

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

**I.A (IB) No 55/CB/2021
IN
C.P. (IB) No. 168/CTB/2019**

In the matter of:

Application under Section 30(6) for approval of Resolution Plan under Section 31(1) of the Insolvency and Bankruptcy Code, 2016;

And

In the matter of:

Swain Aluminium Pvt. Ltd., a company having its registered office at House-2, Green Park, Sailashree Vihar, Bhubaneswar – 751021 (CIN: U27203OR2009PTC010687);

...Corporate Debtor

And

In the matter of:

Binay Kumar Singhania, Resolution Professional appointed under Section 22 of the Insolvency and Bankruptcy Code 2016 having his office at BKS & Co, Diamond Heritage, 16 Strand Road, Unit- 519, 5th Floor, Kolkata- West Bengal.

**...Applicant/Resolution
Professional**

Coram:

Shri Rajasekhar V. K. : Member (Judicial)
Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conference):

For the Applicant : 1. Mr. Saswat Kumar Acharya, Adv.
2. Mr. Binay K. Singhania, R.P.
3. Ms. S. Pholgu, Adv.
4. Mr. A. Agarwal, Adv.
5. Ms. J. Sahoo, Adv.

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Order reserved on: 23.09.2021

Order pronounced on: 01.11.2021

ORDER

Per: Satya Ranjan Prasad Member (Technical)

1. Preliminary

- 1.1. The instant application vide IA (IB) No. 55/CB/2021 was moved on 25.06.2021 by Mr. Binay Kumar Singhania, Resolution Professional of Swain Aluminium Private Limited (CIN: U27203OR2009PTC010687) 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 Swain Aluminium Private Limited, the Corporate Debtor herein.
- 1.2. The underlying Company Petition in CP (IB) No. 168/CTB/2019 was filed by the Corporate Debtor as a Corporate Applicant under Section 10 of the Code which was admitted vide order dated 20.02.2020.
- 1.3. Initially Mr. Saradindu Jena having Registration No. IBBI/IPA-002/IP-N00520/2017-18/11622 was appointed as the Interim Resolution Professional. Thereafter, vide order dated 15.07.2020, the present Applicant, Mr. Binay Kumar Singhania having Regn. No IBBI/IPA-001/IP-P00041/2017-18/10102 was appointed as the Resolution Professional.

2. Collation of Claims

- 2.1. The claims existing as on date of the hearing and the proposal thereto in the resolution plan are as follows:

S. No.	Category of Claim	Amount admitted as per Information	Amount proposed to be paid as per the
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IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

IA (IB) No.55/CB/2021
IN CP (IB) No.168/CTB/2019

In res: Resolution Plan of Swain Aluminum Pvt. Ltd

		Memorandum (INR)	Resolution Plan (INR)
1	CIRP Cost	-	40,00,000/-
2	Financial Creditors	54,82,80,184/-	5,30,00,000/-
3	Operational Creditors	10,25,000/-	-
4	Operational Creditors (Govt. Dues)	50,45,705/-	-
5	Workmen and Employees	-	-
Total		55,43,50,889/-	5,70,00,000/-

3. CIRP Processes and Compliances

3.1. The Applicant has stated that a total of fifteen meetings of the Committee of Creditors (“COC”) have been held during the CIRP period. One COC meeting was convened by the Interim Resolution Professional and 14 COC Meetings were convened by the Applicant, Resolution Professional.

Particulars	Date of COC Meeting
1 st COC Meeting	19.03.2020
2 nd COC Meeting	24.08.2020
3 rd COC Meeting	21.09.2020
4 th COC Meeting	23.09.2020
5 th COC Meeting	16.10.2020
6 th COC Meeting	04.11.2020
7 th COC Meeting	21.12.2020
8 th COC Meeting	19.02.2021
9 th COC Meeting	08.03.2021
10 th COC Meeting	12.03.2021
11 th COC Meeting	22.03.2021
12 th COC Meeting	12.04.2021

Sd

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

IA (IB) No.55/CB/2021
IN CP (IB) No.168/CTB/2019

In res: Resolution Plan of Swain Aluminum Pvt. Ltd

13 th COC Meeting	12.05.2021
14 th COC Meeting	10.06.2021 which was adjourned to 11.06.2021 and thereafter adjourned to 14.06.2021.
15 th COC Meeting	19.06.2021

3.2. The Applicant submits that COC was informed about the Fair Market Value and Liquidation Value of the Corporate Debtor as per the Valuation Report which are as follows:

