

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

I.A. (IB) No. 297/KB/2020

in

C.P. (IB) No. 1495/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:

Jai Balaji Industries Limited

... *Financial Creditor*

Versus

SPS Metal Cast & Alloys Limited

CIN: U2710WB1990PLC049475

And

... *Corporate Debtor*

In the matter of:

Avishek Gupta, Resolution Professional of
SPS Metal Cast & Alloys Limited

... *Applicant*

Date of hearing: 17.08.2021

Date of pronouncement: 25.11.2021

Coram:

Mr. Rajasekhar V.K.

: Member (Judicial)

Mr. Harish Chander Suri

: Member (Technical)

Appearances (via video conference):

For the Applicant/RP

- : 1. Mr. Rishav Banerjee, Advocate
 2. Mr. Aishwarya Kumar Awasthi,
 Advocate
 3. Mr. Avishek Gupta, Resolution
 Professional

ORDER

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

1. This Court convened through video conferencing.
2. **Preliminary**
 - 2.1. I.A. (IB) No. 297/KB/2020 is an application under section 30(6) of the Insolvency and Bankruptcy Code, 2016, after approval of the Resolution Plan by the Committee of Creditors (CoC).
 - 2.2. This application was moved on 17.08.2021 by Mr. Avishek Gupta, Resolution Professional of SPS Metal Cast & Alloy Limited (CIN: U2710WB1990PLC049475), by invoking the provisions of section 30(6) read with section 31(1) of the Insolvency and Bankruptcy Code, 2016 (“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”) or approval of a Resolution Plan in respect of SPS Metal Cast & Alloy Limited (“the Corporate Debtor”).
 - 2.3. The underlying Company Petition in C.P. (IB) No. 1495/KB/2018 was filed by Jai Balaji industries Limited against SPS Metal Cast & Alloys Limited, the Corporate Debtor, under section 9 of the Insolvency and Bankruptcy Code 2016, which was admitted *vide* order dated 25.06.2019.
 - 2.4. Initially, Mr. Rakesh Agarwal was appointed as the Interim Resolution Professional (“IRP”), but the Committee of Creditors (“CoC”) in its 1st CoC meeting held on 24.07.2019 passed a resolution to replace Mr. Rakesh Agarwal with Mr. Avishek Gupta (Regn. No. IBBI/IPA-003/IP-N000135/2017-2018/11499) at the Resolution Professional (“RP”) with 98.09% voting share. Mr. Avishek Agarwal, the Applicant herein was

appointed as the Resolution Professional by an order dated 03.10.2019 passed by this Adjudicating Authority.

- 2.5. The CIRP timeline was extended from time to time with approval of this Adjudicating Authority *vide* order dated 18.12.2020 wherein the timeline was extended by excluding the period from 21.03.2020 to 18.12.2020 and extension of 60 days from 19.12.2020.

3. **Constitution of CoC**

- 3.1. The erstwhile IRP had made public announcement on 28.06.2019 in *Aajkal (Bengali)* and *Financial Express (English)* (Kolkata edition) 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 09.07.2019.
- 3.2. The CoC was constituted on 16.07.2019 with two Financial Creditors i.e., Indian Overseas Bank and Gouri Iron & Steel Pvt. Ltd. The CoC was reconstituted with four Financial Creditors *viz.* Edelweiss Asset Reconstruction Co. Ltd., Indian Overseas Bank, Union Bank of India and Gouri Iron & Steels Pvt. Ltd. and the same was filed before the Adjudicating Authority on 13.01.2020 and 31.01.2020.
- 3.3. The Applicant stated that a total of eleven CoC meetings have been held during CIRP period, as follows:

Particulars	Date of CoC meeting
1 st CoC meeting	24.07.2019
2 nd CoC meeting	19.08.2019
3 rd CoC meeting	11.09.2019
4 th CoC meeting	25.10.2019
5 th CoC meeting	07.11.2019
6 th CoC meeting	02.01.2020

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Particulars	Date of CoC meeting
7 th CoC meeting	24.02.2020
8 th CoC meeting	07.03.2020
9 th CoC meeting	04.01.2021
10 th CoC meeting	25.01.2021
11 th CoC meeting	11.02.2021

