

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-I
KOLKATA**

**I.A. (IB) No. 1391/KB/2023
in
CP (IB) No. 891/KB/2020**

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

In the matter of:

Bank of India

... Financial Creditor

Versus

McNally Bharat Engineering Company Limited

... Corporate Debtor

And

In the matter of:

Ravi Sethna, Resolution Professional of

McNally Bharat Engineering Company Limited

... Applicant

Date of pronouncement: 19 December 2023

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (via hybrid mode):

For the Applicant/RP

ORDER

Per Coram

1. This Court convened through hybrid mode.

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In Re Resolution Plan of McNally Bharat Engineering Company Ltd.
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Preliminary

2. I.A. (IB) No. 1391/KB/2023 is an application under section 30(6) of the Insolvency and Bankruptcy Code, 2016, after approval of the resolution plan by the Committee of Creditors (“CoC”).
3. This application was filed by Mr. Ravi Sethia, Resolution Professional of **McNally Bharat Engineering Company Limited [CIN: L45202WB1961PLC025181]** by invoking the provisions of section 30(6) of the Insolvency and Bankruptcy Code, 2016 (“**the Code**” or “**IBC**”) read with regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”) for approval of a Resolution Plan in respect of **McNally Bharat Engineering Company Limited (“Corporate Debtor”)**.
4. The underlying Company Petition in C.P. (IB) No. 891/KB/2020 was filed by Bank of India, the Financial Creditor against McNally Bharat Engineering Company Limited, the Corporate Debtor, to initiate Corporate Insolvency Resolution Process (“**CIRP**”), under section 7 of the Insolvency and Bankruptcy Code 2016, which was admitted *vide* order dated 29 April 2022.
5. Initially, Mr. Anuj Jain was appointed as the Interim Resolution Professional (**IRP**). At the 1st meeting of the CoC held on 03 June 2022, the CoC proposed to appoint Mr. Ravi Sethia, the Applicant herein, as the Resolution Professional. The appointment of the Resolution Professional was confirmed by this Adjudicating Authority on 26 August 2022.

Constitution of CoC

6. The IRP made public announcement on 07 May 2022 in *Financial Express, the Telegraph (English) (Kolkata Edition) and EkDin (Bengali) (Kolkata Edition)* newspapers regarding initiation of Corporate

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Insolvency Resolution Process and called proof of claims from the financial and operational creditors, workers and employees of the corporate debtor in the specified forms. The last date of submission of claims was 18 May 2022.

7. The CoC was constituted on 25 May 2022, with the following creditors as members of the CoC:

Sl. No.	Name of the Creditor	% Voting Share
1.	Bank of India	19.48%
2.	Axis Bank Limited	14.74%
3.	State Bank of India	13.75%
4.	IDBI Bank Limited	10.22%
5.	ICICI Bank Limited	9.94%
6.	Punjab National Bank	7.70%
7.	Union Bank of India	6.78%
8.	Karur Vysya Bank Limited	4.51%
9.	Indian Bank	3.54%
10.	Standard Chartered Bank	2.43%
11.	EIG (Mauritius)	2.12%
12.	Bank of Baroda	1.92%
13.	Canara Bank	1.14%
14.	UCO Bank	0.99%

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Sl. No.	Name of the Creditor	% Voting Share
15.	DCB Bank Limited	0.29%
16.	Kotak Mahindra Bank	0.26%
17.	Eveready Industries India Ltd.	0.11%
18.	Anchor Investments Private Limited	0.05%
19.	DBS Bank	0.04%
TOTAL		100%

8. A report on the constitution of the CoC, was filed before the Adjudicating Authority. The list of creditors was updated from time to time and uploaded in the IBBI website.
9. The Applicant states that a total of thirty-two CoC meetings have been held during CIRP period, as follows:

Particulars	Date of the CoC Meeting
1 st CoC meeting	03.06.2022
2 nd CoC meeting	29.06.2022
3 rd CoC meeting	04.07.2022
4 th CoC meeting	10.08.2022
5 th CoC meeting	14.09.2022
6 th CoC meeting	10.10.2022
7 th CoC meeting	11.11.2022
8 th CoC meeting	25.11.2022
9 th CoC meeting	06.12.2022
10 th CoC meeting	12.12.2022
11 th CoC meeting	20.12.2022

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Particulars	Date of the CoC Meeting
12 th CoC meeting	07.01.2023
13 th CoC meeting	13.01.2023
14 th CoC meeting	21.01.2023
15 th CoC meeting	21.02.2023
16 th CoC meeting	01.03.2023
17 th CoC meeting	06.03.2023
18 th CoC meeting	17.03.2023
19 th CoC meeting	21.03.2023
20 th CoC meeting	28.03.2023 and 29.03.2023
21 st CoC meeting	05.04.2023
22 nd CoC meeting	10.04.2023
23 rd CoC meeting	24.04.2023
24 th CoC meeting	16.05.2023
25 th CoC meeting	20.05.2023
26 th CoC meeting	22.05.2023
27 th CoC meeting	01.06.2023
28 th CoC meeting	05.06.2023
29 th CoC meeting	12.06.2023 and 13.06.2023
30 th CoC meeting	30.06.2023
31 st CoC meeting	13.07.2023
32 nd CoC meeting	27.07.2023
33 rd CoC meeting	24.08.2023
34 th CoC meeting	22.09.2023

Collation of claims

10. The amounts claimed and admitted are summarised below:

Amount in INR/Cr.

Nature of Creditor	Amount Claimed	Amount Admitted
Secured Financial Creditors	3,559.17	3,514.65

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Nature of Creditor	Amount Claimed	Amount Admitted
Unsecured Financial Creditors	2,304.11	1,282.58
Operational Creditors – Statutory Authorities	175.31	34.53
Operational Creditors – Employees and Workmen	0.37	0.03
Other Operational Creditors	315.63	182.47
Other Creditors	473.68	1.01
Total	6,828.27	5,015.28

CIRP and compliances

11. The Applicant submits that in terms of the provisions of section 25(2)(h) of the Code read with regulation 36A(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, invitations in Form ‘G’ for Expressions of Interest (“**EoI**”) from potential resolution applicants was issued on 05 July 2022 in Financial Express (English), The Telegraph (English) (All India edition) and Ek Din (Bengali (Kolkata edition) newspapers wherein the last date of receiving EoI was 10 August 2022.
12. The notice was also published on the website of the Insolvency and Bankruptcy Board of India (**IBBI**).
13. The Applicant submits that in response to the invitation for EoI published on 05 July 2022, twenty-three EoIs were received. The provisional list of prospective Resolution Applicants was issued on 10 August 2022 and the Final list of eligible Resolution Applicants was issued on 17 August 2022. The RP then shared the Information Memorandum, Evaluation Matrix and Request for Resolution Plan

(RFRP) with the Prospective Resolution Applicants on 20 August 2022.

