

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI**

IA/888(CHE)/2021 in CP(IB)/1325/2019

(Filed under Section 30(6) & 31(1) of the Insolvency and Bankruptcy Code, 2016 r/s Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Debtor) Regulations, 2016 and Rule 11 of NCLT Rules, 2016)

Also

IA (IBC)/1142/2021 in IA/888(CHE)/2021

(Filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rules 11 & 32 of NCLT Rules, 2016)

*In the matter of **Cura Healthcare Private Limited.***

Mrs. Jayashree S Iyer,
Resolution Professional (RP),
of Cura Healthcare Private Limited,
23, Lake Area, 3rd Cross Street,
Nungambakkam,
Chennai 600 034.

*... Applicant / Resolution
Professional*

IA(IB)/214/2021 in CP(IB)/1325/2019

(Filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016)

S.Dillibabu,
S/o S.Sankaran,
Proprietor, Boozan Controls,
No.250, Velachery Main Road, Velachery,
Chennai – 600 042.

... Applicant

-Vs-

1. Cura Healthcare Private Limited,
Rep. by its Authorized Signatory,
No.DP 56, 3rd Main Road,
Sidco Industrial Estate, Thirumudivakkam,
Chennai – 600 044.

*... 1st Respondent /
Corporate Debtor*

2. Mrs. Jayashree S Iyer,
Interim Resolution Professional (IRP),
Reg.No.(IBBI/IPA-002/IP-N00741/2018-2019/12211),
New No.10, Old No.41, Kirupasankari Street,
West Mambalam, Chennai – 600 033.

... 2nd Respondent / IRP

IA(IB)/112/2021 in CP(IB)/1325/2019

*(Filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w
Rule 11 of NCLT Rules, 2016)*

1. Arun Kaul,
S/o J N Kaul,
155B, Kendriya Vihar,
Sector 48B,
Chandigarh – 160047.

2. Virender Singh Bedi,
S/o G S Bedi,
H.No.1519, Sector 34 D,
Chandigarh – 160022.

... Applicants

-Vs-

1. Cura Healthcare Private Limited,
Having Registered Office at,
Plot No.A-32 Phase-1,
MEPZ-SEZ, Tambaram, Kadapperi,
Chennai – 600045.

2. Mrs. Jayashree S Iyer,
Resolution Professional (IRP),
of Cura Healthcare Private Limited,
23, Lake Area, 3rd Cross Street,
Nungambakkam,
Chennai 600 034.

3. Adonis Medical System Private Limited,
Having Registered Office at,
No.DP 56, Third Main Road,
SIDCO Industrial Estate,
Thirumudivakkam,
Chennai 600044.

... Respondents

Order Pronounced on 13th January 2022

CORAM:

JUSTICE (RETD) S.RAMATHILAGAM, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

*For Applicants: Mr.B.Dhanaraj, Advocate (IA/888(CHE)/2021)
& IA(IBC)/1142/2021).*

*Mr.A.R.L. Sundaresan, Sr. Advocate
(IA(IB)/214/2021).*

Mr.K.M.Anand, Advocate(IA/112(CHE)/2021).

For Respondents: Mr.B.Dhanaraj, Advocate (IA(IB)/214/2021).

COMMON ORDER

Per: JUSTICE (RETD) S.RAMATHILAGAM, MEMBER (JUDICIAL)

The IA/888/2021 is moved by the Resolution Professional of the Corporate Debtor viz., **Mrs. Jayashree S Iyer** under Section 30(6) & 31(1) of the Insolvency and Bankruptcy Code, 2016 (in short IBC, 2016) read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short, 'Regulation') seeking the approval of the Resolution Plan submitted by the successful Resolution Applicant viz., Sherisha Technologies Private Limited.

2. The Learned Counsel for the Resolution Professional submitted that one Ms. Gomathy an ex-employee of DE Healthcare Private Limited, a wholly owned subsidiary of Corporate Debtor in the capacity as an Operational Creditor has filed an Application under Section 9 of IBC, 2016, against the Corporate Debtor viz.

Cura Healthcare Private Limited and this Adjudicating Authority vide order dated 09.12.2019 admitted the said Application and initiated Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor by appointing one Mrs. Jayashree S Iyer as the Interim Resolution Professional (IRP).

3. It was submitted that the first Committee of Creditors (CoC) meeting was held on 07.01.2020 and it was decided that the Applicant shall continue to be the Resolution Professional till the appointment of the new Resolution Professional and in the 2nd CoC meeting held on 06.02.2020, the CoC has resolved to appoint Mr.Krishnasamy Vasudevan as a Resolution Professional.

4. It was submitted that the 3rd CoC meeting was originally scheduled on 21.03.2020 and subsequently rescheduled to 23.04.2020, due to the Covid pandemic. In order to avoid any delay in CIRP of Corporate Debtor, the CoC resolved to re-appoint the Applicant herein as the Resolution Professional w.e.f. 23.04.2020. In addition to the above, the Applicant had discussed about the appointment of registered valuers, consultants for completion of accounts, engagement of Statutory Auditor to audit the accounts of the Corporate Debtor. Further, the draft Form-G inviting Expression of Interest (EoI) was placed before CoC for approval.



5. In accordance with the discussions in the 3rd CoC meeting, the Applicant appointed valuers viz., Mr.Muniyandi, Ohm Tech Services (Plant & Machinery), Ms.Ushadevi (Land and Building), Adroit Appraisers and Research Private Limited (Financial Securities) and AAA Insolvency Professionals LLP on 29.06.2020 and published Form-G on 08.07.2019, in English Daily "Financial Express" – All India Edition and in the Tamil Daily "Makkal Kural" – Tamil Nadu Edition, fixing the last date for submission of EoI as 23.07.2020.

