

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

IA (IB) No.802/KB/2021

in

CP (IB) No.993/KB/2018

***Application under sections 30(6) and 31(1) of the Insolvency and
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:

**Switching AVO Electro Power Limited
(CIN:U31200WB2004PLC098363)**

... Operational Creditor

Versus

**Ambient Computronics Private Limited
(CIN:U31200BR1995PTC006868)**

... Corporate Debtor

And

In the matter of:

**Subodh Kumar Agarwal
Resolution Professional of Ambient Computronics Private Limited**

... Applicant

Coram:

Mr. Rajasekhar V.K.

: Member (Judicial)

Mr. Balraj Joshi

: Member (Technical)

Appearances (via videoconferencing):

For the Applicant/RP

: Mr. Subodh Kumar Agarwal

Date of hearing: 22.10.2021

Date of pronouncement: 14.12.2021

ORDER

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

1. Preliminary

- 1.1. This Court convened through videoconferencing.
- 1.2. IA (IB) No. 802/KB/2021 is an application filed by Mr. Subodh Kumar Agarwal, Resolution Professional of Ambient Computronics Private Limited [CIN: U31200BR1995PTC006868], under section 30(6) read with section 31(1) of the Insolvency and Bankruptcy Code, 2016 and regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (*CIRP Regulations*) for approval of the Resolution Plan in respect of Ambient Computronics Private Limited, the Corporate Debtor.
- 1.3. The underlying company petition bearing CP (IB) No. 993/KB/2018 was filed by Switching AVO Electro Power Limited against Ambient Computronics Private Limited, the Corporate Debtor, under section 9 of the Insolvency and Bankruptcy Code, 2016 which was admitted *vide* order dated 10.12.2020.
- 1.4. Mr. Subodh Kumar Agarwal having registration no. IBBI/IPA-001/IP-P00087/2017-18/10183 was appointed as the Interim Resolution Professional (*IRP*). The *IRP* was later confirmed as the Resolution Professional (*RP*) of the Corporate Debtor at the eighth meeting of the Committee of Creditors (CoC) dated 10.04.2021 by way of e-voting on 11.04.2021.
- 1.5. It is submitted that due to nationwide lockdown imposed, the CoC in its tenth CoC meeting held on 17.05.2021 resolved to extend the *CIRP* for a further period of 90 days. Accordingly, the *RP* filed an application with this Adjudicating Authority for approval of the extension of *CIRP* period by 90 days under section 12(2). This Adjudicating Authority *vide* order dated 14.06.2021 passed in IA (IB) No. 509/KB/2021, allowed the extension of *CIRP* period by 90 days.

2. Constitution of CoC

- 2.1. The IRP made public announcements dated 12.12.2020 on 13.12.2020 (“**Public Announcement**”) in “Financial Express”, All India edition and “Morning India”, Patna Edition, “Sanmarg” (Jharkhand & Ranchi) and “Rashtriya Sahara (Delhi, Lucknow and Varanasi) Editions of newspapers, regarding initiation of the CIRP and called for proof of claims from the financial and operational creditors, workmen and employees of the Corporate Debtor till 25.12.2020.
- 2.2. The CoC was constituted with one Financial Creditors viz. Bank of Baroda and one Operational Creditor viz. Elnova Private Limited on 28.12.2020. The CoC was reconstituted on 19.03.2021 and on 27.04.2021. A report of re-constitution of CoC was filed with the Adjudicating Authority on 20.03.2021 stating that the sole financial creditor has withdrawn its claim and the CoC now consists of two Operational Creditors.
- 2.3. The Applicant states that total of 14 (Fourteen) CoC meetings have been held during CIRP period, as follows:

Particulars	Date of CoC Meeting
1 st CoC Meeting	02.01.2021
2 nd CoC Meeting	15.01.2021
3 rd CoC Meeting	27.01.2021
4 th CoC Meeting	10.02.2021
5 th CoC Meeting	18.02.2021
6 th CoC Meeting	04.03.2021 adjourned to 06.03.2021 and 08.03.2021
7 th CoC Meeting	27.03.2021
8 th CoC Meeting	10.04.2021
9 th CoC Meeting	30.04.2021
10 th CoC Meeting	17.05.2021
11 th CoC Meeting	05.06.2021 adjourned to 12.06.2021
12 th CoC Meeting	25.06.2021

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re Resolution Plan of Ambient Computronics Private Limited
IA (IB) No.802/KB/2021 in CP (IB) No.993/KB/2018

Particulars	Date of CoC Meeting
13 th CoC Meeting	21.08.2021
14 th CoC Meeting	24.08.2021 and 25.08.2021

3. Collation of claims

- 3.1. The claims of operational creditors, workers, statutory authorities as existing as on the date of filing the present application is as follows:

Name of Creditor	Amount claimed	Amount of claim admitted
Elnova Private Limited	₹45,55,623/-	₹38,07,014/-
Unitech Enterprises	₹2,60,928/-	₹2,45,568/-
PLS India	₹41,613/-	₹41,613/-
Jupiter Electronics & Telecom Systems	₹2,14,813/-	₹1,30,984/-
Globe Electronics International	₹64,250/-	₹42,442/-
SR Electrosteel Private Limited	₹39,929/-	₹39,929/-
Manmohan Dubey	₹8,31,780/-	₹1,88,320/-
R S Industries	₹2,38,320/-	₹1,88,320/-
Total	₹62,47,256/-	₹46,18,270/-

4. CIRP and compliances

- 4.1. The Applicant submits that in terms of the provisions of section 25(2)(h) of the Code read with regulation 36A(1) of CIRP Regulations, 2016, invitations in Form 'G' for Expressions of Interest ("EoI") from potential resolution applicants was published in "Financial Express", All India edition and "Morning India", Patna Edition, "Sanmarg" (Jharkhand & Ranchi) and "Rashtriya Sahara (Delhi, Lucknow and Varanasi) Editions on 11.03.2021 for submission of resolution plans for the Corporate Debtor, in terms of the provisions of section 25(2)(h) of the Code read with regulation 36A (1) of the Insolvency and Bankruptcy

Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. It was also published on the website of the Corporate Debtor and IBBI.

- 4.2. It is submitted that in response to the EoI published on 11.03.2021, the Applicant received an EoI from Mr Sujeet Kumar, one of the suspended Board of Directors of the Corporate Debtor. The last date of submission of Resolution Plan was 29.04.2021 which was extended to 14.05.2021 and then to 04.06.2021. The prospective Resolution Applicant submitted his plan on 04.06.2021.
- 4.3. The Resolution Plan was placed and opened before the CoC in its 12th CoC meeting held on 25.06.2021. The liquidation value and fair value was informed to the CoC. The Resolution Plan was vetted by the RP in terms of the Request for Resolution Plan (“RFRP”) and the Code.
- 4.4. The RP sought queries from the Resolution Applicant and the revised Resolution plan was filed on 20.08.2021.
- 4.5. The Resolution Plan was discussed at the 13th CoC meeting held on 21.08.2021. The CoC negotiated with the Resolution Applicant.
- 4.6. The revised Resolution Plan dated 24.08.2021 was discussed in the 14th CoC meeting held on 24.08.2021 and 25.08.2021. The Resolution Plan dated 04.08.2021 which was modified on 20.08.2021 and 24.08.2021 was put for e-voting on 27.08.2021 to 28.08.2021.
- 4.7. The Resolution Plan dated 04.08.2021 which was modified on 20.08.2021 and 24.08.2021 was approved with 99.10% voting share by the members of CoC¹.
- 4.8. The RP sent a letter of Intent dated 28.08.2021 to the successful Resolution Applicant which was duly accepted by the successful

¹ Pages 104-105 of the I.A.

Resolution Applicant on 30.08.2021².

