

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

**IA (IB) No.114/KB/2022
in
CP (IB) No.1258/KB/2018**

In the matter of:

Application under section 30(6) and section 31(1) of the Insolvency and Bankruptcy Code, 2016 read with rule 11 of the National Company Law Tribunal Rules, 2016;

And

In the matter of:

Hemang Steel Traders ... **Operational Creditor**

Versus

Omni Auto Tech Private Limited ... **Corporate Debtor**

And

In the matter of:

Mr. Surya Kanta Satapathy,
Resolution Professional of
Omni Auto Tech Private Limited ... **Applicant**

Coram:

Mr. Rohit Kapoor : **Member (Judicial)**

Mr. Harish Chander Suri : **Member (Technical)**

Appearances (via hybrid mode):

For the Applicant/RP : Mr. Balram Pandit, Advocate
Mr. Surya Kanta Satapathy, RP

Date of hearing: 19 April, 2022

Date of pronouncement: 18 July 2022

ORDER

Per: Rohit Kapoor, Member (Judicial)

1. Preliminary

1.1. This Court convened through hybrid mode.

1.2. IA (IB) No. 114/KB/2021 is an application filed by Mr. Surya Kanta Satapathy, Resolution Professional of Omni Auto Tech Private Limited

[CIN: U50300JH2005PTC011601], under section 30(6) read with section 31(1) of the Insolvency and Bankruptcy Code, 2016 and regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (*CIRP Regulations*) for approval of the Resolution Plan in respect of Omni Auto Tech Private Limited, the Corporate Debtor.

1.3. The underlying Company Petition in CP (IB) No. 1258/KB/2018 was filed by Hemang Steel Traders against the Corporate Debtor under Section 9 of the Insolvency and Bankruptcy Code 2016, which was admitted *vide* order dated 01 August 2019.

1.4. Mr. Surya Kanta Satapathy [Regn. No. IBBI/IPA-001/IP-P00589/2017-18/11050] was appointed as the Interim Resolution Professional (IRP) AND was confirmed as the Resolution Professional (RP) of the Corporate Debtor by the Committee of Creditor (“CoC”) in its First CoC meeting held on 30 August 2019.

2. *Constitution of CoC*

2.1. The IRP made public announcement on 04 August 2019 in *Morning India* (English) (Ranchi editions), *Sanmarg* (Hindi) (Ranchi edition) newspapers regarding initiation of Corporate Insolvency Resolution Process [**CIRP**] and called for claims from the financial and operational creditors, workers and employees of the Company in the specified forms till 15 August 2019.

2.2. The CoC was constituted on 23 August 2019 with three Operational Creditors viz. Hemang Steel Traders, Regional Employees Provident Fund Organisation and Industrial Forge & Engineering Company Limited.

2.3. The Applicant states that total of 7 (seven) CoC meetings have been held during CIRP period.

3. CIRP and compliances

- 3.1. The Applicant submits that in terms of the provisions of section 25(2)(h) of the Code read with regulation 36A(1) of CIRP Regulations, 2016, invitations in Form 'G' for Expressions of Interest ("*EoI*") from potential resolution applicants was published on 19 September 2019 for submission of resolution plans for the Corporate Debtor, 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. It was also published on the website of the Corporate Debtor and IBBI.
- 3.2. No EoI was received, hence the Applicant published second EoI was issued on 26 December 2019 in *Morning India* (English) (Ranchi editions), *Sanmarg* (Hindi) (Ranchi edition) newspapers and the last date of receipt of EoI was 09 January 2020 but no EoI was received within the stipulated time. The CoC resolved to extend the last date to submit EoI to 05 February 2020.
- 3.3. The Applicant received the Resolution Plan on 02 June 2020 from Mrs. Shubha Kumar , one of the Promoter/Directors of the Suspended Board of Directors of the Corporate Debtor.
- 3.4. The Resolution Plans placed the Resolution Plan before the CoC and the Resolution Plan was discussed in the 7th CoC meeting held on 10 June 2020, the CoC approved the Resolution Plan of Mrs. Shubha Kumar with 91.90% voting share.
- 3.5. The RP sent a letter of Intent to the successful Resolution Applicant which was duly accepted by the successful Resolution Applicant.
- 3.6. The Successful Resolution Applicant submitted Performance Bank Guarantee of ₹1,00,000/- (Rupees One Lakh only).

