

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

IA (IB) No.1212/KB/2020
& IA (IB) No.1345/KB/2020
In CP (IB) No.140/KB/2019

In re Prithvi Ferro Alloys Pvt Ltd (Resolution Plan)

In the matter of

Ekvira Alloys Pvt. Ltd. ... *Applicant*

Versus

1. Samir Kumar Bhattacharya,
Resolution Professional of Prithvi Ferro Alloys Private Limited
2. Punjab National Bank
3. Bank of Baroda
4. Wood Stock Export Pvt Ltd
5. Prithvi Fininvest Co Pvt Ltd
6. GR Sponge & Power Limited ... *Respondents*

Date of hearing: 21.01.2021

Date of Pronouncement: 03.05.2021

Coram:

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

Appearances (through video conference):

IA No.1212/KB/2020:

For Applicant/RP : 1. Mr Ratnanko Banerji, Sr Adv
2. Mr Rahul Auddy, Adv
3. Mr Samir Kumar Bhattacharya, RP

For successful Resolution Applicant : 1. Mr Joy Saha, Sr Adv
2. Mr Sidharth Sharma, Adv
3. Mr Arjun Asthana Adv

IA 1345/KB/2020:

For Applicant/unsuccessful
Resolution Applicant : 1. Ms Manju Bhuteria, Adv
2. Mr Anirudhya Dutta, Adv

For CoC : 1. Mr Avishek Guha, Adv

For successful Resolution Applicant : 1. Mr Joy Saha, Sr Adv
2. Mr Sidharth Sharma, Adv
3. Mr Arjun Asthana Adv

COMMON ORDER

(Disposing of IA (IB) No. 1212/KB/2020 & IA (IB) No.1345/KB/2020)

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

1. Preamble

1.1. Application bearing IA No.1212/KB/2020 has been filed by Mr. Samir Kumar Bhattacharya, Resolution Professional (RP) of Prithvi Ferro Alloys Private Limited [CIN: U27100WB2008PTC121962], under section 30(6) read with section 31(1) of the Insolvency and Bankruptcy Code, 2016 (*the Code*), seeking approval of the Resolution Plan submitted by GR Sponge & Power Limited [CIN: U27100CT1996PLC011135] for resolution of Prithvi Ferro Alloys Private Limited (*Corporate Debtor*).

1.2. Application bearing IA No.1345/KB/2020 has been filed by Ekvira Alloys Pvt. Ltd., one of the unsuccessful Resolution Applicants, raising certain objections related to the approval of Resolution Plan by the Committee of Creditors of the Corporate Debtor.

1.3. Both the applications are interconnected, and therefore, are being disposed of by means of a single order.

1.4. For convenience, the parties are referred to as follows: -

GR Sponge & Power Limited : Successful Resolution Applicant or GR Sponge

Ekvira Alloys Private Limited : Unsuccessful Resolution Applicant or Objector or Ekvira

1.5. We deem it appropriate to deal with the objection to the Resolution Plan upfront before examining the application for approval of the Resolution Plan.

2. IA No.1345/KB/2020 - Objection to the Resolution Plan

Arguments of Ms Manju Bhuteria, learned counsel for the Applicant/ Objector

- 2.1. This application is filed by Ekvira to record its objections to the resolution plan considered and approved by the CoC. In this application, Respondent No.1 is the RP of the corporate debtor, Respondent Nos.2 to 5 are members of the CoC and Respondent No.6 is the successful resolution applicant.
- 2.2. Ms. Manju Bhuteria, learned Counsel appearing for the objector – Ekvira, the applicant in IA No.1345/KB/2020, and the unsuccessful Resolution Applicant in the case at hand, took us through the contents of the Request for Resolution Plan (RFRP) documents dated 30.06.2020 issued by the Resolution Professional. She submitted that this RFRP document has been issued in consultation with the Committee of Creditors (CoC). She specifically referred to clause 1.9.1 of the RFRP documents which stipulated that along with the Resolution Plan, the Resolution Applicant should provide a performance guarantee of 10% of the proposed investment as per the Resolution Plan.
- 2.3. In the reply filed by the successful Resolution Applicant (*Respondent No.6 in the present application/ GR Sponge*) it has been mentioned that the successful Resolution Applicant submitted its Resolution Plan on 29.08.2020 and revised it on 03.09.2020 and 07.09.2020. At page 16 of the reply, GR Sponge has further stated that the payment equivalent to 10% of its offer was deposited only on 08.09.2020.¹
- 2.4. Ms. Bhuteria submitted that evidently no performance guarantee was submitted by GR Sponge on 29.08.2020 when the plan was first submitted, or on 03.09.2020 when the plan was first revised. In spite of this the CoC considered the plan of the applicant/Ekvira along with that of GR Sponge on 05.09.2020 and interacted with both of them on the same day. From the minutes of the meeting of 05.09.2020,² that the final Resolution Plan was to

¹ para (ac) at page 17 of the reply

² pages 17 to 20 of the RP's reply to the application

be submitted by 07.09.2020. This fact is also confirmed from the RP's email dated 05.09.2020 annexed at page 160 of the application. Therefore, it is Ms. Bhuteria's contention that the RP should not have accepted the Resolution Plan submitted by GR Sponge or placed it for consideration before the CoC. Ms. Bhuteria strenuously argued that the RP can only place such plans for the CoC's consideration which conform to the conditions stipulated in the RFRP, the Regulations and the Code. By not doing so, the RP and the CoC have acted in an unfair, biased and arbitrary manner.

- 2.5. The second limb of Ms. Bhuteria's submission is on the relative merits of the plan submitted by Ekvira in this regard. She led us through the Evaluation Matrix provided by the RP to the applicant by email dated 30.06.2020.³ By a further email dated 17.09.2020, the RP reassured the applicant/Ekvira that there was no change in the parameters mentioned in the evaluation matrix. The RP has, in his reply,⁴ stated that the evaluation matrix score of the applicant was higher than that of GR Sponge (*89.36 to Ekvira and 88.73 to GR Sponge*). However, the RP has not disclosed the breakup of the evaluation matrix score. On the basis of the chart disclosed by the RP, the Ekvira has prepared its own evaluation matrix score as far as the quantitative parameters are concerned, which would reveal Ekvira's score to be 79 as against GR Sponge's score of 71.3. The calculation is attached at page 24 of the rejoinder to the RP's reply.
- 2.6. Ms. Bhuteria contented that there can be no dispute as far as the quantitative parameters of the evaluation matrix score are concerned. While conceding that the CoC has the power to exercise its commercial wisdom, the same cannot mean that the RP is empowered to bypass a procedure provided in the Code, Regulations and RFRP. The difference in the quantitative parameters score is more than seven points and is therefore significant in

³ page 54 of the application

⁴ at page 10 para (oo)

itself. She alleged that the RP has intentionally not disclosed the break-up of the evaluation matrix score.