6. In the 4th meeting of the CoC held on 28.07.2019, the Applicant informed the CoC that 4 EoI were received and also that there were requests received for an extension of time for submitting EoI. In the view of lockdown, the CoC resolved to re-issue Form-G inviting EoI with revised timelines. The Applicant Published Form-G for the second time on 03.07.2020 in the English Daily "Financial Express" – All India Edition and in the Tamil Daily "Makkal Kural" – Tamil Nadu Edition and fixed the last date for submission of EoI as 14.08.2020 and for submission of Resolution Plan as 24.09.2020. In response to the second Form-G, the Applicant received EoI from 6 Prospective Resolution Applicants (PRA).

7. It was further submitted that in the 5th meeting of the CoC held on 18.09.2020, due to the lock-down situation and delay in

preparation and audit of Financials of the Corporate Debtor, the CoC resolved to extend the last date of submission of Resolution Plan.

8. It was further submitted that in the 6th meeting of CoC held on 05.11.2020, the Applicant informed the CoC that except Sherisha Technologies Private Limited, all other Prospective Resolution Applicants were not interested in pursuing further in the resolution process of the Corporate Debtor. At the request of Sherisha Technologies Private Limited, the only Resolution Applicant, the CoC resolved to extend the last date for submitting the Resolution Plan up to 30.11.2020.

9. It was further submitted that prior to the 7th meeting of CoC dated 08.01.2021, the Resolution Plan submitted by Sherisha Technologies Private Limited on 30.11.2020, was circulated to the CoC for consideration. Due to Video Conferencing connectivity issues, it was decided that the observations of the CoC and the Applicant shall be shared with the Prospective Resolution Applicant and granted one week time for their responses.

10. During the 8th meeting of CoC held on 18.01.2021, the Applicant informed the CoC, that the 180th day of the CIRP expired on 08.06.2020. In the view of the Resolution Plan of Sherisha Technologies Private Limited pending for consideration, the CoC

resolved to file an application for exclusion of COVID-19 Lock-down period and for extension of CIRP period up to 270th day on 08.09.2021. Accordingly, the Applicant filed an IA/212/2021 before this Tribunal, which came to be allowed by this Tribunal vide order dated 13.12.2021.

11. It was further submitted that in the 9th meeting of CoC held on 23.02.2021, the Applicant informed the CoC about the submission of the updated Resolution Plan of the Sherisha Technologies Private Limited. However, the CoC chose to decide on the Plan within 2 weeks.

12. In the 10th meeting of CoC held on 19.07.2021, the CoC sought this Applicant to inform the Prospective Resolution Applicant that the transfer of control over management and affairs of the Corporate Debtor, shall be done only on completion of steps 1, 2 and 3 given for implementation of the Resolution Plan and it was decided that the approval of the Resolution Plan will be considered in next CoC meeting.

13. It was submitted that in the 11th meeting of CoC held on 02.09.2021, the agenda for the approval of the Resolution Plan dated 16.07.2021, as submitted by the Prospective Resolution Applicant, Sherisha Technologies Private Limited was taken up for voting. The Sole Financial Creditor State Bank of India having

100% voting rights approved the revised and final Resolution Plan of Sherisha Technologies Private Limited and authorized the Applicant to place the Resolution Plan before this Tribunal for approval.

14. After the successful passing of the Resolution Plan before the CoC on 02.09.2021, the Resolution Professional filed the Resolution Plan with this Adjudicating Authority on 08.09.2021.

15. The Resolution Applicant, who is a third party has submitted the Resolution Plan along with an Affidavit stating that he is eligible under Section 29A of IBC, 2016 to the Resolution Professional.

16. **SALIENT FEATURES OF THE RESOLUTION PLAN**

A. Proposed Amount, Timelines, Implementation and Source of Funds:

- (i) The Resolution Applicant has proposed a Resolution Plan worth Rs.13,42,76,778/- (Rupees Thirteen Crore Forty-Two Lakh Seventy-Six Thousand Seven Hundred and Seventy-Eight Only) out of which a sum of Rs.9,42,76,778/- will be infused in the form of Term Loan / Working Capital Loan (Debt) for which the Resolution Applicant will enter into a separate agreement with the Corporate Debtor and the balance sum of Rs.4,00,00,000/-

shall be out of the Resolution Applicant's own funds. (Resolution Plan internal pages 19 & 20).

- (ii) The Resolution Applicant has proposed to clear all payments / settlements within a period of 90 days from the effective date i.e., Order of Approval of this Tribunal, as per the below timeline.

S.No.	Payment Particulars	Amount	Proposed Timelines	Source of Funds
1.	CIRP Costs and Expenses	2,62,53,399.00	Within 30 days of effective date	Own Funds
2	Operational Creditors who are Employees	1,00,00,000.00	Within 30 days of effective date	Own Funds
3.	Operational Creditors excluding Employees	20,00,000.00	Within 30 days of effective date	Own Funds
4	Upfront Settlement of Financial Creditors	4,50,00,000.00	Within 30 days of effective date	Own Funds
5.	Deferred Settlement of Financial Creditor	4,00,00,000.00	At the end of 90 days from effective date	Internal Accruals or Own Funds
6.	Working Capital Infusion	1,10,23,379.00	Progressively over a period of 90 days	Own Funds

- (iii) The Resolution Applicant has proposed to pay the CIRP costs at Actuals as on the Effective date i.e., Order of Approval by

this Tribunal. The abovementioned quote for Rs.2,62,53,399/- is an estimate only up to 16.07.2021.

