

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

IA No. 94/CB/2021
in
TP No. 26/CTB/2019
[earlier CP (IB) No. 934/KB/2018]

In the matter of:

An Application under Section 30 (6) Read with Section 31 of the Insolvency and Bankruptcy Code 2016 Read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;

And

In the matter of:

Sagu India Holding Limited ... **Financial Creditor**

Versus

In the matter of:

Sri Ganesh Sponge Iron Pvt. Ltd ... **Corporate Debtor**

And

In the matter of:

Avishek Gupta, Resolution Professional of Sri Ganesh Sponge Iron Pvt. Ltd. ... **Applicant**

Coram:

Shri Rajasekhar V.K. : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing):

For the Applicant : Mr. Tanmay Mishra, Advocate
Mr. Somjeet Das, Advocate
Mr. Avishek Gupta, RP

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Order reserved on: 20.09.2021

Order pronounced on: 01.11.2021

ORDER

Per: Rajasekhar V.K. Member (Judicial)

1. Preliminary

- 1.1. IA (IBC) No.94/CB/2021 was filed on 4th September 2021 (through e-filing portal and on 8th September 2021 print copy of the same was subsequently filed) by the Resolution Professional of the Corporate Debtor – Sri Ganesh Sponge Iron Private Limited – under Section 30 (6) read with Section 31 of the Insolvency and Bankruptcy Code 2016 Read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- 1.2. The underlying CP (IB) No.934/KB/2018 was filed by Sagu India Holding Limited, the Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 which was admitted and Corporate Insolvency Resolution Process (CIRP) was initiated on 18th February 2019, and the Applicant herein, Mr. Avishek Gupta [Reg. No. IBBI/IPA-003/IP-N000135/2017-2018/11499] was appointed as Interim Resolution Professional (IRP).
- 1.3. In terms of Section 13 of the Code read with Regulation 6 (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016, the Applicant duly made a public announcement in Form A on 21st February 2019 in *The Times of India* (English) and *Dharitri Balasore Edition-Odia*.
- 1.4. The initial proceedings of the CIRP was done by the IRP and vide order dated 4th June 2019, this Adjudicating Authority confirmed the name of the Applicant as the Resolution Professional (RP).

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- 1.5. All the received claims were collated by the Resolution Professional. Form G was also published. Subsequently ten EoIs were received among which Kashvi Power & Steel Pvt. Ltd. & Kashvi International Pvt. Limited (in consortium) were declared as the successful Resolution Applicant.
- 1.6. The Resolution Plan as revised was approved by the CoC and was pending for approval before this Adjudicating Authority. Pending such approval of NCLT, some applications were filed by Financial Creditors and the erstwhile management of the Corporate Debtor on various grounds with respect to the CIRP proceedings, which were heard and disposed of. In one of the applications filed by a Financial Creditor – SREI Equipment Finance Limited – an order was passed on 28th July 2021, directing the Resolution Professional to admit their entire claim which was complied with, and a revised List of Creditors was subsequently filed by the Resolution Professional.
- 1.7. A revised Information Memorandum was issued and subsequently a revised Resolution plan dated 28th November 2019 thereafter revised on 5th August 2021 was submitted on 5th August 2021 in accordance with the timelines set out by the Hon'ble NCLT in its orders.

2. Collation and proposed settlement of Claims

- 2.1. The claims existing as on the date of hearing are as follows:

Name of the Financial Creditor	Types of Creditors	Amount Admitted (₹)	Total Payments proposed (₹)
State Bank of India	Secured Financial Creditor	90,19,99,741	26,83,56,064.50
SREI Equipment Finance Limited	Secured Financial Creditor	6,77,07,586	2,01,43,935.50

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Name of the Financial Creditor	Types of Creditors	Amount Admitted (₹)	Total Payments proposed (₹)
Sagu India Holding Limited	Unsecured Financial Creditor	9,52,70,174	50,00,000
Simec Indus Resources Private Limited	Unsecured Financial Creditor	12,91,16,654	65,00,000
Payment towards IRP Costs	-	-	CIRP cost on actuals as on date of final approval by NCLT
For statutory dues in lieu of letter received from EPFO, and other costs	-	-	15,00,000
Total		119,40,94,155	30,15,00,000
<i>plus CIRP cost on actual basis</i>			

3. CIRP Process & Compliances

3.1. The applicant states that a total of 9 CoC meetings have been held during the CIRP period as follows:

Meeting	Date of meeting
1 st CoC Meeting	19 th March, 2019
2 nd CoC Meeting	18 th April, 2019

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3 rd CoC Meeting	2 nd May, 2019
4 th CoC Meeting	4 th June, 2019
5 th CoC Meeting	30 th July, 2019
6 th CoC Meeting	2 nd November, 2019
7 th CoC Meeting	8 th November, 2019
8 th CoC Meeting	20 th November, 2019
9 th CoC Meeting	12 th August 2021

3.2. The CIRP of the Corporate Debtor was initiated on 18th February 2019. After time extension granted by the Hon'ble Tribunal for 90 days and further 30 days, the last date of CIRP of the corporate debtor was 16th December 2019.

