



**In the National Company Law Tribunal
Division Bench, (Court-II), Kolkata**

**IA (IB) (Plan)No. 3/ (KB) /2024
In CP(IB) No. 106/(KB) /2021**

Application under section 30(6) and section 31 of the Insolvency & Bankruptcy Code, 2016 read with regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for approval of Resolution Plan.

In the Matter of:

UCO Bank

...Financial Creditor

And

GR Multiflex Packaging Private Limited

....Corporate Debtor

And

In the matter of:

Mr. Madhur Agarwal, Resolution Professional of GR Multiflex Packaging Private Limited.

....Applicant

Date of Pronouncement of order: 30.10.2024

Coram:

Smt. Bidisha Banerjee : Member (Judicial)

Shri D. Arvind : Member (Technical)

Counsel appeared physically / through video Conferencing

Mr. Nikunj Berlia, Adv.] for the Resolution Professional

Ms. Mosarat Reyaz, Adv.

Ms. Urvashi Jain, Adv.

Mr. Sandip Manna, Adv.

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ORDER

Per Bidisha Banerjee, Member (Judicial):

1. The Court convened through hybrid mode.
2. Ld. Counsel for the parties were heard at length.
3. This application has been preferred to seek approval of Resolution Plan in its entirety along with annexure, Schedule, Appendixes including the claims contained therein as submitted by **M/s. Sikkim Organics** and reliefs and concessions sought for under the Plan.
4. The CoC has approved the Resolution Plan of **M/s. Sikkim Organics** by **84% vote and M/s. Sikkim Organics was declared as Successful Resolution Applicant (SRA)** in respect of the Corporate Debtor.

5. Brief facts of the CIRP process are as under:

- a. The applicant submits that vide its order dated 19.09.2022 was pleased to admit the petition and appointed Mr. Madhur Agarwal as the Interim Resolution Professional (“IRP”) of the Corporate Debtor and Mr. Agarwal was confirmed as RP of the Corporate Debtor in the 1st Meeting of CoC.
- b. **During the CIR Process, the CoC has met 8 times and the same are detailed below:**

Particulars of CoC Meeting	Date of CoC Meeting
1 st CoC Meeting	17 th October, 2022
2 nd CoC Meeting	07 th November, 2022
3 rd CoC Meeting	18 th November, 2022
4 th CoC Meeting	2 nd February, 2023
5 th CoC Meeting	23 rd March, 2023
6 th CoC Meeting	23 rd June, 2023
7 th CoC Meeting	14 th July, 2023
8 th CoC Meeting	11 th August, 2023

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- c. The applicant submits that in compliance with Section 15 of the Code on 22.09.2022, the applicant had made the public announcement in (a) Financial Express – English Language, Ahmedabad and Kolkata Edition (b) Aajkaal – Bengali Language, Kolkata Edition and invited claims from all the creditors in prescribed “Form A”.
- d. It is further submitted that as per Regulation 35(2) , the Resolution Professional shared the Fair Value and the Liquidation Value for Plant and Machinery and Land & Buildings with all the members of the CoC after the receipt of the Corporate Debtor obtained from the appointed Registered Valuers are as follows:
- i. Average Fair Value Rs. 1,72,70,311/-**
 - ii. Average Liquidation Value Rs. 1,23,59,133/-**
- e. The valuation reports received from the Registered Valuers on 18th November, 2022 is enumerated below for reference:

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Annexure - "E"

G R Multi Flex Packaging - Valuation Summary 18-Nov-22

	Fair Value in Rs	Liquidation Value in Rs	Variation with Average in %	Report Status
Plant & Machinery				
- Asim Maity	16,145,893	11,302,125	-1%	Final recd
- Debashish Ghosh	16,595,295	11,616,707	1%	Final recd
Average P&M	16,370,594	11,459,416		
Land & Building				
- Pritam Kr Nag	0	0	0%	Final recd
- Sheikh Anowar	0	0	0%	Final recd
Average L&B	0	0		
Financial Assets	899,717	899,717		NA SD 8,82,157 Cash 17,560
Total Valuation	17,270,311	12,359,133		

