by the creditor of any collateral Security/Personal guarantee/Corporate Guarantee offered to them to secure the debt availed by the Corporate debtor either but not limited to by the Promoters/Directors any other third parties/ Associate/ Subsidiary/ Group/ Related Concern or from any other entities but not from the Corporate debtor or RA towards recovery of balance claim amount and all power of attorney or authorities to that extend shall stand extinguished.	In *Lalit Kumar Jain v Union of India & others,* [13] 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. The provisions of section 32A of the IBC will also apply. There is, therefore no question of extinguishment of personal guarantees by virtue only of the Resolution Plan. However, it is left to the individual secured Financial Creditors.
7.	The NCLT to provide relief to the Corporate Debtor from the execution/enforcement of any	No *carte blanche* of this nature can be granted.

[13] 2021 SCC OnLine SC 396 decided on 21.05.2021.

Ref to Clause	Relief, concessions and approvals sought	Orders thereon
	award, decree, order, judgment against the Corporate Debtor in any country by any forum of Law/Court.	
8.	RBI :	
	All accounts of the CD shall stand regularised and their asset classification shall be "standard" for the purpose of all RBI applicable laws upon payment of their full and final settlement in terms of this resolution plan. The records/score of Banks/CIBIL should accordingly be upgraded to reflect such reclassification of account of the CD from NPA to Standard.	The Corporate Debtor under new management to apply to the authorities concerned. Such authorities shall 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.
	All creditors of the CD to withdraw all legal proceedings commenced against the CD in relation to claims under SARFAESI, RDDBFI or any other legal proceeding with any authority within 30 days of the approval date. The resolution applicant undertakes to pay the creditors the amount committed under this plan for takeover of the CD as going concern. The CD or the RA shall not be held liable to	Granted in terms of the *Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd,* [14] wherein the Hon'ble Supreme Court has held in paragraph 95 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

[14] 2021 SCC OnLine SC 313 decided on 13.04.2021

Ref to Clause	Relief, concessions and approvals sought	Orders thereon
	pay any amount to the creditors pursuant to the invocation by the creditor of any collateral security / personal guarantee / corporate guarantee offered to them to secure the debt availed by the CD either but not limited to or by the Promoter / Directors / any other third parties, associate / subsidiary / group / related concern or from any other entities but not from the CD and RA towards recovery of balance claim amount. All the outstanding negotiable instruments issued by the CD including demand promissory notes, post dated cheques and letter of credits, shall stand terminated and the CD's liability under such instruments shall stand extinguished	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. In *Lalit Kumar Jain v Union of India & others,* [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 *per se* operate as a discharge of the guarantor's

[15] 2021 SCC OnLine SC 396 decided on 21.05.2021.

Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		liability. The provisions of section 32A of the IBC will also apply. There is, therefore no question of extinguishment of personal guarantees by virtue only of the Resolution Plan. However, it is left to the individual secured Financial Creditors.
XVII	**OTHER TERMS OF RESOLUTION PLAN**	
1.	.... the resolution applicant and the corporate debtor shall have no responsibility or liability in respect of any claims against the corporate debtor attributable to the period prior to the date of implementation of the resolution plan other than any payments to be made. The resolution applicant undertakes to pay the creditors the amount committed under this plan for takeover of the corporate debtor as going concern. The corporate debtor or the resolution applicant shall not be held liable to pay any amount to the creditors pursuant to the invocation by the creditor of any collateral security/ personal guarantee/ corporate guarantee offered to them to secure the debt	Granted in terms of the *Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd,* [16] wherein the Hon'ble Supreme Court has held in paragraph 95 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

[16] 2021 SCC OnLine SC 313 decided on 13.04.2021

Ref to Clause	Relief, concessions and approvals sought	Orders thereon
	availed by the corporate debtor either but not limited to by the promoter/ directors/ any other third parties, associate/subsidiary/group/related concern or from any other entities but not from the corporate debtor and resolution applicant towards recovery of balance claim amount	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. In *Lalit Kumar Jain v Union of India & others,* [17] 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. The provisions of section 32A of the IBC will also apply. There is, therefore no question of extinguishment of personal guarantees by virtue only of the Resolution Plan. However, it is left to the individual secured

[17] 2021 SCC OnLine SC 396 decided on 21.05.2021.

Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		Financial Creditors.
2.	On and with effect from the implementation of the resolution plan, the guarantors, indemnity providers and like persons that have provided guarantees, indemnities, co-borrowing 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 similar rights) in respect of such arrangements, even where such rights have already been exercised. On and with effect from the date of implementation of the resolution plan, or rights and claims (whether contingent or otherwise) of whatsoever nature of the existing promoters against the corporate debtor shall stand irrevocably and unconditionally extinguished in perpetuity.	Whatever protection is available to the corporate debtor in terms of section 32A of the Code will in any case continue to be available. Therefore, no specific orders are necessary in this regard.
3.	The corporate debtor or the resolution applicant shall not be liable to pay any amount to the creditors pursuant to the invocation by the creditor of any	Granted in terms of the *Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd,* [18] wherein the Hon'ble Supreme

[18] 2021 SCC OnLine SC 313 decided on 13.04.2021

Ref to Clause	Relief, concessions and approvals sought	Orders thereon
	collateral security/ personal guarantee/ corporate guarantee offered to them to secure the debt available by the corporate debtor either but not limited to by the promoter/ director/ any other third parties, associate/ subsidiary/ group/ related concern or from any other entities but not from the corporate debtor and resolution applicant towards recovery of balance claim amount.	Court has held in paragraph 95 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 section 31 could be continued.
4.	Any encumbrance, whether over immovable, movable assets, fixed deposits or cash or any other rights or privileges including without limitation, security, letter of credit, bank guarantee or pledge provided by the corporate debtor to the financial creditors, that was created/ granted/ arranged in connection with any financial debt or operational debt or any other debt or obligation of the corporate debtor at any time prior to the approval date shall automatically be released and all liabilities and obligations of the corporate debtor in relation to such encumbrance or other form of collateral (including this created/ arranged by the corporate debtor as a guarantor or	

Ref to Clause	Relief, concessions and approvals sought	Orders thereon
	a third party security provider in relation to its subsidiaries, joint ventures, related parties or associates, if any) shall stand permanently extinguished and released on the approval of this resolution plan by the NCLT.	In *Lalit Kumar Jain v Union of India & others,* [19] 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. The provisions of section 32A of the IBC will also apply. There is, therefore no question of extinguishment of personal guarantees by virtue only of the Resolution Plan. However, it is left to the individual secured Financial Creditors.
	All titled deeds and other documents (including charged documents, if any) held by the financial creditors or any trustee/ agent on their behalf in relation to the existing encumbrances shall be immediately return to the corporate debtor as per the terms set out in Serial No.XII(h)(4) (timeline and steps of events towards implementation of the proposed plan). No existing encumbrance shall be enforced by any creditor after approval date or otherwise and all existing proceedings/ enforcement action shall be immediately withdrawn.	
5.	All liabilities (whether contingent or crystalized) in relation to any corporate guarantees, indemnities and all other forms of credit support (including those availed by corporate debtor on a co-borrower arrangement, along	

[19] 2021 SCC OnLine SC 396 decided on 21.05.2021.

Ref to Clause	Relief, concessions and approvals sought	Orders thereon
	with any third party provided by the corporate debtor prior to the implementation date and all contingent liabilities disclosed in the annual audit financial statements of the corporate debtor and liabilities which are not in notice of corporate debtor or not enclosed by the corporate debtor shall stand extinguished and discharged on and with effect from the implementation date at a NIL value. The Resolution Applicants undertakes to pay the creditors the amount committed under this plan for take over of the Corporate Debtors as going concern. The Corporate Debtor or the Resolution Applicant shall not be held liable to pay any amount to the creditors pursuant to the Invocation to the Creditors of any collateral security/personal guarantee/ corporate guarantee offered to them to secure the debt availed by the Corporate Debtor either but not limited to by promotors/ Director/ Any other third parties, Associates/ Subsidiary/ group/ Related Concern or from any other entities but not from the Corporate Debtor and Resolution Applicant towards recovery of balance claim amount.	

