20/10/2021

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

I.A. (IB) No. 479/KB/2021
In
C.P. (IB) No. 832/KB/2019

Application under section 30(6) and section 31(1) of the Insolvency & Bankruptcy Code, 2016 read with regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for approval of Resolution Plan.

In the matter of:
Carbon Resources Private Limited

... Operational Creditor

Versus

Dimension Steel & Alloys Private Limited

... Corporate Debtor

And

In the matter of:
Bijay Murmuria

... Applicant

Order reserved on: 09.09.2021
Order pronounced on: 08.10.2021

Coram:
Shri Rajasekhar V.K. : Member (Judicial)
Shri Harish Chander Suri : Member (Technical)

Appearances (through video conference)
For the Applicant

1. Mr. Anuj Singh, Advocate
2. Ms. Urmila Chakraborty, Advocate
3. Ms. Rashmi Singhee, Advocate
4. Ms. Madhuja Barman, Advocate
5. Mr. Arun Kumar Singh, Advocate
6. Mr. Bijay Murmuria, Resolution Professional

ORDER

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

1. This Court convened through video conferencing.

Preliminary

2. This Application – **IA (IB) No.479/KB/2021** – was moved on behalf of Mr. Bijay Murmuria, Resolution Professional *("RP")* of Dimension Steel & Alloys Private Limited (CIN: U27109WB2005PTC100957), by Mr Anuj Singh, learned counsel appearing for the RP, invoking the provisions of section 30(6) of the Insolvency & Bankruptcy Code, 2016 [hereinafter referred to as **"the Code"** or **"IBC"**] read with regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**"*CIRP Regulations*"**) for approval of the Resolution Plan in respect of Dimension Steel & Alloys Private Limited *("the Corporate Debtor")*.

3. The underlying Company Petition in CP (IB) No. 832/KB/2019 was filed by Carbon Resources Private Limited against the Corporate Debtor herein under section 9 of the Insolvency and Bankruptcy Code 2016, which was admitted *vide* order dated 18.10.2019.

4. The 180-day period of CIRP of the Corporate Debtor had expired on 15.04.2020. After extension of 90 days as well as exclusion of 161 days granted by this Adjudicating Authority *vide* order dated 05.11.2020, the last date of 270 days of CIRP of the corporate debtor was 29.12.2020. Further an extension of 60 days was granted by this Adjudicating Authority vide order dated 12.02.2020. Thereafter, the last date of the CIRP of the corporate debtor post approval of exclusion of 52 days by this Adjudicating Authority vide order dated 16.03.2021 was further extended to 07.05.2021.

5. Ms. Meena Sureka was appointed as the Interim Resolution Professional *("IRP") vide* order dated 18.10.2019.

6. The Applicant herein, Mr. Bijay Murmuria (IBBI Reg. No.IBBI/IPA-001/IP-N00007/2016-2017/10026) was appointed as the Resolution Professional *vide* order dated 23.01.2020.

Collation of claims

7. The IRP made public announcement on 19.10.2019 in *Financial Express* (English) and *Aajkal* (Bengali) (Kolkata Edition) newspapers regarding initiation of Corporate Insolvency Resolution Process *("CIRP")* and called for proof of claims from the financial and operational creditors, workers and employees of the Company in the specified forms till 02.11.2019. In response, claims were received from four financial creditors and fifteen operational creditors.

8. The erstwhile IRP filed the Committee of Creditors ("CoC") constitution report on 11.11.2019. Subsequently, the same was revised by the RP and filed with the Adjudicating Authority on 30.11.2020.

