

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

**IA (IB) No. 118/KB/2021
In
C.P. (IB) No. 628/KB/2018**

In the matter of:

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

And

In the matter of:

Ritesh More, of 8, Camac Street, Room No. 606, 6th Floor, Kolkata – 700017.

...Operational Creditor

Versus

Marsons Limited, Marsons House, Budge Budge Trunk Road, Village – Chakmir,
P.O.Maheshtala, Kolkata – 700142

...Corporate Debtor

And

In the matter of:

Sanjit Kumar Nayak [Resolution Professional of Marsons Limited]

... Applicant

Coram:

Shri Rohit Kapoor : Member (Judicial)
Shri Harish Chander Suri : Member (Technical)

Appearances (via video conference):

For the Applicant/RP:

1. Mr. Abhrajit Mitra, Sr. Advocate.
2. Mr. Anuj Singh, Advocate.
3. Mr. Rahul Parasrampur, PCS
4. Mr. Sanjit Kumar Nayak, RP in person

For Successful Resolution Applicant

1. Mr. Jishnu Chowdhury Advocate.
2. Ms. Narmata Basu, Advocate.

**Order reserved on: 05.01.2022
Order pronounced on: 25.01.2022**

ORDER

Per: Harish Chander Suri, Member (Technical)

1. This Court convened through video conferencing.
2. **IA (IB) No.118/KB/2021** is an application under section 30 (6) of the Code after approval of the resolution plan by the Committee of Creditors (“**CoC**”).
3. This Application was moved on 05 January, 2022 by Mr. Abhrajit Mitra, Sr. Advocate, on behalf of Mr. Sanjit Kumar Nayak, Resolution Professional of Marsons Limited (CIN: L31102WB1976PLC030676) 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 Regulation**”) for approval of a Resolution Plan in respect of Marsons Limited.
4. The underlying Company Petition in CP (IB)No.628/ KB/ 2018 was filed by Mr. Ritesh More (“**Operational Creditor**”) against Marsons Limited, (“**Corporate Debtor**”), under section 9 of the Insolvency and Bankruptcy Code 2016 which was admitted *vide* order dated 20 June, 2018.
5. Mr. Sanjit Kumar Nayak (IBBI Reg. No. IBBI/IPA-003/IP-N00079/2017-18/10702) was appointed as the Interim Resolution Professional and was later confirmed as the Resolution Professional (“**RP**”) by the CoC. The RP made public announcement on 22 June, 2018¹ in *Financial Express* (English) and *Sukhabar* (Bengali) newspapers regarding initiation of Corporate Insolvency Resolution Process (“**CIRP**”) and called for proof of claims from the financial and operational creditors, workers and employees of the Corporate Debtor. Subsequently, Committee of Creditors (“**CoC**”) was formed with four Financial Creditor, namely, Allahabad Bank, Nandeshwar Fintrade Private Limited, Kirti Probuild Private Limited and P. Jainex Trade Finance Private Limited.
6. The applicant states that a total of 22 (Twenty-Two) CoC meetings have been held during the CIRP Period, as follows:

¹ Annexure B, Pages 35 – 37 of the Application

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Particulars	Date of CoC meeting
1st CoC	17.07.2018
2nd CoC	07.08.2018
3rd CoC	03.09.2018
4th CoC	24.09.2018
5th CoC	05.11.2018
6th CoC	21.11.2018
7th CoC	10.12.2018
8th CoC	24.01.2019
9th CoC	05.02.2019
10th CoC	14.02.2019
11th CoC	16.02.2019
12th CoC	19.02.2019
13th CoC	22.02.2019
14th CoC	28.02.2019 & 07.03.2019
15th CoC	14.03.2019
16th CoC	27.04.2020
17th CoC	02.05.2020
18th CoC	25.06.2020
19th CoC	12.08.2020
20th CoC	08.09.2020
21st CoC	19.12.2020
22nd CoC	03.12.2021

7. The Applicant submits that in terms of the provisions of section 25(2)(h) of the Code read with regulation 36A(1) of the Insolvency and Bankruptcy Board of

India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, invitations in Form 'G'² for Expressions of Interest ("EoI") from potential resolution applicants were issued. Form 'G' was published on 01 September, 2018 for submission of resolution plans for the Corporate Debtor. The last date for receipt of EOIs was 18 September, 2018. This was published in *Financial Express* (English) and *AajKal* (Bengali). The notice was also published on the website of the Insolvency and Bankruptcy Board of India ("IBBI").