- 2.7. There is a further allegation made by Ms. Bhuteria with regard to the meeting dated 09.09.2020. Ms. Bhuteria contended that this was indeed a CoC meeting, as would be evident from the fact that the link of the meeting was sent by the office of the RP to the applicant and the said meeting was attended by the RP and members of the CoC.⁵ In spite of this, the RP has contended that there was no CoC meeting held on 09.09.2020.
- 2.8. Ms. Bhuteria has relied on the judgment of the Hon'ble Supreme Court in *Rakesh Kumar Sharma v Government of NCT Delhi & other.*⁶ In that case, the Court was considering the case of an applicant whose services were terminated since he did not possess the requisite qualification on the last date of submission of the application but acquired the requisite qualification after the last date of submission of application but before the declaration of the result. The Hon'ble Apex Court had held in paras 21 & 22 that the crucial date will be the last date for submission of the application. In case any examination is made, then there would be a large number of candidates who are eligible as per the requirement of the rules/advertisements since they did not possess the requisite eligibility on the last date of submission of the application forms, granting any benefit in a case such as this would be violative of the doctrine of equality, a backbone of the fundamental rights under the Constitution of India. The appeal in that case was dismissed on those grounds.
- 2.9. Ms. Bhuteria relied on this judgment in support of the contention that as on the date of consideration of the Resolution Plans submitted by both the applicants on 05.09.2020, the Successful Resolution Applicant (GR Sponge) was ineligible since it has not submitted the performance guarantee as

⁵ page 19 of the rejoinder to the RP's reply

⁶ (2013) 11 SCC 58

required in terms of the RFRP document. Rounding up the submissions Ms. Bhuteria urged the Adjudicating Authority to intervene and prevent material irregularities in exercise of power by the RP.

Arguments of Mr Ratnanko Banerji, learned senior counsel for the RP

- 2.10. Mr Ratnanko Banerji, learned senior counsel for the RP submitted that the law in this regard has been laid down over the last couple of years.
- 2.11. Mr Banerji submitted that 05.09.2020 is a significant date, which was the 15th CoC meeting. Two facts need to be borne in mind: (1) Ekvira's plan already stood rejected by the CoC; and the bank guarantee submitted was also returned. Prior to that, GR Sponge's plan was also rejected, but GR Sponge obtained order dated 19.08.2020 from this Adjudicating Authority for its plan to be considered. On 05.09.2020, at the meeting of the CoC, representatives of both Ekvira and GR Sponge were present. The final Resolution Plan was submitted by both parties on 17.09.2020.
- 2.12. Mr Banerji drew our attention to para (oo) at p.10 of the reply of the RP, wherein it has been mentioned that the final marks allotted as per the Evaluation Matrix will reveal that both in total offer for mitigating resolution debt and Net Present Value (NPV), GR Sponge's offer was much higher than Ekvira's on both 07.09.2020 and on 17.09.2020, when the Plans were receiving consideration, contrary to the claim of Ekvira. In any case, Mr Banerji submitted, there is no compulsion that the CoC must go by the highest Evaluation Matrix score, after the amendment to regulation 39(3) with effect from 07.08.2020.
- 2.13. On the question of performance guarantee, Mr Ratnanko Banerji, learned senior counsel led us through the Resolution Plan Evaluation Process Steps.⁷ He specifically drew attention to Step V, VI and VII on that page, wherein it has been mentioned that after the evaluation of the Resolution

⁷ at p.94 of the RP's reply

Plan by the CoC and receiving its approval, there will be a declaration thereof and intimation to the successful resolution applicant. The successful resolution applicant was to submit the performance guarantee thereafter. In the present case also, the same was complied with, and therefore there is no breach. The process was followed meticulously.

- 2.14. Mr Ratnanko Banerji submitted that the commercial wisdom of the CoC cannot be lightly interfered with, as held by the Hon'ble Supreme Court in *K. Sashidhar v Indian Overseas Bank*,⁸ wherein in para 57 it was stated that the provisions investing jurisdiction and authority in NCLT or NCLAT have not made the commercial decision exercised by the CoC approving the resolution plan or rejecting the same, justiciable.
- 2.15. Mr Ratnanko Banerji further relied on the judgment of the Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited v Satish Kumar Gupta & others*,⁹ on the role of the CoC in the CIRP. In particular, he referred us to paras 51, 61 to 64, 66, 72 and 73 of the said judgment. In a nutshell, he submitted that the Hon'ble Supreme Court has that the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the CoC, the limited judicial review available is to see that the CoC has taken into account the fact that the corporate debtor needs to be kept going as a going concern during the insolvency resolution process, that it needs to maximise the value of its assets, and that the interests of all stakeholders including operational creditors has been taken care of. If the adjudicating authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the CoC to resubmit such plan after satisfying the aforesaid parameters. The reasons given by the CoC while approving a resolution plan may thus be looked into by the adjudicating authority only from this point of view,

⁸ (2019) 12 SCC 150, decided on 05.02.2019

⁹ (2020) 8 SCC 531, decided on 15.11.2019

and once it is satisfied that the CoC has paid attention to these key features, it must then pass the resolution plan, other things being equal.

Arguments of Mr Joy Saha, learned senior counsel for the successful resolution applicant (GR Sponge)

2.16. Mr Joy Saha, learned senior counsel appearing for the Successful Resolution Applicant, stated that he would start his submissions by placing regulation 36B(4A)¹⁰ of the Regulations *ibid*, to dispel any misgivings that there could be any contemplation under the Code of two kinds of guarantees being provided – one at the time of submission of the Resolution Plan and the other at the time of final consideration of the Resolution Plan. He stressed on the phrase, “*in case the resolution plan is approved,*” appearing in the said regulation, and forming part of the opening sentence of the regulation, to submit that it is applicable in respect of those persons whose plan is approved, so that they can be held to their promise. Otherwise, it gets converted into an earnest money deposit. This provision, which came in by way of an amendment, was to ensure implementation. Explanation (1) thereto was quite clear, defining the term “*performance guarantee.*”¹¹

2.17. Therefore, Mr Joy Saha submitted, the RP is not entitled to put in any condition that he wishes. The terms and conditions of the RFRP should strictly abide by the Regulations, and not *vice versa*. The RFRP cannot be subservient to the Regulations, it is born because of it. The question of putting in a performance guarantee would have arisen, it at all, only after GR Sponge was declared successful. In spite of this, as soon as the RP

¹⁰ (4A) The request for resolution plans shall require the resolution applicant, in case its resolution plan is approved under sub-section (4) of section 30, to provide a performance security within the time specified therein and such performance security shall stand forfeited if the resolution applicant of such plan, after its approval by the Adjudicating Authority, fails to implement or contributes to the failure of implementation of that plan in accordance with the terms of the plan and its implementation schedule.

¹¹ Explanation I. – For the purposes of this sub-regulation, “performance security” shall mean security of such nature, value, duration and source, as may be specified in the request for resolution plans with the approval of the committee, having regard to the nature of resolution plan and business of the corporate debtor.

communicated by mail dated 07.09.2020 to put in the Guarantee, GR Sponge acted with promptitude and deposited the same on 08.09.2020.

- 2.18. Mr Joy Saha further submitted that the voting on the two plans took place between 18.10.2020 and 31.10.2020. When the plans were being voted upon, the performance guarantee was certainly in place, five weeks before the event.
- 2.19. Elaborating on the real intention of regulation 36B(4A), Mr Joy Saha submitted that the real intent is that the resolution applicant should not be allowed to walk away after the plan submitted was approved. Proceeding further, Mr Joy Saha submitted that he would satisfy the court's conscience that there was no material irregularity which would call for interference from the Adjudicating Authority. He submitted that the evaluation matrix was only a guideline, just so that the process does not descend into arbitrariness. Whether the score of the applicants is better or not, is not a matter within the scope of regulation 39(3) of the Regulations *ibid*.
- 2.20. Mr Joy Saha stated that he supported Mr Ratnanko Banerji's views as far as commercial wisdom of the CoC is concerned, and submitted that these are not justiciable.

