

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
COURT- II  
KOLKATA**

**IA (IB) No. 685/KB/2021  
in  
CP (IB) No. 1198/KB/2018**

*Application under section 30(6) and section 31(1) of the Insolvency & Bankruptcy Code, 2016 read with regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for approval of Resolution Plan.*

***In the matter of:***

Asset Reconstruction Company (India) Limited

...Financial Creditor

Versus

Dagcon (India) Private Limited  
CIN: U45201WB2003PTC096237

...Corporate Debtor

*And*

***In the matter of:***

Mr. Bimal Agarwal, Resolution Professional of  
Dagcon (India) Private Limited

...Applicant

**Date of pronouncing the order: 09 January 2023**

***Coram:***

Shri Rohit Kapoor, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

***Appearances (via hybrid mode):***

**For the Applicant/RP**

Mr. Rishav Banerjee, Advocate

Mr. Siddhanth Makkar, Advocate

Mr. Rasik Singhanian, Resolution Professional

**ORDER**

*Per Balraj Joshi., Member (Technical)*

1. This Court convened through hybrid mode.
2. I.A. (IB) No. 685/KB/2021 is an application under section 30(6) of the Insolvency and Bankruptcy Code, 2016, after approval of the resolution plan by the Committee of Creditors (**'CoC'**).
3. This application was moved on 07 September 2022 by Mr. Rishav Banerjee, Advocate on behalf of the RP, 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 Dagcon (India) Private Limited (**'Corporate Debtor'**).
4. The underlying Company Petition in C.P. (IB) No. 1198/KB/2018 was filed by Asset Reconstruction Company (India) Limited against Dagcon (India) Private Limited, the Corporate Debtor, under section 7 of the Insolvency and Bankruptcy Code 2016, which was admitted *vide* order dated 20 November, 2019. Mr. Bimal Agarwal was appointed as the Interim Resolution Professional (**IRP**) and later he was further appointed as the Resolution Professional (**RP**) of the Corporate Debtor.

**Constitution of CoC**

5. The IRP made public announcement on 23 November 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 corporate debtor in the specified forms till 04 December 2019.

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
(Court No. II)

*In Re Resolution Plan of Dagon (India) Private Limited*  
IA (IB) No. 685/KB/2021 in CP (IB) No. 1198/KB/2018

6. The CoC was constituted with four Financial Creditors i.e., Asset Reconstruction Company (India) Limited, Edelweiss Asset Reconstruction Company Limited, Pradip Kumar Chaudhuri and SREI Equipment Finance Limited with 60.80%, 22.60%, 11.22% and 5.38% voting share, respectively. A report of the constitution of the CoC was filed before the Adjudicating Authority.
7. The Applicant states that a total of Thirteen CoC meetings have been held during CIRP period, as follows:

Particulars	Date of CoC meeting
1 <sup>st</sup> CoC Meeting	18.12.2019
2 <sup>nd</sup> CoC Meeting	16.01.2020
3 <sup>rd</sup> CoC Meeting	31.01.2020
4 <sup>th</sup> CoC Meeting	02.03.2020
5 <sup>th</sup> CoC Meeting	04.09.2020
6 <sup>th</sup> CoC Meeting	14.09.2020
7 <sup>th</sup> CoC Meeting	16.10.2020
8 <sup>th</sup> CoC Meeting	23.12.2020
9 <sup>th</sup> CoC Meeting	18.01.2021
10 <sup>th</sup> CoC Meeting	24.03.2021
11 <sup>th</sup> CoC Meeting	30.04.2021
12 <sup>th</sup> CoC Meeting	08.06.2021
13 <sup>th</sup> CoC Meeting	18.06.2021

**CIRP and compliances**

8. 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 was issued on 21 September, 2020 in *Financial Express (English) (Kolkata Edition)* and *Ekdin (Bengali) (Kolkata Edition)*. The last date of submission of Resolution Plan was 06 October 2020. The notice was also published on the website of the Insolvency and Bankruptcy Board of India (**'IBBI'**).

