

Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulation**”) for approval of a Resolution Plan in respect of Wellman Carbo Metaliks India Limited.

4. The underlying Company Petition in CP (IB) No. 132/KB/2018 was filed by Bank of India against Wellman Carbo Metaliks India Limited, the Corporate Debtor, under section 7 of the Insolvency and Bankruptcy Code 2016 which was admitted *vide* order dated 07.08.2019 in CP (IB) No. 132/KB/2018.
5. Initially, Mr. Santosh Choraria, the Applicant herein (IBBI Reg. No. IBBI/IPA-001/IP-P00549/2017-2018/10979) was appointed as the Interim Resolution Professional. He was later confirmed as the Resolution Professional of the Corporate Debtor at the second meeting of the Committee of Creditors on 24.09.2019.
6. The IRP made public announcement on 09.08.2019 in Financial Express (English)(Kolkata Edition) and Aajkal (Bengali) (Kolkata Edition) newspapers regarding initiation of Corporate Insolvency Resolution Process [hereinafter referred to as “**CIRP**”] and called proof of claims from the financial and operational creditors, workers and employees of the Company in the specified forms till 21.08.2019.
7. The CoC was constituted on 29.08.2019 with only one member, being Bank of India with 100% voting right in the CoC.
8. The applicant states that a total of eighteen CoC meetings have been held during CIRP period, as follows:

Particulars	Date of CoC meeting
1 st CoC Meeting	05.09.2019
2 nd CoC Meeting	24.09.2019
3 rd CoC Meeting	22.10.2019
4 th CoC Meeting	08.11.2019
5 th CoC Meeting	06.12.2019
6 th CoC Meeting	21.12.2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re. Resolution Plan of Wellman Carbo Metaliks India Ltd.

IA (IB) 397/KB/2021 in CP (IB) No. 132/KB/2018

Particulars	Date of CoC meeting
7 th CoC Meeting	10.01.2020
8 th CoC Meeting	28.01.2020
9 th CoC Meeting	12.02.2020
10 th CoC Meeting	02.03.2020
11 th CoC Meeting	28.05.2020
12 th CoC Meeting	15.07.2020
13 th CoC Meeting	28.08.2020
14 th CoC Meeting	08.09.2020
15 th CoC Meeting	18.09.2020
16 th CoC Meeting	29.12.2020
17 th CoC Meeting	05.02.2021
Adjourned 17 th CoC Meeting	10.02.2021
18 th CoC Meeting	26.02.2021

9. The Applicant submits that in terms of the provisions of section 25(2)(h) of the Code read with regulation 36A(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, invitations in Form 'G' for Expressions of Interest (“**EoI**”) from potential resolution applicants were issued. Form 'G' was published on 01.10.2019 for submission of resolution plans for the Corporate Debtor. The last date for receipt of EoIs was 21.10.2019 which was extended till 08.11.2019. This was published in *Financial Express* (English) and *Aajkal* (Bengali) newspapers of 01.10.2019. The notice was also published on the website of the Insolvency and Bankruptcy Board of India [hereinafter referred to as “**IBBI**”].

10. The Applicant submits that in response to the invitation for EoI, upto the last date, i.e., 08.11.2019, three EoIs were received from Tata Metaliks Limited (“TML”), Orissa Metaliks Private Limited (“OMPL”) and Neo Metaliks Limited. Information memorandum, evaluation matrix and request for Resolution Plan was issued to the three prospective resolution applicants on 16.11.2019 and the last date for submission of Resolution Plan was 23.12.2019 which was further extended four times and the last date was 29.02.2020. Till the last date of submissions of resolution plan i.e., till 29.02.2020, only Tata Metaliks Limited and Orissa Metaliks Private Limited submitted their Resolution Plans.
11. The Applicant opened the Resolution Plans in the 10th CoC meeting in front of the CoC members and the prospective resolution applicants and the Resolution Professional evaluated the Resolution Plans and sought for certain clarifications from the resolution applicants.
12. The plans were discussed in the 17th CoC meeting, held on 05.02.2021 and the CoC asked the Resolution Applicants to submit better offers. In the 17th CoC meeting (adjourned), held on 10.02.2021, the prospective resolution applicants participated in the outbidding process. Though Orissa Metaliks Private Limited was declared the H1 bidder, both the plans were put up for voting in the 18th CoC meeting. The Resolution Plan of TML was rejected and the Resolution Plan submitted by OMPL was approved by 100% voting percentage.
13. The Applicant issued Letter of Intent on 21.03.2021 and the same was accepted by the successful resolution applicant on 22.03.2021. A copy of the accepted Letter of Intent is annexed to the I.A. and marked as **Annexure “H”¹**.
14. The successful resolution applicant submitted the performance bank guarantee on 22.03.2021 issued by ICICI Bank. A copy of the bank guarantee is annexed to the I.A. and marked as **Annexure “I”²**.
15. The successful Resolution Applicant, Orissa Metaliks Private Limited is a private company incorporated on 29.07.2006, having CIN: U27109WB2006PTC111146.

¹ Page 468 of the I.A.

² Pages 471 to 477 of the I.A.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re. Resolution Plan of Wellman Carbo Metaliks India Ltd.

IA (IB) 397/KB/2021 in CP (IB) No. 132/KB/2018

OMPL filed a revised Resolution Plan on 09.02.2021 and an addendum on 15.02.2021.

16. The amounts claimed and admitted are summarised below:

(in Rs./Cr.)

Particulars	Claim filed	Claim admitted
Secured Financial Creditors	86.19	85.65
Unsecured Financial Creditors (except related party)	---	---
Staff & Workmen	---	---
Operational Creditors (statutory dues)	231.56	222.45
Related Party (includes Unsecured Financial Creditors & Operational Creditor)	---	---
Total	317.75	308.10

a. Financial Creditors

Name of the Lenders	Amount Claimed Rs. in Cr.	Amount Admitted Rs. in Cr.
Bank of India	86.19	85.65
Total	86.19	85.65

b. Operational Creditors

Name of the Creditors	Amount Claimed Rs. in Cr.	Amount Admitted Rs. in Cr.
Commissioner of Commercial Taxes, Directorate of commercial Taxes, Government of West Bengal	19.73	19.73
Kowa Holdings Asia Pte. Ltd.	204.40	200.75

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re. Resolution Plan of Wellman Carbo Metaliks India Ltd.