8. In response to the publication of Form G, twelve Resolution Applicants ('RA') submitted their EOIs. The consortium of Successful Resolution Applicant ('SRA'), Yashoda Inn Private Limited and Uneecops Solar Private Limited jointly submitted a resolution plan.
9. Thereafter, detailed discussion on the plan submitted by the SRA took place and it was subsequently, approved by the CoC with 100% of voting rights in the CoC meeting, dated 14 March, 2019.
10. *Vide* order dated 09 May, 2019, the Resolution Plan submitted by the SRA was approved by this Adjudicating Authority ('Original NCLT Order'). However, the impugned order dated 09 May, 2019 was challenged by one of the Operationa Creditor, Hamond Power Solutions Private Limited before the Hon'ble National Company Law Appellate Tribunal³. The Hon'ble NCLAT, *vide* order dated 14 February, 2020, set aside the order of this Adjudicating Authority and sent back the matter to this Adjudicating Authority with a direction to send back the Resolution Plan to the CoC to resubmit the Plan after satisfying the parameters as laid down by the Hon'ble Supreme Court in Essar Steel. Accordingly, the matter was remanded to CoC for due consideration.
11. The CoC in its meeting dated 19 December, 2021 considered the orderd given by the Hon'ble NCLAT and this Adjudicating Authority. To ensure the interest of all the stakeholders including the Operational Creditors the CoC have noted the provision of Section 30 (2) of the Code and decided to pay a sum of Rs.15,00,000/- (Rupees Fifteen Lakh only) to the Operational Creditors.

² Annexure – E, Pages – 343 – 344 of I.A. 571/KB/2021.

³ Company Appeal (AT) (Insolvency) No.606 of 2019.

12. Summary of the Payment Terms of the Revised Resolution Plan proposed now due to COVID-19 effect on Business is presented below—

Particulars	Proposed Amount (In Cr)
Upfront Payment already made after the Original NCLT Order	12.950
1st Tranche: Payment to Operational Creditors within 30 days on Approval of Modified Resolution Plan by NCLT	0.150
2nd Tranche: Payment within 60 days from Date of NCLT Order (Principal Upfront – 2.00)	2.000
3rd Tranche: Payment by end of 6 Months from Date of NCLT Order (Principal)	5.000
4th Tranche: Payment by end of 9 months from Date of NCLT Order (Principal)	7.000
5th Tranche: Payment by end of 12 months from Date of NCLT Order (Principal – 8.00 + Old Intt – 1.60 ⁴)	9.600
5th Tranche: Estimated Payment by end of 12 months from Date of NCLT Order, if payment made as per schedule (Interest on Deferred Outstanding) ⁵	1.290
Bank Guarantee Liability ⁶	5.899
Total	43.889

⁴ Interest calculation from Jun 9, 2019 to Feb 14, 2020 (NCLAT Order) for Deferred Amount of Rs 19 Crores at 12.20% p.a.

⁵ Interest @ 10% p.a. on Deferred Outstanding of Rs 19 Crores as proposed under the Original Resolution Plan will be paid from Date of Revised NCLT Order till the Date of Final Payment of such deferred amount on Reducing Principal Value basis. It is to be noted that TDS will be deducted on the Interest paid on Deferred Payment.

⁶ In case of invocation of any BG, interest @10% per annum shall be paid by the Resolution Applicant for the period from the Date of Invocation till Date of Payment.

**SUMMARISED FORMAT OF RESOLUTION AMOUNT PAYMENT
SCHEDULE**

(Rs In Crores)

Particulars	Resolution Debt	Resolution Amount	Amount already paid *	1 st Tranche 30 days from NCLT Order	2 nd Tranche 60 days from NCLT Order	3 rd Tranche 6 Months from NCLT Order	4 th Tranche 9 months from NCLT Order	5 th Tranche 12 months from NCLT Order
CIRP	0.4980	0.4980	0.4980	0	0	0	0	0
Secured Financial Creditors	99.8660	36.392	11.5020	0	2.000	5.000	7.000	10.890
Workmen Due	0.9500	0.9500	0.9500	0	0	0	0	0
Unsecured Financial Creditors	1.0449	0	0	0	0	0	0	0
Statutory Dues	0	0	0	0	0	0	0	0
Operational Creditors	13.3492	0.1500	0	0.15	0	0	0	0
Total	115.7081	37.9900	12.9500	0.15	2.000	5.000	7.000	10.890

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

Clause of S.30(2)	Requirement	How dealt with in the Plan	Page No. in Resolution Plan
(a)	Plan must provide for payment of CIRP cost in priority to repayment of other debts of CD in the manner specified by the Board.	Part B – Financial Proposal, Clause 1 (a)	64