9. Details of financials creditors with Voting share-

Sl. No.	Name of Creditor	Claim submitted	Claim admitted	Voting %
1.	State Bank of India	90,56,27,432	90,56,27,432	37%
2.	Punjab National Bank	63,60,44,045	63,60,06,695	26%
3.	West Bengal Financial Corporation	46,83,82,967	46,83,82,967	19%
4.	Karnataka Bank	44,54,74,153	44,02,09,996	18%
	Total	**2,45,55,28,598**	**2,45,02,27,092**	**100%**

10. The RP submits that a total of fifteen CoC meetings have been held during CIRP period as follows:

Particulars	Date of CoC meeting
1st CoC Meeting	16.11.2019
2nd CoC Meeting	09.12.2019

3rd CoC Meeting	24.12.2019
4th CoC Meeting	18.01.2020
5th CoC Meeting	14.02.2020
6th CoC Meeting	12.03.2020
7th CoC Meeting	14.05.2020
8th CoC Meeting	21.11.2020
9th CoC Meeting	09.12.2020
10th CoC Meeting	04.01.2021
11th CoC Meeting	23.02.2021
12th CoC Meeting	18.03.2021
13th CoC Meeting	23.03.2021
14th CoC Meeting	25.03.2021
15th CoC Meeting	08.04.2021

Evaluation and voting

11. The Applicant submits that in terms of the provisions of section 25(2)(h) of the Code read with regulation 36A(1) of the CIRP Regulations, invitations in Form 'G' for Expressions of Interest *("EoI")* were published on 30.12.2019 in *Financial Express*-all editions & *Aajkaal* -Kolkata Edition within 75 days as per CIRP Regulations. The last date for submission of EoI was 18.01.2020. Since no EOI was received, the Resolution Professional extended the last date of submission of EOI till 10.02.2020 and published the revised Form G in *Financial Express*-all editions and *Aajkaal*-Kolkata edition on 18.01.2020. Resolution Professional had sent an email on 07.02.2020 to all the CoC members for further extension of date for submission of Expression of Interest (EOI) for a period of another 21 days i.e., till 02.03.2020. Accordingly, last date of submission of EoI was extended to 02.03.2020 and it was published in Business Standard-all editions and Aajkal-Kolkata edition on 12.02.2020.

However, the Applicant was of the view that more Expression of Interests needs to be scouted to reduce dependence over a single applicant. Therefore, the last time submission of EoI was further extended from 12.03.2020 to 19.11.2020 after receipt of approval by email of the Committee of Creditors. This was later ratified in the Ninth Meeting of Committee of Creditors and the Revised Form G was published in *Business Standard*-Kolkata Edition and *Aajkaal*- Kolkata Edition on 13.11.2020.

12. The Applicant submits that in response to the invitation for EoI, upto the last date, i.e.,19.11.2020, four EOIs were received. The Applicant issued the final list of prospectiveresolution applicants on 30.11.2020 wherein four prospective resolution applicants, *i.e.,* Prudent ARC Ltd, C.P. Ispat Private Limited, Satvik Enterprises Limited and RKG Asset Management LLP were eligible to submit Resolution Plan. The last date for submission of Resolution Plan as per latest revised EOI was 10.12.2020, which was later extended till 20.12.2020 on the request of the Prospective Resolution Applicants and as approved by the members of the Committee of Creditors vide email dated 09.12.2020. However, the last date for submission of Resolution Plan i.e., 20.12.2020 being a holiday the undersigned had further extended the last date for Submission of Resolution Plan for a period of further two days i.e. till 22.12.2020 post approval from the CoC. Further the applicant on 22.12.2020 filed an interlocutory application for extension of 60 days over and above the period of 270 days at the behest of the decision of the CoC and the same was approved vide order dated 12.02.2021. In compliance with the said Order, 330 days of the Corporate Insolvency Resolution Process of the Corporate Debtor expired on 27.02.2021.

13. In the meantime, as no resolution plan was received till the cut-off date of 22.12.2020, the agenda for liquidation of the Corporate Debtor was put for voting in the 10^{th} meeting of CoC convened on 04.01.2021 and consequently was approved via e-voting wherein 63.12% voted in favour of the resolution for Liquidation of the Corporate Debtor with 36.88% members altogether abstained from voting on the said resolution.

