IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

IA (IB) No.331/KB/2021
in
CP (IB) No.139/KB/2019

In the matter of
An application under section 30(6) for approval of Resolution Plan under section 31(1) of the Insolvency and Bankruptcy Code, 2016

In the matter of
Union Bank of India … Financial Creditor

Versus

K.K. Gifts Private Limited … Corporate Debtor

and

In the matter of
Sachin Gopal Jathar *[Resolution Professional of K.K. Gifts Private Limited]* … Applicant

Coram:
Shri Rajasekhar V.K. : Member (Judicial)
Shri Harish Chander Suri : Member (Technical)

Appearances (via video conference):
For the Applicant : Mr. Rishav Banerjee, Advocate
Mr. Arun Kumar Gupta, PCA
Mr. Sachin Gopal Jathar, RP

Order reserved on: 11.05.2021
Order pronounced on: 28.06.2021

ORDER

Per: Harish Chander Suri, Member (Technical)

1. This Court convened through video conferencing.

2. IA (IB) No. 331/KB/2021 is an application under section 30(6) of the Code after approval of the resolution plan by the Committee of Creditors ("CoC").

3. This Application was moved on 11.05.2021 by Mr. Sachin Gopal Jathar, Resolution Professional of K.K. Gifts Private Limited (CIN: U21094WB2000PTC092054), by invoking the provisions of section 30(6) of the Insolvency and Bankruptcy Code, 2016 ("the Code" or "IBC") read with regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulation") for approval of a Resolution Plan in respect of K.K. Gifts Private Limited ("Corporate Debtor").

4. The underlying Company Petition in CP (IB) No. 139/KB/2019 was filed by Union Bank of India against K.K. Gifts Private Limited, the Corporate Debtor, under section 7 of the Insolvency and Bankruptcy Code 2016 which was admitted *vide* order dated 06.09.2019 in CP (IB) No. 139/KB/2019.

5. Initially, Mr. Sachin Gopal Jathar, the Applicant herein (IBBI Reg. No. IBBI/IPA-002/IP-N00640/2019-19/11968) was appointed as the Interim Resolution Professional (IRP). He was later confirmed as the Resolution Professional (RP) of the Corporate Debtor at the third meeting of the Committee of Creditors on 16.12.2019.

6. The IRP made public announcement on 08.09.2019 in Financial Express (English)(Kolkata Edition) and Ekdin (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 Company in the specified forms till 20.09.2019.

7. The CoC was constituted on 20.09.2019 with only one member, being Union Bank of India with 100% voting right in the CoC.

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

Particulars	Date of CoC meeting
1st CoC Meeting	03.10.2019
2nd CoC Meeting	15.11.2019

Particulars	Date of CoC meeting
3rd CoC Meeting	16.12.2019
4th CoC Meeting	30.12.2019
5th CoC Meeting	24.01.2020
6th CoC Meeting	26.02.2020
7th CoC Meeting	03.03.2020
8th CoC Meeting	02.07.2020
9th CoC Meeting	06.10.2020
10th CoC Meeting	03.11.2020
11th CoC Meeting	12.11.2020
12th CoC Meeting	09.12.2020
13th CoC Meeting	05.02.2021

9. 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. Form 'G' was published on 01.01.2020 for submission of resolution plans for the Corporate Debtor. The last date for receipt of EoIs was 16.01.2020. This was published in Financial Express (English) and Ekdin (Bengali) newspapers of 01.01.2020. The notice was also published on the website of the Insolvency and Bankruptcy Board of India ("IBBI").

10. The Applicant submits that in response to the invitation for EoI, upto the last date, i.e., 16.01.2020, one EOI was received from Mr. Sanjeev Daruka. Information memorandum, evaluation matrix and request for Resolution Plan was issued to the prospective resolution applicant and the last date for submission of Resolution Plan was 04.03.2020 which was further extended to 10.03.2020. Mr. Sanjeev Daruka submitted his Resolution Plan on 02.03.2020.

11. The plan was discussed in the 8th CoC meeting, held on 02.07.2021 and the CoC asked the Resolution Applicant to submit better offers. After several deliberations between the Resolution Applicant and the CoC, the Resolution Applicant revised the terms of payment and timeline of payment. The Resolution Plan was approved in the 13th CoC meeting held on 05.02.2021 and was approved by 100% voting percentage.

