

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-I
KOLKATA**

**I.A. (IB) No. 1455/KB/2023
in
CP (IB) No. 113/KB/2022**

*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:

Kilburn Office Automation Limited

... Corporate Applicant

And

In the matter of:

Kamal Nayan Jain, Resolution Professional of

Kilburn Office Automation Limited

... Applicant

Date of pronouncement: 26 February 2024

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (via hybrid mode):

For the Applicant/RP

Mr. Shaunak Mitra, Advocate

Mr. Kamal Nayan Jain, RP

ORDER

Per: Balraj Joshi, Member (Technical)

1. This Court convened through hybrid mode.

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Preliminary

2. I.A. (IB) No. 1455/KB/2023 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 filed by Mr. Kamal Nayan Jain, Resolution Professional of **Kilburn Office Automation Limited [CIN: L27106WB1980PLC033140]** 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 **Kilburn Office Automation Limited (“Corporate Debtor”)**.
4. The underlying Company Petition in C.P. (IB) No. 113/KB/2022 was filed by Kilburn Office Automation Limited, the Corporate Debtor, to initiate Corporate Insolvency Resolution Process (“**CIRP**”), under section 10 of the Insolvency and Bankruptcy Code 2016, which was admitted *vide* order dated 02 November 2022¹.
5. Initially, Mr. Kamal Nayan Jain, Regn. No. IBBI/IPA/P00029/2016-17/10065 was appointed as the Interim Resolution Professional (“**IRP**”). At the 1st meeting of the CoC held on 30 November 2022, the CoC resolved to appoint Mr. Kamal Nayan Jain, as the Resolution Professional.

Constitution of CoC

6. The IRP made public announcement on 05 November 2022 in *Business Standard (English) (Kolkata Edition) and EkDin (Bengali) (Kolkata Edition)* newspapers regarding initiation of Corporate Insolvency

¹ Annexure A at Pp. 26-31

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Resolution Process and called proof of claims from the financial and operational creditors, workers and employees of the corporate debtor in the specified forms. The last date of submission of claims was 16 November 2022.

7. The CoC was constituted on 25 November 2022 with one Financial Creditor i.e. Minolta Finance Limited having 100% voting share. A report on the constitution of the CoC, was filed before the Adjudicating Authority on 25 November 2022. The list of creditors was uploaded in the IBBI website.
8. The Applicant states that a total of nine CoC meetings have been held during CIRP period, as follows:

Particulars	Date of the CoC Meeting
1 st CoC meeting	30.11.2022
2 nd CoC meeting	28.12.2022
3 rd CoC meeting	28.02.2023
4 th CoC meeting	17.03.2023
5 th CoC meeting	23.03.2023
6 th CoC meeting	04.05.2023
7 th CoC meeting	16.06.2023
8 th CoC meeting	29.07.2023
9 th CoC meeting	09.08.2023

Collation of claims

9. The amounts claimed and admitted are summarised below:

Amount in INR/Lakh

Nature of Creditor	Amount Claimed	Amount Admitted
Unsecured Financial Creditors [who do not have a right to vote]	4,95,47,451.30	4,95,47,451

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Nature of Creditor	Amount Claimed	Amount Admitted
Unsecured Financial Creditor	11,35,834/-	11,35,834/-
Operational Creditors – Statutory Authorities	25,28,138/-	9,03,304/-
Other Operational Creditors	6,63,82,227/-	1,80,40,956/-
Total	11,95,93,650/-	6,96,27,545/-

CIRP and compliances

10. The Applicant submits that in terms of the provisions of section 25(2)(h) of the Code read with regulation 36A(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, invitations in Form ‘G’ for Expressions of Interest (“**EoI**”) from potential resolution applicants was issued on three occasions i.e. on 30 December 2022 wherein the last date of receiving EoI was 14 January 2023, thereafter it was reissued on 01 March 2023 wherein the last date of receiving EoI was 16 March 2023 and was lastly reissued on 28 March 2023 in Business Standard (English) (Kolkata edition) and Ek Din (Bengali (Kolkata edition) newspapers wherein the last date of receiving EoI was 12 April 2023.
11. The notice was also published on the website of the Insolvency and Bankruptcy Board of India (**IBBI**).
12. The Applicant submits that in response to the invitation for EoI published on 28 March 2023, three EoIs were received. The provisional list of prospective Resolution Applicants was issued on 22 April 2023 and the Final list of eligible Resolution Applicants was issued on 08 May 2023. The RP then shared the Information Memorandum, Evaluation Matrix and Request for Resolution Plan (**RFRP**) with the Prospective Resolution Applicants on 12 May 2023.

