



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

**I.A. (IB) No. 190/KB/2023**

**in**

**CP (IB) No. 88/KB/2020**

*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:***

Prarthana Sales Private Limited

... Financial Creditor

Versus

Shiv Sai Metal Products Private Limited

[CIN: U31908BR2012PTC018540]

... Corporate Debtor

*And*

***In the matter of:***

**Aditya Kumar Tibrewal,**

Resolution Professional of Shiv Sai Metal Products Private Limited

... Applicant

**Date of pronouncement: 18/10/2023**

***Coram:***

Smt. Bidisha Banerjee, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

***Appearances (via hybrid mode):***

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*In Re* Resolution Plan of Shiv Sai Metals Pvt. Ltd.  
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For the Resolution Professional

Mr. Shaunak Mitra, Advocate  
Mr. Sidhartha Sharma, Advocate  
Mr. R. Dutt, Advocate  
Ms. Shalini Basu, Advocate  
Mr. Aditya Kumar Tibrewal, Resolution Professional

**ORDER**

*Per: Balraj Joshi, Member (Technical)*

1. This Court convened through hybrid mode.

**Preliminary**

2. I.A. (IB) No. 190/KB/2023 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”).
3. This application has been filed by Mr. Aditya Kumar Tibrewal, Resolution Professional of Shiv Sai Metal Products Private Limited [CIN:U31908BR2012PTC018540], by invoking the provisions of section 30(6) of the Insolvency and Bankruptcy Code, 2016 (“**the Code**” or “**IBC**”) 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 Shiv Sai Metal Products Private Limited (“**Corporate Debtor**”).
4. The underlying Company Petition in C.P. (IB) No. 88/KB/2020 was filed by Prarthana Sales Private Limited, the Financial Creditor to initiate Corporate Insolvency Resolution Process (“**CIRP**”) against Shiv Sai Metal Products Private Limited, the Corporate Debtor, under section 7 of the Insolvency and Bankruptcy Code 2016, which was admitted *vide* order dated 27 April 2022.

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5. Initially, Mr. Aditya Kumar Tibrewal [IBBI/IPA-001/IP-P00743/2017-2018/11249] was appointed as the Interim Resolution Professional (“IRP”). At the 1<sup>st</sup> CoC meeting held on 03 June 2022, the Applicant was appointed as the Resolution Professional.
6. The Corporate Debtor is registered as a Micro, Small and Medium Enterprise (“MSME”) and registered under the category of small manufacturing enterprise, having Udyam Registration No. UDYAM-BR-26-0002959.

**Constitution of CoC**

7. The IRP made public announcement on 30 April 2022 in *The Indian Express (English) (Patna Edition) and Sanmarg (Hindi) (Patna edition)*, newspapers 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 11 May 2022. The Form A was also published in the website of the IBBI.
8. The CoC was constituted on 30 May 2022 with two unsecured Financial Creditors i.e. Mrs. Tanuja Singh and Prarthana Sales Pvt. Ltd. A report of the Constitution of the CoC dated 30 May 2022, was filed before the Adjudicating Authority. Thereafter, the CoC was reconstituted with the following members:

Sl. No.	Name of Financial Creditor	Voting %
1.	Jai Matadi Incorporation Pvt. Ltd.	0.30%
2.	Prarthana Sales Pvt. Ltd.	30.35%
3.	Tanuja Singh	9.89%

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Sl. No.	Name of Financial Creditor	Voting %
4.	Arcon Project Pvt. Ltd.	14.99%
5.	Anugrah Developers Pvt. Ltd.	7.05%
6.	Noble Designs Pvt. Ltd.	12.03%
7.	Shubham Readymade Garments	3.72%
8.	Annapurna Rice Products	21.67%

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

Particulars	Date of CoC meeting
1 <sup>st</sup> CoC Meeting	03.06.2022
2 <sup>nd</sup> CoC Meeting	07.07.2022
3 <sup>rd</sup> CoC Meeting	19.09.2022
4 <sup>th</sup> CoC Meeting	23.09.2022
5 <sup>th</sup> CoC Meeting	06.10.2022
6 <sup>th</sup> CoC Meeting	15.12.2022
7 <sup>th</sup> CoC Meeting	16.12.2022
8 <sup>th</sup> CoC Meeting	21.12.2022
9 <sup>th</sup> CoC Meeting	26.12.2022

**Collation of claims**

10. The amounts claimed and admitted are summarised below:

**Amount in Crore**

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Nature of Creditor	Amount Claimed	Amount Admitted
Financial Creditors	₹13,42,20,127/-	₹8,69,07,127/-
Operational Creditors (other workmen, employees and statutory creditors)	₹1,16,52,719/-	0
Operational Creditors (Workmen and Employees)	₹14,83,616/-	₹14,83,616/-
Operational Creditors (Statutory Creditors)	0	0
Other Creditors	0	0
<b>Total</b>	<b>₹14,73,56,462/-</b>	<b>₹8,83,90,743/-</b>

