

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

IA (IB) No. 352/KB/2021

in

CP (IB) No. 174/KB/2018

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

In the matter of:

Oriental Bank of Commerce (now Punjab National Bank w.e.f. 01.04.2020)

... Financial Creditor

Versus

Atlantic Projects Limited

CIN: U45201WB1999PLC090499

... Corporate Debtor

And

In the matter of:

Anil Anchalia, Resolution Professional of

Atlantic Projects Limited

...

Applicant

Date of hearing: 16.08.2021

Date of pronouncement: 25.11.2021

Date of corrigendum order: 11.01.2022

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Harish Chander Suri, Member (Technical)

Appearances (via video conference):

For the Applicant/RP

Mr. Anil Anchalia, Resolution Professional

CORRIGENDUM ORDER

1. In the order dated 25.11.2021, in para 28, the amount “₹1,99,65,583/- (One Crores-Ninety-Nine Lakh Sixty-Five Thousand Five Hundred Eighty-Three only)” mentioned in sub point c at page 16 shall be substituted as “₹1,00,65,583/- (One Crore Sixty-Five Thousand Five Hundred Eighty-Three only)”.
2. In para 24, Table III the following:

Ref to relevant Reg.	Requirement	How dealt with in the Plan
38(1)	The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.	Point no. vi of Clause 8.3 in Chapter VIII at Page 36 and Clause 6.2 in Chapter VI at Page 29 of the Resolution Plan.

shall be substituted with:

Ref to relevant Reg.	Requirement	How dealt with in the Plan
38(1)(a)	<i>The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.</i>	<i>Point no. vi of Clause 8.3 in Chapter VIII at Page 36 and Clause 6.2 in Chapter VI at Page 29 of the Resolution Plan.</i>
38(1)(b)	<i>The amount payable to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.</i>	<i>Clause 8.3 (b) (v) in Chapter VIII at Page 36 and Clause 6.2 in Chapter VI at Page 29 of the Resolution Plan.</i>

3. The rest of the order shall stand as it is.

Harish Chander Suri
Member (Technical)

Rohit Kapoor
Member (Judicial)

11th of January, 2022.

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In the matter of:

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Atlantic Projects Limited

CIN: U45201WB1999PLC090499

... Corporate Debtor

And

In the matter of:

Anil Anchalia, Resolution Professional of

Atlantic Projects Limited

...

Applicant

Date of hearing: 16.08.2021

Date of pronouncement: 25.11.2021

Coram:

Shri Rajasekhar V.K., Member (Judicial)

Shri Harish Chander Suri, Member (Technical)

Appearances (via video conference):

For the Applicant/RP

Mr. Anil Anchalia, Resolution Professional

ORDER

Per: *Rajasekhar V.K., Member (Judicial)*

1. This Court convened through video conferencing.

Preliminary

2. I.A. (IB) No. 352/KB/2021 is an application under section 30(6) of the Insolvency and Bankruptcy Code, 2016, after approval of the resolution plan by the Committee of Creditors (CoC).
3. This application was moved on 16.08.2021 by Mr. Anil Anchalia, Resolution Professional of Atlantic Projects Limited (CIN: U45201WB1999PLC090499), by invoking the provisions of section 30(6) of the Insolvency and Bankruptcy Code, 2016 (**“the Code” or “IBC”**) read with regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**CIRP Regulations**) for approval of a Resolution Plan in respect of Atlantic Projects Limited (**Corporate Debtor**).
4. The underlying Company Petition in C.P. (IB) No. 174/KB/2018 was filed by Oriental Bank of Commerce against Atlantic Projects Limited, the Corporate Debtor, under section 7 of the Insolvency and Bankruptcy Code 2016, which was admitted *vide* order dated 15.10.2019 in C.P. (IB) No. 174/ KB/2018.
5. Initially, Mr. Anil Anchalia, the Applicant herein (IBBI Reg. No. IBBI/IPA-001/IP-P00049/2017-2018/10123) was appointed as the Interim Resolution Professional (**IRP**). At the first meeting of the CoC on 14.11.2019, the Applicant was appointed as the Resolution Professional (**RP**) of the Corporate Debtor.
6. The period of 251 days i.e. from 25.03.2020 to 30.11.2020 *vide* order dated 09.10.2020 in I.A. (IB) No. 777/KB/2020 (181 days) and order dated 28.01.2021 in I.A.(IB) No.18/KB/2021 (70 days) was excluded for the purpose of CIRP. Further extension of 90 days was also granted *vide* order dated 09.10.2020 in I.A.(IB) No. 777/KB/2020.

