

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

IA(IB) 1332/KB/2020

in

CP (IB) No.1724/KB/2018

In the matter of

An application under section 30(6) for approval of Resolution Plan
under section 31(1) of the Insolvency and Bankruptcy Code, 2016.

And

In the matter of

Indian Overseas Bank

...

Financial Creditor

Versus

R.D.Rubber Reclaim Limited

CIN: L51109WB1948PLC017239

...

Corporate Debtor

And

In the matter of

Mamta Binani, RP of

R.D.Rubber Reclaim Limited

...

Applicant

Coram:

Shri Rajasekhar V.K.

: Member (Judicial)

Shri Harish Chander Suri

: Member (Technical)

Appearances:

For the Applicant/RP

: Ms Mamta Binani, RP in person

Date of hearing: 23.03.2021

Date of pronouncement: 11.05.2021

ORDER

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

1. This Court convened through video conferencing.

2. **IA (IB) No.1332/KB/2020** is an application under section 30(6) of the Code after approval of the resolution plan by the Committee of Creditors (“CoC”).
3. The underlying Company Petition in CP (IB) No. 1724/KB/2018 was filed by Indian Overseas Bank against R.D.Rubber Reclaim Limited, the Corporate Debtor, under section 7 of the Insolvency and Bankruptcy Code 2016 which was admitted *vide* order dated 25.10.2019 in CP (IB) No. 1724/KB/2018.
4. Initially, the Applicant herein, Ms Mamta Binani (IBBI Reg. No. IBBI/ IPA-002/IP-N00086/2017-18/10227) was appointed as the Interim Resolution Professional. She was later confirmed as the Resolution Professional of the Corporate Debtor at the first meeting of the Committee of Creditors on 27.11.2019.
5. The IRP made public announcement dated 31.10.2019 on 02.11.2019 in *Business Standard (English)* and *Aajkaal (Bengali)* - Kolkata edition and *Sanmarg (Hindi)* – Ranchi edition newspapers regarding initiation of Corporate Insolvency Resolution Process (“CIRP”) and called for proof of claims from the financial and operational creditors, workers and employees of the Company in the specified forms till 13.11.2019.
6. The claims of financial and operational creditors as existing as on the date of filing the present application is as follows:

Claims of Creditors:

Sl. No.	Category of Claim and Reference to clause of the Resolution Plan	Amount Admitted as per Information Memorandum (in Rs.)	Amount proposed to be paid as per Plan (in Rs.)
1.	CIRP Costs (approx.) [Part III Section A (4)]	-	1,05,00,161

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Indian Overseas Bank v R.D.Rubber Reclaim Ltd
IA(IB) 1332/KB/2020 in CP (IB) No.1724/KB/2018

Sl. No.	Category of Claim and Reference to clause of the Resolution Plan	Amount Admitted as per Information Memorandum (in Rs.)	Amount proposed to be paid as per Plan (in Rs.)
2.	Secured Financial Creditors [Part III Section A (4)]	24,44,73,641	7,92,00,000
3.	Operational Creditors (other than employees and Workmen) {Part III Section A (3)}	14,03,79,658	1,19,96,785
4.	Employees/Workmen	-	35,00,000
5.	Payment of Shareholders (Public)	-	25,000 as reserve
	Total	38,48,53,299	10,52,21,946

7. The applicant states that a total of fourteen CoC meetings have been held during CIRP period, as follows:

Particulars	Date of CoC meeting
1 st CoC Meeting	27.11.2019
2 nd CoC Meeting	24.12.2019
3 rd CoC Meeting	02.01.2020
4 th CoC Meeting	17.02.2020
5 th CoC Meeting	13.03.2020
6 th CoC Meeting	01.06.2020
7 th CoC Meeting	16.06.2020
8 th CoC Meeting	06.07.2020
9 th CoC Meeting	04.08.2020
10 th CoC Meeting	26.08.2020

Particulars	Date of CoC meeting
11 th CoC Meeting	15.09.2020
12 th CoC Meeting	28.09.2020
13 th CoC Meeting	12.10.2020
14 th CoC Meeting	06.11.2020

8. 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 (“CIRP Regulations”), invitations in Form ‘G’ for Expressions of Interest (“EoI”) from potential resolution applicants were issued on five occasions, the last Form ‘G’ dated 17.06.2020 was published on 18.06.2020 fixing the last date for receipt of EoIs as 03.07.2020. This was published in *Business Standard (English)*, *Aajkal (Bengali)*, *Kolkata* editions and *Sanmarg (Hindi) Ranchi* edition of the newspapers.
9. The Applicant submits that in response to the invitation for EoI, upto the last date, i.e., 03.07.2020, five EoIs were received. Two of the prospective Resolution Applicants (“PRA”) withdrew their EoI and one PRA did not file any viable Resolution Plan till the extended last date of submission of Resolution Plan i.e., till 10.09.2020. Two Resolution Plans were submitted, one each by Girik Securities Private Limited and Glix Securities Private Limited by the last date of submission. In furtherance of the discussions by the CoC, these Resolution Plans were revised from time to time and final Resolution Plan was submitted by Girik Securities Private Limited on 30.10.2020 and by Glix Securities Private Limited on 04.11.2020.
10. On 06.11.2020, the Resolution Plans were discussed in the fourteenth CoC meeting. In the said meeting the CoC unanimously rejected the Resolution Plan of Girik Securities Private Limited and approved the Resolution Plan

submitted by Glix Securities Private Limited (“Resolution Applicant” or “RA”) with 100% voting. Copy of the voting sheets are annexed to the Application and marked as **Annexure ‘A’ (Colly)** at pages 28 to 30 and Copy of the Minutes of meeting of fourteenth CoC meeting are annexed to the Application and marked as **Annexure ‘C’** at pages 111-129.