**CIRP and compliances**

11. The Applicant submits that the erstwhile Resolution Professional, 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, invitation in Form 'G' for Expressions of Interest (EoI) from potential resolution applicants was issued on 09 July 2022 in *The Indian Express (English) (Patna Edition)* and *Sanmarg (Hindi) (Patna Edition)*. The notice was also published on the website of the Insolvency and Bankruptcy Board of India (IBBI).
12. The Applicant submits that in response to the invitation for EoI published on 09 July 2022, one Prospective Resolution Applicant submitted its Resolution Plan. Since the Resolution Plan was not in conformity with the

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requirements as specified under the Code, the same was rejected by the CoC.

13. In view of the fact that there was no Resolution Plan pending consideration before the CoC, the CoC in their 5<sup>th</sup> meeting held on 06 October 2022 directed the Resolution Professional to extend the invitation of EOI by another 15 days. Accordingly, the Resolution Professional published the revised Form G under regulation 36A (1) of the CIRP Regulations, 2016 on 21 October 2022 in *The Indian Express (English) (Patna Edition)* and *Sanmarg (Hindi) (Patna edition)* newspapers, with the last date for submission of Expression of Interest as 05 November 2022
14. The Applicant submits that in response to the invitation for the EoI, one EoI was received from prospective Resolution Applicant. The Provisional List of Prospective Resolution Applicants were issued on 15 November 2022 and the Final List of Prospective Resolution Applicants were issued on 21 November 2022. The RP then shared the Information Memorandum, Evaluation Matrix and Request for Resolution Plan (**RFRP**) with the Prospective Resolution Applicant on 18 November 2022.
15. 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.

**Evaluation and voting**

16. The Resolution Professional received one Resolution Plan from Nishant Business House Private Limited on 07 December 2022. The Resolution Plan was placed and opened in the 6<sup>th</sup> CoC meeting held on 15 December 2022. The Resolution Plan was put up for discussion before the CoC in the 7<sup>th</sup> CoC meeting held on 16 December 2022. The Resolution Plan was discussed and the CoC requested the Resolution Applicant to revise the Resolution.
17. The Resolution Applicant submitted its Modified and Revised Resolution Plan on 16 December 2022. The CoC reviewed the revised plan in its 8<sup>th</sup> meeting held on 21 December 2022. The Resolution Plan was put for e-

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voting for approval which was duly approved by the majority of the CoC with a voting of 69.5% voting share.

18. However, the Resolution Applicant duly submitted a further revised resolution plan dated 23 December 2022 after improving the plan value with respect to the Operational Creditors. In view of this, the Revised Resolution Plan dated 23 December 2022 was placed before the CoC in its 9<sup>th</sup> CoC meeting held on 26 December 2022 for consideration. The Final Revised Resolution Plan was put for e-voting for approval, the e-voting started on 26 December 2022 and concluded on 27 December 2022.
19. The Resolution Plan submitted by Nishant Business House Private Limited was approved with 69.65% voting share.
20. In accordance with regulation 36B(4A) of the CIRP Regulations, the Successful Resolution Applicant has deposited the Performance Bank Guarantee sum of Rs.10,18,370/- (Rupees Ten Lakh Eighteen Thousand Three Hundred Seventy) on 09 January 2023 in the bank account of the Corporate Debtor.

**Compliance of the approved Resolution Plan with various provisions**

21. The Applicant has filed a Compliance Certificate in prescribed form, i.e., Form 'H', dated 28 December 2022 in compliance with regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
22. 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:

**I. Submission of Resolution Plan in terms of sub-section (2) of section 30 of the Code:**

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Clause of s.30(2)	Requirement	How dealt with in the Plan
1.	Plan must provide for payment of CIRP cost in priority to payment of other debts of CD in the manner specified by the Board.	Clause 2 of Part C at Page 21 of the Resolution Plan.
2.	<p>(i) Plan must provide for payment 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;</p> <p>(ii) Plan must provide for payment 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;</p> <p>(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.</p>	<p>Clause 2 of Part C at Page 21 of the Resolution Plan.</p> <p>Clause 2 of Part C at Page 21 of the Resolution Plan.</p> <p>Page 22 of the Resolution Plan.</p>



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Clause of s.30(2)	Requirement	How dealt with in the Plan
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Clause 13(b) of Part C at Page 32 of the Resolution Plan.
(d)	Implementation and Supervision	Clause 13(b) of Part C at Page 32 of the Resolution Plan.
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Clause 1(c) of Part F at Page 41 of the Resolution Plan.
(f)	Conforms to such other requirements as may be specified by the Board.	Clause 1(b) of Part F at Page 41 of the Resolution Plan.