- (iv) The Resolution Applicant has proposed to settle an amount of Rs.1,00,00,000/- out of the Admitted Claim of Rs.2,16,46,507/- as against the Operational Creditors - Employees Claims received for Rs.2,50,05,992/- with 53.80% waiver. In respect to Operational Creditors other than Employees, the Resolution Applicant has proposed to settle an amount of Rs.20,00,000/- out of the admitted claim of Rs.2,33,73,380/- against the Claim Received for Rs.27,45,02,639/- with 91 % waiver. It is relevant to note that the settlement proposed by the Resolution Applicant to the Operational Creditors is higher than the amount payable in case of Liquidation of the Corporate Debtor under Section 53 of I&B Code, 2016.
- (v) The Resolution Applicant has proposed to pay the Sole Financial Creditor, an aggregate amount of Rs.8,50,00,000/- as against their admitted claim of Rs.16,00,84,870/- with a 46.90% waiver. The proposed amount will be payable to the Financial Creditor as Upfront Payment to a tune of Rs.4,50,00,000/- within 30 days from the Effective date and Deferred Payment to a tune of Rs.4,00,00,000/- within a

period of 90 days along with interest of 9% p.a from the effective date but payable at the end of 90 days.

- (vi) The Resolution Applicant has proposed to infuse Rs.1,10,23,379/- progressively over a period of 90 days to facilitate working capital requirements for the operations of the Corporate Debtor. The above infusion shall be made by way of debt which shall be arranged without any obligation on the members of the CoC.

B. Implementation and Monitoring Committee ("IMC"):

- (i) Upon approval of the Resolution Plan by this Tribunal, the Implementation and Monitoring Committee will be constituted with three persons viz., (1) Existing Resolution Professional of the Corporate Debtor to act as the Chairperson of the IMC, (2) Representative of the Financial Creditor and (3) Representative of the Resolution Applicant. The role of IMC shall be limited to supervise the implementation and oversee compliance of the Resolution Plan by the Resolution Applicant.
- (ii) All fees payable to the IMC including any legal costs which have arisen or may arise out of or in connection with the CIRP of the Corporate Debtor shall be met out of the accruals of the Corporate Debtor and if it is not sufficient, the same shall be payable by the Resolution Applicant as consideration for fulfilling their respective obligations during the Implementation Period.

C. Mechanism regarding Management and Control of the affairs of the Corporate Debtor post the Effective Date & Shareholding Pattern:

- (i) After the Effective Date, the implementation of the Resolution Plan will be supervised by the IMC. The management and control of affairs of the Corporate Debtor will be vested with the Board of Directors appointed by the Resolution Applicant, pursuant to completion of following payments by the Resolution Applicant.
- a) Payment of CIRP Costs and Expenses as agreed in the Resolution Plan.
 - b) Payment to Employees and Operational Creditors, as agreed in the Resolution Plan.
 - c) Upfront payment against Admitted Financial Creditor Debt to the Sole Financial Creditor, as agreed in the Resolution Plan.
- (ii) The Resolution Applicant has proposed to induct Mr. Anil Jain and Mr. Shailesh Rajagopalan as the Directors of the Corporate Debtor. However, the Resolution Applicant shall be at liberty to change the Proposed Directors and / or appoint any person as Director of the Corporate Debtor, as may be required.



Name Allotment for Shares	Number of Shares	Equity Shares	% of stake
M/s. Sherisha Technologies Private Limited or its Promoters	92,63,508	9,26,35,080	99.99 %
Anil Jain	1	10	0.01 %
Total	92,63,509	9,26,35,090	100 %

D. Performance Security:

The Resolution Applicant is required to provide a Performance Bank Guarantee for an amount equivalent to 10% of Resolution Debt Amount within 7 Business Days of the date of approval by the CoC. However, in the present case, the Resolution Applicant has provided an email on 07.09.2021 to the Applicant Resolution Professional that the required Performance Bank Guarantee shall be furnished by 14.09.2021.

E. Concessions, Reliefs and Dispensations:

The Resolution Applicant in Annexure 6B of the Resolution Plan has sought a total of 33 Relief and concessions from this Adjudicating Authority so as to implement the Resolution Plan. These are ordered as follows;

SL. No.	RELIEF / CONCESSIONS SOUGHT FOR	ORDERS THEREON
1	<p>The carrying amount of the debts, loans, liabilities, dues to financial creditor or operational creditors, and provisions for liabilities of any nature whatsoever, which are extinguished, cancelled, waived or remitted pursuant to this Resolution Plan, shall be de-recognized in the books of accounts of the Corporate Debtor by credit to 'Profit & Loss Account'. The accounting treatment set out in this Resolution Plan shall be an integral part of the resolution plan.</p>	<p>Granted</p>
2	<p>The carrying value of the assets shall be restated at their realizable value (simultaneous to the above restructuring of liabilities) including but not limited to the following:</p> <ul style="list-style-type: none"> i. The Trade receivables to the extent not receivable shall be written off to the Profit & Loss Account as Bad Debts. ii. The other current assets (including the Inventory and other receivables) shall be analyzed to determine the assets that are not recoverable or the realizable value of such assets shall be determined and the difference between the carrying value and realizable value, shall be provided for/ written off to the Profit & Loss Account. iii. The realizable value of the Investments & Long-term loan advances to be estimated and the difference between the carrying value and realizable value, shall be provided for / written off in the Profit & Loss Account. iv. The residual estimated useful life of the Fixed Assets shall be evaluated and revaluation of the fixed assets shall be undertaken. 	<p>Granted</p>
3	<p>The Resolution Applicant intends to amend the constitutional documents of the Corporate Debtor, dissolution of existing Board of Directors and appointment of new Directors and effect transfer of existing shares for Nil Consideration as part of this Resolution Plan, The Corporate Debtor will file the Order of Approval of Resolution Plan by Hon'ble NCLT with the RoC and all the necessary approvals w.r.t afore-mentioned shall be deemed to be granted by the ROC / MCA and other authorities. Additionally, any obligation arising out of past non-compliance or transfer of shares shall be waived off and no consequent actions shall be</p>	<p>Granted, subject to the provisions of IBC, 2016 and other Applicable laws.</p>