- 4.9. The Successful Resolution Applicant submitted Performance Bank Guarantee of ₹4,00,000/- (Rupees four lakh only), *vide* RTGS dated 31.08.2021³.

5. *Compliance with statutory provisions*

- 5.1. The Applicant has filed a Compliance Certificate in prescribed form, i.e. Form 'H' dated 03.09.2021 in compliance with regulation 39(4) of the CIRP Regulations.
- 5.2. The Applicant has submitted that the Corporate Debtor is a MSME and hence, the Resolution Applicant is eligible to file a Resolution Plan and does not come under the ambit of section 29A of the Code.
- 5.3. 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 are reproduced hereunder:

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.	Section IV Clause 1.3 at Page 19 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	Section V at Page 25 of the Resolution Plan.

² Pages 204-208 of the I.A.

³ Pages 209-210 of the I.A.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re Resolution Plan of Ambient Computronics Private Limited
IA (IB) No.802/KB/2021 in CP (IB) No.993/KB/2018

Clause of s.30(2)	Requirement	How dealt with in the Plan
	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 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;	Section III at Page 14 of the Resolution Plan. (Compliance Chart)
	(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.	Not proposed in the Resolution Plan.
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Section VII at Pages 32-34 of the Resolution Plan.
(d)	Implementation and Supervision	Section V at Pages 25-26 and Section X at Pages 43-45 of the Resolution Plan.
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Section IV at Page 23 of the Resolution Plan.
(f)	Conforms to such other requirements as may be specified by the Board.	Section IV at Page 23 of the Resolution Plan.

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;	Section III at Page 14 in the Resolution Plan. (Compliance Chart)
(d) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	Section III at Page 14 in the Resolution Plan. (Compliance Chart)
(e) cancellation or delisting of any shares of the corporate debtor, if applicable;	Section VI at Page 28 in the Resolution Plan.
(f) satisfaction or modification of any security interest;	Section III at Page 14 in the Resolution Plan. (Compliance Chart)
(g) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Section III at Page 14 in the Resolution Plan. (Compliance Chart)

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re Resolution Plan of Ambient Computronics Private Limited
IA (IB) No.802/KB/2021 in CP (IB) No.993/KB/2018

Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
(h) reduction in the amount payable to the creditors;	Section III at Page 14 in the Resolution Plan. (Compliance Chart)
(i) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	Section III at Page 14 in the Resolution Plan. (Compliance Chart)
(j) amendment of the constitutional documents of the corporate debtor;	Section VI at Page 28 in the Resolution Plan. (Compliance Chart)
(k) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	Section III at Page 14 in the Resolution Plan. (Compliance Chart)
(l) change in portfolio of goods or services produced or rendered by the corporate debtor;	Section III at Page 15 in the Resolution Plan. (Compliance Chart)
(m) change in technology used by the corporate debtor; and	Section III at Page 15 in the Resolution Plan. (Compliance Chart)
(n) obtaining necessary approvals from the Central and State Governments and other authorities.	Section XI at Page 47 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.	Not Applicable as there are no Financial Creditors.
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.	Section IV at Page 23 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.	Section IV at Page 23 of the Resolution Plan.
38(2)	A Resolution Plan shall provide:	
	(a) The term of the plan and its implementation schedule;	Section V at Pages 25-26 and Section X at Pages 43-45 of the Resolution Plan.
	(b) The management and control of the business of the corporate debtor during its term; and	Section VII at Page 32 of the Resolution Plan.
	(c) Adequate means for supervising its implementation.	Section X at Pages 43-45 of the Resolution Plan.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re Resolution Plan of Ambient Computronics Private Limited
IA (IB) No.802/KB/2021 in CP (IB) No.993/KB/2018

Ref to relevant reg.	Requirement	How Dealt with in the Plan
38(3)	A Resolution Plan shall demonstrate that –	
	(a) It addresses the cause of default;	Section X at Page 44 of the Resolution Plan.
	(b) It is feasible and viable;	Section VIII at Pages 35-37 of the Resolution Plan.
	(c) It has provisions for its effective implementation;	Section X at Pages 42-45 respectively of the Resolution Plan.
	(d) It has provisions for approvals required and the timeline for the same; and	Section XI at Page 47 of the Resolution Plan.
	(e) The resolution applicant has the capability to implement the resolution plan.	Section VIII at Pages 35-37 of Resolution Plan.

