

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

IA (IB) No. 228/KB/2021

in

CP (IB) No. 126/KB/2019

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

In the matter of:

Indian Overseas Bank ... Financial Creditor

Versus

Linus Agroventures Private Limited
CIN: U05004WB2011PTC167012 ... Corporate Debtor

And

In the matter of:

Anup Kumar Singh, Resolution Professional of
Linus Agroventures Private Limited ... Applicant

Date of hearing: 12.08.2021

Date of pronouncement: 25.11.2021

Coram:

Shri Rajasekhar V.K., Member (Judicial)

Shri Harish Chander Suri, Member (Technical)

Appearances (via video conference):

For the Applicant/RP

Mr. Anup Kumar Singh, Resolution Professional

ORDER

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

1. This Court convened through video conferencing.

Preliminary

2. I.A. (IB) No.228/KB/2021 is an application under section 30(6) of the Code after approval of the resolution plan by the Committee of Creditors (CoC).

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3. This application was moved on 12.08.2021 by Mr. Anup Kumar Singh, Resolution Professional of Linus Agroventures Private Limited (CIN: U05004WB2011PTC167012), by invoking the provisions of section 30(6) of the Insolvency and Bankruptcy Code, 2016 (“the Code” or “IBC”) read with regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**CIRP Regulations**) for approval of a Resolution Plan in respect of Linus Agroventures Private Limited (**Corporate Debtor**).
4. The underlying Company Petition in C.P. (IB) No. 126/KB/2019 was filed by Indian Overseas Bank against Linus Agroventures Private Limited, the Corporate Debtor, under section 7 of the Insolvency and Bankruptcy Code 2016, which was admitted *vide* order dated 19.02.2020 in C.P. (IB) No. 126/KB/2019.
5. Initially, Mr. Anup Kumar Singh, the Applicant herein (IBBI Reg. No. IBBI/IPA-001/IP-P00153/2017-18/10322) was appointed as the Interim Resolution Professional (**IRP**). At the first meeting of the CoC on 19.03.2020, the Applicant was appointed as the Resolution Professional (**RP**) of the Corporate Debtor.

Constitution of CoC

6. The IRP made public announcement¹ on 22.02.2020 in *Business Standard (English) (Kolkata Edition)* and *Aajkal (Bengali) (Kolkata Edition)* newspapers regarding initiation of Corporate Insolvency Resolution Process (**CIRP**) and called proof of claims from the financial and operational creditors, workers and employees of the corporate debtor in the specified forms till 04.03.2020.
7. The CoC was constituted on 13.03.2020 with only one secured Financial Creditor i.e., Indian Overseas Bank. A report of the constitution of the CoC was filed before the Adjudicating Authority on 13.03.2020.

¹ Annexure B in Pp. 30-34 of I.A.



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

Particulars	Date of CoC meeting
1 st CoC Meeting	19.03.2020
2 nd CoC Meeting	27.05.2020
3 rd CoC Meeting	12.10.2020
4 th CoC Meeting	22.10.2020
5 th CoC Meeting	20.11.2020
6 th CoC Meeting	17.12.2020

Collation of claims

9. The amounts claimed and admitted are summarised below:

(Amount in Rs.)

Sl. No.	Particulars	Claim Filed	Claim Admitted
1.	Secured Financial Creditors	55,79,14,513.00	55,79,14,513.00
2.	Operational Creditors		
	Other than Workmen & Employees	13,48,78,816.00	0.00
	Government	17,02,817.00	0.00
	Grand Total	69,44,96,146.00	55,79,14,513.00

CIRP process and compliances

10. The Applicant submits that in terms of the provisions of section 25(2)(h) of the Code read with regulation 36A(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, invitations in Form 'G' for Expressions of Interest (EoI) from potential resolution applicants were issued four times. Form 'G' was published on 04.06.2020, in *Business Standard* (English) and *Aajkal* (Bengali) Kolkata Edition. The last date for submission of EoI was 03.07.2020. The Applicant



received one EoI. The CoC resolved to re-publish Form- G in order to receive more EOIs.

11. The Applicant submits that the CoC decided to republish Form 'G', in order to reduce dependence on one prospective Resolution Applicant. The Applicant published Revised Form 'G' Version 2 and extended the last date for submission of EoI till 03.08.2020. The Applicant did not receive any EOI.
12. Form 'G' Version 3 was in *Business Standard (English)* and *Aajkal (Bengali)* in Kolkata Edition newspapers of 07.08.2020 and Form 'G' Version 4 was published on 20.08.2020 in *Business Standard (English)* and *Aajkal (Bengali)* in Kolkata Edition. The last day of submission of EoI was 28.08.2020. The notice was also published on the website of the Insolvency and Bankruptcy Board of India (IBBI).
13. The Applicant submits that in response to the invitation for EoI, two EOIs were received and the Resolution Professional submitted the provisional list of eligible Prospective Resolution Applicants on 29.08.2020 and the final list of eligible Prospective Resolution Applicants on 04.09.2020. The Information Memorandum, the Request for Resolution Plan and Evaluation Matrix were provided to the Prospective Resolution Applicants on 03.09.2020.
14. Only one Resolution Plan was received from Biswas Infracon LLP and the Resolution Plan was opened in the 4th CoC meeting held on 22.10.2020.