4. Compliance with statutory provisions

- 4.1. The Applicant has filed a Compliance Certificate in prescribed form, i.e. Form 'H' in compliance with regulation 39(4) of the CIRP Regulations.
- 4.2. The Applicant has submitted that the Resolution Applicant is eligible to file a Resolution Plan and has filed an affidavit under section 29A of the Code as the Corporate Debtor is a MSME.
- 4.3. 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 are reproduced hereunder:

I. Submission of Resolution Plan in terms of sub-section (2) of section 30 of the Code (as amended vide Amendment dated 16 August 2019):

Clause of s.30(2)	Requirement	How dealt with in the Plan
1.	Plan must provide for payment of CIRP cost in priority to repayment of other debts of CD in the manner specified by the Board.	Clause 5 at Part B at Page 18 of the Resolution Plan.
2.	(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;	Clause 5 at Part B at Page 19 of the Resolution Plan
	(ii) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of	Clause 5 at Part B at Page 19 of the Resolution Plan

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Clause of s.30(2)	Requirement	How dealt with in the Plan
	section 53, whichever is higher;	
	(iii) provides for payment of debts of financial creditors who do not vote in favour of the resolution plan, in such manner as may be specified by the Board.	Not Applicable.
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Clause 3 Part A at Page 13 of the Resolution Plan.
(d)	Implementation and Supervision	Clause 5 Part A at Page 24 of the Resolution Plan.
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Page 41 of the Resolution Plan.
(f)	Conforms 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:

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.
(c) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	Not proposed in the Resolution Plan.
(d) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	Point b, Clause 10 at Part B at Page 26 of the Resolution Plan
(e) cancellation or delisting of any shares of the corporate debtor, if applicable;	Point b, Clause 10 at Part B at Page 26 of the Resolution Plan
(f) satisfaction or modification of any security interest;	Clause 10 in Chapter C at Pages 34-35 of the Resolution Plan.
(g) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Chapter D of the Resolution Plan.
(h) reduction in the amount payable to the creditors;	Clause 8 at Part B at Page 22 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;	Not proposed in the Resolution Plan
(j) amendment of the constitutional documents of the corporate debtor;	Not proposed in the Resolution Plan
(k) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or	Clause 10 in Part B at Page 26 of the Resolution Plan.

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Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
interests, or other appropriate purpose;	
(l) change in portfolio of goods or services produced or rendered by the corporate debtor;	Not proposed in the Resolution Plan
(m) change in technology used by the corporate debtor; and	Not proposed in the Resolution Plan
(n) obtaining necessary approvals from the Central and State Governments and other authorities.	----

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(1)	The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.	Part B at Page 16 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.	Part B at Pages 16-21 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	-----

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Ref to relevant reg.	Requirement	How Dealt with in the Plan
	of any other resolution plan approved by the adjudicating authority at any time in the past.	
38(2)	A Resolution Plan shall provide:	
	(a) The term of the plan and its implementation schedule;	Clause 10 at Part B at Page 27 of the Resolution Plan.
	(b) The management and control of the business of the corporate debtor during its term; and	Clause 3 Part A at Page 13 of the Resolution Plan.
	(c) Adequate means for supervising its implementation.	Clause 5 Part A at Page 14 of the Resolution Plan
38(3)	A Resolution Plan shall demonstrate that –	
	(a) It addresses the cause of default;	Clause 6 Part A at Pages 14-15 of the Resolution Plan
	(b) It is feasible and viable;	Clause 7 Part A at Page 15 of the Resolution Plan
	(c) It has provisions for its effective implementation;	Clause 4 Part A at Page 14 of the Resolution Plan
	(d) It has provisions for approvals required and the timeline for the same; and	Clause 10 at Part B at Page 25 of the Resolution Plan
	(e) The resolution applicant has the capability to implement the resolution plan.	Clause 10 at Part B at Page 25-27 of the Resolution Plan