Arguments of Mr Avishek Guha, learned counsel appearing for the CoC.

- 2.21. Mr Avishek Guha, learned counsel appearing for the CoC, submitted that he adopts the arguments of the learned senior counsel for the RP.

Arguments in reply of Ms Manju Bhuteria, learned counsel appearing for the applicant-objector/ Ekvira

- 2.22. Ms Manju Bhuteria, learned counsel for Ekvira, submitted in her closing arguments that the criterion requiring the performance bank guarantee to be put in, was in terms of the criterion approved by the CoC, which was empowered to do so in accordance with section 25(2)(h) of the Code. Once the CoC laid down such a criterion, the resolution applicants have no option

but to comply. Regulation 36B(4A) of the Regulation *ibid* does not come into the picture at this stage.

- 2.23. Ms Bhuteria further submitted that there is no denial that this was indeed the criterion, either in the reply of the RP or in the reply of the successful resolution applicant. Therefore, GR Sponge did not fulfil this criterion.

Analysis and findings on the objections raised by Ekvira

- 2.24. We have heard Ms Manju Bhuteria, learned counsel for the Applicant/ Objector/Ekvira, Mr Ratnanko Banerji, learned senior counsel for the RP and Mr Joy Saha, learned senior counsel for the Successful Resolution Applicant, and perused the records.

- 2.25. There are two main planks of Ekvira's objections: (1) the issue of the performance guarantee; and (2) the Evaluation Matrix Score.

- 2.26. On the first issue, while it is no doubt true that the RFRP document required the resolution applicants to put in the performance guarantee upfront, we find that the same is not in keeping with the Regulations *ibid*. The RP is required to conduct the CIRP strictly in accordance with the Code and the Regulations.

- 2.27. Ms Manju Bhuteria's contention that the conditions enumerated in the RFRP document had the approval of the CoC in terms of section 25(2)(h)¹² of the Code, and was, therefore, required to be strictly complied with is, at first blush, highly attractive. But, viewed from the prism of section 25(2)(h) of the Code, we find that the criteria to be prescribed should be by having regard to the complexity and scale of business of the corporate debtor.

¹² (2) The RP shall undertake the following actions, namely,...(h) invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of the CoC having regard to the complexity and scale of operations of the business of the corporate debtor and such other condition as may be specified by the Board, to submit a resolution plan or plans.

- 2.28. In this view of the matter, the RP with the approval of the CoC, was fully empowered to fix qualifying criteria to screen the applications, so to speak. But this certainly cannot empower the RP to bring in additional conditions which have no relation with the object sought to be achieved. The RP's apprehension about flight by night operators who may submit a plan and thereafter walk away without any detriment after the CoC approved the same, was precisely the *raison d'être* for regulation 36B(4A). The successful resolution applicant was required to put in the performance guarantee **only after** the plan submitted by such applicant was evaluated and found successful. Therefore, there was certainly no need for a condition in the RFRP document that the same needed to be put in along with the plan.
- 2.29. It certainly does not strike us as to what rational purpose is sought to be achieved by insisting upon a performance guarantee at the time of submission of resolution plans itself in the RFRP document. The RFRP is a document that should strive to promote the objects of the Code and the Regulations. It cannot, in the name of evolving criteria in terms of section 25(2)(h) of the Code, bring in any conditions extraneous to the objects sought to be achieved.
- 2.30. Therefore, we hold that the condition requiring submission of a performance guarantee upfront even before the consideration of the resolution plans is not a condition that can be put in the RFRP, especially when regulation 36B(4A) seeks to achieve the same objective.
- 2.31. In this view of the matter, we have no hesitation in holding that any non-submission of the performance guarantee at the time of consideration of the rival plans is not a material irregularity brooking any interference by this Adjudicating Authority. In any case, in the present conspectus, we find that both the resolution applicants had submitted the performance guarantees before the voting on the resolution plans began.

2.32. The second plank of Ms Manju Bhuteria's submission pertains to the Evaluation Matrix score. On this, the rulings of the Hon'ble Supreme Court in *K. Sashidhar (supra)* and *Essar Steel (supra)* are quite clear. It is not within the jurisdiction of this Adjudicating Authority to substitute its own wisdom *vice* that of the CoC's in evaluation of the plans. We bow down to this view, and on this front too, no interference is warranted by this Adjudicating Authority.

2.33. **The result is that IA No.1345/KB/2020 shall stand dismissed.**

3. IA (IB) No.1212/KB/2020

3.1. With the objections out of the way, we now proceed to examine the IA filed by the RP for approval of the Resolution Plan.

3.2. This application was moved on 21.01.2021 by the Applicant. The underlying company petition in CP (IB) No.140/KB/2019 was filed by Punjab National Bank (PNB) against the Corporate Debtor under section 7 of the Code which was admitted into Corporate Insolvency Resolution Process (CIRP) *vide* order dated 08.08.2019.

3.3. Mr. Samir Kumar Bhattacharya (IBBI/IPA-002/IP-N00273/2017-2018/10831) was appointed as the Interim Resolution Professional (**IRP**) of the Corporate Debtor. He was confirmed as the RP of the Corporate Debtor at the first meeting of the Committee of Creditors (**CoC**) held on 29.08.2019.

3.4. The Applicant made the public announcement of the commencement of CIRP on 11.08.2019 in Kolkata edition of *Financial Express (English)* and *Bartaman (Bengali)*, Nagpur edition of *Indian Express (English)* and Nagpur Edition of *Loksatta (Marathi)* newspapers, inviting creditors to file their

claims with the IRP by 22.08.2019. The newspaper advertisements are annexed to the first progress report and marked as Annexure 'C'.¹³

- 3.5. The Applicant constituted the Committee of Creditors (CoC) and filed an undated report certifying the constitution of CoC by way of a separate affidavit affirmed on 29.08.2019.
- 3.6. The claims of financial and operational creditors as existing as on the date of filing the present application is as follows:

(Amount in Crore)

Sl. No.	Category of Claim and Reference to Clause of the Resolution Plan	Amount claimed	Amount admitted
1.	CIRP Costs [Clause 1.6]	----	Actuals
2.	Financial Creditors [Clause 1.2.4]	215.31	190.22
3.	Operational Creditors [Clause 1.2.4]	8.85	3.34
4.	Employees/Workmen [Clause 1.2.4]	0.06	0.06
Total		224.22	193.62

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

Particulars	Date of CoC Meeting
1 st CoC Meeting	29.08.2019
2 nd CoC Meeting	01.10.2019
3 rd CoC Meeting	11.11.2019
4 th CoC Meeting	28.11.2019
5 th CoC Meeting	03.01.2020
6 th CoC Meeting	14.01.2020
7 th CoC Meeting	21.01.2020

¹³ at pages 23 to 26

Particulars	Date of CoC Meeting
8 th CoC Meeting	06.02.2020
9 th CoC Meeting	20.02.2020
10 th CoC Meeting	05.03.2020
11 th CoC Meeting	27.05.2020
12 th CoC Meeting	18.06.2020
13 th CoC Meeting	14.07.2020
13 th CoC Meeting (<i>Part 2</i>)	17.07.2020
14 th CoC Meeting	11.08.2020
15 th CoC Meeting	05.09.2020
16 th CoC Meeting	14.09.2020
17 th CoC Meeting	18.09.2020
18 th CoC Meeting	23.09.2020
19 th CoC Meeting	01.10.2020
20 th CoC Meeting	14.10.2020

- 3.8. 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 published in all India edition of *Financial Express (English)* and Kolkata edition of *Aajkal (Bengali)* newspapers of 06.11.2019. The last date for receipt of EoIs was 21.11.2019.
- 3.9. The Applicant submits that in response to the EoI published on 06.11.2019, he received two EoIs. The Request for Resolution Plans (RFRP) was issued to both the prospective Resolution Applicants and the last date for submission was 02.12.2019. However, only one entity namely GR Sponge & Power Limited (**GR Sponge**) submitted its Resolution Plan, which was

placed before the CoC in its sixth and seventh meetings held on 14.01.2020 and 21.01.2020 respectively.