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- f. Ld. Counsel for the Applicant further states that Information Memorandum regarding receiving of claims from the Creditors of the Corporate Debtor and collating of the same has been submitted before the CoC on 05.11.2022.
- g. Further, in compliance with Regulation 36A(1), The invitation for expression of interest in prescribed Form-G was published by the Applicant on 28th October 2022 in one English Newspaper Financial Express and one Bengali Newspaper Aajkaal.
- h. After that expression of Interest was received from two participants Sikkim Organics and Oriclean Private Limited, the EMD of Rs 5 lakhs was received only from Sikkim Organics. The last date of the receipt of Resolution Plan was fixed as 22nd December 2022 but that was further extended to 2nd January 2023 when both the Resolution Applicant had asked for an extension.
- i. A Resolution Plan was duly received from Sikkim Organics. The Resolution Professional conducted required due diligence with regard to the compliance of the mandatory provisions of the Code and its Regulation on the plan submitted by Sikkim Organics.
- j. During the 5th COC meeting held on 23rd March 2023 it was stated that Oriclean is insisting that they will not submit any performance guarantee/they already have an outstanding amount with the Corporate Debtor. The COC was of the opinion that even if the Resolution Applicant is a Financial Creditor, they will have to adhere with the requirements stated in RFRQ and submit the EMD.
- k. The CIRP started on 19th September 2022 and the period of 180 had ended on 19th March 2023. The COC in its 5th meeting held on 23 March 2023 resolved to seek extension of CIRP

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period by 90 days with 84% voting. The CIRP was extended by 90 days vide an order dated 16th May 2023.

- l. During the 6th COC meeting held on 23rd June 2023, the Resolution Plan submitted by Oriclean Private Limited was rejected and it was decided to invite Sikkim Organics to discuss on their Resolution Plan.
- m. The Confidentiality Agreement was shared by the COC on 24th June, 2023 and the soft copy of the Compliance Report of the RP and the liquidation value was shared with the COC members on 24th June, 2023. The Confidentiality Agreement was shared only by UCO Bank and SIDBI. It was requested to the other Financial Creditors to send the Confidentiality Agreement
- n. During the 7th COC meeting, Mr. Soumendra Podder, the representative of the Resolution Applicant was invited to the COC as a special invitee and after much discussion on the Resolution Plan, the Resolution Applicant was suggested to substantially increase the amounts payable in the Plan to enable a successful resolution and to submit the amended resolution plan within a week.
- o. The 8th COC meeting was held on 11th August 2023 where the Resolution Professional informed that no completed ballots has been received by him after repeated reminder and calls. The commercial viability of the Resolution Plan was also discussed at length.
- p. The Resolution Applicant Sikkim Organics further sent a letter dated 14th August 2023 confirming that that they will pay an interest of 8% to Financial Creditors for payment beyond 60 days and they will bear the cost incurred by the Monitoring Committee.
- q. The Resolution Applicant further sent a letter dated 28th September 2023 stating that the payment that was being made

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to the Financial Creditors is increased by Rs. 10 Lakhs. The total payment being made to the Financial Creditor is Rs. 170 Lakhs as opposed to the previous proposed payment of Rs. 160 Lakhs.

- r. The Resolution Plan submitted by Sikkim Organics was approved by the COC Members by a vote of 84% in the ballot voting held and conducted by the Resolution Professional by sending the Voting Ballots to the Financial Creditors after the 8th COC meeting held on 11th August 2023 vote in favour of the Resolution Plan.
- s. The Resolution Professional has issued a Letter of Intent to the successful Resolution Applicant M/S Sikkim Organics on 20th December 2023. The successful Resolution Applicant has accepted the Letter of Intent on December 20th, 2022 by endorsing his **unconditional acceptance on the Letter of Intent.**
- t. The successful Resolution Applicant has **deposited a sum of Rs. 15,00,000/- as Performance Security** on 18th January 2024.
- u. The Resolution Professional (RP) also confirmed that he has not found any preferential Transactions under Section 43, Under valued Transactions under Section 45, extortionate transactions under Section 50 and fraudulent transactions under Section 66 on record.
- v. It is further submitted that an Affidavit under Section 29A of the Code was submitted by the Resolution Applicant which showed that they are not ineligible to submit a resolution plan.
- w. Ld. Counsel for the Resolution Professional states that the SRA, in the Resolution Plan proposed to pay interest @8% to the Financial Creditor on the payment to be made to them beyond 60 days from the date of the approval of the Resolution Plan and the same is attached to the Plan Application as annexure – N.