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(b)	(i) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than the amount payable to them in the event of liquidation u/s 53; or (ii) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be not less than amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, which ever is higher and (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.	Part B – Financial Proposal, Clause 1 (b) Part B – Financial Proposal, Clause 1 (b) Part B – Financial Proposal, Clause 1 (b)	64-65
(c)	Management of the affairs of the Corporate Debtor after	Part B – Financial	65

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	approval of the Resolution Plan.	Proposal, Clause 1 (c)	
(d)	Implementation and Supervision.	Part B – Financial Proposal, Clause 1 (d)	65 - 66
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Part B – Financial Proposal, Clause 1 (e)	66
(f)	Conforms to such other requirements as maybe specified by the Board.	Part B – Financial Proposal, Clause 1 (f)	67

II. Measures required for implementation of the Resolution Plan interms of Regulation 37 of CIRP Regulations:

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

(b) sale of all or part of the assets whether subject to any security interest or not;	Not proposed by the SRA
(c) restructuring of the corporate debtor, by way of merger, amalgamation and demerger	Not proposed by the SRA.
(d) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	The Company has Authorised Capital of 4,50,00,000 Equity Shares at Face Value of Rs 10/- each aggregating to Authorised Capital of Rs 45,00,00,000 (Rupees Forty-Five Crores) with Issued and Paid up Capital being 2,50,00,000 Equity Shares of Rs 10 each aggregating to Paid up Capital of Rs 25,00,00,000/-. With huge accumulated losses on the balance sheet, the Face Value of existing Equity shares shall be reduced from Rs. 10 per share to Re 0.20 per share with no. of shares issued remaining at same level after the Effective Date. This would result in Issued and Paid Up Capital with 2,50,00,000 Equity Shares of Rs 0.20 each with Voting Rights and aggregate paid up Capital of Rs 50,00,000. <u>Consolidation of Face Value of the Shares –</u> After Reduction of Face Value of the Existing Shares to Rs 0.20/- per share, the Face Value

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	of the Shares will be consolidated to Rs 1/- per share which would result in reduction of the Quantity of Shares held by existing shareholders by 1/5 th of the Existing Quantity i.e. the shares of the existing shareholders holding 2,50,00,000 Equity Shares will reduce to 50,00,000 Equity Shares. Therefore, after reduction of existing shares as stated above, the existing Paid Up Share Capital of the Company will be 50,00,000 Equity Shares of Rs 1/ each aggregating to Paid Up Capital of Rs 50,00,000. This entire process of reduction would result in Capital Reduction of the Corporate Debtor by Rs 24,50,00,000.
(e) cancellation or delisting of any shares of the corporate debtor, if applicable;	Relief sought at Page 50
(f) satisfaction or modification of any security interest;	Not proposed by the SRA
(g) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Not proposed by the SRA
(h) reduction in the amount payable to the creditors;	Table at Page 55 of the Resolution Plan.

(i) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	N/A
(j) amendment of the constitutional documents of the corporate debtor;	Not proposed by the SRA
(k) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	N/A
(l) change in portfolio of goods or services produced or rendered by the corporate debtor;	N/A
(m) change in technology used by the corporate debtor; and	N/A
(n) Obtaining necessary approvals from the Central and State Governments and other authorities.	N/A

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

<i>Reference to relevant Regulation</i>	<i>Requirement</i>	<i>How dealt with in the Plan (page nos)</i>
38(1)	The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.	67

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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.	67-68
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.	68
38(2)	A resolution plan shall provide: (a) the term of the plan and its implementation schedule;	68-69
	(b) the management and control of the business of the corporate debtor during its term; and	70
	(c) Adequate means for supervising its implementation.	70
38(3)	A resolution plan shall demonstrate that– (a) it addresses the cause of default;	70
	(b) it is feasible and viable;	70

	(c) it has provisions for its effective implementation;	71
	(d) it has provisions for approvals required and the timeline for the same; and	71
	(e) the Resolution Applicant has the capability to implement the resolution plan.	71

IV. Mandatory contents of Resolution Plan in terms of Regulation 39 of CIRP Regulations

<i>Reference to relevant Regulation</i>	<i>Requirement</i>	
39(1)(a)	An affidavit stating RA is eligible under section 29A to submit resolution plans;	Supplementary Affidavit filed by the RP in terms of Section 29A
39(1)(c)	An undertaking by the prospective resolution applicant that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency resolution process, forfeit any refundable deposit, and attract penal action under the Code	Supplementary Affidavit filed by the RP in terms of Section 29A

Details of Resolution Plan/ Payment Schedule

14. The Applicant submits the relevant information with regard to the amount claimed, amount admitted and the amount proposed to be paid by the SRA Consortium