11. It is submitted that the RP issued the Letter of Intent (“LoI”) to the RA on 16.11.2020. Subsequent to this, the RA furnished an unconditional performance deposit amounting to ₹1,00,00,000/- (Rupees one crore only) by way of a Demand Draft dated 18.11.2020 drawn in favour of the Corporate Debtor. A copy of the said LoI is annexed to the Application and marked as **Annexure ‘F’** at pages 142 to 144 and a copy of the performance deposit along with undertaking dated 19.11.2020 is annexed to the Application and marked as **Annexure ‘G’** at pages 145 to 148.
12. The Applicant submits details of various compliances as envisaged within the Code and the CIRP Regulations which requires a Resolution Plan to 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):

<i>clause of s.30(2)</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>
<i>a.</i>	Plan must provide for payment of CIRP cost in priority to repayment of other debts of CD in the manner specified by the Board.	Part III clause 3 (iii) at Page 36 of the Resolution Plan.
<i>b.</i>	<p>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; or</p>	clause 3 (v) Part III at Page 37 of the Resolution Plan.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Indian Overseas Bank v R.D.Rubber Reclaim Ltd
IA(IB) 1332/KB/2020 in CP (IB) No.1724/KB/2018

<i>clause of s.30(2)</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>
	ii. Plan must provide for repayment of debts of OC in such manner as may be specified by the Board which shall not be not less than amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher.	clause 3 of Section C of Part III at Pages 40-41 of the 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.	clause 4.2.5 of section C of Part III at Page 44 of the Resolution Plan.
<i>c.</i>	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	clause 6.1 of Part II at Pages 25 to 27 of the Resolution Plan.
<i>d.</i>	Implementation and Supervision	Part IV at Pages 53- 56 and clause 6 of Part II at Pages 25-26 of the Resolution Plan.
<i>e.</i>	Plan does not contravene any of the provisions of the law for the time being in force.	clause 8 of Part II at Page 27 of the Resolution Plan
<i>f.</i>	Conforms to such other requirements as may be specified by the Board.	–

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

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Indian Overseas Bank v R.D.Rubber Reclaim Ltd
IA(IB) 1332/KB/2020 in CP (IB) No.1724/KB/2018

Particulars	Relevant Page of the Revised Resolution Plan dealing with 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;	clause 15(a) of Part II at Page 30 of the Resolution Plan.
b. sale of all or part of the assets whether subject to any security interest or not;	clause 15(b) of Part II at Page 30 of the Resolution Plan.
c. restructuring of the corporate debtor, by way of merger, amalgamation and demerger	clause 15(ba) of Part II at Page 30-31 of 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 15(c) of Part II at Page 31 of the Resolution Plan.
e. cancellation or delisting of any shares of the corporate debtor, if applicable;	clause 15(ca) of Part II at Page 31 of the Resolution Plan.
f. satisfaction or modification of any security interest;	clause 15(d) of Part II at Page 31 of the Resolution Plan.
g. curing or waiving of any breach of the terms of any debt due from the corporate debtor;	clause 15(e) of Part II at Page 31 of the Resolution Plan.
h. reduction in the amount payable to the creditors;	clause 15(f) of Part II 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;	clause 15(g) of Part II at Page 31 of the Resolution Plan.
j. amendment of the constitutional documents of the corporate debtor;	clause 15(h) of Part II at Page 32 of the Resolution Plan.
k. issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims	clause 15(i) of Part II at Page 32 of the Resolution Plan.

Particulars	Relevant Page of the Revised Resolution Plan dealing with compliance with Regulation
or interests, or other appropriate purpose;	
l. change in portfolio of goods or services produced or rendered by the corporate debtor;	clause 15(j) of Part II at Page 32 of the Resolution Plan
m. change in technology used by the corporate debtor; and	clause 15(k) of Part II at Page 32 of the Resolution Plan.
n. obtaining necessary approvals from the Central and State Governments and other authorities.	clause 15(l) of Part II at Page 32 of the Resolution Plan.

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

<i>Reference to relevant Regulation</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>
38(1)	The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.	clause 4.2.5 of section C of Part III at Page 44 of the Resolution Plan.
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors of the corporate debtor.	clause 7 of Part II at Page 27 of the Resolution Plan.
38(1B)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by	clause 10 of Part II at Page 28 of the Resolution Plan.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Indian Overseas Bank v R.D.Rubber Reclaim Ltd
IA(IB) 1332/KB/2020 in CP (IB) No.1724/KB/2018

<i>Reference to relevant Regulation</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>
	the Adjudicating Authority at any time in the past.	
38(2)	A resolution plan shall provide:	
	(a) the term of the plan and its implementation schedule;	clause 4 and clause 12 of Part II at Pages 25 and 29 and Part IV at Pages 53-56 of the Resolution Plan.
	(b) the management and control of the business of the corporate debtor during its term; and	clause 6 of Part II Pages 25-27 of the Resolution Plan.
	(c) adequate means for supervising its implementation.	clause 6.1 of Part II Page 25 of the Resolution Plan.
38(3)	A resolution plan shall demonstrate that –	
	(a) it addresses the cause of default;	clause 9 of Part II at Pages 27-28 of the Resolution Plan.
	(b) it is feasible and viable;	clause 11 of Part II at Pages 28-29 of the Resolution Plan.
	(c) it has provisions for its effective implementation;	clause 6.1 and clause 12 of Part II and Part IV at Pages 25-27, 29, 53-56 respectively of the Resolution Plan.
	(d) it has provisions for approvals required and the timeline for the same; and	Not proposed by the Resolution Applicant.
	(e) the Resolution Applicant has the capability to implement the resolution plan.	clause 14 of Part II at Page 30 of the Resolution Plan.

13. The Applicant submits that the successful Resolution Applicant has submitted a certificate of eligibility under section 29A of the Code, which is annexed to the application as **Annexure ‘B’** at pages 108 to 110.

14. The Applicant has filed a Compliance Certificate in prescribed form, *i.e.*, Form 'H' in compliance with regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which is annexed to the application as **Annexure 'E'** at pages 131 to 141.