**II. Measures required for implementation of the Resolution Plan in terms of regulation 37 of CIRP Regulations:**

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<b>Particulars</b>	<b>Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation</b>
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.
(ba) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	Not proposed in the Resolution Plan.
(c) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	Page 23 of the Resolution Plan.
(ca) cancellation or delisting of any shares of the corporate debtor, if applicable;	Page 23 of the Resolution Plan.

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<b>Particulars</b>	<b>Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation</b>
(d) satisfaction or modification of any security interest;	Page 22, 25 of the Resolution Plan.
(e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Not proposed in the Resolution Plan.
(f) reduction in the amount payable to the creditors;	Not proposed in the Resolution Plan.
(g) 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.
(h) amendment of the constitutional documents of the corporate debtor;	Not proposed in the Resolution Plan.
(i) 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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<b>Particulars</b>	<b>Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation</b>
(j) change in portfolio of goods or services produced or rendered by the corporate debtor;	Not proposed in the Resolution Plan.
(k) change in technology used by the corporate debtor; and	Not proposed in the Resolution Plan.
(l) obtaining necessary approvals from the Central and State Governments and other authorities.	Clause 7(b) at Page 29 of the Resolution Plan.
(m) sale of one or more assets of corporate debtor to one or more successful resolution applicants submitting resolution plans for such assets;  and manner of dealing with remaining assets.	Not proposed in the Resolution Plan.

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

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Ref to relevant Reg.	Requirement	How dealt with in the Plan
38(1a)	The amount payable to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.	Clause 2 of Part C at Page 21 of the Resolution Plan.
38(1b)	The amount payable to the financial creditors, who have right to vote and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.	Page 22 of the Resolution 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 of Part C at Page 20 of the Resolution Plan.
38(1B)	A resolution plan shall include a statement giving details of the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any	Clause 1(f) of Part F at Page 41 of the Resolution Plan.

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Ref to relevant Reg.	Requirement	How dealt with in the Plan
	other resolution plan approved by the Adjudicating Authority at any time in the past.	
38(2)	A resolution plan shall provide:	
	(a) the term of the plan and its implementation schedule;	Clause 7(b) at Page 29 and Clause 13 (a) of Part C at Pages 31-32 of the Resolution Plan.
	(b) the management and control of the business of the corporate debtor during its term; and	Clause 13(b) of Part C at Page 32 of the Resolution Plan.
	(c) adequate means for supervising its implementation.	Clause 13(b) of Part C at Page 32 of the Resolution Plan.
	(d) Provides for the manner in which proceedings in respect of avoidance transactions, if any, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such	Clause 9 of Part C at Page 30 of the Resolution Plan.

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Ref to relevant Reg.	Requirement	How dealt with in the Plan
	proceedings shall be distributed.	
38(3)	A resolution plan shall demonstrate that –	
	(a) it addresses the cause of default;	Clause 3(i) of Part B at Page 15 of the Resolution Plan.
	(b) it is feasible and viable;	Clause 3(ii)(g) at Pages 17-19 of the Resolution Plan.
	(c) it has provisions for its effective implementation;	Clause 13(b) of Part C at Page 32 of the Resolution Plan.
	(d) it has provisions for approvals required and the timeline for the same; and	Clause 7 (b) at Page 29 of the Resolution Plan.
	(e) the Resolution Applicant has the capability to implement the resolution plan.	Pages 17-19 of the Resolution Plan.

23. The Resolution Applicant has submitted affidavit of eligibility under section 29A of the Code affirmed on 05 December 2022.

**Details of Resolution Plan/Payment Schedule**

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24. The Applicant submits the relevant information with regard to the amount claimed, amount admitted and the amount proposed to be paid by the Successful Resolution Applicant i.e., Nishant Business House Private Limited under the said Resolution Plan is tabulated as under:

S. No.	Particulars	Amount Admitted (in Crore)	Amount in the Plan (in Crore)
1	CIRP Cost	--	<b>₹60,00,000</b>
2	Financial Creditors		
	Secured Financial Creditors	0.0	0.0
	Unsecured Financial Creditors	₹8,69,07,127	₹20,64,817
3	Operational Creditors (other than workmen & employees & government/ statutory dues)	0.00	0.00
4	Workmen & Employee dues	₹14,83,616	₹1,83,681
5	Other Creditors	0.00	0.000
6	Refurbishment of Production Facility	--	₹15,55,000
7	Balance- Working Capital for Normal Operation	--	₹3,80,183
	<b>Total Resolution Plan value</b>	<b>₹8,83,90,743</b>	<b>₹1,01,83,681/-</b>