IA (IB) 397/KB/2021 in CP (IB) No. 132/KB/2018

Name of the Creditors	Amount Claimed Rs. in Cr.	Amount Admitted Rs. in Cr.
Government of India, Assistant Commissioner of Central Goods & Service Tax Division & Central Excise Division	1.49	1.49
Neo Metaliks Limited	5.46	0.00
Neo Efficient Transport Services	0.46	0.46
Total	231.56	222.45

17. The Applicant has filed a Compliance Certificate in prescribed form, *i.e.*, Form ‘H’ in compliance with regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which has been annexed to the application as **Annexure “K”**³.
18. The Applicant submits details of various compliances as envisaged within the Code and the CIRP Regulations which requires a Resolution Plan to adhere to, which is 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):

<i>Clause of s.30(2)</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>
(a)	Plan must provide for payment of CIRP cost in priority to repayment of other debts of CD in the manner specified by the Board.	<i>Clause 3.2 at Page 22 of the Resolution Plan.</i>

³ Pages 544-549 of the I.A.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re. Resolution Plan of Wellman Carbo Metaliks India Ltd.

IA (IB) 397/KB/2021 in CP (IB) No. 132/KB/2018

<i>Clause of s.30(2)</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>
(b)	<p>(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; or</p> <p>(ii) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall 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 and</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>(i) <i>Clause 3.4 at Page 22 of the Resolution Plan.</i></p> <p>(ii) <i>Clause 3.4 at Page 22 of the Resolution Plan</i></p> <p>(iii). <i>Clause 3.4 at Page 23 of the Resolution Plan</i></p>
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	<i>Clause 5 at Pages 33 and 34 and Clause 6 at Pages 34-37 of the Resolution Plan</i>
(d)	Implementation and Supervision.	<i>Clause 4.3 at Page 32 and 33 Clause 6.1 in page no. 34 of the Resolution Plan.</i>

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re. Resolution Plan of Wellman Carbo Metaliks India Ltd.

IA (IB) 397/KB/2021 in CP (IB) No. 132/KB/2018

<i>Clause of s.30(2)</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	<i>Clause 7.9 in page no. 39 of the Resolution Plan</i>
(f)	Conforms to such other requirements as may be specified by the Board.	<i>Clause 7.21.7 in page no. 46 of the Resolution Plan</i>

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

<i>Particulars</i>	<i>Relevant Page of the Resolution Plan dealing aforesaid compliance with Regulation</i>
<i>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: -</i>	
(a) transfer of all or part of the assets of the corporate debtor to one or more persons;	<i>The Resolution Plan does not envisage transfer or sale of any of the assets of the Corporate Debtor.</i>
(b) sale of all or part of the assets whether subject to any security interest or not;	<i>The Resolution Plan does not envisage transfer or sale of any of the assets of the Corporate Debtor.</i>

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re. Resolution Plan of Wellman Carbo Metaliks India Ltd.

IA (IB) 397/KB/2021 in CP (IB) No. 132/KB/2018

<i>Particulars</i>	<i>Relevant Page of the Resolution Plan dealing aforesaid compliance with Regulation</i>
(c) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	<i>The Resolution Plan does not envisage any merger, amalgamation or Demerger.</i>
(d) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	<i>Step 2, Annexure 2 at Pages 57-58 of the Resolution Plan.</i>
(e) cancellation or delisting of any shares of the corporate debtor, if applicable;	<i>Step 3, Annexure 2 at Page 58 of the Resolution Plan.</i>
(f) satisfaction or modification of any security interest;	<i>Step 4, Annexure 2 at Page 59 of the Resolution Plan.</i>
(g) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	<i>Not proposed by the RA.</i>
(h) reduction in the amount payable to the creditors;	<i>Section 3.5 at Pages 23-24 of the Resolution Plan.</i>
(i) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	<i>Not proposed by the RA.</i>
(j) amendment of the constitutional documents of the corporate debtor;	<i>Clause 7.7.1 at Page 40 of the Resolution Plan.</i>

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re. Resolution Plan of Wellman Carbo Metaliks India Ltd.

IA (IB) 397/KB/2021 in CP (IB) No. 132/KB/2018

<i>Particulars</i>	<i>Relevant Page of the Resolution Plan dealing aforesaid compliance with Regulation</i>
(k) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	<i>Step 2, Annexure 2 at Pages 57-58 of the Resolution Plan.</i>
(l) change in portfolio of goods or services produced or rendered by the corporate debtor;	<i>Not proposed by the RA.</i>
(m) change in technology used by the corporate debtor; and	<i>Not proposed by the RA.</i>
(n) obtaining necessary approvals from the Central and State Governments and other authorities.	<i>Clause 4.4 at Page 33 of the Resolution Plan.</i>

III. Mandatory contents of Resolution Plan in terms of Regulation 38 of CIRP

Regulations:

<i>Reference to relevant Regulation</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>
38(1)	The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.	<i>Clause 3.3 at Page 22, Clause 3.5 at Page 23 and Clause 3.8 at page no. 27-28 of the Resolution Plan.</i>

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re. Resolution Plan of Wellman Carbo Metaliks India Ltd.

IA (IB) 397/KB/2021 in CP (IB) No. 132/KB/2018

<i>Reference to relevant Regulation</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>
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.	<i>Clause 3.5 at Pages 23-24 of the Resolution Plan.</i>
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.	<i>Clause 4.2 at Page 32 of the Resolution Plan.</i>
38(2)	A resolution plan shall provide:	<i>Clause 4.1 at Page 32 and Clause 4.4 at Page 33 of the Resolution Plan.</i>
	(a) the term of the plan and its implementation schedule;	
	(b) the management and control of the business of the corporate debtor during its term; and	<i>Clause 5 at Pages 33 and 34 of the Resolution Plan.</i>
	(c) adequate means for supervising its implementation.	<i>Clause 6.1 at Page 34 of the Resolution Plan.</i>

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re. Resolution Plan of Wellman Carbo Metaliks India Ltd.

