

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

IA(IB) No. 272/KB/2021

in

CP(IB) No. 28/KB/2019

*Application under section 30(6) for approval of Resolution Plan
under section 31 of the Insolvency and Bankruptcy Code, 2016*

In the matter of

CP (IB) No. 263/KB/2018

J M Financial Asset Reconstruction Co. Ltd.

...Financial Creditor

Versus

Krish (Raipur) Hotels Private Limited

...Corporate Debtor

And

In the matter of

IA(IB) No. 272/KB/2021

Amit Chandrashekhar Poddar [*Resolution Professional
of Krish (Raipur) Hotels Private Limited (in CIRP)*]

...Applicant

Order reserved on: 08.04.2021

Order pronounced on: 19.05.2021

Coram:

Mr. Rajasekhar V.K.

: Member (Judicial)

Mr. Harish Chander Suri

: Member (Technical)

Appearances:

For the Applicant

: 1. Ms. Mamta Binani, Advocate.
2. Mr. Rohit Sharma, PCS
3. Mr. Amit Poddar, RP in person

For Financial Creditor

: 1. Mr. Utsav Mukherjee, Advocate

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

**J M Financial Asset Reconstruction Co. Ltd v. Krish (Raipur) Hotels Private Limited
IA(IB) No. 272/KB/2021 in CP(IB) No. 28/KB/2019**

ORDER

Per: Harish Chander Suri, Member (Technical)

1. This is an Application by Mr. Amit Chandrashekhar Poddar, Resolution Professional (RP) of Krish (Raipur) Hotels Private Limited (CIN: U55101WB2009PTC132828) under section 30(6) read with section 31(1) of the Insolvency and Bankruptcy Code, 2016 and regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for approval of a Resolution Plan in respect of Krish (Raipur) Hotels Private Limited, the Corporate Debtor.
2. The underlying company petition in CP(IB) No. 28/KB/2019 was filed by J M Financial Asset Reconstruction Co. Ltd against Krish (Raipur) Hotels Private Limited, the Corporate Debtor, under section 7 of the Insolvency and Bankruptcy Code 2016 (“**the Code**” or “**IBC**”) which was admitted *vide* order dated 30.09.2019 in CP(IB) No. 28/KB/2019.
3. Initially, the Applicant/RP (Reg. No. IBBI/IPA-001/IP-P00449/2017-18/10792) was appointed as the Interim Resolution Professional. He was later confirmed as the Resolution Professional of the Corporate Debtor at the first meeting of the Committee of Creditors (CoC) on 23.10.2019.
4. The IRP made public announcements on 10.10.2019 in *Times of India* (English) Raipur and Kolkata editions, *Dianik Bhaskar* (Hindi) Chhattisgarh edition and *Duranta Barta* (Bengali) Kolkata edition of newspapers regarding initiation of CIRP and called for proof of claims from the financial and operational creditors, workers and employees of the Company in the specified forms till 14.10.2019. Although these newspapers and their respective editions have been mentioned in para 2 of the first progress report, pages of which are not numbered, filed by the Applicant, none have been attached either to the said progress report nor with the present application. A newspaper cutting, however, of *The Economic Times* (English) Kolkata edition is attached to the said progress report.

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

**J M Financial Asset Reconstruction Co. Ltd v. Krish (Raipur) Hotels Private Limited
IA(IB) No. 272/KB/2021 in CP(IB) No. 28/KB/2019**

5. The claims of financial and operational creditors as existing as on the date of filing the present application is as follows:

I. Claims of Creditors:

(Amount in lakhs)

Sl. No.	Category of Claim and Reference to Clause of the Resolution Plan	Amount admitted as per Information Memorandum	Amount proposed to be paid as per Plan
1.	CIRP Costs (<i>approx.</i>) [Clause 5.5]	100.00	100.00
2.	Financial Creditors [Clause 5.8.1]	16775.28	2934.00
3.	Operational Creditors [Clause 5.7.1 (i)]	1169.30	25.00
4.	Employees/Workmen [Clause 5.6]	0.00	0.00
5.	Others	0.00	0.00
	Total	18,044.58	3,059.00

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

Particulars	Date of CoC Meeting
1 st CoC Meeting	23.10.2019
2 nd CoC Meeting	27.11.2019
3 rd CoC Meeting	18.12.2019
4 th CoC Meeting	09.01.2019
5 th CoC Meeting	25.02.2019

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

**J M Financial Asset Reconstruction Co. Ltd v. Krish (Raipur) Hotels Private Limited
IA(IB) No. 272/KB/2021 in CP(IB) No. 28/KB/2019**

Particulars	Date of CoC Meeting
6 th CoC Meeting	09.06.2020
7 th CoC Meeting	16.07.2020
8 th CoC Meeting	09.10.2020
9 th CoC Meeting	22.10.2020
10 th CoC Meeting	11.11.2020
11 th CoC Meeting	28.12.2020
12 th CoC Meeting	04.02.2021
13 th CoC Meeting	10.02.2021

