

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

IA (IB) No. 11/CB/2022

In

CP (IB) No. 23/CTB/2019

An Application under Sections 30(6) and 31(i) of the Insolvency and Bankruptcy Code, 2016 for approval of Resolution Plan;

And

In the matter of:

Suraj Projects Limited, having registered office at Barapali, P.O. Kesarmal Rajgangpur, Sundargarh – 770 017, Odisha;

...Operational Creditor

-Versus-

Krishna Ferro Products Limited, having registered office at Mandiakudar Kansbahal Rajgangpur, OR -770 034;

... Corporate Debtor

And

In the matter of:

Manish Jain, Resolution Professional in respect of Krishna Ferro Products Limited, having his office at Bajrang Kunj, Room No. 303, 3rd Floor, 2B, Grant Lane, Kolkata – 700 012;

... Resolution Professional/Applicant

Appearances (via video conference):

For the Applicant/ RP:

1. Ms. Meenakshi Manot, Advocate
2. Ms. Shreya Choudhary, Advocate
3. Manish Jain, RP

Order Reserved on: 03.02.2022.

Order Pronounced on: 15.02.2022.

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Coram:

Shri P. Mohan Raj : Member (Judicial)
Shri Satya Ranjan Prasad : Member (Technical)

ORDER

Per P. Mohan Raj, Member, (Judicial)

1. The court convened via Video conference.
2. This is an application filed by Manish Jain, Resolution Professional of KRISHNA FERRO PRODUCTS LIMITED (CIN: L27320OR1982PLC001137), under Section 30(6) read with Section 31(1) of the Insolvency and Bankruptcy Code, 2016 ("the Code") for approval of a Resolution Plan in respect of Krishna Ferro Products Limited, the Corporate Debtor ("CD").
3. The underlying Company Petition being C.P. (IB) No. 23/CTB/2019 was filed by Suraj Projects Limited against the Corporate Debtor under Section 9 of the Code which was admitted into Corporate Insolvency Resolution Process ("CIRP") by an order dated 04.10.2019.
4. Initially, Mr. Chaitanya Kumar Ray was appointed as the Interim Resolution Professional ("IRP"), but the Committee of Creditors ("CoC") in its meeting held on 06.01.2020, resolved to replace Mr. Chaitanya Kumar Ray with Mr. Manish Jain [IBBI/IPA-001/P-00582/2017-2018/11023] as the Resolution Professional ("RP"). An application being I.A. (IB) No. 25/CTB/2020 was filed by the CoC for replacement of the Resolution Professional, and Mr. Manish Jain was appointed as the Resolution

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Professional of the Corporate Debtor by an order dated 20.01.2020 passed by this Adjudicating Authority in the said application.

5. The erstwhile IRP had made public announcement on 10.10.2019 in "Business Standard" (English) and "Prameya" Odiya newspapers regarding initiation of the CIRP and called for proof of claims from the financial and operational creditors, workers and employees of the Company in the specified forms till 18.10.2019.
6. As stated in the **internal pages 12, 13,22 and 29 of the Resolution Plan (pages 62,63,72 and 79 of the application)**, the claims existing as on the date of filing the present application are as follows:

Sl. No.	Category of claim	Amount admitted as per Information Memorandum (in Rs. Lakhs)	Amount proposed to be paid as per Plan (in Rs. Lakhs)
1.	CIRP Costs (approx.)	-	55.00
2.	Financial Creditor	5291.95683	245.00
3.	Operational Creditors (Including Statutory and others)	155.47372	2.00
5.	Workmen	-	-
	Total	5447.43055	302.00

The RA proposes to pay an amount of Rs. 55.00 Lacs towards the CIRP Cost towards full and final payment of the insolvency resolution process costs payable in terms of Sections 30(2)(a) of the Code and Regulation 38(1)(a) of the CIRP Regulations out of the amount allotted as upfront payment, in priority to all other debts. It is further clarified that if the actual cost is below the threshold of Rs. 55.00 lacs the difference will be paid to the Financial Creditor. In case the CIRP cost

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exceeds the mandated Rs. 55.00 Lacs the same will be adjusted and/or reduced from the amount earmarked for the Financial Creditors.