IA (IB) 397/KB/2021 in CP (IB) No. 132/KB/2018

Reference to relevant Regulation	Requirement	How dealt with in the Plan
38(3)	<i>A resolution plan shall demonstrate that –</i>	
	<i>(a) it addresses the cause of default;</i>	<i>Clause 6.9 at Page 36 of the Resolution Plan.</i>
	<i>(b) it is feasible and viable;</i>	<i>Annexure 6 at Pages 65 of the Resolution Plan.</i>
	<i>(c) it has provisions for its effective implementation;</i>	<i>Clause 4 at Pages 32 and 33 and Clause 6 at Page 34 of the Resolution Plan.</i>
	<i>(d) it has provisions for approvals required and the timeline for the same; and</i>	<i>Clause 4.4 at Page 33 of the Resolution Plan.</i>
	<i>(e) the Resolution Applicant has the capability to implement the resolution plan.</i>	<i>Clauses 2.4, 2.5, 2.6 and 2.7 of Section B at Pages 17-21 of the Resolution Plan.</i>

19. The Applicant submits that the successful Resolution Applicant has submitted a certificate of eligibility under section 29A of the Code, which has been annexed as

Annexure A at **Pp. 10 to 12** of the Supplementary Affidavit affirmed on 03.05.2021.

Details of Resolution Plan/Payment Schedule

20. The Applicant submits the relevant information with regard to the amount claimed, amount admitted and the amount proposed to be paid by the Resolution Applicant, *i.e.*, Orissa Metaliks Private Limited, under the said Resolution Plan is tabulated as under:

Sl. No.	Category of Creditor	Amount of Claim (Rs. in Cr.)	Claim Admitted (Rs. in Cr.)	Amount provided in the Plan (Rs. in Cr.)	% of claim Admitted
1.	Insolvency Resolution Process Cost	Actual	0.59	0.59	100%
2.	Operational Creditor (including Statutory Liberties admitted by RP)	231.56	221.99 (222.45) ⁴	0.67	0.30%
3.	Operational Creditor (claim not admitted by RP)	Nil	Nil	0.20	---
4.	Workmen/Employees	Nil	Nil	0.22	--

⁴ Claim of New Efficient Transport Services of Rs.45,87,926/- was admitted on 25.02.2021 and the Resolution Applicant has undertaken that the proposed amount shall be distributed proportionately among the Operational Creditors.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re. Resolution Plan of Wellman Carbo Metaliks India Ltd.

IA (IB) 397/KB/2021 in CP (IB) No. 132/KB/2018

Sl. No.	Category of Creditor	Amount of Claim (Rs. in Cr.)	Claim Admitted (Rs. in Cr.)	Amount provided in the Plan (Rs. in Cr.)	% of claim Admitted
5.	Financial Creditor	86.19	85.65	18.99	22.17%
6.	Capex (within 6 months)	---	---	5.00	---
7.	Working Capital (within 6 months)	---	---	5.00	---
	Total	317.75	308.23	30.67	---

21. Summary of the financial proposal/payment under the Resolution Plan dated 09.02.2021 and addendum dated 15.02.2021 of Orissa Metaliks Private Limited Private Limited is tabulated hereunder:

Particulars	Amount
Admissible Debt to be paid upfront to the CIRP	Rs.0.59 Crore is reserved towards IRP Cost to be paid within 30 days of the effective date.
Admissible Debt to be paid upfront to the Operational Creditors	Rs.0.87 Crore to be paid within 29 days of the effective date.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re. Resolution Plan of Wellman Carbo Metaliks India Ltd.

IA (IB) 397/KB/2021 in CP (IB) No. 132/KB/2018

Admissible Debt to be paid to Financial Creditors	Rs. 18.99 Crore to be paid within 30 days of the effective date.
Admissible Debt to be paid to the Workmen/Employees	Rs.0.22 Crore to be paid within 29 days of the effective date.
Capex/Working Capital	Rs.10.00 Crore (within 6 moths from the effective date).

22. The Resolution Plan defines “**Effective Date**” or “**Completion Date**” shall mean the date of pronouncement of Order by Adjudicating Authority approving the Resolution Plan.

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

23. The Resolution Plan also provides for –

- a) Management of Company after resolution in Clause 5 at Pp. 33-34;
- b) Term of the resolution plan in Clause 4 at Pp. 32-33; and
- c) Implementation and Supervision of the resolution plan in Clause 6 at Pp. 34-37.

24. **Relinquishment/Waiver of liabilities and Approvals**

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
1.	<i>The approval of the Adjudicating Authority and the CoC shall constitute adequate approval and cancellation of the existing share capital and accordingly, no approval/consent shall be necessary from any other Person / Governmental Authority</i>	Granted, subject to the condition that wherever applicable, the company shall file all necessary forms along with applicable fee with the Registrar of Companies.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re. Resolution Plan of Wellman Carbo Metaliks India Ltd.

IA (IB) 397/KB/2021 in CP (IB) No. 132/KB/2018

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
	<i>in relation to either of these actions under any agreement, the constitutional documents or under any Applicable Law. It is also clarified that the Resolution Applicant shall not be required to deal with the dissenting / abstaining Financial Creditors in any manner other than as provided under the Code.</i>	
2.	<i>All convertible instruments issued by the Corporate Debtor either to the promoters, shareholders, or any third party shall stand cancelled pursuant to approval of this Resolution Plan by the Adjudicating Authority and no separate sanction / approval / consent shall be necessary from any other Person / Governmental Authority in relation to either of these actions under any agreement, the constitutional documents or under any Applicable Law.</i>	Granted.
3.	<i>Approval of this plan shall be deemed approval for waiver from filing of statutory returns (including but not limited to any filings for registrar of Companies, Direct & Indirect tax authorities, plant related annual filings, etc), for a period prior to Effective Date. Certified copy of the order approving Resolution Plan shall be a direction on such statutory authorities to allow WCMIL to do compliance(s) with effect from and after the date of approval of</i>	The Resolution Plan is expected to be compliant with other laws, as envisaged under Section 30 of the Code. However, it is for the Income Tax Authorities to consider the same based on the spirit of the Code.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re. Resolution Plan of Wellman Carbo Metaliks India Ltd.

IA (IB) 397/KB/2021 in CP (IB) No. 132/KB/2018

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
	<i>Resolution Plan by the Adjudicating Authority.</i>	
4.	<i>Approval of this plan shall be deemed approval for removal of Directors from the record of the Company as appearing on the MCA portal/ website/ income tax web site/ Any Indirect website. Certified copy of the order approving Resolution Plan shall be a direction on such statutory authorities to do the needful.</i>	Granted.
5.	<i>In case of capital reduction, the requirement of adding “and reduced” in the name of the Corporate Debtor to be dispensed with (on account of reduction of share capital of the Corporate Debtor).</i>	This requirement is no longer there in the Companies Act, 2013
6.	<i>The approval of this Plan by the Adjudicating Authority shall be deemed to have waived all the procedural requirements in terms of Section 66, Section 42 and Section 62(1)(c) of the 2013 Act, and the NCLT (Procedure for Reduction of Share Capital) Rules, 2016 for reduction of share capital and issuance of equity shares to the Resolution Applicant and/or the Financial Creditors.</i>	Granted, however, wherever applicable the company shall file necessary forms along with applicable fee with the Registrar of Companies.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re. Resolution Plan of Wellman Carbo Metaliks India Ltd.

