



**In the National Company Law Tribunal  
Kolkata Bench, (Court-II), Kolkata**

*In IA (IB) No. 1527/ (KB) /2023*

*CP(IB) No. 250/( KB) /2021*

*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:**

SRF Limited

**...Operational Creditor**

And

Birla Tyres Limited

**....Corporate Debtor**

And

In the matter of:

Pratim Bayal, Resolution Professional of Birla Tyres Limited, with Registration No. IBBI/IPA-003/IP-N00213/2018-2019/12385 having his office at 18/1 Tarapurkur Main Road, Ghosh Para, Agarpara, Kolkata, West Bengal - 700 109.

**....Applicant**

**Date of Hearing: 26.09.2023**

**Date of Pronouncement of order: 19.10. 2023**

**Coram:**

**Smt Bidisha Banerjee : Member (Judicial)**


**Shri Arvind Devanathan : Member (Technical)**

**Counsel appeared physically / through video Conferencing**

1. Mr. S. N. Mookherjee, Ld. Advocate General ] For the Applicant /RP
2. Mr. Ranjan Bacchawat, Sr. Adv.
3. Mr. Avishek Guha, Adv.
4. Mr. Shaunak Mitra, Adv.
5. Ms. Arunika Dutta, Adv.

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6. Mr. Amandeep Singh, Adv.
  7. Mr. Pratim Bayal, RP in person

1. Mr. Joy Saha, Sr. Adv. ] For the CoC
2. Mr. Kuldip Mallik, Adv.
3. Ms. Labanyasree Sinha, Adv.
4. Mr. Shiven Ray, Adv.
5. Mr. Aditya Sarkar, Adv.

1. Mr. Abhrajit Mitra, Sr. Adv. ] For Dalmia Bharat Refractories Ltd.
2. Mr. Anirban Ray, Adv.
3. Mr. Piyush Agarwal, Adv.
4. Ms. Shrivalli Kajaria, Adv.

1. Mr. Jishnu Saha, Sr. Adv. ] For Himadri Speciality Chemicals Ltd.
2. Mr. Piyush Agarwal, Adv.
3. Ms. Shrivalli Kajaria, Adv.


1. Mr. D.N. Sharma, Adv. ] For Manav Investment in IA 1599 of 2023
2. Mr. Vishwarup Acharyya, Adv.

1. Mr. Arvind Kr. Jhunjhunwala, Adv. ] For Kesoram Industries Ltd.
2. Mr. Debargha Basu, Adv.

**ORDER**

**Per Bidisha Banerjee, Member (Judicial):**

1. Heard the Ld. Sr. Counsel / Ld. Counsel for the parties.
2. This application has been preferred to seek approval of Resolution Plan dated 27.07.2023, in its entirety along with its annexures, Schedule, Appendices and claims contained therein as submitted by Dalmia Bharat Refractories Limited with reliefs and concessions sought for under the Plan. The Application has been preferred under Rule 34 of the NCLT Rules.

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3. By a majority vote of 82.48%, Dalmia Bharat Refractories Limited was declared as Successful Resolution Applicant (SRA) in respect of the Corporate Debtor.
  4. By a letter dated 22.08.2023, Dalmia Bharat Refractories Limited / Dalmia Bharat and Himadri Speciality Chemicals Limited / Strategic Partner accepted the Letter of Intent and on 23.08.2023, Dalmia Bharat Refractories Limited and its Strategic Partner provided security for a sum of Rs. 50 Crores by way of a Bank Guarantee valid for 12 (twelve) months.


**5. The CIRP process and Compliances**

- a. The Corporate Debtor was admitted into CIRP vide order dated 05.05.2022 and Mr. Sheikh Abul Salam was appointed as the IRP and vide an order dated June 29, 2022 this Tribunal confirmed Mr. Sheikh Abdul Salam as the RP of the Corporate Debtor.
- b. The agenda for replacement of Mr. Sheikh Abdul Salam, (hereinafter referred as erstwhile RP) was proposed and discussed in the 2<sup>nd</sup> CoC Meeting held on July 13, 2022 and the CoC had approved the resolution to replace the erstwhile RP with the Applicant namely Mr. Pratim Bayal having Registration No. IBBI/IPA-003/IP-N000213/2018-19/12385.
- c. Paper publications were made in Form -G containing timelines for submission of EoI by the erstwhile RP on August 01, 2022.
- d. Another publication was made in Form -G in three widely published national newspapers, containing fresh timelines for submission of EoI on August 13, 2022.
- e. Owing to insufficiency of EoIs and with an object of maximization of value, Form -G was published once again on September 05, 2022 for submission of EoI, and with an addendum dated 16<sup>th</sup> September, 2022, the time for submitting EoI was finally extended till September 30, 2022.
- f. The Erstwhile RP collated and published a provisional list of Prospective Resolution Applicant (PRA) containing names of 21 PRAs on October 10, 2022.
- g. On October 15, 2022 the PRAs were provided the RFRP, the Evaluation Matrix and the Information Memorandum and subsequently they were granted access to data room. Final list of PRAs was published on October 15, 2022.