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25. Summary of the financial proposal/payment under the Resolution Plan dated 23 December 2022 is tabulated hereunder:

<b><u>Particulars</u></b>	<b><u>Amount</u></b>
Admissible debt to be paid as CIRP costs.	₹60,00,000 ( Rupees Sixty Lakh only) will be paid upfront within 10 days of Zero Date
Admissible debt to be paid to the Operational Creditors (Employees)	₹ 1,83,681 (Rupees One Lakh Eighty Three Thousand Six Hundred and Eighty One only) i.e. 12.38% of amount admitted upfront within 10 days of Zero Date
Admissible debt to be paid to the Unsecured Financial Creditors	₹ 20,64,817/- (Rupees Twenty Lakh Sixty Four Thousand Eight Hundred and Seventeen only) i.e. 12.38% of amount admitted upfront within 10 days of Zero Date

26. The Resolution Plan defines “Effective Date” as “*date of approval of Resolution Plan by the Kolkata Bench of the National Company Law Tribunal*”. The Resolution Plan defines “Zero Date” as “*date of handing over of Management by Resolution Professional to Resolution Applicant.*”.

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

27. The Resolution Plan also provides for –

- a. Management of company after resolution in Clause 13(b) of Part C at Page 32 of the Resolution Plan.

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- b. Term of the resolution plan in Clause 7(b) at Page 29 and Clause 13 (a) of Part C at Pages 31-32 of the Resolution Plan..
- c. Implementation and Supervision of the resolution plan in Clause 13(b) of Part C at Page 32 of the Resolution Plan.

**Relinquishment/Waiver of liabilities and Approvals**

28. The Reliefs, Exemptions and Waivers sought by the Resolution Applicant from the Adjudicating Authority are set out below for the successful implementation of the Resolution Plan. The Successful Resolution Applicant filed an undertaking stating that the reliefs and concessions claimed by the Successful Resolution Applicant in the Resolution Plan approved by the COC is unconditional<sup>1</sup>.

Sl. No.	Relief, concessions and approvals sought
1.	<p><b><u>TREATMENT OF CLAIMS BY CREDITORS ON MATTERS THAT ARE SUB JUDICE:</u></b></p> <p>There are some matters with regards to Claims of Creditors which are sub Judge before different forums. The matters set out in the Information Memorandum (and the corresponding claims against the Company), together with all other claims against the Company which may be pending or sub judge before any forum as on the Closing Date (whether or not such claims are included in the list of claims of Operational Creditors. and, including but not limited to any proceedings in relation to Statutory Dues, Regulatory Dues and Taxes initiated against the Company) are collectively the "Sub Judge Claims". Each such Sub Judge Claim, is a "claim" and "debt", each as</p>

<sup>1</sup> Annexure Y at Page 6 of the S.A. affirmed on 29 March 2023

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Sl. No.	Relief, concessions and approvals sought
	<p>defined under the IBC, and would consequently qualify as "Financial or operational debt" (as defined under the IBC) and therefore, the full amount of such Sub Judge Claims shall be deemed to be owed and due as of the Closing Date, consequent upon approval the resolution plan, except as proposed in the Resolution Plan no amount is payable in relation thereto.</p> <p>Pursuant to the foregoing, all legal proceedings (including any notice, show cause, adjudication proceedings, assessment proceedings, regulatory orders etc.) initiated before any forum by or on behalf of any Creditor to enforce any rights or claims against the Company shall immediately, irrevocably and unconditionally stand withdrawn, abated, settled and/ or extinguished, and the Creditors shall deem to have taken all necessary steps to ensure the same. The Creditors of the Company shall have no further rights or claims against the Company (including but not limited to, in relation to any past breaches by the Company), in respect of the period prior to the Closing Date, and all such claims shall immediately, irrevocably and unconditionally stand extinguished.</p> <p>By virtue of the order of the NCLT approving this Resolution Plan, new inquiries, investigations, notices, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings will not be initiated or admitted if these relate to any period prior to the Effective Date, pursuant to this Resolution Plan and against Corporate Debtor or any of its employees or directors who are appointed or who remain in employment or directorship after the acquisition of control by the</p>