14. As per regulation 35(2) of the CIRP Regulations, after receipt of the Resolution Plan, the RP informed the fair value and liquidation value of the Corporate Debtor to the CoC.

Evaluation and voting

15. The Resolution Professional received three Resolution Plans from Amit Metaliks Limited, Nalwa Steel and Power Limited and BTL EPC Limited. The Resolution Plans were presented by the Resolution Professional in the 10th CoC meeting held on 12 December 2022. The Resolution Plans were discussed by the CoC in the 11th CoC meeting held on 20 December 2022.
16. In the interregnum, on 17 December 2022, the Resolution Professional received an email from Rashmi Metaliks Limited stating their interest to participate in the CIRP of the Corporate Debtor. The Resolution Professional *vide* email dated 18 December 2022 did not consider the request as the last date of submission of EoI had expired. Rashmi Metaliks Limited filed an I.A. before the Adjudicating Authority to allow them to submit a Resolution Plan which was rejected by this Adjudicating Authority on 28 December 2022, thereafter, an appeal was filed before the Hon'ble NCLAT by Rashmi Metaliks Limited which was allowed and the Hon'ble NCLAT directed Rashmi Metaliks Limited to submit their plan by 11 January 2023 without asking for further extension.
17. The order of the Hon'ble NCLAT was challenged before the Hon'ble Supreme Court by one of the prospective Resolution Applicants which was dismissed. Thereafter, Rashmi Metaliks Limited filed its Resolution Plan with the Resolution Professional.

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18. The CoC decided to conduct the challenge process on 27 December 2022 in the 11th CoC meeting which was held on 20 December 2022. The Challenge Process took place on 21 January 2023 and the four Prospective Resolution Applicants *viz.* Amit Metaliks Limited, Nalwa Steel and Power Limited, BTL EPC Limited and Rashmi Metaliks Limited participated in the said Challenge Process. The Challenge Process was of seven rounds and in the end of the 7th round, BTL EPC Limited was declared as the H1 Resolution Applicant with a plan value of Rs.353.98Crore.
19. In the 17th CoC meeting, the COC resolved with 85.56% voting shares, to conduct a fresh Challenge Process in view of the maximization of the Resolution Plan for the Corporate Debtor. In the 18th CoC meeting held on 17 March 2023, the CoC agreed to conduct the second Challenge Process on 21 March 2023.
20. Amit Metaliks Limited *vide* email stated that it does not wish to participate in the second Challenge Process and requested for the refund of their Bank Guarantee. No response was received from Rashmi Metaliks Limited.
21. In the 22nd CoC meeting held on 10 April 2023, the second Challenge Process was conducted and only two Prospective Resolution Applicants *viz.* Nalwa Steel and Power Limited and BTL EPC Limited participated in the Second Challenge Process. Nine rounds of bidding were conducted in the Second Challenge Process and Nalwa Steel and Power Limited was declared as the highest bidder.
22. The Revised Resolution Plans along with the Addendum were discussed in the 24th CoC meeting held on 16 May 2023, the 25th CoC Meeting held on 20 May 2023, 26th CoC Meeting held on 22 May 2023. In the 27th CoC Meeting held on 01 June 2023, the CoC requested the prospective Resolution Applicant to revise the Resolution Plan.

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23. In the 28th CoC meeting held on 05 June 2023, the CoC discussed the addendum received from Nalwa Steel & Power Limited along with the feasibility and viability of the Resolution Plans. The Resolution Plans were put to vote on 13 June 2023.
24. In the 32nd CoC meeting held on 27 July 2023, the Resolution Professional informed the CoC that both the Resolution Plans of Nalwa Steel and Power Limited and BTL EPC Limited were approved by 90.06% voting share which led to a tie, hence the tie breaker formula which was approved in the 25th CoC meeting was to be applied.
25. As per the tie breaker formula, the Resolution Plan with the higher NPV would be selected as the successful Resolution Plan. The NPV of Resolution Plan submitted by BTL EPC Limited was higher than Nalwa Steel & Power Limited. Hence, BTL EPC Limited having CIN: U29100WB1992PLC054541, was confirmed as the Successful Resolution Applicant by the CoC.
26. The Letter of Intent was issued to the Successful Resolution Applicant on 27 July 2023 which was unconditionally accepted by the Resolution Applicant on 28 July 2023.
27. In accordance with regulation 36B(4A) of the CIRP Regulations, the Successful Resolution Applicant has deposited the Performance Bank Guarantee of Rs18,81,00,000/- (Rupees Eighteen Crore Eighty One Lakh only) in the on 01 August 2023.

Compliance of the approved Resolution Plan with various provisions

28. 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.

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29. The Applicant has submitted details of various compliances as envisaged within the Code and the CIRP Regulations which a Resolution Plan should adhere to, which is reproduced hereunder:

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

Clause of s.30(2)	Requirement	How dealt with in the Plan
1.	Plan must provide for payment of CIRP cost in priority to payment of other debts of CD in the manner specified by the Board.	Clause 5.5.1 at Page 29 of the Resolution Plan.
2.	<p>(i) Plan must provide for payment 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;</p> <p>(ii) Plan must provide for payment 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;</p>	<p>Clause 5.5.3., Clause 5.5.4. at Pages 37-39 of the Resolution Plan amended by the Addendum dated 16.05.2023 at SI No. 8 at Pages 4-5.</p> <p>Clause 5.5.3., Clause 5.5.4. at Pages 37-39 of the Resolution Plan amended by the Addendum dated 16.05.2023 at SI No. 8 at Pages 4-5.</p>

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Clause of s.30(2)	Requirement	How dealt with in the 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.	Clause 5.5.2.1 at Page 30 of the Resolution Plan.
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Section 4.3 at Page 25, Schedule 2 at Pages 68-69 of the Resolution Plan and amended by Addendum at Sl. No. 18 at Page 8.
(d)	Implementation and Supervision	Clause 4.4. at Page 26 and Schedule 3 at Pages 70-74 of the Resolution Plan.
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Clause 1.5 at Page 9, Clause 11.4 at Page 60 and Clause 14 at page 65 of the Resolution Plan.
(f)	Conforms to such other requirements as may be specified by the Board.	Clause 4 at Pages 24-27 of the Resolution Plan.