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- h. Vide order dated October 31, 2022 this Tribunal allowed the appointment of Mr. Pratim Bayal as the RP of the Corporate Debtor replacing the erstwhile RP Mr. Seikh Abdul Salam.
- i. The RP had appointed two registered valuers for valuing the assets of the Corporate Debtor and since there was a wide difference in the valuation reports with regard to “Securities and Financial Assets” of the Corporate Debtor in the 2 valuation reports, the RP appointed a third valuer to value such assets. Relevant extracts of the three valuation reports and the executive summary shared by the RP with the CoC and the same are annexed to the application and marked as “N”.
- j. From the list of 19 PRAs, only 2 (Two) Resolution Plans were received, one from M/s. Dalmia Bharat Refractories Limited and another one from M/s. Melrose Creations Pvt. Ltd. in consortium with Stephen Financial Services Pvt. Ltd. Both the Resolution Plans were discussed in the CoC meeting held on March 28, 2023.
- k. The RP informed in the 13<sup>th</sup> CoC meeting held on May 02, 2023, that M/s. Melrose Creations Pvt. Ltd., in consortium with Stephen Financial Services Pvt Ltd was not considered any further due to non-submission of Bank Guarantee.
- l. A Resolution Plan was put by Dalmia Bharat vide an email, where Dalmia Bharat proposed to include a ‘strategic partner’ being M/s. Himadri Speciality Chemicals Limited (hereinafter referred to as “Strategic Partner”).
- m. The RP shared the Resolution Plan with the CoC Members vide email dated July 28, 2023. A Copy of the Resolution Plan with all annexure and schedules are attached with the application and marked as “P”.
- n. By a letter dated 22.08.2023, Dalmia Bharat Refractories Limited and Himadri Speciality Chemicals Limited / Strategic Partner accepted the **Letter of Intent** and on **23.08.2023**, Dalmia Bharat Refractories Limited and its Strategic Partner provided security for a sum of Rs. 50 Crores by way of a Bank Guarantee valid for 12 (twelve) months.

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6. The Dalmia Bharat Refractories Limited, under this Resolution Plan, has provided for a total plan value for the Corporate Debtor of Rs. 347.03 Crores.

**The amount claimed, amount admitted and the distribution proposal in the Resolution Plan are as under:**

Class of Creditors / Particulars	Amount Claimed (In Crore)	Amount Admitted (In Crore)	Payment Proposed (In Crore)		
			Upfront Payment	Deferred Payment	Total Payment
CIRP Costs	16.15	16.15	16.15	0.00	16.15
Secured Financial Creditors	1109.46	1097.35	154.29	165.00	319.29
Unsecured Financial Creditors	32.34	32.11	0.05	0.00	0.05
All Operational Creditors including Employees and Workmen	1055.01	517.10	11.54	0.00	11.54
Other debts and dues	.012	.0015	0.00	0.00	0.00
<b>Grand Total</b>	<b>2212.97</b>	<b>1662.71</b>	<b>182.03</b>	<b>165.00</b>	<b>347.03</b>

7. **Synopsis of mandatory Provisions / Sections / Regulations and their compliance are as under:**

Sl. No.	Section / Code / Regulation	Requirement	Compliance established
<b>A. For Resolution Applicant</b>			
1)	25(2)(h)	The Resolution Applicant must meet the criteria approved by the CoC having regarding to the	Clause 1.2 of the Resolution Plan

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Sl. No.	Section / Code / Regulation	Requirement	Compliance established
		complexity and scale of operations of business of the CD.	
2)	Section 29A	The Resolution Applicant must be eligible to submit resolution plan.	Clause 9 of part II (Mandatory Provisions of the Plan)
3)	Section 30 (1)	The Resolution Applicant must submit an affidavit stating that it is eligible.	Annexure X (Affidavit of eligibility under Section 29A, IBC Dalmia Bharat Refractories Limited) and the affidavit of eligibility provided by the strategic partner of the RA i.e. Himadri Speciality Chemical Limited
<b>B. For Resolution Plan</b>			
1.	Section 30 (2)(a)	The Resolution Plan must provide for the payment of CIRP costs.	Clause 2 (Payment of IRP Costs) of Part II (Mandatory Provisions) Clause 3 (IRP Costs) of Part III (Settlement Proposal of the Resolution Applicant).
2.	Section 30 (2) (b)	The Resolution Plan must provide for the payment to the Operational Creditors.	Clause 3 (Payment to Operational Creditors) of Part II (Mandatory Provisions) Clause 4 (Operational

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<b>Sl. No.</b>	<b>Section / Code / Regulation</b>	<b>Requirement</b>	<b>Compliance established</b>
			Creditors) of Part III (Settlement Proposal of the Resolution Applicant).
3.	Section 30 (2)(c)	The Resolution Plan Must provide for the payment to the Financial Creditors who did not vote in favour of the Resolution Plan.	Clause 4 (Treatment of Dissenting Financial Creditors) of Part II & Step 5.5 of Schedule 2 at page 88 of Resolution Plan
4.	Section 30 (2) (d)	The Resolution Plan must provide for the management of the affairs of the corporate debtor.	Clause 6 (Supervision of the Plan at page 30 of the Resolution Plan Part II
5.	Section 30 (2) (e)	The Resolution Plan must provide for the implementation and supervision of the resolution plan.	Clause 5 & 6 in Part II of the Resolution Plan
6.	Section 30 (2) (f)	The Resolution Plan should not contravene any of the provisions of the law for the time being in force.	Clause 8 (Part II -Mandatory Provisions of Plan)
7.	Section 30 (4) (a)	The Resolution Plan is feasible and viable, according to the CoC.	Captured in the 16 <sup>th</sup> CoC meeting dated 31.07.2023.
8.	Section 30 (4) (b)	The Resolution Plan has been approved by the CoC with 66% voting share.	Yes, the same has been passed by the majority voting of 82.48%.