	<p>taken against the Corporate Debtor as well as the Resolution Applicant. Additionally, the Resolution Applicant reserves its rights to go for a further issue / preferential allotment / private placement/ to infuse funds through any other instrument as supported by the constitutional documents to comply with relevant applicable laws.</p>	
4	<p>The Resolution Applicant shall have the right to renegotiate the terms of all agreements/contracts or terminate all agreements/contracts executed by the Corporate Debtor with any third parties, unless specifically mentioned otherwise in this resolution plan, in its sole discretion, without any liabilities, penalties or other onerous obligations, whether past, present or future, accruing to the Corporate Debtor or the Resolution Applicant. It is clarified that such third parties will not have the right to terminate their agreements/contracts with the Corporate Debtor without the consent of the Corporate Debtor under control of the Resolution Applicant.</p>	<p>Granted, however the third party right cannot be circumscribed by the Resolution Applicant.</p>
5	<p>Owing to the non-availability of relevant records of the Corporate Debtor with the Resolution Professional, to the extent that any certificates, licenses and government approvals obtained or required to be obtained by the Corporate Debtor may have lapsed, expired, suspended, cancelled, revoked or terminated or the Corporate Debtor has certain non-compliances in relation thereto, all governmental authorities to provide relevant information/records relating to Corporate Debtor and at least I year, at request of Resolution Applicant, after the Effective Date in order for the Resolution Applicant to assess the status of these government approvals and to ensure that the Corporate Debtor is compliant with them without initiating any investigations, actions or proceedings in relation to such non-compliances since there is deficiency of information from the Corporate Debtor. All certificates, licenses and government approvals held by the Corporate Debtor, which expired on or prior to the Effective Date or within period of 1 year thereafter, shall be renewed / extended by the relevant governmental authorities, and the Corporate Debtor shall be permitted to continue to operate its business and assets in the manner operated prior to submission of this Resolution Plan until renewal / extension of</p>	<p>Granted</p>

	such licenses and approvals.	
6	The Relevant Authorities / Agencies shall provide automatic renewal of any of the lapsed Quality & regulatory approvals that the Corporate Debtor had obtained over the years prior to Effective Date, including but not limited to, from agencies like. Atomic Energy Regulatory Board (AERB) for selling & servicing of X-ray equipment, Bureau of Indian Standards (BIS) approvals for the products of the Corporate Debtor, 150-13485 quality approvals, & CE mark approvals for both the Corporate Debtor and its products registered earlier with these authorities.	Appropriate Authorities may grant since the renewal is necessary for re-operationalizing the activities of the Corporate Debtor.
7	Acquisition of the Corporate Debtor is subject to MEPZ-SEZ laws and regulations and the terms and conditions of lease agreement entered into with them by Corporate Debtor. Hence any outstanding dues to MEPZ viz., lease rent, etc. as on CIRP commencement date / approval of plan by AA, are to be paid by the Resolution Applicant.	Granted, subject to the provisions of IBC, 2016 and other Applicable laws.
8	Save as otherwise specifically provided in the Resolution Plan, all the financial claims against the Corporate Debtor and all pecuniary liabilities and obligations of the Corporate Debtor, whether present or future, arising out of: (i) business transactions of the Corporate Debtor; (ii) any litigation or proceedings (including litigations or proceedings pending before any judicial or regulatory authority) against the Corporate Debtor; and (iii) any orders against the Corporate Debtor passed by any judicial or regulatory authority shall stand abated, quashed and/or be disposed of, and be deemed to have been abated, quashed and/or disposed of, without any obligations, liabilities, or penalties to or on, the Corporate Debtor or the Resolution Applicant, and all obligations, whether past, present or future or contingent, of or accruing to, the Corporate Debtor or the. Resolution Applicant thereunder shall stand cancelled and waived by the other parties to the litigations.	Granted, subject to the provisions of IBC, 2016 and other Applicable laws.
9	Any cash balance/ receipts to the Corporate Debtor up to the date of the approval of the plan by the CoC will accrue to the benefit of the Financial Creditors. However, any receipts post the approval of the plan by the CoC shall accrue to the benefit of the Resolution Applicant.	Granted.