3.3. The Applicant submits that CoC was informed about the Fair Market Value and Liquidation Value of the Corporate Debtor as per the Valuation Report.

4. *Salient features of the approved Resolution Plan*

4.1. The successful Resolution Applicant namely Kashvi Power & Steel Pvt. Ltd. & Kashvi International Pvt. Limited (in consortium) have provided for payment of CIRP cost and payment to other stakeholders of the Corporate Debtor as per the provision of the Code.

5. *Payment & Distribution*

5.1. The Resolution Applicant shall pay an amount of ₹30 crore along with actual CIRP cost plus ₹15 lakh towards statutory dues within thirty days of approval of the Resolution Plan by the Adjudicating Authority, towards full and final settlement of the claims against the admitted claims of the Financial Creditors for the purpose of takeover of the corporate debtor as a going concern.

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5.2. The Resolution Applicant has proposed payment of a sum of ₹30 crore plus actual CIRP costs plus a further sum of ₹15 lakh towards statutory dues as upfront payment within thirty days of approval of the Resolution Plan by the Adjudicating Authority. Out of this, a sum of ₹28,85,00,000/- would be provided for distribution to secured financial creditors (Srei Equipment Finance Limited & State Bank of India) and ₹1,15,00,000/- to unsecured financial creditors (Sagu India Holding Limited & Simec Indus Resources Private Limited). Upon payment of the amount towards full and final settlement of the dues to the Financial Creditors and takeover of the Corporate Debtor as a going concern, the Corporate Debtor shall be discharged of all its liabilities and obligations.

6. *E-voting on the Revised Resolution Plan dated 28th November 2019 subsequently revised on 5th August 2021*

6.1. As decided in the 9th CoC Meeting the e-voting was held during the period from 13th August 2021 to 25th August 2021, at which the Financial Creditors State Bank of India and SREI Equipment Finance Limited voted in favour of the Resolution Plan. Financial Creditors Sagu India Holding Limited and Simec Indus Resources Pvt. Ltd. abstained from voting. Hence, the revised Resolution plan dated 28th November 2019 and subsequently revised on 5th August 2021 was approved by CoC with 81.21% shares of the total voting shares.

6.2. The Resolution Plan submitted by the Resolution Applicant proposes to take over the Corporate Debtor as a going concern.

7. *Measures required for the implementation of Resolution Plan in terms of Regulation 37 of CIRP Regulations:*

7.1. The Resolution Applicant has confirmed the compliance of Regulation 37 of Insolvency and Bankruptcy Board of India (Insolvency Resolution

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Process for Corporate Persons) Regulations, 2016, which includes the following clauses:

(a) Transfer of all or part of the assets of the corporate debtor to one or more persons;

All the assets of the Corporate Debtor shall remain with the Corporate Debtor. None of the assets of the corporate debtor is proposed to be transferred in the Resolution Plan.

(b) Sale of all or part of the assets whether subject to any security interest or not;

All the assets of the Corporate Debtor whether subject to any security interest or not shall remain with the Corporate Debtor. None of the assets of the corporate debtor is proposed to be sold 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;

The existing equity shares of the Corporate Debtor will be extinguished in full and new equity shares will be issued to the Resolution Applicants in the manner and ratio mentioned in **Step 2 of Part V** of the Plan.

(ca) Cancellation or delisting of any shares of the corporate debtor, if applicable;

Not Applicable

(d) Satisfaction or modification of any security interest;

As mentioned in **Sub Para 4.2.9 of Para C of Part III** of the Plan, the security documents of the Corporate Debtor held with the financial creditors will be released and redelivered to the Resolution Applicants on approval of the Plan and on payment of the last instalment of the amount proposed to be paid to the Financial Creditors.

(e) Curing or waiving of any breach of the terms of any debt due from the corporate debtor;

Not Applicable.



(f) Reduction in the amount payable to the creditors

The Resolution Applicants proposes for takeover of the Corporate Debtor as a going concern by paying about 25.12% of the total amount of claims of financial creditors as admitted by the Resolution Professional. The same is specified in **Para 3 of Part II 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 Applicable.