5. *Details of Resolution Plan/ Payment Schedule*

- 5.1. The Applicant submits the relevant information with regard to the amount claimed, amount admitted, and the amount proposed to be paid

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by the Successful Resolution Applicant, *i.e.*, Mrs. Shubha Kumar,
under the said Resolution Plan is tabulated as under:

Resolution Debt	Total Admitted Amount	Payment proposed in the Resolution Plan	Upfront Payment
CIRP cost(Estimated)	18,00,000/- (Apx.)	18,00,000/- (Apx.)	18,00,000/- (Apx.)
Employees, Workmen	0	0	0
Operational Creditors, including Government dues	61,31,407/-	61,31,407/-	61,31,407/-
Financial Creditors	0	0	0
Total	79,31,407/-	79,31,407/-	79,31,407/-

5.2. The payment of upfront amount shall be made within 30 days of the approval of the Resolution Plan by the Adjudicating Authority.

5.3. The Resolution Plan defines “**Effective Date**” as “*means the date of approval of this Plan by NCLT.*”

Details on Management/ Implementation and Reliefs as per the Resolution Plan:

5.4. The Resolution Plan also provides for the following:

- (a) Management of company after resolution in Clause 3 Part A at Page 13 of the Resolution Plan.
- (b) Term of the Resolution Plan in Clause 12 at Part B at Page 29 of the Resolution Plan.
- (c) Implementation and Supervision of the resolution plan in Clause 5 Part A at Page 24 of the Resolution Plan.

6. *Reliefs, exemptions and waivers sought and orders passed thereon*

6.1. The Reliefs, Exemptions and Waivers sought by the Resolution Applicant in Chapter C and Chapter D of the Resolution Plan, from the Adjudicating Authority are set out below for the successful implementation of the Resolution Plan. The orders thereon are indicated against each:

Sl. No.	Ref to Clause	Extinguishment of Claims/entitlements	Orders thereon
1.	1	TREATMENT OF CLAIMS BY OPERATIONAL CREDITORS ON MATTERS THAT ARE SUB JUDICE	
		There is no information set out in the Information Memorandum on details of Operational Creditors or any matter which is sub judice before various judicial forum. We understand there some matters which are sub judice before different forums. The matters set out in the Information Memorandum (and the corresponding claims against the Company), together with all other claims against the Company which may be pending or sub judice before any forum as on the Closing Date (whether or not such claims are included in the list of claims of Operational Creditors in the Information Memorandum, and, including but not limited to any	Granted in terms of <i>Ghanshyam Mishra & Sons Pvt Ltd v. Edelweiss Asset</i>

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Sl. No.	Ref to Clause	Extinguishment of Claims/entitlements	Orders thereon
		<p>proceedings in relation to Statutory Dues, Regulatory Dues and Taxes initiated against the Company) are collectively the “Sub Judge Claims”. Each such Sub Judge Claim, is a “claim” and “debt”, each as defined under the IBC, and would consequently qualify as “operational debt” (as defined under the IBC) and therefore, the full amount of such Sub Judge Claims shall be deemed to be owed and due as of the Closing Date, the liquidation value of which is NIL and therefore, no amount is payable in relation thereto.</p> <p>Pursuant to the foregoing, any and all legal proceedings (including any notice, show cause, adjudication proceedings, assessment proceedings, regulatory orders etc.) initiated before any forum by or on behalf of any Operational Creditor to enforce any rights or claims against the Company shall immediately, irrevocably and unconditionally stand withdrawn, abated, settled and/or extinguished, and the Operational Creditors shall</p>	<p><i>Reconstruction Company Ltd,</i>¹ the Hon'ble Supreme Court held in paragraph 95, that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan. The judgement of the Hon'ble Supreme Court in <i>Lalit Kumar Jain v Union of India & ors,</i>² will apply, where in paragraph 133 it was held that sanction of a resolution plan and finality imparted to it by section 31 does not <i>per se</i> operate as a discharge of the guarantor's liability.</p>

¹ 2021 SCC OnLine SC 313 decided on 13.04.2021.