7. 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 (EoIs) from potential resolution applicants were issued on 30.12.2020 for submission of resolution plans for the Corporate Debtor. This was published in *Business Standard* (English) and *Duranto Barta* (Bengali) Kolkata editions, *Samvat Shikhar* (Hindi) and *Time of India* (English) Raipur editions of newspapers on 19.09.2019. The publication for EoIs have been issued a number of time including extensions on various dates such as 02.12.2019, 11.01.2020, 05.03.2020, 11.06.2020, 18.07.2020, 13.11.2020. The last EoI was published on 30.12.2020 fixing 02.01.2021 as the last date for receipt of EoIs, and 03.02.2021 as the last date of submission of resolution plan.
8. The Applicant/RP submits that up till the last date of submission of EoIs i.e. 02.01.2021, he received EoI from twenty-one prospective resolution applicants. On 04.01.2021, the Applicant/RP shared the request for resolution plan (RFRP), information memorandum and evaluation matrix with all the prospective resolution applicants. However, up till the last date of submission of the resolution plan, i.e., 03.02.2021, the Applicant/RP received resolution plans only from five

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

**J M Financial Asset Reconstruction Co. Ltd v. Krish (Raipur) Hotels Private Limited
IA(IB) No. 272/KB/2021 in CP(IB) No. 28/KB/2019**

prospective resolution applicants viz., (1) Vyapak Enterprises, (2) Sun & Sun Inframetric Pvt. Ltd. along with Chhattisgarh Jewellers Pvt. Ltd., (3) Sri Sainath Industry Private Limited, (4) Ashish Kumar Goyal, and (5) 21st Century Infrastructure (India) Pvt. Ltd. along with 21st Century Broadcasting Entertainment Pvt. Ltd. The Applicant/RP shared all the said five resolution plans with the CoC; these resolution plans were revised from time to time upon discussion with the CoC.

9. Out of the aforesaid five resolution applicants, one applicant namely of 21st Century Infrastructure (India) Pvt. Ltd., had communicated via the mail dated 09.02.2021 that the said applicant would not be revising the plan any further, therefore, only four resolution plans were put up for discussion in the thirteenth CoC meeting held on 10.02.2021. Five rounds of negotiations were held in the said meeting after which the resolution plan submitted by Vyapak Enterprises was declared to be H1 with evaluation matrix score of 16.53 and the same was put up for vote from 13.02.2021 to 17.02.2021 (extended till 18.02.2021). The resolution plan submitted by Vyapak Enterprises was voted in favour by 100% vote percentage of the CoC. Copies of minutes of thirteenth CoC meeting as well as e-voting results are annexed to the application as Annexure 'A' (Colly) at pages 46 to 77.
10. Upon receipt of the approval from the CoC, the Applicant/RP issued Letter of Interest (LoI) to the successful resolution applicant (RA) on 19.02.2021. A copy of the said letter of intent has been placed on record as Annexure 'E' at pages 188 to 190 of the application.
11. The RA has provided performance security of Rs. 7,50,00,000/- (Rupees Seven Crore Fifty Lakh Only) by way of performance bank guarantee dated 25.02.2021. A copy of the said performance security is annexed to the Petition and marked as Annexure 'F' at pages 191 to 198.

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

**J M Financial Asset Reconstruction Co. Ltd v. Krish (Raipur) Hotels Private Limited
IA(IB) No. 272/KB/2021 in CP(IB) No. 28/KB/2019**

12. The Applicant/RP 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 section 30(2) of the Code:

<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.	Clause 5.2 B, Para 2, at Page 10 of the Resolution Plan
(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 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</p> <p>(iii) provides for payment of debts of financial creditors who do not vote in favour of the resolution plan, in such manner</p>	<p>(i) Clause 5.7 at Pages 12 to 14 of the Resolution Plan</p> <p>(ii) Clause 5.7 at Pages 12 to 14 of the Resolution Plan</p> <p>(iii) Clause 5.8 (2) (i) at Page 20 of the Resolution Plan</p>

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

**J M Financial Asset Reconstruction Co. Ltd v. Krish (Raipur) Hotels Private Limited
IA(IB) No. 272/KB/2021 in CP(IB) No. 28/KB/2019**

<i>Clause of s. 30(2)</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>
	as may be specified by the Board.	
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Clause 6.6 at Page 32 of the Resolution Plan
(d)	Implementation and Supervision.	Clause 6.8 at Pages 33 to 36 of the Resolution Plan.
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Clause 2.5 (c) at Pages 3 to 4 of the Resolution Plan
(f)	Conforms to such other requirements as may be specified by the Board.	Clause 2.5 (d) at Pages 3 to 4 of the Resolution Plan

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 Revised 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;	Clause 5.7 (2) (ii) at Page 15 of the Resolution Plan and
(b) sale of all or part of the assets whether subject to any security interest or not;	Not proposed by the RA
(c) restructuring of the corporate debtor, by way of merger, amalgamation and demerger	Clause 6.8.2 (d) at Page 34 of the Resolution Plan

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

**J M Financial Asset Reconstruction Co. Ltd v. Krish (Raipur) Hotels Private Limited
IA(IB) No. 272/KB/2021 in CP(IB) No. 28/KB/2019**