(h) Amendment of the constitutional documents of the corporate debtor;

Not Applicable.

(i) Issue of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;

Not Applicable.

(j) Change in portfolio of goods or services produced or rendered by the Corporate Debtor

The Resolution Applicant does not propose for any change in goods or services produced or rendered by the Corporate Debtor.

(k) Change in technology used by the Corporate Debtor

The Resolution Applicant does not propose any change in technology used by the Corporate Debtor.

(l) Obtaining necessary approvals from the Central and State Governments and other authorities.

Not Applicable.

**8. Details on Management / Implementation and Relief as per the Resolution Plan-
Salient Features**

8.1. The Resolution Plan also provides for –

(a) Terms of the Plan and its Implementation Schedule in Part III Para 4 on page 22 of the Plan;

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(b) Mechanism regarding Management, Control & Supervision of affairs of Corporate Debtor in Part III Para 6 on page 23 of the Plan;

(c) Feasibility and viability of the Resolution Plan in Part III Para 11 on page 25 of the Plan; and

(d) Timeline & steps of event towards Implementation of Proposed Plan in Part V on page 42 of the Plan

9. The compliance of the revised Resolution Plan is as under:

9.1. The Applicant has submitted the details of various compliances and mandatory contents of Resolution Plan in terms of the Code and the CIRP Regulations, as follows:

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of the Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	Clause C of section A of Part I At Page No. 11	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan?	Clause 6.1.3 of part II At 23	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Attached Separately	Yes
Section 30(2)	Whether the Resolution Plan –		
	(a) provides for the payment	Clause 1 of section	Yes

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Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of the Resolution Plan	Compliance (Yes / No)
	of insolvency resolution process costs?	C of Part III at page No. 32	
	(b) provides for the payment of the Operational Creditors?	Clause 3 of section C of Part III at page No. 32	Yes
	(c) provides for the payment to the Financial Creditors who did not vote in favour of the resolution plan?	page 34, 35-point no. 4.2.5 (b)	Yes
	(d) provides for the management of the affairs of the Corporate Debtor?	Clause 6 of Part II At Page 23	Yes
	(e) provides for the implementation and supervision of the resolution plan?	Page 24 point 6.2, page 22 point 4	Yes
	(f) contravenes any of the provisions of the law for the time being in force?	Clause 8 of Part II At Page 25	Yes
Section 30(4)	Whether the Resolution Plan –		
	(a) is feasible and viable, according to the CoC?	Clause 11 of Part II At Page 25	Yes
	(b) has been approved by the CoC with 66% voting share?		Yes
Section	Whether the Resolution Plan	Point 12 at Page	Yes

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Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of the Resolution Plan	Compliance (Yes / No)
31(1)	has provisions for its effective implementation plan, according to the CoC?	26	
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	NA	NA
Regulation 38 (1)	Whether the Resolution Plan identifies specific sources of funds that will be used to pay the -		
	(a) insolvency resolution process costs?	Step 2 at Page 43 and 44	Yes
	(b) liquidation value due to operational creditors?		Yes
	(c) liquidation value due to dissenting financial creditors?		Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Clause 7 of Part II At Page 24 & 25	Yes
Regulation	Whether the Resolution Plan provides –		

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Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of the Resolution Plan	Compliance (Yes / No)
on 38(2)	(a) the term of the plan and its implementation schedule?	Point 4 at Page 22 and point 6 at page 23	Yes
	(b) for the management and control of the business of the corporate debtor during its term?	Point 6 at Page 23	Yes
	(c) adequate means for supervising its implementation?	Clause 4 page 22 and clause 6 page 23	Yes
Regulation 38(2)	Whether the Resolution Plan provides –		
	(a) the term of the plan and its implementation schedule?	Point 4 at Page 22 and point 6 at page 23	Yes
	(b) for the management and control of the business of the corporate debtor during its term?	Point 6 at Page 23	Yes
	(c) adequate means for supervising its implementation?	Clause 4 page 22 and clause 6 page 23	Yes
Regulation 38(2)	Whether the Resolution Plan provides –		
	(a) the term of the plan and its implementation schedule?	Point 4 at Page 22 and point 6 at page 23	Yes
	(b) for the management and control of the business of	Point 6 at Page 23	Yes

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Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of the Resolution Plan	Compliance (Yes / No)
	the corporate debtor during its term?		
	(c) adequate means for supervising its implementation?	Clause 4 page 22 and clause 6 page 23	Yes
38(3)	Whether the Resolution Plan demonstrates that –		
	(a) it addresses the cause of default?	Clause 9 Part II At Page 25	Yes
	(b) it is feasible and viable?	Clause 11 of Part II At Page 25	Yes
	(c) it has provisions for its effective implementation?	Clause 12 at Page 26	Yes
	(d) it has provisions for approvals required and the timeline for the same?	Clause 13 page 26 and part VI	Yes
	(e) the resolution applicants has the capability to implement the resolution plan?	Point 14 page 26	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	NA	NA

10. Waivers, Reliefs, Exemptions and Extinguishment of Claims / Entitlements:

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10.1. The reliefs and concessions sought by the Resolution Applicant from the Adjudicating Authority are set out below for the successful implementation of the Resolution Plan. The orders thereon are indicated against each.