Evaluation and voting

15. The Resolution Plan was discussed in the 6th CoC meeting held on 17.12.2020 and was put for e-voting. The CoC approved the Resolution Plan filed by Biswas Infracon LLP with 100% voting share on 15.01.2021. The Applicant issued the Letter of Intent on 18.01.2021 to the Successful Resolution Applicant².

² Annexure O of the IA.



16. In accordance with regulation 36B(4A) of the CIRP Regulations, the Successful Resolution Applicant has submitted the Performance Bank Guarantee of Rs.25,00,000/- (Rupees Twenty-Five Lakh only) vide Cheque No. 000269 of ICICI Bank³.

Compliance of the approved Resolution Plan with various provisions

17. The Applicant has filed a Compliance Certificate in prescribed form, i.e., Form 'H' in compliance with regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which has been annexed to the application as Annexure "P".⁴
18. The Applicant has submitted details of various compliances as envisaged within the Code and the CIRP Regulations which a Resolution Plan should adhere to, which is reproduced hereunder:

I. Submission of Resolution Plan in terms of sub-section (2) of section 30 of the Code (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 1(a) of Schedule 4 in Pages 19-20 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	Clause 1(b) of Schedule 4 in Page 20 of the Resolution Plan.

³ Annexure O1 in Page 261 of the IA

⁴ Pages 262- 270 of the IA



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Clause of s.30(2)	Requirement	How dealt with in the Plan
	<p>the amount payable to them in the event of liquidation u/s 53;</p> <p>(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, whichever is higher;</p> <p>(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.</p>	<p>Clause 1(b) of Schedule 4 in Page 20 of the Resolution Plan.</p> <p>Clause 1(c)(iii) of Schedule 4 in Pages 21-22 of the Resolution Plan.</p>
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Clause 2 of Schedule 5 in Page 34 of the Resolution Plan.
(d)	Implementation and Supervision	Clause V of Schedule 3 in Pages 15-16 of the Resolution Plan.
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Clause IX of Schedule 3 in Page 18 of the Resolution Plan.



Clause of s.30(2)	Requirement	How dealt with in the Plan
(f)	Conforms to such other requirements as may be specified by the Board.	Clause X of Schedule 3 in Page 18 of the Resolution Plan.

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

Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximisation of value of its assets, including but not limited to the following: -	
(a) transfer of all or part of the assets of the corporate debtor to one or more persons;	Not proposed in the Resolution Plan.
(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;	Clause II of Schedule 3 in Page 11 of the Resolution Plan.



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Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
(e) cancellation or delisting of any shares of the corporate debtor, if applicable;	Clause II of Schedule 3 in Page 11 and Clause 1 (g) of Schedule 4 in Page 26 of the Resolution Plan.
(f) satisfaction or modification of any security interest;	Schedule 8 in Page 46 of the Resolution Plan.
(g) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Schedule 7 of the Resolution Plan. (Reliefs and concessions)
(h) reduction in the amount payable to the creditors;	Clause 1(b) of and Clause 1(c) in Pages 20-22 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;	Clause III sub-clause 3 of Schedule 3 in Page 13 of the Resolution Plan.
(k) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	Not proposed in the Resolution Plan.
(l) change in portfolio of goods or services produced or rendered by the corporate debtor;	Not proposed in the Resolution Plan



Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
(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.	Schedule 7 of the Resolution Plan. (Reliefs and concessions)

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.	Clause 1(b)(iii) of Schedule 4 in Page 21 of the Resolution Plan.
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors of the corporate debtor.	Clause 2 of Schedule 4 in Page 28 of the Resolution Plan.



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Ref to relevant Reg.	Requirement	How dealt with in the Plan
38(1B)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.	Clause VIII of Schedule 3 in Page 17 of the Resolution Plan.
38(2)	A resolution plan shall provide:	
	(a) the term of the plan and its implementation schedule;	Clause V of Schedule 3 in Page 15 of the Resolution Plan.
	(b) the management and control of the business of the corporate debtor during its term; and	Clause 2 of Schedule 5 in Page 34 of the Resolution Plan.
	(c) adequate means for supervising its implementation.	Clause IV of Schedule 3 in Page 14 of the Resolution Plan.
38(3)	A resolution plan shall demonstrate that –	
	(a) it addresses the cause of default;	Clause 1 of Schedule 5 in Page 33 of the Resolution Plan.