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

Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximisation of value of its assets, including but not limited to the following: -	
(a) transfer of all or part of the assets of the corporate debtor to one or more persons;	Not proposed in the Resolution Plan.

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Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
(b) sale of all or part of the assets whether subject to any security interest or not;	Not proposed in the Resolution Plan.
(ba) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	Clause 4.4.2 at Page 27 of the Resolution Plan.
(c) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	Clause 4.4.2 at Page 27, Schedule 2 at Pages 68-69 of the Resolution Plan.
(ca) cancellation or delisting of any shares of the corporate debtor, if applicable;	Clause 5.5.6 and Clause 5.5.7 at Pages 41-42 of the Resolution Plan.
(d) satisfaction or modification of any security interest;	Schedule 5, Clause 1.8 at Page 81 of the Resolution Plan.
(e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Not proposed in the Resolution Plan.
(f) reduction in the amount payable to the creditors;	Not proposed in the Resolution Plan.
(g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	Not proposed in the Resolution Plan.
(h) amendment of the constitutional documents of the corporate debtor;	Clause 5.16 at Page 46, Clause 8.2 at Page 51 of the Resolution Plan, amended by Addendum at Sl. No. 12 at Page 6.

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Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
(i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	Clause 5.16 at Page 46 of the Resolution Plan amended by Addendum at Sl. No. 12 at Page 6.
(j) change in portfolio of goods or services produced or rendered by the corporate debtor;	Not proposed in the Resolution Plan.
(k) change in technology used by the corporate debtor; and	Not proposed in the Resolution Plan.
(l) obtaining necessary approvals from the Central and State Governments and other authorities.	Clause 13.5 at Page 62, Schedule 5, Clause 1.6 at Page 80 of the Resolution Plan.
(m) sale of one or more assets of corporate debtor to one or more successful resolution applicants submitting resolution plans for such assets; and manner of dealing with remaining assets.	Not proposed in the Resolution Plan.

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

Ref to relevant Reg.	Requirement	How dealt with in the Plan
38(1a)	The amount payable to the operational creditors under a resolution plan shall be given	Clause 5.5.3 and Clause 5.5.4 at Pages 37-39 of the Resolution Plan, amended by the Addendum at Sl. No. 8 at Pages

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Ref to relevant Reg.	Requirement	How dealt with in the Plan
	priority in payment over financial creditors.	4-5.
38(1b)	The amount payable to the financial creditors, who have right to vote and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.	Clause 5.5.2.1. at Page 30 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 3.6 at Page 23, Clause 4.1 at Page 24 and Clause 5.5. at Pages 29-46 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 the Adjudicating Authority at any time in the past.	Clause 14 at Page 65 of the Resolution Plan.
38(2)	A resolution plan shall provide:	
	(a) the term of the plan and its implementation schedule;	Clause 4.2 at Page 25, Schedule 2 and 3 at Pages 68 to 74 of the Resolution Plan.

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Ref to relevant Reg.	Requirement	How dealt with in the Plan
	(b) the management and control of the business of the corporate debtor during its term; and	Clause 4.3 at Page 25, Schedule 2 at Pages 68-69 of the Resolution Plan and amended by Addendum Sl. No. 18 at Page 8
	(c) adequate means for supervising its implementation.	Clause 4.3 and Clause 4.4 at Page 25 of the Resolution Plan.
	(d) Provides for the manner in which proceedings in respect of avoidance transactions, if any, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed.	Clause 5.14 at Page 45 of the Resolution Plan.
38(3)	A resolution plan shall demonstrate that –	
	(a) it addresses the cause of default;	Clause 4.4.1 at Page 26 of the Resolution Plan.
	(b) it is feasible and viable;	Clause 4.4.2 at Page 27 of the Resolution Plan.
	(c) it has provisions for its effective implementation;	Clause 4.4.3 at Page 27, Schedule 2 at Page 68-69 of the Resolution Plan.
	(d) it has provisions for approvals required and the timeline for the same; and	Clause 13.5 at Page 62, Schedule 5, Clause 1.6 at Page 80 of the Resolution Plan.

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Ref to relevant Reg.	Requirement	How dealt with in the Plan
	(e) the Resolution Applicant has the capability to implement the resolution plan.	Clause 2 at Pages 10-17 and Clause 4.4.4 at Page 27 of the Resolution Plan.

30. The Resolution Applicant has submitted affidavit of eligibility under section 29A of the Code.

Details of Resolution Plan/Payment Schedule

31. The relevant information with regard to the amount admitted and the amount proposed to be paid by the Successful Resolution Applicant, *i.e.*, *BTL EPC Limited*, under the said Revised Resolution Plan is tabulated hereunder:

Creditors	Amount Admitted (Rs. in Crore)	Amount Proposed (Rs. in Crore)	% of claim admitted	Payment Schedule
CIRP Cost	0	To be paid out of the cash available with the Corporate Debtor	---	Within 60 days of NCLT approval
Secured Financial Creditors	3514.65	428.73	12.05%	61.18 crores – within 60 days
Unsecured Financial Creditors	1282.59	3.46	0.15%	50 crores – within 150 days 40 crores – 240 days

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				251 crores – BG protection Assured buyback – 30 crores – within 2 years 60 days
Operational Creditors (Statutory Dues)	217	3.50	0.71%	Within 60 days of NCLT Approval
Operational Creditors (Workman / Employees)	0.03	0.01	2.74%	Within 60 days of NCLT Approval
Operational Creditor (Others)	1.01	0.10	0.21%	Within 60 days of NCLT Approval
Shareholders & Other Stakeholders	0	0.21	---	Within 60 days of NCLT Approval
Business Improvement (for working capital)	---	5.11	---	Within 14 months
TOTAL	5,015.28	441.11	--	

27. The Resolution Plan defines “**Effective Date**” as “*a date identified by the Resolution Applicant, for the purpose of implementation of this Resolution Plan, which shall, subject to the provisions of this Resolution Plan and there being no stay on approval of the Resolution Plan from a court/tribunal of competent jurisdiction, be a date no later than 60(sixty) days from the Appointed Date*”.