IA (IB) 397/KB/2021 in CP (IB) No. 132/KB/2018

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
7.	<i>Waiver of any fee payable to any stock exchange or any such regulatory body towards any past dues or towards fee dues pursuant to any of the steps as contemplated in the Resolution Plan including but not limited to any delisting fee, fee payable to Registrar of Companies (RoC), etc.</i>	Not granted.
8.	<i>An approval with regards to the right of way (“Right of Way”) for an unfettered access to the plant.</i>	If such a right did subsist with the Corporate Debtor at the time of commencement of CIRP, it will continue. No new rights shall be created by virtue of or under the Resolution Plan.
9.	<i>Licenses and approvals held by the Company, which expire prior to Completion Date or within a period of 6 (six) months thereafter, shall be renewed / extended by the relevant Governmental Authorities, and the Company shall be permitted to continue its business and assets in the manner operated prior to submission this plan until the renewal/extension of such licenses and approvals. The relevant Governmental Authorities will be provided a reasonable period of time after Completion Date in order for the Resolution Applicant to:</i>	The Resolution Applicant shall make necessary applications to the concerned regulatory or statutory authorities for renewal of such business permits in terms of s.31(4) of the IBC, and such authority shall also consider the same keeping in mind the objectives of the Code.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re. Resolution Plan of Wellman Carbo Metaliks India Ltd.

IA (IB) 397/KB/2021 in CP (IB) No. 132/KB/2018

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
a.	<i>Assess the status of licenses and approvals required by the Company and to procure that the Company applies for the same;</i>	Granted.
b.	<i>Regularize any non-compliances under the Applicable Law (including nonregistration, inadequate/non-stamping of documents as required under Applicable Law) existing prior to the Closing Date.</i>	Granted
10.	<i>The relevant Governmental / Statutory / Regulatory Authorities shall not initiate any investigations, actions or proceeding in relation to any non-compliances with Applicable Law by the Company during the period prior to the Completion Date. Neither shall the Resolution Applicant, nor the Company, nor their respective directors, officers and employee appointed on and as of the Completion Date be liable for any violations, liabilities, penalties or fines with respect to or pursuant to the Company not having in place requisite licenses and approvals required to undertake its business as per Applicable Law, or any non-compliances of Applicable Law by the Company. Further, the relevant Governmental Authorities will provide a reasonable period of time after the Completion Date, for the Resolution Applicant to assess the status of any non-compliances under the Applicable Law (including with respect to applicable</i>	This shall be in terms of section 32A of the IBC.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re. Resolution Plan of Wellman Carbo Metaliks India Ltd.

IA (IB) 397/KB/2021 in CP (IB) No. 132/KB/2018

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
	<i>environmental laws, directions or orders by the Ministry of Environment and Forest, permits clearances and forest related clearances) and to procure that the Company regularizes such non-compliances under the Applicable Law existing prior to the Completion Date.</i>	
11.	<i>Direction to authorities for providing key infrastructure facilities and approvals like Consent to Establish, Consent to Operate, Water approval, Railways approval, etc</i>	Such blanket reliefs cannot be granted at this stage since the parties against whom these orders will operate are not before us at this stage.
12.	<i>Waiver of any dues of whatsoever nature towards Railways, Water authorities or any such infrastructure provider.</i>	Such blanket reliefs cannot be granted at this stage since the parties against whom these orders will operate are not before us at this stage.
13.	<i>Withdrawal of litigations initiated by the Financial Creditors against Corporate Debtor, issue no-dues certificate(s) in favour of Corporate Debtor and release their respective charges on the securities in full and complete satisfaction of all debts owed to the Financial Creditors by Corporate Debtor, including all guarantees which may have been provided to the Financial Creditors, for credit facilities availed by Corporate Debtor.</i>	Granted.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re. Resolution Plan of Wellman Carbo Metaliks India Ltd.

IA (IB) 397/KB/2021 in CP (IB) No. 132/KB/2018

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
14.	<p><i>Any and all dues to, liabilities or obligations payable to, claims, counter-claims, demands, actions or penalties, made or imposed by or any arrears, dividend or obligations owed or payable to (including but not limited to all interests, damages, losses, expenses and third party claims), and any right, title, interest enjoyed by, any actual or potential other stakeholders of the Corporate Debtor including any group companies whether under law or otherwise, whether or not claimed, whether or not filed, whether or not crystallised, whether or not accrued, whether or not admitted, whether or not notional, whether or not known, whether due or contingent, whether or not disputed, present or future, whether or not being adjudicated in any proceedings, whether or not decreed, whether or not reflected in the financial statements of the Corporate Debtor, or whether or not reflected in any record, document, statement, statutory or otherwise, arising prior to or after the Effective Date, but pertaining to period prior to the Effective Date, and / or arising in connection with Assignment or acquisition of shares of the company by the investors or conversion of the Conversion Debt into Equity or restructuring of the Assigned Debt or in any other manner as a result of or in connection with this Plan,</i></p>	<p>In <i>Ghanshyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd</i>,⁵ the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.</p> <p>The provisions of section 32A of the IBC will also apply.</p> <p>Therefore, the reliefs sought for are granted, but shall be ringfenced by the said judgment of the Hon'ble Supreme Court in so far as extinguishment of liabilities that are not part of the resolution plan, and non-extinguishment of personal guarantees are concerned.</p>

⁵ 2021 SCC OnLine SC 313 decided on 13.04.2021.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re. Resolution Plan of Wellman Carbo Metaliks India Ltd.