Particulars	Resoluti on Debt	Resoluti on Amount	Amount already paid *	1 st Tranc he	2 nd Tranc he	3 rd Tranc he	4 th Tranc he	5 th Tranc he
				30 days from NCLT Order	60 days from NCLT Order	6 Month s from NCLT Order	9 month s from NCLT Order	12 month s from NCLT Order
CIRP	0.4980	0.4980	0.4980	0	0	0	0	0
Secured Financial Creditors	99.8660	36.392	11.5020	0	2.000	5.000	7.000	10.890
Workmen Due	0.9500	0.9500	0.9500	0	0	0	0	0
Unsecured Financial Creditors	1.0449	0	0	0	0	0	0	0
Statutory Dues	0	0	0	0	0	0	0	0
Operational Creditors	13.3492	0.1500	0	0.15	0	0	0	0
Total	115.708 1	37.9900	12.9500	0.15	2.000	5.000	7.000	10.890

15. **Details on Management/Implementation and Reliefs as per the Resolution Plan – Salient Features**⁷

Monitoring Committee constituted as per the Implementation of the Approved Original Resolution Plan in agreement with the Bank decided to accept the Initial Payment of Rs 12.95 Crores as Upfront Payment and agreed for deferral of the Balance Payment of Rs 19 Crores till March 31, 2020, which facilitated the RA to complete the Total Resolution Plan Payment of Rs.31.95 Crores as per the NCLT Approved Resolution Plan.

Reason – This was considered in light of the turmoil prevalent in the Financial Market wherein liquidity crisis reined in Banks / NBFCs / ARCs for funding. ARC was also reluctant to fund the balance Resolution Amount inspite of agreement due to the fact that an Operational Creditor had filed an appeal against the Approval of the Resolution Plan by NCLT at NCLAT and agreed to consider funding after the conclusion of the pending appeal before the Hon'ble NCLAT, New Delhi, if the appeal is dismissed.

It is to be noted that the appeal against the Approval of the Resolution Plan was petitioned on 28th May 2019 which was before the Due Date of Upfront Payment i.e. 9th June 2019 as stated in the Approved Resolution Plan.

It is pertinent to note that the ARC was stated as to be one of the Source of Funding for the remainder Upfront amount as per the Approved Resolution Plan with Comfort Letter of the ARC. The aforementioned matter was ratified in the Monitoring Committee meeting dated 23rd September 2019, the minutes of meeting can be provided on request

16. **Reliefs, Concessions, Liabilities and Waivers**

Sl.No.	Reliefs, Concessions, Liabilities and Waivers Sought	Orders Thereon
(i)	Approval for Change in Face Value of the Shares from Rs 10 per share to Rs 0.20 per share and then Consolidation of Face Value from Rs 0.20 per share to Rs 1 per	Granted.

⁷ Page 61- 63 of the Modified Resolution Plan

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	share.	
(ii)	Exemption from compliance of Takeover Code as per Regulation 10 (1)(da) of SEBI (Substantial Acquisition Of Shares And Takeovers) Regulations, 2011. Any requirements for compliance / payment in future post acquisition	Not Granted. The Resolution Applicant shall ensure full compliance of the SEBI Regulations.
(iii)	waiver/exemption from any further approvals from SEBI/Stock Exchanges under the Listing Rules or any other Rules and Regulations as the case may be, with regard to Cancellation/Reduction/Consolidation of Equity Shares of Promoters / Public and permit such cancellation / reduction / consolidation.	Not Granted. This is for the appropriate authorities to consider.
(iv)	Approval for extinguishment of Fraction Shares due to the result of Reduction and Consolidation of Shares of existing Shareholders of the Corporate Debtor and issuance of equity shares to the Lead Member (including its Group / Associate Companies or Firms or the Promoter and Promoter's Family of the Lead Member) equivalent to the aggregate fraction shares extinguished	Granted.
(v)	Waiver / In-principle approval for any further approvals from SEBI/Stock Exchanges/MCA under the Listing Rules or any other Rules and Regulations as the case may be, with regard to issuance of	This is for the appropriate authorities to consider.