6. Details of Resolution Plan/ Payment Schedule

6.1. 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.*, Sujeet Kumar under the said Resolution Plan is tabulated as under:

Sl. No	Name of Claimant	Claim admitted	Amount proposed	Amount provided (%)
1.	Corporate Insolvency Resolution Process Cost	-----	₹7,00,000/-	100
2.	Financial Creditors	Nil	Nil	----
3.	Operational Creditors	₹46,18,270/-	₹46,18,270/-	100
	Total	₹46,18,270/-	₹53,18,270/-	----

7. Resolution Plan Snapshot

7.1. The summary of the financial proposal/payment under the Resolution Plan of Mr. Sujeet Kumar is tabulated hereunder:

Particulars	Amount
Admissible Debt to be paid as CIRP costs.	₹7,00,000/- approximately shall be paid no later than 30 days from the date of approval of the Resolution Plan by the Adjudicating Authority.
Admissible Debt to be paid to Operational Creditors	₹46,18,270/- being 100% of the total admitted claim.
Admissible Debt to be paid to Operational Creditors viz. PLS India, Globe Electronics International and SR Electrosteel Private Limited	Payment of ₹1,23,984/- i.e., 100% of the amount admitted to be made within 30 days of approval of plan by the Adjudicating Authority.
Admissible Debt to be paid to Operational Creditor viz. Elnova Private Limited, Unitech Enterprises, Jupiter Electronics & Telecom Systems, Manmohan Dubey and R S Industries	Payment of ₹44,94,286/-, 25% of Rs.44,94,286/- i.e. Rs.11,23,571/- to be paid within 30 days of approval of plan by the Adjudicating Authority. Rest of the payment to Elnova Private Limited shall be made in 18 equal instalments on monthly basis starting from one month after Effective Date Rest of the payment to Unitech Enterprises, Jupiter Electronics & Telecom System, Mr. Manmohan Dubey & R. S. Industries will be made in 6 equal instalments on monthly basis starting from one month after Effective Date.
CAPEX and Working	Additional sum of ₹10,00,000/-

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re Resolution Plan of Ambient Computronics Private Limited
IA (IB) No.802/KB/2021 in CP (IB) No.993/KB/2018

Particulars	Amount
capital	[₹5,00,000/- for margin money for working capital and ₹5,00,000/- for CAPEX] within 12-16 months from the Effective Date.
TOTAL	₹63,18,270/-

- 7.2. The Resolution Plan defines “**Effective Date**” as “time period of thirty days from the date of certified copy of order for approval of resolution plan by the Hon’ble Tribunal.”

Details on Management/ Implementation and Reliefs as per the Resolution Plan:

- 7.3. The Resolution Plan also provides for the following:
- (a) Management of company after resolution in Section VII at Page 32 of the Resolution Plan.
 - (b) Term of the Resolution Plan in Section V at Pages 24-26 of the Resolution Plan.
 - (c) Indicative timelines of events for implementation of the Resolution Plan in Section X at Pages 42-45 of the Resolution Plan.
 - (d) Implementation and Supervision of the resolution plan in Section V at Pages 24-26 of the Resolution Plan.