Details of Resolution Plan/Payment Schedule

15. The Applicant submits the relevant information with regard to the amount claimed, amount admitted and the amount proposed to be paid by the Resolution Applicant, *i.e.*, Glix Securities Private Limited, under the said Resolution Plan is tabulated as under:

Sl. No	Creditor	Amount claimed (₹)	Amount admitted (₹)	% share in CoC	Amount proposed in Resolution Plan (in ₹)
Financial Creditors					
1.	Indian Overseas Bank	24,44,73,641	24,44,73,641	100%	7,92,00,000
Operational Creditors					
2.	Jharkhand Bijli Vitran Nigam Limited	7,66,69,324	6,60,20,682	NA	10,09,458
3.	Jharkhand Industrial Area Development Authority	32,58,563	32,58,563	NA	49,824
4.	Deputy Commissioner State Tax, Adityapur Circle, Jamshedpur	2,75,56,320	2,75,56,320	NA	4,21,337
5.	Employees Provident Fund Organisation, Jharkhand -				
	<i>u/s 7A of EPF & MP Act</i>	1,02,84,785	1,02,84,785	NA	1,02,84,785
	<i>u/s 7Q of EPF & MP Act</i>	75,62,576	75,62,576	NA	-
	<i>u/s 14B of EPF & MP Act</i>	1,05,63,927	1,05,63,927	NA	-
6.	Employees State Insurance Corp, WB	4,28,159	1,65,165	NA	2,525
7.	Shouryavansh Enterprises	1,49,67,640	1,49,67,640	NA	2,28,856
Total		39,57,64,935	38,48,53,299	100%	9,11,96,785

16. Summary of the financial proposal/payment under the Resolution Plan dated 04.11.2020 of Glix Securities Private Limited is tabulated hereunder:

Particulars	Amount																					
Admissible Debt to be paid upfront to the CIRP	₹1,05,00,161/- (Rupees one crore five lakh one hundred sixty-one only) is reserved towards IRP Cost to be paid within 14 days of approval of the plan by NCLT.																					
Admissible Debt to be paid upfront to the Operational Creditors	<p>Total of ₹1,19,96,785 (Rupees one crore nineteen lakh ninety-six thousand seven hundred eighty-five only), out of which ₹11,99,679/- (Rupees eleven lakh ninety-nine thousand six hundred seventy-nine only) is proposed to be infused & paid as upfront cash with 14 days of plan approval date and balance ₹1,07,97,106/- (Rupees one crore seven lakh ninety-seven thousand one hundred six only) to be paid over a period of 475 days of the plan approval date.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">Timeline of Payment</th> <th style="text-align: center;">Amt. Proposed in this Plan (Rs.)</th> <th style="text-align: center;">Remarks</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">X* + 14 days</td> <td style="text-align: center;">11,99,679</td> <td style="text-align: center;">Upfront Payment</td> </tr> <tr> <td style="text-align: center;">X + 110 days</td> <td style="text-align: center;">29,99,196</td> <td style="text-align: center;">1st Instalment</td> </tr> <tr> <td style="text-align: center;">X + 230 days</td> <td style="text-align: center;">29,99,196</td> <td style="text-align: center;">2nd Instalment</td> </tr> <tr> <td style="text-align: center;">X + 335 days</td> <td style="text-align: center;">29,99,196</td> <td style="text-align: center;">3rd Instalment</td> </tr> <tr> <td style="text-align: center;">X + 475 days</td> <td style="text-align: center;">17,95,518</td> <td style="text-align: center;">4th Instalment</td> </tr> <tr> <td style="text-align: center;">Total</td> <td style="text-align: center;">1,19,96,785</td> <td></td> </tr> </tbody> </table> <p>* denotes approval date of Resolution Plan.</p>	Timeline of Payment	Amt. Proposed in this Plan (Rs.)	Remarks	X* + 14 days	11,99,679	Upfront Payment	X + 110 days	29,99,196	1 st Instalment	X + 230 days	29,99,196	2 nd Instalment	X + 335 days	29,99,196	3 rd Instalment	X + 475 days	17,95,518	4 th Instalment	Total	1,19,96,785	
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X + 475 days	17,95,518	4 th Instalment																				
Total	1,19,96,785																					
Admissible Debt to be paid to Financial Creditors	<p>Total of ₹7,92,00,000/- (Rupees seven crore ninety-two lakh only), out of which ₹79,20,000/- (Rupees seventy-nine lakh twenty thousand only) is proposed to be infused & paid as upfront cash with 15 days of plan approval date and balance ₹7,12,80,000/- (Rupees seven crore twelve lakh eighty thousand only) to be paid over a period of 485 days of the plan approval date.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">Timeline of Payment</th> <th style="text-align: center;">Amt. Proposed in this Plan (Rs.)</th> <th style="text-align: center;">Remarks</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">X* + 15 days</td> <td style="text-align: center;">79,20,000</td> <td style="text-align: center;">Upfront Payment</td> </tr> <tr> <td style="text-align: center;">X + 120 days</td> <td style="text-align: center;">1,42,00,000</td> <td style="text-align: center;">1st Instalment</td> </tr> </tbody> </table>	Timeline of Payment	Amt. Proposed in this Plan (Rs.)	Remarks	X* + 15 days	79,20,000	Upfront Payment	X + 120 days	1,42,00,000	1 st Instalment												
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X* + 15 days	79,20,000	Upfront Payment																				
X + 120 days	1,42,00,000	1 st Instalment																				

Particulars	Amount		
	X + 240 days	1,42,00,000	2 nd Instalment
	X + 345 days	1,42,00,000	3 rd Instalment
	X + 485 days	2,86,80,000	4 th Instalment
	Total	7,92,00,000	
	* denotes approval date of Resolution Plan.		
Admissible Debt to be paid to Workmen and Employee	Total of ₹35,00,000/- (Rupees thirty-five lakh only) out of which ₹3,50,000/- (Rupees three lakh fifty thousand only) is proposed to be infused & paid as upfront cash with 14 days of plan approval date and balance ₹31,50,000/- (Rupees thirty-one lakh fifty thousand only) to be paid over a period of 475 days of the plan approval date.		
	Timeline of Payment	Amt. Proposed in this Plan (Rs.)	Remarks
	X* + 14 days	3,50,000	Upfront Payment
	X + 110 days	8,75,000	1 st Instalment
	X + 230 days	8,75,000	2 nd Instalment
	X + 335 days	8,75,000	3 rd Instalment
	X + 475 days	5,25,000	4 th Instalment
	Total	35,00,000	
	* denotes approval date of Resolution Plan.		
Payment to Public Shareholders	₹25,000/- (Rupees twenty-five thousand only) to be made on the 13 th day of plan approval date.		

17. The Resolution Plan defines “**Approval Date**” or “**Date of Approval**” as the date of receipt of copy of the order approving the Plan by the Adjudicating Authority.