Relinquishment/Waiver of liabilities and Approvals

28. The Reliefs, Exemptions and Waivers sought by the Resolution Applicant from the Adjudicating Authority are set out below for the successful implementation of the Resolution Plan. The Resolution Applicant clarifies that in the event the aforesaid reliefs, concessions and dispensations are not granted, the same will not have a bearing on the successful implementation of the Resolution Plan.

Sr. No.	Relief, concessions and approvals sought
Handover of Assets	
1.	Any and all Encumbrance over the Assets, property or bank account of the Corporate Debtor, except to the extent allows to be continued under the Resolution Plan shall stand released and / or extinguished on the Effective Date. Any Person (including a Creditor or a Government Authority) who is in possession of the Assets, property or bank account of the Corporate Debtor shall allow possession of such Assets, property or bank account to the Resolution Applicant on and from the Effective Date, irrespective of any symbolic or actual possession or attachment of Assets, property or bank account by such Person prior to the Appointed Date.
2.	No Person (including a Creditor or a Government Authority) shall take possession of and / or create Encumbrance or attach any Assets of the Corporate Debtor after the Effective Date on account of any claim against the Corporate Debtor which relates to a period prior to the Appointed Date.
3.	The Monitoring Committee shall allow possession of the premises / offices of the Corporate Debtor, all passwords, bank account details, cheque books, statutory registers, minutes books, financial and tax records, all communication with vendors, customers, government and regulatory authorities and all other documents pertaining to the Corporate Debtor and its business, information technology systems (including all software and hardware), access to ERP system, etc to the Resolution Applicant within 7 (seven) days of the Effective Date.
4.	All the attachments and execution process levied against the Assets of the Corporate Debtor, shall be lifted and released.
5.	Any and all unauthorised possession/encroachments on the movable/ immovable Assets of the Corporate Debtor,

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Sr. No.	Relief, concessions and approvals sought
	irrespective of period and irrespective of any claim on adverse possession basis, to be declared vacated immediately and the Corporate Debtor's ownership and possession to be admitted and established. The Corporate Debtor should have right to recover and take possession of all such Assets and/or land not under its possession, for which, whether or not any agreements have been made.
6.	The intangible Assets to which the Corporate Debtor is entitled to and/or applied for and/or whether registered or not, whether in possession or not, whether in use or not shall continue to be the Assets of the Corporate Debtor and all infringement and/or use by any third party shall become invalid. All agreements/documents where any such asset has been allowed to be used by any Related Party of the existing Promoters stands null and void.
Lease Arrangements	
7.	Where Corporate Debtor is the lessee in respect of any land leased to it by third party, such lease shall continue and nothing herein shall have the effect of terminating the same, nor shall such change in control amount to an assignment or attract any transfer charges.
8.	Immediately after the Effective Date, the relevant lessors should acknowledge that its dues from the Corporate Debtor is restricted to the settlement amount proposed under this Plan and shall issue a certificate to the Corporate Debtor to that effect.
Right over immovable Assets	
9.	The acquisition of the Corporate Debtor shall be subject to the Resolution Applicant getting title of land owned by the Corporate Debtor and title of such properties (whether or not movable) that are attached to such immovable properties or and title of such movable properties lying on such immovable properties.
10.	In relation to any alleged transfer of any economic interest or other beneficial interest by the corporate debtor to any party in the past pertaining to the land parcels where the title and ownership is still lying with the Corporate Debtor, the Resolution Applicant shall have a right to terminate/ cancel such arrangement without any liability (monetary or otherwise) on the Corporate Debtor/ Resolution Applicant. Also, any agreement, MOU, transfer of rights or contract that hampers the Assets/rights of Corporate Debtor shall be considered void if the same has not been registered/ presented before the concerned authority up to the Effective Date.
Release of Security Deposit provided by Corporate Debtor	
11.	Approval of the Resolution Plan by the Adjudicating Authority

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***In Re* Resolution Plan of McNally Bharat Engineering Company Ltd.
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Sr. No.	Relief, concessions and approvals sought
	will be treated as specific order for waiver / release of any kind of security deposits provided by the Corporate Debtor including but not limited to various government authorities, corporates, private person, government departments (Income Tax Department, Customs Department, Excise Department, Service Tax Department, Pollution Board, etc.), etc., under Applicable Law or otherwise for any reason whatsoever, where the relevant arrangement is being discontinued or terminated.
Effect on past liabilities	
12.	Upon approval of this Resolution Plan by the Adjudicating Authority, all liabilities (including without limitation, for any penalty, interest, fines or fees) (admitted/ verified/ filed or not) or obligations of the Corporate Debtor, in relation to: (A) any investigation, inquiry or show cause, whether civil or criminal; (B) any non-compliance of provisions of any laws, rules, regulations, directions, notifications, circulars, guidelines, policies, licenses, approvals, consents or permissions; (C) change of control, transfer charges, unearned increase, compensation or any other such liability whatsoever under any contract, agreement, lease, license, approval, consent, privilege or permission to which the Corporate Debtor or its subsidiaries, joint ventures or associates are entitled; (D) any leasehold rights or freehold rights to movable or immovable properties in the possession of the Corporate Debtor; (E) any contracts, agreements or commitments made by the Corporate Debtor, whether admitted or not, due or contingent, asserted or unasserted, crystallised or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, present or future, whether or not set out in the balance sheets of the Corporate Debtor or the profit and loss account statement of the Corporate Debtor, in relation to any period prior to the completion date or arising on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan shall be written off in full and shall stand permanently extinguished and the Corporate Debtor shall at no point of time be directly or indirectly held responsible or liable in relation thereto.
Consents and Approval	
13.	As the Resolution Applicant is required to take over the Corporate Debtor's business on a ' <i>going concern</i> ' basis, all consents, licenses, approvals, clearances, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled or accustomed to, shall continue to remain valid, notwithstanding any provision to the contrary in their terms or on account of change of