8. Reliefs, exemptions and waivers sought and orders passed thereon

- 8.1. 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 orders thereon are indicated against each:

Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
1.	Section IX (i)	Given that the Resolution Applicant will acquire control of the affairs of the Corporate	Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss</i>

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re Resolution Plan of Ambient Computronics Private Limited
IA (IB) No.802/KB/2021 in CP (IB) No.993/KB/2018

Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		Debtor on the Effective Date, all Government and Statutory Authorities (as they are Operational Creditors) to waive any financial penalties, or any other financial liabilities and dues that may arise from any defaults or non-compliances by the Corporate Debtor prior to the Effective Date of Applicable Laws, including but not limited to the provisions of the Companies Act, 2013, Electricity Act 2003, Contract Labour (Regulation and Abolition) Act, 1970, all relevant and applicable labour laws, all relevant and applicable Direct and Indirect tax laws, the relevant stamp acts of the different States of India, relevant environmental laws and any other government instrumentality.	<i>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, 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,

4 2021 SCC OnLine SC 313 decided on 13.04.2021.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re Resolution Plan of Ambient Computronics Private Limited
IA (IB) No.802/KB/2021 in CP (IB) No.993/KB/2018

Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
			shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.
2.	Section IX (ii)	The change in shareholding of the Corporate Debtor pursuant to the Resolution Plan shall not lead to lapse of any brought forward losses of the Corporate Debtor and the same shall be made available as per provisions of Section 79 of the Income Tax Act, 1961 and the carry forward and set off all the losses shall be allowed if the change in shareholding takes place pursuant to a resolution plan approved under the IBC 2016 after affording a reasonable opportunity of being heard to the Jurisdictional Principal Commissioner or commissioner of Income Tax	Granted.
3.	Section IX (iii)	As the Resolution Applicant is required to take over the Corporate Debtor's Business on a "going concern" basis, all consents, licenses, approvals, clearances, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled or	All actions should be consistent with the provisions of the Code. There cannot be automatic revival of any licence or consent or permit. The corporate debtor shall prefer appropriate applications before the authorities concerned who shall consider the same

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re Resolution Plan of Ambient Computronics Private Limited
IA (IB) No.802/KB/2021 in CP (IB) No.993/KB/2018

Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		accustomed to, shall continue to remain valid, notwithstanding any provision to the contrary in their terms, and provided that in case of consents, licenses, approvals, rights, entitlements, benefits and privileges that have expired or lapsed, notwithstanding that they may have already lapsed or expired due to any breach, non-compliance or efflux of time, be deemed to continue without disruption, for the benefit of the Corporate Debtor, for a period of 12 (twelve) months from the Effective Date or such other period as required under Applicable Law u/s 31(4) of IBC, 2016.	keeping the spirit of the IBC in view, which is to enable a fresh start for the corporate debtor.
4.	Section IX (iv)	Credit in respect of minimum alternate tax paid by the Corporate Debtor shall continue with the Corporate Debtor on a going concern basis and shall be available for the benefit of the Resolution Applicant or the Corporate Debtor, as the case may be.	This is for the relevant tax authorities to consider.
5.	Section IX (v)	The Corporate Debtor or the Resolution Applicant shall not, at any point of time, be held financially liable under the provisions in relation to the liability of the Corporate Debtor as per Section 170 of the Income Tax Act, 1961 in respect of any	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

⁵ 2021 SCC OnLine SC 313 decided on 13.04.2021.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re Resolution Plan of Ambient Computronics Private Limited
IA (IB) No.802/KB/2021 in CP (IB) No.993/KB/2018

Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		transaction carried out before the Effective Date or contemplated under the Resolution Plan or on account of any action taken pursuant to this Resolution Plan including acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan.	approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt, any State Govt or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re Resolution Plan of Ambient Computronics Private Limited
IA (IB) No.802/KB/2021 in CP (IB) No.993/KB/2018

Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
			approval under section 31 could be continued.
6.	Section IX (vi)	In the interest of keeping the Corporate Debtor a going concern, unless otherwise specified in this Resolution Plan, all contracts and agreements shall continue to remain valid and notwithstanding any lapse, non-compliance, breach or expiry of underlying terms of such contracts and agreements, these contracts and agreements shall be deemed to continue without disruption for the benefit of the Corporate Debtor for their original tenure.	Granted.
7.	Section IX (vii)	All contractual arrangements (except for any contracts that vest property rights in the Corporate Debtor) entered into by the Corporate Debtor with the Related Party of the Corporate Debtor, including (including any contracts of employment or consultancy with, and any benefits, fees, commissions, perquisites or profits in lieu of or in addition to any salary or wages or any policy of providing such benefits, fees, commissions, perquisites or profits extended by the Corporate Debtor) shall be deemed to be terminated on and from the NCLT Approval Date. Any claims or financial liabilities arising because of any termination of such contracts till	Granted.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re Resolution Plan of Ambient Computronics Private Limited
IA (IB) No.802/KB/2021 in CP (IB) No.993/KB/2018

Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		the NCLT Approval Date shall be cancelled on the NCLT Approval Date and shall be permanently extinguished and written-off on the NCLT Approval Date.	
8.	Section IX (viii)	The Resolution Applicant, or the Corporate Debtor shall not be liable to pay any Taxes (direct or indirect) whatsoever arising (directly or indirectly on such entity) as a result of the actions taken by the Corporate Debtor prior to the Insolvency Commencement Date or arising from the actions under this Resolution Plan. It may also be clarified that any Tax liabilities pertaining to any period or action prior to the Effective Date, whether assessed or un-assessed, by the relevant Government and Statutory Authority shall be deemed to have been extinguished and written-off on the Hon'ble NCLT Approval Date.	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, 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
9.	Section IX (ix)	All penalties and dues arising out of any short supply of power/unfulfilled contracts/quality issues in supply in the past or till the approval of Resolution Plan by the Adjudicating Authority shall be deemed to have been extinguished and waived off on the Hon'ble NCLT Approval	

⁶ 2021 SCC OnLine SC 313 decided on 13.04.2021.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re Resolution Plan of Ambient Computronics Private Limited
IA (IB) No.802/KB/2021 in CP (IB) No.993/KB/2018

Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		Date. No liability shall accrue due to this and all benefits and deposits shall be refunded fore with to the Resolution Applicant.	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.
10.	Section IX (x)	All financial liabilities (including any contingent claims) relating to any investigations, inquiries, show-cause notices, causes of actions; suits, claims, disputes, litigations, arbitrations or other judicial or regulatory or administrative proceedings shall be deemed to be extinguished and written-off.	Granted, but only in so far as the Corporate Debtor is concerned. This shall not be extended to the promoters.
11.	Section IX (xi)	Any and all other claims, rights and entitlements of any Person, including any actual or potential	Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss</i>

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re Resolution Plan of Ambient Computronics Private Limited
IA (IB) No.802/KB/2021 in CP (IB) No.993/KB/2018

Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		Creditors of the Corporate Debtor (including but not limited to all Financial Creditors, Operational Creditors, Other Creditors, and Government and Statutory Authorities and any person who may claim to be a creditor by way of exercise of rights under Applicable Laws or equity), whether or not such claims rights or entitlements (including any demand for any losses or damages, principal, interest, compound interest, penal interest, liquidated damages, and other charges already accrued/accruing or in connection with any third party claims) have been filed before the Resolution Professional or not, whether admitted by the Resolution Professional or not, whether or not set out in the . Information Memorandum, the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor, being due or contingent, asserted or unasserted, crystallized or uncrystallised, known or unknown, disputed or undisputed, in relation to any period prior to the CIRP commencement date, shall be deemed to be written-off and permanently extinguished. The Corporate Debtor or the	<i>Asset Reconstruction Company Ltd.</i> ⁷ wherein the Hon'ble Supreme Court has held in para 95(i) that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt, any State Govt or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan,

⁷ 2021 SCC OnLine SC 313 decided on 13.04.2021.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