The resolution professional appointed three sets of valuers as required under Regulation 27. A summary of valuation determined is as below: -

NAME OF THE VALUERS	TYPE OF ASSETS	FAIR VALUE	LIQUIDATION VALUE
Mr. Sushant Aggarwal	Plant and Machinery	5,00,000	5,00,000
Mr. Asim Maity	Plant and Machinery	5,38,580	3,77,000
Mr. Ashutosh Kaushik	Land and Building	19,440,250,	14,164,900
Mr. Debabrata Ghosh	Land and Building	26,135,000	20,908,000
Mr. Mukesh Kumar Jain	Securities or Financial Assets	-	-
Mr. Pranab Kumar Chakrabarty	Securities or Financial Assets	-	-
TOTAL FAIR AND LIQUIDATION VALUE		46,613,830	35,949,900
AVERAGE FAIR AND LIQUIDATION VALUE		23,306,915	17,974,950

7. A total of fourteen CoC meetings have been held during CIRP period out of which the following meeting were held by the RP Manish Jain:

Particulars	Date of CoC meeting
4 th CoC meeting	28.01.2020
5 th CoC meeting	07.08.2020
6 th CoC meeting	20.10.2020
7 th CoC meeting	18.12.2020

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8 th CoC meeting	27.01.2020
9 th CoC meeting	10.05.2021
10 th CoC meeting	17.07.2021
11 th CoC meeting	17.09.2021
12 th CoC meeting	24.09.2021
13 th CoC meeting	11.11.2021 & 18.11.2021
14 th CoC meeting	27.12.2021

8. The CIRP timeline was extended from time to time with approval of this Adjudicating Authority and lastly, by virtue of an order dated 09.11.2021 passed by this Adjudicating Authority in IA (IBC) No.99/CB/2021, the CIRP timeline was finally extended upto 02.01.2022. This application was filed by online on 31.12.2021.
9. Invitation in Form 'G' for Expression of Interest ("EoI") from potential resolution applicants were published on 01.02.2020, 08.08.2020 and thereafter again on 19.12.2020 for submission of resolution plans for the Corporate Debtor, 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. These were published in "Orissa Post" (English) and "Pratidin" (Odia) newspapers on February 1, 2020, August 8, 2020 and December 12, 2020 respectively. The notices were also published on the website of the IBBI. As per the Form 'G' published on 19.12.2020, the last date of receipt of

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resolution plans was 28.01.2021. However, this was extended from time to time by the CoC and accordingly in the 13th CoC meeting dated 18.11.2021 it was decided by the CoC member that the last date for the receipt of the Resolution plan by the RP from the only Resolution Applicant being M/s. KEDARNATH MINING PRIVATE LIMITED shall be 29.11.2021. The only Resolution Applicant namely, M/s. Kedarnath Mining Private Limited accepted the same and submitted the Resolution Plan dated 22.11.2021 within the stipulated timeline. (Pages 27 to 48 of application).

10. The final Resolution Plan was submitted by M/s. Kedarnath Mining Private Limited to the Resolution Professional within the stipulated timeline.
11. The Resolution Plan is disclosed at **pages 50 to 63 of the application.**
12. In the said Resolution Plan, the Resolution Applicant had provided the required bifurcation of the amounts payable to the Financial Creditor and the Operational Creditors and the same is disclosed at **page 79 of the application.**
13. The CoC voted on both the plans and ultimately by Ballot voting which was concluded on December 30, 2021, the CoC approved the Resolution Plan submitted by M/s. Kedarnath Mining Private Limited with 100% vote share. Copy of the minutes of the 14th CoC meeting is disclosed at **pages 299-315 of the application.**
14. The Applicant submits that the amount in the Resolution Plan of M/s. Kedarnath Mining Private Limited is higher than the average liquidation value of the Corporate Debtor as arrived at on the basis of valuation

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conducted by three valuers viz. Rs. 1,79,74,950/-, and the same is disclosed at page 220 of the application.