12. The Applicant issued Letter of Intent on 27.02.2021 and the same was accepted by the successful resolution applicant on 02.03.2021. A copy of the Letter of Intent and email accepting the Letter of Intent are annexed to the I.A. and marked as Annexure "19"[1].

13. The successful resolution applicant submitted the performance bank guarantee on 02.03.2021 through an RTGS transfer.

14. The amounts claimed and admitted are summarized below:

(Amount in Rs./Lakhs)

Sl. No.	Name of Claimant	Claim Amount	Claim Admitted	Claims under verification	Claim rejected
1	Financial Creditors				
	Secured financial creditors				
	Union Bank of India	480.37	480.37	-	0
2	Operational Creditors				
	The Commissioner of Commercial Taxes, West Bengal	0.09	0.09	-	0
	Diamond Arcade Social Welfare Association	0.14	0.14	-	0
	Employees State Insurance Corporation	0.03	0.03	-	0
	Deputy Commissioner of Income of Income Tax, Circle-8(1)	235.97	235.97	-	0
3	Workers/ employees				
	Shri Swar Mal Saraf	3.38	0	-	3.38
	Total	719.98	716.60	-	3.38

15. 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 "20"[2].

[1] Page 361-363 of the I.A.
[2] Pages 364-370 of the I.A.

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

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
(a)	Plan must provide for payment of CIRP cost in priority to repayment of other debts of CD in the manner specified by the Board.	Page 32 and Clause 7 at Page 36 of the Resolution Plan.
(b)	(i) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than the amount payable to them in the event of liquidation u/s 53; or (ii) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be not less than amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher and (iii) provides for payment of debts of financial creditors who do not vote in favour of the resolution plan, in such manner as may be specified by the Board.	(i) Clause 2 at Pages 28-30 of the Resolution Plan. (ii)Clause 2 at Pages 28-30 of the Resolution Plan (iii). Clause 1 at Page 28 of the Resolution Plan

Clause of s.30(2)	Requirement	How dealt with in the Plan
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Clause 3 and 4 at Page 34 of the Resolution Plan
(d)	Implementation and Supervision.	Clause 9 at Pages 37-38 of the Resolution Plan.
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Page 23-24 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 by the RA.
(b) sale of all or part of the assets whether subject to any security interest or not;	Not proposed by the RA.

Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
(c) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	Not proposed by the RA.
(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 5 at Pages 34-35 of the Resolution Plan.
(e) cancellation or delisting of any shares of the corporate debtor, if applicable;	Page 56 of the Resolution Plan.
(f) satisfaction or modification of any security interest;	Page 56 of the Resolution Plan.
(g) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Not proposed by the RA.
(h) reduction in the amount payable to the creditors;	Pages 27-29 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 by the RA.
(j) amendment of the constitutional documents of the corporate debtor;	Clause 6 at Page 36 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;	Clause 5 at Pages 34-35 of the Resolution Plan.

Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
(l) change in portfolio of goods or services produced or rendered by the corporate debtor;	Not proposed by the RA.
(m) change in technology used by the corporate debtor; and	Page 19 of the Resolution Plan.
(n) obtaining necessary approvals from the Central and State Governments and other authorities.	Page 14 of the Resolution Plan.

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

Reference to relevant Regulation	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.	Page 29 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 10 at Pages 38-39 of the Resolution Plan.

Reference to relevant Regulation	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 1 at Page 33 of the Resolution Plan.
38(2)	A resolution plan shall provide: (a) the term of the plan and its implementation schedule;	Clause 2 at Page 33 and Clause 11 at Pages 39-40 of the Resolution Plan.
	(b) the management and control of the business of the corporate debtor during its term; and	Clause 3 at Page 34 of the Resolution Plan.
	(c) adequate means for supervising its implementation.	Clause 9 at Pages 37-38 of the Resolution Plan.
38(3)	A resolution plan shall demonstrate that – (a) it addresses the cause of default;	Pages 15 and 18 of the Resolution Plan.
	(b) it is feasible and viable;	Clauses A and B at Pages 25-26 of the Resolution Plan.
	(c) it has provisions for its effective implementation;	Clause 9 at Page 37 of the Resolution Plan.
	(d) it has provisions for approvals required and the timeline for the same; and	Clause 10 at Page 45 of the Resolution Plan.