- 3.10. Meanwhile, 180 days CIRP period expired on 04.02.2020. This issue was discussed in the seventh CoC meeting held on 21.01.2020. The CoC in the said meeting deliberated on the issue and resolved that an application for extension of CIRP period be filed before the Adjudicating Authority. The Applicant thereafter filed the said application. This Adjudicating Authority extended the period of CIRP by ninety days starting from 03.02.2020.
- 3.11. On 06.02.2020, during its eighth meeting, the CoC discussed the Resolution Plan submitted by GR Sponge once again, since a revised resolution offer was submitted in furtherance of increase in valuation of one immovable asset of the Corporate Debtor.
- 3.12. On 20.02.2020, the CoC during the ninth meeting discussed the revised Resolution Plan submitted by GR Sponge on 14.02.2020. Bank of Baroda (BoB), having 34.47% voting shares in the CoC, was in favour of the revised Resolution Plan, however, PNB having 54.53% voting share, did not approve of the Resolution Plan.
- 3.13. The Resolution Plan was further revised and submitted on 04.03.2020 after incorporating the changes suggested by the CoC. The revised Resolution Plan was discussed in the tenth CoC meeting held on 05.03.2020 and e-voting line that was opened on 27.02.2020 was extended till 13.03.2020. The revised Resolution Plan was again rejected by the PNB, having 54.53% voting share. The Resolution Plan was revised twice more and was placed before the CoC for decision in eleventh CoC meeting held on 27.05.2020 and twelfth CoC meeting held on 18.06.2020, respectively. The revised Resolution Plan was rejected in both these meetings too.
- 3.14. The CoC, therefore, unanimously resolved to liquidate the Corporate Debtor as a going concern. However, before filing the application for liquidation, Ekvira Alloys Private Limited (**Ekvira**) filed an application

before this Adjudicating Authority to participate in the process by submitting a Resolution Plan, which was allowed by this Adjudicating Authority *vide* order dated 29.06.2020.

- 3.15. Ekvira submitted its Resolution Plan on 03.07.2020. The Resolution Plan was discussed in the thirteenth CoC meeting held on 14.07.2020 wherein Ekvira was called upon to improve its financials and the meeting was adjourned. Ekvira submitted its revised plan on 16.07.2020. The revised plan was discussed in the reconstituted adjourned meeting on 17.07.2020 and put to vote by way of e-voting between 21.07.2020 to 31.07.2020. The Resolution Plan was rejected unanimously by the CoC.
- 3.16. In the fourteenth CoC meeting, the CoC once again resolved that the Corporate Debtor be sent into liquidation. Accordingly, an application for liquidation of the Corporate Debtor was filed before this Adjudicating Authority.
- 3.17. As it happens, another application was filed by GR Sponge submitting that they were willing to revise their plan. This Adjudicating Authority allowed the application directing the CoC to consider the improved Resolution Plan that was to be submitted by GR Sponge.
- 3.18. In the fifteenth CoC meeting held on 05.09.2020, GR Sponge and Ekvira were both requested to submit their revised Resolution Plan. Both the prospective Resolution Applicants submitted their revised Resolution Plans on 07.09.2020. However, both the prospective Resolution Applicants wanted to further improve their plans. Therefore, on 14.09.2020, in its sixteenth CoC meeting, the CoC granted a final opportunity to both the prospective Resolution Applicants to submit their revised plans by 17.09.2020. The application for liquidation was withdrawn.
- 3.19. In the seventeenth, eighteenth, nineteenth and twentieth CoC meetings held on 18.09.2020, 23.09.2020, 01.10.2020 and 14.10.2020 respectively, the CoC deliberated on both the Resolution Plans. The plans were put up for

voting and the voting lines were open from 16.10.2020 to 31.10.2020. Upon conclusion of the voting, GR Sponge came out as the Successful Resolution Applicant having received approval of 100% votes. Minutes of all twenty CoC meetings are annexed to the application as Annexure 'A'.¹⁴

3.20. Upon receipt of approval of the CoC, the Applicant issued Letter of Intent (LoI) to the Successful Resolution Applicant on 03.11.2020. The Successful Resolution Applicant deposited the performance security amounting to ₹6,00,00,000 (Rupees six crore only) on 08.09.2020 and ₹19,50,000 (Rupees nineteen lakh and fifty thousand only) on 04.11.2020 with PNB. Copies of LoI and confirmation of Successful Resolution Applicant are annexed with the application at Annexure 'C',¹⁵ and Annexure 'D'.¹⁶

3.21. The Applicant submits details of various compliances as envisaged within the Code and the CIRP Regulations which a Resolution Plan is required to adhere to, and is reproduced hereunder:

I. Submission of Resolution Plan in terms of section 30(2) of the Code:

<i>Cl. 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 3.2 at page 24 of the Resolution Plan.
(b)	(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	Clause 3.2 at page 24 of the Resolution Plan.

¹⁴ pages 46-161

¹⁵ pages 176-178

¹⁶ pages 179-182

<i>Cl. of s.30(2)</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>
	(ii) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sec.53(1), whichever is higher; and	Clause 3.2 at page 24 of the Resolution Plan.
	(iii) provides for payment of debts of financial creditors who do not vote in favour of the resolution plan, in such manner as may be specified by the Board.	Not applicable
(c)	Plan provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Clause 5 at page 37 of the Resolution Plan.
(d)	Plan provides for the implementation and Supervision of the Resolution Plan	Clause 6 at page 38 of the Resolution Plan.
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Clause 6.21 at page 44 of the Resolution Plan.
(f)	Conforms to such other requirements as may be specified by the Board.	Clause 6.33.7 at page 50 of the Resolution Plan.

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

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: -

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

IA (IB) No.1212/KB/2020
& IA (IB) No.1345/KB/2020
In CP (IB) No.140/KB/2019

In re Prithvi Ferro Alloys Pvt Ltd (Resolution Plan)

Sl. No.	Particulars	Relevant Page of the revised Resolution Plan dealing aforesaid compliance with Regulation
(a)	transfer of all or part of the assets of the corporate debtor to one or more persons;	Not proposed by the RA.
(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;	Annexure 2 at page 67 of the Resolution Plan.
(d)	the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	Annexure 2 at pages 62-66 of the Resolution Plan.
(e)	cancellation or delisting of any shares of the corporate debtor, if applicable;	Annexure 2 at pages 62-66 of the Resolution Plan.
(f)	satisfaction or modification of any security interest;	Annexure 2 at pages 62-66 of the Resolution Plan.
(g)	curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Annexure 2 at pages 62-66 of the Resolution Plan.
(h)	reduction in the amount payable to the creditors;	Clause 3.5 at page 25 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;	Annexure 2 at pages 62-66 of the Resolution Plan.
(j)	amendment of the constitutional documents of the corporate debtor;	Not specifically mentioned in the Resolution Plan.