Valuer	Category	Fair Market Value	Liquidation Value
Mukesh K Jain	Financial Assets	-	-
Rahul Parasrampuria	Financial Assets	-	-
Average Value		-	-
Valuer	Category	Fair Market Value	Liquidation Value
Atul K Shukla	Land & Building	2,55,70,260.00	2,06,96,208.00
Sanjeev Kasliwal	Land & Building	2,71,71,000.00	1,90,20,000.00
Average Value		2,63,70,630.00	1,98,58,104.00
Valuer	Category	Fair Market Value	Liquidation Value
Abhishek Shukla	Plant & Machinery	3,57,32,356.00	3,03,92,502.00
Manish K Khanduja	Plant & Machinery	3,79,58,528.00	3,03,66,822.00

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IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

IA (IB) No.55/CB/2021
IN CP (IB) No.168/CTB/2019

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Average Value	3,68,45,442.00	3,03,79,662.00
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3.3. The Resolution Professional had issued invitations for Expression of Interest (“EOI”) from potential Resolution Applicants on 31.08.2020, 22.10.2020, 25.12.2020 and 14.05.2021 respectively, with the last dates for submission of the EOIs on 30.09.2020, 05.11.2020, 09.01.2021 and 21.05.2021, respectively. For submission of Resolution Plan for the Corporate Debtor, in terms of the provisions of section 25(2)(h) of the Code read with Regulation 36A of the CIRP Regulations. The notice was also published on the website of the IBBI.

3.4. The CIRP period was extended from time to time with approval of this Adjudicating Authority as follows:

1.1. IA (IB) No. 2/CB/2021 - CIRP period was extended by a period of 90 days beyond 180 days from 23.12.2020, vide order dated 19.01.2021;

1.2. IA (IB) No. 30/CB/2021 – Exclusion of COVID-19 pandemic period from 25.03.2020 to 31.10.2020, vide order dated 30.03.2021.

3.5. The Applicant has submitted that he received 4 Resolution Plans from the following Resolution Applicants:

- QVC Exports Pvt. Ltd.;
- Fortis Chemicals Pvt. Ltd.;
- N Kandoi/ N Balakrishnan;
- Sahebramka Projects Limited

4. Evaluation and Voting

4.1. The Applicant conducted the 14th COC Meeting on 10.06.2021 wherein the Resolution Plans were opened in the presence of individual Resolution Applicants and the financial offer of each Resolution Applicant was announced in public. Thereafter, the meeting was adjourned to 11.06.2021, wherein open bidding process between the Resolution Applicants was initiated. In the 2nd round of negotiation, two Resolution Applicants

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namely Fortis Chemical Pvt. Ltd. and N. Kandoi & N. Balakrishnan (jointly) expressed their desire to opt out as they did not want to participate further after having knowledge of all financial offers. Thereafter the open bidding process between QVC Exports Pvt. Ltd. and Sahebramka Projects Limited continued their open bidding. Since the Resolution Applicants continued with the open bidding process, the 14th COC Meeting was further adjourned to 14.06.2021.

- 4.2. Thereafter on the adjourned date, Sahebramka Projects Limited emerged as the H1 Bidder offering Rs. 5.65 crores upfront. The members of COC further negotiated with the H1 Bidder and Sahebramka Projects Limited agreed to revise the offer to Rs 5.70 crores as all upfront within 90 days from the date of approval of Resolution plan by this Adjudicating Authority. Further, Rs. 2 crores as performance security shall be deposited within a day or two from the date of receipt of the letter of intent.
- 4.3. The Applicant placed before the members of COC all the four Resolution Plans for consideration and the Resolution Plan being more viable and feasible to be passed by the members of COC. The members of COC thereafter approved the Resolution Plan submitted by Sahebramka Projects Limited which was passed with 100% majority voting share.

5. *Salient features of the approved Resolution Plan*

- 5.1. The Resolution Applicant has provided for payment of CIRP cost and other stakeholders of the corporate debtor as per the provisions of the Code.
- 5.2. The Applicant has also placed the relevant extracts of the valuation report on record. A chart disclosing the average liquidation value has also been placed on record. The amount being paid through the Resolution Plan is higher than the average liquidation value.