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13. As per regulation 35(2) of the CIRP Regulations, after receipt of the Resolution Plan, the RP informed the fair value and liquidation value of the Corporate Debtor to the CoC.

Evaluation and voting

14. The Resolution Professional received two Resolution Plans from Nakshatra Corporate Advisors Limited and Candid Resources Limited. The Resolution Plans were presented by the Resolution Professional before the CoC and after due discussions the Resolution Applicants were requested to revise their Resolution Plans. Candid Resources Limited submitted their revised Resolution Plan and Nakshatra Corporate Advisors Limited submitted to consider the Resolution Plan submitted on 11 June 2023 as the final plan.
15. In the 9th CoC meeting held on 09 August 2023, the CoC deliberated on the feasibility and viability of the Resolution Plans and both the Resolution Plans were put for physical voting and the voting concluded on 09 August 2023 and the Resolution Plan of Candid Resources Limited was approved by 100% voting share². Hence, Candid Resources Limited having CIN: U74140DL2005PTC142848, was confirmed as the Successful Resolution Applicant by the CoC.
16. The Letter of Intent was issued to the Successful Resolution Applicant on 11 August 2023³ which was unconditionally accepted by the Resolution Applicant.
17. In accordance with regulation 36B(4A) of the CIRP Regulations, the Successful Resolution Applicant has deposited the Performance Bank Guarantee of Rs10,00,000/- (Rupees Ten Lakh only) in the on 12 August 2023⁴.

² Page 70

³ Annexure f @ Pp. 39-43

⁴ Annexure G @ Pg. 76

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Compliance of the approved Resolution Plan with various provisions

18. The Applicant has filed a Compliance Certificate dated 12 August 2023 in prescribed form, i.e., Form 'H'⁵ in compliance with regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
19. 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:

Clause of s.30(2)	Requirement	How dealt with in the Plan
1.	Plan must provide for payment of CIRP cost in priority to payment of other debts of CD in the manner specified by the Board.	Clause 7.2 at Page 11 of the Resolution Plan.
2.	(i) Plan must provide for payment 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 payment 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;	Clause 7.3. at Page 12 of the Resolution Plan. Clause 7.3. at Page 12 of the Resolution Plan.

⁵ Annexure H @ Pp. 77-84

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Clause of s.30(2)	Requirement	How dealt with in the Plan
	(iii) provides for payment of debts of financial creditors who do not vote in favour of the resolution plan, in such manner as may be specified by the Board.	Not applicable to the Resolution Plan.
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Clause 19 of Part F at Page 31 and Clause 20.6 at Pages 35-36 of the Resolution Plan.
(d)	Implementation and Supervision	Clause 19 of Part F at Page 31 and Clause 23 of Part G Pages 38-39 of the Resolution Plan.
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Paragraph 3(b) of the Supplementary Affidavit affirmed on 16 January 2024 ⁶ .
(f)	Conforms to such other requirements as may be specified by the Board.	Paragraph 3(b) of the Supplementary Affidavit affirmed on 16 January 2024 ⁷ .

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: -	

⁶ Filed subsequent to the clarification sought on 22.12.2023

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Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
(a) transfer of all or part of the assets of the corporate debtor to one or more persons;	Not proposed in the Resolution Plan.
(b) sale of all or part of the assets whether subject to any security interest or not;	Not proposed in the Resolution Plan.
(ba) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	Not proposed in the Resolution Plan.
(c) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	Clause 20.2. at Pages 32-34 of the Resolution Plan.
(ca) cancellation or delisting of any shares of the corporate debtor, if applicable;	Clause 20.2. at Pages 32-34 of the Resolution Plan.
(d) satisfaction or modification of any security interest;	Clause 7.4. at Pages 15-18of the Resolution Plan.
(e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Not proposed in the Resolution Plan.
(f) reduction in the amount payable to the creditors;	Clause 14 of Part D at Page 24 of the Resolution Plan.
(g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	Not proposed in the Resolution Plan.

