

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

**IA (IB) No.265/KB/2021**

in

**CP (IB) No.956/KB/2018**

*Application under sections 30(6) and 31(1) of the Insolvency and Bankruptcy Code, 2016  
for approval of Resolution Plan*

***In the matter of:***

State Bank of India ... *Financial Creditor*

*Versus*

Swati Udyog Private Limited

CIN: U26922WB2006PTC109915 ... *Corporate Debtor*

*And*

***In the matter of:***

Manish Jain, Resolution Professional of

Swati Udyog Private Limited ... *Applicant*

**Date of hearing: 21.05.2021**

**Date of pronouncement: 16.06.2021**

***Coram:***

Mr. Rajasekhar V.K. : Member (Judicial)

Mr. Harish Chander Suri : Member (Technical)

***Appearances (via video conference):***

For the Applicant/RP : 1. Mr. Joy Saha, Sr Advocate  
2. Mr. Shaunak Mitra, Advocate  
3. Ms. Shreya Choudhary, Advocate  
4. Mr. Manish Jain, RP

**ORDER**

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

***1. Preliminary***

1.1. This is an application filed by Mr. Manish Jain, Resolution Professional of Swati Udyog Private Limited [CIN: U26922WB2006PTC109915], under section 30(6) read with section 31(1) of the Insolvency and Bankruptcy

Code, 2016 (**“the Code”**) for approval of a Resolution Plan in respect of Swati Udyog Private Limited (**“the Corporate Debtor”**).

- 1.2. The Applicant/RP has filed a Supplementary Affidavit affirmed by him on 08.05.2021 (**“first Supplementary Affidavit”**) with this Adjudicating Authority, bringing on record certain relevant facts and documents that, according to the Applicant, were inadvertently not disclosed along with the application and were required to be disclosed for effective adjudication. Further, during the course of hearing on 13.04.2021, it was noticed that the affidavit verifying the application as originally filed did not contain the signature of the notary. On this score also, it became necessary to direct the filing of the supplementary affidavit. In the interest of facilitating a final resolution to the matter, the Supplementary Affidavit is hereby taken on record.
- 1.3. This application was then heard and reserved for orders on 11.05.2021. On 12.05.2021, the application was listed again seeking certain clarifications on some mistakes noticed in the approved Resolution Plan. Mr Joy Saha, learned senior counsel appearing for the RP, sought time to file the clarifications, which was granted, and the case was adjourned to 21.05.2021. The Applicant has filed another Supplementary Affidavit affirmed on 18.05.2021 (**“second Supplementary Affidavit”**) providing clarifications sought for. The matter was thereafter heard again on 21.05.2021 and reserved for orders. The contents of these two **Supplementary Affidavits** shall be read with and shall form part of the Resolution Plan.
- 1.4. The underlying Company Petition being CP (IB) No.956/KB/2018 was filed by State Bank of India (SBI) against the Corporate Debtor under section 7 of the Code which was admitted into Corporate Insolvency Resolution Process (**“CIRP”**) by an order dated 26.11.2019.

- 1.5. Initially, Mr. Anil Agarwal was appointed as the Interim Resolution Professional (“**IRP**”), but the Committee of Creditors (“**CoC**”) in its second meeting held on 18.01.2020, resolved to replace Mr. Anil Agarwal with Mr. Manish Jain [IBBI/IPA-001/P-00582/2017-2018/11023] as the Resolution Professional (“**RP**”). An application being IA (IB) No.237/KB/2020 was filed by the CoC for replacement of the Resolution Professional, and Mr. Manish Jain was appointed as the Resolution Professional of the Corporate Debtor by an order dated 17.02.2020<sup>1</sup> passed by this Adjudicating Authority.
- 1.6. The Applicant submits that the erstwhile IRP had made public announcement on 28.11.2019 in “*Ekdin*” (Bengali) Kolkata edition, “*Financial Express*” (English) Ahmedabad, Bengaluru, Chandigarh, Chennai, Hyderabad, Kochi, Kolkata, Lucknow, Mumbai, New Delhi and Pune editions, and on 29.11.2019 in “*Aaj*” (Hindi) Jamshedpur edition, regarding initiation of the CIRP and called for proof of claims from the financial and operational creditors, workers and employees of the Company in the specified forms till 10.12.2019. Copies of newspaper publications are annexed with the first progress report.<sup>2</sup>

**2. Collation of claims**

- 2.1. The claims existing as on the date of filing the present application are as follows:<sup>3</sup>

| <b>Sl. No.</b> | <b>Category of claim</b> | <b>Amount admitted as per Information Memorandum (in rupees)</b> | <b>Amount proposed to be paid as per Plan (in rupees)</b> |
|----------------|--------------------------|--|---|
| 1.             | CIRP Costs (approx)      | -  | 50,00,000.00  |

<sup>1</sup> Page 35 of the Application

<sup>2</sup> Pages 7 to 19 of the 1<sup>st</sup> progress report

<sup>3</sup> Pages 31 & 32 of the Resolution Plan as amended by the second Supplementary Affidavit

| Sl. No. | Category of claim                 | Amount admitted as per Information Memorandum (in rupees) | Amount proposed to be paid as per Plan (in rupees) |
|---------|-----------------------------------|---|--|
| 2.      | Financial Creditors               | 90,08,32,870.87   | 13,24,22,432.02                                    |
| 3.      | Operational Creditors             | 6,29,33,499.89  | 6,29,335.00 <sup>4</sup>                           |
| 4.      | Operational Creditors (Govt Dues) | 55,91,366.00  | 55,913.66 <sup>5</sup>                             |
| 5.      | Workmen                           | -   | -  |
|         | <b>Total</b>                      | <b>97,43,57,736.76</b>                                    | <b>13,81,07,680.68</b>                             |

**3. CIRP processes and compliances**

3.1. The Applicant submits that a total of eleven of CoC meetings have been held during CIRP period as follows:

| Particulars                  | Date of CoC meeting |
|------------------------------|---------------------|
| 1 <sup>st</sup> CoC meeting  | 24.12.2019          |
| 2 <sup>nd</sup> CoC meeting  | 18.01.2020          |
| 3 <sup>rd</sup> CoC meeting  | 12.03.2020          |
| 4 <sup>th</sup> CoC meeting  | 28.07.2020          |
| 5 <sup>th</sup> CoC meeting  | 02.09.2020          |
| 6 <sup>th</sup> CoC meeting  | 09.09.2020          |
| 7 <sup>th</sup> CoC meeting  | 05.10.2020          |
| 8 <sup>th</sup> CoC meeting  | 16.11.2020          |
| 9 <sup>th</sup> CoC meeting  | 25.11.2020          |
| 10 <sup>th</sup> CoC meeting | 14.12.2020          |
| 11 <sup>th</sup> CoC meeting | 02.01.2021          |

<sup>4</sup> Amended *vide* supplementary Affidavit dated 18.05.2021 from the initial figure of “6.00”.