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

18. The Resolution Plan also provides for –
1. Management of Company after resolution in clause 6 Part II;
 2. Term of the resolution plan in clause 4 of Part II; and

3. Implementation and Supervision of the resolution plan in clause 6.1 Part II.

19. 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.

Waivers, Reliefs and Exemptions sought under Schedule 1 of the Resolution plan starting at page 68.

Sl. No.	Relief and/or Concessions Sought	Orders Thereon
1.	Companies Act, ROC/MCA	
(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.	Granted, however, wherever applicable 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 restructuring of share capital and/or for any form of corporate restructuring to be undertaken.	Granted, however, wherever applicable the company shall file all necessary forms along with applicable fee with the Registrar of Companies.
(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 and issuance of fresh equity shares as per the provisions of the Companies Act, 2013 and further delisting of equity shares of the Corporate Debtor.	Granted, subject to the condition that wherever applicable, the company shall file all necessary forms along with applicable fee with the Registrar of Companies.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Indian Overseas Bank v R.D.Rubber Reclaim Ltd
IA(IB) 1332/KB/2020 in CP (IB) No.1724/KB/2018

(d)	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 NCLT.	Granted, subject to the condition that wherever applicable, the company shall file all necessary forms along with applicable fee with the Registrar of Companies.
(e)	All the non-compliances under the Companies Act including but not limiting to violation of section 185, 186 of the Act and all such other non-compliances under any other law should be regularised and all penalties payable in relation to the non-compliances stand waived off pursuant to approval of this Resolution Plan by NCLT.	Only in terms of section 32A of the Code.
(f)	Ministry of Corporate Affairs and/or the relevant Stamp duty Authority shall exempt the Resolution Applicant and the Corporate Debtor from the levy of stamp duty and fees, applicable in relation to this Resolution Plan and its implementation including but not limited to increase in authorised share capital as provided in this Resolution Plan.	Not Granted. The Resolution Applicant shall ensure full compliance of stamp duty, registration charge, etc., as may be levied by the appropriate State Government.
2.	RBI	
(a)	All accounts of the Corporate Debtor shall stand regularised and their asset classification shall be “standard” for the purposes of all RBI Applicable Laws upon payment of last and final Instalment and upon issuance of the certificate of consummation by the Resolution Professional. The records/score of Banks/ CIBIL should accordingly be upgraded to reflect such reclassification of account of the Corporate Debtor from NPA to Standard.	No blanket approval can be granted in this regard, and all such action shall be in accordance with the Code.
(b)	All creditors of the Corporate Debtor to withdraw all legal proceedings commenced against the Corporate Debtor in relation to Claims including but not limited to under SARFAESI, RDDBFI or any other legal	Granted in terms of the judgment of the Hon’ble Supreme Court in <i>Committee of Creditors of Essar Steel v. Satish Kumar Gupta & Ors.</i> , 2019 SCC

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Indian Overseas Bank v R.D.Rubber Reclaim Ltd
IA(IB) 1332/KB/2020 in CP (IB) No.1724/KB/2018

	<p>proceedings with any authority upon discharge of their debt.</p>	<p>OnLine SC 1478, decided on 15.11.2019. Para 95 of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i>¹ lays down that when the resolution plan is approved by NCLT, 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 and state government 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.</p>
(c)	<p>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.</p>	<p>Granted in terms of the judgment of the Hon'ble Supreme Court in Committee of Creditors of Essar Steel v. Satish Kumar Gupta & Ors., 2019 SCC OnLine SC 1478, decided on 15.11.2019. Para 95 of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra &</i></p>

¹ Civil Appeal No.8129/2019 a/w Civil Appeal No.1554/2021 and WP (Civil) No.1177/2020, dated 13.04.2021

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Indian Overseas Bank v R.D.Rubber Reclaim Ltd
IA(IB) 1332/KB/2020 in CP (IB) No.1724/KB/2018

		<p><i>Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i>² lays down that when the resolution plan is approved by NCLT, 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 and state government 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.</p>
3.	Taxes (Direct & Indirect)	
(a)	Relief from applicability of and payment of taxes and duties under provisions of Direct tax laws including but not limited to waiver of Tax on account of writing back/reduction of any debt pursuant to the Resolution plan and all Indirect Tax laws which may arise as a result of implementation of the Plan either on the Resolution Applicant or the Corporate Debtor who is likely to be impacted due to implementation of the Plan.	<p>The Resolution Plan is expected to be compliant with other laws, as envisaged under section 30 of the Code.</p> <p>Therefore, this waiver cannot be granted. However, it is for the Income Tax Authorities to consider the same based on the spirit of the Code.</p>
(b)	The requirement of obtaining a no objection certificate, if any, under section 281 of the	The Resolution Plan is expected to be compliant

² Civil Appeal No.8129/2019 a/w Civil Appeal No.1554/2021 and WP (Civil) No.1177/2020, dated 13.04.2021

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Indian Overseas Bank v R.D.Rubber Reclaim Ltd
IA(IB) 1332/KB/2020 in CP (IB) No.1724/KB/2018

	Income-tax Act, 1961 and provisions of taking over its predecessor's tax liability under section 170 of the Income Tax Act, 1961 shall not be applicable. Similarly, any requirements to obtain waivers from any Tax authorities including in terms of section 79 and section 115B of the Income Tax Act, 1961 is deemed to have been granted upon approval of this Resolution Plan on the Approval Date.	with other laws, as envisaged under section 30 of the Code. Therefore, this waiver cannot be granted. However, it is for the Income Tax Authorities to consider the same based on the spirit of the Code.
(c)	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.	The Resolution Plan is expected to be compliant with other laws, as envisaged under section 30 of the Code. Therefore, this waiver cannot be granted. However, it is for the Income Tax Authorities to consider the same based on the spirit of the Code.
(d)	Any written off liability arising out of settlement of financial creditors and other creditors shall not be subject to any kind of tax.	The Resolution Plan is expected to be compliant with other laws, as envisaged under section 30 of the Code. Therefore, this waiver cannot be granted. However, it is for the Income Tax Authorities to consider the same based on the spirit of the Code.
4.	Other Government Approvals	
(a)	All relevant Governmental Authorities to continue to make available the Business Permits to the corporate debtor pursuant to any corporate restructuring and pending such transfer of Business Permits the business may continue being carried out as being carried out prior to the Insolvency Commencement Date.	Granted, subject to the condition that all necessary conditions attached to such permits or licences shall be complied with by the Corporate Debtor under the successful Resolution Applicant.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Indian Overseas Bank v R.D.Rubber Reclaim Ltd
IA(IB) 1332/KB/2020 in CP (IB) No.1724/KB/2018