Sl. No.	Waivers, Reliefs and Exemptions sought from NCLT	Orders thereon
1.	Companies Act, RoC/MCA	
(a)	The approval of the Plan by the NCLT shall be deemed waiver all the procedural requirements in terms of applicable provisions of Companies Act, 2013 for the purpose of prompt execution and implementation of the Resolution Plan.	Granted in so far as internal approvals are concerned. However, all procedural filings shall be carried out with the jurisdictional RoC and the filing fee shall be paid.
(b)	In terms of the Code, approval of the shareholders of the Corporate Debtor to the transactions contemplated under the Plan shall be deemed to have been given on the approval of the Plan by the NCLT, including for the increase in authorised capital and any restructuring of share capital and/or for any form of corporate restructuring to be undertaken.	Granted in so far as internal approvals are concerned. However, all procedural filings shall be carried out with the jurisdictional RoC and the filing fee shall be paid.
(c)	The approval of the Plan by NCLT shall constitute adequate and final approval of NCLT for all actions and purposes of the plan including extinguishment of the existing share capital of the Corporate Debtor as per the provisions of the Companies Act, 2013.	Granted in so far as internal approvals are concerned. However, all procedural filings shall be carried out with the jurisdictional RoC and the filing fee shall be paid.
(d)	The Registrar of Companies, Cuttack to take on record and implement the Plan,	It is not the job of the Registrar of

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Sl. No.	Waivers, Reliefs and Exemptions sought from NCLT	Orders thereon
	upon approval of the Plan by NCLT in a timely manner, considering the waivers and exemptions required from compliance of the various provisions of the Companies Act, 2013 as defined in the order of the NCLT.	Companies either to take on record the Plan, or to implement the same. This clause is singularly indicative of the fact that – (i) the framers of the Plan, (ii) the Resolution Professional; and (iii) the CoC; have not really examined it clause by clause to see how the Plan would be implemented.
2.	RBI	
(a)	All accounts of the Corporate Debtor shall stand regularised and their asset classification shall be “standard” for the purposes of all RBI Applicable Laws upon payment of last and final instalment and upon issue of the certificate of consummation by the Resolution Professional. The records/score of Banks/CIBIL should accordingly be upgraded to reflect such reclassification of account of the Corporate Debtor from NPA to Standard.	Granted, in view of the “Clean Slate” Theory propounded by the Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited</i> . ¹
(b)	All creditors of the Corporate Debtor to withdraw all legal proceedings commenced against the Corporate Debtor in relation to claims under SARFAESI, RDDBFI Act or any other legal proceedings with any authority within 30 (thirty) days of the Approval	Granted, but strictly in terms of section 32A of the IBC, and to the exclusion of the personal liability of the erstwhile promoters and directors for any

¹ 2021 SCC Online SC 313 dated 13.04.2021

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Sl. No.	Waivers, Reliefs and Exemptions sought from NCLT	Orders thereon
	Date. The Resolution Applicants undertake to pay the creditors the amount committed under the plan to take-over the Corporate Debtor as going concern. The Corporate Debtor or the Resolution Applicants shall not be held liable to pay any amount to the creditors pursuant to the invocation by the creditor of any Collateral security/ Personal Guarantee/ Corporate Guarantee offered to them to secure the debt availed by the Corporate Debtor either but not limited to by the Promoter/Directors/Any other third parties, Associate/ Subsidiary / Group/ Related Concern or from any other entities but not from the Corporate Debtor and Resolution Applicants towards recovery of balance claim amount.	acts prior to initiation of the CIRP.
(c)	All the outstanding negotiable instruments issued by the Corporate Debtor including demand promissory notes, post-dated cheques and letters of credit, shall stand terminated and the Corporate Debtor's liability under such instruments shall stand extinguished.	Granted.
3.	Taxes (Direct & Indirect)	
(a)	The relevant tax authorities to consider providing relief from applicability of and payment of taxes and duties under provisions of Direct tax laws and all Indirect Tax laws which may arise as a result of implementation of the Plan either on the Resolution Applicants or	This is for the appropriate authorities to consider.