Ref to relevant Reg.	Requirement	How dealt with in the Plan
	(b) it is feasible and viable;	Schedule V of the Business Plan in Page 33 of the Resolution Plan.
	(c) it has provisions for its effective implementation;	Clause V of Schedule 3 in Page 15-16 of the Resolution Plan.
	(d) it has provisions for approvals required and the timeline for the same; and	Schedule 7 of the Resolution Plan. (Reliefs and concessions).
	(e) the Resolution Applicant has the capability to implement the resolution plan.	Schedule 6 in Page 37 of Resolution Plan.

19. The Resolution Applicant has submitted affidavit of eligibility under section 29A of the Code, which is annexed to the Supplementary affidavit affirmed on 24.12.2020.

Details of Resolution Plan/Payment Schedule

20. The Applicant submits that the Resolution Applicant had filed a Resolution Plan on 03.10.2020 which was further amended on 17.12.2020 and 15.07.2021.
21. The relevant information with regard to the amount claimed, amount admitted and the amount proposed to be paid by the Resolution Applicant, *i.e.*, Biswas Infracon LLP [LLPIN: AAI-1785] under the said Resolution Plan is tabulated as under:



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Sl. No.	Name of Claimant	Claim admitted (in Rs./crore)	Amount proposed (in Rs./crore)	Amount provided (%)
1.	CIRP Cost	----	0.6284	100%
2.	Workmen & Employees Dues	----	----	----
3.	Secured Financial Creditors	55.7915	6.7500	12.10%
4.	Operational Creditors (excluding workmen & Govt. dues)	0.00	0.0662	0.49%
5.	Government dues (ESI)	0.00	0.0008	0.49%
6.	Working Capital	----	1.00	----
	Total	55.7915	8.4454	----

22. Summary of the financial proposal/payment under the Resolution Plan dated 15.07.2021, is tabulated hereunder:-

Particulars	Amount
Admissible Debt to be paid to the CIRP	The Resolution Applicant shall pay the CIRP Cost, upfront <i>i.e.</i> , within 30 days of Effective Date.
Admissible Debt to be paid to Operational Creditors (<i>Statutory Dues</i>)	The RA proposes to pay an amount of ₹8,000/- upfront <i>i.e.</i> , within 30 days of Effective Date.
Admissible Debt to be paid to Operational Creditors (<i>Other than</i>	The RA proposes to pay an amount of ₹6.62 lakh upfront <i>i.e.</i> , within 30 days of Effective Date.



Particulars	Amount
<i>Workman & Employee and Statutory Dues)</i>	
Admissible Debt to be paid to Secured Financial Creditors	The RA proposes to pay an amount of ₹6.75 crore upfront <i>i.e.</i> , within 30 days of Effective Date.

23. The Resolution Plan defines “*Effective Date*” as “*it shall be immediate upon approval of resolution plan by Hon’ble NCLT*”.

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

24. The Resolution Plan also provides for –
- Management of company after resolution in Clause VI of Schedule 3 at Page 17 of the Resolution Plan.
 - Term of the resolution plan in Clause V of Schedule 3 at Page 15 of the Resolution Plan.
 - Implementation and Supervision of the resolution plan in Clause IV and Clause V of Schedule 3 at Pages 14-16 of the Resolution Plan.

Relinquishment/Waiver of liabilities and Approvals

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

Sl. No.	Relief, concessions and approvals sought	Orders thereon
i.	<i>Access to Assets of the Company:</i> <i>On payment of full & final resolution amount committed to the financial creditor, each of the lessors/owners of the assets where the Company conducts its</i>	Granted.



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Sl. No.	Relief, concessions and approvals sought	Orders thereon
	<p><i>business shall provide unrestricted access to the Resolution Applicant and the Company. Each of the respective representatives, employees, officers and agents of the Resolution Applicant and the Company shall have unrestricted access to such locations without holding any asset of the Company. The Resolution Applicant agrees that it will be granted control and custody of all the assets of the corporate debtor only from the Final date. The control and custody of all the assets of the corporate debtor shall remain with the monitoring committee from the NCLT Approval date till final date.</i></p>	
ii.	<p>Consents and Permits: <i>Upon approval of this Resolution Plan by Adjudicating Authority, all actions stated in this Resolution Plan shall be deemed to be approved. Accordingly, any action or implementation of this Resolution Plan shall not be a ground for termination of any Clearances already in place of the Corporate Debtor or the like that has been granted to the Company or for which the Company has made an application for renewal or grant.</i></p>	Granted.
iii.	<p>Licences, Consents and approvals: <i>The Resolution Applicant has also considered that by virtue of the order of the Adjudicating Authority approving this Resolution Plan and since the Resolution Applicant would acquire the Company on a 'going concern' basis, all consents, licenses, approvals, rights, entitlements, benefits and privileges</i></p>	<p>It is up to the Resolution Applicant to make necessary applications to the concerned regulatory or statutory authorities for renewal of such business permits in terms of section 31(4) of the IBC, and such authority</p>