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<b>Sl. No.</b>	<b>Section / Code / Regulation</b>	<b>Requirement</b>	<b>Compliance established</b>
9.	Section 31(1)	The Resolution Plan must provide for its effective implementation plan, according to the CoC.	Schedule 2 (Implementation provisions)
10.	Regulation 38 (1)	The amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors.	Clause 5 Schedule 2 (Implementation provisions)
11.	Regulation 38(1A)	The resolution plan includes a statement as to how it has dealt with the interests of all stakeholders.	Clause 7 (Part II Mandatory provisions of the Resolution Plan)
12.	Regulation 38 (2)(a)	The Resolution Plan must provide for the term of the plan and its implementation schedule.	Clause 5 (Term of the plan and its implementation Provisions in part II Mandatory provisions of plan)
13.	Regulation 38 (2)(b)	The Resolution Plan must provide for the management and control of the business of the corporate debtor during its term.	Clause 6 (Supervising of the Plan; Mechanism regarding management and
14.	Regulation 38 (2)(c)	The Resolution Plan must provide adequate means for supervising its implementation.	control of the affairs of the Corporate Debtor ) of Part II ( (Mandatory Provisions)
15.	Regulation 38 (3)(a)	The Resolution Plan should demonstrate that it addresses the cause of default.	Clause 12.1 in Part II (Mandatory Provisions of the Resolution Plan)
16.	Regulation 38	The Resolution Plan should	Clause 12.2 in Part II



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Sl. No.	Section / Code / Regulation	Requirement	Compliance established
	(3)(b)	demonstrate that it is feasible and viable.	(Other confirmations) read with Part III (Settlement Proposal of the Resolution Applicant) and Schedule 2 (Implementation Provision)
17.	Regulation 38 (3)(c)	The Resolution Plan must demonstrate that it has provisions for its effective implementation.	Clause 10 and 12.3 (Part II Mandatory Provisions of the Resolution Plan)
18.	Regulation 38 (3)(d)	The Resolution Plan must demonstrate that it has provisions for approvals required and the timeline for the same.	Clause 12.4 and 12.5 (Part II Mandatory Provisions of the Resolution Plan)
19.	Regulation 38 (3)(e)	The Resolution Plan must demonstrate that the resolution Applicant has the capability to implement the Resolution Plan.	Clause 12.7 (Other confirmations) read with Schedule 5 (Overview of the Resolution Applicant)
20.	The Effective Date is defined as the date on which the Resolution Plan is approved by this Adjudicating Authority.		
<b>C. For Resolution Professional</b>			
21.	<b>Regulation 39 (2)</b>	<b>The Resolution Professional should file applications in respect of transactions observed, found or determined by him.</b>	<b>The applications have been filed and are pending adjudication.</b>

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Sl. No.	Section / Code / Regulation	Requirement	Compliance established
22.	Regulations 39 (4)	The Resolution Professional must provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	Yes, the performance security of Rs. 50 Crores by the Resolution Applicant on 23.08.2023 has been provided by the RA.

8. In course of hearing it was submitted by the Ld. Advocate General/ Ld. Sr. Counsel for the Applicant that the Resolution Plan is in compliance of the provisions of under Section 30 of IBC read with relevant Regulations of the CIRP Regulations and has been approved by CoC and the Plan if approved, would result in maximization of the value of assets of the Corporate Debtor and avoid corporate death due to liquidation by reviving it from financial crisis.

9. **Reliefs and Concessions** sought by the Resolution Applicant from this Adjudicating Authority are enumerated below for successful implementation of the Resolution Plan:

1)	All relevant Governmental Authorities, including the ROC, to grant 100% exemption from payment of stamp duty (including the waiver on stamp duty in terms of Industrial Policy Resolution 2022 Odisha Resolution No.12300/1 dated 30 November 2022), registration charges, and all local taxes and levies imposed for for (1) successful implementation of the Plan (including on all transactions contemplated herein, for increase in authorised share capital, any capital reduction, issuance or transfer of shares or debentures, provision of loan and related security interest, release of security interest, assignment of debt as contemplated in this Plan); (ii) all documents that may be executed by the Resolution Applicant and Corporate Debtor in respect of the transactions contemplated under this Plan; and (iii) change in shareholding of Corporate Debtor.
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2)	The Resolution Applicant be permitted to restructure the share capital of the Corporate Debtor in such manner and for such amount as it may consider appropriate for the working capital of the Corporate Debtor by filing appropriate forms/letters with ROC and all stamp duty and charges in relation to the same be waived.
3)	Any bond, surety, guarantee, power of attorney, undertaking issued by the Corporate Debtor to any person, either in India or outside India before the Insolvency Commencement Date shall stand cancelled and permanently revoked
4)	All Governmental Authorities to waive Non-Compliances of the Corporate Debtor prior to the (including Non-Compliances under the Companies Act, Contract Labour (Regulation and Abolition Act), 1970, Employees' Provident Funds & Miscellaneous Act, 1952, Employees Insurance Act, 1948, Environment Protection Act, 1986, Air (Prevention and Control of Pollution) Act, 1981, Water (Prevention and Control of Pollution Act), 1974, and The Electricity Act, 2003, Inter-State Migrant Workers Act, 1979, non-payment of listing fees to the custodians, any deviation from Indian Accounting Standards and other Applicable Laws, and Non-Compliances in relation to non- payment of any outstanding charges and dues by the Corporate Debtor (including stamp duty, registration fee, extension charges, lease rentals and property Taxes, listing fees, custodian fees).
5)	Any Non-Compliance(s) of the Corporate Debtor under the Companies Act, 1956 and/or Companies Act, 2013 and/or the notifications, circulars, rules and regulations enacted/notified thereunder, prior to the Closing Date shall stand compounded without imposition of any penalty, fees, etc.
6)	From the NCLT Order Date, the Resolution Plan shall be binding on all utility providers and all the utility providers shall continue to supply the utilities to the Corporate Debtor, as may be required for the operations of the Corporate Debtor.
7)	If any electricity dues are pending or disputed at any authority with respect to the Corporate Debtor, in relation to any period prior to the

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	NCLT Order Date or arising on account of the sake of the Corporate Debtor, the said dues/charges should be extinguished.
8)	A direction is issued to TP Central Odisha Limited and Odisha Power Transmission Corporation Limited for the immediate reconnection of the electricity connection of the Corporate Debtor.
9)	For successful implementation of the transactions contemplated under the Plan, all Governmental Authorities (including BSE, NSE, ROC, SEBI and RBI) to grant any relief, concession or dispensation as may be required from all sort of financial and pecuniary liabilities of the Corporate Debtor, (including without limitation, any penalty, whether contingent, assessed, known or unknown, interest, fines or fees and any other liabilities and/or obligations which may have a financial impact) on account of the Non-Compliances of the Corporate Debtor prior to the Closing Date.
10)	To pass an order directing that the Scheme of Arrangement with Creditors, Shareholders and Demerger of Passenger Car Radials Business with Birla Tyre Radials Limited approved by the Board of Directors of the Corporate Debtor at their meeting held on 28 January 2022 be declared as void and non-binding.
11)	Allow possession of the premises/offices of the Corporate Debtor, all passwords, bank account details, cheque books, statutory registers, minutes books, financial and tax records, all communication with vendors, customers, government and regulatory authorities and all other documents pertaining to the Corporate Debtor and its business, information technology systems (including all software and hardware), access to ERP system, etc to the Resolution Applicant.
12)	Pursuant to the approval of the Resolution Plan by the Hon'ble NCLT, the Resolution Applicant shall receive all the rights, titles, entitlements and interest in every part of the Corporate Debtor.
13)	SEBI and relevant stock exchange and its enforcing officers and/or agencies to waive the applicability of procedural aspects, compliances, approvals, disclosure requirements as prescribed in applicable SEBI regulations as well as by stock exchanges in respect of various steps

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	contemplated in the Plan without any monetary or non-monetary consequences to Resolution Applicant or the Corporate Debtor.
14)	All known or unknown, claimed or unclaimed, disclosed or undisclosed, crystallised or uncrystallized liabilities/organisations / risks, of any nature whatsoever, as on the NCLT Order Date, including but not limited to, prior claims of all creditors (whether secured or unsecured), workers, employees, statutory authorities on account of Income Tax, Sales Tax, value added tax, GST, Service Tax, DGFT, Excise, Customs etc. or shareholders, should be extinguished/ waived/ infructuous once the order approving Resolution Plan is passed by Hon'ble NCLT and all the payments is made by the Resolution Professional, as per the provisions of the Code and Regulations thereof and specifically as per section 53 of the Code, as full and final settlement of their dues;
15)	The Central Board of Direct Taxes/relevant Tax authorities and its enforcing officers and/or agencies (including but not limited to the Assessing Officer, Commissioner of Income Tax, Commissioner of Income Tax (Appeals) and Income Tax Appellate Tribunal) to: (i) not void or take any other actions with respect to the transactions contemplated under this Plan under Section 281 of the IT Act, Section 271E of the IT Act, Section 271D of the IT Act, Section 271DA of the IT Act, Section 269SS of the IT Act and Section 269T of the IT Act; (ii) exempt the Resolution Applicant from any liability to Taxes including but not limited to those under Sections 56 read with rule 11U and 11UA of the Income Tax Rules 1962 and Section 170 of the IT Act, arising out of the implementation of the Plan; (iii) exempt the Corporate Debtor and its new management from payment of any tax or interest or penalty under the IT Act, which may be assessed against the Corporate Debtor on account of any non-compliance with the provisions of IT Act for the period 6 months after the Closing Date; (iv) not initiate any prosecution proceedings against the new management of the Corporate Debtor for the non-compliance with the provisions of IT Act for the period before the Insolvency Commencement Date; (v) condone the delay in filing