4. **Collation of claims**

4.1. The amounts claimed and admitted are summarised below:

Sl. No.	Category of claim	Amount Submitted (Rs.)	Amount admitted (Rs.)
1.	Financial Creditors	1,46,16,46,253.45	1,46,16,46,253.45
2.	Operational Creditors	59,46,37,791/-	56,48,23,807/-
3.	Operational Creditors (Govt Dues)	86,77,92,646/-	81,27,21,127/-
	Total	2,92,40,76,690.45	2,83,91,91,187.45

5. **CIRP and compliances**

5.1. 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 Revised Form 'G' for Expressions of Interest (EoI) from potential resolution applicants was issued on 10.11.2019 and was published in "Aajkal" (Bengali) (Kolkata edition) Newspaper on 11.11.2019 and Financial Express (English) (Kolkata edition) Newspaper on 10.11.2019.

5.2. The Applicant submits that in response to the invitation for EoI, the Applicant received three EoIs from Shakambari Tie-Up

Private Limited, Bravo Sponge Iron Private Limited and Prudent ARC Limited. The RP then shared the Information Memorandum, Evaluation Matrix and Request for Resolution Plan (**RFRP**) with both the Prospective Resolution Applicants.

5.3. Only one Resolution Plan was received from Bravo Sponge Iron Private Limited (CIN:U27106WB1997PTC082921) on 14.01.2020.

6. *Evaluation and voting*

6.1. The Resolution Plan was placed for discussion before the CoC in the 6th CoC meeting held on 24.01.2020 but was not put up for voting as the CoC was in the process of negotiating the terms of the Resolution Plan with the Resolution Applicant.

6.2. The Resolution Plan was revised on 29.02.2020, 11.03.2020 and on 16.03.2020. The revised Resolution Plan dated 16.03.2020 was discussed in the CoC meeting and was put up for e-voting from 18.03.2020 to 19.03.2020. The Resolution Plan was not approved by the CoC by 42% voting share.

6.3. Thereafter, the Resolution Applicant filed a revised Resolution Plan dated 10.06.2020 for consideration. The Resolution Professional placed the revised Resolution Plan dated 10.06.2020 before the CoC in its 9th CoC meeting held on 04.01.2021.

6.4. The Resolution Plan was further revised and submitted on 14.01.2021 and was placed for discussion in the 10th CoC meeting held on 25.01.2021. The revised Resolution Plan dated 14.01.2021 was put up for e-voting on 28.01.2021 to 05.02.2021 and further extended to 07.02.2021.

6.5. The Resolution Applicant sent an email stating that all the statutory dues will be paid like other Operational Creditors as per the stake out of the total amount to be paid to the Operational Creditors which was accepted.

- 6.6. The revised Resolution Plan dated 14.01.2021 was approved by the CoC by 99.83% voting share¹.
- 6.7. The Applicant issued a Letter of Intent on 15.02.2021 to the Successful Resolution Applicant and the successful Resolution Applicant sent an Unconditional Acceptance letter to the Applicant on 18.02.2021.
- 6.8. In accordance with regulation 36B(4A) of the CIRP Regulations, the Successful Resolution Applicant has submitted the Performance Bank Guarantee of Rs.2,35,40,000/- (Rupees Two Crore Thirty-Five Lakh Forty Thousand only).
7. **Compliance of the approved Resolution Plan with various provisions**
- 7.1. The Applicant has filed a Compliance Certificate in prescribed form, i.e., Form 'H'² in compliance with regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- 7.2. The Applicant submits that the successful resolution applicant has submitted an affidavit stating eligibility under section 29A of the Code, as required by regulation 39(1)(a) of the CIRP Regulations.
- 7.3. 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:

¹ Annexure E in page 47 of the I.A.

² Annexure H in pages 104-113 of the I.A.

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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 1 (c) in Part B at page 23 Clause 2 in Part B at Pages 26-27 and 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; (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 2(ii) in Part B at Pages 27-28 of the Resolution Plan. Clause 2(ii) in Part B at Pages 27-28 of the Resolution Plan.

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Clause of s.30(2)	Requirement	How dealt with in the 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 1(d) in Part B at Page 25 of the Resolution Plan.
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Clause 2 in Part A at Page 8 of the Resolution Plan.
(d)	Implementation and Supervision	Clause 4 in Part B at Pages 20-21 of the Resolution Plan.
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Clause 1(f) in Part B at Page 25 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 way of merger, amalgamation and demerger;	Page 39 of the Resolution Plan.
(d) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	Page 39 of the Resolution Plan.