Constitution of CoC

7. The IRP made public announcement on 17.10.2019 in *Business Standard (English) (Kolkata Edition)* and *Aajkal (Bengali) (Kolkata Edition)* newspapers regarding initiation of Corporate Insolvency Resolution Process (**CIRP**) and called proof of claims from the financial and operational creditors, workers and employees of the corporate debtor in the specified forms till 29.10.2019.
8. The CoC was constituted on 07.11.2019 with three secured Financial Creditor i.e., Oriental Bank of Commerce, Allahabad Bank and UCO Bank. A report of the constitution of the CoC dated 07.11.2019, was filed before the Adjudicating Authority.
9. The Applicant states that a total of thirteen CoC meetings have been held during CIRP period, as follows:

Particulars	Date of CoC meeting
1 st CoC Meeting	14.11.2019
2 nd CoC Meeting	24.12.2019
3 rd CoC Meeting	27.01.2020
4 th CoC Meeting	04.03.2020
5 th CoC Meeting	14.07.2020
6 th CoC Meeting	16.09.2020
7 th CoC Meeting	03.11.2020
8 th CoC Meeting	01.12.2020
9 th CoC Meeting	16.12.2020
10 th CoC Meeting	24.12.2020, adjourned and concluded on 29.12.2020
11 th CoC Meeting	06.01.2021
12 th CoC Meeting	27.01.2021, adjourned and concluded on 28.01.2021
13 th CoC Meeting	23.02.2021

Collation of claims

10. The amounts claimed and admitted are summarised below:

Amount in INR

Nature of creditor			
Financial Creditors			
S.NO.	NAME OF CREDITOR	Total Claimed	Total Claim
		Amount	Admitted
		(In Rs)	(In Rs)
1	Allahabad Bank (now known as Indian Bank)	70,05,23,413	70,05,23,413
2	Oriental Bank of Commerce (now known as Punjab National Bank)	55,49,86,487	54,18,43,117
3	UCO Bank	28,87,43,488	28,87,43,488
Sub Total- A		1,54,42,53,388	1,53,11,10,018
Operational Creditor (Other than Workmen and Employee and Statutory Dues)		85,11,21,017	73,33,366
Operational Creditors (Statutory Dues)		40,86,888,24	40,86,888,24
Operational Creditor (<i>Workmen & Employee</i>)		0	0
Sub Total- B		125,98,09,841	41,60,22,190
Total A+B		280,40,63,229	194,71,32,208

CIRP and compliances

11. The Applicant submits that in terms of the provisions of section 25(2)(h) of the Code read with regulation 36A(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, invitations in Form 'G' for Expressions of Interest (**EOI**) from potential resolution applicants were issued three times, details of which are given below:-

- i. On 28.12.2019 in *Business Standard*, (*English*) and *Aajkal* (*Bengali*) newspapers of Kolkata edition.
 - ii. On 31.01.2020 in *Financial Express*, (*English*) and *Ekdin*, *Aajkal* (*Bengali*) newspapers of Kolkata edition.
 - iii. On 08.09.2020 in *Business Standard*, (*English*) and *Ekdin*, *Aajkal* (*Bengali*) newspapers of Kolkata edition.
12. The notice was also published on the website of the Insolvency and Bankruptcy Board of India (**IBBI**).
13. The Applicant submits that in response to the invitation for EoI published on 31.01.2020, one EoI was received from Shiva Consultants Pvt. Ltd. But the Prospective Resolution Applicant (**PRA**) did not submit any Resolution Plan. In response to the EoI published on 08.09.2020, RP received EoI from two Prospective Resolution Applicants i.e. from PNC Infratech Limited and Krishna Infosolutions Private Limited. The RP then shared the Information Memorandum, Evaluation Matrix and Request for Resolution Plan (**RFRP**) with both the Prospective Resolution Applicants *vide* e-mail dated 30.09.2020.
14. Only one Resolution Plan was received from Krishna Infosolutions Private Limited in a sealed cover on 29.10.2020 while PNC Infratech Limited did not submit any resolution plan and chose to withdrawn from the process.
15. As per regulation 35(2) of the CIRP Regulations, after receipt of the Resolution Plan, the RP informed the fair value and liquidation value of the Corporate Debtor to the CoC on 02.11.2020.

Evaluation and voting

16. The Resolution Plan was placed for discussion before the CoC in the 7th CoC meeting held on 03.11.2020, the 8th CoC meeting held on 01.12.2020, the 9th CoC meeting held on 16.12.2020 and the 10th CoC meeting held on 24.12.2020, adjourned and concluded on 29.12.2020, the Resolution Plan was revised/modified from time to time by the Resolution Applicant.