14. However, in a sudden turn of events, the Applicant received an email on 04.02.2021 from one of the shortlisted resolution applicants, namely, C.P. Ispat Private Limited filing an Interlocutory Application before this Adjudicating Authority, seeking an order directing the Applicant and the CoC to accept and consider their Resolution Plan submitted after the cut-off date being 22.12.2020 for the Corporate Debtor. Consequently, the Applicant convened the 11th meeting of the CoC wherein the members felt that since the resolution for Liquidation of the Corporate Debtor has already been approved by the 10th CoC Meeting and CIRP is slated to end as on 27.02.2021, the Resolution Professional in all fairness should file Interlocutory Application for Liquidation of the corporate debtor. However, the fact that a Resolution Plan had been received on 05.02.2021 from C.P. Ispat Pvt. Ltd., a shortlisted resolution applicant, well after the cut-off date being 22.12.2020 be brought to the attention of the Adjudicating Authority for necessary directions.

15. The interlocutory application for exclusion of 52 days from the CIRP and the application filed by C.P Ispat Pvt Ltd, the Resolution Applicant were taken up for hearing on 16.03.2021. For reasons mentioned in the order dated 16.03.2021, a period of 43 days in submitting the Resolution Plan by the Prospective Resolution Plan was condoned and an exclusion of 52 days was granted from the overall period of 330 days to enable a decision to be taken on the Resolution Plan for the Corporate Debtor.

16. Thereafter the Resolution Professional convened the 12th CoC meeting on 18.03.2021 as directed by this Adjudicating Authority, wherein the Resolution Plan submitted by C.P. Ispat Pvt Ltd was placed before the CoC for consideration.

17. Modifications to the Plan were suggested at the 13th, 14th and 15th CoC meetings. The final revised Resolution Plan was received on 10.04.2021 and was sent to all the CoC members for e-voting.

18. The CoC was informed of the fair market value and liquidation value of the

CorporateDebtor, as per the valuation reports, which is as follows:

Asset in question	Adroit (1st registered valuer)		LSI (2nd registered valuer)		Average liquidation value (INR)	Average fair value (INR)
	Liquidation Value (INR)	**Fair Value (INR)**	**Liquidation Value (INR)**	**Fair Value (INR)**		
Land & Building	4,19,03,990	5,09,12,259	2,59,78,000	3,71,11,000	33,94,099	4,40,11,629
Plant & Machinery	12,13,82,517	17,23,86,163	12,76,39,000	18,23,41,000	12,45,10,758	1,77,36,358
S & FA	7,48,244	7,48,244	1,22,590	1,36,408	4,35,417	4,42,326
Total					**15,88,87,170**	**22,18,17,537**

19. The Committee deliberated on the resolution plan in terms of section 30(4) of the Code and after discussion agreed to put the said resolution plan for voting. The e-voting system was open during the period 10.04.2021 to of 22.04.2021. The Resolution Plan of C.P. Ispat Private Limited was approved with 80.93% voting share.

20. The application for approval of the resolution plan by this Adjudicating Authority was filed on 28.04.2021.

Details of Resolution Plan/Payment Schedule

21. The amount proposed in the Resolution Plan are tabulated below:

Sl. No.	Types of debts	Resolution Amount
1.	CIRP Cost	1,23,31,923/-
2.	Operational Creditors (other than employee and workmen)	17,50,000/-
3.	Employees and Workmen claims	2,40,770/-

4.	Employees & Workmen Union (unclaimed)	25,00,000/-
5.	Unsecured Financial Creditors	1,86,25,986/-
6.	Secured Financial Creditors	17,17,07,818/-
7.	Capex and Working Capital	1,00,00,000/-
Total		**21,71,56,497/-**

CIRP and compliances

22. The Applicant submits details of various compliances as envisaged within the Code andthe 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):

Clauseof s.30(2)	***Requirement***	***How dealt with in thePlan***
(a)	Plan must provide for payment of CIRP cost in priorityto repayment of other debts of the CD in the manner specified by the Board.	Clause 6(b) at Page 5 of the Resolution Plan.
(b)	Plan must provide for repayment of debts of OCs insuch manner as may be specified by the Board which shall not be less than	
	(i) the amount payable to them in the event of liquidation u/s 53; or	Clause 7(d) at Page 6 of the Resolution Plan.