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Sl. No.	Relief, concessions and approvals sought	Orders thereon
	<p><i>whether under law, contract, lease or license, granted in favour of the Company or to which the Company is entitled or accustomed to shall, notwithstanding any provision to the contrary in their terms and notwithstanding that they may have already lapsed or expired due to any non-compliance or efflux of time, be deemed to continue without disruption for the benefit of the Company and the Resolution Applicant for a period of 3 months from the NCLT Approval Date or until the period mentioned in such Business Licenses, whichever is later.</i></p> <p><i>The Company shall be granted permission from the NCLT Approval Date to apply with competent authorities for renewal of all consent, licenses, clearances, permissions required to carry the operational activity of the unit.</i></p> <p><i>The Company shall be granted a period of 3 months from the NCLT Approval Date to comply with the statutory obligations without suffering any adverse implications including any revocation of licenses or levy of penalties or any other fees or costs.</i></p> <p><i>At the time renewal of licenses, approvals, consents, permissions attached to the company, all the fees, cost or penalty pertaining to the period prior to NCLT Approval Date shall be waived off and the Resolution Applicant shall not</i></p>	<p>shall also consider the same keeping in mind the objectives of the Code. The actions of such authorities shall also be consistent with the provisions of section 32A of the Code.</p> <p>Granted.</p> <p>Section 31(4) of the Code allows a period of one year from the date of approval of the resolution plan by the Adjudicating Authority to obtain all necessary approvals required for the business of the corporate debtor. All actions should be consistent with the provisions of the Code.</p> <p>All regulatory compliances such as filing with the Registrar of Companies, payment of filing fees on documents etc. will have to be complied with.</p>



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Sl. No.	Relief, concessions and approvals sought	Orders thereon
	<p><i>be liable to pay any old fees/costs/penalty whether due or not.</i></p> <p><i>It is hereby clarified that neither the Resolution Professional nor the CoC/ Financial Creditors shall be responsible in any manner whatsoever for obtaining any of the required approvals. However, the Resolution Professional & CoC/Financial Creditors shall provide necessary cooperation if needed in getting any consents/ approvals.</i></p>	No specific orders are necessary in this regard.
iv.	<p><i>It is proposed that upon full and final payment of resolution amount committed to financial creditor, the original ownership documents of all the assets of the company, shall be transferred to the Company and after NCLT Approval Date; the Resolution Applicant can perform its business. Further, the company shall be the legal and beneficial owner of the assets.</i></p>	Granted, since the objective of the Code is to enable the Corporate Debtor to make a fresh start in business.
v.	<p><i>All domain names, servers, being currently used by the Company to the extent not owned shall continue to be available for use by the Company for a period of 3 months from the NCLT Approval Date.</i></p>	Granted.
vi.	<p><i>There shall be no adverse effect on the rights of the Company over its immoveable properties.</i></p>	Granted.



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Sl. No.	Relief, concessions and approvals sought	Orders thereon
vii.	<i>On and from the date of final payment, the Resolution Applicant shall have the right to replace the existing auditors of the Company and appoint new auditors as deemed fit by the Resolution Applicant.</i>	This is not within the jurisdiction of this Adjudicating Authority.
viii.	<i>Each of the directors whose offices are being vacated pursuant to the provisions of the Resolution Plan, the Related Parties whose Contracts are being terminated pursuant to this Resolution Plan shall have no claim against the Company either in law or tort including on account of any loss of office, profit or repute.</i>	Granted, since the objective of the Code is to enable the Corporate Debtor to make a fresh start in business.
ix.	Capital Reduction: <i>In case of capital reduction, the requirement of adding "and reduced" in the name of the Corporate Debtor to be dispensed with (on account of reduction of share capital of the Corporate Debtor).</i>	This requirement is no longer there under the Companies Act, 2013. Therefore, specific orders are not necessary.



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Sl. No.	Relief, concessions and approvals sought	Orders thereon
x.	<p>Compliance of Companies Act, 2013: <i>The approval of this Plan by the NCLT shall be deemed to have waived the procedural requirements in terms of Section 66, Section 42 and Section of the 2013 Companies Act, and the NCLT (Procedure for Reduction of Share Capital) Rules, 2016 for reduction of share capital and issuance of equity shares to Resolution Applicant.</i></p>	<p>As far as meetings of shareholders for issue of such new equity shares and for cancellation of existing equity shares of the corporate debtor are concerned, approval to the Resolution Plan accorded by this Adjudicating Authority shall be deemed to be requisite approval for all such meetings or dispensation from conducting meetings of shareholders. However, all regulatory compliances such as filing with the Registrar of Companies, payment of filing fees on documents etc. will have to be complied with. Registrar of Companies cannot be expected to grant automatic approval for such activities without the forms being filed on behalf of the corporate debtor. This fact has also been recognised to be so by the Ministry of Corporate Affairs vide General Circular No.IBC/01/2017 dated 25.10.2017 issued under File No.30/14/2017-Insolvency.</p>
xi.	<p>Handover of books of accounts, clearances, permissions, approvals <i>On final date, the Resolution Professional or Monitoring Committee/ Financial Creditors shall handover all the books of accounts, documents, returns, forms, clearances, permissions, approvals or any other documents, which is in their possession, of the company for</i></p>	<p>It is between the Resolution Professional and the monitoring Committee to do this. The Adjudicating Authority under the Code is not obligated to record non-availability of any records.</p>