<i>Sl. No.</i>	<i>Particulars</i>	<i>Relevant Page of the revised Resolution Plan dealing aforesaid compliance with Regulation</i>
(k)	issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	Annexure 2 at pages 63 of the Resolution Plan.
(l)	change in portfolio of goods or services produced or rendered by the corporate debtor;	Not proposed by the RA.
(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.	Not proposed by the RA. However, the same shall be in accordance with section 31(4) of the Code.

III. Mandatory contents of Resolution Plan in terms of regulation 38 of CIRP Regulations:

<i>Ref. to relevant Reg.</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 3.3 at page 24 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 3.5 at page 25 of the Resolution Plan.

<i>Ref. to relevant Reg.</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>
38(1B)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.	Clause 4.2 at page 36 of the Resolution Plan.
38(2)	A resolution plan shall provide:	
	(a) the term of the plan and its implementation schedule;	Clause 4.1 at page 35 of the Resolution Plan.
	(b) the management and control of the business of the corporate debtor during its term; and	Clause 5 at page 37 of the Resolution Plan.
	(c) adequate means for supervising its implementation.	Clause 6 at page 38 of the Resolution Plan.
38(3)	A resolution plan shall demonstrate that –	
	(a) it addresses the cause of default;	Annexure 6 at page 76 of the Resolution Plan.
	(b) it is feasible and viable;	Annexure 6 at page 76 of the Resolution Plan.
	(c) it has provisions for its effective implementation;	Clause 4.1 at page 35 of the Resolution Plan.
	(d) it has provisions for approvals required and the timeline for the same; and	Not envisaged in the plan, however, the same shall be in accordance with section 31(4) of the Code.

<i>Ref. to relevant Reg.</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>
	(e) the Resolution Applicant has the capability to implement the resolution plan.	Clause 2 (Part B) at page 15 of the Resolution Plan.

3.22. The successful Resolution Applicant has submitted a certificate of eligibility under section 29A of the Code.¹⁷

3.23. 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 B.¹⁸

3.24. The information with regard to the amount claimed, amount admitted, and the amount proposed to be paid by the successful Resolution Applicant under the said Resolution Plan is tabulated as under:

(Amount in crore rupees)

Sr. No.	Category of Creditor	Amount of claim	Amount admitted	Amount provided in the Plan
1.	Insolvency Resolution Process Cost	Actuals	--	--
2.	Operational Creditor <i>(Other than Workmen and Employees)</i>	8.55	3.08	0.35

¹⁷ pages 268 to 270 of the Application.

¹⁸ pages 162 to 175 of the Application

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Sr. No.	Category of Creditor	Amount of claim	Amount admitted	Amount provided in the Plan
3.	Operational Creditors <i>(Related Parties)</i>	0.30	0.26	NIL
4.	Operational Creditor <i>(Only Workmen and Employees)</i>	NIL	NIL	NIL
5.	Financial Creditor <i>(Unrelated Party)</i>	131.06	131.06	58.65
6.	Financial Creditor <i>(Related Party)</i>	84.25	59.16	0.02
Total: A (1+2+3+4+5+6)		224.16	193.56	59.02
7.	Creditors <i>(Related Parties)</i>	7.01	NIL	NIL
8.	Other Liabilities- Claim not filed <i>(Operational Creditor -Statutory Due)</i>	0.89	NIL	0.12
9.	Other Liabilities- Claim not filed- <i>(Operation Creditor -Employees)</i>	0.04	NIL	0.04
10.	Other Liabilities- Claim not filed- <i>(Operation Creditor -Director Remuneration)</i>	0.05	NIL	NIL
11.	Liabilities – Claim filed but not admitted	NIL	NIL	0%
12.	Contingent Liabilities**	5.89	NIL	NIL
Total: B (7+8+9+10+11+12)		13.88	--	0.16
13.	Capex	--	--	3.00
14.	Working Capital	--	--	22.00
Grand Total: (A+B+13+14)		238.04	193.56	84.18

3.25. Summary of the financial proposal/payment under the Resolution Plan of GR Sponge as provided under “Part-A” is tabulated hereunder for sake of clarity:

Particulars	Amount (Rs in Cr)	Time Frame [#]	Recovery as % of Admitted Debt
CIRP Process Cost	Actual	Within 30 days	100%
Upfront to the Financial Creditors (Related Party)	0.02	As per regulation 38 <i>(within 45 days)</i>	0.11%
Upfront to the Financial Creditors	20.65	As per regulation 38 <i>(within 45 days)</i>	44.75%
Deferred Payment to Financial Creditor	*38.00	**Payable within 2 years from the effective date	
Payment to Operational Creditors (including Statutory Liabilities)	0.47	As per regulation 38	4.83%
Payment to Workmen	0.04		100.00%
Other Liabilities	0.00		0.00%
Capex / Working Capital	25.00	Within 6 months	
TOTAL	84.18		

[#] Time mentioned hereinabove are from Effective Date, defined as the date of approval of Resolution Plan by Adjudicating Authority

* Interest shall be payable on the above deferred payment @ 8.5% p.a., with quarterly rests, beginning after 180 days of effective date.

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

3.26. The Resolution Plan also provides for –

- a. Appointment of Monitoring Agency in Clause 5.1.1.1 at page 37 of the Resolution Plan;
- b. Management of Company after Resolution in Clause 5.1.1 at page 37 of the Resolution Plan; and
- c. Term and implementation of the resolution plan in Clause 6 at page 38 of the Resolution Plan.

Reliefs and Concessions

3.27. The Reliefs and Concessions sought by the Resolution Applicant from the Adjudicating Authority are set out below for the successful implementation of the Resolution Plan. The orders thereon are indicated against each.

S. No.	Ref. to Clause	Relief and/or Concessions Sought	Orders thereon
1.	Clause 1 of Part D at page 51.	The approval of the Adjudicating Authority and the CoC shall constitute adequate approval and cancellation of the existing share capital and accordingly, no approval/consent shall be necessary from any other Person/ Governmental Authority in relation to either of these actions under any agreement, the constitutional documents or under any Applicable Law. It is also clarified that the Resolution Applicant shall not be required to deal with the dissenting/abstaining Financial Creditors in any manner other than as provided under the Code.	Granted, however, the company shall file all necessary forms and applications along with applicable fee with the Registrar of Companies, if required.
2.	Clause 2 of Part D at page 51.	Approval of this plan shall be deemed approval for waiver from filing of statutory returns, including but not limited to any filings for registrar of Companies, Direct & Indirect tax authorities, plant related annual filings, etc., for a period prior to Effective Date. Certified copy of the order approving the Resolution Plan shall be a direction on such	To be construed only in terms of the waivers available under the IBC, nothing more and nothing less.