9. The Applicant submits that in response to the invitation for EoI published on 21 September, 2020, the Applicant received one Expression of Interest from the Prospective Resolution Applicant (**'PRA'**) i.e., Ashiana Dynamic Consortium. The same was informed to the CoC in the seventh CoC meeting (*Page 124 of the Application*). In the same meeting, it was further resolved that the RP will issue evaluation matrix and Request for Resolution Plan (**'RFRP'**) to the Prospective Resolution Applicant.

**Evaluation and voting**

10. Thereafter, in the 8th CoC meeting i.e., 23 December, 2020, the RP apprised the CoC that a sealed and un-tampered Resolution Plan was received at the office of the RP on 15 December, 2020. The same was opened in front of the PRA and the CoC Members. It was further resolved that the RP shall validate and verify, whether the Plan is in compliance to the RFRP, the Code and its Regulations.
11. The PRA was invited to the 9th CoC meeting, wherein necessary modifications required to be incorporated was discussed, and the PRA agreed to come up with a revised Revised Resolution Plan by 27 January, 2021.
12. Subsequently, on 30 April, 2021, i.e., 11<sup>th</sup> CoC Meeting, the RP apprised the CoC about the final Resolution Plan received from the PRA and its compliance with the Code. Further, the PRA is also eligible under section 29A of the Code. The PRA emerged as the Successful Resolution Application on 12<sup>th</sup> CoC Meeting, with 88.78% voted passed by the members of the CoC.

**Compliance of the approved Resolution Plan with various provisions**

13. 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.

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
(Court No. II)

*In Re Resolution Plan of Dagcon (India) Private Limited*  
IA (IB) No. 685/KB/2021 in CP (IB) No. 1198/KB/2018

14. 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):**

<i>Clause of s.30(2)</i>	<i>Requirement</i>	<i>How dealt with in the Resolution Plan</i>
1.	Plan must provide for payment of CIRP cost in priority to repayment of other debts of Corporate Debtor in the manner specified by the Board.	<i>Chapter- III, Part – B, Page No. 12</i>
2.	(i) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than the amount payable to them in the event of liquidation u/s 53;  (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;  (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>Chapter- III, Part – E, Page No. 19-24</i>  <i>Chapter- III, Part – C, Page No. 17, Clause – IV.</i>
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	<i>Chapter- III, Part – I, Page No. 28</i>
(d)	Implementation and Supervision	<i>Chapter- III, Part – J, Page No. 29</i>

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
(Court No. II)**

***In Re Resolution Plan of Dagcon (India) Private Limited***  
IA (IB) No. 685/KB/2021 in CP (IB) No. 1198/KB/2018

<i>Clause of s.30(2)</i>	<i>Requirement</i>	<i>How dealt with in the Resolution Plan</i>
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	<i>Chapter- III, Part – M, Page No. 34</i>
(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:**

<i>Particulars</i>	<i>Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation</i>
A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximisation of value of its assets, including but not limited to the following: -	
(a) transfer of all or part of the assets of the corporate debtor to one or more persons;	<i>Not proposed in the Resolution Plan.</i>
(b) sale of all or part of the assets whether subject to any security interest or not;	<i>Not proposed in the Resolution Plan.</i>
(c) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	<i>Not proposed in the Resolution Plan.</i>
(d) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	<i>Not proposed in the Resolution Plan.</i>

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
(Court No. II)**

***In Re Resolution Plan of Dagcon (India) Private Limited***  
**IA (IB) No. 685/KB/2021 in CP (IB) No. 1198/KB/2018**

<i>Particulars</i>	<i>Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation</i>
(e) cancellation or delisting of any shares of the corporate debtor, if applicable;	<i>Not proposed in the Resolution Plan.</i>
(f) satisfaction or modification of any security interest;	<i>Not proposed in the Resolution Plan.</i>
(g) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	<i>Not proposed in the Resolution Plan.</i>
(h) reduction in the amount payable to the creditors;	<i>Not proposed in the Resolution Plan.</i>
(i) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	<i>Not proposed in the Resolution Plan.</i>
(j) amendment of the constitutional documents of the corporate debtor;	<i>Not proposed in the Resolution Plan.</i>
(k) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	<i>Not proposed in the Resolution Plan.</i>
(l) change in portfolio of goods or services produced or rendered by the corporate debtor;	<i>Not proposed in the Resolution Plan.</i>
(m) change in technology used by the corporate debtor; and	<i>Not proposed in the Resolution Plan.</i>
(n) obtaining necessary approvals from the Central and State Governments and other authorities.	<i>Not proposed in the Resolution Plan.</i>