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		Resolution Applicant shall at no point of time, directly or indirectly, have any obligation, liability or duty in relation thereto.	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.
12.	Section IX (xii)	Extinguishment and write-off of any financial liabilities against the Corporate Debtor, by the Corporate Debtor till the CIRP commencement date.	
13.	Section IX (xiii)	Extinguishment and write-off of all financial liabilities (including past liabilities) against the Corporate Debtor that may accrue due to non-compliance with any clearance issued by any Government and Statutory Authority.	
14.	Section IX (xiv)	Extinguishment of any other liability, investigations, inquiry pending against the Corporate Debtor due to non-compliance with any environmental clearance issued by any Government and Statutory Authority.	Whatever protection is envisaged under section 32A of the Code alone is granted, nothing more and nothing less.
15.	Section IX (xv)	All Disputes to be initiated against the Corporate Debtor (including those proceedings that relate to the Corporate Debtor) at any time till the Effective Date shall stand automatically abated, revoked, released, cancelled, withdrawn, dismissed and deemed null and void (as the case may be) and all financial	Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , ⁸ wherein the Hon'ble Supreme Court has held in para 95(i) that once a resolution plan is duly approved by the Adjudicating Authority

⁸ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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KOLKATA BENCH

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		obligations in relation to such Dispute shall be permanently extinguished on the NCLT Approval Date, after payments being made to any such Creditors if mandatorily required in accordance with the provisions of the Code.	under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt, any State Govt or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

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16.	Section IX (xvi)	All benefits and incentives, including but not limited to, under all such incentive schemes, subsidy schemes and policies that the Corporate Debtor is entitled under, and all such benefits shall remain vested in the Corporate Debtor with effect from the Effective Date;	Granted.
17.	Section IX (xvii)	For such further or other relief/s be granted and/or directions be given as the NCLT may deem fit and proper in the facts and circumstances of the case and in the interests of resolution of the insolvency of the Corporate Debtor	No orders are necessary.

9. Analysis and Orders

- 9.1. On hearing the submissions made by the Resolution Professional, and perusing the record, we find that the Resolution Plan has been approved with 99.10% 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 Resolution Professional and the Resolution Applicant for making the plan effective after approval by this Bench.
- 9.2. On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- 9.3. As far as the question of granting time to comply with the statutory obligations or seeking approvals from authorities is concerned, the Resolution Applicant is directed to do so within one year from the date

of this order, as prescribed under section 31(4) of the Code.

- 9.4. In case of non-compliance of this order or withdrawal of Resolution Plan, the payments already made by the Resolution Applicant shall be liable for forfeiture.
- 9.5. Subject to the observations made in this Order, the Resolution Plan dated 04.06.2021, further modified on 20.08.2021 and on 24.08.2021, is hereby **APPROVED** by this Bench. **The Resolution Plan shall form part of this Order.**
- 9.6. The Resolution Plan thus approved shall be binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect.
- 9.7. The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
- 9.8. The Resolution Professional shall submit copies of the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters.
- 9.9. The Resolution Professional shall stand discharged from his duties with effect from the date of this order.
- 9.10. The Resolution Professional is further directed to hand over all records, and properties to the Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records and premises of the corporate debtor through the Resolution Professional to finalise the further line of action required for starting of the operation.
- 9.11. Liberty is hereby granted for moving applications, if required, in connection with implementation of this Resolution Plan.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re Resolution Plan of Ambient Computronics Private Limited
IA (IB) No.802/KB/2021 in CP (IB) No.993/KB/2018

- 9.12. The Resolution Applicant shall file a copy of this order with the Registrar of Companies, Bihar, *inter alia* for updating the status of the Corporate Debtor.
- 9.13. The application bearing **IA (IB) No. 802/KB/2021** along with the Company Petition bearing **C.P. (IB)No. 993/KB/2018** are disposed of accordingly.
- 9.14. Additionally, the Registry shall send a copy of this order to the Registrar of Companies, Bihar.
- 9.15. Certified copy of this order be issued on demand to the concerned parties, upon due compliance.

Balraj Joshi
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

14.12.2021

GGRB[LRA]