10	All the assets of the Corporate Debtor, including but not limited to deposits advances with Government authorities, security deposits, tender deposits and other deposits, shall vest under the complete control of the Resolution Applicant and the Resolution Applicant reserves the right to deal with the same as it deems fit post resolution of the Corporate Debtor.	Granted.
11	The existing personnel, and the previously employed key personnel of the Corporate Debtor including but not limited to directors, Chief Financial Officer, Company Secretary and other staff, shall cooperate as and when requested by the Resolution Applicant with regards to handover of all records / documents./ engineering drawings/ Service history of equipment / inspection protocols / information / manuals / certifications / approvals / process documents and other data of the Corporate Debtor and in liasoning with the relevant authorities/agencies, Further, the Resolution Professional shall, at the request of the Resolution Applicant, implead the Resolution Applicant in the application pending before Hon'ble NCLT, regarding non-cooperation from erstwhile management.	Not Granted.
12	<p>All the intellectual property rights of the Corporate Debtor, whether in India or outside India, including but not limited to any software, trademark, patents, brand name etc. shall deemed to vest with the Resolution Applicant upon resolution of Corporate Debtor.</p> <p>With respect to Share Purchase Agreement ("SPA") by the Corporate Debtor for acquisition and business transfer of Adonis Medical Systems Private Limited ("Seller") dated 4th April, 2015 as amended by Amendment to the Share Purchase Agreement dated 31st October, 2017 ("SPA Amendment"), an amount of 1NR 4,46,98,212 (India Rupees Four Crores Forty Six Lakhs Ninety Eight Thousand Two hundred and Twelve Only) towards purchase of 69,732 equity shares is pending to be made as on insolvency commencement date. Notwithstanding anything contained in the SPA and the SPA Amendment, the terms of the SPA shall continue to subsist and be effective pursuant to resolution of the Corporate Debtor and the Resolution Applicant shall be vested with all the rights as originally</p>	Granted, subject to the provisions of the Companies Act, 2013.

	bestowed upon the Corporate Debtor including but not limited to recourse against the Seller, and seeking specific performance on account of non-compliance / default / breach, under the SPA and the SPA Amendment, if any. The Resolution Applicant shall be at liberty to amend the SPA upon mutual discussion with the Seller, Further, the Resolution Applicant shall not liquidate/transfer/sell its shareholding in Seller unless complete settlement is affected to assenting financial creditor under the resolution plan.	
13	The Resolution Applicant shall undertake to review the past tax and regulatory compliance status of the Corporate Debtor and shall endeavour to complete the pending compliances to be undertaken.	Granted
14	Any amount lying in the Security Premium Account shall be allowed to 'be used in manner deemed' fit by the Resolution Applicant and the same shall be considered as deemed compliance of relevant laws. However, the same shall come to effect only upon the approval of the NCLT with respect to specific compliance to applicable laws.	Granted, subject to the provisions of the Companies Act, 2013 and other Applicable laws.
15	The entire shareholding of the Existing Shareholders shall be transferred as per the terms and conditions of this Resolution Plan. The Resolution Applicant proposes to make NIL payment towards full and final settlement/discharge of any liability of the Corporate Debtor towards the Existing Shareholders and there shall be no claim in future on the Reserves and Surplus of the Corporate Debtor by the Existing Shareholders on account of any reason whatsoever.	Granted in terms of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited</i>. 2021 SCC Online SC 313
16	The Central Board of Direct Taxes ("CBDT"), Central Board of Indirect Taxes and Customs ("CBIC") or any other relevant governmental authority to exempt the Resolution Applicant and the Corporate Debtor from the applicability of and payment of all Taxes under the Income Tax Act, 1961 (including Section 115JB), including any liability under the Minimum Alternate Tax which may arise on account of the transactions envisaged under the Resolution Plan either on the Resolution Applicant or the Corporate Debtor. Additionally, the Resolution Applicant shall be allowed to carry forward business losses for	This is for the CBDT, CBIC and other appropriate authorities to consider keeping in view the object of IBC, 2016

	<p>further period of 8 years and the unabsorbed depreciation, after taking over the Corporate Debtor under Income Tax Act, 1961 and the jurisdictional Principal Commissioner or Commissioner shall provide necessary relief. The Resolution Applicant shall be allowed to utilize MAT credit available under Income Tax Act and Input credit available in the books of the Corporate Debtor under the relevant GST Act and relevant authority shall provide relief as to said effect. Any relevant governmental authority shall exempt the Resolution Applicant and the Corporate Debtor from the payment of all Taxes, interest and penalties under the Income Tax Act, 1961, Central Excise Act, 1944, Customs Act, 1962, Central Sales Tax Act, 1956, Tamil Nadu General Sales Tax Act, 1959, Finance Act, 1994. Tamil Nadu Value Added Tax Act, 2006, Central Goods and Services Tax Act, 2017, Tamil Nadu Goods and Services Tax Act 2017 or Integrated Goods and Services Tax Act, 2017 or any other act including the various states' value added tax acts and any other indirect Tax laws on account of past non-compliances prior to Effective Date.</p>	
17	<p>The CBDT shall grant the following exemptions / waivers: (a) from applicability of Section 281 of the Income-tax Act, 1961 including obtaining no-objection certificate from income tax authorities in respect of all the pending proceedings and dues (including interest and penalty) of the Corporate Debtor arising for periods up to the Effective Date (including such proceedings and dues for periods prior to the Effective Date that may crystallize subsequent to the Effective Date). Further, CBDT shall restrict/ restrain from treating any transactions contemplated in this Resolution Plan as being void or non-compliant with any provisions of the Income-tax Act, 1961; (b) from all tax liabilities (including interest and penalty) and tax proceedings arising in respect of periods up to the Effective Date, including such liabilities/ proceedings for periods up to the Effective Date that may crystallize subsequent to the Effective Date in respect of on going or potential income tax litigations at all levels (c) from applicability of section 170 of the Income-tax Act, 1961, in the hands of Resolution Applicant, which deals with successor liability of Resolution Applicant in respect of outstanding tax liabilities of the Corporate Debtor, in respect of transactions arising as a result of giving effect to the Resolution Plan.</p>	<p>This is for the CBDT and other appropriate authorities to consider keeping in view the object of IBC, 2016</p>
18	<p>The collector of Stamps, Revenue Department, of any state government and the Ministry of Corporate Affairs to exempt the Resolution Applicant and the Corporate Debtor, from the levy of stamp duty and fees applicable in relation to</p>	<p>This is for the appropriate authorities to consider, keeping in view of the clean</p>