<sup>5</sup> Amended *vide* supplementary Affidavit dated 18.05.2021 from the initial entry of “NA”.

- 3.2. The CIRP timeline was extended from time to time with approval of this Adjudicating Authority. For the last time it was extended by excluding the period coinciding with the nationwide lockdown from 23.03.2020 till 22.04.2020, by virtue of an order dated 19.02.2021 passed by this Adjudicating Authority in IA (IB) No.98/KB/2021, the CIRP timeline was finally extended up to 21.03.2021, the Applicant submits.
- 3.3. The Applicant submits that Invitation in Form 'G' for Expression of Interest ("**EoI**") from potential resolution applicants was published on 06.02.2020 for submission of resolution plans for the Corporate Debtor, 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 [**"CIRP Regulations"**], in "*Aaj*" (Hindi) Jamshedpur edition and "*Financial Express*" (English) Ahmedabad, Bengaluru, Chandigarh, Chennai, Hyderabad, Kochi, Kolkata, Lucknow, Mumbai, New Delhi and Pune editions, and on 07.02.2020 in "*Ekdin*" (Bengali) Kolkata edition fixing the last for receipt of EoI as 21.02.2020. The copies of newspaper publications are annexed to the third progress report.<sup>6</sup>
- 3.4. The Applicant submits that one company, *viz.*, Prudent ARC Limited, had responded to the invitation for EoI published on 06.02.2020, but later they withdrew the EoI. Thereafter, the Resolution Professional had re-published invitations in Form 'G' for EoIs from potential resolution applicants on 05.03.2020 and 30.07.2020. The last dates for receipt of EoIs were 25.03.2020 and 24.08.2020 respectively. These were published in "*Business Standard*" (English) and "*Ekdin*" (Bengali) newspapers Kolkata edition on 05.03.2020 and "*Sanmarg*" and "*Morning India*" Ranchi edition on 06.03.2020 and "*Business Standard*" (English) and "*Ekdin*" (Bengali) newspapers Kolkata edition on 30.07.2020 and "*Sanmarg*" and "*Morning*

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<sup>6</sup> Pages 4 to 16 of the 3<sup>rd</sup> progress report.

*India*” of Ranchi editions on 30.07.2020. The copies of newspaper publications are annexed to the application.<sup>7</sup>

3.5. The Applicant submits that though the last date for submission of Resolution Plans pursuant to the last invitation in Form G published on 30.07.2020 was 26.09.2020, the time to submit Resolution Plans was thereafter extended by the CoC from time to time.

3.6. Pursuant to the invitation for EoI published dated 30.07.2020, the Resolution Professional received two Resolution Plans, from – (1) Shri Jai Baba Casting Private Limited [CIN: U27310CT2008PTC020766]; and (2) Bhadrashree Steel and Power Limited [CIN: U27106DL2004PLC130754].

**4. *Evaluation and voting***

4.1. On 14.12.2020,<sup>8</sup> the CoC at its tenth meeting, considered both the plans. After deliberations on both the plans, they were put up for open bidding. In the bidding, Shri Jai Baba Casting Private Limited enhanced the total amount proposed to be paid. However, Bhadrashree Steel and Power Limited refrained from enhancing the amount proposed. Thereafter, Shri Jai Baba Casting Private Limited submitted its final revised Resolution Plan which was dated 14.12.2020. By a letter dated 29.12.2020,<sup>9</sup> Jai Baba Casting Private Limited provided the required bifurcation of the amounts payable to each of the Financial Creditors.

4.2. The CoC voted on both the plans through e-voting which concluded on 30.01.2021.<sup>10</sup> The CoC approved the Resolution Plan submitted by Shri Jai Baba Casting Private Limited with 92.46% vote share. The CoC member

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<sup>7</sup> Pages 36 to 43 of the Application

<sup>8</sup> Agenda item 3, at pages 139 to 146 of the Application

<sup>9</sup> Page 116 of the Application

<sup>10</sup> Minutes at pages 135 to 149 of the Application

having 7.54% vote share voted against and dissented to the Resolution Plan.<sup>11</sup>

4.3. A copy of the evaluation matrix is annexed to the first Supplementary Affidavit.<sup>12</sup>

**5. *Salient features of the approved Resolution Plan***

5.1. The Resolution Applicant, Shri Jai Baba Casting Private Limited had clarified by a letter dated 25.01.2021<sup>13</sup> that payment to the dissenting financial creditor would be made as per section 30 of the Code.

5.2. In terms of regulation 38(1) of the CIRP Regulations, the successful Resolution Applicant has confirmed by a written undertaking dated 01.05.2021,<sup>14</sup> that the payment to the Operational Creditors would be made in priority to the Financial Creditors and in any event, within 30 days of the Financial Creditors.

5.3. The Applicant has also placed the relevant extracts of the valuation reports on record.<sup>15</sup> A chart disclosing the average liquidation value has also been placed on record.<sup>16</sup> The amount being paid through the Resolution Plan is higher than the average liquidation value.

**6. *Compliance of the successful Resolution Plan with various provisions***

6.1. The Applicant has submitted the details of various compliances as envisaged by the Code and the CIRP Regulations which a Resolution Plan is required to adhere to, as follows:-

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<sup>11</sup> E-voting sheet and report at pages 132 to 134 of the Application

<sup>12</sup> Pages 23 to 27 of the second supplementary affidavit

<sup>13</sup> Page 153 of the Application

<sup>14</sup> Page 67 of the first supplementary affidavit

<sup>15</sup> Pages 46 to 59 of the first supplementary affidavit

<sup>16</sup> Page 60 of the first supplementary affidavit

***I. Submission of Resolution Plan in terms of section 30(2) of the Code***

| <b>Clause of section 30(2)</b> | <b>Requirement</b>   | <b>How dealt with in the Plan</b>   |
|--------------------------------|--|---|
| (a)                            | Plan must provide for payment of CIRP cost in priority to repayment to further debts of CD in the manner specified by the Board.   | Clause C (1), Part III, page 32 of the Resolution Plan.   |
| (b)                            | Plan must provide for repayment of debts of Operational Creditors in such manner as may be specified by the Board which shall not be less than-  |   |
|                                | (i) the amount payable to such creditors in the event of liquidation under section 53; or  | (i) Clause A(5), Part III, para (v), internal pages 30 & 31 of the Resolution Plan.   |
|                                | (ii) the 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; and | (ii) pages 12 & 13 of the first supplementary affidavit dated 13.4.2021 that forms part of this Resolution plan.                                      |
|                                | (iii) provides for payment of debts of financial creditors who do not vote in favour of the resolution plan, in such manner as may be specified by the Board.  | (iii) RA's letter dated 25.01.2021 at page 153 of application and Undertaking dated 01.05.2021 at page 67 of first Supplementary Affidavit that forms |

| Clause of section 30(2) | Requirement  | How dealt with in the Plan   |
|-------------------------|--|--|
|                         |  | part of this Resolution plan.  |
| (c)                     | Management of the affairs of the Corporate Debtor after approval of the Resolution Plan. | Paras 6.1 & 6.2, Part II, at pages 23 and 24 of the Resolution Plan. |
| (d)                     | Implementation and Supervision.  | Paras 6.1 & 6.2, Part II, at pages 23 and 24 of the Resolution Plan. |
| (e)                     | Plan does not contravene any of the provisions of the law for the time being in force.   | Para 8, Part II, at pages 24 & 25 of the Resolution Plan.            |
| (f)                     | Conforms to such other requirements as may be specified by the Board.                    | Not proposed by RA.  |