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S. No.	Ref. to Clause	Relief and/or Concessions Sought	Orders thereon
		statutory authorities to allow the CD to do compliance(s) with effect from and after the date of approval of Resolution Plan by the Adjudicating Authority.	
3.	Clause 3 of Part D at page 51.	Approval of this plan shall be deemed approval for removal of Directors from the record of the Company as appearing on the MCA portal/website/income tax web site/Any Indirect website. Certified copy of the order approving Resolution Plan shall be a direction on such statutory authorities to do the needful.	Granted. However, all necessary filings required in this respect shall be made to the appropriate authorities and no exemption is granted in this regard.
4.	Clause 4 of Part D at page 51.	In case of capital reduction, the requirement of adding “and reduced” in the name of the Corporate Debtor to be dispensed with (on account of reduction of share capital of the Corporate Debtor)	Not required in terms of the Companies Act, 2013.
5.	Clause 5 of Part D at page 51.	The approval of this Plan by the Adjudicating Authority shall be deemed to have waived all the procedural requirements in terms of Section 66, Section 42 and Section 62(1)(c) of the 2013 Act, and the NCLT (Procedure for Reduction of Share Capital) Rules, 2016 for reduction of share capital and issuance of equity shares and Preference shares to the Resolution Applicant and/or the Financial Creditors	Granted, however, the company shall file all necessary forms and applications along with applicable fee with the Registrar of Companies. The exemption granted is only from the requirement of holding meetings of shareholders or of

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S. No.	Ref. to Clause	Relief and/or Concessions Sought	Orders thereon
			creditors under the Companies Act, 2013.
6.	Clause 6 of Part D at page 51.	Order approving Resolution Plan shall be deemed approval for moving the Registered Office from Kolkata to Chhattisgarh/ any procedural requirement shall be deemed to be waived.	Appropriate application shall be moved before the authorities concerned in this regard.
7.	Clause 7 of Part D at page 51.	Waiver of any fee payable to any stock exchange or any such regulatory body towards any past dues or towards fee dues pursuant to any of the steps as contemplated in the Resolution Plan including but not limited to any delisting fee, fee payable to Registrar of Companies (RoC), etc.	Granted, so far as past dues are concerned. However, delisting fee, fee payable to Registrar of Companies (RoC), etc., are to be paid.
8.	Clause 8 of Part D at page 51.	An approval with regards to the right of way ("Right of Way") for an unfettered access to the plant.	Any such easementary rights shall be only in terms of what is already being enjoyed by the corporate debtor. No new rights can be created under a Resolution Plan.
9.	Clause 9 of Part D at page 51.	Licenses and approvals held by the Company, which expire prior to Completion Date or within a period of 6 (six) months thereafter, shall be renewed/extended by the relevant Governmental Authorities, and the Company shall be permitted to continue its	The Resolution Applicant shall make necessary applications to the concerned regulatory or statutory authorities for renewal of such business permits in terms of s.31(4) of the IBC, and such authority

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S. No.	Ref. to Clause	Relief and/or Concessions Sought	Orders thereon
		<p>business and assets in the manner operated prior to submission this plan until the renewal/extension of such licenses and approvals. The relevant Governmental Authorities will provide a reasonable period of time after Completion Date in order for the Resolution Applicant to:</p> <p>(a) Assess the status of licences and approvals required by the Company and to procure that the Company applies for the same; and</p> <p>(b) Regularize any non-compliances under the Applicable Law (including non-registration, inadequate/ non-stamping of documents as required under Applicable Law) existing prior to the Closing Date</p>	<p>shall also consider the same keeping in mind the objectives of the Code.</p> <p>In so far as regularisation of non-compliances such as non-registration or inadequate stamping or non-stamping of documents required to be registered or stamped, as the case may be, is concerned, the same cannot be granted as part of the resolution plan and the corporate debtor under the successful resolution applicant is required to comply with all applicable laws.</p>
10.	Clause 10 of Part D at page 52.	<p>The relevant Governmental Authorities shall not initiate any investigations, actions or proceeding in relation to any non-compliances with Applicable Law by the Company during the period prior to the Closing Date. Neither shall the Resolution Applicant, nor the Company, nor their respective directors, officers and employee appointed on and as of the Closing Date be liable for</p>	<p>This shall be strictly in terms of section 32A of the Code only and nothing more and nothing less. Any approval not specifically granted should not be treated as deemed approval.</p>

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S. No.	Ref. to Clause	Relief and/or Concessions Sought	Orders thereon
		any violations, liabilities, penalties or fines with respect to or pursuant to the Company not having in place requisite licenses and approvals required to undertake its business as per Applicable Law, or any non-compliances of Applicable Law by the Company. Further, the relevant Governmental Authorities will provide a reasonable period of time after the Completion Date, for the Resolution Applicant to assess the status of any non-compliances under the Applicable Law (including with respect to applicable environmental laws, directions or orders by the Ministry of Environment and Forest, permits clearances and forest related clearances) and to procure that the Company regularizes such non-compliances under the Applicable Law existing prior to the Completion Date.	
11.	Clause 11 of Part D at page 52.	Direction to authorities for providing key infrastructure facilities and approvals like Consent to Establish, Consent to Operate, Water approval, Railways approval, etc.	The company shall make appropriate applications along with applicable fee to the authorities concerned, who shall consider the same keeping in view the objects of the IBC.

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S. No.	Ref. to Clause	Relief and/or Concessions Sought	Orders thereon
12.	Clause 12 of Part D at page 52.	<p>Withdrawal of litigations initiated by the Financial Creditors against Corporate Debtor, issue no-dues certificate(s) in favour of Corporate Debtor and release their respective charges on the securities in full and complete satisfaction of all debts owed to the Financial Creditors by Corporate Debtor, including all guarantees which may have been provided to the Financial Creditors, for credit facilities availed by Corporate Debtor. However, this clause shall exclude any personal guarantee given by erstwhile guarantor/promoter of the Corporate Debtor (which may be enforced by creditor separately as per extant rules and regulations). It should be noted that, Company and/or RA shall be immune from any subrogation right by whatsoever nature arising out of enforcement of such guarantee/ obligation.</p>	<p>This shall be only to the extent permitted by the Code, nothing more and nothing less.</p>
13.	Clause 13 of Part D at page 52.	<p>Any and all dues to, liabilities or obligations payable to, claims, counter-claims, demands, actions or penalties, made or imposed by or any arrears, dividend or obligations owed or payable to (including but not limited to all interests, damages, losses, expenses and third party claims),</p>	<p>Such general waivers cannot be granted in the present form, these have to be in terms of the Code and the existing laws.</p>

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S. No.	Ref. to Clause	Relief and/or Concessions Sought	Orders thereon
		and any right, title, interest enjoyed by, any actual or potential other stakeholders of the Corporate Debtor including any group companies whether under law or otherwise, whether or not claimed, whether or not filed, whether or not crystalized, whether or not accrued, whether or not admitted, whether or not notional, whether or not known, whether due or contingent, whether or not disputed, present or future, whether or not being adjudicated in any proceedings, whether or not decreed, whether or not reflected in the financial statements of the Corporate Debtor, or whether or not reflected in any record, document, statement, statutory or otherwise, arising prior to or after the Effective Date, but pertaining to period prior to the Effective Date, and/or arising in connection with Assignment or acquisition of shares of the company by the investors or conversion of the Conversion Debt into Equity or restructuring of the Assigned Debt or in any other manner as a result of or in connection with this Plan, shall be deemed to have been irrecoverably waived and permanently extinguished and written off in full with effect from the Effective Date. To give effect	

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S. No.	Ref. to Clause	Relief and/or Concessions Sought	Orders thereon
		to such waiver and extinguishment, any contract, agreement, deed or document, whether oral or written, expressed or implied, statutory or otherwise, pursuant to which any such dues, liabilities, obligations, claims, counterclaims, demands, actions, penalties, right, title or interest in claimed (other than as specifically mentioned herein) shall stand modified with effect from the Effective Date without any further act, deed and approval of the Resolution Plan by Adjudicating Authority shall be deemed to be sufficient notice which may be required to be given to any person for such matters and no further notice shall be required to be given	
14.	Clause 14 of Part D at page 53.	An order approving the Resolution Plan shall be a deemed order upon Financial Creditors to cancel all pledge/ lien/ other encumbrances upon the issued share capital of the Company to enable corporate action as envisaged in the Resolution Plan.	Granted, strictly in terms of the Code.
15.	Clause 15 of Part D at page 53.	The Ministry of Corporate Affairs and/ or the Adjudicating Authority shall exempt compliance with the provisions of Chapter XV of the Companies Act, 2013 (and the corresponding	Not granted.