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- x. Ld. Counsel for the Resolution Professional states that the details of the amount claimed by Creditors and amount admitted therein are annexed with the Resolution Plan and the same is placed below:

Category of Stakeholder	Amount Claimed	Amount Admitted	Amount provided under the Resolution Plan	Percentage (%) of Amount provided to the Amount Claimed
Secured Financial Creditor	17,30,85,214	17,30,85,214	1,70,00,000	9.82%
Unsecured Financial Creditor	12,64,329	12,64,329	12643	0.99%
Operational Creditors	26,06,399	26,06,399	26,030	1%

- y. Ld. Counsel for the Resolution Professional has also confirms that the RP has not found any preferential transactions under Section 43, under valued Transactions under Section 45, extortionate transactions under Section 50 and fraudulent transactions under Section 66 on record.

6. **The Successful Resolution Applicant namely M/S Sikkim Organics**, submitted on 15.03.2023, has provided for a total plan value for the Corporate Debtor of **Rs. 2,86,17,013/- (Rs. 1,85,42,013/- to be paid to the Creditors of the Corporate Debtor and an amount of Rs. 1,00,75,000/- including contingent liability fresh investment.** The SRA has further clarified vide its letter dated

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11.09.2023 that additional payment of Rs. 10,00,000/- proposed to the Secured Financial Creditor shall be paid with the last instalment under the Resolution Plan. Therefore, the SRA proposed payment of Rs. 1,70,00,000/- to the Secured Financial Creditor. The amounts claimed, amount admitted and the distribution proposal in the Resolution Plan are as under:

(Amount in INR)

Sr. No.	Category of Creditor	Due Amount	Upfront payment within 60 days	Payment within 6 months	Payment within 12 months	Payment within 18 months	Payment within 24 months	Total
1.	Insolvency Resolution Process Cost	15,00,000	15,00,000					15,00,000
2.	Operational Creditor (other than government dues)	26,03,059	26,030					26,030
3.	Workers Liability including PF dues (ESIC dues)	3,340	3,340		0	0	0	3,340
4.	Financial Creditor-Secured	17,30,85,214	40,00,000	30,00,000	30,00,000	30,00,000	40,00,000	1,70,00,000
5.	Financial Creditor-Unsecured	12,64,329	12,643	0	0	0	0	12643
6.	Contingent Liability (Including WBDIC and fresh investment in CD for revival)	8,52,69,217	25,75,000	25,00,000	25,00,000	25,00,000	0	1,00,75,000
7.	Total – A (1+2+3+4+5+6)	26,37,25,159	81,17,013	55,00,000	55,00,000	55,00,000	30,00,000	2,86,17,013

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**7. -Synopsis of mandatory Provisions / Sections / Regulations and
their compliance are as under:**

Sl. No.	Provisions	Requirement	Compliance established
A. For Resolution Applicant			
1)	25(2)(h)	The Resolution Applicant must meet the criteria approved by the CoC having regarding to the complexity and scale of operations of business of the CD.	Yes. Clause 1.10, 1.11, 1.12 & 1.13 of the Resolution Plan
2)	Section 29A	The Resolution Applicant must be eligible to submit resolution plan.	Yes, The Resolution Professional has received affidavit dated 21.03.2023 for stating and affirming that RA is eligible to submit the Resolution Plan u/s 29A of the IBC, 2016.
3)	Section 30 (1)	The Resolution Applicant must submit an affidavit stating that it is eligible.	Yes, Appendix 11 of Resolution Plan
B. For Resolution Plan			
1.	Section 30 (2)(a)	The Resolution Plan must provide for the payment of CIRP costs.	Yes, Clause 5.1 of Resolution Plan

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Sl. No.	Provisions	Requirement	Compliance established
2.	Section 30 (2) (b)	The Resolution Plan must provide for the payment to the Operational Creditors.	Yes, Clause 5.5 of the Resolution Plan.
3.	Section 30 (2)(c)	The Resolution Plan Must provide for the payment to the Financial Creditors who did not vote in favour of the Resolution Plan.	Yes, Clause 5.4 of the Resolution Plan.
4.	Section 30 (2) (d)	The Resolution Plan must provide for the management of the affairs of the corporate debtor.	Yes, Clause 5.2 of the Resolution Plan.
5.	Section 30 (2) (e)	The Resolution Plan must provide for the implementation and supervision of the resolution plan.	Yes, Clause 5.11 & 5.12 of the Resolution Plan.
6.	Section 30 (2) (f)	The Resolution Plan should not contravene any of the provisions of the law for the time being in force.	NA
7.	Section 30 (4) (a)	The Resolution Plan is feasible and viable, according to the CoC.	Yes.
8.	Section 30 (4)	The Resolution Plan has	Yes, the same has