	this Resolution Plan and its implementation, including any stamp duty applicable on the acquisition of shares by the Resolution Applicant.	slate principle envisaged under IBC, 2016.
19	The Resolution Applicant or the Corporate Debtor shall have no obligation against unpaid dividends, if any, lying in the books as on the insolvency commencement date and waiver of such unpaid dividend shall be deemed to be compliance of requirements of Companies Act, 2013.	Granted
20	The relevant State Pollution Control Boards to approve renewal of the consents to establish / operate obtained by the Corporate Debtor under applicable provisions of the Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981.	This is for the appropriate authorities to consider, keeping in view of the clean slate principle envisaged under IBC, 2016.
21	All Governmental I Regulatory authorities to waive all past non-compliances of the Corporate Debtor under applicable laws, and the Corporate Debtor and the Resolution Applicant shall not be liable for any non-compliances under applicable laws for the period prior to the Effective Date. The relevant Government Authorities shall not initiate any investigations, enquiries, actions or proceedings in relation to any non-compliance with or breach of Applicable Law by the Corporate Debtor during the period prior to the Effective Date. Neither shall the Resolution Applicants, nor the Corporate Debtor, nor their respective directors, officers and employees appointed on and as of the Effective Date be liable for any violations, liabilities, penalties or fines with respect to or pursuant to the Corporate Debtor not having in place the requisite licenses and approvals required to undertake its business as per Applicable Law, or any non-compliances of Applicable Law by the Corporate Debtor	Granted in terms of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited</i>. 2021 SCC Online SC 313
22	Without prejudice to the above-mentioned provisions, the relevant Governmental Authorities to waive all past non-compliances of the Corporate Debtor prior to the Effective Date under any applicable law, including but not limited to provisions of the Companies Act, 2013, Companies Act, 1956, the Foreign Exchange Management Act, 1999 , Industrial Disputes Act, 1947, the Factories Act, 1948, Payment of Wages Act, 1936, Payment of Bonus Act, 1965, Employees Provident Funds and Miscellaneous Provisions Act, 1952, Employee State Insurance Act, 1948, Indian Contract Act, 1872, Carriers Act, 1865, Arbitration and Conciliation Act, 1996, Customs Act, 1962, the Foreign Exchange Management Act, 1999 and the relevant Shops and Establishment Acts, other Applicable legal enactments and any rules, circulars and regulations framed thereunder and other	This is for the CBDT, CBIC and other appropriate authorities to consider keeping in view the object of IBC, 2016

	Applicable Laws, State Professional Tax Acts, and Non-Compliances in relation to non-payment of any outstanding charges and dues by the Corporate Debtor (including stamp duty, registration fee and property Taxes).	
23	Since the Resolution Applicant does not have complete 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 I revoked / Terminated or the Corporate Debtor had committed non-Compliances in relation thereto. Accordingly, all relevant Governmental Authorities to provide reasonable time period not being less than I (one) year, as provided in the Code, after the Effective Date in order for the Resolution Applicant to assess the status of these Business-Permits and clear all defects and ensure that the Corporate Debtor is compliant with the terms of such Business Permits and Applicable Law, without initiating any investigations actions or proceedings or imposing any costs in relation to such Non-Compliances and permit the Resolution Applicant to continue to operate the businesses of the Corporate Debtor during this period.	Granted in terms of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.</i> 2021 SCC Online SC 313
24	All relevant Governmental Authorities (including, for the avoidance of doubt, the Enforcement Directorate and the Serious Fraud Investigation Office) to not attach, take any other action including initiating or continuing criminal proceedings against or in respect of the Corporate Debtor and its assets and properties under the Prevention of Money Laundering Act, 2002, Prevention of Corruption Act, 1988, the Companies Act, 2013, the Indian Penal Code or any other similar Applicable Law dealing with fraud, money laundering or any other economic offences in relation to non-compliances committed prior to the Effective Date.	Granted in terms of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited.</i> 2021 SCC Online SC 313
25	The Directorate General of Foreign Trade to waive all past Non-Compliances of the Corporate Debtor committed prior to Effective Date, in relation to any export obligations under the Foreign Trade Policy, 2015-20 and all outstanding liabilities of the Corporate Debtor (which have not been admitted by the Resolution Professional) in relation to such export obligations of the Corporate Debtor under the Export Promotion Capital Goods (EPCG) Scheme, to be unconditionally and irrevocably waived and extinguished.	This is for the appropriate authorities to consider
26	All Governmental Authorities to grant any relief, concession or dispensation as may be required for implementation of the transactions contemplated under the Resolution Plan in accordance with its terms and conditions.	Granted in terms of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons v.</i>