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Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
(e) cancellation or delisting of any shares of the corporate debtor, if applicable;	Clause 6 in Part B at Pages 33-34 and Clause 2 (g) in Part A at Page 11 of the Resolution Plan.
(f) satisfaction or modification of any security interest;	Not proposed in the Resolution Plan.
(g) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Point vii at Page 36 of the Resolution Plan. (Reliefs and concessions)
(h) reduction in the amount payable to the creditors;	Page 23 of the Resolution Plan.
(i) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	Not proposed in the Resolution Plan.
(j) amendment of the constitutional documents of the corporate debtor;	Point iv at Page 36 of Resolution Plan. (Reliefs and concessions)
(k) issuance 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.

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Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
(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	Not proposed in the Resolution Plan
(n) obtaining necessary approvals from the Central and State Governments and other authorities.	Clause 5 of Part A at Pages 21-22 of 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 2(ii) in Part B at Pages 27-28 of the Resolution Plan.

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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 1 in Part B at Pages 22-24 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.	Clause 14 in Part B at Pages 34-35 of the Resolution Plan.
38(2)	A resolution plan shall provide:	
	(a) the term of the plan and its implementation schedule;	Page 24 of the Resolution Plan.

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Ref to relevant Reg.	Requirement	How dealt with in the Plan
	(b) the management and control of the business of the corporate debtor during its term; and	Clause 4 (b) and (c) in Part A at Page 21 of the Resolution Plan.
	(c) adequate means for supervising its implementation.	Clause 4 in Part A at Page 20-21 and Clause 13 in Part B at Page 34 of the Resolution Plan.
38(3)	A resolution plan shall demonstrate that –	
	(a) it addresses the cause of default;	Clause 3 in Part A at Pages 18-19 of the Resolution Plan.
	(b) it is feasible and viable;	Clause 1 (f) in Part A at Page 25 of the Resolution Plan.
	(c) it has provisions for its effective implementation;	Clause 3(c) in Part A at Page 19 of the Resolution Plan.
	(d) it has provisions for approvals required and the timeline for the same; and	Clause 5 of Part A at Pages 21-22 of the Resolution Plan.

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Ref to relevant Reg.	Requirement	How dealt with in the Plan
	(e) the Resolution Applicant has the capability to implement the resolution plan.	Part A at Pages 12-18 of Resolution Plan.

Details of Resolution Plan/Payment Schedule

8. The relevant information with regard to the amount claimed, amount admitted and the amount proposed to be paid by the Resolution Applicant *i.e.*, Bravo Sponge Iron Private Limited, under the said resolution plan is tabulated as under:

(Rs. in Crore)

Sl No	Creditor	Amount Claimed (in Rs.)	Amount Admitted (in Rs.)	% to be paid	Amount proposed in Resolution Plan (in Rs.)
1.	CIRP Cost	-----	-----	N/A	Actual payment
2.	Secured Financial Creditors	146.16	146.16	----	9.9875
3.	Unsecured Financial Creditors			—	1.7625
4	Operational Creditors	143.24	137.75	—	0.0200

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TOTAL	292.40	283.91	11.7700 + Actual CIRP costs
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9. The total plan size is approximately ₹21.770 Crore + CIRP costs, inclusive of the Working Capital of ₹10.00 Crore for development of the assets and operation of the Corporate Debtor, as tabulated hereunder:

SI No	Type of debts	Amount proposed (Rs. Crore)
1.	Estimated CIRP Cost	Actual
2.	Secured Financial Creditors	9.9875
3.	Unsecured Financial Creditors	1.7625
4.	Operational Creditors	0.0200
	Total payment to creditors	11.770
5.	Capital expenditure and working capital for development of the assets and operations of the corporate debtor ³ .	10.00
	Total Plan Outlay	21.770

³ Page 77 of the I.A.