Reference to relevant Regulation	Requirement	How dealt with in the Plan
	(e) the Resolution Applicant has the capability to implement the resolution plan.	Pages 16-17 and Clause B at Page 26 of the Resolution Plan.

17. The Applicant submits that the successful Resolution Applicant has submitted a certificate of eligibility under section 29A of the Code, which has been affirmed on 29.02.2020.

Details of Resolution Plan/Payment Schedule

18. The Applicant submits the relevant information with regard to the amount claimed, amount admitted and the amount proposed to be paid by the Resolution Applicant, i.e., Mr Sanjeev Daruka, under the said Resolution Plan is tabulated as under:

(Rs. in Lakhs)

Sl. No.	Name of Claimant	% share in COC	Claim Admitted	Amount proposed
1.	Financial Creditor			
	Union Bank of India	100%	480.37	83.00
2.	Operational Creditors			
i	The Commissioner of Commercial Taxes, West Bengal	N/A	0.09	0.045
ii	Diamond Arcade Social Welfare Association	N/A	0.14	0.07
iii	Employees State Insurance Corporation	N/A	0.03	0.015
iv	Deputy Commissioner of Income of Income Tax, Circle-8(1)	N/A	235.97	2.87
	Total		716.60	86.00
3.	CIRP Cost (estimated)	---	---	15.00

Sl. No.	Name of Claimant	% share in COC	Claim Admitted	Amount proposed
	Total cost			101.00

19. Summary of the financial proposal/payment under the Resolution Plan dated 15.12.2020, is tabulated hereunder:

Particulars	Amount
Admissible Debt to be paid upfront to the CIRP	Rs. 15.00 lakhs (X+60 days) 100% will be paid within 60 days of effective date
Admissible Debt to be paid upfront to the Operational Creditors	Rs.3.00 lakhs 100% will be paid within 60 days of effective date (without interest)
Admissible Debt to be paid to Financial Creditors	Rs. 83.00 lakhs 100% will be paid within 60 days of effective date in instalments (without interest)

20. The Resolution Plan defines "Effective Date" means the date on which the Adjudicating Authority approves the Resolution Plan.

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

21. The Resolution Plan also provides for –

a) Management of Company after resolution in Clause 4 at Pages 34 of the Resolution Plan.
b) Term of the resolution plan in Clause 11 at Pages 39-40 of the Resolution Plan.
c) Implementation and Supervision of the resolution plan in Clause 9 at Pages 37-38 of the Resolution Plan.

22. 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.

Relinquishment/Waiver of liabilities and Approvals

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
	Statutory Departments:	
1.	Existing Equity Share Capital shall be written off without any implication under Income tax act, 1961 and Companies Act,2013.	Granted.
2.	Respective authorities to consider and approve the following:	
a.	Allowing carry forward losses and depreciation as per provision of the Income Tax Act, 1961;	This is for the Income Tax authorities to consider, keeping the spirit of the IBC in view.
b.	To waive all demands/ interest and penalty charged against the dues of the income tax authority for the period prior to effective date (Whether claimed or not).	In Ghanashyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd, the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan. In Lalit Kumar Jain v Union of India & ors, the Hon'ble Supreme Court held in para 133 that sanction of a resolution plan and finality imparted to it by section 31 does not per se operate as a discharge of the guarantor's liability. The provisions of section 32A of the IBC will also apply.
c.	To allow total loss brought forward (including unabsorbed depreciation) to be reduced from the book profit for the purposes of levy of MAT under section 115JB of the Act;	This is for the Income Tax authorities to consider, keeping the spirit of the IBC in view.