Sl. No.	Relief, concessions and approvals sought	Orders thereon
	<p><i>the period prior to NCLT Approval Date to the Resolution Applicant. If any documents are not available with Resolution Professional or Monitoring Committee or Financial Creditors, the NCLT shall record its non-availability and shall waive any liabilities arising from such documents including but not limited to submission, filing of such documents with the respective authorities.</i></p>	
<p>xii.</p>	<p>Status of new acquired Company: <i>For all cases, claims etc filed by any person or competent authority, pertaining to period prior to NCLT Approval Date, the Corporate Debtor/ Resolution Applicant shall not be held responsible. No such prior cases, claims, etc shall stand valid after approval of plan from NCLT. No liabilities of such prior claims, cases etc shall be on the Resolution Applicant w.e.f NCLT Approval Date</i></p>	<p>Granted, since the objective of the Code is to enable the Corporate Debtor to make a fresh start in business.</p>
<p>xiii.</p>	<p>Submission of Documents with competent authority <i>In future any notice is issued against the Company by any authority to produce the documents pertaining to period prior to NCLT Approval Date and such documents are not provided to the Resolution Applicant, under such circumstances, the Resolution Applicant and the company shall not be liable to produce those documents & details before the competent authority and no penalty or liability shall incur on Resolution Applicant and the company on non-submission of said details & documents and no claims pertaining to period prior to NCLT Approval Date shall be liable on the Resolution Applicant.</i></p>	<p>Not granted. It was really up to the Resolution Applicant to conduct its due diligence and satisfy itself as to whether the documents were perfect or not. If it has not done so, then it must suffer the consequences thereof. The Resolution Applicant cannot be permitted to withdraw from implementation of the Plan on this ground. This flippant request is, therefore, not acceptable.</p>



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xiv.	Benefits granted to sick unit: <i>Benefits, concessions, exemptions, grants, subsidies etc that are granted to any sick unit, by any competent authority or department, under any Law, Act, Policies or Rules, whether under State or Central Government, which is in effect at present, shall be granted to the Company and Resolution Applicant, with effect from NCLT Approval Date</i>	Unless specific reliefs are identified and placed for decision, it is not possible for the Adjudicating Authority to exercise its mind on the matter, especially in a situation where the Resolution Applicant is not sure of the approvals that would be required.
xv.	Relief from Stamp Duty & Fees: <i>All relevant Governmental 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 capital reduction, issuance of shares).</i>	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.
xvi.	Shareholders' Approval <i>The approval of the shareholders of the Corporate Debt or to the transactions contemplated under the Plan shall be deemed to have been given on the approval of the Plan by the NCLT, including for the reduction of share capital to be undertaken.</i>	As far as meetings of shareholders for issue of such new equity shares and for cancellation of existing equity shares of the corporate debtor are concerned, approval to the Resolution Plan accorded by this Adjudicating Authority shall be deemed to be requisite approval for all such meetings or dispensation from conducting meetings of shareholders.
xvii.	Benefits granted to new unit: <i>All the benefits that is granted to any newly set up unit, in any form viz. rebate,</i>	Granted, since the objective of the Code is to enable the Corporate



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	<p><i>exemption, subsidy, grants etc. by any competent authority or department, whether by Central or State Government or any industrial policy, which is in order at present, shall be granted to the Company with effect from NCLT Approval Date.</i></p>	<p>Debtor to make a fresh start in business.</p>
<p>xviii.</p>	<p><i>NCLT final Order to prevail</i> <i>The approval of this Plan by NCLT shall constitute adequate and final approval of NCLT for all actions and purposes of this plan including (a) cancellation of the existing share capital of the Corporate Debtor(as may be agreed upon) in terms of Section66 and other provisions of the 2013 Act and other Applicable Law; and (B) for issuance of new equity shares/preference shares and / or convertible securities in terms of the 2013 Act and other Applicable Law and accordingly, no approval/consent shall be necessary from any other Person in relation to any of the sections including under any agreement, the constitution documents of the Corporate Debtor or any Applicable Law.</i></p>	<p>As far as meetings of shareholders for issue of such new equity shares and for cancellation of existing equity shares of the corporate debtor are concerned, approval to the Resolution Plan accorded by this Adjudicating Authority shall be deemed to be requisite approval for all such meetings or dispensation from conducting meetings of shareholders. However, all regulatory compliances such as filing with the RoC, payment of filing fees on documents etc. will have to be complied with. RoC cannot be expected to grant automatic approval for such activities without the forms being filed on behalf of the corporate debtor. This fact has also been recognised to be so by the Ministry of Corporate Affairs <i>vide</i> General Circular No.IBC/01/2017 dated 25.10.2017 issued under File No.30/14/2017-Insolvency.</p>