<i>Particulars</i>	<i>Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation</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;	Clause 6.2 at Page 28 and 29 of the Resolution Plan
(e) cancellation or delisting of any shares of the corporate debtor, if applicable;	Clause 4.3.6 at Page 8, Clause 5.9 at Page 23-25 and Clause 6.1.4 at Page 27 of the Resolution Plan
(f) satisfaction or modification of any security interest;	Clause 5.8.3 (ii) and (iv) at Pages 21-23 of the Resolution Plan
(g) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Clause 5.7 (2) (viii) on Page 18 of the Resolution Plan
(h) reduction in the amount payable to the creditors;	Clause 5.7 (1) (i) at Page 13 and Clause 5.8 (1) and (2) at Page 19 & 20 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;	Clause 5.7 (2)(viii) at Page 18 of the Resolution Plan
(j) amendment of the constitutional documents of the corporate debtor;	Clause 6.5.5 on Page 31 of the Resolution Plan
(k) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	Clause 6.2 at Pages 28 & 29 of the Resolution Plan

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

**J M Financial Asset Reconstruction Co. Ltd v. Krish (Raipur) Hotels Private Limited
IA(IB) No. 272/KB/2021 in CP(IB) No. 28/KB/2019**

<i>Particulars</i>	<i>Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation</i>
(l) change in portfolio of goods or services produced or rendered by the corporate debtor;	Clause 6.8.2 (a) at Page 34 of the Resolution Plan
(m) change in technology used by the corporate debtor; and	Not proposed by the RA
(n) obtaining necessary approvals from the Central and State Governments and other authorities.	Clause 6.12.5 at Pages 38 & 39 of the Resolution Plan

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.	Clause 5.2 (b) at Page 10 of 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 5.3 at Page 10 and Clause 5.6 at Page 12 of the Resolution Plan.
38(1B)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by	Not proposed by the RA.

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

**J M Financial Asset Reconstruction Co. Ltd v. Krish (Raipur) Hotels Private Limited
IA(IB) No. 272/KB/2021 in CP(IB) No. 28/KB/2019**

<i>Reference to relevant Regulation</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>
	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 6.10 at Pages 36 & 37 of the Resolution Plan
	(b) the management and control of the business of the corporate debtor during its term; and	Clause 6.6 Pages 32 & 33 of the Resolution Plan.
	(c) adequate means for supervising its implementation.	Clause 6.8 Pages 33 & 34 of the Resolution Plan.
38(3)	A resolution plan shall demonstrate that –	
	(a) it addresses the cause of default;	
	(b) it is feasible and viable;	
	(c) it has provisions for its effective implementation;	
	(d) it has provisions for approvals required and the timeline for the same; and	
	(e) the Resolution Applicant has the capability to implement the resolution plan.	Clause 4 at Pages 7 & 8 of the Resolution Plan.

13. 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 B2 at Pages 154 to 156 of the Application.
14. 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

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

**J M Financial Asset Reconstruction Co. Ltd v. Krish (Raipur) Hotels Private Limited
IA(IB) No. 272/KB/2021 in CP(IB) No. 28/KB/2019**

of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which has been annexed as Annexure D at Pages 176 to 187 of the Application.

Details of Resolution Plan/Payment Schedule

15. 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.*, Vyapak Enterprises, under the said Resolution Plan is tabulated as under:

(in Lakh)

Sr. No	Creditor	Amount Claimed (in Rs.)	Amount Admitted (in Rs.)	Amount proposed in Resolution Plan
<i>Financial Creditor</i>				
1	JMF Asset Reconstruction Company Limited	16775.28	16,775.28	2934.00
<i>Operational Creditors (3 in total)</i>				
2	Cherra Construction Company	1,148.01	1,148.01	24.54
3	SDY & Co.	5.22	5.22	0.11
4	Nisa Industrial Services Private Limited	16.07	16.07	0.34
<i>CIRP Cost</i>				
5	CIRP Cost	100.00	100.00	100.00
Total		18,044.58	18,044.58	3,059.00

16. Summary of the financial proposal/payment under the Resolution Plan dated 20.02.2021 of Vyapak Enterprises is tabulated hereunder for sake of clarity:

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

**J M Financial Asset Reconstruction Co. Ltd v. Krish (Raipur) Hotels Private Limited
IA(IB) No. 272/KB/2021 in CP(IB) No. 28/KB/2019**