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Sl. No.	Provisions	Requirement	Compliance established
	(b)	been approved by the CoC with 66% voting share.	been passed by CoC with 84% voting.
9.	Section 31(1)	The Resolution Plan must provide provisions for its effective implementation plan, according to the CoC.	Yes, Clause 5.11 and 5.12 of the Resolution Plan.
10.	Regulation 35A	Whether the Resolution Professional made a determination if the corporate debtor	Yes, Clause 5.13 on page 7
11.	Regulation 38 (1)	The amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors.	Yes, Clause 5.4 of the Plan.
12.	Regulation 38(1A)	The resolution plan includes a statement as to how it has dealt with the interests of all stakeholders.	Yes, Clause 5.4 of the Resolution Plan.
13.	Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed	NO. Clause 5.17 of the Plan of the Resolution Plan.

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Sl. No.	Provisions	Requirement	Compliance established
		<p>to implement or contributed to the failure of implementation of any resolution plan approved under the Code.</p> <p>(ii) If, so whether the Resolution Applicant has submitted the statement giving details of such non-implementation?</p>	NA
14.	Regulation 38 (2)(a)	The Resolution Plan must provide for the term of the plan and its implementation schedule.	Yes, Clause 5.11 of the Resolution Plan.
15.	Regulation 38 (2)(b)	The Resolution Plan must provide for the management and control of the business of the corporate debtor during its term.	Yes, Clause 5.2 and Clause 5.6 of the Resolution Plan at page 16 states proposals for operating restructuring.

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Sl. No.	Provisions	Requirement	Compliance established
16.	Regulation 38 (2)(c)	The Resolution Plan must have adequate means of supervising its implementation provision.	Yes, Clause 5.11 on page 17 discusses the means for supervising its implementation.
17.	Regulation 38 (3)(a)	The Resolution Plan should demonstrate that it addresses the cause of default.	Yes. Clause 5.5, 5.6, 5.7 and 5.8 on page 16 discusses about financial, operational and capital restructuring.
18.	Regulation 38 (3)(b)	The Resolution Plan should demonstrate that it is feasible and viable.	
19.	Regulation 38 (3)(c)	The Resolution Plan must demonstrate that it has provisions for its effective implementation.	
20.	Regulation 38 (3)(d)	The Resolution Plan must demonstrate that it has provisions for approvals required and the timeline for the same.	Yes, Clause 5.9
21.	Regulation 38 (3)(e)	The Resolution Plan must demonstrate that the resolution Applicant has the capability to implement the Resolution Plan.	Yes, Clause 5.15

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Sl. No.	Provisions	Requirement	Compliance established
C. For Resolution Professional			
22.	Regulation 39 (2)	The Resolution Professional should file applications in respect of transactions observed, found or determined by him.	Yes, the RP has not filed any application before this Adjudicating Authority for fraudulent transactions under section 66 of the Code.
23.	Regulations 39 (4)	The Resolution Professional must provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	Yes. Provided by Resolution Applicant

8. A bare perusal of the extracts / excerpts from the Plan establishes that the **Resolution Plan has been approved with 84% 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 its approval.
9. On perusal of the documents on record, supported by an affidavit of the Resolution Professional, we accord our satisfaction that the Resolution Plan as approved by the CoC, is in accordance with sections 30 and 31 of the IBC and also comply with regulations 38

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and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, as enumerated supra.