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	management/ownership of the Corporate Debtor, and provided that in case of consents, licenses, approvals, rights, entitlements, benefits and privileges that have expired or lapsed, notwithstanding that they may have already lapsed or expired due to any breach, non-compliance or efflux of time, be deemed to continue without disruption for the benefit of the Corporate Debtor, till the implementation of the Resolution Plan, as envisaged or such other period as required under Applicable Law. The name of new management will be endorsed on all such rights and entitlements as may be required only to the extent necessary for operating the Corporate Debtor.
14.	<p>All Government Authorities:</p> <p>(i) to provide reasonable time period of at least 12 (twelve) months after the Effective Date in order to enable Resolution Applicant to assess the status of the Business Permits / statutory approvals and ensure that the Corporate Debtor is compliant with the terms of such Business Permits / statutory approvals and Applicable Law;</p> <p>(ii) should not initiate any investigations, actions or proceedings in relation to such non-compliances;</p> <p>(iii) should co-operate with the Corporate Debtor to renew / obtain such permits / approvals;</p> <p>(iv) permit the Resolution Applicant to continue to operate the business of the Corporate Debtor pending such permits / approvals at least till a period of 12 (twelve) months from the Effective Date; and</p> <p>(v) to not charge any charges, penalty, interest, etc., till the time such permits / approvals are received.</p>
Contracts and Agreements	
15.	In the interest of keeping the Corporate Debtor as a 'going concern', unless otherwise specified in the Resolution Plan, all contracts and agreements shall continue to remain valid and notwithstanding any lapse, non-compliance, breach or expiry of underlying terms of such contracts and agreements or requirement of prior approval upon change of control; these contracts and agreements shall be deemed to continue without disruption and without any further acts, deeds, cost, penalty, etc., for the benefit of the Corporate Debtor for their original tenure including subsequent tenures wherever the Corporate Debtor is entitled for renewals.
16.	Any change in the management of the Corporate Debtor shall not affect the validity and enforceability of any agreement, lease deed, contract, etc. executed by the Corporate Debtor with various parties, authorities, companies, etc. save and except the provisions and scope of alterations/modifications/amendments

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	as also such reliefs and concessions provided to the Resolution Applicant and the Corporate Debtor under this Resolution Plan.
17.	The Resolution Applicant will, after the Effective Date, make an assessment of whether it wants to continue with or terminate the contracts / agreements entered into by the Corporate Debtor. It is clarified that in case the Resolution Applicant terminates any such old contract / agreements, no termination payments or liquidated damages shall be payable by the Resolution Applicant or Corporate Debtor on account of such termination.
18.	Status quo of the agreements in relation to all its existing empanelment, inter alia including in railways and defence shall be maintained.
19.	The potential liabilities arising under the contracts from customers of the Corporate Debtor on account of liquidated damages and other levies from the date of execution of contracts up to Appointed Date shall be extinguished.
Encumbrances	
20.	On and with effect from the Effective Date, all Encumbrances, security interest, liens and /or attachments including pursuant to Applicable Law and particularly Sections 281 of the Income Tax Act, 1961 and Section 81 of the Central Goods and Services Tax Act created or suffered to exist over the Assets of the Corporate Debtor or owe! the securities of the Corporate Debtor, whether by contract or by Applicable Law, whether or not in favour of Persons receiving settlements under this Plan or those who have provided debt to any third party, shall stand unconditionally and irrevocably released and all enforcement proceedings commenced by any Person over any of the Assets of the Corporate Debtor or any subsidiary or over any securities of the Corporate Debtor shall stand released and reversed, without the requirements of any further deed or action on part of the Resolution Applicant or the Corporate Debtor.
Utilities	
21.	All the electricity, water and other utilities in relation to the existing units of the Corporate Debtor shall be continued and any request for reconnection shall be allowed without any reconnection charge or fresh security deposit.
Proceedings, Inquiries and Investigations	
22.	Any proceedings arising after the Appointed Date but pertaining to a period prior to the Effective Date, shall be deemed to have been withdrawn and/or dismissed and/or abated and will be deemed to have been barred.

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23.	Upon approval of this Resolution Plan by the Adjudicating Authority, all inquiries, investigations and proceedings, whether civil or criminal, notices, causes of action, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings against, or in relation to, or in connection with the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future, (including without limitation, any investigation, action, proceeding, prosecution, whether civil or criminal, by the Central Bureau of Investigation, the Enforcement Directorate or any other regulatory or enforcement agency), in relation to any period prior to the Effective Date or arising on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan shall stand withdrawn or dismissed and all liabilities or obligations in relation thereto, whether or not set out in the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor, will be deemed to have been written off in full and permanently extinguished and the Corporate Debtor or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto notwithstanding any adverse order that may be passed in respect of the same by any authority prior to or after the Effective Date. Upon approval of this Resolution Plan by the Adjudicating Authority, all new inquiries, investigations, whether civil or criminal, notices, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings will be deemed to be barred and will not be initiated or admitted against the Corporate Debtor in relation to any period prior to the acquisition of by the Resolution Applicant over the Corporate Debtor or on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan.
Prior non-compliances, breaches and defaults	
24.	Upon approval of the Resolution Plan by the Adjudicating Authority, all non-compliances, breaches and defaults of the Corporate Debtor for the period prior to the Effective Date (including but not limited to those relating to tax), shall be deemed to be waived by the concerned Governmental Authorities. Immunity shall be deemed to have been granted to the Corporate Debtor from all proceedings and penalties under all Applicable Laws for any non-compliance for the period prior to the Effective Date and no interest/penal implications shall arise due to such noncompliance/ default/breach prior to the Effective Date. Notwithstanding the generality of the foregoing,