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S. No.	Ref. to Clause	Relief and/or Concessions Sought	Orders thereon
		rules issued under the Companies Act, 2013), in respect of schemes of arrangement contemplated under the Plan.	
16.	Clause 16 of Part D at page 53.	Relinquishment of all/any promise to pay towards any obligation including corporate guarantee, pledge on any shares, mortgage or charge on any specific asset, etc. issued by Corporate Debtor in favour of or on behalf of any of its subsidiaries, associates, group companies or any third party	Granted, strictly in terms of the Code.
17.	Clause 17 of Part D at page 53.	Specific waiver of transaction costs related leading to implementation of the Resolution Plan including but not limited to any incidence of Stamp Duty, ROC Fee, Income Tax, any Statutory Levy, Renewal Charges, etc. The Resolution Plan envisages increase in the authorised capital for implementation. The ROC fees towards the same shall be specifically waived.	Not granted.
18.	Clause 18 of Part D at page 53.	By approving the Resolution plan by the Adjudicating Authority, it is deemed approved that, Title of the Land (as is available with Corporate Debtor) situated at – 1) Commercial Plot at - Bankura, opposite Kalimata Ispat Industries, Mauza - Bishnupur, Block-Barjora, Dist: Bankura,	Waived by the Resolution Applicant during the course of hearing. In any case, any such approval is beyond the remit of this Adjudicating Authority acting within the boundaries of the IBC.

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S. No.	Ref. to Clause	Relief and/or Concessions Sought	Orders thereon
		<p>West Bengal-722202 comprising area of 21.35 Acre and Additional land (Entire Land as appearing in the Balance Sheet of CD of Value of Rs. 83.88 Lacs) in Bankura in the name of Old Promoters of CD for which Deed has been executed and sale consideration has already been paid by the CD.</p> <p>2) Land at Village Tirodi, Dist: Balaghat, Madhya Pradesh comprising area of 17.38 Acre, shall get transferred to Corporate Debtor on a going concern basis.</p>	The corporate debtor shall be at liberty to take steps in this regard in accordance with law.
19.	Clause 19 of Part D at page 53.	To direct/grant all approvals required for consummating the scheme of arrangement presented in Annexure 2	Granted, strictly in terms of the Code. However, the company shall file all necessary forms and applications along with applicable fee with the Registrar of Companies.
20.	Clause 20 of Part D at page 53.	To direct/grant all approvals required for undertaking the schemes of capital reduction envisaged in Annexure 2 of the Resolution Plan.	Granted, strictly in terms of the Code. However, the company shall file all necessary forms and applications along with applicable fee with the Registrar of Companies.
21.	Clause 21 of Part D at page 53.	Waiver as to any liability that may arise pursuant to cases / arbitration / proceeding / action as mentioned in Information Memorandum and / or any other	Granted but only in terms of section 32A of the Code.

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		information as provided by the RP including but not limited to the one set out in Annexure 3 & 4	
22.	Clause 22 of Part D at page 53.	Permitting waiver of all liabilities and taxes arising out of implementation of the transactions contemplated in the Resolution Plan and instructing the relevant authorities concerned accordingly	Not granted.
23.	Clause 23 of Part D at page 53.	All litigations, prosecutions, legal proceedings, suits, claims (including claims for damages), notices, show cause notices, demand notices, actions, arbitration or administrative, judicial, quasi-judicial, regulatory, government or any enforcement agencies, pending or threatened against the company or whose outcome adversely affects the Company (including but not limited to the proceedings set out in the Process Memorandum) arising prior to or after the Effective Date ("Proceedings"), shall be deemed to have been withdrawn or dismissed and will be deemed to have been barred with effect from the Effective Date. Pursuant to the order of the Adjudicating Authority approving this Plan, all liabilities, obligations, demands, actions or penalties made or imposed in relation to any	Granted, in so far as waiver being sought with respect to the past proceedings are concerned, in terms of section 32A of the Code.

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		proceedings, whether or not claimed, whether or not filed, whether or not assessed, whether or not crystalized, whether or not accrued, whether or not admitted, whether or not notional, whether or not known, whether due or contingent, whether or not disputed, present or future, whether or not being adjudicated in any proceedings, whether or not decreed, whether or not reflected in any record, document, statement, statutory or otherwise, arising prior to or after the Effective Date, but pertaining to a period prior to the Effective Date shall be deemed to have been irrecoverably waived and permanently extinguished and written off in full and settled at Nil value with effect from the Effective Date by virtue of the order of the Adjudicating Authority approving this plan	
24.	Clause 24 of Part D at page 54.	Directions from Adjudicating Authority that other than actions taken by the CoC/Resolution Professional against the personal guarantees extended by the Existing Promoter group which have been initiated prior to the approval by the Adjudicating Authority, all legal suits, proceedings, certificate proceedings and/or quasi-legal proceedings that have been	This shall be in terms of section 32A of the Code.

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		<p>initiated against Corporate Debtor or the Incumbent Promoter Group, Subsidiaries/Associates/ related party(ies) of the Incumbent Promoter Group, which may have an adverse impact on Corporate Debtor of any nature whatsoever, shall stand quashed, including but not limited to:</p> <p>(a) for recovery of any debts and dues (including but not limited to statutory dues like Central/State Sales Tax/value added tax/Central Excise/Service Tax/ Goods and Services Tax, Income Tax, Custom Duty, etc. or any other statutory dues) pending against PFAPL and 100% waiver of all such claims/dues thereunder;</p> <p>(b) those related to taxation, related to environment and forest laws, railway claims/disputes, proceedings under the Foreign Exchange Management Act 1999, Prevention of Money Laundering Act 2002, criminal matters, etc (if any)</p> <p>However, nothing mention above, shall hamper the right of creditor to initiate actions against the erstwhile promoters, personal guarantors and corporate guarantors and Company should</p>	

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S. No.	Ref. to Clause	Relief and/or Concessions Sought	Orders thereon
		support the Financial Creditors with information, documents for the above purpose. Further, to explain Company should not be responsible /accountable towards any claims (resulting out of subrogation or otherwise)	
25.	Clause 25 of Part D at page 54.	Direction to Resolution Professional and CoC to provide full access to information, premises and assets to Resolution Applicant.	Granted.
26.	Clause 26 of Part D at page 54.	Directions from Adjudicating Authority to the relevant parties concerned to ensure continuity of critical infrastructure contracts/ arrangements	These shall be subject to the contractual terms.
27.	Clause 27 of Part D at page 54.	Directions to the concerned ROC and State Governments to waive stamp duty and fees applicable to the implementation of the Resolution Plan	Not granted.
28.	Clause 28 of Part D at page 54.	Directions from Adjudicating Authority to Resolution Professional/ IMA to ensure all the assets shall be fully insured till the time their possession is handed over to the new management.	This is not for this Adjudicating Authority to direct.
29.	Clause 29 of Part D at page 54.	An order approving the Resolution Plan shall be deemed to [be] waiver of the unpaid lease rent of the existing land at MUL	Not granted. Any unpaid lease rent of the existing land shall be paid to the authorities concerned.