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	Equity Shares or Equivalent Instruments through Preferential Allotment to New / Existing / Specified Shareholders or Issuance of Non-convertible Debentures OR Rights Issue of Equity Shares to Existing Shareholders for raising capital for Working Capital / CAPEX within 24 months from the Date of the Effective Date as well as for Deferred Payment under this Resolution Plan	
(vi)	Waiver/Exemption from Shareholder's Approval vide MCA Circular dated October 25, 2017 bearing No IBC/01/2017 with regard to any action required in a Resolution Plan for a Company under Insolvency Process and implementation of the Approved Resolution Plan.	Granted.
(vii)	Exemption from maintenance of minimum public shareholding requirement for a period of 3 years or such time which will be allowed by SEBI later on	Not Granted. The Resolution Applicant shall ensure full compliance of the SEBI Regulations.
(viii)	Exemption/waiver/in-principle approval from any further approvals from SEBI / Stock Exchanges / Shareholders under the Listing Rules or any other Rules and Regulations as the case may be, with regard to issuance of Sweat Equity Shares to the Shareholders or any persons decided later on	Not Granted. This is for the appropriate authorities to consider

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(ix)	waiver of the requirements of the Valuation of Pricing of Shares by Registered Valuer to be computed for Issuance of Equity Shares through Preferential Allotment / Warrants / Preference Shares / Convertible Debentures to RA as well as Investors. The request for such waiver is due to the fact that current valuation of the Company 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.	Granted.
(x)	Approval under Sec 281 of the Income Tax Act, 1961 by the Selling Shareholders and provision of taking over predecessor’s tax liability under Sec 170 of the Income Tax Act, 1961 and <u>Specific Order</u> for treating such Transactions as VOID under Sec 281 of the Income Tax Act, 1961 for any claims in respect of tax or any other sum payable by Selling Shareholders	No general reliefs can be granted in the manner sought for. It is for the appropriate taxing authorities to consider the same in accordance with the relevant law.
(xi)	Approval of the Resolution Plan will be treated as Specific Order to the Secured Financial Creditors that all the debts of the lenders be it due and pending on any account, gets fully and finally satisfied	The judgment of the Hon’ble Supreme Court in <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction</i>

and extinguished, in terms of this Resolution Plan (on receipt of Final Tranche by the Financial Creditors) and there remains nothing to be recovered out of such dues, either from the Resolution Applicant, against such loans / dues or from the Corporate Debtor. The Charges / Liens / Mortgages / Securities against the existing loans of Corporate Debtor / claims admitted under CIRP would stand fully discharged on all kind of tangible / intangible / movable / immovables fixed assets on receipt of the complete payment by the Financial Creditors, under this Resolution Plan. Approval of the Resolution Plan will be treated as Specific Order to the Secured Financial Creditors to “<u>UPGRADE</u>” the	<i>Company Ltd.</i>⁸ lays down that when the resolution plan is approved by NCLT, 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 and state government or any local authority, guarantors and other stakeholders. 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. Granted.
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⁸ 2021 SCC OnLine SC 313 decided on 13.04.2021.

	Account of Corporate Debtor under the Credit Bureau Mechanism (i.e. in Financial Creditors records as well as update in the records of TransUnion Credit Information Bureau (India) Limited (or CIBIL), Credit Rating Information Services of India Limited (CRISIL), Equifax, ICRA (formerly known as Investment Information and Credit Rating Agency of India Limited), CRIF High Mark, Experian or any other agency formed for this specific purpose) to <u>“STANDARD CATEGORY”</u> from <u>“NPA/ WILLFUL DEFAULTER”</u> STATUS or provide a Confirmation Letter to the Corporate Debtor / Resolution Applicant that such Update / Upgrade has been done in the Books / Records of the Bank within 7 days of the Approval of this Resolution Plan by NCLT. The Secured Creditors under this Resolution Plan undertakes to treat the Approval of the Resolution Plan as Specific Order to complete the Upgradation of Credit Status as “Standard” to external agencies as well as to various Credit Bureaus (as stated above) within 60 days of the NCLT Order approving this Resolution Plan. As the Upfront Payment has already been paid to Secured Financial Creditors under this	
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	Resolution Plan so as to enable the RA to revive afresh the business of Corporate Debtor and such action would enable the RA to take Loans for Upgradation of the Plant & Machinery / Production Facilities / Working Capital Requirements for the Corporate Debtor which will assist in complete revival. It is to be noted that any payment to be paid as per timeline under the Modified Resolution Plan approved by NCLT will be extended by such period for which upgradation of Credit Status of the Corporate Debtor is delayed. Approval of the Resolution Plan will be treated as Approval by NCLT to withdraw all the recovery proceedings against the Corporate Debtor under DRT, SARFESI, Negotiable Instruments Act or any other law. The relevant Financial Creditors shall file their respective applications for withdrawal of proceedings against the Corporate Debtor (while keeping their options to proceed against third party security and guarantees) within 15 days of receipt of the Final Tranche by the Financial Creditors under this Resolution Plan. Further, the Financial Creditors agree to keep all the relevant proceedings on hold or abeyance till the Final Tranche is due.	
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(xii)	Approval of the Resolution Plan will be treated as Waiver for any further liability after Approval of the Resolution Plan and payment made to Workmen and Employees as per section 53(1)(b) under the Waterfall Mechanism stated under the IBC 2016 and such Payment made to Workmen and Employees shall be treated as Fully and Finally Settled.	The judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd.</i> ⁹ lays down that when the resolution plan is approved by NCLT, 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 and state government or any local authority, guarantors and other stakeholders. 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
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⁹ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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		the resolution plan
(xiii)	Approval of the Resolution Plan will be treated as Order for Waiver and Closure Approval by NCLT for any cases pending before Industrial Court, Labour Court, Civil Court, Criminal Court or any Indian Court relating to Operational Creditors Dues, Unpaid Wages and Other Type Statutory dues, Dismissal of Workers, Inaccurate Water and Electricity Bill as well as any other cases related to acts before commencement of Corporate Insolvency Process which are in process or may arise after the approval of Resolution Plan against the Corporate Debtor.	Such blanket reliefs cannot be granted at this stage, since the parties against whom these orders will operate, are not before us at this stage. However, the decision of the Hon'ble Supreme Court in <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , ¹⁰ shall apply.
(xiv)	Approval of the Resolution Plan will be treated as Waiver Approval by NCLT for all Liabilities claimed by Promoters and Related Parties for Unsecured Loans and Operational/Other Creditors as on insolvency commencement date to be treated as Fully and Finally Settled with "Value" as stated in the Resolution Plan and No Due remains to be paid over ever after the waiver.	The judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> . ¹¹ lays down that when the resolution plan is approved by NCLT, the claims as provided in the resolution
(xv)	Approval of the Resolution Plan will be treated as Waiver Approval by NCLT for all Statutory Dues accrued or may get	plan shall stand frozen and will be binding on the corporate debtor, and its