15. The Applicant has submitted the details of various compliances as envisaged by the Code and the CIRP Regulations which a Resolution Plan is required to adhere to, as follows: -

I. Submission of Resolution Plan in terms of the Code

The compliance of the Resolution Plan is as under:

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	Part of the Resolution plan dated 22.11.2021 clause 2.1 and documents annexed.	YES
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Part of the Resolution plan dated 22.11.2021 annexure which is part of the Resolution Plan.	YES
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Part of the Resolution plan dated 22.11.2021	YES

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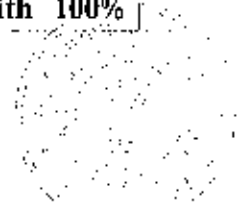
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<p>Section 30(2)</p>	<p>Whether the Resolution Plan-</p> <p>(a) Provides for the payment of insolvency resolution process costs?</p> <p>(b) Provides for the payment to the operational creditors?</p> <p>(c) provides for the payment to the financial creditors who did not vote in favor of the resolution plan?</p> <p>(d) provides for the management of the affairs of the corporate debtor?</p> <p>(e) provides for the implementation and supervision of the resolution plan?</p> <p>(f) contravenes any of the provisions of the law for the time being in force?</p>	<p>Clause 5.5 page 14 & 15 of the Resolution plan dated 22.11.2021</p> <p>Clause 5.7 (1) page 15 & 16 of the Resolution plan dated 22.11.2021</p> <p>Clause 5.8.2(i) Page 22 of the Resolution plan dated 22.11.2021</p> <p>Clause 7.4.3 & 7.4.4 page 38 & 39</p> <p>Clause 7.6 Page 40 to 45</p>	<p>YES</p> <p>YES</p> <p>Only one Financial Creditor, so there is no question of making any provision for payment to any dissenting Financial Creditor.</p> <p>YES</p> <p>YES</p> <p>No</p>
<p>Section 30(4)</p>	<p>Whether the Resolution Plan</p> <p>(a) is feasible and viable, according to the CoC?</p> <p>(b) has been approved by the CoC with</p>	<p>Yes</p> <p>Yes</p>	<p>The plan is approved by the CoC member in the 14th CoC meeting dated 27.12.2021 via Ballot voting concluded on 30.12.2021 with 100%</p>

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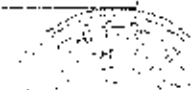
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	66% voting share?		voting result.
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Yes Clause 7.6.1-page no. 40-43	YES
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?		YES. The RP vide an email dated 27th April 2020, informed the IIPICAI the monitoring committee about the conduct and the continuous non-co-operation from the suspended Board of Directors and also the RP had framed his opinion and determination as required under Regulation 35A and have communicated the same to IBBI on 07.05.2021. Details of the same is stated as under in point no. 39(2) of the form.
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Clause 5.7, of the Plan. Page No. 15-16 of the plan dated 22.11.2021.	YES
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with	Clause 5, concise details	YES

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	the interests of all stakeholders?	provided in page 12 to 29 of the Plan.	
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	NO, as per declaration given in page no. 46 of the Resolution plan dated 22.11.2021 The RA declares that they have never failed in implementation in any resolution plan.	YES
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising its implementation?	Clause 7.4 of the Resolution Plan page no. 38 to 42 Clause 7.4.3 of the Resolution Plan page no. 38-39. Clause 7.6 of the Resolution Plan page no. 40-42.	YES YES YES