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Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
(h) amendment of the constitutional documents of the corporate debtor;	Clause 20.2 at Page 33 and the Resolution Plan.
(i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	Not proposed in the Resolution Plan.
(j) change in portfolio of goods or services produced or rendered by the corporate debtor;	Not proposed in the Resolution Plan.
(k) change in technology used by the corporate debtor; and	Not proposed in the Resolution Plan.
(l) obtaining necessary approvals from the Central and State Governments and other authorities.	Clause 20.7 at Page 36 of the Resolution Plan.
(m) sale of one or more assets of corporate debtor to one or more successful resolution applicants submitting resolution plans for such assets; and manner of dealing with remaining assets.	Not proposed in the Resolution Plan.

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

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Ref to relevant Reg.	Requirement	How dealt with in the Plan
38(1a)	The amount payable to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.	Clause 7.3 at Page 13 of the Resolution Plan.
38(1b)	The amount payable to the financial creditors, who have right to vote and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.	Not applicable to 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 7 at Pages 11-19 and Clause 14 of Part D at Page 24 of the Resolution Plan.
38(1B)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.	Paragraph 3(a) of the Supplementary Affidavit affirmed on 16 January 2024 ⁸ .
38(2)	A resolution plan shall provide:	

⁸ Filed subsequent to the clarification sought on 22.12.2023

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Ref to relevant Reg.	Requirement	How dealt with in the Plan
	(a) the term of the plan and its implementation schedule;	Clause 23 of Part G at Pages 38-39 of the Resolution Plan.
	(b) the management and control of the business of the corporate debtor during its term; and	Clause 19 of Part F at Page 31 of the Resolution Plan.
	(c) adequate means for supervising its implementation.	Clause 19 of Part F at Page 31 of the Resolution Plan.
	(d) Provides for the manner in which proceedings in respect of avoidance transactions, if any, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed.	Not Applicable to the Resolution Plan.
38(3)	A resolution plan shall demonstrate that –	
	(a) it addresses the cause of default;	Clause 2.2. at Page 7 and Clause 13.1 at Page 22 of the Resolution Plan.
	(b) it is feasible and viable;	Clause 13.2 at Pages 22-23 of the Resolution Plan.
	(c) it has provisions for its effective implementation;	Clause 23 of Part G at Pages 38-39 of the Resolution Plan.

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Ref to relevant Reg.	Requirement	How dealt with in the Plan
	(d) it has provisions for approvals required and the timeline for the same; and	Clause 24.3 at Page 39 of the Resolution Plan.
	(e) the Resolution Applicant has the capability to implement the resolution plan.	Clause 14 in Part D at Page 24 of the Resolution Plan.

20. The Resolution Applicant has submitted affidavit of eligibility under section 29A of the Code.

Details of Resolution Plan/Payment Schedule

21. The relevant information with regard to the amount admitted and the amount proposed to be paid by the Successful Resolution Applicant, *i.e.*, *Candid Resources Limited*, under the said Revised Resolution Plan on 02 August 2023 is tabulated hereunder:

Sr. No.	Class of Creditors	Amount admitted as at 25.07.2023	Proposed Settlement Amount	%
1.	CIRP Cost	12,70,716/-	15,75,000/-	
2.	Unsecured Financial Creditor [Minolta Finance Limited]	11,35,834/-	10,00,000/-	88.04%
3.	Unsecured Financial Creditor [Shree Durga Agencies Limited (Related Party)]	4,95,47,451/-	50,000/-	0.10%

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4.	Operational Creditors [Statutory Dues]	9,03,304/-	4,74,137/-	18.75%
5.	Operational Creditors [others]	1,80,40,956/-	1,25,863/-	0.19%
6.	Capex or working capital	---	17,75,000/-	---
	TOTAL	7,08,98,261	50,00,000	--

*Any further changes into CIRP cost will be adjusted with proposed payment for settlement to Financial Creditors with the total settlement amount of INR 32,25,000 remaining the same.