6. *Compliance of the successful Resolution Plan with various provisions*

- 6.1. The Applicant has submitted the details of various compliances as envisaged by the Code and the CIRP Regulations which a Resolution Plan is required to adhere to, as follows:

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

Clause of Sec.30(2)	Requirement	How dealt with in the Plan
(a)	Plan must provide for payment of CIRP cost in priority to repayment to further debts of CD in the manner specified by the Board.	<i>Part B- Clause 7.1, pg no. 27 of the Plan and pg 28 and pg 40 of the word and PDF copy respectively; and pg 407 of the Application.</i>
(b)	Plan must provide for repayment of debts of Operational Creditors in such manner as may be specified by the Board which shall not be less than-	
	(i) the amount payable to such creditors in the event of liquidation under section 53; or	<i>Part B- Clause 7.1, pg no. 27 of the Plan and pg 28 and pg 40 of the word and PDF copy respectively; and pg 407 of the Application.</i>
	(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub- section (1) of section 53, whichever is higher; and	<i>Part B- Clause 7.1, pg no. 27 of the Plan and pg 28 and pg 40 of the word and PDF copy respectively; and pg 407 of the Application.</i>
	(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.	<i>Part B- Clause 7.2, pg no. 27 of the Plan (and pg 28 of the word copy and pg 41 and PDF copy) respectively; and pg 408 of the Application</i>

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Clause of Sec.30(2)	Requirement	How dealt with in the Plan
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	<i>Part A- Clause 3, pg no. 15 of the Plan (and pg no. 15 of the word copy and pg. no. 28 of the pdf copy respectively); and pg no. 395</i>
(d)	Implementation and Supervision of Resolution Plan.	<i>Part B- Clause 11, 12, and 13, pg no. 33 of the Plan (and pg no. 34 and of the Word copy and pg no.46 of the PDF copy respectively); and pg no. 413 to 420.</i>
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	-
(f)	Confirms to such other requirements as may be specified by the Board.	-

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 maximization of value of its assets including but not limited to the following: -

Sq

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

IA (IB) No.55/CB/2021
IN CP (IB) No.168/CTB/2019

In res: Resolution Plan of Swain Aluminum Pvt. Ltd

Particulars	Relevant Provision of the Resolution Plan dealing with Regulation 37
(a) transfer of all or part of the assets of the corporate debtor to one or more persons;	Not proposed in the plan
(b) sale of all or part of the assets whether subject to any security interest or not;	Not proposed in the plan
(ba) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	Not proposed in the plan
(c) the substantial acquisition of shares of the corporate debtor, or the merger or the consolidation of the corporate debtor with one or more persons;	Not proposed in the plan
(ca) cancellation or delisting of any shares of the corporate debtor, if applicable;	Page 53 of the Resolution Plan
(d) satisfaction or modification of any security interest;	Page 53 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 plan
(f) reduction in the amount payable to the creditors;	Page 53 of 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 plan

Sf

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

IA (IB) No.55/CB/2021
IN CP (IB) No.168/CTB/2019

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Particulars	Relevant Provision of the Resolution Plan dealing with Regulation 37
(h) amendment of the constitutional documents of the corporate debtor;	Not proposed in the plan
(i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	Page 53 of the Resolution plan
(j) change in portfolio of goods or services produced or rendered by the corporate debtor;	Not proposed in the plan
(k) change in technology used by the corporate debtor; and	Not proposed in the plan
(l) obtaining necessary approvals from the Central and State Governments and other authorities	Page 53 of the Resolution plan

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

Sd

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

IA (IB) No.55/CB/2021
IN CP (IB) No.168/CTB/2019

In res: Resolution Plan of Swain Aluminum Pvt. Ltd

Ref. to relevant Regulation	Requirement	How dealt with in the Plan
38(1)	(a) The amount payable to the operational creditors under a resolution plan shall be paid in priority over financial creditor.	<i>Part B- Clause 7.4, pg no. 28 of the Plan (and pg 29 of the word copy and pg 41 and PDF copy) respectively; and pg 408 of the Application</i>
	(b) The amount payable to the financial creditors under a resolution plan, who have a right to vote under section 21(2) 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.	<i>Page 23 Clause 5 of the Plan</i>
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.	<i>Part B - Clause 7.5, pg no. 29 of the Plan (and pg 30 of the word copy and pg 42 and PDF copy) respectively; and pg 409 of the Application</i>