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38(3)	<p>Whether the resolution plan demonstrates that -</p> <p>(a) it addresses the cause of default?</p> <p>(b) it is feasible and viable?</p> <p>(c) it has provisions for its effective implementation?</p> <p>(d) it has provisions for approvals required and the timeline for the same?</p> <p>(e) the resolution applicant has the capability to implement the resolution plan?</p>	<p>Clause 4.1 / Page 7 of the Resolution Plan dated 22.11.2021</p> <p>Clause 2.1 page no 3 and clause 5.4 page no 14 of the Resolution Plan dated 22.11.2021 and documents annexed.</p>	<p>YES</p> <p>YES</p> <p>YES</p> <p>YES</p>
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39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	<p>The RP vide an email dated 27th April 2020, informed the IIPICAI, the monitoring committee about the conduct and the continuous non-cooperation from the suspended Board of Directors and also the RP had framed his opinion and determination as required under Regulation 35A and have communicated the same to IBBI on 07.05.2021.</p> <p>Due to sustained non-cooperation of the Corporate Debtor, the Ex- Interim Resolution Professional filed an application under Section 19(2) of the code. However, the same was disposed off now vide an order dated 18.02.2020.</p> <p>The resolution process as well as the Forensic cum Transaction Audit was greatly hampered due to the non-receipt of required documents from the Corporate Debtor and also due to the Covid pandemic. Eventually, the transaction audit was</p>
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		<p>completed on the basis of available documents. The Forensic cum Transaction Audit Report was received on 01.09.2021 by the Resolution Professional (Report attached separately) however no absolute conclusion is given in the report as no evidence is available due to lack of corresponding/contemporaneous documents to prove fraudulent transactions in respect of the Corporate Debtor. Due to lack of information, the Resolution Professional is unable to establish who carried any such fraudulent/ deceiving/ ill-legitimate transactions. In such circumstances, the RP is not able to establish any fraudulent transaction/preferential/undervalued transactions in respect of the Corporate Debtor in absence of any evidence whatsoever. It is very difficult to prove a case under Section 66 of IBC without any complete evidence</p>
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		<p>whatsoever.</p> <p>In view of the above RP sought legal opinion on 16.09.2021 from an Advocate being Mr. Rishav Banerjee brief of the opinion is given as under:</p> <p>Under Section 66 of the IBC, the Querist has a right to file an application before the Hon'ble Adjudicating Authority on the terms and conditions that if the business of the Corporate Debtor has been carried on with the intent to defraud the creditors of the Corporate Debtor or for any fraudulent purposes, the Hon'ble Adjudicating Authority may on an application of the Resolution Professional pass an order that any person who was knowingly party to carry on the business in such a manner shall be liable to make such contributions to the assets of the Corporate Debtor as it may deem fit.</p> <p>In the instant case at hand, no evidence is available due to lack of</p>
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		<p>corresponding/contemporaneous documents to prove fraudulent transactions in respect of the Corporate Debtor. Due to lack of information, the Resolution Professional is unable to establish who carried out such fraudulent transactions. In such circumstances, the Querist will not be able to establish any fraudulent transaction/preferential/undervalued transactions in respect of the Corporate Debtor in absence of any evident whatsoever. It will be very difficult to prove a case under Section 66 of IBC without any complete evidence whatsoever. In absence of any concrete evidence and/or documents, filing of an application under Section 66 of IBC would merely be a futile exercise and would render the entire process a mere formality as the Querist will not be in a position to prove the fraudulent transactions. In the backdrop of the abovementioned facts</p>
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		<p>and circumstances, in my opinion, the Querist should not file any application under Section 66 of IBC, which will merely be a formality and such exercise shall be futile as the Querist will not be able to prove any fraudulent transactions in absence of the books of accounts of the corporate debtor as well as in absence of any contemporaneous documents.</p> <p>In my opinion, the Querist should not incur unnecessary risk and costs in filing an application which cannot be proved before the Hon'ble Adjudicating Authority. However, in my opinion, since the suspended Board of Directors of the Corporate Debtor did not render cooperation to the Querist, the Querist herein should immediately file an application under Section 70 of the IBC and should pray for punishment of the suspended Board of Directors of the</p>
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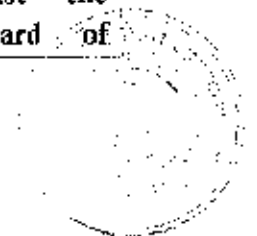
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		<p>Corporate Debtor for failing to provide the Querist with all the details of the properties of the Corporate Debtor and details of the transactions thereof and all other information as the Querist may require.</p> <p>In my opinion, it is a fit case to proceed against the suspended Board of directors under Section 70 of IBC for failure on their part to deliver to the Querist all the books of accounts and papers in their control and possession belonging to the Corporate Debtor which they were required to deliver. Since, the suspended Board of Directors had prevented production of any books or papers effecting or relating to the properties or affairs of the Corporate Debtor, it is a fit case to punish the suspended Board of Directors of the Corporate Debtor under Section 70 of IBC.</p> <p>The Querist can also proceed against the suspended Board of</p>
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		<p>Directors and seek for their punishment under Sections 71 and 72 of the IBC. However, in my opinion, the Querist should not file an application under Section 66 of the IBC in absence of any concrete evidence as the Querist will not be able to prove his case under Section 66 of the IBC. Further, in my opinion, the Querist should also inform Insolvency and Bankruptcy Board of India (IBBI) about the affairs of the Corporate Debtor and should go ahead and make necessary complaints in this regard before IBBI under the provisions of IBC and the corresponding Rules and Regulations framed thereunder, if not already done".</p> <p>In view of the above-mentioned facts the RP could not file the Application u/s 43,45, 50 &66.</p> <p>However the RP has filed the Application under Section 70 as per the suggestion in the Legal opinion and the same is under the</p>
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			consideration of the Hon'ble NCLT and the matter was last heard by the Hon'ble NCLT on 03.02.2022 and the matter shall be further heard by the Hon'ble NCLT on 21 st February 2022, these matters were duly informed by the RP to the Coc members from time to time and also discussed in the 14th Coc meeting dated 27.12.2021 before the consideration and approval of the Resolution plan by the Coc member.
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.		YES, EMD RECEIVED Rs. 50,00,000/- (Fifty Lakhs Only) Through RTGS in CIRP BANK A/C on 27.01.2021 and Performance Guarantee Amount of Rs. 50,00,000/- (Fifty Lakhs Only) Through RTGS in CIRP BANK A/C on 30.12.2021.