IA (IB) 397/KB/2021 in CP (IB) No. 132/KB/2018

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
	<p><i>shall be deemed to have been irrecoverably waived and permanently extinguished and written off in full with effect from the Effective Date. To give effect to such waiver and extinguishment, any contract, agreement, deed or document, whether oral or written, expressed or implied, statutory or otherwise, pursuant to which any such dues, liabilities, obligations, claims, counterclaims, demands, actions, penalties, right, title or interest in claimed (other than as specifically mentioned herein) shall stand modified with effect from the Effective Date without any further act, deed and approval of the Resolution Plan by Adjudicating Authority shall be deemed to be sufficient notice which may be required to be given to any person for such matters and no further notice shall be required to be given.</i></p>	
15.	<p><i>Extinguishment and waiver of all dues to the Existing Promoter group by Corporate Debtor including but not limited to any Financial Debt owed to them.</i></p>	Granted
16.	<p><i>An order approving the Resolution Plan shall be a deemed order upon Financial Creditors to cancel all pledge/ lien/ other encumbrances upon the issued share capital of the Company to enable corporate action as envisaged in the Resolution Plan.</i></p>	Granted.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re. Resolution Plan of Wellman Carbo Metaliks India Ltd.

IA (IB) 397/KB/2021 in CP (IB) No. 132/KB/2018

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
17.	<i>The Ministry of Corporate Affairs and/ or the Adjudicating Authority shall exempt compliance with the provisions of Chapter XV of the Companies Act, 2013 (and the corresponding rules issued under the Companies Act, 2013), in respect of schemes of arrangement contemplated under the Plan.</i>	Not granted at this stage.
18.	<i>Relinquishment of all / any promise to pay towards any obligation including corporate guarantee, pledge on any shares, mortgage or charge on any specific asset, etc. issued by Corporate Debtor in favour of or on behalf of any of its subsidiaries, associates, group companies or any third party.</i>	The judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd.</i> ⁶ lays down that when the resolution plan is approved by NCLT, 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 and state government 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.

⁶ 2021 SCC OnLine SC 313 decided on 13.04.2021.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re. Resolution Plan of Wellman Carbo Metaliks India Ltd.

IA (IB) 397/KB/2021 in CP (IB) No. 132/KB/2018

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
19.	<i>Specific waiver of transaction costs related leading to implementation of the Resolution Plan including but not limited to any incidence of Stamp Duty, ROC Fee, Income Tax, any Statutory Levy, Renewal Charges, etc. The Resolution Plan envisages increase in the authorised capital for implementation. The ROC fees towards the same shall be specifically waived.</i>	Not Granted. The Resolution Applicant shall ensure full compliance of stamp duty, registration fee, etc. as may be levied by the appropriate State Government.
20.	<i>To direct / grant all approvals required for consummating the scheme of arrangement presented in Annexure 2*. *The Merger or Reverse Merger shall not be an integral part of the Resolution Plan. However, by approving this Resolution Plan, the scheme of the Merger or Reserve Merger are in principle, approved by the Adjudicating Authority.</i>	Not granted at this stage. Such blanket approvals should not be asked for in “template” form when the Resolution Applicant has itself not made up its mind as to how to proceed. Approvals will be restricted to specifics in the Resolution Plan itself, and not to some future plan of action which is not delineated in the Resolution Plan.
21.	<i>To direct / grant all approvals required for undertaking the schemes of capital reduction envisaged in Annexure 2 of the Resolution Plan.</i>	Not granted at this stage. Such blanket approvals should not be asked for in “template” form when the Resolution Applicant has itself not made up its mind as to how to proceed. Approvals will be restricted to specifics in the Resolution Plan itself, and not to some future plan of action which is not delineated in the Resolution Plan.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re. Resolution Plan of Wellman Carbo Metaliks India Ltd.

IA (IB) 397/KB/2021 in CP (IB) No. 132/KB/2018

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
22.	<i>Waiver as to any liability that may arise pursuant to cases / arbitration / proceeding / action as mentioned in Information Memorandum and / or any other information as provided by the RP including but not limited to the one set out in Annexure 3.</i>	No general reliefs can be granted in the manner sought for. It is for the appropriate taxing authorities to consider the same in accordance with the relevant law.
23.	<i>Permitting waiver of all liabilities and taxes arising out of implementation of the transactions contemplated in the Resolution Plan and instructing the relevant authorities concerned accordingly.</i>	The Resolution Plan is expected to be compliant with other laws, as envisaged under section 30 of the Code. Therefore, this waiver cannot be granted. However, it is for the Income Tax Authorities to consider the same based on the spirit of the Code.
24.	<i>All litigations, prosecutions, legal proceedings, suits, claims (including claims for damages), notices, show-cause notices, demand notices, actions, arbitration or administrative, judicial, quasi-judicial, regulatory, government or any enforcement agencies, pending or threatened against the company or whose outcome adversely effects the Company (including but not limited to the proceedings set out in the Process Memorandum) arising prior to or after the Effective Date (“Proceedings”), shall be deemed to have been withdrawn or</i>	Such blanket reliefs cannot be granted at this stage, since the parties against whom these orders will operate, are not before us at this stage. However, the decision of the Hon’ble Supreme Court in <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , ⁷ shall apply.

⁷ 2021 SCC OnLine SC 313 decided on 13.04.2021.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re. Resolution Plan of Wellman Carbo Metaliks India Ltd.

IA (IB) 397/KB/2021 in CP (IB) No. 132/KB/2018

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
	<p><i>dismissed and will be deemed to have been barred with effect from the Effective Date.</i></p> <p><i>Pursuant to the order of the Adjudicating Authority approving this Plan, all liabilities, obligations, demands, actions or penalties made or imposed in relation to any proceedings, whether or not claimed, whether or not filed, whether or not assessed, whether or not crystalized, whether or not accrued, whether or not admitted, whether or not notional, whether or not known, whether due or contingent, whether or not disputed, present or future, whether or not being adjudicated in any proceedings, whether or not decreed, whether or not reflected in any record, document, statement, statutory or otherwise, arising prior to or after the Effective Date, but pertaining to a period prior to the Effective Date shall be deemed to have been irrecoverably waived and permanently extinguished and written off in full and settled at Nil value with effect from the Effective Date by virtue of the order of the Adjudicating Authority approving this plan.</i></p>	
25.	<p><i>Directions from Adjudicating Authority that other than actions taken by the CoC / Resolution Professional against the personal guarantees extended by the Existing Promoter group which have been</i></p>	<p><i>In Ghanshyam Mishra & Sons Pvt Ltd v. Edel-weiss Asset Reconstruction Company Ltd,⁸ the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate</i></p>

⁸ 2021 SCC OnLine SC 313 decided on 13.04.2021.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re. Resolution Plan of Wellman Carbo Metaliks India Ltd.