Sd

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

IA (IB) No.55/CB/2021
IN CP (IB) No.168/CTB/2019

In res: Resolution Plan of Swain Aluminum Pvt. Ltd

Ref. to relevant Regulation	Requirement	How dealt with in the Plan
38(1B)	A resolution plan shall include a statement giving details of 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.	Not included in the Plan
38(2)	A resolution plan shall provide:	
	(a) the term of the plan and its implementation schedule;	<i>Part B- Clause 11, pg no. 33 of the Plan (and pg no. 34 and of the Word copy and pg no.46 of the PDF copy respectively); and pg no. 413-416.of the Application.</i>
	(b) the management and control of the business of the corporate debtor during its term; and	<i>Part B- Clause 13; pg. no. 39,40 of the Plan; (and pg. no. 419 – 420 of the Application).</i>
	(c) Adequate means for supervising its implementation	<i>Part B- Clause 13.2.5: pg no. 39,40 of the Plan; (and pg. no. 419 – 420 of the Application).</i>
38(3)	A resolution plan shall demonstrate that-	
	(a) it addresses the cause of default;	<i>Part B- Clause 7.1.3; 10.5.2, pg no. 27, 32 of the Plan (and pg. no. 407 & pg no. 412 of the Application).</i>

Sd

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

IA (IB) No.55/CB/2021
IN CP (IB) No.168/CTB/2019

In res: Resolution Plan of Swain Aluminum Pvt. Ltd

Ref. to relevant Regulation	Requirement	How dealt with in the Plan
	(b) it is feasible and viable;	<i>Part B- Clause 13; pg. no. 39, 40 of the Plan (and pg. no. 419 – 420 of the Application).</i>
	(c) it has provisions for its effective implementation;	<i>Part B- Clause 11.2, 12, 13.2; pg. no. 34-40 of the Plan (and pg. no. 414 – 420 of the Application).</i>
	(d) it has provisions for approvals required and the timeline for the same; and	<i>Part B- Clause 10.3, 11.2, pg.no. 31,34,35 of the Plan (and pg. no. 411, 413 of the Application).</i>
	(e) the Resolution Applicant has the capability to implement the resolution plan.	<i>Part A- Clause 4, pg.no. 16,17 of the Plan (and pg. no. 396,397 of the Application).</i>

6.2. The Applicant submits that the successful resolution applicant has submitted a certificate of eligibility under section 29A of the Code, as required by regulation 39(1)(a) of the CIRP Regulations. An undertaking has also been submitted by the successful Resolution Applicant, as mandated in terms of regulation 39(1)(c) of the CIRP Regulations.

6.3. The Applicant has filed a Compliance Certificate in prescribed Form 'H' in compliance with regulation 39(4) of the CIRP Regulations. Evidence of receipt of performance security as required under regulation 36B(4A) is placed on record.

7. Synopsis of the financial proposals:

54

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

IA (IB) No.55/CB/2021

IN CP (IB) No.168/CTB/2019

In res: Resolution Plan of Swain Aluminum Pvt. Ltd

Particulars		In Rs.
Uses of Fund		
Upfront Consideration (Cash) for Secured Financial Creditor + CIRP Cost		5,70,00,000/- (CIRP Cost to be paid on priority and balance to secured financial creditor in the respective voting share)
Deferred payment for Resolution of Debt		Nil
Upfront Payment Operational Creditors	Employees	Nil
	Other Operational Creditors	Nil
Fresh Infusion of for Fixed Assets (Plant & Machineries)		2,00,00,000/-
Fresh infusion towards Working Capital (over a period of time)		5,00,00,000/-
Total		12,70,00,000/-
Source of Funds		
From Own Contribution of Resolution Applicant:	Equity	5,70,00,000/-
	Loan	7,00,00,000/-
Total		12,70,00,000/-

8. *Basis of settlement of claims & settlement amount to take care of all the stakeholders:*

8.1. The basis of settlement of claims of various class of stakeholders, their order of priority and their respective settlement amount is provided under:

Order of Priority	Nature of Creditor	Basis of Settlement & indicative amount
1 st	CIRP Cost	There is no mention of CIRP cost in the Information Memorandum provided by the Resolution Professional. Hence it is estimated at Rs 40 lacs (as known during discussion). However short on CIRP cost, if any, has to be paid in priority to others. In such a case upfront

Sq

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

IA (IB) No.55/CB/2021
IN CP (IB) No.168/CTB/2019

In res: Resolution Plan of Swain Aluminum Pvt. Ltd

Order of Priority	Nature of Creditor	Basis of Settlement & indicative amount
		amount to be paid to secured Financial Creditors shall get reduced by CIRP Cost.
2 nd	Dues to Workman / Employees (other than related parties of CD)	Nil There is no dues to be paid to any workmen or employees by the Corporate Debtor as per Information Memorandum provided by the Resolution Professional.
3 rd	Operational Creditors including Govt statutory dues	Liquidation value available to Operational Creditors is Nil. Resolution Applicant Proposes to pay Nil amount to all Operational Creditors including statutory dues.
4 th	Secured Financial Creditors	Upfront amount of Rs.5,30,00,000/- (Rupees Five Crore Thirty Lakhs Only) (Total amount 570 lacs as reduced by CIRP Cost in actual presently estimated at 40 lacs) shall be distributed among the financial Creditors in proportion to their admitted claim as below: i) Indian Overseas Bank- 69.51% Rs 3,68,40,300/- ii) Odisha Gramya Bank- 30.49% Rs.1,61,59,700/-
6 th	Shareholders	NIL

9. *Indicative percentage of recovery of each stakeholder*

(Figures in Rs.)