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

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:-

| Particulars   | Relevant Provision of the Resolution Plan dealing with Regulation 37 |
|---|--|
| (a) transfer of all or part of the assets of the corporate debtor to one or more persons; | Para 15(a), Part II, at page 27 of the Resolution Plan.              |

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| <b>Particulars</b>  | <b>Relevant Provision of the Resolution Plan dealing with Regulation 37</b>  |
|---|--|
| (b) sale of all or part of the assets whether subject to any security interest or not;  | Not proposed by the RA   |
| (c) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;   | Not proposed by the RA   |
| (d) the substantial acquisition of shares of the corporate debtor, or the merger or the consolidation of the corporate debtor with one or more persons; | Para 15(b), Part II, at page 27 of the Resolution Plan read with step 2, Part V, at page 41 of the Resolution.             |
| (e) cancellation of order listing of any shares of the corporate debtor, if applicable;   | Step 3, Part V, at page 41 of the Resolution Plan.   |
| (f) satisfaction or modification of any security interest;  | Para 15(c), Part II, at page 27 read with sub-para 4.2.9 of Clause C of Part III, internal page 34 of the Resolution Plan. |
| (g) curing or waiving of any breach of the terms of any debt due from the corporate debtor;   | Not proposed by the RA   |
| (h) reduction in the amount payable to the creditors;   | Para 15(e), Part II, at page 27 read with para 6, Part III, at page 31 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;                                   | Clauses B and C at pages 32 to 35 of the Resolution Plan. No maturity extension sought.                                    |
| (j) amendment of the constitutional documents of the corporate debtor;  | Not proposed by the RA.  |

| <b>Particulars</b>  | <b>Relevant Provision of the Resolution Plan dealing with Regulation 37</b> |
|---|---|
| (k) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose; | Not proposed by the RA.   |
| (l) change in portfolio of goods or services produced or rendered by the corporate debtor;  | Not proposed by the RA.   |
| (m) change in technology used by the corporate debtor; and  | Not proposed by the RA.   |
| (n) obtaining necessary approvals from the Central and State Governments and other authorities  | Not proposed by the RA.   |

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

| <b>Reference to relevant Regulation</b> | <b>Requirement</b>   | <b>How dealt with in the Plan</b>  |
|---|--|--|
| 38(1)                                   | (a) The amount payable to the operational creditors under a resolution plan shall be paid in priority over financial creditor. | Clause C, Para 3 of Part III, at pages 32 & 33 of the Resolution Plan as modified by the second supplementary Affidavit dated 18.05.2021 read with Resolution Applicant's affidavit dated 13.04.2021 at pages 12 & 13 of first Supplementary Affidavit and Written undertaking |

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| <b>Reference to relevant Regulation</b> | <b>Requirement</b>  | <b>How dealt with in the Plan</b>   |
|---|---|---|
|   |   | dated 01.05.2021 at page 67 of the first Supplementary affidavit.                     |
|   | (b) The amount payable to the financial creditors under a resolution plan, who have a right to vote under section 21(2) 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.                             | Written undertaking dated 01.05.2021 at page 67 of the first Supplementary affidavit. |
| 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.   | Para 7 of Part II, at page 24 of the Resolution Plan.                                 |
| 38(1B)                                  | A resolution plan shall include a statement giving details of 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. | Para 10, Part II, at page 25 of the Resolution Plan.                                  |

| <b>Reference to relevant Regulation</b> | <b>Requirement</b>  | <b>How dealt with in the Plan</b>  |
|---|---|--|
| 38(2)                                   | A resolution plan shall provide:  |  |
|   | (a) the term of the plan and its implementation schedule;                                   | Part V at pages 40-43 of the Resolution Plan.  |
|   | (b) the management and control of the business of the corporate debtor during its term; and | Para 6.2, Part II, at page 24 of the Resolution Plan.  |
|   | (c) Adequate means for supervising its implementation                                       | Paras 6.1 and 6.2, Part-II, at pages 23 and 24 of the Resolution Plan.   |
| 38(3)                                   | A resolution plan shall demonstrate that-   |  |
|   | (a) it addresses the cause of default;  | Para 9, Part II, at page 25 of the Resolution Plan.  |
|   | (b) it is feasible and viable;  | Para 11, Part II, at pages 25 and 26 of the Resolution Plan.   |
|   | (c) it has provisions for its effective implementation;                                     | Para 11, Part II, at page 26 of the Resolution Plan read with Part V, step 5, at page 43 of the Resolution Plan. |
|   | (d) it has provisions for approvals required and the timeline for the same; and             | Para 1, Part V, at pages 40 and 41 of the Resolution Plan.   |
|   | (e) the Resolution Applicant has the capability to implement the resolution plan.           | Para 14 Part II, at page 26 of the Resolution Plan.  |

- 6.2. The Applicant submits that the successful resolution applicant has submitted a certificate of eligibility under section 29A of the Code, as required by regulation 39(1)(a) of the CIRP Regulations.<sup>17</sup> An undertaking has also been submitted by the successful Resolution Applicant, as mandated in terms of regulation 39(1)(c) of the CIRP Regulations.<sup>18</sup>
- 6.3. The Applicant has filed a Compliance Certificate in prescribed Form 'H' in compliance with regulation 39(4) of the CIRP Regulations.<sup>19</sup> Evidence of receipt of performance security as required under regulation 36B(4A) is placed on record.<sup>20</sup>

**Details of Resolution Plan/Payment Schedule**

- 6.4. The relevant information with regard to the amount claimed, amount admitted, and the amount proposed to be paid by the Resolution Applicant *i.e.*, Shri Jai Baba Casting Private Limited, under the said resolution plan is tabulated as under:

| Sl No                             | Creditor                 | Amount Claimed (in Rs.) | Amount Admitted (in Rs.) | % to be paid | Amount proposed in Resolution Plan (in Rs.) |
|-----------------------------------|--------------------------|-------------------------|--------------------------|--------------|---|
| <b><u>CIRP Cost</u></b>           |                          |                         |                          |              |   |
| 1.                                | CIRP Cost                | 50,00,000.00            | 50,00,000.00             | N/A          | 50,00,000.00                                |
| <b><u>Financial Creditors</u></b> |                          |                         |                          |              |   |
| 2.                                | SBI                      | 83,29,12,348.00         | 83,29,12,348.00          | 14.70%       | 12,24,38,115.16                             |
| 3.                                | PNB<br>(formerly<br>OBC) | 6,79,20,522.87          | 6,79,20,522.87           | 14.70%       | 99,84,316.86                                |