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- 10.** Summary of the financial proposal/ payments under the Resolution Plan dated 14.01.2021 of Bravo Sponge Iron Private Limited, is tabulated hereunder:

Particulars	Amount
Admissible Debt to be paid upfront to the CIRP costs	The Resolution Applicant proposes to make upfront payment of the actual CIRP cost.
Admissible Debt to be paid upfront to the Operational Creditors	The Resolution Applicant proposes to make upfront payment of ₹0.0200 Crore to the operational creditors.
Payment to Secured Financial Creditor	The Resolution Applicant proposes to make an upfront payment of ₹5.000Crore, ₹2.4950Crore in the second tranche and ₹2.4925Crore in the third tranche.
Payment to the Unsecured Financial Creditor	The Resolution Applicant proposes to make an upfront payment of ₹0.875Crore, ₹0.4425Crore in the second tranche and ₹0.4450Crore in the third tranche.
Working Capital	The Resolution Applicant proposes to infuse ₹10.00Crore within 24-48 months from the approval of Resolution Plan.

Details on Management / Implementation and Relief as per the Resolution Plan- Salient Features

11. The Resolution Plan also provides for-
- 11.1. Management of Company after resolution in Clause 2 of Part A at Pages 8-10 of the Plan;
- 11.2. Term of the Resolution Plan as per Clause 2 of Part B at Pages 27-28 of the Plan;

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- 11.3. Implementation and Supervision of the resolution plan in Clause 4 of Part A at Pages 20-21 of the Plan;
- 11.4. Indicative timelines of events for implementation in Clause 2 of Part B at Pages 27-28 of the Plan.

Waivers, Reliefs and Exemptions

12. The reliefs and concessions sought by the Resolution Applicant from the Adjudicating Authority are set out below for the successful implementation of the Resolution Plan. The orders thereon are indicated against each.

SI No.	Ref. to Clause	Reliefs/Concessions/Grants sought	Order Thereon
1.	20 (i)	Replacement and reconstitution of the existing board of directors with the new board of directors without any requirement of any board/shareholders resolution or any other corporate approval.	As far as meetings of shareholders are concerned, approval to the Resolution Plan accorded by this Adjudicating Authority shall be deemed to be requisite approval for all such meetings or dispensation from conducting meetings of shareholders. However, all regulatory compliances such as filing with the RoC, payment of filing fees on documents etc. will have to be complied with. RoC cannot be expected to grant automatic approval

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SI No.	Ref. to Clause	Reliefs/Concessions/Grants sought	Order Thereon
			for such activities without the forms being filed on behalf of the corporate debtor.
2.	20 (ii)	Consolidation of the issued and paid-up equity share capital of the Company and issuance of the shares as contemplated in the resolution plan without any requirement of any board/shareholders resolution or any other corporate approval.	As far as meetings of shareholders for issue of such new equity shares and for cancellation of existing equity shares of the corporate debtor are concerned, approval to the Resolution Plan accorded by this Adjudicating Authority shall be deemed to be requisite approval for all such meetings or dispensation from conducting meetings of shareholders. However, all regulatory compliances such as filing with the RoC, payment of filing fees on documents etc. will have to be complied with. RoC cannot be expected to grant automatic approval for such activities without

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SI No.	Ref. to Clause	Reliefs/Concessions/Grants sought	Order Thereon
			the forms being filed on behalf of the corporate debtor. This fact has also been recognised to be so by the Ministry of Corporate Affairs vide General Circular No.IBC/01/2017 dated 25.10.2017 issued under File No.30/14/2017-Insolvency.
3.	20 (iii)	Restructuring and increase in the authorized share capital of the Company as aforesaid without any requirement of any board/shareholders resolution or any other corporate approval and without payment of any fee and or duty for such increase	Granted, only for restructurings within the Plan period, and not in perpetuity. Notwithstanding the above, the company shall file all necessary forms along with applicable fee with the jurisdictional RoC, and no exemption is granted in this regard.
4.	20 (iv)	Amendment and the replacement of the MOA and AOA of the Company/change of the name of the Company without any requirement of any board/shareholders	Granted within the Plan period, and not in perpetuity.

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SI No.	Ref. to Clause	Reliefs/Concessions/Grants sought	Order Thereon
		resolution or any other corporate approval.	
5.	20 (v)	All legal proceedings pertaining to any claims which are ongoing before any court, tribunal quasi-judicial authority or any Government authority be quashed and such claim shall stand extinguished against the Company	Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , ⁴ wherein the Hon'ble Supreme Court has held that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt, any State Govt or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority,
6.	20 (vi)	All on-going litigation against the Company impacting the implementation of the Resolution Plan shall not be further proceeded with.	