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
(Court No. II)

*In Re* Resolution Plan of Dagcon (India) Private Limited  
IA (IB) No. 685/KB/2021 in CP (IB) No. 1198/KB/2018

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

<i>Ref to relevant Reg.</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>
38(1)	The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.	<i>Chapter – III, Part – E, Page 19 – 24.</i>
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors of the corporate debtor.	<i>Chapter – III, Part – G, Page - 24. Part – H, Page – 25.</i>
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.	<i>Chapter – III, Part – K, Page 29.</i>
38(2)	Whether the Resolution Plan provides;	
	(a) the term of the plan and its implementation schedule;	<i>Chapter – III, Part – H, Clause – H, Page 27.</i>

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
(Court No. II)**

***In Re* Resolution Plan of Dagcon (India) Private Limited  
IA (IB) No. 685/KB/2021 in CP (IB) No. 1198/KB/2018**

<i>Ref to relevant Reg.</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>
	(b) the management and control of the business of the corporate debtor during its term; and	<i>Chapter – III, Part – I, Page 28.</i>
	(c) adequate means for supervising its implementation.	<i>Chapter – III, Part – J, Page 29.</i>
38(3)	Whether the Resolution Plan demonstrates that –	
	(a) it addresses the cause of default;	<i>Chapter – III, Part – O, Page 35.</i>
	(b) it is feasible and viable;	<i>Chapter – III, Part – A, Page 27. Part – O, Page – 35.</i>
	(c) it has provisions for its effective implementation;	<i>Chapter – III, Part – I, Page – 27. Part – J, Page – 29.</i>
	(d) it has provisions for approvals required and the timeline for the same; and	<i>Chapter – III, Part – H, Page – 27.</i>
	(e) the Resolution Applicant has the capability to implement the resolution plan.	<i>Chapter – I, Clause – 5, Page – 7. Part – J, page 29.</i>

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
(Court No. II)**

***In Re Resolution Plan of Dagcon (India) Private Limited***  
IA (IB) No. 685/KB/2021 in CP (IB) No. 1198/KB/2018

15. The Resolution Applicant has submitted affidavit of eligibility under section 29A of the Code, affirmed on 30 June 2022<sup>1</sup>.

**Details of Resolution Plan/Payment Schedule**

16. The relevant information with regard to the amount claimed, amount admitted and the amount proposed to be paid by the Successful Resolution Applicant, *i.e.*, Ashiana Dynamic Consortium under the said Resolution Plan is tabulated as under:

<i>Details</i>		<i>Claims Admitted (in lakh Rs.)</i>	<i>Amount Proposed (in lakh Rs.)</i>
<b><i>Financial Creditors (Secured)</i></b>			
i.	ARCIL	9617.26	386.93
ii.	Edelweiss ARC	8503.67	143.82
iii.	SREI	3575.04	34.23
<b><i>Unsecured Financial Creditor</i></b>			
i.	Pradip Kumar Chaudhuri (Allottee)	1775.28	Allotment transferred - NIL
<b><i>Operational Creditors</i></b>			
i.	Kolkata Metropolitan Development Authority	8066.81	4.1
ii.	The Commissioner of Commercial Taxes	1671.28	0.9
<b><i>CIRP Cost</i></b>		–	35
<b><i>Total Project Cost</i></b>			<b><i>605 (Approx)</i></b>

<sup>1</sup>Pages – 361 – 370 of the Application.

17. The Resolution Plan defines “**Effective Date**” as “*shall be treated as the date on which this Adjudication Authority approved the Resolution Plan*”.

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

18. The Resolution Plan also provides for –
- a. Management of Company after resolution at Part I of the Resolution Plan;
  - b. Implementation and Supervision of the resolution plan Part I of the Resolution Plan.