17. The Revised Resolution Plan was discussed in the 11th CoC meeting held on 06.01.2021 for approval. However, on e-voting the said Resolution Plan was not approved.
18. The CoC conducted one Joint Lender Meeting wherein it was decided that for successful resolution of the Corporate Debtor they would give another opportunity to the Prospective Resolution Applicant to submit their revised Resolution Plan incorporating the changes suggested by the CoC.
19. The Resolution Applicant submitted its revised Resolution Plan to the RP on 23.01.2021. The RP called the 12th CoC meeting on 27.01.2021 for further discussion on the Resolution Plan, which was adjourned and concluded on 28.01.2021. After due discussions the RP placed the said Resolution Plan before the CoC for voting. However, on conclusion of e-voting on 10.02.2021 the same was again not approved by the CoC members.
20. The Resolution Applicant and the Resolution Applicant again submitted its Revised Resolution Plan on 20.02.2021. The CoC reviewed the revised plan in its 13th meeting held on 23.02.2021. The Resolution Plan was put for e-voting for approval, the e-voting started on 24.02.2021 and concluded on 06.03.2021 wherein the Resolution Plan submitted by Krishna Infosolutions Private Limited was approved with 81.14% voting share.
21. The Applicant issued the Letter of Intent on 06.03.2021 to the Successful Resolution Applicant¹.
22. In accordance with regulation 36B(4A) of the CIRP Regulations, the Successful Resolution Applicant has submitted the Performance Bank Guarantee of Rs.25,75,000/- (Rupees Twenty-Five Lakh Seventy-Five Thousand only) issued by HDFC Bank on 16.03.2021².

¹ Annexure G in pages 63-64 of the I.A.

² Annexure H in pages 67-70 of the I.A.

Compliance of the approved Resolution Plan with various provisions

23. The Applicant has filed a Compliance Certificate in prescribed form, i.e., Form ‘H’ dated 18.03.2021 in compliance with regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.³
24. The Applicant has submitted details of various compliances as envisaged within the Code and the CIRP Regulations which a Resolution Plan should adhere to, which is reproduced hereunder:

I. Submission of Resolution Plan in terms of sub-section (2) of section 30 of the Code (as amended vide Amendment dated 16 August 2019):

Clause of s.30(2)	Requirement	How dealt with in the Plan
1.	Plan must provide for payment of CIRP cost in priority to repayment of other debts of CD in the manner specified by the Board.	Clause 8.3 (a) in Chapter VIII at Page 35 of the Resolution Plan.
2.	(i) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than the amount payable to them in the event of liquidation u/s 53; (ii) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be not less	Clause 8.3 (b) (vi) & (vii) in Chapter VIII at Page 36-37 and Clause 6.2 in Chapter VI at Page 29 of the Resolution Plan Clause 8.3 (b) (vi) & (vii) in Chapter VIII at Page 36-37 and Clause 6.2 in Chapter

³ Pages 137-144 of the I.A.

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Clause of s.30(2)	Requirement	How dealt with in the Plan
	<p>than amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher;</p> <p>(iii) provides for payment of debts of financial creditors who do not vote in favour of the resolution plan, in such manner as may be specified by the Board.</p>	<p>VI at Page 29 of the Resolution Plan</p> <p>Clause 8.3 (b) (v) in Chapter VIII at Page 36 and Clause 6.2 in Chapter VI at Page 29 of the Resolution Plan.</p>
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Chapter X at Page 46 of the Resolution Plan.
(d)	Implementation and Supervision	Chapter IX at Pages 43-45 of the Resolution Plan.
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Clause 2 in Chapter XIII at Page 53 of the Resolution Plan
(f)	Conforms to such other requirements as may be specified by the Board.	Clause 6.8 in Chapter VI at Page 31 of the Resolution Plan.

II. Measures required for implementation of the Resolution Plan in terms of regulation 37 of CIRP Regulations:

Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximisation of value of its assets, including but not limited to the following: -	
(a) transfer of all or part of the assets of the corporate debtor to one or more persons;	Not proposed in the Resolution Plan.
(b) sale of all or part of the assets whether subject to any security interest or not;	Not proposed in the Resolution Plan.
(c) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	Not proposed in the Resolution Plan.
(d) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	Clause 7.1.1 in Chapter VII at page 33 and Clause 2.2.1 of Chapter IX at page 43-44 of the Resolution Plan.

Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
(e) cancellation or delisting of any shares of the corporate debtor, if applicable;	Clause 2.2.1 in Chapter IX at page 43-44 of the Resolution Plan
(f) satisfaction or modification of any security interest;	Clause 8.3 in Chapter VII at page 35-36 of the Resolution Plan.
(g) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Chapter VIII at Pages 38-42 of the Resolution Plan
(h) reduction in the amount payable to the creditors;	Chapter VIII at Pages 34-38 of the Resolution Plan
(i) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	Not proposed in the Resolution Plan
(j) amendment of the constitutional documents of the corporate debtor;	Chapter 2 at Page 16 of Resolution Plan.
(k) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	Clause 7.1.1 in Chapter VII at Page 33 and Clause 2.2.1 in Chapter IX at Pages 43-44 of the Resolution Plan.

Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
(l) change in portfolio of goods or services produced or rendered by the corporate debtor;	Not proposed in the Resolution Plan
(m) change in technology used by the corporate debtor; and	Not proposed in the Resolution Plan
(n) obtaining necessary approvals from the Central and State Governments and other authorities.	Clause 2 in Chapter IX at page 43-44 of the Resolution Plan

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

Regulations:

Ref to relevant Reg.	Requirement	How dealt with in the Plan
38(1)	The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.	Point no. vi of Clause 8.3 in Chapter VIII at Page 36 and Clause 6.2 in Chapter VI at Page 29 of the Resolution Plan.

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Ref to relevant Reg.	Requirement	How dealt with in the Plan
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors of the corporate debtor.	<i>Clause 8.3 in Chapter VIII at Pages 35-42 of the Resolution Plan.</i>
38(1B)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.	Clause 6.14 at Chapter VI at page 32 of the Resolution Plan.
38(2)	A resolution plan shall provide:	
	(a) the term of the plan and its implementation schedule;	Clause 1 in Chapter IX at page 43 and Chapter XI at page 47 of the Resolution Plan.

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Ref to relevant Reg.	Requirement	How dealt with in the Plan
	(b) the management and control of the business of the corporate debtor during its term; and	Chapter X at Page 46 of the Resolution Plan.
	(c) adequate means for supervising its implementation.	Clause 3 in Chapter IX at page 44-45 of the Resolution Plan.
38(3)	A resolution plan shall demonstrate that –	
	(a) it addresses the cause of default;	Clause 5.1 in Chapter V at Page 27 of the Resolution Plan.
	(b) it is feasible and viable;	<i>Clause 6.10 in Chapter VI at page 31 of the Resolution Plan.</i>
	(c) it has provisions for its effective implementation;	Chapter IX at Page 43 of the Resolution Plan.
	(d) it has provisions for approvals required and the timeline for the same; and	Clause 2 in Chapter IX at page 43-44 of the Resolution Plan.

Ref to relevant Reg.	Requirement	How dealt with in the Plan
	(e) the Resolution Applicant has the capability to implement the resolution plan.	Clause 3.1 to 3.5 in Chapter III at Pages 18-23 of Resolution Plan.

25. The Resolution Applicant has submitted affidavit of eligibility under section 29A of the Code, affirmed on 28.10.2020⁴.

Details of Resolution Plan/Payment Schedule

26. The Applicant submits that the Resolution Applicant had filed a Resolution Plan on 28.10.2020 which was further amended on 19.11.2020, 19.12.2020, 31.12.2020, 04.01.2021, 23.01.2021, 28.01.2021 and 20.02.2021.
27. The relevant information with regard to the amount claimed, amount admitted and the amount proposed to be paid by the Resolution Applicant, *i.e.*, Krishna Infosolutions Private Limited (CIN: U72200DL2005PTC142629) under the said Resolution Plan is tabulated as under:

Sl. No.	Name of Claimant	Claim admitted <i>(in Rs./lakh)</i>	Amount proposed <i>(in Rs./lakh)</i>	Amount provided (%)
1.	CIRP Costs (approx.) [Clause 8.3]	65.00	65.00	100%

⁴ Pages 145-148 of the I.A.

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Sl. No.	Name of Claimant	Claim admitted (in Rs./lakh)	Amount proposed (in Rs./lakh)	Amount provided (%)
2.	Financial Creditors [Clause 8.3]	15,311.10	440.00 (to secured FC)	2.87%
3.	Operational Creditors [Clause 8.3]	4,160.22	10.00	0.24%
4.	Employees/Workmen [Clause 8.3]	Nil	Nil	----
5.	Others [Clause 8.3]	Nil	Nil	----
6.	Capex and Working Capital	Nil	50.00	----
	Total	19,536.32	565.00	----

28. Summary of the financial proposal/payment under the Resolution Plan dated 20.02.2021, is tabulated hereunder:

Particulars	Amount
Admissible Debt to be paid as CIRP costs.	₹65,00,000/- (Rupees Sixty-Five Lakh only) (approx.) shall be paid in

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Particulars	Amount
	priority within 30 days of approval of Resolution Plan.
Admissible Debt to be paid to the Secured Financial Creditors:	Total payment proposed in the Resolution Plan:
Allahabad Bank (<i>now Indian Bank w.e.f 01.04.2020</i>)	<p>₹2,01,31,166/- (Rupees Two Crore One Lakh Thirty-One Thousand One Hundred and Sixty-Six only) being 2.87% of the total admitted claim.</p> <p>a. Upfront payment of ₹40,26,233/- (Forty Lakh Twenty-Six Thousand Two Hundred Thirty-Three only) to be made within 30 days of the effective date.</p> <p>b. Second instalment of ₹60,39,350/- (Rupees Sixty Lakh Thirty-Nine Thousand Three Hundred Fifty only) to be made within 90 days of the effective date.</p> <p>c. Balance payment of ₹1,99,65,583/- (One Crores- Ninety-Nine Lakh Sixty-Five Thousand Five Hundred Eighty-Three only) within six months of the effective date.</p>
Admissible Debt to be paid to the Secured Financial Creditors:	Total payment proposed in the Resolution Plan:

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Particulars	Amount
<p>Oriental Bank of Commerce (<i>now Punjab National Bank w.e.f. 01.04.2020</i>)</p>	<p>₹1,55,71,120/- (Rupees One Crore Fifty-Five Lakh Seventy-One Thousand One Hundred Twenty only) being 2.87% of the total admitted claim.</p> <p>a. Upfront payment of ₹31,14,224/- (Rupees Thirty-One Lakh Fourteen Thousand Two Hundred Twenty-Four only) to be made within 30 days of the effective date.</p> <p>b. Second instalment of ₹46,71,336 (Rupees Forty-Six Lakh Seventy-One Thousand Three Hundred Thirty-Six only) to be made within 90 days of the effective date.</p> <p>c. Balance payment of ₹77,85,560/- (Rupees Seventy-Seven Lakh Eighty-Five Thousand Five Hundred Sixty only) within six months of the effective date.</p>
<p>Admissible Debt to be paid to the Secured Financial Creditors:</p> <p>UCO Bank</p>	<p>Total payment proposed in the Resolution Plan:</p> <p>₹82,97,714/- (Rupees Eighty-Two Lakh Ninety-Seven Thousand Seven</p>

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Particulars	Amount
	<p>Hundred and Fourteen Only) being 2.87% of the total admitted claim.</p> <p>a. Upfront payment of ₹16,59,543/- (Rupees Sixteen Lakh Fifty-Nine Thousand Five Hundred and Forty-Three only) to be made within 30 days of the effective date.</p> <p>b. Second instalment of ₹24,89,314/- (Rupees Twenty-Four Lakh Eighty-Nine Thousand Three Hundred and Fourteen only) to be made within 90 days of the effective date.</p> <p>c. Balance payment of ₹41,48,857/- (Rupees Forty-One Lakh Forty-Eight Thousand Eight Hundred and Fifty-Seven only) within six months of the effective date.</p>
Admissible Debt to be paid to Operational Creditors including Government dues	₹10,00,000/- (Rupees Ten Lakh only) being 0.24% of the claim admitted, proposed to be payable upfront within 30 days of the effective date.

29. The Resolution Plan defines “**Effective Date**” as “*the date on which the NCLT approves the Resolution Plan with or without the amendment and the copy of the order duly received by the Resolution Applicant*”.

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

30. The Resolution Plan also provides for –
- Management of company after resolution in Chapter X at page 46 of Resolution Plan.
 - Term of the resolution plan in Chapter XI at page 47 of Resolution Plan.
 - Implementation and Supervision of the resolution plan in Chapter IX at page 43 of the Resolution Plan.

Relinquishment/Waiver of liabilities and Approvals

31. The Reliefs, Exemptions and Waivers sought by the Resolution Applicant from the Adjudicating Authority are set out below for the successful implementation of the Resolution Plan. The orders thereon are indicated against each.

Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
1.	12.1.1	CBDT i. All income tax demands/ interest and penalty assessed/ to be assessed/ claimed/ to be claimed against the corporate debtor for the FY/ period up to the effective date shall stand written off/ waived and extinguished on approval of Resolution Plan by the Hon’ble Adjudicating Authority.	This is for the relevant tax authorities to consider, and not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority.
2.		ii. CD shall be exempted from the applicability of provisions of sections 41(1), Section 79 and	This is for the relevant tax authorities to consider, and not in the nature of a

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Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		Section 115 JB of the Income Tax Act, 1961 in respect of net credit balance pursuant to write off of assets (considered unrecoverable) of the CD and waivers /extinguishments of the claims/ outstanding dues/ outstanding liabilities of the creditors of the CD, whether provided in the books of the CD or not, made pursuant to the approved Resolution Plan. All demands of whatever nature for the Financial years/ period up to the Effective Date; shall be deemed to have been waived/ written off/ extinguished and no amount shall be payable to the Income Tax Department by the Corporate Debtor	waiver, concession or relief to be granted by this Adjudicating Authority.
3.		iii. The CD/ RA shall be exempted from the applicability of section 56(2)(x) of the Income Tax Act, 1961 due to consideration offered to Creditors which might be different to the fair value of such assets	This is for the relevant tax authorities to consider, and not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority.
4.		iv. The RA, CD, nominees of RA on the board of the CD and the employees of the CD shall not be liable for any penalty or prosecution in respect of any default, including but not limited to defaults for nonfiling of Income Tax and TDS returns,	In <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , ⁵ the Hon'ble Supreme Court held that once a Resolution Plan is