⁴ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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SI No.	Ref. to Clause	Reliefs/Concessions/Grants sought	Order Thereon
			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.
7.	20 (vii)	Condonation/waiver of all past irregularities and non-compliances by the Company	Whatever protection is available to the corporate debtor in terms of section

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		under the Companies Act, 2013, Income Tax Act, EPF, ESI, DLI, VAT, Entry-tax, GST, Service Tax, Excise Duty, Custom Duty, Allied levies of excise and custom duty, and other similar compliances.	32A of the Code will in any case continue to be available. Therefore, no specific orders are necessary in this regard.
8.	20 (viii)	Extinguishment of all existing statutory dues and waiver of interest/damages/penalty etc. against the statutory dues and condonation of delay in submission of returns.	Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , ⁵ wherein the Hon'ble Supreme Court has held that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt, any State

⁵ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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SI No.	Ref. to Clause	Reliefs/Concessions/Grants sought	Order Thereon
			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

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SI No.	Ref. to Clause	Reliefs/Concessions/Grants sought	Order Thereon
			<p>section 31 could be continued.</p> <p>With respect to condonation of delay, if is for the respective authorities to consider, keeping the spirit of the IBC in view.</p>
9.	20 (ix)	Exemption from the payment of the stamp duty & other costs and expenses required to be incurred.	<p>Not granted. The Resolution Plan cannot be in violation of any law for the time being in force. Therefore, if there are any documents on which stamp duty is required to be paid, or in respect of which non-registration will have adverse consequences, they shall apply with full force and no waiver can be granted in this regard.</p>
10.	20 (x)	Immunity from all inquiries, investigations, notices, cause of action, suits, claims, disputes litigation, arbitration or other judicial, regulatory or	<p>Whatever protection is available to the corporate debtor in terms of section 32A of the Code will in any case continue to be</p>

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SI No.	Ref. to Clause	Reliefs/Concessions/Grants sought	Order Thereon
		administrative proceedings against, the Company or the affairs of the Company, pending or threatened, present or future, in relation to any period prior to the acquisition of control by the Resolution Applicant over the Company.	available. Therefore, no specific orders are necessary in this regard.
11.	20 (xi)	All inquiries, investigation, notices, cause of action, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings against, the Company or the affairs of the Company, pending or threatened, present or future, in relation to any period prior to the acquisition of control by the Resolution Applicant over the Company shall stand extinguished and accordingly all such proceedings, inquiries, investigations, etc. shall be disposed of and all liabilities or obligations in relation there to, whether or	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.

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		<p>not set out in the balance sheet of the Company or the profit and loss account statements of the Company, will be deemed to have been written off in full and permanently extinguished by virtue of the NCLT approving the Resolution Plan and the Resolution Applicant or their nominee directors shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto. By virtue of the order of the NCLT approving the Resolution Plan, all new inquiries, investigations, notices, suits, claims, disputed, litigation, arbitration or other judicial, regulatory or administrative proceedings will not be initiated or admitted if these relate to any period prior to the Closing Date, against the Company or any of its employees or directors who are appointed or who remain</p>	

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		in employment or directorship after the acquisition of control by Resolution Applicant over the Company or pursuant to the implementation of the Resolution Plan.	
12.	20 (xii)	Existing promoters, shareholders, managers, directors, officers, employees, workmen or other personnel of the Company shall continue to be liable for all liabilities, claim, demand, obligations, penalties etc. arising out of any (i) proceedings, inquiries, investigations, order, show causes, notices, suits, litigation etc. (including those arising out of any orders passed by the NCLT pursuant to Sections 43,45,49,50,66,68,70,71,72,73,74 of the Code), whether civil or criminal, pending before any authority, court, tribunal or any other forum	With respect to the existing promoters, shareholders, managers, directors, officers, employees, workmen or other personnel of the Company, this cannot be called waiver, relief or exemption. Why this direction is required is also not clear. Whatever protection is available to the corporate debtor in terms of section 32A of the Code will in

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		prior to the acquisition of control by the Resolution Applicant over the Company or (ii) that may arise out of any proceedings, inquiries, investigations, orders, show cause, notices, suits, litigations etc ((including those arising out of any orders passed by the NCLT pursuant to Sections 43,45,49,50,66,68,70,71,72,73,74 of the Code), whether civil or criminal, that may be initiated or instituted post the approval of the Resolution Plan by the NCLT on account of any transactions entered into, or decisions or action taken by, such existing, promoters, shareholders, managers, directors, officers, employees, workman or other personnel of the Company, and the Company or Resolution Applicant shall at no point of time be, directly or	any case continue to be available.