² 2021 SCC OnLine SC 396 decided on 21.05.2021.

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Sl. No.	Ref to Clause	Extinguishment of Claims/entitlements	Orders thereon
		<p>deem to have taken all necessary steps to ensure the same. The operational Creditors of the Company shall have no further rights or claims against the Company (including but not limited to, in relation to any past breaches by the Company), in respect of the period prior to the Closing Date, and all such claims shall immediately, irrevocably and unconditionally stand extinguished.</p> <p>By virtue of the order of the NCLT approving this Resolution Plan, new inquiries, investigations, notices, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings will not be initiated or admitted if these relate to any period prior to the Effective Date or arise on account of the acquisition of control by the Resolution Applicant over Omni Auto Tech Private Limited, pursuant to this Resolution Plan and against Omni Auto Tech Private Limited or any of its employees or directors who are appointed or who remain in employment or directorship after the acquisition of control by the Resolution Applicant over Omni Auto Tech Private Limited</p>	

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Sl. No.	Ref to Clause	Extinguishment of Claims/entitlements	Orders thereon
		<p>or pursuant to the implementation of the Resolution Plan.</p> <p>However, the existing management, promoters, shareholders, managers, directors, officers, employees, workmen or other personnel of Omni Auto Tech Private Limited shall continue to be liable for all the liabilities, claims, demand, obligations, penalties etc. arising out of any (i) proceedings, inquiries, investigations, orders, show causes, notices, suits, litigation etc. (including those arising out of any orders passed by the NCLT pursuant to the provisions of the Code, whether civil or criminal, pending before any authority, court, tribunal or any other forum prior to the acquisition of control by the Resolution Applicant over Omni Auto Tech Private Limited, 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 the provisions of the Code), whether civil or criminal, that may be initiated or instituted post the approval of the</p>	

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Sl. No.	Ref to Clause	Extinguishment of Claims/entitlements	Orders thereon
		Resolution Plan by the NCLT on account of any transactions entered into, or decisions or actions taken by, such existing management, promoters, shareholders, managers, directors, officers, employees, workmen or other personnel of Omni Auto Tech Private Limited. The new management of Omni Auto Tech Private Limited and/ or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.	
2.	2	TREATMENT OF CONTINGENT LIABILITIES	
		In addition, we understand that the Corporate Debtor has recognized some contingent liabilities as mentioned in the latest available financial statement for the FY ending on 31/03/2018 and as per information given in Information Memorandum (IM) by the Resolution Professional. The matters set out in the Information Memorandum, together with all other contingent liabilities of the Corporate Debtor until the Effective Date (whether or not recognized in the FY 17-18 Annual Report or set out in the	Granted in terms of <i>Ghanshyam Mishra & Sons Pvt Ltd v. Edelweiss Asset</i>

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		<p>Information Memorandum), are collectively the “Contingent Liabilities”. Each such Contingent Liability is a “claim” and “debt”, each as defined under the IBC. On implementation of the plan on effective date, all such liabilities shall immediately, irrevocably and unconditionally stand fully and finally discharged and settled with there being no further claims whatsoever, and all forms of security created or suffered to exist, or rights to create such a security, to secure any obligations towards Financial Creditors, Operational Creditors and other creditors shall immediately, irrevocably and unconditionally stand released and discharged, and the Financial Creditors, Operational Creditors and other creditors shall waive all rights to invoke or enforce the same.</p> <p>Further as per the matter set out in the information memorandum there are two claims received which are not admitted is hereby considered as Contingent Liability. Details are as</p>	<p><i>Reconstruction Company Ltd</i>³</p>

³ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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		<p>follows:</p> <p>1. Assistant, Commissioner, CGST& CX, Division – III – Rs. 7,50,796/-</p> <p>2. Assistant Commissioner of Income Tax, Jamshedpur, Circle -2(1) – Rs. 16,08,745/-</p> <p>On implementation of the plan on effective date, above two liabilities shall immediately, irrevocably and unconditionally stand fully and finally discharged and settled with there being no further claims whatsoever.</p>	
3.	3.	TREATMENT OF CLAIMS UNDER APPLICABLE LAWS (INCLUDING TAXES)	
		<p>All claims that may be made or that arise against the Corporate Debtor in relation to any payments required to be made by the Corporate Debtor under Applicable Law (including Taxes), or in relation to any breach, contravention or non-compliance of any Applicable Law (including criminal laws), whether or not such claim was notified to or claimed against the corporate Debtor at such time, and whether or not such</p>	<p>Granted in terms of <i>Ghanshyam Mishra & Sons Pvt Ltd v. Edelweiss Asset</i></p>

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Sl. No.	Ref to Clause	Extinguishment of Claims/entitlements	Orders thereon
		<p>Governmental Authority was aware of such claim at such time, in relation to the period prior to the Effective Date, is a “claim” and “debt”, each as defined under the IBC, and would consequently qualify as “operational debt” (as defined under the IBC) and therefore, the full amount of such claims shall be deemed to be owed and due as on the closing date, the liquidation value of which is NIL and therefore, no amount is payable in relation thereto, shall not be enforceable before any court of law.</p> <p>In accordance with the foregoing, all claims (whether final or contingent, whether disputed or undisputed, and whether notified to or claimed against the Company) of all Governmental Authorities (including in relation to Taxes, and all other dues and statutory payments to any Governmental Authority), relating to the period prior to the Effective Date, shall stand fully and finally discharged and settled and shall be deemed as not operative before any court of law.</p>	<i>Reconstruction Company Ltd⁴</i>

⁴ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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Sl. No.	Ref to Clause	Extinguishment of Claims/entitlements	Orders thereon
4.	4.	TREATMENT OF RELATED PARTY CLAIM	
		<p>All claims on M/S Omni Auto Tech Private Limited, the Corporate Debtor, by any related party and all liabilities of the Corporate Debtor towards any related party, as on and for the period prior to Effective Date, shall be deemed to be owed and due as of the Insolvency Commencement Date, the liquidation value of which is NIL and therefore no amount is payable in relation thereto. All such liabilities shall immediately, irrevocably and unconditionally stand fully and finally discharged and settled with there being no further claims whatsoever (against the Corporate Debtor and/ or the new management of Corporate Debtor), on the Effective Date pursuant to the NCLT Approval Order. The order of the NCLT approving the Resolution Plan shall operate as automatic extinguishment of all other liabilities of M/sOmni Auto Tech Private Limited, the Corporate Debtor, without the requirement of any further act or deed by the Resolution Applicant and/or the Corporate Debtor.</p>	<p>Granted in terms of <i>Ghanshyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruc-tion Company Ltd</i>⁵</p>

⁵ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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Sl. No.	Ref to Clause	Extinguishment of Claims/entitlements	Orders thereon
5.	5.	Other than the Persons receiving settlements under Section 7 of Part B of the Resolution Plan, no other payments or settlements (of any kind) shall be made to any other person in respect of Claims filed under the CIRP or otherwise and all Claims (including for the avoidance of doubt any unverified portion of their Claims) against the Corporate Debtor along with any related legal proceedings, including criminal proceedings shall stand irrevocably and unconditionally abated, settled and extinguished in perpetuity on and with effect from the effective date	Granted in terms of <i>Ghanshyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd</i> ⁶
6.	6.	All indebtedness of the Corporate Debtor, except CIRP Cost, which is not due as of the Insolvency Commencement date but relates to the period prior to the effective date shall stand irrevocable and unconditionally extinguished in perpetuity on and with effect from the effective Date.	Granted in terms of <i>Ghanshyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd</i> ⁷
7.	7.	The payment to Persons contemplated in Section 7 of Part B of the Resolution Plan shall be the Corporate Debtor's and Resolution Applicant's full	Granted in terms of

⁶ 2021 SCC OnLine SC 313 decided on 13.04.2021.