Particulars	Amount										
Admissible Debt to be paid upfront to the CIRP	Rs. 1.00 Crores (approx.) The said CIRP cost is payable at actuals and shall be paid towards full and final payment of the insolvency resolution process costs payable in terms of Sections 30(2)(a) of the Code and Regulation 38(1)(a) of the CIRP Regulations out of the amount allotted as upfront premium.										
Admissible Debt to be paid upfront to the Operational Creditors	<p>It has been proposed that an amount of Rs. 25.00 lakh shall be paid to the Operational Creditors against their total admitted claims Rs. 11.69 Crores, which shall be paid upfront within 50 days from the Approval Date in equal proportion to each operational creditors as under:</p> <p style="text-align: right;"><u>Amount in Rs Lacs</u></p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;">Name of the Operational Creditors Including Statutory & Others</th> <th style="text-align: center;">Offered Amount</th> </tr> </thead> <tbody> <tr> <td>Cherra Construction Company</td> <td style="text-align: right;">24.54</td> </tr> <tr> <td>SDY & CO</td> <td style="text-align: right;">0.11</td> </tr> <tr> <td>Nisa Industrial Services Private Limited</td> <td style="text-align: right;">0.34</td> </tr> <tr> <td>TOTAL (Rs)</td> <td style="text-align: right;">25.00</td> </tr> </tbody> </table>	Name of the Operational Creditors Including Statutory & Others	Offered Amount	Cherra Construction Company	24.54	SDY & CO	0.11	Nisa Industrial Services Private Limited	0.34	TOTAL (Rs)	25.00
Name of the Operational Creditors Including Statutory & Others	Offered Amount										
Cherra Construction Company	24.54										
SDY & CO	0.11										
Nisa Industrial Services Private Limited	0.34										
TOTAL (Rs)	25.00										
Admissible Debt to be paid to Financial Creditors	The Resolution Applicant proposes payment of Rs. 29.34 Crores to Financial Creditors towards settlement of total admitted dues of Rs. 167.75 Crores of the Financial Creditors. It is proposed that the entire amount of Rs. 29.34 will be paid upfront to the Financial Creditors within 50 days of the approval of the plan by the Adjudicating Authority.										

17. The Resolution Plan defines the “*Effective Date*”, as the date on which Corporate Debtor makes the entire payment of the resolution outlay as envisaged in the instant resolution plan.

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

**J M Financial Asset Reconstruction Co. Ltd v. Krish (Raipur) Hotels Private Limited
IA(IB) No. 272/KB/2021 in CP(IB) No. 28/KB/2019**

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

18. The Resolution Plan also provides for –
- (a) Appointment of monitoring committee in clause 6.8;
 - (b) Management of Company after Resolution in clause 6.14.3; and
 - (c) Term and implementation of the resolution plan in clause 6.10.

Reliefs and Concessions

19. The Reliefs and Concessions sought by the Resolution Applicant from the Adjudicating Authority, provide for in clause 8 of the Resolution Plan, are set out below for the successful implementation of the Resolution Plan. The orders thereon are indicated against each.

S. No.	Relief and/or Concessions Sought	Orders thereon
(1)	<i>The requirement of obtaining a no objection certificate under section 281 of the Income-tax Act, 1961 and provisions of taking over its predecessor's Tax liability under section 170 of the Income-tax Act, 1961 shall not be applicable. Similarly, any requirements to obtain waivers from any Tax authorities including in terms of section 79 and section 115JB of the Income-tax Act, 1961, is deemed to have been granted upon approval of this Resolution Plan and with effect from the Approval Date.</i>	This shall be considered by the Income Tax Department in keeping with the letter and spirit of the Insolvency & Bankruptcy Code, 2016.
(2)	<i>The change in the shareholding of the Corporate Debtor pursuant to this Resolution Plan approved by the Adjudicating Authority shall not result in lapse of any losses of the Corporate Debtor</i>	This shall be considered by the Income Tax Department in keeping with the letter and spirit of

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

**J M Financial Asset Reconstruction Co. Ltd v. Krish (Raipur) Hotels Private Limited
IA(IB) No. 272/KB/2021 in CP(IB) No. 28/KB/2019**

S. No.	Relief and/or Concessions Sought	Orders thereon
	<i>that are brought forward under the provisions of section 79 read with section 2(18) Income-tax Act, 1961.</i>	the Insolvency & Bankruptcy Code, 2016.
(3)	<i>The Central Board of Excise and Customs to not to void the transactions contemplated under the Resolution Plan (including a potential sale of Assets) under section 81 of the Central Goods and Service Tax Act, 2017 and not to impose any subsequent liability on the Resolution Applicant and/or the Corporate Debtor.</i>	This shall be considered by the Central Board of Indirect Taxes & Customs (CBIC) or authorities subordinate to it, in keeping with the letter and spirit of the Insolvency & Bankruptcy Code, 2016.
(4)	<p><i>Act as necessary directions to Central Board of Direct Taxes:</i></p> <p><i>i) For exemption from the provisions of Income Tax Act, 1961, including but not limiting to the provisions of Minimum Alternate Tax, arising as a result of giving effect to the Resolution Plan, including write-back of liabilities.</i></p> <p><i>ii) For Claim set-off of the entire Minimum Alternate Tax (MAT) credit as available to the Corporate Debtor, against the normal income-tax as would be payable by the Corporate Debtor post the Approval Date, i.e., no normal taxation should be applicable until the MAT credit is adjusted/utilized in full.</i></p>	This shall be considered by the Income Tax Department in keeping with the letter and spirit of the Insolvency & Bankruptcy Code, 2016.
(5)	<i>Act as grant of exemption and relief to the Corporate Debtor from the provisions of</i>	This shall be considered by the Income Tax

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

**J M Financial Asset Reconstruction Co. Ltd v. Krish (Raipur) Hotels Private Limited
IA(IB) No. 272/KB/2021 in CP(IB) No. 28/KB/2019**