**Relinquishment/Waiver of liabilities and Approvals**

19. 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.

<i>Sl. No.</i>	<i>Relief and/or Concessions and Approvals Sought</i>
1.	Financial Creditors of Dagcon (India) Private Limited shall remove all the charge on the Assets of the Corporate Debtor as per the implementation schedule of the Resolution Plan upon full and final payment of the Resolution Plan amount.
2.	All the pledges on the shares (if any) of Dagcon (India) Private Limited would be cancelled subsequent to the approval of the Resolution Plan.
3.	No personal or corporate guarantees are proposed to be given by the promoters of the Resolution Applicants or any of its associates.

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
(Court No. II)**

***In Re Resolution Plan of Dagcon (India) Private Limited***  
**IA (IB) No. 685/KB/2021 in CP (IB) No. 1198/KB/2018**

<b><i>Sl. No.</i></b>	<b><i>Relief and/or Concessions and Approvals Sought</i></b>
4.	Any criminal proceedings including matters u/s 138 of Negotiable Instrument Act, continuing as on the date of this Resolution Plan and pending with any court of law against the Corporate Debtor or against any erstwhile director of corporate debtor by any member of CoC or Financial Creditor shall be withdrawn unconditionally within 7(seven) days of the Effective Date.
5.	Any personal guarantee given by erstwhile directors and promoters of the Corporate Debtor shall be released by the Financial Creditors and shall deemed to be transferred in favour of the Resolution Applicant on payment of the entire Resolution Plan amount. However, secured Financial Creditors shall not invoke personal guarantee or take any coercive action against any personal guarantor till payment of the entire Resolution Plan amount by the Resolution Applicant.
6.	The Financial Creditor will handover the original Title deed and other original documents of the property at 143A, Rashbehari Avenue, Kolkata-700029 to The Resolution Applicant within 30 days effective date.
7.	RP may assist the Resolution Applicant to complete the building/construction work at 143A, Rashbehari Avenue, Kolkata-700029. The Resolution Professional may provide necessary assistance for realization of the amount of Rs.176.00 Lacs receivable from the 22 Nos. allottees (as per Annexure-J of Information Memorandum
8.	The Resolution Professional has to transfer the money already paid by the allottees to CIRP account to the Resolution Applicant within 30 (thirty) days of the Effective Date.
9.	The Resolution Professional has to handover all the documents and records available with him to the Resolution Applicant.

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
(Court No. II)

*In Re* Resolution Plan of Dagcon (India) Private Limited  
IA (IB) No. 685/KB/2021 in CP (IB) No. 1198/KB/2018

<i>Sl. No.</i>	<i>Relief and/or Concessions and Approvals Sought</i>
10.	The Resolution Professional will hand over all available movable and immovable assets of Corporate Debtor to the Resolution Applicant within 30(thirty) days of the Effective Date.
11.	From Erstwhile Promoters and Directors: a. Participation in Arbitration and Legal proceedings as witness or other way, b. Providing information and documents for participation in tender, c. Help to recover movable assets from different sources, d. Help to settle disputes other than legal if any, e. Help to complete construction work at premises 143A, Rashbehari Avenue, Kolkata-700029.
12.	<p>For waiver of the claims of Harmonia Enterprises Pvt. Ltd. (contingent liability) on the asset of the Corporate Debtor being 1900 Square Feet space on the 7th Floor of 143A, Rashbehari Avenue, Kolkata-700029.</p> <p>The said space is reserved by an order of the Supreme Court of India and is pending disposal at the Sessions Court in Alipore (Serial No.57/2010 and T.S. No.1549/2010) as per Annexure-J of Information Memorandum.</p> <p>Granting leave to apply before the Hon'ble Supreme Court for recall of said order and for handover of peaceful possession of the 1900 Square Feet Flat on the 7th Floor of 143A, Rashbehari Avenue, Kolkata-700029 to the Resolution Applicant.</p>