⁵ 2021 SCC OnLine SC 313 decided on 13.04.2021

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Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		committed by the CD for the period prior to the Effective Date	approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan. The provisions of section 32A of the Code shall also apply.
5.	12.1.2	<p>FROM MINISTRY OF CORPORATE AFFAIRS /CENTRAL GOVERNMENT-</p> <p>i. On approval of the Resolution plan, existing paid up equity share capital of CD shall stand cancelled /extinguished without following the provisions of Section 66 of the Companies Act, 2013.</p>	As far as meetings of shareholders for issue of such new equity shares and for cancellation of existing equity shares of the corporate debtor are concerned, approval to the Resolution Plan accorded by this Adjudicating Authority shall be deemed to be requisite approval for all such meetings or dispensation from conducting meetings of shareholders. However, all regulatory compliances such as filing with the RoC, payment of filing fees on documents etc. will have to be complied with. RoC cannot be expected to grant automatic approval for such activities without the forms being filed on behalf of the corporate debtor. This fact has also been recognised to be so
6.	<p>ii. The Company shall be exempted from following the procedural requirement relating to enhancement of Authorized Share Capital and also from the payment of necessary fee to MCA.</p>		
7.	<p>iii. In view of the restructuring of capital, the respective clauses relating to Authorized Share Capital in the Memorandum of Association and Articles of Association of CD, due to re-composition of Authorized share capital and other provisions of the Resolution Plan, shall stand modified in order to be in line with the provisions of the</p>		

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Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		approved Resolution Plan with effect from the Effective date without any further compliances under Schedule V of the Companies Act, 2013, compliances under the Listing agreements with the stock exchanges and without any payment of Registration Charges as per section 403 and other relevant applicable provisions of the Companies Act, 2013.	by the Ministry of Corporate Affairs <i>vide</i> General Circular No.IBC/01/2017 dated 25.10.2017 issued under File No.30/14/2017-Insolvency.
8.		iv. On approval of the Resolution Plan the CD shall be exempt from applicability of the provisions of section 13 and 14 of the Companies Act 2013 related to amendment in the MOA and AOA of the CD in case any conflict arises between Resolution Plan and Memorandum & Article of Association of the CD, the provisions of this resolution plan shall prevail.	
9.		v. Upon approval of the Resolution Plan by the AA, all non-compliances, breaches and defaults of CD under the Companies Act, 2013 for the period prior to the Effective Date (including but not limited to those relating to filing of annual documents), shall be deemed to be waived by the concerned Government	Immunity is granted in terms of section 32A of the Code, nothing more and nothing less.

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		Authorities. Immunity shall be deemed to have been granted to CD from all proceedings and penalties under the Companies Act and/or any other act for any non-compliance for the period prior to the Effective Date.	
10.	12.1.3	<p>Other reliefs</p> <p>(a) <u>Indirect Taxes</u> All demands including tax, interest and penalty charged/ to be charged/ chargeable from the CD on account of Sales Tax, VAT, GST, Trade Tax, Commercial Tax, Service Tax or any other tax of similar nature, for the period up to the effective date shall stand waived, extinguished and written off on approval of Resolution Plan by the Hon'ble Adjudicating Authority.</p>	In <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , ⁶ the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.
11.		<p>(b) <u>Liability for past actions or omissions</u> The Resolution Applicant/its promoters /directors /employees and the CD /its new directors /employees shall have immunity from any actions, penalties and prosecution (of any nature) under any laws for any non-compliance of laws in relation to the CD or by the CD upto the effective date.</p>	Whatever protection is envisaged under section 32A of the Code alone is granted, nothing more and nothing less.
12.		<p>(c) <u>Inquires, investigations etc.</u> All inquiries, investigations, whether civil or criminal, notices, causes of action, suits, claims, disputes, litigation, arbitration or other judicial, regulatory</p>	Whatever protection is available to the corporate debtor in terms of section 32A of the Code will in any case continue to be

⁶ 2021 SCC OnLine SC 313 decided on 13.04.2021

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Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		<p>or administrative proceedings against, or in relation to, or in connection with the CD or affairs of the CD, pending or threatened, present or future (including without limitation, any investigation, action proceeding, prosecution, whether civil or criminal, by the Central Bureau of Investigation, the Enforcement Directorate or any other enforcement agency), in relation to any period prior to the effective date or arising on account of the acquisition of control by the Resolution Applicant over the CD pursuant to this Resolution Plan shall be deemed to be withdrawn or dismissed and all liabilities or obligations, whether or not set out in the balance sheets of the CD or the profit and loss account statements of the CD, will be deemed to have been written off in full and permanently extinguished by virtue of the order of the NCLT approving this Resolution Plan and the CD or the Resolution Applicants shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto. By virtue of the order of the NCLT approving this Resolution Plan all new inquiries investigations, whether civil or criminal, notices, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings will be deemed to be barred and will not be initiated or admitted against the CD in relation to any period prior to the acquisition of control by the Resolution Applicants over the CD or on account of the acquisition of control</p>	<p>available. Therefore, no specific orders are necessary in this regard.</p>