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	<p>any compliances /returns during the period from the Insolvency Commencement Date till the Closing Date; and (vi) not levy any Tax (including but not limited to Sections 56, 41(1) and 28 of the IT Act and minimum alternate Tax) arising as a result of giving effect to, or otherwise in relation to, the Plan, in the hands of the Corporate Debtor or the Resolution Applicant (vii) not to make any adjustments against the losses as well which would have any impact of reducing losses or unabsorbed depreciation; and (viii) Non-applicability of Section 79(1) of IT Act. The Central Board REF of Indirect Taxes (CBIC) to not void or take any other actions with respect to the transactions contemplated under this Plan under Section 81 of the Central Goods and Service Tax Act, 2017 and relevant State GST legislations (for provisions similar to Section 81 of Central Goods and Service Tax Act) and not impose any successor liability on the Resolution Applicant or the Corporate Debtor.</p>
16)	<p>If any penalties, liabilities, duties, etc. arise on account of taxes (such income tax, deduction at source, tax collection at source, goods and service tax, custom duty value added tax, service tax, wealth tax, cess, DGFT dues etc.) whether direct or indirect in nature, whether admitted or not, whether due or contingent, whether asserted or unasserted, crystallised or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, and these relate to a period prior to the Closing Date, then, they should be written off in full and should be permanently extinguished.</p>
17)	<p>Since the Resolution Applicant has been provided with limited information in relation to the Business Permits and their current status, it is probable that certain 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 to provide 1 (one) year after the Closing Date to rectify, modify, reinstate, renew and/or revalidate the licenses including but not limited to the licenses issued by the Ministry of Environment, Forest and Climate Change, the Central Pollution Control Board and the State Pollution Control Board. At the</p>

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	<p>time of renewal of licenses, approvals, consents, permissions attached to the Corporate Debtor, all the fees, cost or penalty pertaining to the period prior to NCLT Approval Date shall be waived off and the Corporate Debtor shall not be liable to pay any fees/costs/penalty whether due or not. The Resolution Applicant shall be entitled to obtain (and no Government Authorities shall withhold) such Business Permits (including but not limited to the indicative list of expired/nearing expiry Business Permits set out in Appendix I (Indicative List of Business Permits), including renewals thereon or of existing Business Permits, corresponding to the proposed timelines stated by the Resolution Applicant as per this Plan, and the Government Authorities shall grant the same in a timely manner, upon relevant application by the Resolution Applicant.</p>
18)	<p>The name of the Corporate Debtor shall be excluded/deleted from the credit information bureau, as a defaulter.</p>
19)	<p>Business Permits held by the Corporate Debtor which expired prior to the NCLT Order or which will expire within a period of 3 months thereafter shall be renewed/extended by the relevant Governmental Authorities and the Corporate Debtor shall be permitted to continue its business and assets in manner operated prior to submission of this Plan.</p>
20)	<p>If Corporate Debtor applies for credit rating / grading with any agency/bank/financial institutions etc., past performance (during the closure period for around 3 years) should not be considered for fiscal fillip. The Resolution Applicant and/or its affiliates/group companies and its Promoters and Promoters Group and their controlled company/concerns who are proposed to be the shareholders of Corporate Debtor has got certain synergy with Corporate Debtors as has been mentioned in Resolution Plan. Therefore, it is possible that some of the products of Resolution applicant or its associate concern may be common with the products of the Corporate Debtor. Therefore, to attain the financial stability of the Corporate Debtor, exemption will be available to the Resolution Applicant and its members/associates as well as Corporate Debtor with regard to provisions of the conflict of</p>

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	Interest due to common shareholding of the corporate debtor and Resolution Applicant including its associates from all the customers including but not limited to Government/Semi- Government/PSUs/ Non-Government/ Research & Development Centres/subsidiaries/Division/Zones/Workshop/Sheds or any other entities not mentioned here.
21)	The Corporate Debtor/SPV shall be allowed to participate in auction sale/tenders/offers/proposals of all departments/authorities/public sector undertakings for a period of 3 (three) years from the NCLT Order Date without having to submit the details on the past revenue, past performance, profitability records, net worth, etc.
22)	Neither shall the (a) Resolution Applicant (b) nor the Corporate Debtor (c) nor the respective directors, officers, and employees of the Corporate Debtor to be appointed after the NCLT Order be liable for any violations, liabilities, penalties or fines with respect to or pursuant to the Corporate Debtor not having in place the requisite Business Permits (including but not limited to the indicative list of expired/nearing expiry Business Permits set out in Appendix I (Indicative List of Business Permits)) which are, required to undertake its business as per Applicable Laws and the Resolution Applicant seeks time period of 12 months from the NCLT Order, to ensure renewal of such Business Permits.
23)	Appropriate directions to be issued to all Government Authorities/tribunals/courts that all subsisting consents, licenses, approval, rights, entitlements, benefits and privileges whether under law, contracts, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled to shall notwithstanding any provision to the contrary in their terms, be deemed to continue without disruption for the benefit of the Corporate Debtor and all additional licenses, registrations and consents to operate required by the Corporate Debtor be made available to the Resolution Applicant for operations of the Corporate Debtor and direct to pass orders in litigation, if any pending pertaining to grant/renewal of any