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	breaches, contraventions or non-compliances of the Applicable Laws shall be deemed to be permanently extinguished by virtue of the order of the Adjudicating Authority approving this Resolution Plan, and the Corporate Debtor or the Resolution Applicant shall at no point of time, directly or indirectly, have any obligation, Liability or duty in relation thereto.
25.	The lenders (including secured Financial Creditors) of the Corporate Debtor shall regularize all the loan accounts of the Corporate Debtor and shall ensure that the asset classification of such loan accounts is “standard” in their books with effect from the Effective Date.
26.	The past performance of the Corporate Debtor should not be considered when the Corporate Debtor applies for credit rating with any agency/ bank/ financial institutions.
Compliances under 2013 Act	
27.	The Corporate Debtor, pursuant to the provisions of this Resolution Plan and the authority contained therein, shall cause its Board to take steps for implementation of the provisions of the Resolution Plan, which inter alia includes - (i) execution of appropriate loan agreement, modifications of previous documents for creating security and filing of appropriate forms under Company Law or other laws, with, amongst others, the Registrar of Companies and MCA or other statutory authorities; (ii) issuance of shares and instruments as provided in the Resolution Plan; and (iii) other compliances as per the governing law. The Corporate Debtor shall file the order of the Adjudicating Authority approving this Resolution Plan with the Registrar of Companies and MCA or any other regulatory authority, instead of resolution of Board or the shareholders of the Corporate Debtor that were otherwise required for actions that are affected through an order of the Adjudicating Authority approving this Resolution Plan, and that shall be sufficient compliance by the Corporate Debtor.
28.	The directors of the reconstituted Board shall not be liable for any past non-compliances under the provisions of Applicable Laws committed by the erstwhile Board of Directors of the Corporate Debtor.
29.	Approval of this plan shall be deemed approval for removal of Directors from the record of the Corporate Debtor as appearing on the MCA portal/ website/ income tax web site/ Any Indirect tax website. Certified copy of the order approving Resolution Plan shall be a direction on such statutory authorities to do the

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	needful.
Taxation	
30.	The Corporate Debtor and Resolution Applicant be exempted from the applicability of the provisions of Sections 28, 41, 43B, 45, 56, 79, 179, 269-SS, 269-T, 281 and other applicable provisions of the Income-Tax Act, 1961 for the purposes of implementation of this Resolution Plan.
31.	The Corporate Debtor or the Resolution Applicant shall not, at any point of time, be held financially liable under the provisions in relation to the Liability of the Corporate Debtor as per Section 170 of the Income Tax Act, 1961 in respect of any transaction carried out before the Effective Date or contemplated under the Resolution Plan.
32.	Necessary directions, instructions be issued to the CBDT and other relevant Tax authorities to waive/exempt the applicability of Sections 56 and 50A of the Income Tax Act, 1961 in respect of reduction of capital of the Existing Shareholders of the Corporate Debtor, issuance of shares by the Corporate Debtor and increase of authorised share capital in terms of Resolution Plan, and any of these transactions shall not result in any tax incidence in the hands of the Corporate Debtor or the Resolution Applicant under the aforesaid sections whether on account of valuation or otherwise.
33.	The CBDT under its notification dated January 6, 2018 has eased the applicability of provisions relating to levy of Minimum Alternate Tax (“MAT”) for companies against whom CIRP has commenced. In accordance with the aforesaid notification, the CBDT is requested to allow the reduction of total amount of loss brought forward (including unabsorbed depreciation) from the book profits of the Corporate Debtor for the purposes of levy under Section 115 JB of the Income Tax Act, 1961. The CBDT is also requested to waive and exempt all MAT and other income tax Liabilities arising on the Corporate Debtor and/or its successors on account of settlement of Financial Creditors and Operational Creditors pursuant to implementation of this Plan.
34.	Necessary directions, instructions be issued to the CBDT, Customs, Value Added Tax authorities, Central Sale Tax authorities, GST authorities, entry tax and other Tax authorities whether central or state to exempt income/gain/profits, if any, arising as a result of giving effect to the Resolution Applicant under the provisions of Income Tax Act, 1961, value added tax,

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	<p>customs, octroi, excise duty, service tax, goods, and service tax, including but not limited to any income tax and MAT Liability arising on capital reduction in the Corporate Debtor, waiver/write off/ write down of current amounts due to employees, vendors, Operational Creditors, Financial Creditors, value of Assets, value of inventories, etc. without any impact un brought forward tax and book loss / depreciation and waive all Liabilities whether crystallised or not in respect of Taxes (including interest and penalty) arising in respect of periods up to the Appointed Date and arising out of implementation or sanction of the Resolution Plan.</p>
35.	<p>It is further clarified that a company is not ordinarily permitted to carry forward its accumulated business losses in case of a change in the shareholding of such company in excess of 51% (fifty-one percent) as per Section 79 of the Income-Tax Act, 1961. However, this restriction does not apply if such change in shareholding takes place pursuant to a resolution plan approved under the Code, provided that the jurisdictional Principal Commissioner of Income-tax or the jurisdictional Commissioner of Income-tax (as appropriate), is afforded reasonable opportunity to express his views in this regard. Accordingly, the Adjudicating Authority be pleased to or cause the Resolution Professional or the reconstituted Board of Corporate Debtor, or cause the Corporate Debtor to, serve a notice to jurisdictional Principal Commissioner of Income-tax or the jurisdictional Commissioner of Income-tax (as appropriate) immediately after this Resolution Plan is submitted to the Adjudicating Authority for its approval, and it is prayed that the Corporate Debtor should be permitted to carry forward its unabsorbed business losses along with the unabsorbed depreciation and MAT Credit, notwithstanding a change in the shareholding of the Company in excess of 51% (fifty one percent) pursuant to this Resolution Plan.</p>
36.	<p>Post the Appointed Date, no re-assessment / revision or any other proceedings under the provisions of any of the Tax laws should be initiated on the Corporate Debtor in relation to the period prior to Effective Date and any consequential demand shall be considered non-existing and shall be not payable by the Corporate Debtor.</p>
Waiver of Transaction Fees, Stamp Duty	
37.	<p>The Collector of Stamps, Revenue Department of concerned State Government and the MCA to exempt the Resolution Applicant and the Corporate Debtor, from the levy of stamp</p>