S. No.	Relief and/or Concessions Sought	Orders thereon
	<i>Section 41(1),45, 72 (3), 43-B, 56, 79, 80 read with 139, 115JB and 269-SS, 269-T and 281 provisions of Chapter XVII of the Income Tax Act, effective from the Approval Date for implementation of the Resolution Plan.</i>	Department in keeping with the letter and spirit of the Insolvency & Bankruptcy Code, 2016.
(6)	<i>That All the assets of the Corporate debtor including but not limited to the current assets, bank balances and fixed deposits will vest to the benefit of the Corporate Debtor and under control of the Resolution Applicant. Any attachment and/or freezing order against the assets of the Corporate Debtor by any authority, including but not limited to IT, GST will stand vacated and the Corporate Debtor will be free to use the assets to its benefits to ensure that the unit continues to be a going concern.</i>	Granted.
(7)	<i>On the date of Adjudicating Authority order approving, the resolution plan, all Encumbrances, Security Interest, liens and/or attachments (including pursuant to applicable law) created or suffered to exist over the assets of the Corporate debtor, whether by contract or by Applicable law shall be allowed to exist only to the extent of the balance amount as contemplated in the resolution plan due to the creditors and commenced by any person over any assets of the Corporate debtors or over any securities of the corporate debtors shall stand irrevocably released and reversed upon full and final settlement of the dues of the secured financial creditors as</i>	Granted.

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

**J M Financial Asset Reconstruction Co. Ltd v. Krish (Raipur) Hotels Private Limited
IA(IB) No. 272/KB/2021 in CP(IB) No. 28/KB/2019**

S. No.	Relief and/or Concessions Sought	Orders thereon
	<i>contemplated in the resolution plan without the requirement of any further deed or actions on part of the Resolution Applicant.</i>	
(8)	<i>The losses already lapsed / not lapsed as on the date of approval of the Resolution Plan shall be allowed to be carried forward for a period of eight (8) Assessment Years from the Financial Year relevant to the Assessment Year in which Resolution Plan is approved.</i>	This shall be considered by the Income Tax Department in keeping with the letter and spirit of the Insolvency & Bankruptcy Code, 2016.
(9)	<i>There arising no liability of the Resolution Applicant in respect of any reassessment, reopening, revision, review or other proceedings under the Income-tax Act, 1961, or any other law or statute for any period prior to the Effective Date.</i>	This shall be only in terms of section 32A of the Code. No specific orders are, therefore, passed.
(10)	<i>There being waiver of interest and penalty on delayed payment of income tax and tax deducted at source, or any other statutory liability, if any, for any period prior to the Approval Date.</i>	Granted in terms of the Resolution Plan
(11)	<i>There being waiver of the penalty in respect of late filing of TDS returns or returns under any other law for any period prior to the Effective Date.</i>	Granted in terms of the Resolution Plan
(12)	<i>There being waiver of the penalty levied under the Income Tax Act, 1961, and all pending penalty proceedings under the Income Tax Act, 1961 to stand closed.</i>	Granted in terms of the Resolution Plan
(13)	<i>There being no issue to be raised by the Income Tax Department or any other Statutory body or authority under any law to question any acts, deed/s or thing/s as</i>	Granted in terms of the Resolution Plan

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

**J M Financial Asset Reconstruction Co. Ltd v. Krish (Raipur) Hotels Private Limited
IA(IB) No. 272/KB/2021 in CP(IB) No. 28/KB/2019**

S. No.	Relief and/or Concessions Sought	Orders thereon
	<i>may be carried out by the Corporate Debtor and/or any person in control of or acting under instruction of the Corporate Debtor or vice-versa, for which a demand, liability or charge can be framed on the Corporate Debtor; and accordingly, issues raised and/or proceeding outstanding or pending to stand closed and/or dropped, as the case may be.</i>	
(14)	<i>No claim, demand/reassessment/ liabilities whether crystalized or otherwise, present or future, unseen or foreseen, by whatever name or under any head whatsoever will be raised by any creditors and/or statutory authorities including but not limiting to the Income Tax department pertaining to the period prior to the effective date after the Effective date.</i>	Granted in terms of the Resolution Plan, and paras 86 and 87 of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra & Sons Private Limited v Edelweiss Asset Reconstruction Company Limited</i> . ¹
(15)	<i>The existing promoters, managers, directors, officers, employees, or such other person in charge of the affairs and management of the Company shall not be entitled to any compensation upon their exit from the respective offices and shall render support to the Resolution Applicant when sought in order to fully implement this Resolution Plan, including amongst others, monetizing the assets of the Corporate Debtor for the benefit of all stakeholders.</i>	Granted.
(16)	<i>The Corporate Debtor and the Resolution Applicant shall not be required to deal with</i>	Granted.