Clauseof s.30(2)	*Requirement*	*How dealt with in thePlan*
	(ii)Plan must provide for repayment of debts of OCs insuch manner as may be specified by the Board which shall not be not less than amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher and	Clause 7(d) at Page 6 of the Resolution Plan.
	(iii) provides for payment of debts of financial creditorswho do not vote in favour of the resolution plan, in suchmanner as may be specified by the Board.	Clause 8(i) at Page 11 of the Resolution Plan.
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Clause 17(f) at Page 22 of the Resolution Plan.
(d)	Implementation and Supervision.	Clause 17(g) to (o) at Pages 22-23 of the Resolution Plan.
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Clause 20(b) at Page 26 of the Resolution Plan.
(f)	Conforms to such other requirements as may bespecified by the Board.	Provided in the different parts of the Resolution plan

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

Particulars	*Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation*
A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximisation of value of its assets, including but not limited to the following:	
(a) transfer of all or part of the assets of the corporate debtor to one or more persons;	Clause 12(h) at Page 17 of the Resolution Plan.
(b) sale of all or part of the assets whether subject to any security interest or not;	Not proposed by the Resolution Applicant.
(c) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	Not proposed by the Resolution Applicant.
(d) the substantial acquisition of shares of the corporate debtor, or the merger or the consolidation of the corporate debtor with one or more persons;	Clause 13(b) at Page 18 of the Resolution Plan.
(e) cancellation or delisting of any shares of the corporate debtor, if applicable;	Clause 13 (a) at Page 18 of the Resolution Plan.
(f) satisfaction or modification of any security interest;	Clause 10(n) at page 14 of the Resolution Plan.
(g) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Not proposed by the Resolution Applicant.
(h) reduction in the amount payable to the creditors;	Clause 7 (e) at Page 7 and Clause 8 (d) and (e) at Page 10 of the Resolution Plan.
(i) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	Not proposed by the Resolution Applicant.
(j) amendment of the constitutional documents of thecorporate debtor	*Clause 23l-m at Page 33 of the Resolution Plan*

(k) issuance of securities of the corporate debtor, forcash, property, securities, or in exchange for claimsor interests, or other appropriate purpose;	Not proposed by the Resolution Applicant.
(l) change in portfolio of goods or services producedor rendered by the corporate debtor;	Clause 12(e) at Page 17 of the Resolution Plan.
(m) change in technology used by the corporatedebtor; and	Not proposed by the Resolution Applicant.
(n) obtaining necessary approvals from the Central and State Governments and other authorities.	*Clause 18 at Page 24 of the Resolution Plan*

Mandatory contents of Resolution Plan in terms of regulation 38 of CIRPRegulations:

Ref. to relevant Reg.	*Requirement*	*How dealt with in thePlan*
38(1)	The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.	Clause 7(g) at Page 7 of the Resolution Plan.
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors of the corporate debtor.	Clause 20(a) at Page 26 of the Resolution Plan.
38(1B)	A resolution plan shall include a statement givingdetails if the resolution applicant or any of its related parties has failed to	Clause 14(b) at Page 18 of the Resolution Plan.

	implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.	
38(2)	A resolution plan shall provide:	
	(a) the term of the plan and its implementation schedule;	Clause 17(e) at Page 21 of the Resolution Plan.
	(b) the management and control of the business ofthe corporate debtor during its term; and	Clause 17(f) at Page 22 of the Resolution Plan.
	(c) adequate means for supervising its implementation.	Clause 17(f) to (o) at Page 22-23 of the Resolution Plan.
38(3)	*A resolution plan shall demonstrate that –*	
	(a) it addresses the cause of default;	Clause 5 at Pages4-5 of the Resolution Plan.
	(b) it is feasible and viable;	Clause 19 at Pages 25-26 of the Resolution Plan.
	(c) it has provisions for its effective implementation;	Clauses 17 and 19 at Pages 21-23 and 25-26 respectively of theResolution Plan.
	(d) it has provisions for approvals required and the timeline for the same; and	Clause 18 at Pages 23-24 of the Resolution Plan.
	(e) the Resolution Applicant has the capability to implement the resolution plan.	Clause 19 at Pages 25-26 of the Resolution Plan.

23. 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 namely Resolution Applicant's undertaking** at **pages 235 to 237** of the Application.

24. 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 as **Annexure N1** at **pages 257 to 273** of the Application.

25. The RP issued the Letter of Intent to the successful Resolution Applicant on 23.04.2021 and as required under Regulation 39(4), payment through RTGS of INR 1,00,00,000 (Rupees One Crore Only) already made to the RP shall be extended as the Performance Guarantee in compliance to the RFRP issued and as decided by CoC members in this matter, which has been annexed as **Annexure M and M1** at pages 241 to 245 of the Application.

Details of Resolution Plan/Payment Schedule

26. 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.*, C.P. Ispat Private Limited, under the said Resolution Plan is tabulated as under:

(Amount in crore)

Sl. No	Particulars	Amount Claimed	Amount Admitted	Amount provided under the Plan	Term
1	CIRP Cost	NIL	NIL	1.23	Within 30 days from NCLT Approval

Sl. No	Particulars	Amount Claimed	Amount Admitted	Amount provided under the Plan	Term
					date
2	Operational Creditors				
	a)Operational Creditors *(other than Workmen and Employees)*	85.33	85.33	0.17	Within 60 days from NCLT Approval date
	b)Operational Creditors *(Workmen and Employees)*	0.02	0.02	0.02	Within 60 days from NCLT Approval date
	c) Other Operational Creditor	-	-	0.25	Within 60 days from NCLT Approval date
	Total *(Operational Creditors)*	**85.35**	**85.35**	**0.44**	**Within 60 days from NCLT Approval**
3	Financial Creditors	245.55	245.02	19.03	Overall within 18 months from NCLT Approval date, off which Rs8.18crore within 60

Sl. No	Particulars	Amount Claimed	Amount Admitted	Amount provided under the Plan	Term
					days from NCLT Approval Date and Balance 50% of the said amount in the first 9 months and remaining 50% in the next 9 months
4	Govt Dues	-	-	-	
	Total	**330.9**	**330.3**	**20.7**	
5	Working Capital		–	1.00	To be infused progressively as and when required
	Total Resolution Fund			**21.7**	

27.

28. The Resolution Plan defines "**Approval Date**" as the date of approval of this Resolution Plan by the NCLT, or any other applicable Adjudicating Authority.

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

29. The Resolution Plan also provides for –

a. Management of Company after resolution in Clause 17 at pages 21-23 of the Resolution Plan;

b. Term of the resolution plan in Clause 17 at pages 21-23 of the Resolution Plan; and

c. Implementation and Supervision of the resolution plan in Clause 17 at pages 21-23 of the Resolution Plan.

Waivers, Reliefs and Exemptions

30. Relief and Concessions:

Sl. No.	Relief and/or Concessions Sought	Orders Thereon
1.	In the Resolution plan there is express provision that the Resolution Applicant shall not be responsible for any previous liability i.e. before the approval of Resolution plan by the Adjudicating Authority except those of which claim has been admitted by the RP. The payment of old dues shall be to the extent as proposed by the RA in the Resolution plan.	In ***Ghanshyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd,***[1] 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. Therefore, the reliefs sought for are granted in terms of judgment of the Hon'ble Supreme Court in so far as extinguishment of liabilities that are not part of the resolution plan are concerned.
2.	The proper accounting effect shall be given in books of accounts on the Approval Date which includes inter alia the adjustment in the value of	It is for the Successful Resolution Applicant to convince the Income Tax Authorities in this regard. No

[1] 2021 SCC OnLine SC 313 decided on 13.04.2021.