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Sl. No.	Relief, concessions and approvals sought
	Resolution Applicant over Corporate Debtor or pursuant to the implementation of the Resolution Plan
2.	<p><b><u>TREATMENT OF CONTINGENT LIABILITIES:</u></b></p> <p>In addition, the Corporate Debtor may have some contingent liabilities whether mentioned in the financial statements and as per information given in Information Memorandum (IM) by the Resolution Professional. The matters set out in the Information Memorandum, together with all other contingent liabilities of the Corporate Debtor until the Effective Date (whether or not recognized in the Financial Statements or set out in the Information Memorandum), are collectively the "<b>Contingent Liabilities</b>". Each such Contingent Liability is a "claim" and "debt", each as defined under the IBC. On implementation of the plan on effective date, all such Contingent liabilities, except the Contingent Liability on account of Bank Guarantees issued by Secured Financial Creditor M/s Yes Bank Limited &amp; Central Bank of India shall immediately, irrevocably and unconditionally stand fully and finally discharged and settled with there being no further claims whatsoever, and all forms of security created or suffered to exist, or rights to create such a security, to secure any obligations towards Financial Creditors, Operational Creditors and other creditors shall immediately, irrevocably and unconditionally stand released and discharged, and the Financial Creditors, Operational Creditors and other creditors shall waive all rights to invoke or enforce the same.</p>

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Sl. No.	Relief, concessions and approvals sought
<b><u>TREATMENT OF ALL INDEBTNESS</u></b>	
3.	<p>All indebtedness of the Corporate Debtor, except CIRP Cost, which is not due as of the Insolvency Commencement date but relates to the period prior to the effective date shall stand irrevocable and unconditionally extinguished in perpetuity on and with effect from the effective Date. All liabilities, save and except as settled in Paragraph 1 to 3 of Part C of the Resolution Plan, shall be settled at NIL value and shall be completely waived off and extinguished. Approval of the Adjudicating Authority shall be sufficient cause to give effect to the same.</p>
4.	<p>The payment to Persons contemplated in Paragraph 1 to 3 of Part C of the Resolution Plan shall be the Corporate Debtor's and Resolution Applicant's full and final performance and satisfaction of all its obligations to such Persons and all claims (including for the avoidance of doubt, any unverified portion of their Claims) of such Persons against the Corporate Debtor shall stand irrevocably and unconditionally settled and extinguished in perpetuity on and with effect from the Effective Date.</p>
5.	<p>The Resolution Professional issued a notice inviting all potential claimants to submit their proofs of Claim. This was published in newspapers in accordance with Applicable Law. The Plan is being proposed in order to restructure the assets and liabilities of the Corporate Debtor. With this objective, the Resolution Applicant assumes that all Persons that have any Claims against the Corporate Debtor have filed their Claims and the Verifiable</p>

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I.A. (IB) No. 190/KB/2023 in CP (IB) No. 88/KB/2020



Sl. No.	Relief, concessions and approvals sought
	<p>Claims have been admitted by the Resolution Professional and disclosed in the Information Memorandum. Accordingly, the Resolution Applicant and the Corporate Debtor shall not have any responsibility or liability in respect of any Claims against the Corporate Debtor attributable to the period prior to the Effective Date (except IRP cost) other than any payments to be made under the Resolution Plan and all Claims along with any related legal proceedings shall stand irrevocably and unconditionally abated, settled and extinguished in perpetuity.</p>
6.	<p>Upon the approval of the Plan by the NCLT under Section 31 of the Code, all pending proceedings relating to the winding-up of the Corporate Debtor, if any, shall stand irrevocably and unconditionally abated in perpetuity and all violation or breach of any agreement of the Corporate Debtor shall stand condoned or waived and such agreements shall be treated as if no violation or breach has ever been committed.</p>
7.	<p>On and with effect from the Effective Date, all Encumbrances, security interest, liens and for attachments (including pursuant to Applicable Law and particularly Sections 281 of the IT Act and Section 81 of the Central Goods and Services Tax Act ) created or suffered to exist over the assets of the Corporate Debtor or over the securities of the Corporate Debtor, whether by contract or by Applicable Law, whether or not in favour of Persons receiving settlements under this plan or those who have provided debt to any third party, shall stand unconditionally and irrevocably released and all enforcement proceedings commenced by any Person over</p>

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Sl. No.	Relief, concessions and approvals sought
	any of the assets of the Corporate Debtor or any subsidiary or over any securities of the Corporate Debtor shall stand released and reversed, without the requirements of any further deed or action on part of the Resolution Applicant or on part of the Corporate Debtor.
8.	On and with effect from the Effective Date, all the outstanding negotiable instruments issued by the Corporate Debtor or by any Person on behalf of the Corporate Debtor including demand promissory notes, post-dated cheques and letters of credit, shall stand terminated and the Corporate Debtor's liability under such instruments shall stand extinguished and shall not be deemed as operative document before any court of law.
9.	On and with effect from the Effective Date, the guarantors, indemnity providers and like persons that have provided guarantees, indemnities or like arrangements for and on behalf of the Corporate Debtor, in order to secure the Debt availed of by the Corporate Debtor, except the guarantees provided to Secured Financial Creditor Yes Bank Limited and Central Bank of India for Credit Facility shall not be entitled to exercise or enforce any subrogation rights(or similar rights) in respect of such arrangements, even where such rights and claims (whether contingent or otherwise) of whatsoever nature of every member of the Promoter Group against the Corporate Debtor and / or its subsidiaries (including subrogation or similar rights) shall stand irrevocably and unconditionally extinguished in perpetuity.