¹ 2021 SCC OnLine SC 313 decided on 13.04.2021

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

**J M Financial Asset Reconstruction Co. Ltd v. Krish (Raipur) Hotels Private Limited
IA(IB) No. 272/KB/2021 in CP(IB) No. 28/KB/2019**

S. No.	Relief and/or Concessions Sought	Orders thereon
	<i>the Dissenting Financial Creditors in any manner other than as provided in the Code.</i>	
(17)	<i>The approval of resolution Plan by Adjudicating Authority shall constitute adequate and final approval of the Adjudicating Authority for: (a) cancellation of the share capital of the Corporate Debtor (as may be agreed upon) including the shares issued on conversion of unsustainable debt to the Financial Debtors in terms of section 66 and other provisions of the Companies Act, 2013 and other Applicable Law without any compliance of any provisions of the Act which shall stand exempted without any further actions on part of any Party; (b)for issuance of new Equity Shares/ preference shares and/ or convertible securities as may be considered appropriate to issue in terms of the Section 42 and Section 62(1)(c) of the Companies Act, 2013 and other Applicable Law and accordingly; and (c) the amount infused by the Resolution Applicant in the Corporate Debtor for payment of dues of financial creditors as per this Resolution Plan shall not be termed as deposits under section 73 to 76 of the Companies Act, 2013 and the rules made thereunder, shall be effective without following the provisions of the Companies Act, 2013, and that no approval/ consent shall be necessary from any other Person in relation to any of these actions including under any agreement, the</i>	Granted. However, the Corporate Debtor shall file applicable forms with the Registrar of Companies along with the fee prescribed, so that the records maintained by the Registrar of Companies are upto-date.

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

**J M Financial Asset Reconstruction Co. Ltd v. Krish (Raipur) Hotels Private Limited
IA(IB) No. 272/KB/2021 in CP(IB) No. 28/KB/2019**

S. No.	Relief and/or Concessions Sought	Orders thereon
	<i>constitution documents of the Corporate Debtor or any Applicable Law.</i>	
(18)	<i>All Relevant Authorities (including RBI) to waive and close matters and not to raise any fresh assessment/demand pertaining to any and all non-compliances/ defaults/dues of the Corporate Debtor prior to the Effective Date, including but not limited to those relating to Income Tax, Service Tax, Goods and Service Tax, Customs and Excise Act, Foreign Exchange Management Act, Prevention of Money Laundering Act, s Tax/Value Added Tax Acts of the relevant State or the Central Government, Real Estate Regulatory Act of the relevant States or the Central Government). All penalties, liabilities and claims by whatever name called, shall in relation to the aforesaid non-compliances/demand/defaults/dues shall stand extinguished permanently.</i>	Granted in terms of the Resolution Plan, and paras 86 and 87 of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra & Sons Private Limited v Edelweiss Asset Reconstruction Company Limited</i> . ²
(19)	<i>The Resolution Applicant shall not be liable for any advance licenses, EPCG benefit availed by the Corporate Debtor, which remained undischarged as on the Approval Date and there shall be complete waiver of any interest, penalty or prosecution against the Corporate Debtor, Resolution Applicant and its nominees.</i>	Granted in terms of the Resolution Plan, and paras 86 and 87 of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra & Sons Private Limited v Edelweiss Asset</i>

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

**J M Financial Asset Reconstruction Co. Ltd v. Krish (Raipur) Hotels Private Limited
IA(IB) No. 272/KB/2021 in CP(IB) No. 28/KB/2019**

S. No.	Relief and/or Concessions Sought	Orders thereon
		<i>Reconstruction Company Limited.</i> ³
(20)	<i>The Resolution Applicant (and its Affiliates) and any future buyers of the Assets of the Corporate Debtor shall not be liable, in any way, for any criminal proceedings or actions that have been initiated against the Corporate Debtor or its employees, officers, at any point of time, for an offence, action or event committed prior to commencement of CIRP.</i>	This shall be in terms of section 32A of the IBC
(21)	<i>The Department of Registration and Stamps and any other relevant authorities of West Bengal and/or Other State Governments where the Corporate Debtor or the Resolution Applicant carries on its business and operations or where its Assets are located, shall exempt the Resolution Applicant and the Corporate Debtor from the levy of stamp duty and fees, applicable in relation to this Resolution Plan and its implementation, including issuance of Equity Shares as provided in this Resolution Plan.</i>	Not granted.
(22)	<i>The Ministry of Corporate Affairs shall exempt the Resolution Applicant and the Corporate Debtor from the levy of duties and fees applicable in relation to this Resolution Plan and its implementation, including issuance of Equity Shares as provided in this Resolution Plan.</i>	Not granted

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

**J M Financial Asset Reconstruction Co. Ltd v. Krish (Raipur) Hotels Private Limited
IA(IB) No. 272/KB/2021 in CP(IB) No. 28/KB/2019**

S. No.	Relief and/or Concessions Sought	Orders thereon
(23)	<i>All relevant Governmental Authorities to grant relief/waiver from payment of stamp duty for the successful implementation of the Plan, inter alia, including but not limited to the increase in authorized share capital, issuance/transfer of shares or debentures (optionally convertible debentures/non-convertible debentures) etc.</i>	Not granted.
(24)	<i>All Governmental Authorities (including but not limited to Income Tax Authority, Service tax Department, VAT Department and GST Department) to waive the non-compliances of the Corporate Debtor or further claims of the Governmental Authorities on the Corporate Debtor arising out of or in relation to the past claims, and/or actions, deed/s or thing/s prior to the Insolvency Commencement Date.</i>	This shall be only in terms of section 32A of the Code. No specific orders are, therefore, passed.
(25)	<i>All Governmental Authorities (including but not limited to Income Tax Authority, Service tax Department, VAT Department and GST Department) to provide relief to the Corporate Debtor from all past litigations pending and or proposed to be raised at different levels and provide waiver from tax dues, including interest and penalty on such litigations as on insolvency Commencement Date.</i>	This shall be only in terms of section 32A of the Code. No specific orders are, therefore, passed.