IA (IB) 397/KB/2021 in CP (IB) No. 132/KB/2018

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
	<p><i>initiated prior to the approval by the Adjudicating Authority, all legal suits, proceedings, certificate proceedings and/or quasi-legal proceedings that have been initiated against Corporate Debtor or the Incumbent Promoter Group, Subsidiaries / Associates / related party(ies) of the Incumbent Promoter Group, which may have an adverse impact on Corporate Debtor of any nature whatsoever, shall stand quashed, including but not limited to:</i></p>	<p>proceedings for recovery of claims which are not part of the Resolution Plan.</p> <p>In <i>Lalit Kumar Jain v Union of India & ors</i>,⁹ 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 <i>per se</i> operate as a discharge of the guarantor's liability.</p> <p>The provisions of section 32A of the IBC will also apply.</p>
a.	<p><i>for recovery of any debts and dues (including but not limited to statutory dues like Central/State Sales Tax/value added tax/Central Excise/Service Tax/ Goods and Services Tax, Income Tax, Custom Duty, etc. or any other statutory dues) pending against WCMIL and 100% waiver of all such claims/dues thereunder;</i></p>	<p>The exemptions sought for in this row should measure up to both of these judgments, and also section 32A of the IBC. Those exemptions or waivers sought which are outside the scope of these two judgments and of section 32A of the Code, are not granted.</p>
b.	<p><i>those related to taxation, related to environment and forest laws, railway claims/disputes, proceedings under the Foreign Exchange Management Act 1999, Prevention of Money Laundering Act 2002, criminal matters, etc.</i></p>	

⁹ 2021 SCC OnLine SC 396 decided on 21.05.2021.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re. Resolution Plan of Wellman Carbo Metaliks India Ltd.

IA (IB) 397/KB/2021 in CP (IB) No. 132/KB/2018

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
26.	<i>Directions from Adjudicating Authority to the relevant parties concerned to ensure continuity of critical infrastructure contracts/arrangements.</i>	Such blanket reliefs cannot be granted at this stage since the parties against whom these orders will operate, are not before us at this stage.
27.	<i>Directions to the concerned ROC and State Governments to waive stamp duty and fees applicable to the implementation of the Resolution Plan.</i>	Not granted. The Resolution Applicant shall ensure full compliance of stamp duty and fees as applicable.
28.	<i>Directions from Adjudicating Authority to Resolution Professional / IMA to ensure all the assets shall be fully insured till the time their possession is handed over to the new management.</i>	Not granted.
29.	<i>Directions from Adjudicating Authority allowing Corporate Debtor to use the brought forward losses and unabsorbed depreciation, whether assessed or not, for the purpose of the Income Tax Act, 1961. Further, RA should not be liable to pay any tax whatsoever arising out of implementation of this Resolution Plan.</i>	No general reliefs can be granted in the manner sought for. It is for the appropriate taxing authorities to consider the same in accordance with the relevant law.
30.	<i>Other than Admitted Workmen and Employees Dues and the potential obligations owed or payable to, (including any demand for any losses or damages, or interest, back wages, compensation, penal interest, liquidated damages already</i>	The judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd.</i> ¹⁰ lays down that when the resolution plan is approved by

¹⁰ 2021 SCC OnLine SC 313 decided on 13.04.2021.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re. Resolution Plan of Wellman Carbo Metaliks India Ltd.

IA (IB) 397/KB/2021 in CP (IB) No. 132/KB/2018

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
	<p><i>accrued/ accruing or in connection with any claims) any present or past, direct or indirect, permanent or temporary, employees and/or workmen of the Company, whether admitted or not, due or contingent, asserted or unasserted, crystalized or un-crystalized, known or unknown, secured or unsecured, disputed or undisputed, present or future, whether or not set out in the Provisional Balance Sheet or the balance sheet of the Company or the profit and loss account statements of the Company or the List of Creditors, in relation to any prior period to the effective date or arising on account of acquisition of control by the Resolution Applicant over the Company pursuant to the Resolution Plan, will be written off in full and shall be deemed to be permanently extinguished by virtue of the order of Adjudicating Authority approving the Resolution Plan and the Company or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.</i></p>	<p>NCLT, 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 and state government 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.</p>
31.	<p><i>Other than Admitted Workmen and Employees Dues and the potential Workmen Dues any and all rights and entitlements of present or past, direct or indirect, permanent or temporary, employees and/or workmen of the</i></p>	<p>The judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd.</i>¹¹ lays down that when the resolution plan is approved by</p>

¹¹ 2021 SCC OnLine SC 313 decided on 13.04.2021.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re. Resolution Plan of Wellman Carbo Metaliks India Ltd.

IA (IB) 397/KB/2021 in CP (IB) No. 132/KB/2018

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
	<p><i>Company, whether admitted or not, due or contingent, asserted or unasserted, crystalized or un-crystalized, known or unknown, secured or unsecured, disputed or undisputed, present or future, in relation to any prior period to the effective date or arising on account of acquisition of control by the Resolution Applicant over the Company pursuant to the Resolution Plan, will be written off in full and shall be deemed to be permanently extinguished by virtue of the order of Adjudicating Authority approving the Resolution Plan and the Company or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.</i></p>	<p>NCLT, 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 and state government 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.</p>
32.	<p><i>All Claims or demands made by, or liabilities or obligations owed or payable to or assessed by, the Governmental Authorities including but not limited to the Central government, the State governments, any regulatory or local authority or body or any agency or instrumentality thereof, in relation to any Taxes, including all such dues, duties, direct or indirect, penalties, fees, interest, fines, levies, cesses, assessments or additions or any other charges or payments or any other liability civil or criminal arising out of non-payment or non-</i></p>	<p>The judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd.</i>¹² lays down that when the resolution plan is approved by NCLT, 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 and state government or any local authority, guarantors and other stakeholders. On the date of</p>

¹² 2021 SCC OnLine SC 313 decided on 13.04.2021.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re. Resolution Plan of Wellman Carbo Metaliks India Ltd.

IA (IB) 397/KB/2021 in CP (IB) No. 132/KB/2018

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
	<p><i>compliance of any statutory provisions whatsoever (including without limitation, the Operational Creditor Claims, the Tax or liabilities and any liabilities in relation to any consent, permission, privilege, entitlement, exemption, benefit, license or approval granted to the Company or in relation to the Company, whether or not such consent, permission, privilege, entitlement, exemption, benefit, license or approval is subsisting, lapsed or expired), whether admitted or not, due or contingent, asserted or unasserted, crystallized or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, present or future, whether or not set out in the Provisional Balance Sheet, the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor or the List of Creditors, in relation to any period prior to the Effective Date or arising on account of the acquisition of control by the Resolution Applicant over the Company pursuant to this Resolution Plan, will be written off in full and will be deemed to be permanently extinguished by virtue of the order of the Adjudicating Authority approving this Resolution Plan and the Corporate Debtor or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto. It is also proposed that no interest or penalty should be levied on the crystallised</i></p>	<p>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.</p>

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re. Resolution Plan of Wellman Carbo Metaliks India Ltd.