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10.	All Claims (whether contingent or crystallised and whether or not filed) of Governmental Authorities in relation to all Statutory Dues, Regulatory Dues and Taxes which the Corporate Debtor was or may be liable to pay (including with respect to financial years under assessment), all deductions and all withholding Taxes on any payment, as required under Applicable Law and pertaining to the period prior to the Effective Date shall stand extinguished on and with effect from the Closing Date and pending cases, if any, shall be abated.
11.	All liabilities (whether contingent or crystallized) in relation to any corporate guarantees, indemnities and all other forms of credit support provided by the Corporate Debtor prior to the Effective Date and all contingent liabilities disclosed / undisclosed in the annual audited financial statements as well as financial statement as on Insolvency Commencement Date of the Corporate Debtor and liabilities which are not in notice of Corporate Debtor or not acknowledged by the Corporate Debtor shall stand extinguished and discharged on and with effect from the Effective Date.
12.	The Resolution Applicant and / or Corporate Debtor will not be liable for any claim, liability, obligations, undertakings, guaranties, warranties etc. of any nature which are not disclosed and claimed by any person under the Information Memorandum and for anything beyond the amount contemplated to be paid under the express provisions of the Resolution Plan.
13.	Waiver of any income-tax and Minimum Alternate Tax (MAT)



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	liability or consequences (including interest, fine, penalty, etc. ) on the Corporate Debtor, Resolution Applicant and its shareholders on account of various steps as proposed in the Resolution Plan, including but not limited to liabilities if any under Section 41 (1), Section 56, Section 43, Section 43 B, Section 28, Section 115JB and Section 79 of the Income-tax Act, 1961, including, without limitation waiver of MAT and income tax implication arising due to write back/write off of liabilities in the books of accounts of Corporate Debtor without any impact on brought forward losses /past unabsorbed depreciation, pursuant to this Resolution Plan.
14.	From the Effective Date, all inquiries, investigations and proceedings, suits, claims, disputes, proceedings in connection with Corporate Debtor affairs of Corporate Debtor (including those initiated by Governmental Authorities), pending or threatened, present or future in relation to any period prior to the Effective Date, or arising on account of implementation of this Resolution Plan shall stand withdrawn and dismissed and all liabilities and obligations therefore, whether or not set out in the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor will be deemed to have been written off fully, and permanently extinguished and no adverse orders passed in the said matters should apply to the Corporate Debtor or the Resolution Applicant. Upon approval of this Resolution Plan, all new inquiries, investigations, notices, suits, claims, disputes, litigations, arbitrations or other judicial, regulatory or administrative proceedings will be deemed to be barred and will not be initiated or admitted against the Corporate Debtor and/ or its new management in relation to any period prior

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Sl. No.	Relief, concessions and approvals sought
	to the Effective Date.
15.	All Government, semi government Authorities including Taxation Authorities, DGFT, MCA to waive the non-Compliances, if any, of the Corporate Debtor prior to the closing date;
16.	All claims, obligations, demands, penalties, liabilities, fees, costs, etc. (past present or future pertaining to the Corporate Debtor prior to the approval of the resolution plan by the adjudicating authority) in relation to: (a) any breach or non-adherence including of any laws or contract; (b) any act, deed, non-compliances of any statutory obligations; (c) licenses, permissions, approvals etc.; (d) contractual dues or statutory dues; and/or (e) litigation, enquiry, investigations, proceedings, etc., shall stand expired and settled in perpetuity under the resolution plan.
17.	All relevant Government Authorities to continue to make available the Business Permits and the business may continue being carried out as being carried out prior to the Insolvency Commencement Date;
18.	Waiver of any past liabilities prior to Effective Date irrespective whether claimed or unclaimed from any person or any authority including any other claim / litigation from any revenue authorities.
19.	Waiver of any past liabilities in relation to any water dues of the Corporate Debtor to any state government or central government department prior to the Effective Date.