¹⁰ 2021 SCC OnLine SC 313 decided on 13.04.2021.

¹¹ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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	accrued due to Past Liabilities as on insolvency commencement date to the Statutory Authorities i.e. Department concerned with Income Tax, Sales Tax/VAT/GST, Excise, Entry Tax, Municipality Land Due, Water Department Dues etc by way of Taxes, Fees, Penalties, Penal Interest, Damages, TDS, VAT, GST etc over and above the Amount stated in the Resolution Plan be treated as Fully and Finally Settled with “Value” as stated in the Resolution Plan and No Due remains to be paid over ever after the waiver.	employees, members, creditors, including the central and state government or any local authority, guarantors and other stakeholders. 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
(xvi)	Approval of the Resolution Plan will be treated as Waiver Approval by NCLT for all Other Liabilities claimed by Operational/Other Creditors as on the Date of Approval of the Resolution Plan by NCLT to be treated as Fully and Finally Settled with “Value” as stated in the Resolution Plan and No Due remains to be paid over ever after the waiver.	initiate or continue any proceedings in respect to a claim which is not part of the resolution plan.
(xvii)	Approval of the Resolution Plan will be treated as Waiver Approval / Approval by NCLT for all kind of Liabilities, known or unknown for the period commencing before and from the Incorporation Date upto passing of the NCLT Order (including Income Tax Due or Arrears, Contingent Liabilities, Disputed Liability,	

Interest, Penal Interest, Penalty, Interest on Penalty, any kind of Late Fee as well as Taxes) related to Income Tax which may arise out of Ongoing Disputes or Pending Assessments which are Known/Unknown or due to non-filing of returns for any Assessment Year(s) or in abeyance for the assessment proceedings (completed / under process / not yet initiated) and any demand related to non-deposit of TDS which may arise out of any Ongoing Disputes Known/Unknown or in abeyance to the RA till the NCLT Order for Approval of the Resolution Plan, be treated as Finally Settled at “NIL Value” with closure of the all the past cases of any type/kind/related to same. As the Income Tax assessment for previous years may have not yet been completed or initiated, any kind of future liabilities on such past actions by the Income Tax Dept including Income Tax Due or Arrears, Contingent Liabilities, Disputed Liability, Interest, Penal Interest, Penalty, Interest on Penalty, any kind of Late Fee as well as Taxes would be treated as waived under the Approved Resolution Plan and all such assessments / appeals / actions will be deemed to have been assessed with NIL Liability and	The judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd.</i>¹² lays down that when the resolution plan is approved by NCLT, 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 and state government or any local authority, guarantors and other stakeholders. 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
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¹² 2021 SCC OnLine SC 313 decided on 13.04.2021.