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		indirectly, held responsible or liable in relation thereto.	
13.	20(xiii)	All penalties and punishment under the Companies Act, 2013, FEMA, PMLA, and all other applicable laws as may be applicable due to the handling of the business and management of affairs prior to the Resolution Applicant becoming the shareholders of the Company, shall stand condoned/waived by the order of the NCLT. Further the Company shall not be required to pay any penalty or apply for compounding due to delay in the audit of the financial statements for any financial year(s) or filing of annual return, or any other return etc. Such delays shall stand condoned/waived and regularized by virtue of the order of the NCLT.	Whatever protection is available to the corporate debtor in terms of section 32A of the Code will in any case continue to be available.
14.	20(xiv)	All Corporate guarantee issued by the Company, whether invoked or not, shall	Granted.

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		be deemed to have been discharged and released in full with effect from the closing date.	
15.	20(xv)	<p>(a) The Company and the Resolution Applicant shall be granted an exemption from all taxes, levies, fees, transfer charges, transfer premiums, and and surcharges that arise from or relate to implementation of the Resolution Plan, including exemption from any transfer premium or any other charges by whatever name called leviable or to be levied by Assansol Durgapur Development Authority with reference to 12 acres (more or less)of leasehold land of Assansol Durgapur Development Authority.</p> <p>(b) Liability arising from transfer of land from the name of Corporate Debtor to Resolution Applicant or any of its group Company by</p>	Not granted. The Resolution Plan cannot be in violation of any law for the time being in force.

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		<p>Assansol Durgapur Development Authority (ADDA) e.g. Transfer Premium, fee or any other levy by whatever name called shall be waived and shall not be required to be paid.</p> <p>ADDA shall grant permission within 15 days from the date of approval of the Resolution Plan for mortgaging 12 acres of land favoring financial institutions/banks for obtaining finance for modernization, upgradation and expansion of the Corporate Debtor's plant without any charge/Transfer fee or any other charge for creation of such mortgage.</p>	
16.	20(xvi)	<p>Any income tax and Minimum Alternate Tax (MAT) liability or consequences (including interest, fine, penalty, etc.) on the company, the Resolution Applicant and its shareholders in account of</p>	<p>This is for the relevant tax authorities to consider, and not in the nature of a waiver, concession or relief to be granted by this</p>

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		various steps as proposed for implementation of the Resolution Plan, including but not limited to liabilities if any under Section 56, Section 41, Section 43, Section 28, Section 115JB and Section 79 of the Income Tax Act, 19__ shall stand waived without requirement of any further approvals from any other authority whatsoever.	Adjudicating Authority.
17.	20(xvii)	Grant of carryover of entitlement/losses, unabsorbed depreciation and other exemption under Income Tax Act to continue remaining available to the company.	This is for the relevant tax authorities to consider, and not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority.
18.	20(xvii i)	Any contracts entered into or obligations/encumbrances/licenses entered into by the erstwhile members of the Board of Directors and/or Corporate Debtor for dilution of the Corporate Debtor's	A carte blanche of this nature cannot be granted in favour of the corporate debtor.

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		right and interests shall stand annulled forthwith.	
19.	20(xix)	All claims not admitted by resolution professional but accounted in books shall not be paid and shall stand extinguished against the Company.	Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , ⁶ wherein the Hon'ble Supreme Court has held 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,

⁶ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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			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.
20.	20(xx)	(a) Approval of Ministry of Environment and Forest (MOEF) to be considered on	This is for the relevant tax authorities to consider, and not in the nature of a waiver,

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		<p>merit without any reference to past details of approval not received from RP and requirement of reference of past approval is waived. Further MOEF and other sanctioning/approving authorities are to expedite the process of grant of pollution and other necessary approval for enhanced capacity of the plant to enable expeditious implementation of upgradation, by refurbishing of existing plant.</p> <p>All other approvals required whether statutory or otherwise shall be granted by concerned authorities expeditiously and in event within thirty days from the date of application for the same.</p>	concession or relief to be granted by this Adjudicating Authority.
21.	20(xxi)	All existing liabilities save to the extent paid from out of bid amount, including the	Granted.