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
(Court No. II)**

***In Re Resolution Plan of Dagcon (India) Private Limited***  
**IA (IB) No. 685/KB/2021 in CP (IB) No. 1198/KB/2018**

<b><i>Sl. No.</i></b>	<b><i>Relief and/or Concessions and Approvals Sought</i></b>
13.	Waiving all Property Taxes, including Building Taxes of Kolkata Municipal Corporation (KMC) for Rs. 65.00 Lacs or more or as actual as Statutory/Operational Dues in terms of the premises no. 143A, Rashbehari Avenue, Kolkata-700029 and any other property in the name of Corporate Debtor within the KMC jurisdiction.
14	Kolkata Municipal Corporation to waive all past irregularities by the Corporate Debtor in terms of the KMC Building Rules, 2009 and any other irregularities as per the Kolkata Municipal Corporation Act, 1980 upto the Effective Date and providing Completion Certificate for the building at premises no. 143A, Rashbehari Avenue, Kolkata-700029 within 90(ninety) days of application by the Resolution Applicant.
15.	For handover of all Hypothecated equipment and machineries of the Corporate Debtor to the possession of the Resolution Applicant at a designated place. The necessary transportation cost, if any, will be borne by Resolution Applicant.
16.	The Title Suit No. 444 of 2013 (Smt. KanakProvaSikder vs. Dagcon India Pvt. Ltd. &Ors.) to be disposed or amicably settled between the parties within a period of 6(six) months from the Effective date.
17.	Any other pending Suit before any Court or any Arbitration Proceedings by Corporate Debtor vide Annexure -H, page-39 & 40 of Revised IM to be disposed within a period of 6(six) months from the Effective date.
18.	An order for getting Police Assistance if require to taking possession of assets by Resolution Applicant.

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
(Court No. II)

*In Re* Resolution Plan of Dagcon (India) Private Limited  
IA (IB) No. 685/KB/2021 in CP (IB) No. 1198/KB/2018

<i>Sl. No.</i>	<i>Relief and/or Concessions and Approvals Sought</i>
19.	An order to cancel allotment for the real estate project at 143A, Rashbehari Avenue, Kolkata-700029 If any allottees not paid the due money with a notice of 30 days by the Resolution Applicant then their allotment will be cancelled without any further notice and the space will be assigned to the Resolution Applicant. No claim from the allottees to refund the paid money will not be acceptable in case of cancellation
20.	100% exemption on stamp duty and any other levy.
21.	Stamp duty and taxes on the transactions undertaken to be exempt
22.	The Resolution Applicant will not be liable for any liabilities which are neither appearing in the Balance Sheet nor mentioned in claim statement in response to the Public Advertisement dated 21.09.2020 under IBC, 2016 except those liabilities which are mentioned in this Resolution Plan.
23.	All licenses & consents to operate to be available within 2 months of completion date.
24.	The Ministry of Environment, Central Pollution Control Board and Pollution Control Board of West Bengal and all other Government authorities concerned to grant all environmental business permits as required by the Corporate Debtor.
25	Full waiver of other contingent dues and unconfirmed dues.
26.	The principal outstanding of the statutory dues as stated hereinabove in shall be paid as per the terms mentioned in this Resolution Plan with no future interest and remaining amount should be directed to be waived by the concerned competent authority.

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
(Court No. II)**

***In Re Resolution Plan of Dagcon (India) Private Limited***  
**IA (IB) No. 685/KB/2021 in CP (IB) No. 1198/KB/2018**

<b><i>Sl. No.</i></b>	<b><i>Relief and/or Concessions and Approvals Sought</i></b>
27	To waive penal interest, simple interest, compound interest, damage charged if any (whether provided or not provided in the Books of Corporate Debtor) as the liability of the Company as on the date of approval of this Resolution Plan.
28	All the contingent liabilities as mentioned in this Resolution Plan, which may or may not have been confirmed in the past (before or during the CIRP) or even may be confirmed in the time to come are proposed to be waived off fully.
29	To exempt the Resolution Applicant from applicable provisions of Income Tax Act, 1961 with respect to set off and carry forward of loss incurred by the Corporate Debtor and the Resolution Applicant shall be entitled to carry forward and set off the accumulated losses and unabsorbed depreciation as per provisions of Section 72A of the Income Tax Act, 1961.
30	To allow MAT Credit, if any available to the Corporate Debtor shall be allowed to be claimed and utilized by the Resolution Applicant.
31	To allow VAT Credit, if any available to the Corporate Debtor, shall be allowed to be claimed and utilized by the Resolution Applicant.
32.	100% of gross SGST reimbursement for 10 years.
33.	To exempt Corporate Debtor and Resolution Applicant from the applicability of and payment of tax under Section 115(JB) of the Income Tax Act, 1961 regarding the waiver/write off accepted by the creditors as envisaged under this Resolution Plan and thus the amount of write off should not be added/considered while