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20.	Waiver of any past liabilities in relation to electricity dues of the Corporate Debtor to the electrical supplier including any state government or central government department prior to the Effective Date.
21.	Any and all restrictions, impositions, prohibitions, debarments and limitations, whether interim or permanent on the Corporate Debtor, arising out of any order and/or legal proceedings and/or any investigations by any governmental bodies or authorities to the effect that on and from the Effective Date, the Corporate Debtor shall be discharged and released in perpetuity from any and all claims, suits, actions, charges, demands, judgments, costs and executions present and future, known or unknown, both legal and equitable in any manner arising out of out of any order and/or legal proceedings and/or any investigations by any governmental bodies or authorities, as afore-stated. From Effective Date, no such restrictions, impositions, prohibitions, debarments and limitations shall apply on the Corporate Debtor and the Resolution Applicant.
22.	All liabilities including all statutory dues, demands, operational creditors, unsecured loans, trade payables, amount payable against any guarantees issued, contingent liabilities, income tax demands / dues if any, VAT demands/ dues if any, GST, license fees etc. that may arise due to pending litigations / enquires / investigations / assessments or any other disputed / undisputed / recorded / unrecorded liabilities or otherwise against the Corporate Debtor shall be waived / extinguished in perpetuity and no action shall be taken against the Corporate Debtor or the Resolution Applicant in such respect.

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Sl. No.	Relief, concessions and approvals sought
23.	No consequence or liability including arising out of any criminal act done by the Corporate Debtor and/or its management till the Effective Date shall fall upon Resolution Applicant / Corporate Debtor or any of its/their employees, directors, or representatives. Resolution Applicant prays to the Adjudicating Authority to pass necessary orders / give appropriate directions for the same.
24.	Any approvals that may be required from Governmental Authorities (including Tax Authorities) in connection with the implementation of the Resolution Plan including on account change in ownership / control of the Corporate Debtor shall be deemed to have been granted upon approval of the Resolution Plan by the Adjudicating Authority. There shall be no requirement to seek separate approvals/permissions/consents from tribunal, RBI, government authorities, stakeholders etc. for implementation of this resolution plan.
25.	Neither the Resolution Applicant, nor any of its Affiliates or connected persons, will be disqualified from or considered ineligible under the Code for proposing and/ or implementing a plan in relation to the insolvency resolution of any Person (other than the Corporate Debtor), merely on account of the implementation of this Plan by the Resolution Applicant.
26.	It is probable that certain of the Business Permits of the Corporate Debtor have lapsed, expired, suspended, cancelled, revoked or terminated or the Corporate Debtor has non-Compliances in relation thereto. Accordingly, all Government Authorities to provide

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	reasonable time period after the Effective Date in order to enable Resolution Applicant to assess the status of these Business Permits and ensure that the Corporate Debtor is compliant with the terms of such Business Permits and Applicable Law without initiating any investigations, actions or proceedings in relation to such non-Compliances and permit the Resolution Applicant to continue to operate the business of the Corporate Debtor.
27.	It is assumed from the Effective date; all accounts of the Corporate Debtor shall stand regularized, and their Asset Classification is "Standard" for the purpose of Applicable RBI Laws.
28.	<p>The Central Board of Direct Taxes</p> <p>i.To allow Carry forward and set off of losses to the Corporate Debtor, where a change in the shareholding takes place under Section 79 of the IT Act in conformity with approved Resolution Plan.</p> <p>ii.not to take any other actions with respect to the transactions contemplated under this Plan (including the Merger and the sale of Collateral) under Section 281 of the IT Act</p> <p>iii.to exempt the Resolution Applicant from any liability pursuant to Sections 56 and 170 of the IT Act</p> <p>iv.not to levy any Tax (including minimum alternate tax) arising as a result of giving effect to, or otherwise in relation to, the Plan, in the hands of Corporate Debtor or the Resolution Applicant., and</p> <p>v.to modify the demand notice issued under Section 156 of the IT Act in conformity with approved Resolution Plan under the provisions of Section 156A of the IT Act.</p>

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29.	Neither the Resolution Applicant nor the Corporate Debtor, nor their respective directors, officers and employees appointed as on or after the Effective Date shall be liable for any violations, liabilities, penalties, interests on statutory payments and/ or fines with respect to or pursuant to any order of any Governmental Authority or on account of noncompliance of Applicable Laws by the Corporate Debtor or due to the Corporate Debtor not having in place requisite approvals and licenses to undertake its business as per Applicable Law.
30.	All Government Authorities to grant any relief, concession or dispensation as may be required for implementation of the transactions contemplated under the Plan in accordance with its term and conditions.
31.	The jurisdictional Registrar of Companies to take on record and implement the Plan, upon approval of the Plan by NCLT, without any further compliances.
32.	All creditors of the Corporate Debtor to withdraw all legal proceedings commenced against the Corporate Debtor in relation to Claims, proceedings under Section 138 of the Negotiable Instruments Act, 1881 and proceeding under SARFAESI and RDDBFI, within 30 (thirty) days of the Effective Date.
33.	The Resolution Applicant reserves all rights to undertake any expansion in the project, Merger and /or Amalgamation, Joint venture including but not limited to increase in Capital and all business prudent actions which is not given in the Resolution Plan, of the

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	Corporate Debtor if in future the Resolution Applicant gets any opportunity for the benefit of all the stakeholders.