(b)	<p>In case 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 approval of the resolution plan in order for the Resolution Applicant 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 Applicant to continue to operate the business of the Corporate Debtor as carried out prior to the Insolvency Commencement Date.</p>	<p>All such licences, permits and things of such nature shall be applied for afresh with the competent authority, who shall consider the same keeping in view the letter and spirit of the Insolvency & Bankruptcy Code, 2016.</p>
5. Other Waivers, Reliefs & Exemptions		
(a)	<p>The order of this Adjudicating Authority for the purposes of approval of Resolution Plan shall be deemed to be an exemption from payment of stamp duty/registration fees on account of transfer of Retail Space situated at No. 21 B, 2nd Floor, Hiland Mall, Kolkata, West Bengal in the name of Corporate Debtor.</p>	<p>Not Granted. The Resolution Applicant shall ensure full compliance of stamp duty, registration fee, etc. as may be levied by the appropriate State Government.</p>
(b)	<p>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.</p>	<p>This is not in the nature of a waiver, concession or approval requiring the attention of this Adjudicating Authority at this stage. In law, a company is entitled to hold property in its own name and is capable of perpetual succession. Therefore, this relief is otiose.</p>

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Indian Overseas Bank v R.D.Rubber Reclaim Ltd
IA(IB) 1332/KB/2020 in CP (IB) No.1724/KB/2018

(c)	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.	Para 95 of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> ³ lays down that when the resolution plan is approved by NCLT, 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 and state government 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.
(d)	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.	Such blanket reliefs cannot be granted at this stage, since the parties against whom these orders will operate, are not before us at this stage.
(e)	All powers of attorney or authorities executed by the erstwhile Board of the Corporate Debtor on or prior to the date of	Such blanket reliefs cannot be granted at this stage, since the parties against whom these orders will

³ Civil Appeal No.8129/2019 a/w Civil Appeal No.1554/2021 and WP (Civil) No.1177/2020, dated 13.04.2021

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Indian Overseas Bank v R.D.Rubber Reclaim Ltd
IA(IB) 1332/KB/2020 in CP (IB) No.1724/KB/2018

	implementation of the resolution plan shall stand revoked, cancelled and shall be void.	operate, are not before us at this stage.
(f)	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	Para 95 of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> ⁴ lays down that when the resolution plan is approved by NCLT, 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 and state government 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.
(g)	Neither the Resolution Applicant, nor any of its Affiliates, will be disqualified from or considered ineligible under the Code for proposing and/ or implementing a plan in relation to the insolvency resolution of any Person, merely on account of the implementation of the Resolution Plan by the Resolution Applicant.	Such blanket reliefs cannot be granted at this stage, since the parties against whom these orders will operate, are not before us at this stage.

⁴ Civil Appeal No.8129/2019 a/w Civil Appeal No.1554/2021 and WP (Civil) No.1177/2020, dated 13.04.2021

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Indian Overseas Bank v R.D.Rubber Reclaim Ltd
IA(IB) 1332/KB/2020 in CP (IB) No.1724/KB/2018

(h)	From the Approval Date, all inquiries, investigations and proceedings, suits, claims, disputes, proceedings in connection with the Corporate Debtor and/or affairs of the Corporate Debtor, pending or threatened, present or future in relation to any period prior to the Approval Date, or arising on account of 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 Corporate Debtor or the profit and loss account statements of the Corporate Debtor will be deemed to have been written off fully, and permanently extinguished and no adverse orders passed in the said matters should apply to the Corporate Debtor or the Resolution Applicant.	Such blanket reliefs cannot be granted at this stage, since the parties against whom these orders will operate, are not before us at this stage.
(i)	No Governmental Authority (including regulatory, judicial and quasi-judicial authority) shall issue any orders, directions, decrees, judgments, etc. that will be in contravention of the provisions of the Resolution Plan.	Such blanket reliefs cannot be granted at this stage, since the parties against whom these orders will operate, are not before us at this stage.
(j)	The Resolution Applicant has also considered that by virtue of the order of the Adjudicating Authority approving this Resolution Plan and since the Resolution Applicant would acquire the Corporate Debtor on a 'going concern' basis, all consents, licences, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled or accustomed to shall, notwithstanding any provision to the contrary in their terms and notwithstanding that they may have already lapsed or expired due to any non-compliance or efflux of time, be deemed to continue without disruption for the benefit of the Corporate	The RA shall apply to the concerned authorities who shall then consider the application keeping in mind the objectives of the Code. Any conditions attached to the grant of such permits shall be duly complied with by the Corporate Debtor under the successful Resolution Applicant.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Indian Overseas Bank v R.D.Rubber Reclaim Ltd
IA(IB) 1332/KB/2020 in CP (IB) No.1724/KB/2018

	Debtor and the Resolution Applicant as required for implementation of the Resolution Plan.	
(k)	Allow the Corporate Debtor to enjoy and avail in future any tax benefits, deductions, exemptions as per the relevant provisions of the Applicable Law which the Corporate Debtor was entitled to before the commencement of CIRP for the balance period as per the relevant provisions of the Applicable Law.	No general reliefs can be granted in the manner sought for. It is for the appropriate taxing authorities to consider the same in accordance with the relevant law.
(l)	All Governmental Authorities to waive the Non-Compliances of the Corporate Debtor prior to the approval Date.	Such blanket reliefs cannot be granted at this stage, since the parties against whom these orders will operate, are not before us at this stage.
(m)	Any charge, interest, penalty or dues pertaining to statutory authorities such as Income Tax, Service Tax/ Goods and Service Tax, Luxury Tax, Entertainment Tax, VAT, or Sales Tax, Companies Act etc., which remain outstanding even after payments proposed in this Resolution Plan prior to CIRP Commencement date shall stand extinguished and be waived by the respective authorities.	Para 95 of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> ⁵ lays down that when the resolution plan is approved by NCLT, 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 and state government 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