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
(Court No. II)**

***In Re Resolution Plan of Dagcon (India) Private Limited***  
**IA (IB) No. 685/KB/2021 in CP (IB) No. 1198/KB/2018**

<b><i>Sl. No.</i></b>	<b><i>Relief and/or Concessions and Approvals Sought</i></b>
	calculating the book profit for the purpose of Section 115(JB) and thus MAT Liability on such write off should not be levied.
34.	To allow tax credit of Service Tax (RCM) to be used by Resolution Applicant for meeting its future GST Liability.
35.	Any claims/counter claims against the Corporate debtor though any Arbitration proceedings whether disclosed or not in the list of disputes furnished in the Information Memorandum if related to any agreement or contract entered by the promoters of the Corporate Debtor is proposed to be dropped and not proceeded with any further. Any future claim/counter claim of any of creditors of the Corporate Debtor/party to any Arbitration Proceedings, which has not been filed with the Resolution Professional till the date of this Resolution Plan shall not be accepted at any later stage. However, the Resolution Applicant may at their sole discretion continue arbitration proceedings filed by the Corporate Debtor prior to the insolvency commencement date, towards recovery of any dues. Resolution Applicant can start new legal proceedings or arbitration to recovery of any due from any person/organization or anybody else.
36.	In any event any claim of the Corporate Debtor under any arbitration proceedings shall remain enforceable and subject to outcome of the said arbitration proceedings including any of the Operational Creditors, as stated above.
37.	Upon the Resolution Plan becoming approved, total outstanding of the Operational Creditors shall be deemed to be waived and Rs.5 Lacs (Rupees Five Lacs Only) shall be paid to the Operational Creditor proportionate to their claim amount in full and final settlement of their claim and no other claim by any other name shall be allowed.

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
(Court No. II)**

***In Re Resolution Plan of Dagcon (India) Private Limited***  
**IA (IB) No. 685/KB/2021 in CP (IB) No. 1198/KB/2018**

<b><i>Sl. No.</i></b>	<b><i>Relief and/or Concessions and Approvals Sought</i></b>
38	Upon sanction of this Resolution Plan and payment of the said plan amount of Rs. 5 lacs to the Operational Creditors, all the dues of the Statutory Authorities shall stand paid as per the plan given hereinabove in full and final settlement of their dues and claims against the Corporate Debtor.
39.	Dispensation is sought from any applicable provisions of the Companies Act, 2013 or rules made thereunder, relating to the capital restructuring, financial restructuring, cancellation of existing shares or any other of this Resolution Plan for its implementation including re-casting of the financial statements of the corporate debtor. Requisite filings may be done within the period of 1(one) year from the date of receipt of certified copy of the order approving the resolution plan and that no further order be required from any regulator or authority and that approval of the resolution plan be deemed to be approval of all such actions.
40	Dispensation is further sought from fresh initiation of any cases or proceedings against the corporate debtor or the resolution applicant relating to any period prior to the Insolvency Commencement date, no amount would be paid to any creditor or authority under any circumstances relating to the period prior to the Insolvency Commencement date except at specifically provided under this resolution plan, and that any such would consequently qualify as “operational creditor” (as defined under the IBC) and therefore the full amount of such liabilities shall be deemed to be owed and due as of the Insolvency Commencement date and therefore no amount is payable in relation thereto.
41.	All business approvals/permits required by the Corporate Debtor to conduct its business and which have not been granted/canceled/terminated/revoked/suspended or not renewed may please be directed to be granted/ restored/ renewed/reinstated as the case may be (by the concerned competent authority of State/Central Government/any other competent authority) at no

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
(Court No. II)

*In Re Resolution Plan of Dagcon (India) Private Limited*  
IA (IB) No. 685/KB/2021 in CP (IB) No. 1198/KB/2018

<i>Sl. No.</i>	<i>Relief and/or Concessions and Approvals Sought</i>
	additional cost to the Resolution Applicant within one year from the date of approval of the Resolution Plan by NCLT or within such period for in such law, whichever is later.