Particulars	Admitted Debt as on date of Resolution Plan	Settlement Amount	% age of admitted Debt
Secured Financial Creditors	54,82,80,184	5,30,00,000/-	9.67 %
Workman & Employees Dues	-	-	-

51

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

IA (IB) No.55/CB/2021
IN CP (IB) No.168/CTB/2019

In res: Resolution Plan of Swain Aluminum Pvt. Ltd

Unsecured Financial Creditors	-	-	-
Operational Creditors	60,70,705/-	0	0
Other Creditors	-	-	-

10. Proposed corporate restructuring:

- 10.1. Total 5699000 Number of Equity shares of Rs.10/- each amounting Rs. 5,69,90,000/- to the Resolution Applicant and 1000 Number of Equity shares of Rs.10/- each amounting Rs.10,000/- to any one of the promoters/Directors of the Resolution Applicant, as nominee of the Resolution Applicant. Hence the Corporate Debtor becomes a 100% subsidiary of the Resolution Applicant. Cancellation/extinguishment of shares of all existing Share Holders by making no payment to them.

11. Summary of Implementation Timelines

Sl. No.	Event	Estimated Timeline
1.	Approval of NCLT for the Plan	On NCLT Approval Date
2.	Effective Date	NCLT Approval Date
3.	Date of Signing Definitive Agreement	Within 15 days of Effective Date
4.	Zero Date	Date of Signing of Definitive Agreement or 90 days from Effective Date
5.	Extinguishment of shares of existing Share Holders.	Within 30 Days from the Zero Date or 90 days from Effective Date
6.	Infusion of Fresh Equity by Resolution Applicants and issue of fresh equity shares	Within 30 Days from the Zero Date or 90 days from Effective Date

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7.	Payment towards settlement of various Claims	As contemplated under Section 7 Part B of this Plan.
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12. Term of the plan & its monitoring & supervision:

Term of the plan:

12.1. The term of the Plan shall commence on the date on which the NCLT approves the Plan in accordance with section 31 of the Code and shall continue until payment to all stakeholders as stipulated in Section 7 of Part B has been done. Upon approval of the Plan by the NCLT, this Plan shall *ipso facto* form part of the NCLT order.

Management and control of the Corporate Debtor during the Term:

12.2. Pursuant to the approval of the Plan by the NCLT, Insolvency Professional, as decided by the CoC & RA, shall be appointed as the “**Implementing Agency**” (IA) of the Corporate Debtor in order to manage and control the business of the Corporate Debtor from the date of approval of the Plan by the NCLT and until the Closing Date, and for such purpose, shall have the powers of the Board vested in him.

12.3. A “**Monitoring Committee**” (MC) comprising of (a) representative/s of the CoC, (b) representative/s of the RA, and (c) RP shall be formed to oversee implementation of the Plan. The Implementation Agency shall act on the instructions of MC. All decisions of the Monitoring Committee shall be taken by a majority of all its members.

12.4. The RP shall be paid the costs in consideration of fulfilling his obligations under this Plan; his fees should be same as during the CIRP period.

12.5. The Monitoring Committee shall manage and control the Corporate Debtor as a going concern, in trust and for the benefit of the creditors of the Corporate Debtor and the Resolution Applicant.

13. Management and control of the Corporate Debtor after the Term

13.1. On the Closing Date, the RA will acquire control over the Corporate Debtor, and shall thereafter, supervise the implementation of the Plan in accordance with its terms (to the extent outstanding).