		Edelweiss Asset Reconstruction Company Limited. 2021 SCC Online SC 313
27	The Ministry of Corporate Affairs of the Government of India, the Registrar of Companies, Chennai and the Collector of Stamps, Revenue Department, Government of Tamil Nadu to waive all the past non-compliances of the Corporate Debtor in respect of the requirements under the Companies Act, 2013 and the rules and regulations thereunder.	This is for the concerned Governmental authorities to consider, keeping in view of the clean slate principle envisaged in IBC, 2016.
28	The relevant governmental authorities to waive all past non-compliances of the Corporate Debtor in relation to any delayed filing or non-filing of relevant mandatory forms or returns or any other documents, including any undertakings or acknowledgements to be filed in relation thereto, under Companies Act, 2013, Foreign Exchange Management Act, 1999, Income Tax Act, 1961 and any other Applicable Law. Nothing shall act in prejudice of the Resolution Applicant on account of delayed filings by the Corporate Debtor prior to resolution and the subsequent compliances by the Resolution Applicant shall be deemed to be performed within statutory timelines.	This is for the concerned Governmental authorities to consider, keeping in view of the clean slate principle envisaged in IBC, 2016.
29	The Resolution Applicant shall have the right to renegotiate the terms of all agreements or terminate all agreements executed by the Corporate Debtor with any third parties, in its sole discretion, without any additional liabilities, penalties or other onerous obligations accruing to the Corporate Debtor or the Resolution Applicant. It is clarified that such third parties will not have the right to terminate their agreements with the Corporate Debtor.	Granted, however the third parties right cannot be circumscribed by the Resolution Applicant.
30	Other than as set out herein, all the contracts executed by the Corporate Debtor which were valid and subsisting as on each of the insolvency commencement date in respect of the Corporate Debtor shall be renewed / extended.	Granted, subject to the provisions of IBC, 2016.
31	On and from the date of successful implementation of resolution plan by effecting full and final payment to the assenting Financial Creditor, all accounts of the Corporate Debtor shall stand regularized and their asset classification shall be classified as "standard" to the extent permitted under all Applicable Laws.	Granted
32	All agreements and arrangements between the Corporate Debtor and any Promoter Related Parties shall stand terminated without any additional liabilities, penalties or other onerous obligations accruing to the Corporate Debtor or the Resolution Applicant. It is clarified that such third parties will not have the right to terminate	Granted, however the third parties right cannot be circumscribed by the Resolution Applicant.

	their agreements with the Corporate Debtor.	
33	All incentives and benefits granted to the Corporate Debtor by any Governmental Authority to continue to remain valid and implementing this Resolution Plan will not entitle the relevant Governmental Authorities to withdraw such benefits and incentives.	Granted, subject to the provisions of IBC, 2016.

17. From the averments made in the Application as well as in Form-H as filed by the Resolution Professional in relation to the procedural aspects, the same seems to have been duly complied with. However, this Authority is duty bound to examine the Resolution Plan within the contours of Section 30(2) of the IBC, 2016. A comparison vis-à-vis with the Mandatory compliance under the IBC and the Compliance made under the Resolution Plan is captured hereunder;

MANDATORY COMPLIANCE UNDER IBC CODE AND REGULATIONS	COMPLIANCE UNDER RESOLUTION PLAN
S. 30(1) - Resolution Applicant to submit an affidavit stating that he is eligible under Sec.29A of the Code, 2016	The Affidavit of the Resolution Applicant (RA) is placed on record and the RP in Form H has certified that the RA has submitted an affidavit and the said affidavit is in order.
S. 30(2)(a) - Payment of Insolvency and Resolution cost in the manner specified by the Board	Clause 1 (a) of the Resolution Plan provides for the payment of CIRP costs and the same would be paid within 30 days from the Record date. The CIRP Cost is arrived at ₹ 2,62,53,399/-.
S. 30(2)(b) - Payment of debts of Operational Creditors in such manner as may be specified by the Board, which shall not be less than the amount to be paid to the Operational Creditors in the event of a liquidation of the Corporate Debtor under Sec. 53	Resolution Applicant has stated in Clause 1(a) that as per the Plan the Operational Creditors are being paid Rs.20,00,00/- the amount paid to the Operational Creditor is higher than the amount payable in case of Liquidation and the Workmen are being paid Rs.1,00,00,000/- with

	53.80% wavier of their admitted claim and the same would be paid within 30 days from the Record date.
<p>Reg. 38(1) - Resolution Plan identifies specific source of funds that will be used to pay the</p> <p>(a) Insolvency Resolution Process cost?</p> <p>(b) Liquidation value due to Operational Creditors?</p> <p>(c) Liquidation value due to dissenting financial creditors</p>	Annexure 6A of the Resolution Plan manifest that the total Amount provided under the Resolution Plan for a sum is Rs.13,42,76,778/- and the Resolution Applicant proposes to pay the sum of Rs.9,42,76,778/- crore in the form of Term Loan / Working capital Loan and the balance Rs.4,00,00,000/- out of its Own Fund.
<p>Reg. 38(1A) - Resolution Plan shall include a statement as to how it has dealt with the interest of all the stakeholders, including financial creditors and operational creditors of the Corporate Debtor</p>	Clause 1 in Annexure 6A provides for payments to be made to all the stakeholders of the Corporate Debtor and the same shall be paid within 30 days from the Record date.
<p>S. 30(2)(c) - Management of the affairs of the Corporate Debtor after approval of the Resolution Plan</p>	Clause 1(c) of the Resolution Plan deals with the Management and Control of the Corporate Debtor after the approval of the Resolution Plan
<p>S. 30(2)(d) - Implementation and Supervision of the Resolution Plan</p>	Clause 1(b) of the Resolution Plan deals with the Implementation of the Resolution Plan in a time bound manner
<p>Reg. 38(2) - Resolution Plan shall provide:</p> <p>a) term of plan and its implementation schedule</p> <p>b) management and control of the business of the Corporate Debtor during its term;</p> <p>c) it has provisions for effective implementation</p> <p>d) it has provisions for approval required and the timeline for the same; and</p> <p>e) the Resolution applicant has the capability to implement the Resolution Plan.</p>	Clause 1 of the Resolution Plan deals with the Term, Implementation Schedule and Monitoring of the Resolution Plan
<p>Reg. 38(3) - Resolution Plan shall demonstrate:</p> <p>a) it address the cause of default</p> <p>b) it is feasible and viable</p> <p>c) it has provisions for effective</p>	Clause 1(f) of the Resolution Plan deals with the causes of default of the Corporate Debtor and the