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	treated as CLOSED under the Approved Resolution Plan.	proceedings in respect to a claim which is not part of the resolution plan.
(xviii)	Approval of the Resolution Plan will be treated as Waiver Approval Order by NCLT for all Kind of Liabilities (including Sales Tax / VAT / Service Tax / GST / Excise Duty / Customs Duty / Octroi / Entry Tax Due or Penalty or Arrears, Contingent Liabilities, Disputed Liability, Interest, Penal Interest, Penalty, Interest on Penalty, any kind of Late Fee as well as Taxes) related to Sales Tax / VAT / Service Tax / GST / Excise Duty / Customs Duty / Octroi / Entry Tax etc which may arise out of Ongoing Disputes or Pending Assessments Known/Unknown or in abeyance for any year prior to the completion of Corporate Insolvency Resolution Process be treated as Finally Settled at “NIL Value”. As the State VAT / CST / GST / Excise / Customs Duty / Service Tax Assessment / Appeals for these previous years may have not yet been completed or initiated, any kind of future liabilities on past actions by the respective Departments including Tax Due or Arrears, Contingent Liabilities, Disputed Liability, Interest, Penal Interest, Penalty, Interest on Penalty, any kind of Late Fee as well as Taxes would be treated as waived under	

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	the Approved Resolution Plan and all such assessments / appeals / actions will be deemed to have been assessed with NIL Liability and treated as CLOSED under the Approved Resolution Plan.	
(xix)	Approval of the Resolution Plan will be treated as Waiver Approval by NCLT for any past liabilities, penalties and any form of payment by way of Late Fees, Damages etc which occurred or become due because of any non-compliances related to the below stated Acts including Investor Education and Protection Fund Rules including the period from Commencement of Insolvency Process till 6 months from the Date of the NCLT Approval of this Resolution Plan as it will provide Resolution Applicant, the time period to review the current compliance status of the Corporate Debtor under these Acts, Rules and regulations in terms of Compliances and action to be taken in this regard	The judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd.</i> ¹³ lays down that when the resolution plan is approved by NCLT, 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 and state government or any local authority, guarantors and other stakeholders. 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
(xx)	Approval of the Resolution Plan will be treated as Waiver Approval by NCLT for any past liabilities, penalties and any form of payment by way of Late Fees, Damages etc which occurred or become due because of any non-compliance of the Stock Exchange / SEBI Rules related to	

¹³ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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	Listing as well as Disclosure of Financials, Management Change or any other issues applicable to a listed entity till completion of Approved Resolution Plan and also waiver of Charges applicable (in case of revocation of Suspension of the Listing of the Entity on the Stock Exchange) and Specific Order to Defreeze the Promoter and Promoter Groups Demat Account by the Custodians to ensure smooth transfer of shares, if any	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.
(xxi)	Approval of the Resolution Plan will be treated as Waiver Approval from past Liabilities, Payments of Fees and all Dues including any Penalties as well as any form of payment by way of Interest, Late Fees, Damages etc, related to all Government Authorities with regard to non-compliances of various Statutes to be adhered related to Consent, Fees, Certification etc. by the Corporate Debtor prior to the Effective Date	Granted.
(xxii)	Approval of the Resolution Plan will be treated as Waiver by NCLT for any liability (includes Tax, MAT, interest, fine, penalty etc) on Corporate Debtor, RAs on account of various actions proposed in the Approved Resolution Plan including but not limited to liabilities, if any, under Sec 56, Sec 43, Sec 28, Sec 115JB and Section 79 of the Income Tax	The Resolution Plan is expected to be compliant with other laws, as envisaged under section 30 of the Code. Therefore, this waiver cannot be granted. However, it is for the Income Tax Authorities to consider the same based on the spirit of

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	Act, 1961.	the Code.
(xxiii)	Approval by NCLT to allow: - Carry Forward, Set off and Adjustment of Losses of Corporate Debtor not available under Section 79 of Income Tax Act, 1961 as said Section not applicable for Companies under IBC 2016. - Aggregate of Brought Forward Loss and Unabsorbed Depreciation to be adjusted as per amended Section 115JB of the Income Tax Act, 1961 related to Minimum Alternate Tax (MAT) as the same is applicable for Companies under IBC 2016 - Set Off of any Income which arises due to write back of liabilities against the existing Brought Forward Losses and Unabsorbed Depreciation pursuant to the Approval of the Resolution Plan	The Resolution Plan is expected to be compliant with other laws, as envisaged under section 30 of the Code. Therefore, this waiver cannot be granted. However, it is for the Income Tax Authorities to consider the same based on the spirit of the Code.
(xxiv)	Approval of the Resolution Plan will be treated as Approval by NCLT wherein All Corporate Guarantees issued by Corporate Debtor in favour of any party which is reflected in the Annual Report or not or may occur in future due to any transaction in the past stands extinguished with the approval of the Resolution Plan	Granted.
(xxv)	Approval of the Resolution Plan will be treated as Waiver Approval by NCLT for	Granted, strictly in terms of the Code.