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	duty and fees applicable in relation to this Resolution Plan and its implementation, Including any stamp duty applicable on and the issue of shares by the Corporate Debtor.
38.	Necessary directions, instructions be issued to all relevant Governmental Authorities to grant relief/concessions from payment of fees, charges, transfer charges, assignment charges, stamp duty, registration fees (including fees payable to the jurisdictional RoC) for various actions contemplated under this Resolution Plan (including capital reduction, issuance of shares by the Corporate Debtor), appointment of Board of Directors including Key Managerial Personnel and any other action taken to implement the Resolution Plan and that the fees payable to the RoC in respect of amendment of the memorandum of association and articles of association of the Corporate Debtor be waived and the RoC be directed to approve the relevant forms under the 2013 Act and rules thereto without payment of fees in respect thereof. Similarly, the stamp duty arising on issuance of shares by the Corporate Debtor be waived.
39.	It is envisaged that, dispensation/ waiver be given by the State Governments, Central Governments or any other authorities, from payment of any stamp duty on transfer of land, salami on transfer, transfer fees on account of change in shareholdings pursuant to this plan, Khazana, land taxes, conversion of land including interest, penalty or other charges/fees relating to the transfer/takeover of Assets or state levies which may arise in the event of change in management of the Corporate Debtor pursuant to the acceptance of this Resolution Plan. Further direction be issued to the state authorities for suitably amending all the licenses and rights pursuant to the change of management on acceptance of the Resolution Plan. Any subsidies or entitlements, which are accruing to the Corporate Debtor either before or after the approval of the Resolution Plan, are to be continued.
Claims by Statutory Authorities	
40.	All statutory Liabilities pertaining to the period prior to the Effective Date or pertaining to or arising out of implementation of this Resolution Plan shall not be required to be paid and the same shall be binding on all such statutory authorities.
Extension of time for completion of contracts	
41.	Approval of the Resolution Plan by the Adjudicating Authority will be treated as specific order to all kind of Central/State Government Departments, Local Bodies, Central/State owned

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	Corporations, Private Bodies and authorities and other Body Corporations, etc. for extending the date of completion of contracts which are ongoing projects and which got delayed due to the financial stress of the Corporate Debtor for a maximum period of 3 years from the date of handover of the business post approval of the Resolution Plan by Adjudicating Authority and payment of Upfront Payment Amount. The said request is made to ensure that the Corporate Debtor can be revived and made viable as any ongoing projects halted/rescinded due to past delays will lead to blacklisting/debarring of the Corporate Debtor as approved contractors/vendors for such departments/local bodies/corporations as well as any new customers.
Treatment of Workmen/Employee Dues	
42.	The employment terms of the employees of the Corporate Debtor shall be in accordance with the standard policies of the Resolution Applicant. For avoidance of doubt, it is clarified that, except expressly set forth herein, no obligations or liabilities of the Corporate Debtor in respect of the employees pertaining to the period up to the Effective Date are being assumed by the Resolution Applicant. No employee of the Corporate Debtor shall have any claim whatsoever against the Corporate Debtor pertaining to the period prior to the Effective Date except to the extent provided for payment by the Resolution Applicant in this Resolution Plan, if applicable.
Benefits received by the Corporate Debtor	
43.	That the Corporate Debtor or Resolution Applicant shall not be required to refund any benefit (subsidy / incentive or any monetary benefit) already availed by the Corporate Debtor. or pay any interest, penalty, late fees, damages on account of failure of the Corporate Debtor to comply with the terms and conditions for grant of such incentive/subsidy/benefit or due to change in management arising due to implementation of the Resolution Plan and no litigation/proceedings shall be instituted against the Corporate Debtor or Resolution Applicant on this account and any pending litigation/proceedings shall stand quashed/withdrawn without any Liability on the Corporate Debtor/Resolution Applicant and the relevant authority including any district industrial center / State Government / Central Government or any implementing authority appointed under any law for the time being in force shall act in accordance with the aforesaid directions.

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Waiver of Valuation of Pricing of Shares by Registered Valuer	
44.	Approval of Resolution Plan by the Adjudicating Authority will be treated as waiver of the requirements of the valuation of pricing of shares by Registered Valuer under any Act, Law, Statute, Rules, Regulations etc applicable or in vogue for computation to issue equity shares or equivalent instruments through Preferential Allotment as well as Debt Instruments to RA, Investors, KMP, Employees etc for a period of 60 Months. The request for such waiver is due to the fact that current valuation of the Corporate Debtor basis Book Value or Net Assets Value basis Realisable Valuation of Assets adjusted to Current Liabilities or Discounted Cash Flow of the Business will be “Negative”, whereas the RA is paying Premium over Face Value considering the Future Potential of the Business.
Removal of Corporate Debtor's name from blacklisted or barred vendor/contractors list (if any)	
45.	Approval of the Resolution Plan by the Adjudicating Authority will be treated as specific order to all kind of Central/State Government Departments, Local Bodies, Central/State owned Corporations etc. in removal of the Corporate Debtor name from the blacklisted or barred vendor/contractor list (if any) in places where such action has been taken or proposed to be taken by above stated authorities due to delay in the projects in past by the past management of the Corporate Debtor so that the Resolution Applicant/new management of the Corporate Debtor becomes eligible bidder in the new project tender/contracts floated by these authorities. The eligibility will assist the Resolution Applicant to revive the Corporate Debtor in complete perspective.
Treatment of debts barred by limitation	
46.	As of the Effective Date, any Debt owed by the Corporate Debtor to any Operational Creditor, which is barred by limitation under the Applicable Laws, shall immediately, irrevocably and unconditionally stand extinguished, waived and withdrawn on and from the Effective Date, and no person shall have any further rights or claims against the Corporate Debtor in this regard
Right to recover any amount from the existing debtors of the Corporate Debtor	
47.	Upon approval of the plan by Adjudicating Authority the Resolution Applicant will have all the rights to recover from the debtors of the Corporate Debtor any amount lying as due in the