<sup>17</sup> Pages 9 to 11 of the first Supplementary Affidavit

<sup>18</sup> Page 14 of the first Supplementary Affidavit

<sup>19</sup> Pages 28 to 41 of the first Supplementary Affidavit

<sup>20</sup> Pages 42 to 45 of the first Supplementary Affidavit

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| Sl No                        | Creditor                    | Amount Claimed (in Rs.) | Amount Admitted (in Rs.) | % to be paid | Amount proposed in Resolution Plan (in Rs.) |
|------------------------------|-----------------------------|-------------------------|--------------------------|--------------|---|
| <b>Operational Creditors</b> |                             |                         |                          |              |   |
| 4.                           | Other operational creditors | 8,65,64,436.89          | 62,933,499.89            | 1.00%        | 6,29,335.00                                 |
| 5.                           | Govt dues                   | 55,91,366.00            | 55,91,366.00             | 1.00%        | 55,914.00                                   |
| Total                        |                             | 99,79,88,673.76         | 97,43,57,576.76          | -            | <b>13,81,07,681.00</b>                      |

- 6.5. The total plan size is approximately ₹1881.07 lakh inclusive of the Capital Expenditure of ₹2.00 crore and Working Capital of ₹3.00 crore for development of the assets and operation of the Corporate Debtor, as tabulated hereunder:

| Sl No | Type of debts   | Amount proposed (Rs. lakhs) |
|-------|---|-----------------------------|
| 1.    | Estimated CIRP Cost                                       | 50.00                       |
| 2.    | Secured Financial Creditors                               | 1324.22                     |
| 3.    | Workmen and Employees                                     | 0.00                        |
| 4.    | Unsecured Financial Creditors                             | 0.00                        |
| 5.    | Others Unsecured Financial Creditors<br>(Related Parties) | 0.00                        |
| 6.    | Operational Creditors (other than statutory)              | 6.29                        |
| 7.    | Statutory Liabilities                                     | 0.56                        |

| Sl No | Type of debts  | Amount proposed<br>(Rs. lakhs) |
|-------|--|--------------------------------|
| 8.    | Shareholders   | 0.00                           |
| 9.    | Contingent to Mining Department  | 0.00                           |
| 10.   | Contingent/ Unforeseen Cost  | 0.00                           |
|       | <b>Total payment to creditors</b>  | <b>1381.07</b>                 |
| 11.   | Capital expenditure and working capital for development of the assets and operations of the corporate debtor <sup>21</sup> | 500.00                         |
| 12.   | Additional sum for payment to workmen/ employees   | 0.00                           |
| 13.   | <b>Total Plan Outlay</b>   | <b>1881.07</b>                 |

6.6. Summary of the financial proposal/ payments under the Resolution Plan dated 14.12.2020 of Shri Jai Baba Casting Private Limited is tabulated hereunder:

| Particulars   | Amount   |
|---|--|
| Admissible Debt to be paid upfront to the CIRP costs            | ₹50,00,000/- or actual amount whichever is higher.   |
| Admissible Debt to be paid upfront to the Operational Creditors | The resolution applicant proposes to pay ₹6,29,334.00 to the operational creditors and ₹55,914.00 towards Government dues. |
| Payment to Financial Creditor, State Bank of India              | The total settlement amount proposed is ₹12.24 crore ( <i>as per letter dated 29.12.2020</i> )                             |

<sup>21</sup> Page 26 of the Resolution Plan, clause 11, Part II.

| <b>Particulars</b>  | <b>Amount</b>   |
|---|---|
| Payment to Financial Creditor, Punjab National Bank ( <i>earlier, Oriental Bank of Commerce</i> ) | The total settlement amount proposed is ₹0.99 crore ( <i>as per letter dated 29.12.2020</i> ) |

6.7. The resolution plan defines “*Approval Date*” as the date on which the Adjudicating Authority approves the resolution plan. Since under the resolution plan, it was provided that the payments to the financial creditors would be made on or before 31.03.2021, the resolution applicant has issued a letter dated 08.04.2021<sup>22</sup> confirming that it will make the requisite payments within 30 days of the date on which this Adjudicating Authority approves the Plan. The Resolution Professional states that the majority CoC member (SBI) who had voted in favour of the Plan has accepted this proposal by issuing e-mail dated 11.04.2021.<sup>23</sup>

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

- 6.8. The Resolution Plan also provides for-
- a. Management of Company after resolution in Part II, Para 6.2 at internal page No.24 of the Plan;
  - b. Term of the Resolution Plan as per Part V at internal page No.40 of the Plan;
  - c. Indicative timelines of events for implementation in Part V at internal pages 40 and 41 of the Plan; and
  - d. Implementation and Supervision of the resolution plan in Part V, step 5 at internal page no.43 of the Plan.

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<sup>22</sup> Pages 61 & 62 of the first Supplementary Affidavit.

<sup>23</sup> Page 64 of the first Supplementary Affidavit.

**Waivers, Reliefs and Exemptions**

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

| Sl. No. | Waivers, Reliefs and Exemptions sought from NCLT  | Orders thereon   |
|---------|---|--|
| 1.      | <b>Land Lease Deed</b>  |  |
|         | Direct Vaishnavi Metals & Power Pvt Ltd to continue the Lease agreement dated 24 <sup>th</sup> February 2010 entered between Vaishnavi Metal & Power Limited & Swati Udyog Limited for a period of 41 years, with all the terms and conditions remaining same.  | This cannot be called waiver, relief or exemption. Why this direction is required is also not clear.   |
| 2.      | <b>Corporate Guarantee of Vaishnavi Metals &amp; Power Pvt Ltd</b>  |  |
|         | Corporate Guarantee of Vaishnavi Metals & Power Pvt Ltd to be released pursuant to the transfer of the lease right.   | Why this direction is required is not clear.   |
| 3.      | <b>Companies Act, RoC/MCA</b>   |  |
| (a)     | The approval of this Plan by the NCLT shall be deemed to have waived all the procedural requirements in terms of applicable provisions of Companies Act, 2013 for the purpose of prompt execution and implementation of the Resolution Plan.  | <b>Granted, only for restructurings within the Plan period, and not in perpetuity.</b> However, the company shall file all necessary forms along with applicable fee with the Registrar of Companies.                      |
| (b)     | In terms of the Code, approval of the shareholders of the Corporate Debtor to the transactions contemplated under the Plan shall be deemed to have been given on the approval of the Plan by the NCLT, including for the increase in authorised capital and any restructuring of share capital and/or for any form of corporate restructuring to be undertaken. | <b>Granted, only for restructurings within the Plan period, and not in perpetuity.</b> Notwithstanding the above, the company shall file all necessary forms along with applicable fee with the jurisdictional RoC, and no |