Sl. No.	Relief and/or Concessions Sought	Orders Thereon
	fixed assets, debtors and creditors recast as proposed in the Resolution plan, current assets to the current market value, current liability as proposed in the Resolution plan, short term & long term borrowings to the tune it is proposed in the Resolution plan and all these will be adjusted through capital reserve/ reserve and surplus or as per guidance note, if any issued by the Institute of Chartered Accountants of India and applicable accounting standards. Due to this effect the Resolution Applicant shall not be liable to pay any income tax or other statutory liability.	orders of this Adjudicating Authority are necessary in this regard.
3.	The Resolution Applicant shall be liable to pay Income Tax, GST, VAT, SEZ payments if any and other statutory dues which occur or accrue only as a going concern after the Approval Date.	In ***Ghanshyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd,***[2] 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. Therefore, the reliefs sought for are granted, in terms of the judgment of the Hon'ble Supreme Court in so far as extinguishment of liabilities that are not part of the resolution plan

2 2021 SCC OnLine SC 313 decided on 13.04.2021.

Sl. No.	Relief and/or Concessions Sought	Orders Thereon
		are concerned.
4.	The available brought forward losses shall be carried forward in accounts of the Corporate Debtor and the same shall be available for setoff against any credits, gains, write backs if any in the future.	This is for the income tax authorities to consider.
5.	The available GST credit in the account of the Corporate Debtor shall be carried forward in accounts.	Granted.
6.	On approval of the Resolution Plan by the NCLT, it shall be deemed that all and any Government approvals required by the Resolution Applicant for the purpose of implementing this Resolution Plan have been granted.	This shall have to be in conformity with section 31(4) of the IBC, which stipulates that the resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later.
7.	The Resolution Applicant further undertakes that any relevant approval which may be required from any authority for the purpose of successful implementation of this Resolution Plan shall be obtained within such timelines as stated in the tentative plan implementation schedule.	This is in the nature of an undertaking and hence does not require any approval of this Adjudicating Authority.

Sl. No.	Relief and/or Concessions Sought	Orders Thereon
8.	Save and except the Statutory payments mentioned in the Resolution Plan, any claim pertaining to any dues pertaining to any statutory/ government agency, including taxes, duty, penalties, interest, fines, cesses, unpaid Tax Deducted at Source / Tax Collected at Source, whether verified or not, due or contingent, whether part of Tax due diligence finding or not, asserted or unasserted, crystallised or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, present or future, in relation to any period prior to the acquisition of control by the Resolution Applicant over the Company pursuant to this Plan, shall stand extinguished by virtue of the order of the NCLT approving this Plan and the Company should not be liable to pay any amount against such demand. Further, any notice(s) proposing to initiate any proceedings against the company in relation to the period prior to the date of NCLT order and pending on that date, shall be considered withdrawn and should not be proceeded against. Post the order of the NCLT, no re-assessment / revision or any other proceedings under the provisions of the Income Tax Act or any other statutory Act	In ***Ghanshyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd,***[3] 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. Therefore, the reliefs sought for are granted, in terms of the judgment of the Hon'ble Supreme Court in so far as extinguishment of liabilities that are not part of the resolution plan are concerned.

[3] 2021 SCC OnLine SC 313 decided on 13.04.2021.