II. Measures required for implementation of the Resolution Plan in terms of Regulations 37 and 38 of CIRP Regulations (at pages 96-97 of application):

The mandatory contents of this Resolution Plan as per the provisions

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section 30 of the Insolvency and Bankruptcy Code, 2016 ("IB Code") and Regulation 37 and 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulation") and the RFRP released by the Resolution Professional are detailed in the table below:

Sl. No.	Source of Requirement	Description of Requirement	Resolution Plan Reference addressing such Requirement
1.	Regulation 38(1) of CIRP Regulation	Dues to Operational Creditor Given priority over payment to Financial Creditor	Clause 5.2, page 12 and Clause 5.7 at page 15
2.	Regulation 38(1A) of CIRP Regulation	how the resolution plan proposes to deal with the interests of all stakeholders, including Financial Creditors and Operational Creditors, of the Company;	Clause 5, concise details provided in page 29
3.	Regulation 38(1B) of CIRP Regulation	Whether the Resolution Applicant of any of its related parties has failed to implement or contributed to failure of any resolution plan approved under the code, and if so, whether the Resolution Applicant has submitted the statement giving details of such non-Implementations	The RA declares that they have never failed in implementation in any resolution plan
4.	Regulation 38(2) of CIRP Regulation	the term of the Resolution Plan and its implementation schedule; management and control of the affairs of the Corporate Debtor during its term and adequate means	Clause 7



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		for supervising the implementation of Approved Resolution Plan;	
5.	Regulation 38(3) of CIRP Regulation	Demonstrates requirements stipulated under Regulation 38(3) of the CIRP Regulations;	Clause 4.1/ Page 7 & Clause 7/page 35
6.	Section 30(2)(a) of the IB Code	payment of the insolvency resolution process cost in priority to the payment of other debts of the Corporate Debtor;	Clause 5.5 page 14
7.	Section 30(2)(b) of the IB Code	payment of the debts of Operational Creditors in a manner that the amount received by the Operational Creditors is not less than the amount which would have been otherwise received by them in the event of liquidation of the Corporate Debtor.	5.7(1)(iii) page 16
8.	Section 30(2)(c) of the IB Code	Provide for the management of the affairs of the Corporate Debtor after approval of the resolution plan;	Clause 7.4.3 Page 38
9.	Section 30(2)(d) of the IB Code	The implementation and supervision of the resolution plan;	Clause 6/page 30- & 7.6-page 40

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10.	Section 30(2)(e) of the IB Code	Declaration to the effect that the Resolution Plan is not in contravention of provisions of the law for the time being in force and is in strict compliance with the IB Code and the CIRP Regulations.	Clause 2.5 page 4
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RELIEFS AND CONCESSIONS

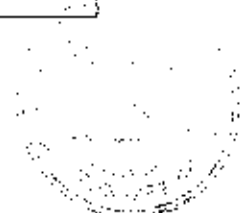
The Resolution Applicant requests, proposes and prays for the following reliefs and concessions to be granted to the Corporate Debtor and/or the Resolution Applicant, as the case may be, on the Approval Date.