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Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		by the Resolution Applicants over the CD pursuant to this Resolution Plan.	
13.		<p>(d) <u>Shareholders' Approval not required</u></p> <ul style="list-style-type: none"> • Under the Companies Act, various actions which are proposed to be undertaken pursuant to this Resolution Plan, such as, cancellation of the equity share capital of the CD; issuance of securities by the CD require the approval of the shareholders' of the CD. • However, pursuant to the General Circular No. IBC/01/2017 dated October 25, 2017 released by the MCA ("October 25 Circular"), it has been clarified by the MCA that "the approval of the shareholders/members of the corporate debtor/company for a particular action required in the resolution plan for its implementation, which would have been required under the Companies Act, 2013 or any other law if the resolution plan of the company was not being considered under the Code, is deemed to have been given on its approval by the Adjudicating Authority". • Accordingly, in light of the 25th October, 2017 Circular, the requirement of procuring approval of the shareholders of the CD has been dispensed with for any of the actions proposed to be undertaken pursuant to this Resolution Process. 	Granted.

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14.		<p>(e) <u>Exemptions from Stamp Duty/ fee</u> The CD/RA shall be exempted from the levy of stamp duty and fees by the stamp authorities and Ministry of Corporate Affairs, applicable in relation to this Resolution Plan and its implementation, including issuance and transfer of new Equity Shares, Merger, Capital Reduction</p>	<p>Not granted. The Resolution Plan cannot be in violation of any law for the time being in force. Therefore, if there are any documents on which stamp duty is required to be paid, or in respect of which non-registration will have adverse consequences, they shall apply with full force and no waiver can be granted in this regard.</p>
15.		<p>(f) <u>Undertaking for creation of Performance Security</u> After the approval of Resolution Plan of M/s. Krishna Infosolutions Pvt Ltd(RA) from the Committee of Creditor of M/s Atlantic Projects Limited and in terms of the conditions of the RFRP, RA undertakes for creation of Performance Security for a value equal to 5% of the amount payable under the Resolution Plan in favour of Indian Bank within 15 days of the date of approval of the Plan by CoC which is valid for the entire term of the Resolution Plan and adhere with the terms and conditions of the RFRP. The said regulation come into effect after the approval of the Resolution Plan from the CoC and issue of LOI by RP.</p>	<p>The implication of this waiver is not clear.</p>
16.		<p>The CD / the Resolution Applicant shall be granted an exemption from all taxes, levies, fees, transfer charges, transfer premium, and surcharge chargeable under any law, rule or regulation by the Central Govt. /State</p>	<p>Not granted. The Resolution Plan cannot be in violation of any law for the time being in force.</p>

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		Govt. /Department /Authority /Entity that arise from or relate to implementation of the Resolution Plan.	
17.		The jurisdictional Registrar of Companies to take on record and implement the Plan, upon approval of the Plan by the AA , without any further compliances and re-instate all the approvals and waive all the financial or other penalties/ interest / prosecution of all type and nature against the CD.	The duties of the Registrar of Companies do not include taking on record and implementing the Plan. In so far as compliances are concerned, all necessary forms along with filing fees shall be filed with the Registrar of Companies to enable him to take the same on record.
18.		Any dues, penalties and charges of whatsoever nature charged or chargeable by any Authority from the CD/ RA for the period upto the Effective date and relating to the implementation of this Resolution Plan shall stand waived and extinguished on approval of Resolution Plan by the Hon'ble Adjudicating Authority.	Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , ⁷ 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

⁷ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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			<p>authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.</p>
19.		<p>Any approvals that may be required from Government Authorities or any other land development authority with regard to any change in business activities of the Corporate Debtor in connection with the implementation of this Resolution Plan shall be deemed to have been granted as on the Effective Date.</p>	<p>This is for the respective authorities to consider, keeping the spirit of the IBC in view, which is to enable a fresh start for the Corporate Debtor.</p>

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20.		Upon approval of the Resolution Plan by the AA, all non-compliances, breaches and defaults of CD for the period prior to the Effective Date (including but not limited to those relating to tax), shall be deemed to be waived by the concerned Government Authorities. Immunity shall be deemed to have been granted to CD from all proceedings and penalties under all Applicable Laws for any non-compliance for the period prior to the Effective Date.	Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , ⁸ wherein the Hon'ble Supreme Court has held that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt, any State Govt or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the
21.		Further, no interest/penal implications shall arise due to such non-compliance /default /breach prior to the Effective Date. This includes, without limitation, waiver/extinguishment of any penalties / interests on account of extinguishment of statutory and other liabilities of CD (including the electricity dues of the Company) in accordance with the terms of this Resolution Plan.	