⁵ Civil Appeal No.8129/2019 a/w Civil Appeal No.1554/2021 and WP (Civil) No.1177/2020, dated 13.04.2021

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Indian Overseas Bank v R.D.Rubber Reclaim Ltd
IA(IB) 1332/KB/2020 in CP (IB) No.1724/KB/2018

		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.
(n)	Ministry of Corporate Affairs, Government of India, Provident Fund Authorities, Sales Tax Authorities/Service Tax Authorities/GST Council to waive penal charges for past non-compliances of filing/secretarial obligations.	No general reliefs can be granted in the manner sought for. It is for the appropriate authorities to consider the same in accordance with the relevant law.
(o)	The Resolution Applicant understands that Jharkhand Bijli Vitran Nigam Limited has disrupted the electric supply of the Corporate Debtor permanently and also removed the metering systems and its equipment. The Resolution Applicant prays that in order to run the Corporate Debtor as going concern, the approval of this plan by the Adjudicating Authority shall be deemed to be a No Objection Certificate (NOC) from the Jharkhand Bijli Vitran Nigam Limited to the Corporate Debtor, in case they do not continue to supply electricity to the Corporate Debtor. The Resolution Applicant and/or the Corporate Debtor will not require any further approval or NOC for obtaining a new electric connection. This plan will be deemed to be considered as a NOC from the Electricity Board as electricity is an essential need and is very important to continue the business of the Corporate Debtor as a going concern.	Jharkhand Bijli Vitran Nigam Limited is expected to act in accordance with the Insolvency & Bankruptcy Code, 2016, and the regulations made thereunder, by recognising the binding nature of the Resolution Plan upon its approval by this Adjudicating Authority. Para 95 of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> ⁶ lays down that when the resolution plan is approved by NCLT, 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 and state

⁶ Civil Appeal No.8129/2019 a/w Civil Appeal No.1554/2021 and WP (Civil) No.1177/2020, dated 13.04.2021

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Indian Overseas Bank v R.D.Rubber Reclaim Ltd
IA(IB) 1332/KB/2020 in CP (IB) No.1724/KB/2018

		government 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.
(p)	To the extent payments provided under this Resolution Plan, the order passed by this Adjudicating Authority approving the Resolution Plan shall be deemed to be a discharge, settlement or waiver for all other payments towards the Provident Fund Authority including but not limited to damages, interest and penalty etc. as levied or to be levied by the said authority under The Employees Provident Funds and Miscellaneous Provisions Act, 1952 or any other law applicable upto the plan approval date.	The authority concerned is expected to act in terms of the Hon'ble Supreme Court judgments in the case of <i>Supreme Court in Committee of Creditors of Essar Steel v. Satish Kumar Gupta & Ors.</i> , 2019 SCC OnLine SC 1478, decided on 15.11.2019.

1. **EXTINGUISHMENT OF CLAIMS / ENTITLEMENTS (Schedule 2)**

Sl. No.	Relief and/or Concessions Sought	Orders Thereon
1.	The Resolution Professional issued a notice inviting all potential claimants to submit their 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	Granted in terms of the judgment of the Hon'ble Supreme Court in <i>Committee of Creditors of Essar Steel v. Satish Kumar Gupta & Ors.</i> , 2019 SCC OnLine SC 1478, decided on 15.11.2019, reinforced Para 95 of the judgment of the Hon'ble Supreme Court

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Indian Overseas Bank v R.D.Rubber Reclaim Ltd
IA(IB) 1332/KB/2020 in CP (IB) No.1724/KB/2018

Sl. No.	Relief and/or Concessions Sought	Orders Thereon
	<p>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 Applicant 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 and List of Creditors. Accordingly, the Resolution Applicant 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 Applicant undertakes to pay the creditors the amount committed under this plan for takeover of the Corporate Debtor as going concern.</p>	<p>in <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i>⁷ which lays down that when the resolution plan is approved by NCLT, 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 and state government 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.</p>
2.	<p>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</p>	<p>No personal guarantees can be extinguished as a result of the Resolution Plan.</p>

⁷ Civil Appeal No.8129/2019 a/w Civil Appeal No.1554/2021 and WP (Civil) No.1177/2020, dated 13.04.2021

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Indian Overseas Bank v R.D.Rubber Reclaim Ltd
IA(IB) 1332/KB/2020 in CP (IB) No.1724/KB/2018

Sl. No.	Relief and/or Concessions Sought	Orders Thereon
	where such rights have already been exercised.	
3.	As of the date of implementation of the resolution plan, any Debt owed by the Corporate Debtor which is barred by limitation under Applicable Law, shall immediately, irrevocably and unconditionally stand extinguished, waived and withdrawn on and from the date of implementation of the resolution plan, and no Person shall have any further rights or Claims against the Corporate Debtor in this regard. The Resolution Applicant undertakes to pay the creditors the amount committed under this plan for takeover of the Corporate Debtor as going concern.	This relief is otiose, inasmuch as if the debt itself is barred by limitation, then it is not legally recoverable.
4.	Any Encumbrance, whether over immovable, movable assets, fixed deposits or cash or any other rights or privileges and including without limitation, security, letter of credit, bank guarantee or pledge provided by Corporate Debtor to the financial creditors, that was created/granted/arranged in connection with any Financial Debt or Operational Debt or any other debt or obligation of the Corporate Debtor, at any time prior to the Approval Date, shall automatically be released and all liabilities and obligations of the Corporate Debtor in 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. All title deeds and other documents (including charge documents, if any) held by	Granted.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Indian Overseas Bank v R.D.Rubber Reclaim Ltd
IA(IB) 1332/KB/2020 in CP (IB) No.1724/KB/2018