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		<p>following statutory liability, shall stand extinguished.</p> <p>(a) Any payment due under power supply arrangement without affecting future re-connectivity.</p> <p>(b) EPF, ESI, DLI, VAT, Entry-tax, GST, Service Tax, Excise Duty, Custom Duty, Allied levies of excise and custom duty, and similar other liabilities.</p>	
22.	20(xxii)	<p>Permission to be hereby given to enter into arrangement/merger with Bravo Sponge Iron Private Limited or any other companies in the Group under Section 230, 232 and all other applicable provisions of Companies Act, 2013 and other related statutory provisions as may be decided by the other related areas for better and cost-effective operation.</p>	Not granted at this stage.

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23.	20((xxi ii)	The Registrar of Companies, West Bengal shall give effect to appointment of the directors (Reconstituted Board) of the Resolution Applicant through back end process or any other applicable mode for giving effect to the Resolution Plan.	The duties of the Registrar of Companies do not include taking on record and implementing the Plan. In so far as compliances are concerned, all necessary forms along with filing fees shall be filed with the Registrar of Companies to enable him to take the same on record.
24.	20((xxi v)	The authorities under GST Laws shall give effect to addition in authorised signatories/authorised persons in GST portal of Corporate Debtor to give effect to the Resolution Plan.	This is for the relevant tax authorities to consider, and not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority.
25.	(a)	Operation level shall need approval of Ministry of Environment and Forest (MOEF). Presentation of prior detail not received from Resolution Professional shall be waived.	The implication of this waiver is not clear.

13. Findings

- 13.1. On hearing the submissions made by the learned Counsel for the Resolution Professional, and perusing the records, we find that the Resolution Plan has been approved with 99.83% 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.
- 13.2. On perusal of the Resolution Plan, it is found that the Resolution Applicant has considered the dates for making payments on assumption that the Resolution Plan would be approved by the Adjudicating Authority on 08.02.2021. Firstly, we discourage this practise of making assumptions. Secondly, the entire timeline of payment has been planned on the assumption that the Resolution Plan would be approved on 08.02.2021. The Resolution Applicant has proposed to make payments on 31.03.2021, 30.06.2021 and 30.09.2021 subject to approval of the Resolution Plan on 08.02.2021 by the Adjudicating Authority.
- 13.3. We direct the Resolution Professional and the Resolution Applicant to decide on an appropriate timeline for payment of resolution amount on approval of the Resolution Plan.
- 13.4. On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with sections 30 and 31 of the Code and also complies with regulations 37, 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

Orders

14. Therefore, subject to the observations made in this Order, we hereby accord our approval to the Resolution Plan. The Resolution Plan shall form part of this Order.
15. As far as the question of granting time to comply with the statutory obligations or 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.
16. Any relief sought in the Resolution Plan, where any contract, agreement, understanding, proceeding, action, notice etc. not specifically identified, or is for a future contingency, is, at this point of time, rejected.
17. The Resolution Plan as approved is binding on the Corporate Debtor and other stakeholders involved so that the revival of the Corporate Debtor can come into force with immediate effect.
18. The Moratorium imposed under section 14 shall cease to have effect from the date of this order.
19. 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.
20. 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.
21. In case of non-compliance of this order or withdrawal of Resolution Plan, the performance security amount already paid by the Resolution Applicant shall be liable to be forfeited.
22. Liberty is hereby granted for moving any Application if required in connection with implementation of this Resolution Plan.

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23. The Resolution Professional shall file a copy of this Order with the Registrar of Companies, West Bengal, *inter alia* for updating the status of the Corporate Debtor. Additionally, the Registry shall send a copy of this order to the Registrar of Companies, West Bengal.
24. The application bearing **IA (IB) No. 297/KB/2021** and the main Company Petition bearing **CP (IB) No. 1495/KB/2018** shall both stand disposed of accordingly.
25. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance of requisite formalities.

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)
25.11.2021

GGRB (LRA)