⁷ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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Sl. No.	Ref to Clause	Extinguishment of Claims/entitlements	Orders thereon
		and final performance and satisfaction of all its obligations to such Persons and all claims (including for the avoidance of doubt, any unverified portion of their Claims) of such Persons against the Corporate Debtor shall stand irrevocably and unconditionally settled and extinguished in perpetuity on and with effect from the Effective Date.	<i>Ghanshyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruc-tion Company Ltd</i> ⁸
8.	8.	The Resolution Professional issued a notice inviting all potential claimants to submit their proofs of Claim. This was published in newspapers in accordance with Applicable Law. The Plan is being proposed in order to restructure the assets and liabilities of the Corporate Debtor. With this objective, the Resolution Applicant assumes that all Persons that have any Claims against the Corporate Debtor have filed their Claims and the Verifiable Claims have been admitted by the Resolution Professional and disclosed in the information Memorandum. Accordingly, the Resolution Applicant and the Corporate	Granted in terms of <i>Ghanshyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruc-tion Company Ltd</i> ⁹

⁸ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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Sl. No.	Ref to Clause	Extinguishment of Claims/entitlements	Orders thereon
		Debtor shall not have any responsibility or liability in respect of any Claims against the Corporate Debtor attributable to the period prior to the Effective Date (except IRP cost) other than any payments to be made under the Resolution Plan and all Claims along with any related legal proceedings, including criminal proceedings shall stand irrevocably and unconditionally abated, settled and extinguished in perpetuity.	
9.	9.	Upon the approval of the Plan by the NCLT under Section 31 of the Code, all pending proceedings relating to the winding-up of the Corporate Debtor, if any, shall stand irrevocably and unconditionally abated in perpetuity and all violation or breach of any agreement of the Corporate Debtor shall stand condoned or waived and such agreements shall be treated as if no violation or breach has ever been committed.	Granted in terms of <i>Ghanshyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd</i> ¹⁰
10.	10.	On and with effect from the Effective Date, all Encumbrances, security interest, liens and /or attachments (including pursuant to Applicable Law	This is for the appropriate taxing authorities to consider the same in accordance with the relevant law, keeping in mind the objective of the IBC.

¹⁰ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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		and particularly Sections 281 of the ITAct and Section 81 of the Central Goods and Services Tax Act) created or suffered to exist over the assets of the Corporate Debtor or over 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 irrevocable 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 of the Corporate Debtor	
11.	11.	On and with effect from the Effective Date, the guarantors, indemnity providers and like persons that have provided guarantees, indemnities or like arrangements for and on behalf of the Corporate Debtor, in order to secure the Debt availed of by the Corporate Debtor, shall not be entitled to	Granted.

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Sl. No.	Ref to Clause	Extinguishment of Claims/entitlements	Orders thereon
		exercise or enforce any subrogation rights(or similar rights) in respect of such arrangements, even where such rights and claims (whether contingent or otherwise) of whatsoever nature of every member of the Promoter Group against the Corporate Debtor and / or its subsidiaries (including subrogation or similar rights) shall stand irrevocably and unconditionally extinguished in perpetuity.	
12.	12.	On and with effect from the Effective Date, all the outstanding negotiable instruments issued by the Corporate Debtor or by any Person on behalf of the Corporate Debtor including demand promissory notes, post-dated cheques and letters of credit, shall stand terminated and the Corporate Debtor's liability under such instruments shall stand extinguished and shall not be deemed as operative document before any court of law.	Granted.
13.	13.	On and with effect from the Effective Date, the rights of any person (whether exercisable now or in the future and whether contingent or not) to call for the allotment,	Granted.