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Sl. No.	Waivers, Reliefs and Exemptions sought from NCLT	Orders thereon
	the Corporate Debtor who is likely to be impacted due to implementation of the Plan.	
(b)	The Central Board of Direct Taxes shall: (a) consider that the change in shareholding of the Corporate Debtor pursuant to the Plan shall not lead to lapse of brought forward losses of the Corporate Debtor; and (b) provide relief to the Corporate Debtor from all past litigations pending at different levels and provide waiver from all Tax dues including interest and penalty on such litigations pending prior to the insolvency commencement date.	This is for the appropriate authorities to consider.
(c)	Any written off liability arising out of settlement of financial creditors, sundry creditors and export obligations shall be treated as general reserve and shall not be subject to any kind of tax.	This is for the appropriate authorities to consider.
4	Other Government Approvals	
(a)	All relevant Governmental Authorities to continue to make available the Business Permits to the corporate debtor till the implementation of the resolution plan and pending such transfer of Business Permits the business may continue being carried out as being carried out prior to the Insolvency Commencement Date.	Granted.
(b)	Since the Resolution Applicants have been provided with negligible information in relation to the Business Permits and their current status, it is	It is for the resolution applicant to arm itself with whatever information is

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	<p>probable that certain Business Permits of the Corporate Debtor have lapsed, expired, suspended, cancelled, revoked or terminated or the Corporate Debtor has Non-Compliances in relation thereto. Accordingly, all Governmental Authorities that have issued or granted or renewed such Business Permits to provide reasonable time period after the date of implementation of the resolution plan in order for the Resolution Applicants to assess the status of these Business Permits 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 in relation to such Non-Compliances and to permit the Resolution Applicants to continue to operate the business of the Corporate Debtor as carried out prior to the Insolvency Commencement Date.</p>	<p>required, prior to submission of the resolution plan. Once the resolution plan is submitted, it is no defence to claim that only “negligible information” has been provided. This is nobody else’s responsibility but that of the Resolution Applicant’s.</p> <p>Having said, that, section 31(4) of the Insolvency & Bankruptcy Code provides a one-year window from the date of approval of the resolution plan to obtain necessary approvals under any law. The successful resolution applicant is expected to keep these timelines in mind.</p>
5.	General Waivers, Reliefs & Exemptions	
(a)	<p>Upon implementation of the resolution plan, all rights, titles and benefits relating to the movable and immovable properties of the Corporate Debtor shall be vested in the Corporate Debtor free of any title, defects or Encumbrances.</p>	<p>A company can own immovable properties in its own name. If the corporate debtor has right, title and interest in such immovable properties, it shall</p>

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		continue to have them even under the new management.
(b)	All liabilities (<i>whether contingent or crystallised</i>) in relation to any forms of credit support provided to the corporate debtor and corporate guarantees, indemnities provided by the Corporate Debtor prior to the date of implementation of the resolution plan shall stand extinguished.	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> ²
(c)	The Corporate Debtor shall be entitled to modify or terminate contracts (<i>including contracts with parties that were related parties of the Corporate Debtor prior to the Insolvency Commencement Date</i>) which impose onerous conditions hindering the restructuring for the Corporate Debtor.	Without identification of such contracts and how they constitute an onerous burden on the corporate debtor, it is not possible to grant <i>carte blanche</i> to the corporate debtor to terminate such contracts.
(d)	All powers of attorney or authorities executed by the erstwhile Board of the Corporate Debtor on or prior to the date of implementation of the resolution plan shall stand revoked, cancelled and shall be void. The Resolution Applicants undertakes to pay the creditors the amount committed under the plan for take-over of the Corporate Debtor as going concern. The Corporate Debtor or the Resolution Applicants shall not be held liable to pay any amount to the creditors pursuant to the invocation by	Granted.