**Orders**

29. On hearing the submissions made by the Ld. Counsel for the Resolution Professional, and perusing the record, we find that the Resolution Plan submitted by Nishant Business House Private Limited has been approved with 69.65% 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.
30. On perusal of the documents on record supported by an affidavit of the Resolution Professional, we accord our satisfaction that the Resolution Plan as approved by the CoC, is in accordance with sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
31. We have perused the reliefs, waivers and concessions as sought and as given in Part D and Part E at Pages 33-40 of the Resolution Plan. While some of the reliefs, waivers and concessions sought by the Resolution Applicant come within the purview of the Code while many others fall under the power and jurisdiction of different government authorities/departments. This Adjudicating Authority has power to grant reliefs, waivers and concessions only with respect to the reliefs, waivers and concessions that are directly in relation to the Code and the Companies Act 2013 (within the powers of the NCLT), and these are granted keeping in mind the object of the Code. No reliefs, waivers and concessions that fall within the domain of other government department/authorities are granted. The reliefs, waivers and concessions that pertain to governmental

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authorities/departments & other parties/institutions shall be dealt with the respective competent authorities/forums/offices, Government or Semi Government enterprises of the State or Central Government with regard to the respective reliefs, waivers and concessions. The competent authorities including the respective Appellate authorities, as the case may be, may consider grant such reliefs, waivers and concessions keeping in view the spirit of the Code.

32. The Resolution Plan should be consistent with extant law. The Resolution Applicant shall make necessary applications to the concerned regulatory or statutory authorities for renewal of business permits and supply of essential services, if required, and all necessary forms along with filing fees etc. and such authority shall also consider the same keeping in mind the objectives of the Code, which is essentially the resolving of the insolvency of the Corporate Debtor.
33. Regarding the reliefs sought with respect to subsisting contracts/agreements no blanket orders can be granted in the absence of the parties to the contracts and agreements.
34. With respect to the waivers with regard to extinguishment of claims which arose Pre-CIRP and which have not been claimed are hereby granted in terms of **Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd**,<sup>2</sup> 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. In this regard we also rely on the judgement of Hon'ble High Court of Rajasthan in the matter of **EMC v. State of Rajasthan** wherein it has been inter-alia held that :

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<sup>2</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.



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*Law is well-settled that with the finalization of insolvency resolution plan and the approval thereof by the NCLT, all dues of creditors, Corporate, Statutory and others stand extinguished and no demand can be raised for the period prior to the specified date.*

Thus on the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan as per the law laid down by the Hon'ble Supreme Court in **Ghanashyam Mishra supra.** The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.

35. With respect to the waivers sought in relation to guarantors, we seek to place reliance on the judgment of *Lalit Kumar Jain v Union of India & ors.*<sup>3</sup> wherein the Hon'ble Supreme Court held in para 133 that sanction of a resolution plan and finality imparted to it by section 31 does not per se operate as a discharge of the guarantor's liability shall apply.
36. With respect to the reliefs and waivers sought for all inquiries, litigations, investigations and proceedings are granted strictly as per the section 32A of the Code and other related and enabling provisions of the law as may be applicable.
37. 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.

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<sup>3</sup> 2021 SCC OnLine SC 396 decided on 21.05.2021

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38. In case of non-compliance of this order or withdrawal of Resolution Plan, the CoC shall have the right to forfeit the EMD amount already paid by the Resolution Applicant.
39. **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.
40. The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect.
41. The Moratorium imposed under section 14 shall cease to have effect from the date of this order.
42. The Resolution Professional shall submit the records/copies of the record collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record and also return the relevant record/copies thereof to the Resolution Applicant or New Promoters.
43. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.
44. Liberty is hereby granted for moving any Application if required in connection with implementation of this Resolution Plan.
45. A copy of this Order is to be submitted in the Office of the Registrar of Companies, Bihar.
46. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.
47. The Resolution Professional is further directed to handover all records, premises/factories/documents to the Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records/premises/factories/documents through the Resolution Professional to finalise the further line of action required for starting of the operation.
48. **IA (IB) No. 190/KB/2023 in the main Company Petition i.e., CP (IB) No. 88/KB/2020** shall stand disposed of accordingly.

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49. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
50. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**Balraj Joshi**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

Order signed on the 18<sup>th</sup> day of October 2023.

GGRB\_LRA