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S. No.	Ref. to Clause	Relief and/or Concessions Sought	Orders thereon
		by MIDC and Continuation of the same.	
30.	Clause 30 of Part D at page 55.	<p>An order approving the Resolution Plan shall be a deemed approval to continue the benefit of and/ or re-grant of;</p> <p>a. Electricity Duty Exemption for the period of 15 years from the date of commencement of commercial production (from 16.07.2014 to 15.07.2029).</p> <p>b. Industrial Promotion Subsidy (IPS) equivalent to 100% of eligible investments of Rs. 12068.93 lacs 7 years from 16.07.2014 to 15.07.2021 or to the extent of taxes payable under MVAT & CST by the project in respect of sale of finished products eligible for incentives after adjustment of set off or other credit available within a period of 7 years, whichever is lower.</p> <p>c. 100% exemption from payment of stamp duty in accordance with dispensation under Govt. notification dated 12.06.2007</p> <p>d. Royalty refund for a period of 5 years from the effective date.</p> <p>e. 75% reimbursement of expenditure incurred on account of ESI & EPF for a period of 5 years from</p>	<p>The corporate debtor shall make necessary applications to the concerned regulatory or statutory authorities for renewal of such business permits, and such authority shall also consider the same keeping in mind the objectives of the Code. No implicit waiver shall be construed in this regard.</p>

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

IA (IB) No.1212/KB/2020
& IA (IB) No.1345/KB/2020
In CP (IB) No.140/KB/2019

In re Prithvi Ferro Alloys Pvt Ltd (Resolution Plan)

S. No.	Ref. to Clause	Relief and/or Concessions Sought	Orders thereon
		16.07.2014 to 15.07.2019, limited to 25% of FCI i.e. Rs. 3017.23 lac and subject to condition that at least 75% of total no. of proposed employments are from Chandrapur district.	
31.	Clause 31 of Part D at page 55.	An order approving the Resolution Plan shall be deemed to continue the eligibility certificate for Mega Project under the Scheme of Incentives – 2007 issued by Govt. of Maharashtra, under which the Company is eligible Exemption & Subsidies.	The Resolution Applicant shall make necessary applications to the concerned regulatory or statutory authorities for renewal of such business permits, and such authority shall also consider the same keeping in mind the objectives of the Code.
32.	Clause 32 of Part D at page 55.	Directions from Adjudicating Authority allowing Corporate Debtor to use the brought forward losses and unabsorbed depreciation, whether assessed or not, for the purpose of the Income Tax Act, 1961. Further, RA should not be liable to pay any tax whatsoever arising out of implementation of this Resolution Plan.	This shall be subject to the Income Tax Act, 1961.
33.	Clause 33 of Part D at page 55.	An Order approving the Resolution Plan shall be deemed to be the waiver of entire old water charges, pertaining to operational and non-operational period by corporate debtor to be	Granted, strictly in terms of the Code.

S. No.	Ref. to Clause	Relief and/or Concessions Sought	Orders thereon
		payable to Executive Engineer, Irrigation Division, Chandrapur upto the date of approval of plan from Adjudicating Authority.	

4. Findings

- 4.1. With respect to the compliance of regulation 38(3)(d) of the CIRP Regulations are concerned, the Resolution Plan refers to clause 4.4 at page 36 which is the implementation schedule of the Resolution Plan and not the provisions for approvals required and its timeline, the Resolution Applicant shall therefore, adhere to section 31(4) of the Code in order to comply with the said requirement. Further wherever applicable, timeline provided under the Code and CIRP Regulations shall be complied with.
- 4.2. It also appears from clause 1.4.2 at page 11 of the Resolution Plan that Employee Provident Fund is due; the same shall be paid in full.
- 4.3. As per clause 3.3.1. at page 24 of the Resolution Plan the liquidation value to be paid to the Operational Creditors or the other creditors or stakeholders (including dues to employee other than workmen), government dues, taxes etc. and other creditors and stakeholders is **NIL**, the successful Resolution Applicant therefore seeks a waiver of all the sum due towards payment of Operational Creditors. The clause further provides for an amount of ₹47,00,000 (Rupees forty-seven lakh only) to meet payment of any Operational Creditor due on its sole discretion based on the business need.
- 4.4. **As per the scheme of the Code, Operational Creditors are to be paid in priority to the Financial Creditors, the Resolution Applicant shall not, therefore, pick and choose which Operational Creditor is to be paid and which should not be paid. If the claims have been admitted, then all such claims shall be paid proportionally.**

- 4.5. So far as the proposal for merger or reverse merger mentioned at points (a) to (c) at page 67 of the Resolution Plan is concerned, in the absence of a proposal at this stage when the Successful Resolution Applicant has itself not made up its mind as to what should be done, it is not possible to grant approval to the provision that the *“by approving this Resolution Plan, the scheme of the Merger or Reserve Merger are in principle, approved by the Adjudicating Authority”*. Proper petition under sections 230-232 of the Companies Act, 2013 shall be made which shall be considered on its own merit at that point of time.
- 4.6. 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.
- 4.7. The objections raised by Ekvira, the unsuccessful resolution applicant, to the approved resolution plan having been overruled, and on perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with sections 30 and 31 of the Code and also complies with regulations 37, 38 and 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. No circumstances exist that militate against grant of approval for the resolution Plan.

5. Orders

- 5.1. As far as the question of granting time to comply with the statutory obligations or seeking sanctions from governmental authorities is

concerned, the successful Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.

- 5.2. 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.
- 5.3. 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.**
- 5.4. 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.
- 5.5. The moratorium imposed under section 14 shall cease to have effect from the date of this order.
- 5.6. In case of non-compliance of this order or withdrawal of Resolution Plan, the CoC shall take steps to forfeit the performance guarantee already submitted by the Resolution Applicant.
- 5.7. 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.
- 5.8. 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.
- 5.9. Liberty is hereby granted for moving applications, if required, in connection with implementation of this Resolution Plan.

- 5.10. The Resolution Professional shall file a copy of this Order with the Registrar of Companies, West Bengal, *inter alia* for updating the status of the Corporate Debtor on the MCA portal.
- 5.11. **The applications bearing IA (IB) No.1212/KB/2020 and IA (IB) No.1345/KB/2020 along with CP (IB) No.140/KB/2019 are disposed of accordingly.**
- 5.12. Additionally, the Registry shall send e-mail copy of this order to the Registrar of Companies, West Bengal, to all the parties and their Id. Counsel for information and for taking necessary steps.
- 5.13. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Harish Chander Suri
Member (Technical)

Rajasekhar V K
Digitally signed
by Rajasekhar V
K
Date: 2021.05.03
14:30:20 +05'30'
Rajasekhar V.K.
Member (Judicial)