Shareholder's permission

S. No.	Waiver	Approval/ Rejection
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 Debtor Company. However, as per explanation to Section 30(2) of the Insolvency and	APPROVED

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<p>Bankruptcy Code, 2016, it has been clarified that <i>"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."</i></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 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.</p>	
<p>2. Income Tax and Statutory Reliefs:</p> <p>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</p>	<p>The resolution applicant shall make necessary applications to the concerned authorities in this regard and obtain</p>

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	<p>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. 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.</p>	<p>orders.</p>
3.	<p>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 and Service Tax Act, 2017 and</p>	<p>The applicant to make necessary application to the authority concern, and such authority shall consider the same keeping in mind the</p>

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	not to impose any subsequent liability on the Resolution Applicant and/or the Corporate Debtor.	objective of IBC, 2016
4.	The losses already lapsed / not lapsed 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.	This is for the relevant tax authority to consider.
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 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.	This is for the relevant tax authority to consider.
6.	They're arising no liability of the	Approved in terms of

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	<p>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.</p>	<p>Apex Court Judgment Ghanshyam Mishra-vs-Edelweiss Assets Reconstruction Company Ltd. (2021 SCC online SC 313), there it is held that once Resolution Plan is accepted, no proceedings to be instituted for claims which is not part of Resolution Plan.</p>
7.	<p>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/defaults/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 Added Tax Acts of the relevant State or the Central Government, Real Estate Regulatory Act of the relevant States or the Central Government).</p>	<p>The Applicant shall make necessary Application to the authority concern and the Taxing authority shall consider the same keeping in mind the objective of IBC, 2016.</p>

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	All penalties, liabilities and claims by whatever name called, shall in relation to the aforesaid non-compliances/demand/defaults/dues shall stand extinguished permanently.	
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.	The Applicant shall make necessary Application to the authority concern and the Taxing authority shall consider the same keeping in mind the objective of IBC, 2016.
9.	That all the assets of the corporate debtor including but not limited to the current assets, 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	Approved

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	going concern.	
10.	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 Corporatedebtor, 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 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.	Approved
11.	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 Corporatedebtor, whether by contract	Approved

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	<p>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 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.</p>	
12.	<p>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</p>	Approved

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<p>on part of any Party; (b) for issuance of new Equity 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.</p>	
<p>13. 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</p>	<p>Approved. No action can be taken against the Resolution Applicant for the default committed by erstwhile management of corporate debtor</p>

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	former promoters, shareholder or directors, employees, officers, at any point of time, before or after the Approval Date.	company
14.	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.	This is for the relevant taxing/Stamping authorities to consider.
15.	All creditors (including but not 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	Approved

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	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.	
16.	For the purpose of consolidation of the books of the Corporate Debtor with Resolution Applicant, the EffectiveDate shall be treated as the date on which Corporate Debtor shall issue its equity 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.	Approved
17.	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	Approved

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	Corporate Debtor shall be continued to be made available to the Corporate Debtor.	
18.	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 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.	This is for the relevant authorities concern to consider.
19.	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.	Approved

16. As required by Regulation 39(1)(a) of the CIRP Regulations, the Applicant submits that the successful resolution applicant has submitted a certificate of

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eligibility under Section 29A of the Code, which has been disclosed at **pages 114-115 of the Application**. In terms of Regulation 39(1)(c) of the CIRP Regulations, an undertaking has been submitted by the successful Resolution Applicant, disclosed at **page 120 of the application**.

17. The applicant has filed a Compliance Certificate in prescribed form i.e., Form "H" in compliance with regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) regulations 2016, along with evidence of receipt of performance security as required under regulation 36B(4A) is disclosed at **pages 316 to 333 of the application**.