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|         |   | exemption is granted in this regard.   |
| (c)     | The approval of this Plan by NCLT shall constitute adequate and final approval of NCLT for all actions and purposes of this plan including extinguishment of the existing share capital of the Corporate Debtor as per the provisions of the Companies Act, 2013.   | <b>Granted, only for restructurings within the Plan period, and not in perpetuity.</b><br>Notwithstanding the above, the company shall file all necessary forms along with applicable fee with the jurisdictional RoC, and no exemption is granted in this regard. |
| (d)     | The resolution plan is required to be implemented by the resolution applicant. The Registrar of Companies is not required to implement the plan or any portion thereof and as such is required only to act and/or give effect to the waivers, exemptions and/or direction as sought in Part VI of the resolution plan which is to be decided by the Hon'ble Tribunal in its own discretion. <sup>24</sup> | No waiver, relief or concession of any kind is sought for. Therefore, no orders are necessary.   |
| 4.      | <b>RBI</b>  |  |
| (a)     | All accounts of the Corporate Debtor shall stand regularised and their asset classification shall be "standard" for the purposes of all RBI Applicable Laws upon payment of last and final instalment and upon issuance of the certificate of consummation by the Resolution Professional. The records/score of   | Granted.   |

<sup>24</sup> As amended by the second Supplementary Affidavit at page 24 thereof. Prior to this, the relevant clause at page 43, Step 5, para C read, "*The Registrar of Companies, Kolkata to take on record and implement the Plan, upon approval of the Plan by NCLT in a timely manner, considering the waivers and exemptions required from compliance of the various provisions of the Companies Act, 2013 as defined in the order of the Hon'ble NCLT.*"

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|         | Banks/CIBIL should accordingly be upgraded to reflect such reclassification of account of the Corporate Debtor from NPA to Standard.  |  |
| (b)     | <p>All creditors of the Corporate Debtor to withdraw all legal proceedings commenced against the Corporate Debtor in relation to Claims under SARFAESI, RDDBFI or any other legal proceedings with any authority within 30 (thirty) days of the Approval Date. The Resolution Applicant undertakes to pay the creditors the amount committed under this plan to take- over the Corporate Debtor. The Corporate Debtor or the Resolution Applicant shall not be held liable to pay any amount to the creditors pursuant to the invocation by the creditor of any collateral security/Personal Guarantee/Corporate Guarantee offered to them to secure the debt availed by the Corporate Debtor either but not limited to by the Promoter/Directors/Any other third parties,</p> <p>Associate/Subsidiary/Group/Related Concern or from any other entities but not from the Corporate Debtor and Resolution Applicants towards recovery of balance claim amount.</p> | <p>In <b>Ghanshyam Mishra &amp; Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd</b>,<sup>25</sup> 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.</p> <p>In <b>Lalit Kumar Jain v Union of India &amp; ors</b>,<sup>26</sup> the Hon'ble Supreme Court held in para 133 that sanction of a resolution plan and finality imparted to it by section 31 does not per se operate as a discharge of the guarantor's liability.</p> <p>The provisions of section 32A of the IBC will also apply.</p> <p>Therefore, the reliefs sought for are granted, but shall be ringfenced by the two judgments of the Hon'ble Supreme Court in so far as extinguishment of liabilities that are not part of the</p> |

<sup>25</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.

<sup>26</sup> 2021 SCC OnLine SC 396 decided on 21.05.2021.

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|           |   | resolution plan, and non-extinguishment of personal guarantees are concerned.   |
| (c)       | All the outstanding negotiable instruments issued by the Corporate Debtor including demand promissory notes, post-dated cheques and letters of credit, shall stand terminated and the Corporate Debtor's liability under such instruments shall stand extinguished.   | Granted, strictly in terms of the Code.   |
| <b>5.</b> | <b>Taxes (Direct &amp; Indirect)</b>  |   |
| (a)       | The relevant tax authorities to consider providing relief from applicability of and payment of taxes and duties under provisions of Direct tax laws and all Indirect Tax laws which may arise as a result of implementation of the Plan either on the Resolution Applicants or the Corporate Debtor who is likely to be impacted due to implementation of the Plan.   | 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. |
| (b)       | The Central Board of Direct Taxes shall: (A) consider that the change in shareholding of the Corporate Debtor pursuant to the Plan shall not lead to lapse of brought forward losses of the Corporate Debtor; and (B) provide relief to the Corporate Debtor from all past litigations pending at different levels and provide waiver from all Tax dues including interest and penalty on such litigations pending prior to the insolvency commencement date. | This is for the relevant tax authorities to consider, and not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority. |
| (c)       | Any written off liability arising out of settlement of financial creditors, sundry creditors and export obligations shall be  | This is for the relevant tax authorities to consider, and not in the nature of a  |

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|         | treated as general reserve and shall not be subject to any kind of tax.   | waiver, concession or relief to be granted by this Adjudicating Authority.   |
| 6.      | <b>Other Government Approvals</b>   |  |
| (a)     | All relevant Governmental Authorities to continue to make available the Business Permits to the corporate debtor till the implementation of this resolution plan and pending such transfer of Business Permits the business may continue being carried out as being carried out prior to the Insolvency Commencement Date.  | The Resolution Applicant shall make necessary applications to the concerned regulatory or statutory authorities for renewal of such business permits in terms of s.31(4) of the IBC, and such authority shall also consider the same keeping in mind the objectives of the Code.   |
| (b)     | Since the Resolution Applicants have been provided with negligible 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 that have issued or granted or renewed such Business Permits to provide reasonable time period after the date of implementation of the resolution plan in order for the Resolution Applicants to assess the status of these Business Permits and ensure that the Corporate Debtor is compliant with the terms of such Business Permits and Applicable Law without initiating any investigations, actions or proceedings in relation to such Non-Compliances and to permit the Resolution Applicants to continue to operate the | It is incredulous that the resolution applicant claims to have been provided with “negligible information” about the business permits etc. If so, it was for the Resolution Applicant to undertake proper due diligence, and not thrust its own carelessness on the Adjudicating Authority and expect concessions in this regard. Having said that, it is up to the Resolution Applicant to make necessary applications to the concerned regulatory or statutory authorities for renewal of such business permits in terms of s.31(4) of the IBC, and such authority shall also consider |

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|         | business of the Corporate Debtor as carried out prior to the Insolvency Commencement Date.   | the same keeping in mind the objectives of the Code.   |
| 7.      | <b>General Waivers, Reliefs &amp; Exemptions</b>   |  |
| (a)     | Upon implementation of this resolution plan, all rights, titles and benefits relating to the movable and immovable properties of the Corporate Debtor shall be vested in the Corporate Debtor free of any title defects or Encumbrances.   | A fundamental premise of company law is that the company can own properties in its own name. Therefore, if the corporate debtor owns any movable and immovable property, it shall continue to do so and there is no question of any special vesting of rights as a result of approval of the Resolution Plan. What is there, is there, and what is not there, cannot be vested by virtue of the Resolution Plan or its approval. |
| (b)     | All liabilities (whether contingent or crystallised) in relation to any forms of credit support provided to the corporate debtor and corporate guarantees, indemnities provided by the Corporate Debtor prior to the date of implementation of the resolution plan shall stand extinguished. | In <i>Ghanshyam Mishra &amp; Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd</i> <sup>27</sup> 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.<br><br>The provisions of section 32A of the IBC will also apply.  |

<sup>27</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.