<p>implementation</p> <p>d) it has provisions for approval required and the timeline for the same</p> <p>e) the resolution applicant has the capability to implement the resolution plan</p>	<p>operational Viability of the project by the Resolution Applicant and its capability to implement the Resolution plan</p>
<p>S. 30(2)(e) - Does not contravene any of the provisions of the law for the time being in force</p>	<p>Clause 1(g) of the Resolution plan is an Undertaking by the Resolution Applicant wherein it has been stated that the Resolution Plan is not in contravention with the provisions of any Applicable Laws.</p>
<p>S. 30(4) - Committee of Creditors approve the Resolution Plan by not less than 66% of voting share of Financial Creditors, after considering its feasibility, viability and such other requirement as specified by the Board</p>	<p>The CoC, in its 11th meeting has approved the Resolution Plan with 100% voting.</p>

18. In so far as the approval of the Resolution Plan is concerned, this Authority is not sitting on an appeal against the decision of the Committee of Creditors and this Authority is duty bound to follow the much celebrated Judgment of the Supreme Court in the matter of **K. Sashidhar –Vs– Indian Overseas Bank 2019 SCC Online SC 257**, wherein in para 19 and 62 it is held as follows;

“19.....In the present case, however, our focus must be on the dispensation governing the process of approval or rejection of resolution plan by the CoC. The CoC is called upon to consider the resolution plan under Section 30(4) of the I&B Code after it is verified and vetted by the resolution professional as being compliant with all the statutory requirements specified in Section 30(2).

62.In the present case, however, we are concerned with the provisions of I&B Code dealing with the resolution process. The dispensation provided in the I&B Code is entirely different. In terms of Section 30 of the I&B Code, the decision is taken collectively after due negotiations between the financial creditors who are constituents of the CoC and they express their opinion on the proposed resolution plan in the form of votes, as per their voting share. In the meeting of the CoC, the proposed resolution plan is placed for discussion and after full interaction in the presence of all concerned and the Resolution Professional, the constituents of the CoC finally proceed to exercise their option (business/commercial decision) to approve or not to approve the proposed resolution plan. In such a case, non-recording of reasons would not per-se vitiate the collective decision of the financial creditors. The legislature has not envisaged challenge to the "commercial/business decision" of the financial creditors taken collectively or for that matter their individual opinion, as the case may be, on this count."

19. Further, the Hon'ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steels –Vs– Satish Kumar Gupta & Ors.** in *Civil Appeal No. 8766 – 67 of 2019* at para 42 has held as follows;

42.Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of Section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and Section 32 read with Section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in *K. Sashidhar (supra)*.

20. It is also seen that a against the Liquidation value of Rs.9,93,41,544/-, the Resolution Applicant proposes to pay a sum of Rs.13,42,76,778/-, which is much more than the Liquidation value.



21. Thus, the Resolution Plan is hereby **approved** and is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect and the "Moratorium" imposed under section 14 of IBC, 2016 shall not have any effect henceforth. 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. Certified copy of this Order be issued on demand to the parties concerned, upon due compliance. Liberty is hereby granted for moving any Miscellaneous Application, if required, in connection with implementation of this Resolution Plan. That in respect of stepping by the New Promoters/Resolution Applicant into the shoes of the erstwhile Company and taking over the business, the provisions of Companies Act, 2013 shall be applicable and because of this reason a copy of this Order is to be submitted in the Office of the Registrar of Companies, Chennai.

22. The Resolution Professional has further directed to hand over all records, premises / documents to Resolution Applicant to finalise the further line of action required for starting of the operation as contemplated under the Resolution Plan. The Resolution Applicant shall have access to all the records premises /



documents through Resolution Professional to finalise the further line of action required for starting of the operation.

23. In relation to the IA(IB)/214/2021 filed by one Mr. S.Dillibabu under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, seeking to direct the IRP to release the property leased to the Corporate Debtor under the lease deed dated 01.07.2017 situated at No.DP 56, 3rd Main Road, Sidco Industrial Estate, Thirumudivakkam, Chennai - 600044; and the IA(IB)/112/2021 filed by Mr.Arun Kaul and another sought directions for the performance of the Shareholder Agreement between the Corporate Debtor and the Applicants therein and to pay fourth tranche outstanding amount to the Applicants therein and to order a transfer of land and building mentioned under Schedule II of the agreement filed in application in IA(IB)/112/2021, in favour of the applicants.

24. The Learned Counsels appeared for the above Applicants in IA(IB)/112/2021 and IA(IB)/214/2021, on 13.12.2021 hearing, made a submissions that their claims are covered under the Resolution Plan and it was recorded on the interim order of this Tribunal dated 13.12.2021.

25. In view of the above submissions the Applications IA(IB)/112/2021 and IA(IB)/214/2021 filed by Mr. S.Dillibabu &

Ors and Mr.Arun & Ors stands **disposed of** and the **IA/888/2021** filed by the Resolution Professional for the approval of the Resolution Plan stands **allowed**. Consequently, the urgent hearing application **IA (IBC)/1142/2021** stands **closed**.

-Sd-

B. ANIL KUMAR
MEMBER (TECHNICAL)

-Sd-

Justice (Retd.) S. RAMATHILAGAM
MEMBER (JUDICIAL)

Gopishankar. D