Sl. No.	Relief and/or Concessions Sought	Orders Thereon
	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 -IV (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.	
5.	All liabilities (whether contingent or crystallised) 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.	No blanket exemption of the nature sought for can be granted at this stage. Individual cases shall be brought to the notice of the Adjudicating Authority for orders thereon.
6.	The payment to Persons contemplated in Part III (<i>Proposal for all kinds of Creditors of the Corporate Debtor</i>) shall be the Corporate Debtor's and Resolution Applicant's full and final performance and satisfaction of all its obligations to such Persons and all Claims (<i>including, for the avoidance of doubt, any unverified portion of their Claims</i>) of such Persons against the Corporate Debtor shall stand irrevocably and unconditionally settled and extinguished in perpetuity upon such discharge. The Resolution Applicant undertakes to pay the creditors the amount	Granted.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Indian Overseas Bank v R.D.Rubber Reclaim Ltd
IA(IB) 1332/KB/2020 in CP (IB) No.1724/KB/2018

Sl. No.	Relief and/or Concessions Sought	Orders Thereon
	committed under this plan for takeover of the Corporate Debtor as going concern.	
7.	On and with effect from the date of implementation of the resolution plan, all the outstanding negotiable instruments issued by the Corporate Debtor or by any Person on behalf of the Corporate Debtor including demand promissory notes, post-dated cheques and letters of credit, shall stand terminated and the Corporate Debtor's liability under such instruments shall stand extinguished.	Granted.
8.	Upon the approval of the Plan by the NCLT under section 31 of the Code, all pending proceedings relating to the winding-up of the Corporate Debtor shall stand irrevocably and unconditionally abated in perpetuity.	Granted.
9.	On and with effect from the Implementation Date, all securities convertible or exchangeable into Equity Shares and all rights to subscribe to Equity Shares, including convertible debentures, convertible preference shares, convertible loans (whether compulsorily or partially convertible or not), warrants, subscription rights under shareholders agreements entered into by the Existing Promoters, shall stand immediately extinguished and settled.	Granted.
10.	On and with effect from the date of implementation of the resolution plan, the rights of any Person (whether exercisable now or in the future and whether contingent or not) to call for the allotment, issue, sale or transfer of shares or loan capital of the Corporate Debtor, whether on a change of control, or otherwise, shall stand unconditionally and irrevocably extinguished.	Granted.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Indian Overseas Bank v R.D.Rubber Reclaim Ltd
IA(IB) 1332/KB/2020 in CP (IB) No.1724/KB/2018

Sl. No.	Relief and/or Concessions Sought	Orders Thereon
11.	<p>Any Encumbrance (including any Encumbrance created pursuant to Applicable Law and particularly section 281 of the Income Tax, 1961 and section 81 of the Central Goods and Services Tax Act, 1961 (whether over immovable, movable assets, fixed deposits or cash or any other rights or privileges and including without limitation, any security, letter of credit, or pledge provided by Corporate Debtor that was created/granted/arranged in connection with any Financial Debt or Operational Debt or any other debt or obligation of the Corporate Debtor, at any time prior to the Approval Date, shall automatically be released and all liabilities and obligations of the Corporate Debtor on behalf 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, without the requirement of any further action on part of any party and irrespective, of whether such Financial Creditor or Operational Creditor is receiving any payment under this Resolution Plan or not. 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 Schedule - IV (Timeline and</p>	<p>Granted in terms of the judgment of the Hon'ble Supreme Court in <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i>⁸</p>

⁸ Civil Appeal No.8129/2019 a/w Civil Appeal No.1554/2021 and WP (Civil) No.1177/2020, dated 13.04.2021

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Indian Overseas Bank v R.D.Rubber Reclaim Ltd
IA(IB) 1332/KB/2020 in CP (IB) No.1724/KB/2018

Sl. No.	Relief and/or Concessions Sought	Orders Thereon
	Steps of Events towards Implementation of the Proposed Plan). No existing Encumbrance or guarantee (personal or corporate)/ or any other contractual comfort shall be enforced by any creditor after Approval Date or otherwise.	

20. On hearing the submissions made by the Resolution Professional, and perusing the record, we find that the Resolution Plan has been approved with 100% voting share. As per the CoC, the plan meets the requirement of being viable and feasible for revival of the Corporate Debtor. By and large, all the compliances have been done by the RP and the Resolution Applicant for making the plan effective after approval by this Bench.
21. 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. No circumstances exist that militate against grant of approval for the resolution Plan.
22. As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.
23. 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.
24. 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.**

25. 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.
26. The moratorium imposed under section 14 shall cease to have effect from the date of this order.
27. In case of non-compliance of this order or withdrawal of Resolution Plan, the CoC shall forfeit the Performance Security amount already paid by the Resolution Applicant.
28. The RP shall stand discharged from his duties with effect from the date of this Order. She shall, however, perform his duties in terms of the Resolution Plan as approved by this Adjudicating Authority.
29. The Resolution Applicant shall have access to all the Corporate Debtor's records, documents, assets and premises with effect from the date of this order, to finalise the further line of action required for starting the business operations of the corporate Debtor.
30. Liberty is hereby granted for moving applications, if required, in connection with implementation of this Resolution Plan.
31. The Resolution Applicant shall file a copy of this Order with the Registrar of Companies, West Bengal, *inter alia* for updating the status of the Corporate Debtor in the master data.
32. **IA (IB) No.1332/KB/2020** along with **CP (IB) No.1724/KB/2018** are disposed of accordingly.
33. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Indian Overseas Bank v R.D.Rubber Reclaim Ltd
IA(IB) 1332/KB/2020 in CP (IB) No.1724/KB/2018

34. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
35. File be consigned to the record.

Harish Chander Suri
Member (Technical)

Rajasekhar Digitally signed by
V K Rajasekhar V K
Date: 2021.05.11
10:23:15 +05'30'

Rajasekhar V.K.
Member (Judicial)

11.05.2021

SR (LRA)

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

IA(IB) No.1455/KB/2020

in

CP (IB) No.1724/KB/2018

In the matter of

Indian Overseas Bank

...

Financial Creditor

Versus

R.D.Rubber Reclaim Limited

CIN: L51109WB1948PLC017239

...

Corporate Debtor

And

In the matter of

Jharkhand Bijli Vitran Nigam Ltd

...

Applicant

Versus

Mamta Binani

...

Resolution Professional

Coram:

Shri Rajasekhar V.K.