² 2021 SCC Online SC 313 dated 13.04.2021

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	the creditor of any Collateral security/ Personal Guarantee/ Corporate Guarantee offered to them to secure the debt availed by the Corporate Debtor either but not limited to by the Promoter/Directors/Any other third parties, Associate/ Subsidiary / Group/ Related Concern or from any other entities but not from the Corporate Debtor and Resolution Applicants towards recovery of balance claim amount and all power of attorney or authorities to that extent shall stand.	
(e)	The NCLT to provide relief to the Corporate Debtor from the execution/enforcement of any award, decree, order, judgement against the Corporate Debtor in any country by any forum of law/court.	Any claim arising out of any award, decree or judgment, if they do not form part of the Resolution Plan, shall stand extinguished in terms of the judgment of Hon'ble Supreme Court in <i>Ghanashyam Mishra and Sons v. Edelweiss Asset Reconstruction Company Limited</i> . ³
1	The Resolution Professional issued a notice inviting all potential claimants to submit their proofs of Claim. The notice was published in newspapers in accordance with Applicable Law. Pursuant to that notice the Resolution Professional may have received letters from Persons whose Claims have not	This is not in the nature of a waiver or concession, but merely a statement of fact. Further, any claim arising out of any award, decree or judgment, if they do

³ 2021 SCC Online SC 313 dated 13.04.2021

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	<p>been crystallised as of the Insolvency Commencement Date. The Plan is being proposed in order to restructure the assets and liabilities of the Corporate Debtor and for the best interests of stakeholders of the Corporate Debtor to the extent possible. With that objective, the Resolution Applicants assumes that all Persons that have any Claims against the Corporate Debtor have filed their Claims and the verifiable Claims have been admitted by the Resolution Professional and disclosed in the Information Memorandum. Accordingly, the Resolution Applicants and the Corporate Debtor shall have no responsibility or liability in respect of any Claims against the Corporate Debtor attributable to the period prior to the date of implementation of the resolution plan other than any payments to be made under in Part III (<i>Proposal for all kinds of Creditors of the Corporate Debtor</i>). The Resolution Applicants undertakes to pay the creditors the amount committed under the plan to take-over the Corporate Debtor as going concern. The Corporate Debtor or the Resolution Applicants shall not be held liable to pay any amount to the creditors pursuant to the invocation by the creditor of any Collateral security/Personal Guarantee/Corporate Guarantee offered to them to secure the debt availed by the Corporate Debtor either but not limited to by the Promoter/Directors/Any other</p>	<p>not form part of the Resolution Plan, shall stand extinguished in terms of the judgment of Hon'ble Supreme Court in <i>Ghanashyam Mishra ibid.</i></p>

Sd

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

IA No.94/CB/2021 in TP No. 26/CTB/2019

[earlier CP (IB) No. 934/KB/2018]

In Re: Resolution Plan of Sri Ganesh Sponge Iron Pvt Ltd

Sl. No.	Waivers, Reliefs and Exemptions sought from NCLT	Orders thereon
	third parties, Associate/Subsidiary /Group/ Related Concern or from any other entities but not from the Corporate Debtor and Resolution Applicants towards recovery of balance claim amount.	
2	On and with effect from the date of implementation of the resolution plan, the guarantors, indemnity providers and like persons that have provided guarantees, indemnities, co-borrowing or like arrangements for and on behalf of the Corporate Debtor, including in order to secure the Debt availed of by the Corporate Debtor, shall not be entitled to exercise or enforce any subrogation rights (<i>or similar rights</i>) in respect of such arrangements, even where such rights have already been exercised. On and with effect from the date of implementation of the resolution plan, all rights and claims (<i>whether contingent or otherwise</i>) of whatsoever nature of the Existing Promoters against the Corporate Debtor shall stand irrevocably and unconditionally extinguished in perpetuity.	Granted in terms of the judgment of Hon'ble Supreme Court in <i>Ghanashyam Mishra ibid.</i>
3	As of the date of implementation of the resolution plan, any Debt owed by the Corporate Debtor which is barred by limitation under Applicable Law, shall immediately, irrevocably and unconditionally stand extinguished, waived and withdrawn on and from the date of implementation of the resolution plan, and no Person shall have any	If the claim is barred by limitation, then there is no question of recovery of such a debt under law.

Sd

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	<p>further rights or Claims against the Corporate Debtor in regard to that. The Resolution Applicants undertakes to pay the creditors the amount committed under the plan to take over the Corporate Debtor as going concern. The Corporate Debtor or the Resolution Applicants shall not be held liable to pay any amount to the creditors pursuant to the invocation by the creditor of any Collateral security/ Personal Guarantee/ Corporate Guarantee offered to them to secure the debt availed by the Corporate Debtor either but not limited to by the Promoter/ Directors/ Any other third parties, Associate/ Subsidiary /Group/ Related Concern or from any other entities but not from the Corporate Debtor and Resolution Applicants towards recovery of balance claim amount.</p>	
4	<p>Any Encumbrance, whether over immovable, movable assets, fixed deposits or cash or any other rights or privileges and including without limitation, security, letter of credit, bank guarantee or pledge provided by Corporate Debtor to the financial creditors, that was created/ granted/ arranged in connection with any Financial Debt or Operational Debt or any other debt or obligation of the Corporate Debtor, at any time prior to the Approval Date, shall automatically be released and all liabilities and obligations of the Corporate Debtor in</p>	<p>Granted in terms of the judgment of Hon'ble Supreme Court in <i>Ghanashyam Mishra ibid.</i></p>