Details of Resolution Plan/payment Schedule

18. The applicant submits the relevant information with regard to the amount claimed, amount admitted and the amount proposed to be paid by the Resolution Applicant, under the said resolution plan is tabulated as under:
- a. **Resolution Plan Outlay and means of finance:**

The details of costs of Resolution Plan and its means are given hereunder:

In Rupees

Cost of Plan	Amount
Cost to be incurred	
CIRP Cost (As per Actuals proposed, Subject to maximum of Rs. 55.00 Lacs)	55,00,000.00
Payment to Secured Financial Creditors in full & final Settlement (full value and not NPV)	2,45,00,000.00
Payment to Operational Creditors in full & final Settlement (full value and not NPV)	2,00,000.00
Sub-Total	3,02,00,000.00
Total Payment to Existing Financial & Operational Creditors	3,02,00,000.00



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Add: Capital Expenditure to Restart the Unit	1,25,00,000.00
Add: Working Capital	50,00,000.00
TOTAL	4,77,00,000.00
Means of Finance	Amount
Fresh Equity to be infused by the Resolution Applicant at the time of implementation of the Resolution Plan	1,40,00,000.00
Unsecured Loans by Applicant/ Associates/Friends	3,37,00,000.00
Accruals from operations	-
TOTAL	4,77,00,000.00

The RA proposes to pay an amount of Rs. 55.00 Lacs towards the CIRP Cost towards full and final payment of the insolvency resolution process costs payable in terms of Sections 30(2)(a) of the Code and Regulation 38(1)(a) of the CIRP Regulations out of the amount allotted as upfront payment, in priority to all other debts. It is further clarified that if the actual cost is below the threshold of Rs. 55.00 lacs the difference will be paid to the Financial Creditor. In case the CIRP cost exceeds the mandated Rs. 55.00 Lacs the same will be adjusted and/or reduced from the amount earmarked for the Financial Creditors.

19. The resolution plan defines "Approval Date" as the date on which the Adjudicating Authority approves the resolution plan. Under the resolution plan, it was provided that the payments to the financial creditor would be made upfront within 3 months of approval of the Resolution Plan by the Adjudicating Authority stated at page 73 of the application.

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FINDINGS

20. On hearing the submissions made by the Ld. Counsel for the Resolution Professional, and perusing the records, we find that the Resolution Plan has been approved with 100% 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 approval by this Bench.
21. On perusal of the documents on record, we are also satisfied that the Resolution Plan is in accordance with sections 30 and 31 of the Code and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. No circumstances exist that militate against grant of approval for the Resolution Plan.
22. 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.
23. Therefore, 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.**
24. The Resolution Plan is binding on the Corporate Debtor, its employees, members, and all its creditors including but not limited to secured, unsecured, financial and operational creditors, guarantors, government and statutory.

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- and local authorities and other stakeholders involved so that revival of the Corporate Debtor can come into force with immediate effect.
25. The Moratorium imposed under section 14 shall cease to have effect from the date of this order.
 26. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order. However, he shall perform his duties in terms of the Resolution Plan as approved by this Adjudicating Authority
 27. The Resolution Applicant shall have access to all the Corporate Debtor's records, documents, assets and premises with effect from the date of this order.
 28. The Resolution Professional is further directed to handover all records, documents and properties of the Corporate Debtor to the Resolution Applicant to enable the Resolution Applicant to finalize the further line of action required for starting of the operations.
 29. In case of non-compliance of this order or withdrawal of Resolution Plan, the CoC shall forfeit the performance security amount already paid by the Resolution Applicant.
 30. Liberty is hereby granted for moving any Application if required in connection with implementation of this Resolution Plan.
 31. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance of requisite formalities.
 32. A copy of this Order is to be submitted by the Resolution Applicant in the Office of the Registrar of Companies, Cuttack.

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33. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel / Authorized Representatives for information and for taking necessary steps.
34. IA (IB) No. 11/CB/2022 and the main Company Petition i.e., C.P. (IB) No. 23/CTB/2019 shall stand disposed of accordingly.

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Satyã Ranjan Prasad
Member (Technical)

Kaushal

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P. Mohan Raj
Member (Judicial)

Signed on this the 15th of February, 2022.

सत्य प्रति प्रमाणित होना
CERTIFIED TO BE TRUE COPY

Approved
16/02/2022

उप कुलसचिव
Deputy Registrar
राष्ट्रीय कम्पानी विधि अधिकरण
National Company Law Tribunal
कटक बेंच
Cuttack Bench