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
d.	Exemption from section 41 of the Act with respect to any Income which may arises due to write back of liabilities against the existing Brought Forward Losses and unabsorbed Depreciation pursuant to the Approval of the Resolution Plan.	This is for the Income Tax authorities to consider, keeping the spirit of the IBC in view.
e.	On write back of the loan, the difference between the amount paid and the amount outstanding shall directly be credited to the reserves of the Corporate Debtor.	This is for the Income Tax authorities to consider, keeping the spirit of the IBC in view.
f.	Exempting the Corporate Debtor from Section 79 of the Income Tax Act, 1961.	This is for the Income Tax authorities to consider, keeping the spirit of the IBC in view.
3.	To waive all demands/ interest and penalty charged against the dues of the statutory authorities for the period up to effective date including but not limited to dues with respect to pending income tax, customers, sales tax, service tax, PF, ESI etc.	Granted. In Ghanashyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd, the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan. The provisions of section 32A of the IBC will also apply. PF dues shall be governed by the judgment of the Hon'ble NCLAT in
4.	To waive off all the future/subsequent demands/claims/suits etc. against the corporate debtor related to the events up to effective date.	The Resolution Plan is expected to be compliant with other laws, as envisaged under section 30 of the Code. It is for the Income Tax Authorities to consider the same based on the spirit of the Code.

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
5.	On approval of the Resolution Plan by the Hon'ble NCLT and from effective date, all the litigations, proceedings of whatever nature, including those relating to direct or indirect taxation, or of any other nature, in respect of the issues, claims, etc., pertaining to the period up to effective date, shall stand closed immediately and the Corporate Debtor and Resolution Applicants , shall not be liable for any civil or any other consequence including penalty arising therefrom; But Resolution Applicant shall assist Resolution Professional in case any information is required from their side and comply with the order of Adjudicating Authority.	
6.	To waive off the contingent liability as may arise up to effective date and also which are not captured related to period before approval of Resolution Plan.	Such blanket reliefs cannot be granted at this stage.
7.	Liberty to change the name and the registered office of the company and the approval of the State Government without any tax implications.	The Resolution Applicant shall ensure full compliance of the forms and fees as may be levied, if any, by the Government.
8.	Waiver Approval by NCLT for any past liabilities, penalties and any form of payment by way of Late Fees, Damages etc. which occurred or become due because of any non-compliance related to Companies Act and Rules till effective date.	Not granted.
9.	All claims, rights of existing Promoter/ Promoter group against the Corporate Debtor, unless covered in the Resolution Plan, shall stand irrevocably and unconditionally extinguished and ineffective on approval of Resolution Plan.	Granted.

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
10.	Time period of twelve months from the effective date to ensure compliance in relation to non-compliance of Applicable laws by the Corporate Debtor to any period up to effective date without any additional interest and penalty. Further the relevant Government/ Statutory authorities shall not initiate any investigation, action or proceeding against the Resolution Applicant or the new management (upon acquisition of Corporate Debtor) including the Board of Directors, in relation to any non-compliance with Applicable laws by the Corporate Debtor pertaining to any period up to effective date.	Such blanket reliefs cannot be granted at this stage, since the parties against whom these orders will operate, are not before us at this stage.
11.	The Registrar of Companies to take on record upon approval of Resolution Plan from Hon'ble NCLT, without further compliances.	The approved Resolution Plan shall be filed with the jurisdictional Registrar of Companies in the prescribed form along with the prescribed fee, who shall then take the same on record.
12.	Since the Resolution Applicant has been provided with limited information in relation to the business permits and their current status. 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 that have issued or granted such business permits to provide reasonable time period of at least twelve months after the effective date in order to the Resolution Applicant to assess the status of business permits and applicable laws without initiating any action, proceeding in relation to non- compliance, and to permit the Resolution Applicant to continue to operate the business of the corporate debtor as carried out prior to effective date.	The RA shall apply to the concerned authorities who shall then consider the application keeping in mind the objectives of the Code. Any conditions attached to the grant of such permits shall be duly complied with by the Corporate Debtor under the successful Resolution Applicant.