IA (IB) 397/KB/2021 in CP (IB) No. 132/KB/2018

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
	<i>statutory liabilities with respect to the statutory liabilities of the Company prior to the Effective Date.</i>	
33.	<i>All dues under the provisions of Applicable Laws relating to Taxes (including without limitation, the Taxes Claims and Liabilities dues) whether admitted or not, due or contingent, whether or not set out in the Provisional Balance Sheet, the balance sheets of the Company or the profit and loss account statements of the Company or the List of Creditors, asserted or unasserted, crystallized or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, present or future, in relation to any period prior to the Effective Date or arising on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan, shall stand extinguished by virtue of the order of the Adjudicating Authority approving this Resolution Plan and the Company shall not be liable to pay any amount against such dues. All notices, assessments, appellate or other proceedings pending or threatened in relation to the Company, in relation to any period prior to the Effective Date or arising on account of the acquisition of control by</i>	The judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd.</i> ¹³ lays down that when the resolution plan is approved by NCLT, 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 and state government 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.

¹³ 2021 SCC OnLine SC 313 decided on 13.04.2021.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re. Resolution Plan of Wellman Carbo Metaliks India Ltd.

IA (IB) 397/KB/2021 in CP (IB) No. 132/KB/2018

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
	<p><i>the Resolution Applicant over the Company pursuant to this Resolution Plan, shall stand terminated and withdrawn and all consequential liabilities, if any, shall stand extinguished and be considered as not payable by the Company by virtue of the order of the Adjudicating Authority approving this Resolution Plan and any reassessment, revision or other proceedings under the provisions of the Applicable Laws relating to Taxes would be deemed to be barred in relation to any period prior to the Effective Date, by virtue of the order of the Adjudicating Authority approving this Resolution Plan. Any other liability, civil or criminal, on the erstwhile Directors or any of the personnel authorised by the Corporate Debtor or in its management, for any of their acts before the date of approval of the Resolution Plan by the NCLT, shall be solely on their account and neither WCMIL or its newly appointed Directors or key managerial person shall be liable for such past acts of non-compliance or violation of any of the provisions in law.</i></p>	
34.	<p><i>Any and all rights and entitlements of the Governmental Authorities including but not limited to the Central government, the State governments, any regulatory or local authority or body or any agency or</i></p>	<p>The judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd.</i>¹⁴ lays down that when the</p>

¹⁴ 2021 SCC OnLine SC 313 decided on 13.04.2021.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re. Resolution Plan of Wellman Carbo Metaliks India Ltd.

IA (IB) 397/KB/2021 in CP (IB) No. 132/KB/2018

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
	<p><i>instrumentality thereof (or any other party or entity (under any agreement, lease, license, approval, consent or permission), whether admitted or not, due or contingent, asserted or unasserted, crystallized or uncrystallised, known or unknown, disputed or undisputed, present or future, in relation to any period prior to the Effective Date or arising on account of the acquisition of control by the Resolution Applicant over the Company pursuant to this Resolution Plan, shall be deemed to be permanently extinguished by virtue of the order of the Adjudicating Authority approving this Resolution Plan and the Company or the Resolution Applicant shall at no point of time, directly or indirectly, have any obligation, liability or duty in relation thereto.</i></p>	<p>resolution plan is approved by NCLT, 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 and state government 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.</p>
35.	<p><i>Any and all other Claims or demands made by, or liabilities or obligations owed or payable to (including but not limited to any Operational Debt, any demand for any losses or damages, indemnification, principal, interest, compound interest, penal interest, liquidated damages, and other charges already accrued/ accruing or in connection with any Third Party Claims) any actual or potential Creditor, vendor, contracting counterparty, Government Authority, claimant or any other person</i></p>	<p>The judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd.</i>¹⁵ lays down that when the resolution plan is approved by NCLT, 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 and state government or any local</p>

¹⁵ 2021 SCC OnLine SC 313 decided on 13.04.2021.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re. Resolution Plan of Wellman Carbo Metaliks India Ltd.

IA (IB) 397/KB/2021 in CP (IB) No. 132/KB/2018

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
	<p><i>whatsoever (including but not limited to the Operational Creditors and its promoters, directors and other related parties of the Company and/ or the Existing Promoters) (singular as "Third Party" and collectively as "Third Parties"), whether admitted or not, due or contingent, asserted or un-asserted, crystallized or un-crystallized, known or unknown, secured or unsecured, disputed or undisputed, present or future, whether or not set out in the Provisional Balance Sheet, the balance sheets of the Company or the profit and loss account statements of the Company or the List of Creditors, in relation to any period prior to the Effective Date or arising on account of the acquisition of control by OMPL over the Company pursuant to this Resolution Plan, will be written off in full and shall be deemed to be permanently extinguished by virtue of the order of the NCLT approving this Resolution Plan and the Company or OMPL shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.</i></p>	<p>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.</p>

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re. Resolution Plan of Wellman Carbo Metaliks India Ltd.

IA (IB) 397/KB/2021 in CP (IB) No. 132/KB/2018

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
36.	<p><i>Any Encumbrance, or any other form of collateral (whether over immovable, movable assets, fixed deposits or cash or any other rights or privileges and including without limitation, any guarantee, security, letter of credit or pledge provided by the Existing Promoters of the Company) that was created/granted/arranged in connection with any Operational Debt or any other debt or obligation of the Company, at any time prior to the Effective Date, shall automatically be released and all liabilities and obligations of the Company in relation to such Encumbrance or other form of collateral shall stand permanently extinguished on the approval of this Resolution Plan by the NCLT, without the requirement of any further action on part of any party. All title deeds and other documents (including charge documents, if any) held by the Operational Creditors or on their behalf shall be immediately returned to the Company.</i></p>	<p>In <i>Ghanshyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd</i>,¹⁶ the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.</p> <p>In <i>Lalit Kumar Jain v Union of India & ors</i>,¹⁷ the Hon'ble Supreme Court held in para 133 that sanction of a resolution plan and finality imparted to it by section 31 does not <i>per se</i> operate as a discharge of the guarantor's liability.</p> <p>The provisions of section 32A of the IBC will also apply.</p> <p>Therefore, the reliefs sought for are granted, but shall be ringfenced by the two judgments of the Hon'ble Supreme Court in so far as extinguishment of liabilities that are not part of the resolution plan, and non-extinguishment of personal guarantees are concerned.</p>
37.	<p><i>Any and all rights and entitlements of any actual or potential Third Party, whether admitted or not, due or contingent, asserted or un-asserted, crystallized or un-crystallized, known or unknown, disputed or undisputed, present or future, in relation</i></p>	<p>The judgment of the Hon'ble Supreme Court in <i>Ghanshyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i>.¹⁸ lays down that when the resolution plan is approved by</p>

¹⁶ 2021 SCC OnLine SC 313 decided on 13.04.2021.