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|         |   | Therefore, the reliefs sought for are granted, but shall be ringfenced by the said judgment of the Hon'ble Supreme Court in so far as extinguishment of liabilities that are not part of the resolution plan, and non-extinguishment of personal guarantees are concerned. |
| (c)     | The Corporate Debtor shall be entitled to modify or terminate contracts (including contracts with parties that were related parties of the Corporate Debtor prior to the Insolvency Commencement Date) which impose onerous conditions hindering the restructuring for the Corporate Debtor.  | If there is any such condition in any specific contract, then this should be specifically mentioned in the Resolution Plan. A carte blanche of this nature cannot be granted in favour of the corporate debtor.  |
| (d)     | All powers of attorney or authorities executed by the erstwhile Board of the Corporate Debtor on or prior to the date of implementation of the resolution plan shall stand revoked, cancelled and shall be void. The Resolution Applicants undertakes to pay the creditors the amount committed under this plan for take-over of the Corporate Debtor. The Corporate Debtor or the Resolution Applicants shall not be held liable to pay any amount to the creditors pursuant to the invocation by the creditor of any Collateral security/Personal Guarantee/Corporate Guarantee offered to them to secure the debt availed by the Corporate Debtor either but not limited to by the Promoter/Directors/Any other third parties, Associate/Subsidiary /Group/ Related Concern or from any other entities | Granted, strictly in terms of the Code.  |

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|         | but not from the Corporate Debtor and Resolution Applicants towards recovery of balance claim amount and all power of attorney or authorities to that extent shall stand.                     |  |
| (e)     | The NCLT to provide relief to the Corporate Debtor from the execution/enforcement of any award, decree, order, judgment against the Corporate Debtor in any country by any forum of law/court | <p>A <i>carte blanche</i> of this nature cannot be granted in favour of the corporate debtor.</p> <p>However, it may be noted that in <i>Ghanshyam Mishra &amp; Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd</i>,<sup>28</sup> 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.</p> <p>The provisions of section 32A of the IBC will also apply.</p> |

6.10. Schedule 2 of Part VI of the Plan<sup>29</sup> provides for the extinguishment of claims and entitlements as follows:-

| Sl. No. | Extinguishment of Claims / Entitlements   | Orders thereon   |
|---------|---|--|
| 1.      | <i>The Resolution Professional issued a notice inviting all potential claimants to submit their</i> | In <i>Ghanshyam Mishra &amp; Sons Pvt Ltd v. Edel-</i> |

<sup>28</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.

<sup>29</sup> Internal pages 48-51 of the Plan (pages 91 to 94 of the application).

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| <p><i>proofs of Claim. This was published in newspapers in accordance with Applicable Law. Pursuant to this notice the Resolution Professional may have received letters from Persons whose Claims have not been crystallised as of the Insolvency Commencement Date. The Plan is being proposed in order to restructure the assets and liabilities of the Corporate Debtor and for the best interests of stakeholders of the Corporate Debtor to the extent possible. With this objective, the Resolution Applicants assumes that all Persons that have any Claims against the Corporate Debtor have filed their Claims and the verifiable Claims have been admitted by the Resolution Professional and disclosed in the Information Memorandum. Accordingly, the Resolution Applicants and the Corporate Debtor shall have no responsibility or liability in respect of any Claims against the Corporate Debtor attributable to the period prior to the date of implementation of the resolution plan other than any payments to be made under in Part III (Proposal for all kinds of Creditors of the Corporate Debtor). The Resolution Applicants undertakes to pay the creditors the amount committed under this plan to take-over the Corporate Debtor. The Corporate Debtor or the Resolution Applicants shall not be held liable to pay any amount to the creditors pursuant to the invocation by the creditor of any Collateral security/ Personal Guarantee/ Corporate Guarantee offered to them to secure the debt availed by the Corporate Debtor either but not limited to by the Promoter/ Directors/ Any other</i></p> | <p><i>weiss Asset Reconstruction Company Ltd,</i><sup>30</sup> 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.</p> <p>In <i>Lalit Kumar Jain v Union of India &amp; ors,</i><sup>31</sup> the Hon'ble Supreme Court held in para 133 that sanction of a resolution plan and finality imparted to it by section 31 does not <i>per se</i> operate as a discharge of the guarantor's liability.</p> <p>The provisions of section 32A of the IBC will also apply.</p> |
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<sup>30</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.

<sup>31</sup> 2021 SCC OnLine SC 396 decided on 21.05.2021.

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|           | <p><i>third parties, Associate/Subsidiary/Group/ Related Concern or from any other entities but not from the Corporate Debtor and Resolution Applicants towards recovery of balance claim amount."</i></p>   |  |
| <p>2.</p> | <p><i>On and with effect from the date of implementation of the resolution plan, the guarantors, indemnity providers and like persons that have provided guarantees, indemnities, co-borrowing or like arrangements for and on behalf of the Corporate Debtor, including in order to secure the Debt availed of by the Corporate Debtor, shall not be entitled to exercise or enforce any subrogation rights (or similar rights) in respect of such arrangements, even where such rights have already been exercised. On and with effect from the date of implementation of the resolution plan, all rights and claims (whether contingent or otherwise) of whatsoever nature of the Existing Promoters against the Corporate Debtor shall stand irrevocably and unconditionally extinguished in perpetuity.</i></p> | <p>In <b><i>Ghanshyam Mishra &amp; Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd,</i></b><sup>32</sup> 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.</p> <p>In <b><i>Lalit Kumar Jain v Union of India &amp; ors,</i></b><sup>33</sup> the Hon'ble Supreme Court held in para 133 that sanction of a resolution plan and finality imparted to it by section 31 does not <i>per se</i> operate as a discharge of the guarantor's liability.</p> |

<sup>32</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.

<sup>33</sup> 2021 SCC OnLine SC 396 decided on 21.05.2021.