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Sl. No.	Relief, concessions and approvals sought	Orders thereon
xix.	<p>No Dues Certificate/Consent Letter</p> <p><i>For avoidance of any doubt, after payment of full resolution amount to financial creditors, the CoC shall immediately provide the following documents:</i></p> <ul style="list-style-type: none"> - Certificate from all the financial creditors stating that there are no dues towards the Resolution Applicant. - Satisfy all charge created on assets of the corporate debtor, in the records of the Registrar of Companies/ Ministry of Corporate Affairs after payment of full amount as per the Resolution Plan. - Title deeds in original and other relevant documents as mortgaged or hypothecated with them which is in their possession. 	Granted.
xx.	<p>No-effect of Non Compliance made by Corporate Debtor before NCLT Approval Date:</p> <p><i>All Governmental Authorities to waive the Non-Compliances of the Corporate Debtor prior to the NCLT Approval Date including without limiting to failure to obtain any approval from the Government Authorities with respect to change in control of the Corporate Debtor as per the terms of the Plan.</i></p>	This is for the appropriate Government Authorities to consider, keeping in view the object of the Code, which is to enable a fresh start for the Corporate Debtor.
xxi.	<p>Carry Forward losses:</p> <p><i>Pursuant to Finance Act 2018, the change in the shareholding of the Corporate Debtor pursuant to this Resolution Plan approved by the NCLT</i></p>	No general reliefs can be granted in the manner sought for. It is for the appropriate taxing authorities



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	<p><i>shall not result to lapse of any brought forward losses of the Corporate Debtor, and NCLT shall accord its approval to the Resolution Plan under the Code after affording a reasonable opportunity of being heard to the jurisdictional principal commissioner or commissioner of Income tax. Moreover, the Resolution Applicant shall be deemed to be eligible to avail carry forward of losses and the losses mentioned herein are presumed to be free from any dispute.</i></p> <p><i>Further pursuant to the Finance Act 2018, in case of a company against whom an application for CIRP has been admitted under IBC, amount of Accumulated Losses and Unabsorbed Depreciation, even though written off in the books of account shall be available to carry forward and set-off in the years following NCLT order for the purpose of computation of book profit as per the provisions of Section 115JB or any other relevant sections/rules/regulations of the Income Tax Act.</i></p>	<p>to consider the same in accordance with the relevant law.</p>
xxii.	<p>RBI confirmation on status of Account: <i>From NCLT Approval Date, status of accounts of the Corporate Debtor shall stand regularized and their asset classification shall be "standard" for the purposes of all RBI Applicable Laws and the name of the Corporate Debtor shall be removed from the list of defaulters/black list of RBI/NHB. The same will be classified as per RBI/NHB guidelines only</i></p>	<p>The Reserve Bank of India is requested to consider this request keeping in view the object of the Code, which is to enable a fresh start for the Corporate Debtor.</p>



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xxiii.	<p>Power Connection: <i>The power connection shall be continued and restored by the competent authority/board on payment of requisite security deposit as required, but the Resolution Applicant or the Company shall not be liable to pay any old fees, cost or penalty whether due or not pertaining to the period prior to Insolvency Commencement Date and such fees, cost or penalty shall be entirely waived off.</i></p>	<p>Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i>,⁵ wherein the Hon'ble Supreme Court has held in para 95(i) that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt, any State Govt or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which</p>

⁵ 2021 SCC OnLine SC 313 decided on 13.04.2021.



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Sl. No.	Relief, concessions and approvals sought	Orders thereon
		the Adjudicating Authority grants its approval under section 31 could be continued.
xxiv.	<i>Carry forward of Subsidies /Grants</i> <i>Any subsidies, grants sanctioned to Corporate Debtor prior to NCLT Approval Date by any government authority and which are not been fully availed (including remaining period) by the Corporate Debtor due to closure of operational activity of the company, such unutilized amount & the period between closure of operations and till NCLT Approval Date should be considered exempted for the said subsidies, grants and the remaining amount or period shall continue to be carry forward w.e.f. NCLT Approval Date.</i>	No general reliefs can be granted in the manner sought for. It is for the appropriate authorities to consider the same in accordance with the relevant law.
xxv.	<i>Relief from payment of indirect taxes</i> <i>The relevant tax authorities to consider providing relief from applicability of and payment of taxes under provisions of all indirect tax laws which may arise as a result of implementation of the Plan either on the Resolution Applicant or the Corporate Debtor or any other Person who is likely to be impacted due to implementation of the Plan. Further, the relevant tax authorities to consider providing waiver/relief/exemption from applicability of or payment of taxes, interest or penalty levied/ proposed to be levied pertaining to the period prior to the NCLT Approval Date relating to and</i>	Approval of the resolution Plan leads to extinguishment of liabilities except and to the extent and manner specified in the Resolution Plan. The Hon'ble Supreme Court in <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd.</i> ⁶ 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