**Orders**

20. 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.
21. 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.
22. We have perused the reliefs, waivers and concessions as sought and as given in Part N at Pages 29-34 of the Resolution Plan. While some of the reliefs, waivers and concessions sought by the Resolution Applicant come within the purview of the Code while many others fall under the power and jurisdiction of different government authorities/departments. This Adjudicating Authority has power to grant reliefs, waivers and concessions only with respect to the reliefs, waivers and concessions that are directly in relation to the Code and the Companies Act (within the powers of the NCLT), keeping in mind the object of the Code. No reliefs, waivers and concessions that fall within the domain of other government department/authorities are granted. The reliefs, waivers and concessions that pertain to other governmental authorities/departments shall be dealt with the respective competent authorities/forums/offices, Government or Semi Government of the State or Central Government with regard to the

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
(Court No. II)

*In Re Resolution Plan of Dagcon (India) Private Limited*  
IA (IB) No. 685/KB/2021 in CP (IB) No. 1198/KB/2018

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respective reliefs, waivers and concessions. The competent authorities including the Appellate authorities may consider grant such reliefs, waivers and concessions keeping in view the spirit of the Code.

23. The Resolution Plan should be consistent with extant law. The Resolution Applicant shall make necessary applications to the concerned regulatory or statutory authorities for renewal of business permits and supply of essential services, if required, and all necessary forms along with filing fees etc. and such authority shall also consider the same keeping in mind the objectives of the Code, which is essentially the resolving of the insolvency of the Corporate Debtor.
24. The reliefs sought with respect to subsisting contracts/agreements can be granted, but no blanket orders can be issued in the absence of the parties to the contracts and agreements.
25. With respect to the waivers with regard to extinguishment of claims which arose Pre-CIRP and which have not been claimed are granted in terms of **Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd**,<sup>2</sup> 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 extinguished and no proceedings in respect of such dues for the period prior to the date on which

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<sup>2</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
(Court No. II)

*In Re Resolution Plan of Dagcon (India) Private Limited*  
IA (IB) No. 685/KB/2021 in CP (IB) No. 1198/KB/2018

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- the Adjudicating Authority grants its approval under section 31, could be continued.
26. With respect to the waivers sought in relation to guarantors, the judgment of *Lalit Kumar Jain v Union of India & ors*,<sup>3</sup> wherein 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, shall apply.
  27. With respect to the reliefs and waivers sought for all inquiries, litigations, investigations and proceedings shall be granted strictly as per the section 32A of the Code.
  28. 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.
  29. Subject to the observations made in this Order, the Resolution Plan, 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.
  30. The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
  31. 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.
  32. Liberty is hereby granted for moving any application if required in connection with implementation of this Resolution Plan.
  33. A copy of this Order is to be submitted to the Registrar of Companies, West Bengal.

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<sup>3</sup> 2021 SCC OnLine SC 396 decided on 21.05.2021.

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
(Court No. II)

*In Re Resolution Plan of Dagcon (India) Private Limited*  
IA (IB) No. 685/KB/2021 in CP (IB) No. 1198/KB/2018

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34. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except the duties envisaged in the Resolution Plan.
35. 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.
36. **IA. (IB) No. 685/KB/2022 in the main Company Petition, i.e., C.P. (IB) No. 1198/KB/2018 shall stand disposed of accordingly.**
37. The Registry is directed to send e-mail copies of the order forthwith to all the parties for information and for taking necessary steps.
38. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
39. File be consigned to the record.

**Balraj Joshi**  
**Member (Technical)**

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

Signed on the 9<sup>th</sup> day of January 2023.

SA\_LRA