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|           |   | <p>The provisions of section 32A of the IBC will also apply.</p> <p>Therefore, the reliefs sought for are granted, but shall be ringfenced by the two judgments of the Hon'ble Supreme Court in so far as extinguishment of liabilities that are not part of the resolution plan, and non-extinguishment of personal guarantees are concerned.</p> |
| <p>3.</p> | <p><i>As of the date of implementation of the resolution plan, any Debt owed by the Corporate Debtor which is barred by limitation under Applicable Law, shall immediately, irrevocably and unconditionally stand extinguished, waived, and withdrawn on and from the date of implementation of the resolution plan and no Person shall have any further rights or Claims against the Corporate Debtor in this regard. The Resolution Applicants undertakes to pay the creditors the amount committed under this plan to take over the Corporate Debtor. The Corporate Debtor or the Resolution Applicants shall not be held liable to pay any amount to the creditors pursuant to the invocation by the creditor of any Collateral Security/Personal Guarantee/Corporate Guarantee offered to them to secure the debt availed by the Corporate Debtor either but not limited to by the Promoter/</i></p> | <p>If the debt is barred by limitation, there cannot be a debt due and payable in law. Therefore, no specific approval of this Adjudicating Authority can be sought in this manner.</p> <p>In so far as the invocation by any creditor of any collateral security, personal guarantee, corporate guarantee is concerned, the judgment of the</p>   |

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|           | <p><i>Directors/Any other third parties, Associate/ Subsidiary /Group/ Related Concern or from any other entities but not from the Corporate Debtor and Resolution Applicants towards the recovery of the balance claim amount.</i></p>  | <p>Hon'ble Supreme Court in <i>Ghanshyam Mishra &amp; Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd</i>,<sup>34</sup> 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.</p> <p>The provisions of section 32A of the IBC will also apply.</p> <p>Therefore, the reliefs sought for are granted, but shall be ringfenced by the said judgment of the Hon'ble Supreme Court in so far as extinguishment of liabilities that are not part of the resolution plan, and non-extinguishment of personal guarantees are concerned.</p> |
| <p>4.</p> | <p><i>Any Encumbrance, whether over immovable, movable assets, fixed deposits or cash or any other rights or privileges and including without limitation, security, letter of credit, bank guarantee or pledge provided by Corporate Debtor to the financial creditors, that was</i></p> | <p>If the debt is barred by limitation, there cannot be a debt due and payable in law. Therefore, no specific approval of</p>  |

<sup>34</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.

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| <p><i>created/granted/arranged in connection with any Financial Debt or Operational Debt or any other debt or obligation of the Corporate Debtor, at any time prior to the Approval Date, shall automatically be released and all liabilities and obligations of the Corporate Debtor in relation to such Encumbrance or other form of collateral (including those created/ arranged by the Corporate Debtor as a guarantor or a third party security provider in relation to its subsidiaries, joint ventures, related parties or associates, if any) shall stand permanently extinguished and released on the approval of this Resolution Plan by the NCLT.</i></p> <p><i>All title deeds and other documents (including charge documents, if any) held by the Financial Creditors or any trustee/agent on their behalf in relation to the Existing Encumbrances shall be immediately returned to the Corporate Debtor as per the terms set out in Part-V(Timeline and Steps of Events towards Implementation of the Proposed Plan). No existing Encumbrance shall be enforced by any creditor after Approval Date or otherwise and all existing proceedings /enforcement action shall be immediately withdrawn.</i></p> <p><i>The Resolution Applicants undertakes to pay the creditors the amount committed under this plan to take over the Corporate Debtor. The Corporate Debtor or the Resolution Applicants shall not be held liable to pay any amount to the creditors pursuant to the invocation by the creditor of any Collateral security/Personal Guarantee/ Corporate Guarantee offered to them to secure the debt availed by the Corporate Debtor either</i></p> | <p>this Adjudicating Authority can be sought in this manner.</p> <p>In so far as the invocation by any creditor of any collateral security, personal guarantee, corporate guarantee is concerned, the judgment of the Hon'ble Supreme Court in <i>Ghanshyam Mishra &amp; Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd</i>,<sup>35</sup> will apply, in which 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.</p> <p>The provisions of section 32A of the IBC will also apply.</p> <p>Therefore, the reliefs sought for are granted, but shall be ringfenced by the said judgment of the Hon'ble Supreme</p> |
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<sup>35</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.

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|    | <i>but not limited to by the Promoter/Directors/Any other third parties, Associate/Subsidiary /Group/ Related concern or from any other entities but not from the Corporate Debtor and Resolution Applicants towards recovery of balance claim amount.</i>   | Court in so far as extinguishment of liabilities that are not part of the resolution plan, and non-extinguishment of personal guarantees are concerned.   |
| 5. | <i>All liabilities (whether contingent or crystallized) in relation to any corporate guarantees, indemnities and all other forms of credit support including those availed by Corporate Debtor on a co-borrower arrangement, along with, any third party provided by the Corporate Debtor prior to the Implementation Date, and all contingent liabilities disclosed in the annual audited financial statements of the Corporate Debtor and liabilities which are not in notice of Corporate Debtor or not acknowledged by the Corporate Debtor, shall stand extinguished and discharged on and with effect from the Implementation Date, at a Nil value. The Resolution Applicants undertakes to pay the creditors the amount committed under this plan to take-over of the Corporate Debtor. The Corporate Debtor or the Resolution Applicants shall not be held liable to pay any amount to the creditors pursuant to the invocation by the creditor of any Collateral security/Personal Guarantee/Corporate Guarantee offered to them to secure the debt availed by the Corporate Debtor either but not limited to by the Promoter/Directors/Any other third parties, Associate/Subsidiary /Group/ Related</i> | <p>In <b><i>Ghanshyam Mishra &amp; Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd</i></b>,<sup>36</sup> 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.</p> <p>In <b><i>Lalit Kumar Jain v Union of India &amp; ors</i></b>,<sup>37</sup> the Hon'ble Supreme Court held in para 133 that sanction of a resolution plan and finality imparted to it by section 31 does not <i>per se</i> operate as a discharge of the guarantor's liability.</p> <p>The provisions of section 32A of the IBC will also apply.</p> |

<sup>36</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.

<sup>37</sup> 2021 SCC OnLine SC 396 decided on 21.05.2021.

|           |  |  |
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|           | <p><i>Concern or from any other entities but not from the Corporate Debtor and Resolution Applicants towards recovery of balance claim amount."</i></p>  | <p>Therefore, the reliefs sought for are granted, but shall be ringfenced by the two judgments of the Hon'ble Supreme Court in so far as extinguishment of liabilities that are not part of the resolution plan, and non-extinguishment of personal guarantees are concerned</p>   |
| <p>6.</p> | <p><i>The payment to Persons contemplated in Part III (Proposal for all kinds of Creditors of the corporate Debtor) shall be the Corporate Debtor's and Resolution Applicant's full and final performance and satisfaction of all it so obligations to such Persons and all Claims (including, for the avoidance of doubt, any unverified portion of their Claims) of such Persons against the Corporate Debtor shall stand irrevocably and unconditionally settled and extinguished in perpetuity upon such discharge. The Resolution Applicant undertakes to pay the creditors the amount committed under this plan for taking over the Corporate Debtor. The Corporate Debtor or the Resolution Applicant shall not be held liable to pay any amount to the creditors pursuant to the invocation by the creditor of any Collateral security/Personal Guarantee/Corporate guarantee offered to them to secure the debt availed by the Corporate Debtor but not limited to by the Promoter/Directors/Any other third parties,</i></p> | <p>In <i>Ghanshyam Mishra &amp; Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd</i>,<sup>38</sup> 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.</p> <p>In <i>Lalit Kumar Jain v Union of India &amp; ors</i>,<sup>39</sup> the Hon'ble Supreme Court held in para 133 that sanction of a resolution plan and finality imparted to it by section 31 does not <i>per se</i> operate as a</p> |

<sup>38</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.