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Sl. No.	Ref to Clause	Extinguishment of Claims/entitlements	Orders thereon
		issue, sale or transfer of shares or loan capital of the Corporate Debtor, whether on a change of control or otherwise, shall stand unconditionally and irrevocably extinguished.	
14.	14.	All Claims (whether contingent or crystallised and whether or not filed) of Governmental Authorities in relation to all Statutory Dues, Regulatory Dues and Taxes which the Corporate Debtor was or may be liable to pay (including with respect to financial years under assessment), all deductions and all withholding Taxes on any payment, as required under Applicable Law and pertaining to the period prior to the Effective Date shall stand extinguished on and with effect from the Closing Date and pending cases, if any, shall be abated.	Granted in terms of <i>Ghanshyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd¹¹</i>
15.	15.	All liabilities (whether contingent or crystallized) in relation to any corporate guarantees, indemnities and all other forms of credit support provided by the Corporate Debtor prior to the Effective Date and all contingent liabilities disclosed / undisclosed in the annual	Granted in terms of <i>Ghanshyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd¹²</i>

¹¹ 2021 SCC OnLine SC 313 decided on 13.04.2021.

¹² 2021 SCC OnLine SC 313 decided on 13.04.2021.

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Sl. No.	Ref to Clause	Extinguishment of Claims/entitlements	Orders thereon
		audited financial statements as well as financial statement as on Insolvency Commencement Date of the Corporate Debtor and liabilities which are not in notice of Corporate Debtor or not acknowledged by the Corporate Debtor shall stand extinguished and discharged on and with effect from the Effective Date.	

Sl. No.	Ref to Clause	Reliefs and Concessions	Orders thereon
1	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, capital reduction, issuance and transfer of shares or debentures and assignment of Debt)	Not granted. The Resolution Plan cannot be in violation of any law for the time being in force. Therefore, if there are any documents on which stamp duty is required to be paid, or in respect of which non-registration will have adverse consequences, they shall apply with full force and no waiver can be granted in this regard.
2	2.	M/S Omni Auto Tech 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 Resolution Plan, since payment	Not granted. The Resolution Plan cannot be in violation of any law for the time being in force. Therefore, if there are any documents on which stamp duty is required to be paid, or in respect of which non-registration will have adverse consequences, they

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Sl. No.	Ref to Clause	Reliefs and Concessions	Orders thereon
		of these amounts may make the Resolution Plan unviable.	shall apply with full force and no waiver can be granted in this regard.
3	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.	The objective of the IBC is to resolve the insolvency of the corporate debtor and to enable the corporate debtor on a clean state. Therefore, while the reliefs sought in these clauses are for the appropriate Tax authorities to consider the same in accordance with the relevant law, they are requested to deal with the same keeping in mind the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company</i> .
4	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.	The objective of the IBC is to resolve the insolvency of the corporate debtor and to enable the corporate debtor on a clean state. Therefore, while the reliefs sought in these clauses are for the appropriate Tax authorities to consider the same in
5	5.	Any approvals that may be required from	

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Sl. No.	Ref to Clause	Reliefs and Concessions	Orders thereon
		Governmental Authorities (including tax authorities) in connection with the implementation of 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.	accordance with the relevant law, they are requested to deal with the same keeping in mind the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company</i> The objective of the IBC is to resolve the insolvency of the corporate debtor and to enable the corporate debtor on a clean state. Therefore, while the reliefs sought in these clauses are for the appropriate Tax authorities to consider the same in accordance with the relevant law, they are requested to deal with the same keeping in mind the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company</i>
6	6.	From the Effective Date, all inquiries, investigations and proceedings, whether civil or criminal, suits, claims, disputes, proceedings in connection with Corporate Debtor affairs of Corporate Debtor (including those initiated by Governmental Authorities), pending or threatened, present or	The objective of the IBC is to resolve the insolvency of the corporate debtor and to enable the corporate debtor on a clean state. Therefore, while the reliefs sought in these clauses are for the appropriate Tax authorities to consider the same in accordance with the relevant law, they are requested to deal with the same keeping