27. All the payments shall be made within 60 days from the Effective Date. The Resolution Plan defines “**Effective Date**” as “*the date of approval of this Plan by the ADJUDICATING AUTHORITY & certified true copy of the approval order and plan provided by the RP*”.

Relinquishment/Waiver of liabilities and Approvals

28. 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 Resolution Applicant submitted a undertaking on 22 November 2023, that in the event the aforesaid reliefs, concessions and dispensations are not granted, the same will not have a bearing on the successful implementation of the Resolution Plan.

Sr. No.	Relief, concessions and approvals sought
<u>Consents and approvals, authorizations etc</u>	
1.	Upon approval of this Resolution Plan by the ADJUDICATING AUTHORITY, all actions stated in this Resolution Plan shall be deemed to be approved to make the Resolution Plan effective. Accordingly, any action or implementation of this Resolution Plan shall not be a ground for termination of any consents, approvals, licenses, concessions, authorisations, permits or the like that has been granted to the Corporate Debtor or for which the Corporate Debtor has made an application for renewal or grant

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Sr. No.	Relief, concessions and approvals sought
Licenses/ Approvals/Contractual Rights and Benefits	
2.	The Resolution Applicant has assumed that upon approval of this Resolution Plan by the ADJUDICATING AUTHORITY, all subsisting consents, licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled or accustomed to (whether applied for renewal by the Corporate Debtor or not), shall, notwithstanding any provision to the contrary in their terms, be deemed to continue without disruption for the benefit of the Corporate Debtor for a period of 3 (three) years.
3.	For the avoidance of doubt, it is hereby clarified that all consents, licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled or accustomed to, which have expired as of the Completion Date, shall be deemed to continue without disruption for the benefit of the Corporate Debtor for a period of 12 months or until renewed by the relevant authorities, whichever is later. Without any liability for the non-compliance during the time specified above, the Resolution Applicant undertakes to cause the Corporate Debtor to expeditiously identify such expired consents, licenses, approvals, rights, entitlements granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled or accustomed to, evaluate the steps required to address the same and take steps to remedy the same to the extent practically possible
4.	The Resolution Applicant has assumed that upon approval of this Resolution Plan by the ADJUDICATING AUTHORITY, all essential services required by the Corporate Debtor to continue operations shall be restored to the Corporate Debtor by the relevant authorities.
5.	The Resolution Applicant has also assumed that upon approval of this Resolution Plan by the ADJUDICATING AUTHORITY, any claims by any person (whether admitted or not, due or contingent, asserted or unasserted, crystallised or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, present or future) against the Corporate Debtor accruing due to the commencement or pendency of insolvency proceedings against the Corporate Debtor, whether arising under the terms of subsisting consents, licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate

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Sr. No.	Relief, concessions and approvals sought
	Debtor or any contractual arrangements entered into by the Corporate Debtor, shall, notwithstanding any provision to the contrary in their terms, stand extinguished without any recourse.
<u>Liability for past actions or omissions</u>	
6.	The Resolution Applicant will acquire control over the Corporate Debtor pursuant to the order of the ADJUDICATING AUTHORITY and not pursuant to the usual acquisition process which would ordinarily include a detailed due diligence and representation, warranties and indemnities in relation to the affairs of the Corporate Debtor from its existing promoters. Therefore, the Resolution Applicant may take some time to discover all the non-compliances that may exist in relation to the Corporate Debtor on the date of acquisition of control by the Resolution Applicant over the Corporate Debtor. As such the Resolution Applicant may take some time to identify such non-compliances and to address them.
7.	In light of this, the Resolution Applicant and the Corporate Debtor shall have immunity from any actions and penalties (of any nature) under any laws for any non-compliance of laws in relation to the Corporate Debtor or by the Corporate Debtor, as well as with the terms of any agreement or arrangement entered into by the Corporate Debtor. Without any liability for the aforesaid non-compliance for the past period before the Completion Date, the Resolution Applicant shall endeavor to cause the Corporate Debtor to identify such non-compliances, evaluate the steps required to address such non-compliances and take steps to remedy such non-compliances to the extent practically possible. The Resolution Applicant and the Corporate Debtor shall be entitled to apply to and approach the ADJUDICATING AUTHORITY for relief for continued implementation of the approved Resolution Plan before or after any coercive action is taken against the Corporate Debtor or the Resolution Applicant, especially in view of the limited due diligence offered to the Resolution Applicant.
8.	This Resolution Plan will be implemented pursuant to an order of the ADJUDICATING AUTHORITY, and all actions stated in this Resolution Plan shall be deemed to be approved by the ADJUDICATING AUTHORITY. Accordingly, any action or implementation of this Resolution Plan shall not be a ground for termination of any contracts entered into by the Corporate Debtor by the counter party(ies) to such contracts.
<u>Inquiries, Investigations etc</u>	
9.	Upon approval of this Resolution Plan by the ADJUDICATING AUTHORITY, all dues, penalties, strictures, enforcement orders, under the provisions of Securities Contract Regulation

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	<p>Act(SCRA), Securities Contract Regulation Rules(SCRR), SEBI Act, rules, regulations & bye laws , whether imposed & admitted or not, due or contingent, asserted or unasserted, crystallised or uncrystallised, known or unknown, disputed or undisputed, present or future, in relation to any period prior to the Completion Date, shall stand extinguished and the Corporate Debtor shall not be liable to pay any amount against such demand. All proceedings pending in case of the Corporate Debtor, on the date of the order of ADJUDICATING AUTHORITY relating to the period prior to that date, shall stand terminated and all consequential liabilities, if any, stand abated and should be considered to be not payable by the Corporate Debtor. All notices proposing to initiate any proceedings against the Corporate Debtor in relation to the period prior to the date of ADJUDICATING AUTHORITY order and pending on that date, shall stand abated and should not be proceeded against. Post the order of the ADJUDICATING AUTHORITY, no re-assessment/ revision or any other proceedings under the provisions of the Securities Contract Regulation Act (SCRA), Securities Contract Regulation Rules(SCRR), SEBI Act, rules, regulations & byelaws shall be initiated on the Corporate Debtor in relation to period prior to acquisition of control by the Resolution Applicant and any consequential demand should be considered non-existing and as not payable by the Corporate Debtor. Any proceedings which were kept in abeyance in view of the insolvency process or otherwise shall not be revived post the order of ADJUDICATING AUTHORITY</p>
10.	<p>Upon approval of this Resolution Plan by the ADJUDICATING AUTHORITY, all inquiries, investigations and proceedings (including before the BIFR), whether civil or criminal, notices, causes of action, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings against, or in relation to, or in connection with the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future, (including without limitation, any investigation, action, proceeding, prosecution, whether civil or criminal, by the Central Bureau of Investigation, the Enforcement Directorate, the SFIO or any other regulatory or enforcement agency), in relation to any period prior to the IC Date or arising on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan, including in relation to the Bombay Stock Exchange and Securities and Exchange Board of India, shall stand withdrawn or dismissed and all liabilities or obligations in relation thereto, whether or not set out in the balance sheets of</p>