Sd

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	<p>relation to such Encumbrance or other form of collateral (<i>including those created/ arranged by the Corporate Debtor as a guarantor or a third party security provider in relation to its subsidiaries, joint ventures, related parties or associates, if any</i>) shall stand permanently extinguished and released on the approval of the Resolution Plan by the NCLT.</p> <p>All title deeds and other documents (<i>including charge documents, if any</i>) held by the Financial Creditors or any trustee/ agent on their behalf in relation to the Existing Encumbrances shall be immediately returned to the Corporate Debtor as per the terms set out in Part - V (<i>Timeline and Steps of Events towards Implementation of the Proposed Plan</i>). No existing Encumbrance shall be enforced by any creditor after Approval Date or otherwise and all existing proceedings / enforcement action shall be immediately withdrawn.</p> <p>The Resolution Applicants undertake to pay the creditors the amount committed under the plan to take over the Corporate Debtor as going concern. The Corporate Debtor or the Resolution Applicants shall not be held liable to pay any amount to the creditors pursuant to the invocation by the creditor of any Collateral security/ Personal Guarantee/ Corporate Guarantee offered to them to secure the debt availed by the Corporate Debtor either but not limited to by the Promoter/ Directors/ Any other third</p>	

Sd

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Sl. No.	Waivers, Reliefs and Exemptions sought from NCLT	Orders thereon
	parties, Associate/ Subsidiary /Group/ Related Concern or from any other entities but not from the Corporate Debtor and Resolution Applicants towards recovery of balance claim amount.	
5	All liabilities (<i>whether contingent or crystallised</i>) in relation to any corporate guarantees, indemnities and all other forms of credit support including those availed by Corporate Debtor on a co-borrower arrangement, along with, any third party provided by the Corporate Debtor prior to the Implementation Date, and all contingent liabilities disclosed in the annual audited financial statements of the Corporate Debtor and liabilities which are not in notice of Corporate Debtor or not acknowledged by the Corporate Debtor, shall stand extinguished and discharged on and with effect from the Implementation Date, at a Nil value. The Resolution Applicants undertake to pay the creditors the amount committed under the plan to take-over of the Corporate Debtor as going concern. The Corporate Debtor or the Resolution Applicants shall not be held liable to pay any amount to the creditors pursuant to the invocation by the creditor of any Collateral security/Personal Guarantee/Corporate Guarantee offered to them to secure the debt availed by the Corporate Debtor either but not limited to by the Promoter/Directors/Any other third	Granted in terms of the judgment of Hon'ble Supreme Court in <i>Ghanashyam Mishra ibid.</i>

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Sl. No.	Waivers, Reliefs and Exemptions sought from NCLT	Orders thereon
	parties, Associate/Subsidiary /Group/ Related Concern or from any other entities but not from the Corporate Debtor and Resolution Applicants towards recovery of balance claim amount.	
6	The payment to Persons contemplated in Part III (<i>Proposal for all kinds of Creditors of the Corporate Debtor</i>) shall be the Corporate Debtor's and Resolution Applicant's full and final performance and satisfaction of all its obligations to such Persons and all Claims (<i>including, for the avoidance of doubt, any unverified portion of their Claims</i>) of such Persons against the Corporate Debtor shall stand irrevocably and unconditionally settled and extinguished in perpetuity upon such discharge. The Resolution Applicant undertakes to pay the creditors the amount committed under the plan for takeover of the Corporate Debtor as going concern. The Corporate Debtor or the Resolution Applicant shall not be held liable to pay any amount to the creditors pursuant to the invocation by the creditor of any Collateral security/ Personal Guarantee/ Corporate Guarantee offered to them to secure the debt availed by the Corporate Debtor either but not limited to by the Promoter/ Directors/ Any other third parties, Associate/Subsidiary /Group/ Related Concern or from any other entities but not from the Corporate Debtor and	Granted in terms of the judgment of Hon'ble Supreme Court in <i>Ghanashyam Mishra ibid.</i>

Sd

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

IA No.94/CB/2021 in TP No. 26/CTB/2019

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In Re: Resolution Plan of Sri Ganesh Sponge Iron Pvt Ltd