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- 13.2. All powers of the Board of Directors of the Corporate Debtor under applicable laws shall be vested with the as re-constituted Board of Directors, who shall be entitled to exercise all powers of Board of Directors under applicable laws, including under Section 179 of the Companies Act, 2013. Mr. Kunal Agrawal, Ms. Punam Agrawal and Mr. Ramesh Chandra Gupta would initially be appointed as the directors of the re-constituted Board of the Corporate Debtor.
- 13.3. On and from the Closing Date, the management team of the Corporate Debtor (including any Key Managerial Personnel) shall be re-constituted by the Resolution Applicant in accordance with this Plan.
- 13.4. As of the Closing Date, the Auditors of the Company shall be deemed to have vacated its office, and, a person nominated by the Resolution Applicant shall be designated and appointed as the Auditor of the Company.
14. ***Reliefs and Concessions sought, and orders thereon, are tabulated below.***

Sl. No.	Waivers, Reliefs and Exemptions sought from NCLT	Orders thereon
1.	All relevant Government Authorities to grant relief from payment of stamp duty and applicable fees (including fees payable to the jurisdictional Registrar of Companies) for the successful implementation of the Plan (including for the Merger, issuance and transfer of shares or debentures and assignment of Debt).	Not granted
2.	Swain Aluminium Private Limited, the Corporate Debtor, and the Resolution Applicant shall be granted an exemption from all taxes, levies, fees, transfer charges, transfer premiums, and surcharges that arise from or relate to implementation of the	Not granted

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

IA (IB) No.55/CB/2021
IN CP (IB) No.168/CTB/2019

In res: Resolution Plan of Swain Aluminum Pvt. Ltd

Sl. No.	Waivers, Reliefs and Exemptions sought from NCLT	Orders thereon
	Resolution Plan, since payment of these amounts may make the Resolution Plan unviable.	
3.	Waiver of any income-tax and Minimum Alternate Tax (MAT) liability or consequences (including interest, fine, penalty, etc) on the Corporate Debtor, Resolution Applicant and its shareholders on account of various steps as proposed in the Resolution Plan, including but not limited to liabilities if any under Section 41 (1), Section 56, Section 43, Section 43 B, Section 28, Section 115JB and Section 79 of the Income-tax Act, 1961, including, without limitation waiver of MAT and income tax implication arising due to write back/write off of liabilities in the books of accounts of Corporate Debtor without any impact on brought forward tax and book loss / depreciation, pursuant to this Resolution Plan.	Granted in terms of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.</i> ¹
4.	Any requirements to obtain waivers from any Tax Authorities including in terms of section 79 of the IT Act is deemed to have granted upon approval of this Resolution Plan on the Effective Date.	This is for the appropriate authorities to consider.
5.	Any approvals that may be required from Governmental Authorities (including tax authorities) in connection with the implementation of	The corporate debtor under the successful resolution applicant shall apply to the appropriate authorities, who

¹ 2021 SCC Online SC 313 dated 13.04.2021

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

IA (IB) No.55/CB/2021
IN CP (IB) No.168/CTB/2019

In res: Resolution Plan of Swain Aluminum Pvt. Ltd

Sl. No.	Waivers, Reliefs and Exemptions sought from NCLT	Orders thereon
	the Resolution Plan including on account of change in ownership / control of Corporate Debtor shall be deemed to have been granted on the Effective Date.	are requested to consider the same keeping in view the letter and spirit of the Insolvency & Bankruptcy Code, 2016, which is to enable a fresh start for the corporate debtor.
6.	From the Effective Date, all inquiries, investigations and proceedings, whether civil or criminal, suits, claims, disputes, proceedings in connection with Corporate Debtor or affairs of Corporate Debtor (including those initiated by Governmental Authorities), pending or threatened, present or future in relation to any period prior to the Effective Date, or arising on account of implementation of this Resolution Plan shall stand withdrawn and dismissed and all liabilities and obligations therefore, 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 fully, and permanently extinguished and no adverse orders passed in the said matters should apply to the Corporate Debtor or the Resolution Applicant. Upon approval of this Resolution Plan, all new inquiries, investigations, notices, suits, claims, disputes, litigations, arbitrations or other judicial, regulatory, or administrative proceedings will be deemed to be	This shall be in terms of section 32A of the Insolvency & Bankruptcy Code, 2016, nothing more and nothing less.

Sd

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

IA (IB) No.55/CB/2021
IN CP (IB) No.168/CTB/2019

In res: Resolution Plan of Swain Aluminum Pvt. Ltd

Sl. No.	Waivers, Reliefs and Exemptions sought from NCLT	Orders thereon
	barred and will not be initiated or admitted against the Corporate Debtor and/or its new management in relation to any period prior to the Effective Date.	
7.	The Corporate Debtor and the Resolution Applicant (as its shareholder) shall be entitled to modify contracts which: (i) are entered into with parties which prior to the Insolvency Commencement Date were related parties of the Corporate Debtor, and (ii) impose onerous conditions hindering the resolution process for the Corporate Debtor.	Granted
8.	All Government Authorities to waive the Non-Compliances of the Corporate Debtor prior to the Effective Date.	Blanket permission of this kind cannot be granted, since it is likely to have some repercussions. Specific difficulties may, however, be brought to the notice of this Adjudicating Authority for orders.
9.	All relevant Government Authorities to continue to make available the Business Permits and the business may continue being carried out as being carried out prior to the Insolvency Commencement Date.	Section 31(4) of the Insolvency & Bankruptcy Code provides a one-year window from the date of approval of the resolution plan to obtain necessary approvals under any law. The successful resolution applicant is expected to keep these timelines in mind.
10.	Neither the Resolution Applicant, nor any of its Affiliates or connected	Granted.