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	the Corporate Debtor or the profit and loss account statements of the Corporate Debtor, will be deemed to have been written off in full and permanently extinguished and the Corporate Debtor or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto notwithstanding any adverse order that may be passed in respect of the same by any authority prior to or after the Completion Date. Upon approval of this Resolution Plan by the ADJUDICATING AUTHORITY, all new inquiries, investigations, whether civil or criminal, notices, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings will be deemed to be barred and will not be initiated or admitted against the Corporate Debtor in relation to any period prior to the acquisition of control by the Resolution Applicant over the Corporate Debtor or on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan.
<u>Tax and stamp duty exemptions else as approved</u>	
11.	No income tax will be attracted / payable on account of capital gain arising out of transfer of shares/Assets/restructuring/waiver of liabilities/claim whatsoever in nature, envisaged in this Resolution Plan by/to Resolution Applicant, if any
12.	No income tax will be attracted / payable on account of capital gain arising out of transfer of non-core assets by Resolution Applicant to third party
13.	To allow the company to carry forward its unabsorbed business losses/Capital Loss, if any, related to period up to effective date (even if there is delay in filing the return) beyond statutory time limit of 8 assessment years under Section 72 of IT Act 1961 and set off in subsequent years; in as much as in calculation of the period of limitation of 8 years under section 72(3) of Income Tax Act for carry forward of losses, the years during which the net worth remained negative, be excluded.
14.	Credit in respect of minimum alternate tax paid by the Corporate Debtor before the effective Date shall continue with the Corporate Debtor on a going concern basis and shall not be revoked on account of change of management and control on the completion of the Transaction.
15.	CD and the RA shall be granted exemption from all taxes (including income tax and Minimum Alternate Tax (MAT) liability or consequences, including interest, fine, penalty, etc., due and payable by the CD for the period up to the Effective Date and to the Resolution Applicant and its shareholders on account of various steps as proposed in the Resolution Plan, including but not limited to liabilities, if any {under section 41

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Sr. No.	Relief, concessions and approvals sought
	<p>(1), Section 56, Section 50CA, Section 43, Section 43 B, Section 28, Section 115 JB (since in case of restructuring of debt of RA with the CD, the write off of the book value of the debt of FCs and OCs in books of CD is in excess of the settlement/restructured amount; MAT provisions may get triggered. The MAT liability (if arises) shall be unviable for the implementation of this Resolution Plan and thus the CD shall be exempt from MAT Liability u/s 115JB of the Income Tax Act, 1961) and Section 79 of the Income Tax Act, 1961 or due to write back/write off of liabilities in the books of accounts of CD, levies, fees, transfer charges, transfer premiums, and surcharges that arise from or related to implementation of resolution plan without any impact on brought forward tax and book loss / depreciation, since payment/ levy on these charges may make the Resolution Plan unviable.</p>
16.	<p>The requirement of obtaining a no objection certificate under section 281 of the Income Tax Act, 1961 and the provisions of taking over its predecessor's tax liability under section 170 of the Income Tax Act shall not be applicable. Further, the transaction shall not be treated as void under section 281 of the Income Tax Act, 1961 for any claims in respect of tax or any other sum payable by the Corporate Debtor.</p> <p>Upon approval of the Resolution Plan by the NCLT, all taxes, cess, levies, and interest/ penalties thereon; which are due or payable for the period upto the Effective Date as well as taxes/ interest/ penalties for non-compliances, breaches and defaults of CD for the period prior to the Effective Date (including but not limited to those relating to tax authorities including Property Tax, GST, VAT, Service Tax, Excise Duty, Custom Duty or any other tax as applicable to the CD or due to the acquisition of control of the CD by the RP/SPV/OP), RERA, FEMA (if applicable), PF, ESI), shall be deemed to be waived by the concerned Governmental Authorities other than those specifically stated to be paid under this resolution plan. Immunity shall be deemed to have been granted to CD from all proceedings and penalties under all Applicable laws for any non-compliances for the period prior to the Effective Date and no interest/panel implications shall arise due to such non-compliance/default/breach in relation to any period prior to Effective Date. This includes, without limitation, waiver/extinguishment of any penalties / interests / charges by</p>

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Sr. No.	Relief, concessions and approvals sought
	whatsoever named called in relation to any period up to Effective Date
<u>Anti-Corruption Provisions and Immunity</u>	
17.	As the Resolution Applicant will acquire control over the Corporate Debtor pursuant to the order of the ADJUDICATING AUTHORITY and not pursuant to the usual acquisition process which would ordinarily include a detailed due diligence and representation, warranties and indemnities in relation to the affairs of the Corporate Debtor from its existing promoters, the Resolution Applicant may take some time to discover all the non-compliances that may exist in relation to the Corporate Debtor on the date of acquisition of control by the Resolution Applicant over the Corporate Debtor.
<u>Title in respect of property held by the Corporate Debtor</u>	
18.	The assets, titles, patents, copy rights, trademarks will be continue to be with the corporate debtors
<u>Effectiveness of this Resolution Plan</u>	
19.	This Resolution Plan shall come into effect on the date of approval of this Plan by the ADJUDICATING AUTHORITY (“Effective Date”).