Ref to Clause	Relief, concessions and approvals sought	Orders thereon
6.	The payment to the person Contemplated in Serial No.IX (Summary proposal of the Resolution Applicant) shall be the Corporate 'Debtor's and Resolution Applicants full and final performance and satisfaction of all its obligations to such persons and all claims (including for the avoidance or doubt any unverified portions of their claims) of such persons against the corporate Debtors shall stand irrevocably and unconditionally settled and extinguished in perpetuity upon the discharge. The Resolution Applicants undertakes to pay the creditors the amount committed under this plan for takeover of the Corporate Debtors as going concern. The Resolution Applicant undertakes shall not be held liable to pay any amount to the creditors pursuant to the Invocation to the Creditors of any collateral security/personal guarantee/ corporate guarantee offered to them to secure the debt availed by the corporate Debtor either but not limited to by promotors/Director/Any other third parties, Associates/ Subsidiary/ group/ Related Concern or from any other	

Ref to Clause	Relief, concessions and approvals sought	Orders thereon
	entities but not from the Corporate Debtor and Resolution Applicant towards recovery of balance claim amount”	
7.	On and with effect from the date of implementation of resolution plan all the outstanding negotiable instruments issued by the Corporate Debtors or by any person on behalf of the Corporate Debtor including demand promissory note, post dated cheques and letter of credit shall stand terminated and the Corporate Debtors liability under such instruments shall extinguished. The Resolution Applicant undertakes to pay the creditors the amount committed under this plan for takeover of the Corporate Debtors as going concern. The Resolution Applicant undertakes shall not be held liable to pay any amount to the creditors pursuant to the Invocation to the Creditors of any collateral security/ personal guarantee/ corporate guarantee offered to them to secure the debt availed by the corporate Debtor either but not limited to by promotors/ Director/ Any other	Granted, except in the case of personal guarantees, which will be in terms of the judgment of the Hon'ble Supreme Court in *Lalit Kumar Jain v Union of India & others,* [20] 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. The provisions of section 32A of the IBC will also apply. There is, therefore no question of extinguishment of personal guarantees by virtue only of the Resolution Plan. However, it is left to the individual secured Financial Creditors.

[20] 2021 SCC OnLine SC 396 decided on 21.05.2021.

Ref to Clause	Relief, concessions and approvals sought	Orders thereon
	third parties, Associates/ Subsidiary/ group/ Related Concern or from any other entities but not from the Corporate Debtor and Resolution Applicant towards recovery of balance claim amount.	
8.	Upon the approval of the Plan by the NCLT under section 31 of the code, all pending proceeding relating to the winding up of the Corporate Debtors shall stand irrevocably and unconditionally abated in perpetuity.	Granted.
9.	On and with effects from the implementations date all securities convertible or exchangeable into equity shares and all rights to subscribe to equity shares, including convertible debenture, convertible preference shares, convertible loans (whether compulsorily or partially convertible or not), warrants subscription right under shareholders agreements entered into by the existing promoters shall stand immediately extinguished and settled.	Granted.

10. Analysis

10.1. The IA was heard and reserved on two occasions, but on both occasions certain clarifications were required. Therefore, the IA was put back on Board on 26 February 2021 and 25 November 2021. The Resolution Professional filed a supplementary affidavit on 07 February 2022 answering the queries raised by this Bench.

10.2. The clarification sought and the replies given thereto are given below:

Query raised	Clarification provided
(a) The CoC was directed to explain how section 29A of the Code is not applicable to Mr. Avik Lahiri, who will be the Project consultant of the Company.	The Resolution Professional submitted that Resolution Applicant has agreed to cancel all clauses in the Resolution Plan relating to the appointment of Mr. Avik Lahiri.[21]
(b) ASP Transformers Product Private Limited who is related party and unsecured Financial Creditor of the Corporate Debtor to infuse funds.	The infusion of funds by ASP Transformers Product Private Limited at the request of the Successful Resolution Applicant Ashish Baldwa does not contravene or violate any provision of the Code and the same should not be an impediment to the approval of the Resolution Plan of Ashish Baldwa. However, the Successful Resolution Applicant has undertaken to infuse such funds in addition to his own fund stipulated in the Resolution Plan from his private or individual resources.[22] Further, the CoC in its meeting held on 30 March 2021 discussed whether ASP Transformers Product Private Limited were eligible to infuse funds.