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	Business Permit.
24)	Direct the relevant tax authorities that, pursuant to the Section 79(2)(c) of the IT Act any change in shareholding of the Corporate Debtor should not (a) result in in lapse of any carry forward accumulated Tax losses of the Corporate Debtor; and (b) be considered as void under Section 81 of the Central Goods and Service Tax Act, 2017 and concerned authority shall not impose any successor liability on the Applicant and the Corporate Debtor.
25)	Representation from the principal commissioner or commissioner regarding no objections to the Corporate Debtor for carrying forward its Tax losses pursuant to the Section 79(2)(c) of the IT Act. In an event, the same is not received from the relevant tax authorities, then all brought forward tax losses and unabsorbed depreciation of the Corporate Debtor will be permitted to be carried forward and set off against future income of the Corporate Debtor.
26)	In respect of the assessments/appellate or other proceedings which are under process including the pending transfer pricing and tax deduction at source matters and also with regard to notices issued by the relevant Governmental Authority for relevant assessment years under various provisions of the IT Act or indirect tax laws, the relevant Governmental Authority to treat the said notices as sufficiently replied to and conclude the pending assessments in a manner that there is no extra demand arising and/or reduction in losses/unabsorbed depreciation out of such pending assessments relating to income tax payable by the Corporate Debtor and in case any such demand is determined, the same to be deemed to have been waived and fulfilled without any requirement on part of the Corporate Debtor to pay any amount relating to the said future demand including any penalty or interest thereon.
27)	All Governmental Authorities (including the Income Tax authority, GST authority, Customs, Excise Authority, Service Tax department and VAT department) to provide relief to the Corporate Debtor from any non- compliance of provisions of any laws rules, regulations, directions, notifications, circulars, guidelines, policies, licenses, approvals,

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	consents or permissions including any suspension, cancellation, revocation or termination, prior to the commencement of Corporate Insolvency Resolution Process shall be deemed to be extinguished and/or regularized automatically, as the case may be, on the NCLT Order Date.
28)	All investigations, assessments, notices, cause of action, suits, claims, disputes, litigations, 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 (other than against the erstwhile promoters or former members of the management of the Corporate Debtor), pending or threatened, or stopped due to moratorium, present or future in relation to any period prior to commencement of Corporate Insolvency Resolution Process, shall stand abated/withdrawn/dismitted against the Corporate Debtor.
29)	All concerned authorities and parties be advised about this Resolution Plan without antecedent liabilities of any kind as may be relevant for the operation of the Corporate Debtor, pursuant to the order approving the Resolution Plan is passed by the Hon'ble NCLT.
30)	The provisions of Section 281 of the IT Act to not be applicable to the Corporate Debtor as all pending and threatened proceedings, inquires, investigations, notices, cause of actions, litigations pertaining to the period prior to the date of the Insolvency Commencement Date are settled and extinguished under this plan.
31)	Waiver from requirement of any kind of security deposit to Government Authorities. Further, the security deposit, if any already provided by the Corporate Debtor shall be released in favor of the Corporate Debtor.
32)	The Corporate Debtor to be exempted from taking approvals from the relevant Governmental Authority under Applicable Law for sale or disposal of any of its assets which are non-core to its business or necessary for the revival of the Corporate Debtor.
33)	The Corporate Debtor to not be denied any benefit under any Applicable Law including but not limited to IT Act, Central Goods and Service Tax Act, 2017 or under relevant State Goods and Services Tax

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	Act, Customs Act, Finance Act, Central Excise Act, Foreign Trade Policy and 'Merchandise Exports from India Scheme' merely on account of unavailability of supporting documents (including but not limited to purchase invoices, shipping bill and bill of export).
34)	The Corporate Debtor and the Resolution Applicant to be exempted from the application of the various fair valuation/deeming provisions of the IT Act (including but not limited to Sections 43CA, 45, 50C, 50CA, and 56).
35)	All Governmental Authorities (including the Income Tax authority, GST authority, Customs, Excise Authority, Service Tax department and VAT department) to provide relief to the Corporate Debtor from all past litigations pending at various judicial forums and provide waiver from tax dues including interest and penalty on such litigations as on the Insolvency Commencement Date.
36)	The Resolution Applicant and the Corporate Debtor shall in no event, be held responsible for any liabilities/obligations/risks of the Corporate Debtor, between the Insolvency Commencement Date until the NCLT Order are duly rectified and completed prior to the NCLT Order Date of this Plan and the same should be dealt in accordance with the relevant provisions of the Code.
37)	The Resolution Professional shall ensure that all Non-Compliances between the Insolvency Commencement Date until the NCLT Order are duly rectified and completed prior to the NCLT Order Date of this Plan.
38)	The Resolution Applicant assumes that, in compliance of its duties under Regulation 35A of the CIRP Regulations, the Resolution Professional had determined whether the Corporate Debtor has been subjected to any transactions covered under Sections 43 to 51 (both inclusive) or Section 66 of the Code or not and applied to the Adjudicating Authority for seeking appropriate relief. Accordingly, though the Resolution Applicant reserve its right to institute any investigation pertaining to any transaction(s) carried out by the erstwhile management of the Corporate Debtor or to file appropriate before the courts/tribunals having competent applications before the