<sup>39</sup> 2021 SCC OnLine SC 396 decided on 21.05.2021.

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|           | <p><i>Associate/Subsidiary/Group/ Related Concern or from any other entities but not from the Corporate Debtor and Resolution Applicant towards the recovery of balance claim amount.</i></p>   | <p>discharge of the guarantor's liability.</p> <p>The provisions of section 32A of the IBC will also apply.</p> <p>Therefore, the reliefs sought for are granted, but shall be ringfenced by the two judgments of the Hon'ble Supreme Court in so far as extinguishment of liabilities that are not part of the resolution plan, and non-extinguishment of personal guarantees are concerned.</p>                       |
| <p>7.</p> | <p><i>On and with effect from the date of implementation of the resolution plan, all the outstanding negotiable instruments issued by the Corporate Debtor or by any Person on behalf of the Corporate Debtor including demand promissory notes, post-dated cheques and letters of credit, shall stand terminated and the Corporate Debtor's liability under such instruments shall stand extinguished. The Resolution Applicant undertakes to pay the creditors the amount committed under this plan for take over of the Corporate Debtor. The Corporate Debtor or the Resolution Applicant shall not be held liable to pay any amount to the creditors pursuant to the invocation by the creditor of any Collateral security/Personal Guarantee/ Corporate Guarantee offered to them</i></p> | <p>In <i>Ghanshyam Mishra &amp; Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd</i>,<sup>40</sup> 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.</p> <p>In <i>Lalit Kumar Jain v Union of India &amp; ors</i>,<sup>41</sup> the Hon'ble Supreme Court held in para 133</p> |

<sup>40</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.

<sup>41</sup> 2021 SCC OnLine SC 396 decided on 21.05.2021.

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|    | <p><i>to secure the debt availed by the Corporate Debtor either but not limited to by the Promoter/Directors/Any other third parties, Associate/Subsidiary /Group/ Related Concern or from any other entities but not from the Corporate Debtor and Resolution Applicant towards recovery of balance claim amount.</i></p>  | <p>that sanction of a resolution plan and finality imparted to it by section 31 does not <i>per se</i> operate as a discharge of the guarantor's liability.</p> <p>The provisions of section 32A of the IBC will also apply.</p> <p>Therefore, the reliefs sought for are granted, but shall be ringfenced by the two judgments of the Hon'ble Supreme Court in so far as extinguishment of liabilities that are not part of the resolution plan, and non-extinguishment of personal guarantees are concerned.</p> |
| 8. | <p><i>Upon the approval of the Plan by the NCLT under section 31 of the Code, all pending proceedings relating to the winding-up of the Corporate Debtor shall stand irrevocably and unconditionally abated in perpetuity.</i></p>  | <p>Granted.</p>  |
| 9. | <p><i>On and with effect from the Implementation Date, all securities convertible or exchangeable into Equity Shares and all rights to subscribe to Equity Shares, including convertible debentures, convertible preference shares, convertible loans (whether compulsorily or partially convertible or not), warrants, subscription rights under shareholders agreements entered into by the</i></p> | <p>Granted.</p>  |

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|  | <i>Existing Promoters if any, shall stand immediately extinguished and settled.</i> |  |
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**7. Findings**

- 7.1. On hearing the submissions made by the learned Senior Counsel for the Resolution Professional, and perusing the records, we find that the Resolution Plan has been approved with 92.46% 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.
- 7.2. The Resolution Applicant has from time to time submitted various clarificatory letters and undertakings through the two Supplementary Affidavits mentioned hereinbefore, the said two Supplementary Affidavits dated 08.05.2021 and 18.05.2021 along with their annexures shall form part of the Resolution Plan. The Resolution Applicant shall be bound by the undertakings given.
- 7.3. On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with sections 30 and 31 of the Code and also complies with regulations 37, 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. No circumstances exist that militate against grant of approval for the Resolution Plan.

**8. Orders**

- 8.1. Therefore, subject to the observations made in this Order, we hereby accord our approval to the Resolution Plan. The Resolution Plan shall form part of this Order.
- 8.2. As far as the question of granting time to comply with the statutory obligations or 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.

- 8.3. Any relief sought in the Resolution Plan, where any contract, agreement, understanding, proceeding, action, notice etc. not specifically identified, or is for a future contingency, is, at this point of time, rejected.
- 8.4. The Resolution Plan as approved is binding on the Corporate Debtor and other stakeholders involved so that the revival of the Corporate Debtor can come into force with immediate effect.
- 8.5. The Moratorium imposed under section 14 shall cease to have effect from the date of this order.
- 8.6. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order. However, he shall perform his duties in terms of the Resolution Plan as approved by this Adjudicating Authority.
- 8.7. The Resolution Professional is further directed to handover all records, documents and properties of the Corporate Debtor to the Resolution Applicant to enable the Resolution Applicant to finalize the further line of action required for starting of the operations.
- 8.8. In case of non-compliance of this order or withdrawal of Resolution Plan, the performance security amount already paid by the Resolution Applicant shall be liable to be forfeited.
- 8.9. Liberty is hereby granted for moving any Application if required in connection with implementation of this Resolution Plan.
- 8.10. The Resolution Professional shall file a copy of this Order with the Registrar of Companies, West Bengal, *inter alia* for updating the status of the Corporate Debtor. Additionally, the Registry shall send a copy of this order to the Registrar of Companies, West Bengal.

- 8.11. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance of requisite formalities. However, given the present pandemic times, and to mitigate hardship, the Registrar of Companies is directed to accept a digitally signed copy of this order in lieu of a properly certified copy, subject to the condition that a duly certified copy shall be applied for and produced as soon as feasible, for the record of the Registrar of Companies.
- 8.12. The application bearing **IA (IB) No.265/KB/2021** and the main Company Petition bearing **CP (IB) No.956/KB/2018** shall both stand disposed of accordingly. Any pending IAs shall also stand disposed of.

Harish Chander Suri  
Member (Technical)

**Rajasekhar V K** Digitally signed  
by Rajasekhar V K  
Date: 2021.06.16  
10:36:26 +05'30'  
Rajasekhar V.K.  
Member (Judicial)

16.06.2021

*SR (LRA)*