⁶ 2021 SCC OnLine SC 313 decided on 13.04.2021



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	<p><i>including but not limited to central excise, goods and services taxes, customs, central sales tax and entry tax laws) in respect of which proceedings have been initiated against the Corporate Debtor or the Resolution Applicant or in respect to proceedings which may initiated in future under the indirect tax laws and the goods and services tax laws applicable from July 1,2017.</i></p>	<p>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.</p>
xxvi.	<p><i>Eligibility for other business plan</i> <i>Neither the Resolution Applicant, nor any of its Affiliates, 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, merely on account of the implementation of this Plan by the Resolution Applicant.</i></p> <p><i>All Governmental Authorities to grant any relief, concession or dispensation as maybe required for implementation of the transactions contemplated under the Plan in accordance with its terms and conditions.</i></p>	<p>It is not clear as to which law debars the Resolution Applicant or indeed its affiliates or connected persons from proposing or implementing any resolution plan of person.</p> <p>This is for the appropriate authorities to consider.</p>
xxvii.	<p><i>Cases prior to NCLT approval Date</i> <i>All pending or threatened legal, regulatory or administrative proceedings in respect of the the affairs of the Corporate Debtor, all inquiries, investigations, notices, causes of action, whether already arisen or expected to arise (and including without limitation</i></p>	<p>Whatever protection is available to the corporate debtor in terms of section 32A of the Code will in any case continue to be available. Therefore, no specific orders are necessary in this regard.</p>



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	<i>civil, criminal, extant exchange control laws, securities laws, any anti-corruption laws applicable to the Corporate Debtor and its Subsidiaries and Tax related Claims) in relation to any period prior to the NCLT Approval Date shall be disposed of and all liabilities or obligations in relation thereto.</i>	
xxviii.	Regularization of Non-Compliance <i>On and from the Approval Date, all non-compliances by the Corporate Debtor shall stand regularized and any interest, cost, penalty or such other amounts levied or threatened to be levied shall stand extinguished for the purposes of all Applicable Laws.</i>	Whatever protection is available to the corporate debtor in terms of section 32A of the Code will in any case continue to be available. Therefore, no specific orders are necessary in this regard. In regard to compliances attached to any license, permit or concession, the same shall be considered by the appropriate authority which granted such license, permit or concession keeping in view the object of the Code.
xxix.	Creditors to Withdraw all proceedings <i>The creditors of the Corporate Debtor shall not proceed with the case against the Corporate Debtors. However they can pursue those cases against the guarantor/corporate guarantor to the credit facility.</i>	Granted.
xxx.	Right to terminate old contracts/agreements <i>The Corporate Debtor shall be entitled to terminate contracts including contracts with related parties of the Corporate Debtor prior to the Insolvency Commencement Date.</i>	If there is any such condition in any specific contract, then this should be specifically mentioned in the Resolution Plan. A <i>carte</i>



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Sl. No.	Relief, concessions and approvals sought	Orders thereon
	<p><i>The financial creditors shall, after final date, not undertake any recovery proceeding against the corporate debtor or the resolution applicant in respect of debts of the corporate debtor.</i></p>	<p><i>blanche</i> of this nature cannot be granted.</p> <p>Granted in terms of the Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd,⁷ wherein the Hon'ble Supreme Court has held that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt, any State Govt or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand</p>

⁷ 2021 SCC OnLine SC 313 decided on 13.04.2021.



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Sl. No.	Relief, concessions and approvals sought	Orders thereon
		extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.
xxxi.	<p>Waiver of Non-Compliance: <i>All Governmental Authorities shall waive the non-compliances of the Corporate Debtor prior to the Approval Date including without limitation with regard to the following: (A) any non-compliances pertaining to environment laws; (B) any non-compliances pertaining to Fuel Supply Agreement; (C) any non-compliances pertaining to Electricity Department and (D) waiver of all penalties / costs/ interests payable by the Corporate Debtor on account of any of the non- compliances specified in (A), (B) and (C)above.</i></p>	Unless specific cases of non-compliances are identified, it is difficult to grant reliefs of this nature. In regard to compliances attached to any license, permit or concession, the same shall be considered by the appropriate authority which granted such license, permit or concession keeping in view the object of the Code.
xxxii.	<p>Cancellation of old negotiable instruments/LC others <i>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 after full and final payment made to the Financial Creditors as per the Resolution Plan.</i></p>	Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , ⁸ wherein the Hon'ble Supreme Court has held that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors,

⁸ 2021 SCC OnLine SC 313 decided on 13.04.2021.