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	courts / tribunals having competent jurisdiction, the Resolution Applicant and its officers, directors, employees and the new management of the Corporate Debtor, shall at no point be liable/responsible for any such transactions carried out by the ex-management of the Corporate Debtor.
39)	All creditors of the Corporate Debtor to withdraw all legal proceedings commenced against the Corporate Debtor in relation to Claims including proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Recovery of Debt and Bankruptcy Act, 1993 and seek quashing of criminal proceedings including proceedings under Section 138 of the Negotiable Instruments Act, 1881, and or under any other Applicable Law within a period of 90 (ninety) days of NCLT Order.
40)	Upon payment of the amounts indicated under this Plan, all existing litigations against the Corporate Debtor (including but not limited to proceedings set out in Appendix II (Details of Legal Proceedings) and appeals) and all claims and obligations (whether or not due, payable, contingent, matured or otherwise), shall abate and stand irrevocably and unconditionally extinguished and settled in perpetuity.
41)	The creditors of the Corporate Debtor shall regularize all the loan accounts of the Corporate Debtor and shall ensure that the asset classification of such loan accounts is "standard" in their books with effect from the NCLT Order Date in terms of Master Circular Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances.
42)	A direction be issued that the cases pending/decreed against the Corporate Debtor by any court and/or tribunal and/or any quasi- judicial authority will not be enforced against the Resolution Applicant/SPV and/or its Affiliates/Strategic Partner or the Corporate Debtor.
43)	All agreements in relation to dematerialization of the securities of the Corporate Debtor including the agreement between the Corporate Debtor and its registrar and transfer agent to be reinstated on the same terms and conditions as subsisting prior to their expiry or termination.

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44)	Single window clearance from the NCLT (i.e., Kolkata) shall suffice for all actions contemplated under this Resolution Plan.
45)	Appropriate directions to be sought from the NCLT to direct secured creditors to hand over the title documents, deleting all encumbrances mentioned in the assets secured to them in relation to the Corporate Debtor, with a good and marketable title, if not already vested with the Corporate Debtor without any further costs and expenses.
46)	The Resolution Plan shall be binding on the respective applicable collector(s) having jurisdiction over the land of the Corporate Debtor and shall not require any of their specific permission for change of management, control and ownership of the Corporate Debtor and other terms as contemplated under this Resolution Plan.
47)	Resolution Applicant may avail supply of capital goods against capital advance given by the Corporate Debtor and such amount lying as due in the books of account of the Corporate Debtor as on the Insolvency Commencement Date.
48)	Exemption from applicability of any ceiling limit under any Applicable Law and all ceiling limits shall be waived and all necessary permissions or consents required under any Applicable Law for purchasing, owning, holding, using in any manner and transferring the same without any restriction shall be deemed to have been granted and/or complied with by all concerned Persons.
49)	Extinguishment of liability and waiver of all statutory and other liabilities and dues relating to the land including but not limited to land revenue, khazna, municipal taxes, property tax, mutation fees, conversion fees, etc.
50)	With respect to land in possession of Corporate Debtor but not registered in its name, necessary direction be given for mutation of the land, in the name of Corporate Debtor by the relevant Governmental Authorities without requirement of payment of any mutation fees, charges, costs etc. or any past dues on any account and the same be fully waived/exempted.
51)	All the Land parcel owned, leased, sub-leased belonging to the

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	Corporate Debtor whether registered in its name or not shall be made available free of any dispute, litigation or claim by any third part or any Government Authority.
52)	Resolution Applicant may avail the right to review and terminate any contract that was entered into prior to the Closing Date without any penalty, charges, fees, fines, liabilities, damages in relation thereto. Save and except the contracts and arrangements which shall be terminated by the Corporate Debtor/ Applicant, all other contracts and arrangements shall remain in existence on the same terms and conditions. Supplies and/or vendors of the Corporate Debtor shall complete their works and continue to provide support to the Corporate Debtor.
53)	Existing contracts and arrangements of the Corporate Debtor, if any, with the Existing Promoters/ Directors and Related Parties of the Corporate Debtor, should stand terminated on and from the NCLT Order Date.
54)	Corporate Debtor and/or Resolution Applicant and/or its Affiliates /nominees/Strategic Partner shall be entitled to recover all dues and assets not made available to the Corporate Debtor pursuant to the order of the NCLT dated 8 November 2019 for the demerger of the Tyre business undertaking from Kesoram Industries Limited to the Corporate Debtor inter alia including input tax credits, cash balances and TDS deducted balances in relation to Central Goods and Services Tax Act, 2017 or relevant State Goods and Services Tax Act.
55)	Waiving interest, penalties and other penal consequences of delayed or non-filing of mining plan, annual returns, monthly returns, non-payment of mining dues, other past violations, etc. by the Corporate Debtor and/or the Resolution Applicant.
56)	Necessary directions to relevant authorities to issue and/or renew environmental clearances and consent for operation with respect to all operations of the Corporate Debtor and Resolution Applicant.
57)	All the assistance, reliefs and waivers sought under this Resolution Plan shall equally be applicable to the SPV/ Affiliates and/or to the Strategic