Orders

29. On hearing the submissions made by the Resolution Professional, and perusing the record, we find that the Resolution Plan filed by **Candid Resources Limited** has been approved by the CoC 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 Resolution Professional and the Resolution Applicant for making the plan effective after approval by this Bench.
30. As stated in Clause 19 a) of Part F at Page 31 of the Resolution Plan, a committee consisting of the Resolution Professional, one member of the CoC and two nominee of the Resolution Applicant (“**Monitoring Agency**”) shall manage the Corporate Debtor until the new board

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appointment. Provided further that, fee of the resolution professional will be fixed at INR 25,000 for each meeting.

31. 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.
32. 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.
33. We have perused the reliefs, waivers and concessions as sought and as given in Clause 16 of Part E at Pages 25-29 of the Resolution Plan, in this regard, we refer to section 31 of the Code and rely upon the law laid down by the Hon'ble Supreme Court in *Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd*,⁹ 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.

The relevant part of the *Ghanashyam Mishra judgment(supra)* in this regard is given below:

61. All these details are required to be contained in the information memorandum so that the resolution applicant is aware, as to what are the liabilities, that he may have to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure, that the Corporate Debtor is revived and made a running establishment. The legislative intent of making the resolution plan binding on all the stake-holders

⁹ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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after it gets the seal of approval from the Adjudicating Authority upon its satisfaction, that the resolution plan approved by CoC meets the requirement as referred to in sub-section (2) of Section 30 is, that after the approval of the resolution plan, no surprise claims should be flung on the successful resolution applicant. The dominant purpose is, that he should start with fresh slate on the basis of the resolution plan approved.

62. This aspect has been aptly explained by this Court in the case of Committee of Creditors of Essar Steel India Limited through Authorised Signatory (supra).

“107. For the same reason, the impugned NCLAT judgment [Standard Chartered Bank v. Satish Kumar Gupta, 2019 SCC OnLine NCLAT 388] in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with “undecided” claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count.”

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34. We also place reliance on the recent judgement of Hon'ble High Court of Rajasthan in the matter of *EMC v. State of Rajasthan* wherein it has been *inter-alia* held that :

“Law is well-settled that with the finalization of insolvency resolution plan and the approval thereof by the NCLT, all dues of creditors, Corporate, Statutory and others stand extinguished and no demand can be raised for the period prior to the specified date.”

35. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.

36. With respect to the waivers sought in relation to guarantors, the judgment of *Lalit Kumar Jain v Union of India & ors*,¹⁰ 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.

37. In view of the above position of law, the Resolution Plan approved by CoC and being approved by this Adjudicating Authority shall be binding on the Corporate Debtor and other persons, authorities etc. as specified in section 31 of the Code.

38. 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.

¹⁰ 2021 SCC OnLine SC 396 decided on 21.05.2021.

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39. The Resolution Plan has to 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 and enabling the Corporate Debtor to stand on its feet again.
40. 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.
41. 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 and shall be read along with this order for implementation.** The Resolution Plan thus approved shall be binding on the Corporate Debtor and other stakeholders involved in terms of section 31 of the Code, so that revival of the Debtor Company shall come into force with immediate effect.
42. The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
43. 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.
44. Liberty is hereby granted for moving any application if required in connection with implementation of this Resolution Plan.
45. A copy of this Order is to be submitted to the Registrar of Companies, West Bengal.
46. 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.

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47. 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.
48. In view of the above the **I.A. (IB) No. 1455/KB/2023 and C.P. (IB) No. 113/KB/2022 shall stand disposed of accordingly.**
49. The Registry is directed to send e-mail copies of the order forthwith to all the parties for information and for taking necessary steps.
50. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Order signed on the 26th day of February 2024.

GGRB_LRA