: Member (Judicial)

Shri Harish Chander Suri

: Member (Technical)

Appearances:

For Applicant

: 1. Mr. A.K. Shrivastava, Advocate

: 2. Mr. Akash Sharma, Advocate

For RP

: Ms. Mamta Binani, RP in person

Order reserved on: 23.03.2021

Order pronounced on: 11.05.2021

ORDER

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

1. This Court convened through video conferencing.
2. **IA(IB) 1455/KB/2020** is an application by Jharkhand Bijli Vitran Nigam Ltd, one of the Operational Creditors of R.D.Rubber Reclaim Limited, the

Corporate Debtor against praying to direct the Resolution Professional (RP) to consider its claim as per the revised claim filed on 20.10.2020.

3. Applicants case in brief is that –
- a. The Corporate Debtor was sent into Corporate Insolvency Resolution Process (CIRP) *vide* order of this Adjudicating Authority dated 25.02.2019 and Ms. Mamta Binani was appointed as the Interim Resolution Professional and later confirmed as Resolution Professional (RP).
 - b. The Corporate Debtor has been a regular defaulter in paying electricity dues since the year 1995. There have been serious allegations of theft of electricity against the Corporate Debtor, the Hon'ble High Court, Ranchi in WP No.2197/2003 had directed the Corporate Debtor to pay ₹47,00,000/- (Rupees forty-seven lakh only) to the Applicant herein.
 - c. The Applicant herein had served the Corporate Debtor with several notices under the Electricity Act, 2003 including that on 09.12.2019 and 17.01.2020 for disconnection of electricity because of non-payment of the dues and finally disconnected the electricity supply on 30.01.2020 and removed the metering system on 03.06.2020.
 - d. On 08.06.2020, the Corporate Debtor that CIRP had been initiated against the Corporate Debtor, therefore the removal of metering system was in violation of the CIRP.
 - e. Thereafter, a claim along with “provisional final bill” dated 13.06.2020 was filed before RP. On 15.07.2020, the RP sent a notice disputing the amount of provisional final bill. The Applicant herein submitted its claim before the RP on 17.07.2020 and subsequently filed a revised claim on 31.07.2020.
 - f. On 07.10.2020 the Applicant provided bill abstract belonging to the Corporate Debtor in the books of the Applicant from the period 2012 to 2019 to the RP. The said abstract further helped the RP to verify and collate the Applicant's claims. On 08.10.2020, the RP requested the Applicant to resubmit the claim form. On 18.10.2020, the RP informed the Applicant that a sum of ₹6,60,32,866/- has been verified and collated.

- g. In furtherance of the mail dated 08.10.2020 from the RP, the applicant submitted its revised claim amounting to ₹7,66,69,324/- on 20.10.2020. On 21.10.2020, the RP admitted the claim only to the extent of ₹6,66,20,682/- thus, rejecting the claim of ₹1,00,48,642/- on grounds that the amount of ₹1,00,48,642/- is for delayed payment surcharge (DPS) for the period when the CIRP had been undergoing and moratorium was in force.
- h. The RP has erroneously and without considering the relevant documents and provisions rejected part of the claim. The RP has failed to provide any valid reason to reject the part of the claim. The DPS is delayed payment surcharge is payable since even after the commencement of CIRP the electricity connection was reconnected as per the Direction of the Adjudicating Authority, and the bills have been raised for the service and supply strictly as per law. The Applicant has not charged any penalty as wrongly.
4. Ms Mamta Binani, RP, appeared in person and submitted as follows:
- a. Regulation 13 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, mandates that the RP shall verify every claim **as on the insolvency commencement date**, within seven days from the last date of receipt of the claims.
- b. Further, Form B prescribed under regulation 7 of the Regulations *ibid* also requires in Sl. No.4 that the total amount of claim including interest shall be computed **as on the insolvency commencement date**.
5. The RP therefore contends that it is not within her competence to accept a claim in which various elements of the claim in question are for periods after the insolvency commencement date.
6. Mr Akhilesh Shrivastava, learned counsel appearing for the applicant, submitted that the claim is based on contractual obligations undertaken in pursuance of another statute, *i.e.*, the Electricity Act, 2003. He urged us to take a harmonious view of both the Acts – the Electricity Act, 2003 and the IBC – and direct the RP to accept the claim. Further, he submitted that the

electricity distribution companies (discoms) would suffer huge losses if, after supplying electricity as per the contract, they are deprived of their right to charge interest or Delayed Payment Surcharge (DPS).

7. We have heard the learned counsel appearing for the applicant and the RP, appearing as party in person, and perused the records.
8. We find from the records that admittedly, the claim of the applicant is not restricted to the amount due as at the insolvency commencement date, but includes period well into the CIRP. Therefore, *prima facie*, there is merit in the contention of the RP that she cannot include claims for any period after the commencement of the CIRP, *i.e.*, after 29.10.2019.
9. Mr Akhilesh Shrivastava, learned counsel for the applicant, has contended that the applicant is a State entity, public money is involved, and that the claims are all in pursuance to a statutory obligation. However, we are unable to accept the contentions since the IBC is a complete Code in itself. Any claim filed with the IRP or the RP, as the case may be, has to be in consonance with the IBC and the regulations framed thereunder. There is no way that the RP can be directed to collate a claim, part of which has arisen after the insolvency commencement date. That will do violence to the statutory provisions of the Code itself.
10. Moreover, while the applicant may raise a contention that its claim is based on a statute, we are reminded of the provisions of section 238 of the Code, which stipulates that the IBC shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force **or any instrument having effect by virtue of any such law.**
11. In this view of the matter, we hold that the RP was right in not accepting the claim of the applicant for time-periods extending beyond the insolvency commencement date. The RP was right in restricting the collation to the claim subsisting as on the insolvency commencement date.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

IA(IB) 1455/KB/2020
In CP (IB) No. 1724/KB/2018

Jharkhand Bijli Vitran Nigam Ltd v Mamta Binani, RP of RD Rubber Reclaim Ltd

12. The result is that **IA No.1455/KB/2020 shall stand dismissed as devoid of merit** and it is ordered accordingly.
13. The Registry is directed to communicate a copy of this order to the counsel on record for the parties immediately.
14. Urgent certified copies of this order be issued on completion of requisite formalities.

Harish Chander Suri
Member (Technical)

Rajasekhar V
K

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Rajasekhar V K
Date: 2021.05.11 10:23:45
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Rajasekhar V.K.
Member (Judicial)

11.05.2021