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	Partner.
58)	All assets (including properties, whether freehold, leasehold or on license basis or any movable assets/inventories) of the Corporate Debtor located at any location other than the Balasore Plant, Orissa shall continue to be vested and in possession of the Corporate Debtor, from the Closing Date, free and clear from all Encumbrances related to any or all Claims.
59)	Provide the Resolution Applicant, 100% exemption on stamp duty and registration fee and all local taxes and levies imposed by the appropriate Government, in respect of Land transferred pursuant to transfer of Non-Operational Assets Division to a subsidiary of Resolution Applicant/Strategic Partner as detailed in Schedule 2 Implementation Provisions) of this Resolution Plan.
60)	Any subsidy, waiver, reimbursement or any other relief by whatsoever name called available to the Resolution Applicant from any Government Authority, including but not limited to the Government of Orissa, through any Scheme or Policy, including but not limited to the Industrial Policy Resolution 2022, shall also be available to the SPV and/or Affiliates and/or to the Strategic Partner to whom the Non-Operational Assets Division shall be transferred pursuant to this Resolution Plan.
61)	The Applicant shall have the liberty to restructure/realign/re-locate/merge/ demerge/amalgamate the business operations/ units of the Corporate Debtor.
62)	In accordance with the terms of Industrial Policy Resolution 2022 Odisha Resolution No.12300/I dated 30 <sup>th</sup> November 2022, the industrial units of Corporate Debtor as dealt under the provisions of the Insolvency and Bankruptcy Code of India 2016 shall be considered as certified eligible new industrial unit for the purpose of this Industrial Policy Resolution 2022.
63)	The SPV shall be allowed to apply for any business permits, consents, licenses etc. that may be required for the revival of the operations and business of the Non-Operational Assets Division.

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10. A bare perusal of the extracts / excerpts from the Plan establishes that the Resolution Plan has been approved with 82.48% 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 mentioned by the RP and the Resolution Applicant for effective implementation of the Resolution Plan.
  11. On perusal of the documents on record, supported by an affidavit of the Resolution Professional, we accord our satisfaction that the Resolution Plan as approved by the CoC, 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, as enumerated supra.
  12. We have also perused the reliefs, waivers and concessions as sought and as given in Schedule 3 of page 93 to 107 of the Resolution Plan. While some of the reliefs, waivers and concessions sought by the Resolution Applicant come within the purview of the Code, many others fall under the power and jurisdiction of different government authorities/departments. This Adjudicating Authority has power to grant reliefs, waivers and concessions only with respect to the reliefs, waivers and concessions that are directly in relation to the Code and the Companies Act 2013 (within the powers of the NCLT), and these are granted keeping in mind the object of the Code. Reliefs, waivers and concessions that fall within the domain of other government department/authorities are not granted.
  13. However, The reliefs, waivers and concessions that pertain to other governmental authorities/departments may be dealt with the respective competent authorities/forums/offices, Government or Semi Government of the State or Central Government with regard to the respective reliefs, waivers and concessions, whenever sought for.
  14. It is almost trite and fairly well settled that the Resolution Plan must be consistent with the 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 the insolvency of the Corporate Debtor.

15. The reliefs sought with respect to subsisting contracts/agreements can be granted, and no blanket orders can be granted in the absence of the parties to the contracts and agreements.
16. With respect to the waivers with regard to extinguishment of claims which arose Pre-CIRP and which have not been claimed are granted in terms of **Ghanashyam Mishra and Sons Pvt Ltd Vs. Edelweiss Asset Reconstruction Company Ltd**, 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.
17. In this regard we also rely on the 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.”*
18. Thus on the date of approval of resolution plan by the Adjudicating Authority, all such claims, which do not form 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 as per the law laid down by the Hon'ble Supreme Court in Ghanashyam Mishra (supra).
19. 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.
20. With respect to the waivers sought in relation to guarantors, we seek to place reliance on the judgment of **Lalit Kumar Jain v Union of India & ors. [(2021) 9 SCC 321]**, wherein the Hon'ble Apex Court held 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”.*

21. 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 and the provisions of the law as may be applicable.
22. 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.
23. In case of non-compliance of this order or withdrawal of Resolution Plan, the CoC shall have the right to forfeit the EMD amount already paid by the Resolution Applicant.
24. Subject to the observations made in this Order, the Resolution Plan in question is hereby APPROVED by this Bench. The Resolution Plan shall form part of this Order.
25. 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.
26. The Moratorium imposed under section 14 shall cease to have effect from the date of this order.
27. 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.
28. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.
29. Liberty is hereby granted for moving any Application if required in connection with implementation of this Resolution Plan.
30. A copy of this Order is to be submitted in the Office of the Registrar of Companies, West Bengal.
31. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.

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32. The Resolution Professional is further directed to handover all records, premises/factories/documents to the Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records/premises/factories/documents through the Resolution Professional to finalise the further line of action required for starting of the operation.
33. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
34. The Application being IA (IB) No. 1527/KB/2023 along with main Company Petition vide CP (IB) No. 250/KB/2021 shall stand disposed of accordingly.
35. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**Arvind Devanathan**  
**Member (Technical)**

**Bidisha Banerjee,**  
**Member (Judicial)**

Signed on this the 19<sup>th</sup> day of October, 2023

M. Jana, PS