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		<p>including the Central Govt, any State Govt 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. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.</p>
xxxiii.	<p><i>Clean Titles on movable and immoveable property</i></p> <p><i>All rights, titles and benefits relating to the movable and immovable properties of the Corporate debtor/Guarantors after receipt of full resolution amount by Financial Creditors as per Resolution plan shall vested in the Corporate Debtor free of any title defects or Encumbrances.</i></p> <p><i>Resolution Applicant shall have "no recourse" against the Financial Creditor regardless of grant of such reliefs, concessions and entitlements.</i></p>	Granted.



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xxxiv.	<p>Old Power of attorney/authority</p> <p><i>All powers of attorney or authorities executed by the Board of the Corporate Debtor or guarantors on or prior to the NCLT Approval Date shall stand revoked, cancelled and shall be void with the exception that it will continue with regard to pending litigations against the erstwhile promoter/directors/guarantor which shall not include corporate debtor.</i></p>	Granted.
xxxv.	<p>Past Litigation</p> <p><i>The NCLT to provide relief to the Corporate Debtor from all past litigations pending at different levels and provide waiver from all Tax dues including interest and penalty on such litigations which may arise in future as well, pertaining to any period prior to the NCLT Approval Date.</i></p>	Whatever protection is available to the corporate debtor in terms of section 32A of the Code will in any case continue to be available. Therefore, no specific orders are necessary in this regard.
xxxvi.	<p>Future Tax Benefits</p> <p><i>The NCLT to allow the Corporate Debtor to enjoy and avail in future any tax benefits, deductions, exemptions as per the relevant provisions of the applicable law which the Corporate Debtor was entitled to as on the NCLT Approval Date for the balance period as per the relevant provisions of the Applicable Law.</i></p>	This is for the appropriate authorities to consider.
xxxvii.	<p>Exemption from taxes</p> <p><i>The NCLT to exempt from levying any type of Taxes and stamp duty, if any, arising on account of transactions consummated or actions undertaken pursuant to the approval of the Resolution Plan by the NCLT in accordance with the Code and not initiate any proceedings there under the</i></p>	It is for the Income Tax authorities to consider, keeping the spirit of the IBC in view.



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	<p><i>provisions of Income Tax Act, 1961 with respect to the transaction, since such taxes and duties, if required to be paid, will render the Plan unviable.</i></p> <p><i>Further, the Waiver of principal Loan/ waiver of any creditors amount as well as waiver of Interest as appearing in the books of accounts of the Corporate Debtor as on the date of NCLT order and written back in the books of account following NCLT order shall not be taxed as perquisite under section 28(iv) and cessation of liability under section 41(1) or any other relevant sections/rules/regulations of the Income Tax Act."</i></p>	
xxxviii.	<p><i>Pending Compliances pertaining to Companies Act 1956/2013, Income Act, 1961 or any other laws as applicable to the company</i></p> <p><i>The Resolution Professional or the Monitoring Committee shall handover all books of accounts, records, documents or any other data pertaining to the periods prior to NCLT Approval Date, which is in their possession. The Resolution Applicant shall not be liable to file required returns, forms or in complying with various provisions of Companies Act 1956/2013, Income Act, 1961 or any other applicable laws for the period prior to NCLT Approval Date.</i></p> <p><i>In order to comply with the provisions of applicable law for the period prior to NCLT Approval Date, the returns/forms, if time barred as per the law, it shall be deemed to be filed within the stipulated period or the competent authority shall</i></p>	<p>It is for the competent authorities to consider, keeping the spirit of the IBC in view.</p>



Sl. No.	Relief, concessions and approvals sought	Orders thereon
	<p><i>provide a reasonable to period to comply with the same.</i></p> <p><i>The liability arising on account of failure of filing returns/forms or complying with necessary provisions of law for period prior to NCLT Approval Date shall be waived off.</i></p> <p><i>On compliance of the aforementioned returns, the Resolution Applicant shall be eligible for availing and utilizing the carry forward of losses if any.</i></p>	

Orders

26. On hearing the submissions made by 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.
27. 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.
28. 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.
29. 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.




30. Subject to the observations made in this Order, the Resolution Plan dated 15.07.2021, is hereby **APPROVED** by this Bench. **The Resolution Plan shall form part of this Order.** 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.
31. The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
32. 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.
33. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.
34. Liberty is hereby granted for moving any application if required in connection with implementation of this Resolution Plan.
35. A copy of this Order is to be submitted to the Registrar of Companies, West Bengal.
36. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.
37. The Resolution Professional is further directed to handover all records, premises/factories/documents to the Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records and premises of the corporate debtor through the Resolution Professional to finalise the further line of action required for starting of the operation.
38. **IA. (IB) No. 228/KB/2021 and the main Company Petition, i.e., C.P. (IB) No. 126/KB/2019 shall stand disposed of accordingly.**

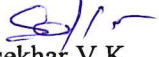


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39. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
40. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
41. File be consigned to the record.


Harish Chander Suri
Member (Technical)


Rajasekhar V.K.
Member (Judicial)

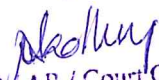
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25.11.2021



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