Sl. No.	Relief and/or Concessions Sought	Orders Thereon
	should be initiated on the Company in relation to period prior to acquisition of control by the Resolution Applicant and any consequential demand should be considered non-existing and as not payable by the Company. Any proceedings which were kept in abeyance in view of process under the Code or otherwise should not be revived post the order of NCLT. All cases filed against the company should be deemed to be disposed off or withdrawn without any liability either on the company or on resolution applicant.	
9.	The Resolution Applicant will acquire control over the Company pursuant to the order of the NCLT and not pursuant to the usual acquisition process which would ordinarily include a detailed due diligence and representation, warranties and indemnities in relation to the affairs of the Company from its Existing Promoters. The Resolution Applicant may take some time to discover all the non-compliances that may exist in relation to the Company on the date of acquisition of control by the Resolution Applicant over the Company. As such the Resolution Applicant may take some time to identify such non-compliances and to address them. In light of this, the Resolution	The period available to any resolution applicant in terms of section 31(4) of the IBC shall apply.

Sl. No.	Relief and/or Concessions Sought	Orders Thereon
	Applicant prays to the NCLT to grant it immunity from any actions and penalties (of any nature) under any laws for any non-compliance of laws in relation to the Company or by the Company, which was existing as on the date of acquisition of control by the Resolution Applicant over the Company and which continues for a period of upto 12 (twelve) months after the acquisition of control by the Resolution Applicant over the Company. The Resolution Applicant undertakes to cause the Company to expeditiously identify such non-compliances, evaluate the steps required to address such non-compliances and take steps to remedy such non-compliances to the extent practically possible. No penalty to be charged while complying with the irregularity.	
10.	All inquiries, investigations, cases, whether civil or criminal, notices, causes of action, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings against, or in relation to, or in connection with the Corporate Debtor or affairs of the Corporate Debtor, pending or threatened, present or future which includes the list as provided under Schedule 4 below (including without limitation, any investigation, action proceeding,	There are two parts to this: (1) ***Liability for prior offences:*** This is covered by section 32A of the IBC, which lays down that the liability of a corporate debtor for an offence committed prior to the commencement of CIRP shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating

Sl. No.	Relief and/or Concessions Sought	Orders Thereon
	prosecution, whether civil or criminal, by the Central Bureau of Investigation, the Enforcement Directorate or any other enforcement agency), in relation to any period prior to the Completion Date or arising on account of the acquisition of control by the Resolution Applicants over the Corporate Debtor pursuant to this Resolution Plan shall be deemed to be withdrawn or dismissed and all liabilities or obligations in relation thereto, whether or not set out in the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor, will be deemed to have been written off in full and permanently extinguished by virtue of the order of the NCLT approving this Resolution Plan and the Company or the Resolution Applicants shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto. By virtue of the order of the NCLT approving this Resolution Plan all new inquiries investigations, whether civil or criminal, notices, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings will be deemed to be barred and will not be initiated or admitted against the Corporate Debtor in relation to any period prior to the acquisition of	Authority under section 31, if the resolution plan results in change in the management or control of the corporate debtor. (2) ***Liabilities in existence prior to the commencement of CIRP:*** These will be covered by the resolution plan itself. In ***Ghanshyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd***, 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.

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	control by the Resolution Applicants over the Company or on account of the acquisition of control by the Resolution Applicants over the Corporate Debtor pursuant to this Resolution Plan.	
11.	The Resolution Applicant also prays to the NCLT to grant an exemption from the obligation to pay taxes and stamp duty in respect of actions undertaken pursuant to the approval of the Resolution Plan by the NCLT, since such taxes and duties, if required to be paid, will render the Resolution Plan unviable for the Resolution Applicants in monetary terms.	Not granted.
12.	The Department of Registration and Stamps, Government of West Bengal and Jharkhand, ROC and the MCA are to exempt the Resolution Applicant and the Company, from the levy of any stamp duty and fees applicable in relation to this Plan and its implementation.	Not granted.
13.	Accordingly, upon the Resolution Plan being approved by the NCLT, the actions undertaken pursuant to the implementation of the Resolution Plan shall be deemed to be exempt from any tax obligation under various taxing statutes, including but not limited to Sections 50B, 50V, 50CA, 56 and 115JB	Not granted.