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

**J M Financial Asset Reconstruction Co. Ltd v. Krish (Raipur) Hotels Private Limited
IA(IB) No. 272/KB/2021 in CP(IB) No. 28/KB/2019**

S. No.	Relief and/or Concessions Sought	Orders thereon
(26)	<i>All creditors (including but not limited to the Financial Creditors and other Operational Creditors) of the Corporate Debtor shall withdraw all legal proceedings commenced against the Corporate Debtor in relation to Claims, including proceedings commenced against the Corporate Debtor under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Recovery of Debt and Bankruptcy Act, 1993 within a period of 90(ninety) days of the Approval Date, and in the meanwhile the creditors shall not pursue the legal and other actions taken by any and/or all of them against the Corporate Debtor.</i>	Granted in terms of the Resolution Plan, and paras 86 and 87 of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra & Sons Private Limited v Edelweiss Asset Reconstruction Company Limited</i> . ⁴
(27)	<i>The Resolution Applicant seeks a time period of 12 months from the Approval Date to ensure compliances in relation to the non-compliance of Applicable Laws by the Corporate Debtor pertaining to any period up to Approval Date, which shall, if otherwise found to be as per information within the possession of the Resolution Applicant, be considered to be final and effective, without any further costs or liabilities or consequences. Further, the relevant Governmental Authorities shall not initiate any investigations, action or proceedings against the Resolution Applicant or the new management to be appointed by the Resolution Applicant (upon acquisition of control and</i>	These shall be in terms of section 31 (4) and section 32A of the Code.

⁴ 2021 SCC OnLine SC 313 decided on 13.04.2021

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

**J M Financial Asset Reconstruction Co. Ltd v. Krish (Raipur) Hotels Private Limited
IA(IB) No. 272/KB/2021 in CP(IB) No. 28/KB/2019**

S. No.	Relief and/or Concessions Sought	Orders thereon
	<i>management of the Corporate Debtor by the Resolution Applicant), including the members of the Board of Directors, in relation to any non-compliance with Applicable Laws by the Corporate Debtor pertaining to any period up to Approval Date, including waiver of penalty for any such non-compliance.</i>	
(28)	<i>Neither the Resolution Applicant nor the Corporate Debtor nor their respective directors, officers, and employees to be appointed after the Approval Date, be liable for an violations, liabilities, penalties or fines with respect to or pursuant to the Corporate Debtor, amongst others to be extent they pertain to or relate to requisite licenses and approvals required to undertake its business as per Applicable laws and the Resolution Applicant will have a time period of 12 months from the Approval Date, to ensure renewal of such consents/ licenses and approvals.</i>	This shall be strictly in terms of section 32A of the Code. No specific orders are, therefore, passed
(29)	<i>For the purpose of consolidation of the books of the Corporate Debtor with Resolution Applicant, the Effective Date shall be treated as the date on which Corporate Debtor shall issue its equity shares to the Resolution Applicant against full payment to the Financial Creditors in terms of this Resolution Plan, which eventually results in takeover of the Corporate Debtor by the Resolution Applicant on that day.</i>	Granted.

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

**J M Financial Asset Reconstruction Co. Ltd v. Krish (Raipur) Hotels Private Limited
IA(IB) No. 272/KB/2021 in CP(IB) No. 28/KB/2019**

S. No.	Relief and/or Concessions Sought	Orders thereon
(30)	<i>The Adjudicating Authority be pleased to direct all relevant government authorities to provide/extend to the Corporate Debtor all licenses, permits and approvals required by the Resolution Applicants for implementation of the terms of this Resolution Plan and for an efficient functioning of the business of the Corporate Debtor. Further, all licenses and permits required by the Corporate Debtor shall be continued to be made available to the Corporate Debtor.</i>	Appropriate applications shall be made to the authorities concerned, who shall consider the same in terms of the Resolution Plan, the spirit behind the Code and the fact that the Resolution Plan is intended to bring the Corporate Debtor back on its feet.
(31)	<i>Under the provisions of the Code, namely Section 31(4), a resolution applicant, pursuant to the resolution plan approved under sub-section (1) of section 31 of the Code, is required to 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) of section 31 of the Code or within such period as provided for in such law, whichever is later. Pursuant to the above, all concerned Governmental Authorities shall provide to the Corporate Debtor a period of one year after the approval of the Resolution Plan, to obtain all necessary approvals under the relevant Applicable Laws required for the purpose of implementation of this Resolution Plan, including continuing with the business of the Corporate Debtor.</i>	Appropriate applications shall be made to the authorities concerned, who shall consider the same in terms of the Resolution Plan, the spirit behind the Code and the fact that the Resolution Plan is intended to bring the Corporate Debtor back on its feet.