[21] letter dated 10 January 2022

[22] Letter dated 15 january 2022

Query raised	Clarification provided
	The CoC noted that for ASP Transformers Product Private Limited, the only clause that could have triggered section 29A of the Code is clause (c) of section 29A of the Code, which deals with NPA. However, even that clause is not applicable as the account of the Corporate Debtor was not an NPA at the time of the commencement of CIRP and became NPA on 30 November 2019 i.e., nearly two months thereafter. Hence, section 29A is not applicable to ASP Transformers Product Private Limited and hence there is no reason for substitution of payment.
(c) The Successful Resolution Applicant *i.e.,* Mr Ashish Baldwa has been representing eleven of the member of the CoC and has voted in favour of his Resolution Plan. On perusal of the master data of the said members, it was noted that the Successful Resolution Applicant was not a Director in any of the Companies that he represented in the CoC. Not only this, Mr KG Baldwa, who is proposed to be the Director in the new management of the Corporate Debtor is also representing one of the Financial Creditors in the Committee of Creditors.	It is submitted by the Resolution Professional that Mr. Ashish Baldwa became acquainted with the members of the CoC and hence, eleven out of sixteen of CoC members appointed Mr Ashish Baldwa as their representative and one of the CoC members appointed Mr KG Baldwa as their representative. However, after the query was raised by this Adjudicating Authority, the Resolution Professional approached the twelve CoC members and the twelve CoC members have given their approval in respect of the Resolution Plan *vide* their Board Resolution.

10.3. On hearing the submissions made by the Resolution Professional, and perusing the record, we find that the Resolution Plan has been approved with 100% voting share. The queries raised by this Adjudicating Authority have been answered satisfactorily.

10.4. 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 the compliances have been done by the RP and the Resolution Applicant for making the plan effective after approval by this Bench.

11. Orders

11.1. 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 complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

11.2. As far as the question of granting time to comply with the statutory obligations or seeking approvals from authorities is concerned, the Resolution Applicant is directed to do so within one year from the date of this order, as prescribed under section 31(4) of the Code.

11.3. In case of non-compliance of this order or withdrawal of Resolution Plan, the payments already made by the Resolution Applicant shall be liable for forfeiture, in addition to any other action that may be deemed necessary under the Code.

11.4. Subject to the observations made in this Order, the Resolution Plan dated 03 February 2020 amended on 02 July 2020 and 06 August 2020 and keeping in mind the letters 10 January 2022 and 15 January 2022, is hereby **APPROVED** by this Bench. **The Resolution Plan shall form part of this Order.** 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.

11.5. The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.

11.6. 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 and also return to the Resolution Applicant or New Promoters.

11.7. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.

11.8. Liberty is hereby granted for moving any application if required in connection with implementation of this Resolution Plan.

11.9. A copy of this Order is to be submitted to the Registrar of Companies, West Bengal.

11.10. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.

11.11. The Resolution Professional is further directed to hand over all records, and premises 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 and premises of the corporate debtor through the Resolution Professional to finalise the further line of action required for starting of the operation.

11.12. **IA (IB) No.965/KB/2020 in CP (IB) No.1498/KB/2018 shall stand disposed of accordingly.**

11.13. The Registry is directed to send e-mail copies of the order forthwith to all the parties for information and for taking necessary steps.

11.14. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

11.15. File be consigned to the record.

BALRAJ JOSHI Digitally signed by BALRAJ JOSHI Date: 2022.04.19 16:38:36 +05'30'

Rajasekhar V K Digitally signed by Rajasekhar V K Date: 2022.04.19 15:56:46 +05'30'

Balraj Joshi
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

Order dated 19 April 2022

GGRB[LRA]