Sl. No.	Waivers, Reliefs and Exemptions sought from NCLT	Orders thereon
	Resolution Applicant towards recovery of balance claim amount.	
7	On and with effect from the date of implementation of the resolution plan, all the outstanding negotiable instruments issued by the Corporate Debtor or by any Person on behalf of the Corporate Debtor including demand promissory notes, post-dated cheques and letters of credit, shall stand terminated and the Corporate Debtor's liability under such instruments shall stand extinguished. The Resolution Applicant undertakes to pay the creditors the amount committed under the plan for takeover of the Corporate Debtor as going concern. The Corporate Debtor or the Resolution Applicant shall not be held liable to pay any amount to the creditors pursuant to the invocation by the creditor of any Collateral security/Personal Guarantee/Corporate Guarantee offered to them to secure the debt availed by the Corporate Debtor either but not limited to by the Promoter/Directors/Any other third parties, Associate/Subsidiary /Group/ Related Concern or from any other entities but not from the Corporate Debtor and Resolution Applicant towards recovery of balance claim amount.	in terms of the judgment of Hon'ble Supreme Court in <i>Ghanashyam Mishra ibid.</i> This shall be restricted to the corporate debtor under the successful resolution applicants, and shall have no application to the liability of the erstwhile promoters and directors of the corporate debtor.
8	Upon the approval of the Plan by the NCLT under Section 31 of the Code, all pending proceedings relating to the winding-up of the Corporate Debtor shall	Granted.

Sd

IN THE NATIONAL COMPANY LAW TRIBUNAL
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	stand irrevocably and unconditionally abated in perpetuity.	
9	On and with effect from the Implementation Date, all securities convertible or exchangeable into Equity Shares and all rights to subscribe to Equity Shares, including convertible debentures, convertible preference shares, convertible loans (<i>whether compulsorily or partially convertible or not</i>), warrants, subscription rights under shareholders agreements entered into by the Existing Promoters if any, shall stand immediately extinguished and settled.	Granted.

11. Findings

- 11.1. On hearing the submissions made by the Ld. Counsel for the Resolution Professional, and perusing the record, we find that the Resolution Plan has been approved with 81.21% 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 Successful Resolution Applicant for making the plan effective after approval by the Adjudicating Authority.
- 11.2. On perusal of the documents on record, we are also satisfied that the Resolution Plan is in accordance with sections 30 and 31 of the IBC and also complies with regulations 37, 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. No circumstances exist that militate against grant of approval for the revised Resolution Plan dated 28th November 2019 as revised on 5th August 2021 and approved thereafter by the CoC.

Sd

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

IA No.94/CB/2021 in TP No. 26/CTB/2019

[earlier CP (IB) No. 934/KB/2018]

In Re: Resolution Plan of Sri Ganesh Sponge Iron Pvt Ltd

12. Orders

- 12.1. Therefore, subject to the observations made in this Order, we hereby accord our approval to the Resolution Plan. The approved Resolution Plan shall form part of this Order.
- 12.2. As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.
- 12.3. The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect.
- 12.4. In case of non-compliance of this order or withdrawal of Resolution Plan, the CoC shall forfeit the EMD amount already paid by the Resolution Applicant.
- 12.5. The Moratorium imposed under section 14 shall cease to have effect from the date of this order.
- 12.6. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order. However, he shall perform his duties in terms of the Resolution Plan as approved by this Adjudicating Authority.
- 12.7. The Resolution Professional is further directed to hand over all 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.
- 12.8. Liberty is hereby granted for moving any Application if required in connection with implementation of this Resolution Plan.

Sd

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IA No.94/CB/2021 in TP No. 26/CTB/2019
[earlier CP (IB) No. 934/KB/2018]

In Re: Resolution Plan of Sri Ganesh Sponge Iron Pvt Ltd

- 12.9. The Registry is directed to forward a copy of this Order to the Registrar of Companies, Odisha, *inter alia* for updating the Master Data of the Corporate Debtor.
- 12.10. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.
- 12.11. The Resolution Professional is further directed to handover all records, premises/factories/documents to the Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records, premises, factories and documents through the Resolution Professional to finalise the further line of action required for starting of the operation.
- 12.12. IA (IB) No.94/CTB/2021 in TP No. 26/CTB/2019 and the main Company Petition, *i.e.*, TP No. 26/CTB/2019 [earlier, CP (IB) No. 934/KB/2018] shall stand disposed of accordingly.
- 12.13. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Authorized Representative for information and for taking necessary steps.
- 12.14. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
- 12.15. File be consigned to the record.

Sd

Satya Ranjan Prasad
Member (Technical)

Sd

Rajasekhar V.K.
Member (Judicial)

Signed this 1st day of November, 2021

Nishi (Steno)