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IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

IA (IB) No.55/CB/2021
IN CP (IB) No.168/CTB/2019

In res: Resolution Plan of Swain Aluminum Pvt. Ltd

Sl. No.	Waivers, Reliefs and Exemptions sought from NCLT	Orders thereon
	persons, will be disqualified from or considered ineligible under the Code for proposing and/ or implementing a plan in relation to the insolvency resolution of any Person (other than the Corporate Debtor), merely on account of the implementation of this Plan by the Resolution Applicant.	
11.	It is probable that certain of the Business Permits of the Corporate Debtor have lapsed, expired, suspended, cancelled, revoked or terminated or the Corporate Debtor has non-compliances in relation thereto. Accordingly, all Government Authorities to provide reasonable time-period after the Effective Date in order to enable Resolution Applicant to assess the status of these Business Permits and ensure that the Corporate Debtor is compliant with the terms of such Business Permits and Applicable Law without initiating any investigations, actions or proceedings in relation to such non-compliances and permit the Resolution Applicant to continue to operate the business of the Corporate Debtor.	Section 31(4) of the Insolvency & Bankruptcy Code provides a one-year window from the date of approval of the resolution plan to obtain necessary approvals under any law. The successful resolution applicant is expected to keep these timelines in mind.
12.	It is assumed from the Effective Date, all accounts of the Corporate Debtor shall stand regularised and their Asset Classification is "Standard" for the purpose of Applicable RBI Laws.	This is for the RBI to consider keeping in view the letter and spirit of the Insolvency & Bankruptcy Code, 2016, since the resolution plan is being approved to enable a fresh start for the Corporate Debtor.

51

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

IA (IB) No.55/CB/2021
IN CP (IB) No.168/CTB/2019

In res: Resolution Plan of Swain Aluminum Pvt. Ltd

Sl. No.	Waivers, Reliefs and Exemptions sought from NCLT	Orders thereon
13.	The Central Board of Direct Taxes to - (i) not take any other actions with respect to the transactions contemplated under this Plan (including the Merger and the sale of collateral) under Section 281 of the IT Act - (ii) exempt the Resolution Applicant from any liability pursuant to Sections 56 and 170 of the IT Act and iii) not levy any Tax (including minimum alternate tax) arising as a result of giving effect to, or otherwise in relation to, the Plan, in the hands of Corporate Debtor or the Resolution Applicant.	This is for the Central Board of Direct Taxes to consider keeping in view the letter and spirit of the Insolvency & Bankruptcy Code, 2016, since the resolution plan is being approved to enable a fresh start for the Corporate Debtor.
14.	The Central Board of Excise and Customs/ Dept. of GST & Central Excise not to take any actions with respect to the transactions contemplated under this Plan (including the Merger and the sale of Collateral) under Section 81 of the Central Goods and Services Tax Act, 2017 and not to impose any successor liability on the Resolution Applicant and the Corporate Debtor.	This is for the appropriate authorities to consider keeping in view the letter and spirit of the Insolvency & Bankruptcy Code, 2016, since the resolution plan is being approved to enable a fresh start for the Corporate Debtor.
15.	Neither the Resolution Applicant nor the Corporate Debtor, nor their respective directors, officers and employees appointed as on or after the Effective Date shall be liable for any violations, liabilities, penalties, interests on statutory payments and/ or fines with respect to or pursuant to any order of any Governmental Authority or on account of non-	Granted, in accordance with section 32A of the Insolvency & Bankruptcy Code, 2016.