⁸ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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			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.
22.		All legal proceedings commenced against the Corporate Debtor in relation to Claims, including all criminal proceedings, proceedings under Section 138 of the Negotiable Instruments Act, 1881(including any proceedings specified or unspecified, disclosed or not disclosed in the documents of the company) and proceedings under SARFAESI initiated against the CD/its asset shall stand withdrawn on approval of the resolution plan by the AA within 10 (ten) days of the Effective Date.	Granted.
23.		From the Effective Date, all inquiries, litigations, investigations and proceedings including but not limited to those as mentioned in this resolution plan, whether civil or criminal, suits, claims, disputes, proceedings CD or affairs of CD (including those initiated by Government Authorities), pending or threatened, present or future in relation to any period prior to the Effective Date, or arising on account of	This shall be in terms of section 32A of the Code, nothing more and nothing less.

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Sl. No.	Ref to Clause	Relief, concessions and approvals sought	Orders thereon
		implementation of this Resolution Plan shall stand withdrawn and dismissed and all liabilities and obligations therefore, whether or not set out in the balance sheets of the CD or the profit and loss account statements of the CD will be deemed to have been written off fully, and permanently extinguished and no adverse orders passed in the said matters should apply to CD / the Resolution Applicant. Upon approval of this Resolution Plan, all new inquiries, investigations, notices, suits, claims, disputes, litigations, arbitrations or other judicial, regulatory or administrative proceedings will be deemed to be barred and will not be initiated or admitted against CD / the RA and/ or its new management in relation to any period prior to the Effective Date.	
24.		Neither the Resolution Applicant nor CD , nor their respective directors, officers and employees appointed as on or after the Effective Date shall be liable for any violations, liabilities, penalties, interests on statutory payments and/ or fines with respect to or pursuant to any order of any Government Authority or on account of non-compliance of Applicable Laws by CD or due to CD not having in place requisite approvals and licenses to undertake its business as per Applicable Law.	Whatever protection is available to the corporate debtor in terms of section 32A of the Code will in any case continue to be available. Therefore, no specific orders are necessary in this regard.
25.		All Departments and Authorities, including but not limited to Government/ Semi-Government / PSUs/ Centres / Subsidiaries / Division/ Zones/ Workshop/ Sheds or any other entities not mentioned here, shall be deemed to have waived all their dues/ claims and all such Government authorities	Any resolution plan should be consistent with extant law. The Resolution Applicant to make necessary applications to the concerned regulatory or

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		shall supply their essential services to the CD without levy of any additional fee, surcharge, penalty or any other charge of whatsoever nature.	statutory authorities for renewal of such business permits and supply of essential services, and such authority shall also consider the same keeping in mind the objectives of the Code.
26.		Indemnification- Resolution Applicant and the CD shall not be impacted and will be kept indemnified financially or otherwise against any of the negative impact / observation / findings of Forensic Audit. Further neither the Corporate Debtor nor any member of the new promoter group shall be made party to any of the legal cases arising out of such forensic audit.	Whatever protection is available to the corporate debtor in terms of section 32A of the Code will in any case continue to be available. Therefore, no specific orders are necessary in this regard.
27.		Authority to Register Units – Resolution Applicant and the CD shall have all rights of ownership relating to said project, including but not limited to the right to transfer and convey rights, title and interest in the said building to unit purchasers who have executed valid sale deeds and to execute relevant documents including sale deeds and registry of the units in the name of the purchasers in the relevant Registrar or Sub-Registrar’s office.	The implication of this waiver is not clear.

Orders

32. On hearing the submissions made by the Resolution Professional, and perusing the record, we find that the Resolution Plan has been approved with 81.14% 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 RP and the Resolution Applicant for making the plan effective after approval by this Bench.

33. On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
34. As far as the question of granting time to comply with the statutory obligations or seeking approvals from authorities is concerned, the Resolution Applicant is directed to do so within one year from the date of this order, as prescribed under section 31(4) of the Code.
35. In case of non-compliance of this order or withdrawal of Resolution Plan, the payments already made by the Resolution Applicant shall be liable for forfeiture.
36. Subject to the observations made in this Order, the Resolution Plan dated 28.10.2020 which was further amended on 19.11.2020, 19.12.2020, 31.12.2020, 04.01.2021, 23.01.2021, 28.01.2021 and 20.02.2021, is hereby **APPROVED** by this Bench. **The Resolution Plan shall form part of this Order.** The Resolution Plan thus approved shall be binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect.
37. The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
38. The Resolution Professional shall submit copies of the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters.
39. Liberty is hereby granted for moving any application if required in connection with implementation of this Resolution Plan.
40. A copy of this Order is to be submitted to the Registrar of Companies, West Bengal.
41. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except the duties envisaged in the Resolution Plan.

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42. The Resolution Professional is further directed to handover all records, premises/factories/documents to the Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records and premises of the corporate debtor through the Resolution Professional to finalise the further line of action required for starting of the operation.
43. **IA. (IB) No. 352/KB/2021 and the main Company Petition, i.e., C.P. (IB) No. 174/KB/2018 shall stand disposed of accordingly.**
44. The Registry is directed to send e-mail copies of the order forthwith to all the parties for information and for taking necessary steps.
45. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
46. File be consigned to the record.

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

GGRB[LRA]

25.11.2021