¹⁷ 2021 SCC OnLine SC 396 decided on 21.05.2021.

¹⁸ 2021 SCC OnLine SC 313 decided on 13.04.2021.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re. Resolution Plan of Wellman Carbo Metaliks India Ltd.

IA (IB) 397/KB/2021 in CP (IB) No. 132/KB/2018

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
	<p><i>to any period prior to the Effective Date or arising on account of the acquisition of control by OMPL over the Company pursuant to this Resolution Plan, shall be deemed to be permanently extinguished by virtue of the order of the NCLT approving this Resolution Plan and the Company or OMPL shall at no point of time, directly or indirectly, have any obligation, liability or duty in relation thereto.</i></p>	<p>NCLT, 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 and state government 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.</p>
38.	<p><i>All liabilities in relation to any letters of credit, letters of undertaking, guarantees, counter guarantees, corporate guarantees, bank guarantees, performance guarantees or other contingent or future Claims, liabilities and/or commitments of any nature whatsoever (including without limitation, the Tax, the Operational Creditor Claims and liabilities), issued by, or on behalf of, or at the behest of, the Company, or incurred or undertaken by the Company (as the case maybe), in relation to any period prior to the Effective Date or</i></p>	<p><i>In Ghanashyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd,</i>¹⁹ the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.</p> <p><i>In Lalit Kumar Jain v Union of India & ors,</i>²⁰ the Hon'ble Supreme Court held in para 133 that sanction of a resolution plan and finality imparted to it by section 31 does not <i>per se</i> operate</p>

¹⁹ 2021 SCC OnLine SC 313 decided on 13.04.2021.

²⁰ 2021 SCC OnLine SC 396 decided on 21.05.2021.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re. Resolution Plan of Wellman Carbo Metaliks India Ltd.

IA (IB) 397/KB/2021 in CP (IB) No. 132/KB/2018

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
	<p><i>arising on account of the acquisition of control by the Resolution Applicant over the Company pursuant to this Resolution Plan, whether asserted or unasserted, whether admitted or not, crystallized or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, whether or not set out in the Provisional Balance Sheet, the balance sheets of the Company or the profit and loss account statements of the Company or List of Creditors, will be written off in full and will be deemed to be permanently extinguished, by virtue of the order of the Adjudicating Authority approving this Resolution Plan and the Company or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto Guarantee/Corporate Guarantee provided by the Company to others shall stand extinguished</i></p>	<p>as a discharge of the guarantor's liability. The provisions of section 32A of the IBC will also apply. Therefore, the reliefs sought for are granted, but shall be ringfenced by the two judgments of the Hon'ble Supreme Court in so far as extinguishment of liabilities that are not part of the resolution plan, and non-extinguishment of personal guarantees are concerned.</p>
39.	<p><i>All Claims arising out of inquiries, investigations, notices, causes 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 and the proceedings (under Section 138 of the Negotiable Instruments Act, 1881, the</i></p>	<p><i>In Ghanshyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd,</i>²¹ the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan. The provisions of section 32A of the IBC will also apply.</p>

²¹ 2021 SCC OnLine SC 313 decided on 13.04.2021.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re. Resolution Plan of Wellman Carbo Metaliks India Ltd.

IA (IB) 397/KB/2021 in CP (IB) No. 132/KB/2018

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
	<i>Operational Creditor Claims and the Tax related Claims or liabilities in relation to any period prior to the Effective Date or on account of acquisition of control by the Resolution Applicant over the Company pursuant to this Resolution Plan, shall be settled at NIL value at par with the treatment accorded to the Operational Creditors of the Company as set out in the Resolution Plan.</i>	Therefore, the reliefs sought for are granted, but shall be ringfenced by the said judgment of the Hon'ble Supreme Court in so far as extinguishment of liabilities that are not part of the resolution plan, and non-extinguishment of personal guarantees are concerned.
40.	<i>It is clarified that the approval of the Adjudicating Authority and the CoC shall constitute adequate approval for issuance of New Equity Shares in accordance with Section 42 and Section 62(1)(c) of the Companies Act and other Applicable Law and accordingly, no approval or consent shall be necessary from any other Person/Government Authority in relation to either of these actions under agreement, the constitution documents of the Company or under any applicable Law.</i>	Granted, subject to the condition that all necessary filings with the RoC shall be completed, including payment of necessary fee.

25. On hearing the submissions made by the Ld. Counsel for the Resolution Professional, and perusing the record, we find that the Resolution Plan has been approved with 100% voting share. As per the CoC, the plan meets the requirement of being viable and feasible for revival of the Corporate Debtor. By and large, all the compliances have been done by the RP and the Resolution Applicant for making the plan effective after approval by this Bench.
26. On perusal of the documents on record, we are also satisfied that the Resolution Plan is in accordance with sections 30 and 31 of the IBC and also complies with

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

27. 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.
28. In case of non-compliance of this order or withdrawal of Resolution Plan, the CoC shall forfeit the EMD amount already paid by the Resolution Applicant.
29. 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.**
30. 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.
31. The Moratorium imposed under section 14 shall cease to have effect from the date of this order.
32. The Resolution Professional shall submit 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.
33. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.
34. Liberty is hereby granted for moving any Application if required in connection with implementation of this Resolution Plan.
35. A copy of this Order is to be submitted in the Office of the Registrar of Companies, West Bengal.
36. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.
37. 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.

38. **IA (IB) No. 397/KB/2021 and the main Company Petition i.e., CP (IB) No. 132/KB/2018** shall stand disposed of accordingly.
39. 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.
40. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
41. File be consigned to the record.

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)
25th November, 2021.

GGRB[LRA]