Sl. No.	Relief and/or Concessions Sought	Orders Thereon
	under the Income-tax Act as well as Central/State Goods and Service Tax Act, 2017 (as amended from time to time) and the provisions of the Indian Stamp Act, 1899 (as amended from time to time) and other laws relating to payment of stamp duty applicable in any state.	
14.	As the Resolution Applicants will acquire control over the Company pursuant to the order of the NCLT and not pursuant to the usual acquisition process which would ordinarily include a detailed due diligence and representation, warranties and indemnities in relation to the affairs of the Company from its existing promoters, the Resolution applicants, may take some time to discover all the non-compliances that may exist in relation to the Company on the date of acquisition of control by the Consortium over the Company.	This is the same as Sl. No.9.
15.	Any award/order/judgment/decree in any court of law/forum/panel of arbitrators or any other adjudicating authority in India as well as outside India against the company shall stand discharged. No execution proceeding for any such award/order/ judgement/decree shall remain pending or can be given effect to or allowed against the company in India or elsewhere.	In ***Ghanshyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd***, 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. This is binding law under Article 141 of the Constitution.

Sl. No.	Relief and/or Concessions Sought	Orders Thereon
16.	All proceedings against the Corporate Debtor by an operational creditor in any court of law/forum/panel of arbitrators or any other adjudicating authority in India or elsewhere shall stand dismissed and no fresh/further proceedings can be commenced against the company for any cause of action occurring on or before the date of approval of the Resolution Plan.	In ***Ghanshyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd***, 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. This is binding law under Article 141 of the Constitution.
17.	Any pledges, guarantees, securities created by the Corporate Debtor created for securing the debt of any other entity except mentioned specifically in this Resolution Plan shall stand satisfied, cured, waived, and extinguished and claims in respect thereof can ever be made on the Corporate Debtor after the Approval Date.	Granted.

Findings:

31. On hearing the submissions made by the Ld. Senior Counsel for the Resolution Professional and perusing the record, we find that the Resolution Plan has been approved with 80.93% voting share. As per the CoC, the Plan meets the requirement of being viable and feasible revival of the Corporate Debtor. By and large, there are provisions for making the Plan effective after approval by this Bench.

32. On perusal of the documents on record, we are satisfied that the Resolution Plan is inaccordance 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.

33. 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.

34. 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.

Orders

35. Subject to the observations made in this Order, the Resolution Plan in question is hereby **approved**. **The Resolution Plan shall form part of this Order.**

36. 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. The Electricity Service Provider is hereby directed to restore the electricity connection to the premises of the Corporate Debtor immediately upon receipt of the amount earmarked to it under the Resolution Plan, so that the operations of the Corporate Debtor can be restarted without any delay. The Corporate Debtor under the new management shall pay the applicable security deposit as for a new connection

37. The Moratorium imposed under section 14 shall cease to have effect from the date of this order.

38. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record.

39. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.

40. Liberty is hereby granted for moving any application if required in connection with implementation of this Resolution Plan.

41. A copy of this Order shall be filed with the Registrar of Companies, West Bengal.

42. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except those duties that are enjoined upon him for implementation of the approves Resolution Plan.

43. The Resolution Professional is further directed to hand over 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 and premises through the Resolution Professional to finalise the further line of action required for starting of operations of the Corporate Debtor.

44. IA (IB) No.479/KB/2021 and the main Company Petition, *i.e.*, CP (IB) No.832/KB/2019 shall stand disposed of accordingly.

45. 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.

46. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

47. File be consigned to the record.

Sd/-
Harish Chander Suri
Member (Technical)

Sd/-
Rajasekhar V.K.
Member (Judicial)
08.10.2021

CERTIFIED TO BE TRUE COPY

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DD / DR / AR / Court Officer
National Company Law Tribunal
Kolkata Bench