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

**J M Financial Asset Reconstruction Co. Ltd v. Krish (Raipur) Hotels Private Limited
IA(IB) No. 272/KB/2021 in CP(IB) No. 28/KB/2019**

S. No.	Relief and/or Concessions Sought	Orders thereon
(32)	<i>The local district administration of the respective States where the assets and/or business activity of the Corporate Debtor are situated, shall provide and extend assistance to the Resolution Applicant for the implementation of the Resolution Plan.</i>	The RA may approach the local district administration for assistance in case required. Upon considering such request, the local district administration may extend their assistance.
(33)	<i>That the Concerned Registrar of Companies do waive off the Fees as may be payable in course of implementation of the Resolution Plan including but not limiting to Fees and charges payable for increase in the Authorized Capital of the Corporate debtor in course of allotment of shares to Financial Creditors for the unsustainable Debts and also increase in authorized capital as may be required in course of equity infusion by the Resolution Applicant.</i>	No fee waiver is granted. Further, the Corporate Debtor shall file applicable forms along with the fee prescribed, with the jurisdictional Registrar of Companies.
(34)	<i>That the concerned Registrar of Companies to associate the Directors Identification Numbers (DIN) of the Directors who would be taking charge collectively as Reconstituted Board of Directors of the Corporate Debtor pursuant to the approval of the Resolution Plan</i>	The Corporate Debtor shall file applicable forms along with the fee prescribed, with the jurisdictional Registrar of Companies for this purpose.
(35)	<i>The change in ownership of the Corporate Debtor shall not be construed as a breach of legal obligation or as an event of default by any government/statutory authority and the same shall not be used as a reason for non-grant/denial of extension of any no objection/permission/license as was</i>	Renewal of expired licences shall be subject to application in this behalf to the authority concerned who shall consider for approval keeping in view the spirit of the Code, which is to provide

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

**J M Financial Asset Reconstruction Co. Ltd v. Krish (Raipur) Hotels Private Limited
IA(IB) No. 272/KB/2021 in CP(IB) No. 28/KB/2019**

S. No.	Relief and/or Concessions Sought	Orders thereon
	<i>granted to or is required to be granted to the Corporate Debtor, as the case may be.</i>	resolution to the Corporate Debtor. Such applications shall also be subject to payment of the prescribed fee in this regard, and blanket exception from payment of fee is not granted.

Findings

20. On hearing the submissions made by the Learned Counsel for the Resolution Professional, and perusing the record, we find that the Resolution Plan has been approved with 100% majority by the CoC, as against the minimum threshold of approval by 66% majority of the CoC. As per the CoC, the Resolution 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. There is no opposition from any quarter as regards the Resolution Plan.
21. On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. No circumstances exist that militate against grant of approval for the Resolution Plan.
22. As far as the question of granting time to comply with the statutory obligations or 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.

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

**J M Financial Asset Reconstruction Co. Ltd v. Krish (Raipur) Hotels Private Limited
IA(IB) No. 272/KB/2021 in CP(IB) No. 28/KB/2019**

23. Any relief sought in the Resolution Plan, where any contract, agreement, understanding, proceeding, action, notice, etc., not specifically identified, or is for a future contingency, is, at this point of time, rejected.
24. Therefore, subject to the observations made in this Order, we hereby accord our approval to the Resolution Plan. **The Resolution Plan shall form part of this Order.**
25. The Resolution Plan as approved is binding on the Corporate Debtor and other stakeholders involved so that the revival of the Corporate Debtor can come into force with immediate effect.
26. The Moratorium imposed under section 14 shall cease to have effect from the date of this order.
27. 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.
28. The RP shall stand discharged from his duties with effect from the date of this Order. He shall, however, perform his duties in terms of the Resolution Plan as approved by this Adjudicating Authority.
29. The Resolution Applicant shall have access to all the Corporate Debtor's records, documents, assets and premises with effect from the date of this Order, to finalise the further line of action required for starting the business operations of the Corporate Debtor.
30. Liberty is hereby granted for moving applications, if required, in connection with implementation of this Resolution Plan.
31. The Resolution Applicant shall file a copy of this Order with the Registrar of Companies, West Bengal, *inter alia* for updating the status of the Corporate Debtor.

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

**J M Financial Asset Reconstruction Co. Ltd v. Krish (Raipur) Hotels Private Limited
IA(IB) No. 272/KB/2021 in CP(IB) No. 28/KB/2019**

32. The application bearing **IA (IB) No. 272/KB/2021** along with the Company Petition bearing **CP (IB) No. 28/KB/2019** are disposed of accordingly. Any pending IAs shall also stand disposed of.
33. Additionally, the Registry shall send a copy of this order to the Registrar of Companies, West Bengal.
34. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.
35. File be consigned to the record.

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

19.05.2021

SR (LRA)