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Sl. No.	Ref to Clause	Reliefs and Concessions	Orders thereon
		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 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.	in mind the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company</i>
7	7.	The Corporate Debtor and the Resolution Applicant	Such blanket orders cannot be granted in the absence of

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Sl. No.	Ref to Clause	Reliefs and Concessions	Orders thereon
		(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.	the parties to the contract.
8	8.	All Government Authorities to waive the Non-Compliances of the Corporate Debtor prior to the closing date.	Granted.
9	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.	The objective of the IBC is to resolve the insolvency of the corporate debtor and to enable the corporate debtor on a clean state. Therefore, while the reliefs sought in these clauses are for the appropriate Government authorities to consider the same in accordance with the relevant law, they are requested to deal with the same keeping in mind the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company</i>
10	10.	Neither the Resolution Applicant, nor any of its	Granted.

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Sl. No.	Ref to Clause	Reliefs and Concessions	Orders thereon
		Affiliates or connected 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	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.	The Resolution Applicant shall apply for such permits, licenses etc. to the appropriate authorities and the authorities shall consider the same in accordance with the relevant law, they are requested to deal with the same keeping in mind the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company</i>
12	12.	It is assumed from the	Granted.

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Sl. No.	Ref to Clause	Reliefs and Concessions	Orders thereon
		Effective date; all accounts of the Corporate Debtor shall stand regularized and their Asset Classification is “Standard” for the purpose of Applicable RBI Laws.	
13	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.	The objective of the IBC is to resolve the insolvency of the corporate debtor and to enable the corporate debtor on a clean state. Therefore, while the reliefs sought in these clauses are for the appropriate Government authorities to consider the same in accordance with the relevant law, they are requested to deal with the same keeping in mind the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company</i>
14	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;	
15	15.	Neither the Resolution	

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Sl. No.	Ref to Clause	Reliefs and Concessions	Orders thereon
		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-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	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 term and conditions.	The objective of the IBC is to resolve the insolvency of the corporate debtor and to enable the corporate debtor on a clean state. Therefore, while the reliefs sought in these clauses are for the appropriate Government authorities to consider the same in accordance with the relevant law, they are requested to deal with the same keeping in mind the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company</i>

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17	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	Granted.
18	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, within 30 (thirty) days of the Effective Date.	Granted.
19	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	Granted.

7. Analysis and Orders

- 7.1. On hearing the submissions made by the Resolution Professional, and perusing the record, we find that the Resolution Plan has been approved with 91.90% 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.

- 7.2. 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.
- 7.3. 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.
- 7.4. 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.
- 7.5. Subject to the observations made in this Order, the Resolution Plan dated 12 March 2020, is hereby **APPROVED** by this Bench. **The Resolution Plan shall form part of this Order.**
- 7.6. The Resolution Plan thus approved shall be binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect.
- 7.7. The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
- 7.8. 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.
- 7.9. The Resolution Professional shall stand discharged from his duties with effect from the date of this order.
- 7.10. The Resolution Professional is further directed to hand over all records, and properties 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.

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- 7.11. Liberty is hereby granted for moving applications, if required, in connection with implementation of this Resolution Plan.
- 7.12. The Resolution Applicant shall file a copy of this order with the Registrar of Companies, West Bengal, *inter alia* for updating the status of the Corporate Debtor.
- 7.13. The application bearing **IA (IB) No. 114/KB/2022** and **C.P. (IB)No. 1258/KB/2018** is disposed of accordingly.
- 7.14. Additionally, the Registry shall send a copy of this order to the Registrar of Companies, West Bengal.
- 7.15. Certified copy of this order be issued on demand to the concerned parties, upon due compliance.

Harish Chander Suri
Member (Technical)

Rohit Kapoor
Member (Judicial)

The order is pronounced on the 18th day of July, 2022

GGRB[LRA]/ SM(LRA)