10. We have also considered whether the reliefs, waivers and concessions have been sought for and as such given in the Resolution Plan. However the Plan mentions none. We would note that this Adjudicating Authority has power to grant reliefs, waivers and concessions only with respect to the reliefs, waivers and concessions that are directly in relation to the Code and the Companies Act 2013 (within the powers of the NCLT), and these are granted keeping in mind the object of the Code. No reliefs, waivers and concessions that fall within the domain of other government department/authorities are granted. However, The reliefs, waivers and concessions that pertain to other governmental authorities/departments may be dealt with the respective competent authorities/forums/offices, Government or Semi Government of the State or Central Government with regard to the respective reliefs, waivers and concessions whenever sought for.
11. It is almost trite and fairly well settled that the Resolution Plan must be consistent with the extant law. The Resolution Applicant shall make necessary applications to the concerned regulatory or statutory authorities for renewal of business permits and supply of essential services, if required, and all necessary forms along with filing fees etc. and such authority shall also consider the same keeping in mind the objectives of the Code, which is essentially the resolving of the insolvency of the Corporate Debtor.
12. The reliefs sought with respect to subsisting contracts/agreements can be granted, and no blanket orders can be granted in the absence of the parties to the contracts and agreements.
13. With respect to the waivers with regard to extinguishment of claims which arose Pre-CIRP and which have not been claimed are granted in terms of **Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited reported in**

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MANU/SC/0273/2021: (2021)9SCC657: [2021]13SCR737, wherein the Hon'ble Apex 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..."*

14. In this regard we also rely on the judgement of Hon'ble High Court of Rajasthan in the matter of **EMC v. State of Rajasthan, Civil Writ Petition No. 6048/2020 with 6204/2020 reported in (2023) ibclaw.in 42 HC** wherein it has been inter-alia held that *"Law is well-settled that with the finalization of insolvency resolution plan and the approval thereof by the NCLT, all dues of creditors, Corporate, Statutory and others stand extinguished and no demand can be raised for the period prior to the specified date."*
15. Thus on the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan as per the law laid down by the Hon'ble Supreme Court in **Ghanashyam Mishra** supra.. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.
16. With respect to the waivers sought in relation to guarantors, we seek to place reliance on the judgment of **Lalit Kumar Jain v. Union of India reported in MANU/SC/0352/2021: (2021) 9 SCC 321: (2021) ibclaw.in 61 SC**, wherein the Hon'ble Supreme Court held in

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para 133 that sanction of a resolution plan and finality imparted to it by section 31 does not per se operate as a discharge of the guarantor's liability shall apply.

17. With respect to the reliefs and waivers sought for all inquiries, litigations, investigations and proceedings shall be granted strictly as per the section 32A of the Code and the provisions of the law as may be applicable.
18. 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.
19. In case of non-compliance of this order or withdrawal of Resolution Plan, the CoC shall have the right to forfeit the EMD amount already paid by the Resolution Applicant.
20. 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.
21. 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.
22. The Moratorium imposed under section 14 shall cease to have effect from the date of this order.
23. 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.
24. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.
25. Liberty is hereby granted for moving any Application if required in connection with implementation of this Resolution Plan.

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26. A copy of this Order is to be submitted in the Office of the Registrar of Companies, West Bengal.
27. We find that there is a haircut of 90% for financial creditors and 99% for operational creditors and unsecured financial creditors.
28. Against Rs. 17.30 crore to secured financial creditors, only Rs. 1.70 crore has been proposed in the plan. Against Rs. 26.03 lakh due to Operational Creditors, only Rs. 0.26 lakh has proposed in the plan. Against Rs. 12.64 lakh due to unsecured financial creditors, only Rs. 0.12 lakh has been proposed.
29. Considering the haircuts mentioned above, we find that the resolution professional has not given any basis for not initiating PUFEE application. The resolution professional did not bring on record any transaction audit report to substantiate his inaction of not filing any PUFEE application.
30. Hence, although we approve the plan, we direct the CoC to appoint a transaction auditor and take action on PUFEE applications based on the report of transaction audit. Copy of the transaction audit report may be submitted to this Court.
31. It is not on record that whether the Financial Creditors have invoked Personal Guarantees or not. It is essential for the purpose of maximization for wealth of the Corporate Debtor, personal guarantees need to be invoked. Therefore, we direct the Financial Creditors to invoke Personal Guarantees, if not already done.
32. The Resolution Professional may stand discharged from his duties with effect from the date of this Order, however, he is required to comply with our direction mentioned in Para 30 of the order subject to comply the direction, which the creditors should bear in mind.
33. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.

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34. 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.
35. 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.
36. The Interlocutory Application being **IA (IBC) (PLAN)/3(KB)/2024 along with main Company Petition vide CP(IB) 106(KB) /2021 shall stand disposed of** accordingly.
37. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee,
Member (Judicial)**

Signed on this, the 30th day of October, 2024

M. Jana(P.S.)