51

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

IA (IB) No.55/CB/2021
IN CP (IB) No.168/CTB/2019

In res: Resolution Plan of Swain Aluminum Pvt. Ltd

Sl. No.	Waivers, Reliefs and Exemptions sought from NCLT	Orders thereon
	compliance of Applicable Laws by the Corporate Debtor or due to the Corporate Debtor not having in place requisite approvals and licenses to undertake its business as per Applicable Law.	
16.	All Government Authorities to grant any relief, concession or dispensation as may be required for implementation of the transactions contemplated under the Plan in accordance with its terms and conditions.	This is for the appropriate authorities to consider keeping in view the letter and spirit of the Insolvency & Bankruptcy Code, 2016, since the resolution plan is being approved to enable a fresh start for the Corporate Debtor.
17.	The jurisdictional Registrar of Companies to take on record and implement the Plan, upon approval of the Plan by NCLT, without any further compliances	It is not the duty of the jurisdictional Registrar of Companies to implement the Plan. It shall be the duty of the corporate debtor under the successful resolution applicant to ensure that all filings necessary in connection with the implementation of the Plan are made with the Registrar of Companies, along with the applicable filing fee.
18.	All creditors of the Corporate Debtor to withdraw all legal proceedings commenced against the Corporate Debtor in relation to claims, including all criminal proceedings, proceedings under Section 138 of the Negotiable Instruments Act, 1881 and proceeding under SARFAESI and RDDBFI,	Granted, since the intention of the Insolvency & Bankruptcy Code is to enable fresh start for the corporate debtor.

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

IA (IB) No.55/CB/2021
IN CP (IB) No.168/CTB/2019

In res: Resolution Plan of Swain Aluminum Pvt. Ltd

Sl. No.	Waivers, Reliefs and Exemptions sought from NCLT	Orders thereon
	within 30 (thirty) days of the Effective Date.	
19.	The Resolution Applicant reserves all rights to undertake any expansion in the project, which is not given in the Resolution Plan, of the Corporate Debtor if in future the Resolution Applicant gets any opportunity for the benefit of all the stakeholders.	This is not in a nature of any relief, waiver or concession. Therefore, no orders of the Adjudicating Authority are necessary. In any such case, all due compliances with the applicable laws shall be made by the corporate debtor under new management, since this exercise is going to be <i>de hors</i> the Resolution Plan itself.
20.	The Corporate Debtor, Swain Aluminium Private Limited, shall continue as a going concern as before. There is going to be no change in the legal status of the Corporate Debtor. Therefore, the Corporate Debtor is eligible to carry forward losses u/s 72 of Income Tax Act. On approval of the plan by the Hon'ble NCLT, the Corporate Debtor shall carry forward such losses as per the provisions of the Income Tax Act.	It is for the corporate debtor to satisfy the income tax authorities in this regard. No orders of the Adjudicating Authority are necessary.

15. Conclusions:

- 15.1. On hearing the submissions made by the Ld. Counsel for the Resolution Professional, and perusing the record, we find that the Resolution Plan has been approved with 100% voting share. As per the CoC, the plan meets the requirement of being viable and feasible for revival of the Corporate Debtor. By and large, all the compliances have been done by the Resolution Professional and the Resolution Applicant for making the plan effective after approval by this Bench.

51

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

IA (IB) No.55/CB/2021
IN CP (IB) No.168/CTB/2019

In res: Resolution Plan of Swain Aluminum Pvt. Ltd

- 15.2. On perusal of the documents on record, we are also satisfied that the Resolution Plan is in accordance with sections 30 and 31 of the Code and also complies with regulations 38 and 39 of the CIRP Regulations.
- 15.3. As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.
- 15.4. In case of non-compliance of this order or withdrawal of Resolution Plan, the performance guarantee amount already paid by the Resolution Applicant shall stand forfeited, in addition to the Resolution Applicant being liable for any other action as per law.
- 15.5. Subject to the observations made in this Order, the Resolution Plan in question is hereby **approved** by this Bench.
- 15.6. The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect.
- 15.7. The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
- 15.8. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the successful Resolution Applicant or New Promoters.
- 15.9. Liberty is hereby granted for moving any Application if required in connection with implementation of this Resolution Plan.
- 15.10. A copy of this Order is to be submitted to the Office of the Registrar of Companies, Cuttack.
- 15.11. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

IA (IB) No.55/CB/2021
IN CP (IB) No.168/CTB/2019

In res: Resolution Plan of Swain Aluminum Pvt. Ltd

- 15.12. The Resolution Professional is further directed to handover all records, premises/factories/documents to the Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records/premises/factories/documents through the Resolution Professional to finalise the further line of action required for starting of the operation.
- 15.13. Accordingly, the instant application **IA (IB) No.55/CTB/2021** shall stand disposed of.
- 15.14. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- 15.15. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.



Satya Ranjan Prasad
Member (Technical)
(Judicial)



Rajasekhar V.K.
Member

Signed this 1st day of November 2021.

Ravijeet_P.S.