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	Contingent Liabilities or any suits other than those explicitly covered in the Resolution Plan, no other person or whosoever shall be eligible to receive any amount whatsoever from the Corporate Debtor, either on account of unverified claims or otherwise or through legal proceedings, etc. All legal proceedings and other contingent liabilities shall irrevocably and unconditionally stand settled and extinguished as on the Effective Date.	
(xxvi)	Approval of the Resolution Plan will be treated as Approval by NCLT that any onerous contract made by the Corporate Debtor subsisting before the approval of Resolution Plan shall be duly extinguished and be ineffective on approval of Resolution Plan by NCLT.	Granted, strictly in terms of the Code.
(xxvii)	Approval of the Resolution Plan will be treated as Approval by NCLT that all claims, rights of existing promoter / promoter group against the Corporate Debtor, unless covered in the Resolution Plan, shall stand irrevocably and unconditionally extinguished and ineffective on approval of Resolution Plan	Granted.
(xxviii)	Approval of the Resolution Plan will be treated as Approval by NCLT that claims of government authorities, in relation of all taxes etc. for period pertaining prior to	Granted in terms of <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction</i>

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	the insolvency commencement date shall stand extinguished and ineffective.	<i>Company Ltd.</i> ¹⁴
(xxix)	Approval of the Resolution Plan will be treated as Approval by NCLT that All outstanding negotiable instruments issued by Corporate Debtor or any other person on behalf of Corporate Debtor shall stand terminated and no liability shall arise on the same on the insolvency commencement date.	In <i>Ghanshyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd,</i> ¹⁵ the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.
(xxx)	Approval of the Resolution Plan will be treated as Approval by NCLT with regard to All liabilities which may arise due to issuance of Corporate Guarantees, Indemnities, etc. provided by the Corporate Debtor (whether known or unknown) shall stand extinguished and ineffective on the insolvency commencement date.	The provisions of section 32A of the IBC will also apply. Therefore, the reliefs sought for are granted, but shall be ringfenced by the said judgment of the Hon'ble Supreme Court in so far as extinguishment of liabilities that are not part of the resolution plan, and non-extinguishment of personal guarantees are concerned.
(xxxi)	Approval of the Resolution Plan will be treated as Specific Order and Approval by NCLT to treat all the power of attorneys provided to any person by the Corporate Debtor stands revoked after the Effective Date.	Granted, strictly in terms of the Code.
(xxxii)	Approval of the Resolution Plan will be	Granted, strictly in terms of the Code.

¹⁴ 2021 SCC OnLine SC 313 decided on 13.04.2021.

¹⁵ 2021 SCC OnLine SC 313 decided on 13.04.2021.

	treated as Specific Order and Approval by NCLT that Any contract subsisting with respect to Workmen contractual labor before the approval of Resolution Plan shall be duly extinguished and be ineffective, which we assume has already been done in July 2017 by following procedure prescribed under the Industrial Disputes Act.	
(xxxi)	Approval of the Resolution Plan will be treated as Specific Order and Approval by NCLT to vest Power with the RAs on Approval of the Resolution Plan to appoint new Workmen and Employees basis on Merit as well as Revised Salaries/Wages with new Terms and Conditions to effectively support revival of the Unit.	Granted.

Findings:

17. 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 RP and the Resolution Applicant for making the plan effective after approval by this Bench.
18. On perusal of the documents on record, we are also satisfied that the Resolution Plan is inaccordance with sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations,2016.
19. 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.

20. In case of non-compliance of this order or withdrawal of Resolution Plan, the CoC shall forfeit the EMD amount already paid by the Resolution Applicant.
21. Subject to the observations made in this Order, the Resolution Plan in question is hereby **approved** by this Bench. **The Resolution Plan shall form part of this Order.**
22. 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.
23. The Moratorium imposed under section 14 shall cease to have effect from the date of this order.
24. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for the record and also unto the Resolution Applicant or New Promoters.
25. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.
26. Liberty is hereby granted for moving any Application if required in connection with implementation of this Resolution Plan.
27. A copy of this Order is to be submitted in the Office of the Registrar of Companies, West Bengal.
28. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.
29. 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.
30. IA (IB) No. 118/KB/2021 and the main Company Petition i.e. C.P. (IB) No. 628/KB/2018 shall stand disposed of accordingly.

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31. 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.
32. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
33. File be consigned to the record

(Harish Chander Suri)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

The order is pronounced on 25 January, 2022

SA, LRA