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
13.	100 % extinguishment of unclaimed amount of all other Central and state Government Authorities, including dues of Land Revenue Department, Income tax Department, Municipal authority up to effective date.	Granted in terms of para 95 of the judgment of In Ghanashyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd, where the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.
14.	Respective authorities to consider the following: State Government/Kolkata Municipal Corporation to continue rent agreement on the existing terms and conditions after the approval of Resolution Plan without any further act or deed and without any further interest, charges, penalty etc.	The authorities concerned shall consider the same and pass appropriate orders.
	Financial creditors:	
15.	On receipt of the payment of their dues as per this plan, the banks shall release their charge over all the assets as forming part of Plan, which have been provided as security against the facilities availed from the financial lenders and no amount of any nature shall be payable either by the Resolution Applicants or by the corporate debtor having new management / directors, except as provided for in the resolution plan.	Granted.
16.	The Financial Creditors shall withdraw any suits/ applications related to recovery or any other nature filed against Corporate Debtor whatsoever pending in any court of law and any effect of suits/applications decided thereafter and related to past events (pre CIRP date) will stand infructuous after the approval of the plan. However, any suits	Granted.

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
	against the guarantors shall remain continued, after approval of plan.	
17.	The Resolution Applicants will have the option to prepay the dues of the Financial Creditors, without any additional levies;	Granted
18.	After the implementation of the Resolution Plan all fixed assets, financial assets and current assets as specifically provided for in the plan except written off will solely remain under the ownership and right of corporate debtor and no other person will have the right on these assets in future.	Granted.
19.	The Financial Creditors to notify/update receipt of payments under the CIBIL Mechanism on the receipt of payments under the Resolution Plan so as to enable the New Promoters (Resolution Applicants) to revive the business of Corporate Debtor afresh and such action would enable the Resolution Applicant to quickly turn around the Corporate Debtor.	Granted.
	Others	
20.	The Corporate Debtor and the Resolution Applicant to be responsible only for the liabilities specifically mentioned and undertaken by it in the Resolution Plan. To clarify, the Resolution Applicant shall not be responsible for the liabilities not mentioned/ undertaken in the Resolution Plan. All fixed assets, financial assets, rights, trademark, intangible assets and current assets as specifically provided for in the plan will solely remain under the ownership and right of corporate debtor and no other person will have the right on these assets in future unless otherwise provided.	Granted in terms of the judgment of the Hon'ble Supreme Court in Ghanashyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd, wherein it was held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
	Waivers out of claims admitted/Claims Filed	
21.	That in case any of the waivers as mentioned in the Resolution Plan is not allowed by the Hon'ble Tribunal, the Resolution Applicant should not back out or adversely change any terms or conditions of the Plan.	This is not in a nature of a waiver. In any case, there is no way for the resolution applicant to back out of the Plan without inviting adverse consequences.
22.	That the Resolution Applicant should not withdraw from the process in case there is delay in approval of the resolution plan by the Hon'ble Tribunal or any other Authority.	
23.	That the secured financial creditors should have the right to proceed against the personal guarantor's/ corporate guarantors, if any, of the Corporate Debtor. Further, if any amount is received from the personal guarantor's/ corporate guarantors, the RA would not have any right of subrogation.	In Lalit Kumar Jain v Union of India & ors, the Hon'ble Supreme Court held in para 133 that sanction of a resolution plan and finality imparted to it by section 31 does not per se operate as a discharge of the guarantor's liability.
24.	That if any amount recovered in the due course of time from the Transaction Application filed by the RP under the provisions of the IBC, 2016 should go to the secured financial creditors.	The pendency of any such application has not been brought to the notice of this Adjudicating Authority at the time that the present IA for approval of Resolution Plan was heard and reserved for orders.
	Financial Creditors:	
25.	As per the Information extracted from the Information Memorandum, the Resolution Professional has received Claims of Rs. 480.37 lacs from financial creditors. The Resolution Applicant has offered an amount of Rs. 83.00 lacs, payable in 60 days, without interest. The balance amount, not provided for in the Resolution Plan shall stand extinguished after the approval of the Resolution Plan.	Granted in terms of the judgment of the Hon'ble Supreme Court in Ghanashyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd, wherein it was held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
	Further any Unclaimed Amount shall also stand extinguished on the approval of Resolution Plan from the Effective Date.	claims which are not part of the Resolution Plan.
	From Workers& Employees	
26.	As per the Information Extracted from the Information Memorandum, the Resolution Professional has originally received claims of Rs. 3.38 lacs from the workers/ employees. The RP has rejected the claim amount in entirety and hence the Resolution Applicant assumes no liability towards any amount payable to the employees of the CD, except for retirement benefits like gratuity, which shall be paid by the RA to the employees when their service is terminated. The Applicant proposes to continue with the current employee of the Corporate Debtor so as to enable a smoother transition. Workers/employees who have not lodged their claims or if any amount has not been provided for in the Resolution Plan, shall stand extinguished after the approval of the Resolution Plan.	No waiver has been sought in this clause.
	From Operational Creditors (Trade Payables):	
27.	As per the Information Extracted from the Information Memorandum, the Resolution Professional has received claims worth Rs. 236.23 lacs which has been admitted in entirety. The Resolution Applicant has offered Rs. 3.00 lacs towards their claims; despite the expected liquidation value available to them is "NIL" as per the assessment of the applicant.	Granted in terms of the judgment of the Hon'ble Supreme Court in Ghanashyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd, wherein it was held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
	Further any Unclaimed Amount shall also stand extinguished on the approval of Resolution Plan from the effective date.	claims which are not part of the Resolution Plan.
	Contingent liabilities	
28.	To extinguish all the contingent liabilities of whatsoever nature as stated in the financial statements or otherwise and also which are stated / not stated in the Information Memorandum and which is related to period up to effective date. Further any Contingent Liabilities crystallizing after the effective date on account of all these litigations relating to the period prior to the effective date, shall stand extinguished in perpetuity.	Granted in terms of the judgment of the Hon'ble Supreme Court in Ghanashyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd, wherein it was held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.
	Litigations/Legal Proceedings	
29.	To extinguish all the legal proceedings as extracted from the information memorandum and future/subsequent demands/claims/suits etc. against the corporate debtor relating to the events prior up to effective date. However, the said settlement shall be only against the Corporate Debtor and not against the Personal Guarantors. The creditors shall still have recourse to the personal guarantees, if any. Further the Financial settlements as presented in the Resolution Plan shall be binding on all the category of creditors, Employees/Workmen, other stakeholders and no person shall be entitled to receive any amount apart from as mentioned in the Plan.	Granted in terms of the judgment of the Hon'ble Supreme Court in Ghanashyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd, wherein it was held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.
	Contracts made prior to Effective Date	