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	books of account as on the Insolvency Commencement Date.
48.	Transfer of any amount lying in the banks for more than 7 (seven) years or otherwise to investor protection fund under the provisions of 2013 Act shall be exempted and use of such funds in operating the Corporate Debtor shall be allowed.
49.	It is expressly clarified that no liabilities, claims, demand, obligations, penalties etc. whatsoever arising out of or in relation to (i) proceedings, inquiries, investigations, orders, show causes, notices, suits, litigation etc. (including those arising out of any orders passed by the Adjudicating Authority pursuant to Sections 43, 45, 49, 50, 66, 68, 70, 71, 72, 73, 74 of the Code) or any acts or omissions in breach of Applicable Law which occurred prior to the Effective Date or (ii) that may arise out of any proceedings, inquiries, investigations, orders, show cause, notices, suits, litigation etc. (including any orders that may be passed by the NCLT pursuant to Sections 43, 45, 49, 50, 66, 68, 70, 71, 72, 73, 74 of the Code), shall arise in respect of the Corporate Debtor or the Resolution Applicant or the Resolution Professional and his representatives who shall at no point of time, directly or indirectly, have any obligation, liability or duty in relation thereto. If any criminal proceedings initiated against the officers of the Corporate Debtor prior to the Effective Date cannot be disposed of by the Adjudicating Authority under Applicable Law, the same shall continue against such officers. However, any liability accruing to the Corporate Debtor or the Resolution Applicant as a result of or in relation to any criminal proceedings against the officers of the Corporate Debtor shall be deemed to have been permanently extinguished by the Adjudicating Authority order approving the Resolution Plan.

Orders

29. On hearing the submissions made by the Resolution Professional, and perusing the record, we find that the Resolution Plan filed by BTL EPC Limited has been approved by the CoC with 90.06% voting share. As per the CoC, the plan meets the requirement of being viable and feasible for revival of the Corporate Debtor. By and large, all the compliances have

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been done by the Resolution Professional and the Resolution Applicant for making the plan effective after approval by this Bench.

30. As defined in Clause 36 in Schedule I at Page 6 of the Resolution Plan it is stated that the Monitoring Committee shall mean a committee of five members- the Resolution Professional, two representative of the Committee of Creditors and two representatives of the Resolution Applicant.

31. 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.

32. As far as the question of granting time to comply with the statutory obligations or seeking approvals from authorities is concerned, the Resolution Applicant is directed to do so within one year from the date of this order, as prescribed under section 31(4) of the Code.

33. We have perused the reliefs, waivers and concessions as sought and as given in Schedule 5 at Pages 78-87 of the Resolution Plan, in this regard, we refer to section 31 of the Code and rely upon the law laid down by the Hon'ble Supreme Court in **Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd**,¹ wherein the Hon'ble Supreme Court has held that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt, any State Govt or any local authority, guarantors and other stakeholders.

The relevant part of the **Ghanashyam Mishra judgment(supra)** in this regard is given below:

¹ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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61. *All these details are required to be contained in the information memorandum so that the resolution applicant is aware, as to what are the liabilities, that he may have to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure, that the Corporate Debtor is revived and made a running establishment. The legislative intent of making the resolution plan binding on all the stake-holders after it gets the seal of approval from the Adjudicating Authority upon its satisfaction, that the resolution plan approved by CoC meets the requirement as referred to in sub-section (2) of Section 30 is, that after the approval of the resolution plan, no surprise claims should be flung on the successful resolution applicant. The dominant purpose is, that he should start with fresh slate on the basis of the resolution plan approved.*

62. *This aspect has been aptly explained by this Court in the case of Committee of Creditors of Essar Steel India Limited through Authorised Signatory (supra).*

“107. *For the same reason, the impugned NCLAT judgment [Standard Chartered Bank v. Satish Kumar Gupta, 2019 SCC OnLine NCLAT 388] in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with “undecided” claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count.”*

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34. We also place reliance on the recent judgement of Hon'ble High Court of Rajasthan in the matter of *EMC v. State of Rajasthan* wherein it has been *inter-alia* held that :

“Law is well-settled that with the finalization of insolvency resolution plan and the approval thereof by the NCLT, all dues of creditors, Corporate, Statutory and others stand extinguished and no demand can be raised for the period prior to the specified date.”

35. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.

36. With respect to the waivers sought in relation to guarantors, the judgment of *Lalit Kumar Jain v Union of India & ors*,² wherein the Hon'ble Supreme Court held in para 133 that sanction of a resolution plan and finality imparted to it by section 31 does not *per se* operate as a discharge of the guarantor's liability shall apply.

37. In view of the above position of law, the Resolution Plan approved by CoC and being approved by this Adjudicating Authority shall be binding on the Corporate Debtor and other persons, authorities etc. as specified in section 31 of the Code.

38. With respect to the reliefs and waivers sought for all inquiries, litigations, investigations and proceedings shall be granted strictly as per the section 32A of the Code.

² 2021 SCC OnLine SC 396 decided on 21.05.2021.

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39. The Resolution Plan has to be consistent with extant law. The Resolution Applicant shall make necessary applications to the concerned regulatory or statutory authorities for renewal of business permits and supply of essential services, if required, and all necessary forms along with filing fees etc. and such authority shall also consider the same keeping in mind the objectives of the Code, which is essentially the resolving of the insolvency of the Corporate Debtor and enabling the Corporate debtor to stand on its feet again.
40. In case of non-compliance of this order or withdrawal of Resolution Plan, the payments already made by the Resolution Applicant shall be liable for forfeiture.
41. Subject to the observations made in this Order, the Resolution Plan is hereby **APPROVED** by this Bench. **The Resolution Plan shall form part of this Order and shall be read along with this order for implementation.** The Resolution Plan thus approved shall be binding on the Corporate Debtor and other stakeholders involved in terms of section 31 of the Code, so that revival of the Debtor Company shall come into force with immediate effect.
42. The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
43. The Resolution Professional shall submit copies of the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters.
44. Liberty is hereby granted for moving any application if required in connection with implementation of this Resolution Plan.
45. A copy of this Order is to be submitted to the Registrar of Companies, West Bengal.
46. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except the duties envisaged in the Resolution Plan.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-II**

***In Re* Resolution Plan of McNally Bharat Engineering Company Ltd.
I.A. (IB) No. 1391/KB/2023 in CP (IB) No. 891/KB/2020**

47. The Resolution Professional is further directed to handover all records, premises/factories/documents to the Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records and premises of the corporate debtor through the Resolution Professional to finalise the further line of action required for starting of the operation.
48. In view of the above the **I.A. (IB) No. 1391/KB/2023 and C.P. (IB) No. 891/KB/2020 shall stand disposed of accordingly.**
49. The Registry is directed to send e-mail copies of the order forthwith to all the parties for information and for taking necessary steps.
50. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Order signed on the 19th day of December 2023.

GGRB_LRA