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
30.	Approval by Hon'ble NCLT that, from the Effective Date, any onerous contract entered into by the Corporate Debtor subsisting before the approval of Resolution Plan shall stand terminated, without any liability and obligation on part of the Corporate Debtor / Resolution Applicant.	Such blanket reliefs cannot be granted at this stage, since the parties against whom these orders will operate, are not before us at this stage.
	Termination of any Negotiable Instruments	
31.	Approval by Hon'ble NCLT that all outstanding negotiable instruments issued by Corporate Debtor or any other person on behalf of Corporate Debtor shall stand terminated from the Effective Date and no liability shall arise on account of it.	Granted in terms of the judgment of the Hon'ble Supreme Court in Ghanashyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd, wherein it was held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.
	Corporate Guarantee/Indemnities by Corporate Debtor	
32.	All liabilities which may arise due to issuance of Corporate Guarantees, Indemnities, etc. provided by the Corporate Debtor (whether known or unknown) shall stand extinguished and ineffective on the Effective Date.	Granted in terms of the judgment of the Hon'ble Supreme Court in Ghanashyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd, wherein it was held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.
	Revocation of Power of Attorney	

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
33.	All the power of attorney provided to any person by the Corporate Debtor shall stand revoked/ ineffective / null and void, immediately on the Effective Date.	Such blanket reliefs cannot be granted at this stage.
	Extinguishment of claims and entitlements	
34.	Other than persons receiving financial settlement under the Resolution Plan, no payments or settlements (of any kind) shall be made to any other Person in respect of claims filed under the CIRP and all claims (including, for avoidance of doubt, any un-verified portion of their claims, rejected) 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 effective date.	Granted in terms of the judgment of the Hon'ble Supreme Court in Ghanashyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd, wherein it was held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.
35.	Any invocation or appropriation or enforcement action already taken in respect of any security, guarantee, pledge, charge, encumbrance or collateral granted or created by the Corporate Debtor, or in respect of any asset of the Corporate Debtor in connection with any financial debt or any other debt or obligation of the Corporate Debtor, at any time prior to the effective date shall stand automatically revoked and cancelled and deemed null and void all liabilities and obligations in relation to such security, guarantee, pledge, charge, encumbrance or collateral granted or created by the Corporate Debtor, or in respect of any asset of the Corporate Debtor shall be deemed to have been permanently extinguished w.e.f. effective date.	Granted in terms of the judgment of the Hon'ble Supreme Court in Ghanashyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd, wherein it was held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.

Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
	Others	
36.	On making payment as per Resolution Plan, encumbrances, security interest, liens, and/or attachments created over the assets of the corporate debtor or any subsidiary or over the securities of the corporate debtor, whether by contract or by applicable law, shall stand conditionally and irrevocably released and reversed, without the requirement of any further deed or action on part of the Resolution Applicant or the Corporate Debtor.	Granted
37.	Although Resolution Plan is prepared with utmost care and due diligence in spite of that if in future any hidden financial liability towards discharge of any legal obligation, of any nature whether known or unknown, defined or non-defined, admitted or non-admitted, arise on Resolution Applicant, the Resolution Applicant must be protected from such liability and must be allowed to approach Hon’ble NCLT for reliefs, if needed.	No blanket exemption of the nature sought for can be granted at this stage.

23. On perusal of the application, a few errors have been observed that cannot go unnoticeable as the application is the crux, on the basis of which a matter is taken into consideration. The prayer portion in the application seeks for approval of a Resolution Plan dated 04.03.2020 whereas the Resolution Plan filed alongwith the application is dated 15.12.2020. Further, the paragraphs which reflect the amounts proposed in the I.A. are contrary to the Final Resolution Plan filed. On perusal of the minutes of the CoC meetings it was observed that the Applicant has referred to the initial Resolution Plan and not the revised Resolution Plan Such inaccuracies should not have occurred and we request the Resolution Professional to be more diligent in future.

24. Further, the Resolution Plan suffers from certain basic errors when it comes to compliance of regulations 37 (ca) and regulation 37 (d) of the CIRP regulations. These errors are not fatal to the Resolution Plan but cannot be overlooked by this Adjudicating Authority. The regulations 37 (ca) and regulation 37 (d) of the CIRP regulations have been mentioned in a chart at Page 56 of the Resolution Plan.

25. It is incumbent on the Resolution Professional to provide accurate details in the application filed before the Adjudicating Authority and also the requirements, measures, and mandatory content of the Resolution Plan should be provided under separate headings in the body of the Resolution Plan and not only in the compliance chart.

26. However, rejecting the I.A. for such mistakes would cause hindrance in completion of the CIRP of the Corporate Debtor in a time bound manner, hence we have considered the I.A. as the Resolution Plan dated 15.12.2020 is in compliance with the Code.

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

28. On perusal of the documents on record, we are also satisfied that the Resolution Plan is in accordance with sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

29. As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the

Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.

30. In case of non-compliance of this order or withdrawal of Resolution Plan, the CoC shall forfeit the EMD amount already paid by the Resolution Applicant.

31. Subject to the observations made in this Order, the Resolution Plan in question is hereby **APPROVED** by this Bench. The Resolution Plan shall form part of this Order.

32. The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect.

33. The Moratorium imposed under section 14 shall cease to have effect from the date of this order.

34. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters.

35. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.

36. Liberty is hereby granted for moving any Application if required in connection with implementation of this Resolution Plan.

37. A copy of this Order is to be submitted in the Office of the Registrar of Companies, West Bengal.

38. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.

39. The Resolution Professional is further directed to handover all records, premises/factories/documents to the Resolution Applicant to finalise the further

line of action required for starting of the operation. The Resolution Applicant shall have access to all the records/premises/factories/documents through the Resolution Professional to finalise the further line of action required for starting of the operation.

40. IA (IB) No. 331/KB/2021 and the main Company Petition i.e. CP (IB) No. 139/KB/2019 shall stand disposed of accordingly. Any other pending applications shall stand disposed of as infructuous upon approval of the Resolution Plan.

41. 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.

42. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

43. File be consigned to the record.

Rajasekhar VK
Authenticated through
Leegality.com (VLBb0hv)
Rajasekhar VK
Date: Mon Jun 28 10:20:19 IST
2021

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

28th June 2021

GGRB[LRA]