IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

I.A. (IB) (Plan) No. 2/KB/2024
In
Company Petition No. 104/KB/2022

An application under Section 30(6) and 31(1) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of IBBI (Insolvency Regulations Process of Corporate Persons) Regulations, 2016 for approval of the Resolution Plan.

IN THE MATTER OF:

POWER MAX (INDIA) PVT. LTD

... Corporate Applicant.

And

IN THE MATTER OF:

RACHNA JHUNJHUNWALA, RESOLUTION PROFESSIONAL OF POWER MAX (INDIA) PVT. LTD.

... Applicant.

Date of Pronouncement: May 17, 2024.

CORAM:
SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)

Appearance:
For the Resolution Professional: **Mr. Shaunak Mitra, Adv.**
Mr. Pranay Agarwal, Adv.
Ms. Ankita Baid, Adv.
Ms. Sweta Majumdar, Adv.

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O R D E R

Per: D. Arvind, Member (Technical)

1. The Court congregated through a blended mode.

2. We have the Learned Counsels Mr. Shaunak Mitra along with Mr. Pranay Agarwal, Ms. Ankita Baid, and Ms. Sweta Majumdar appearing on behalf of the Resolution Professional.

Prologue

3. The instant application is filed under Sections 30(6) and 31(1) of the Insolvency and Bankruptcy Code, 2016, for brevity "I&B Code" read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016, for brevity "CIRP Regulations" by the Resolution Professional of Power Max (India) Private Limited (Corporate Applicant) - **Mrs. Rachna Jhunjhunwala** (having Registration no, IBBI/IPA-001/IP-P00389/2017-18/10707), hereinafter referred to as **"Applicant".**

4. The Learned Counsel Mr. Shaunak Mitra, Adv. for the Applicant would submit that the Committee of Creditors (for brevity "CoC") in its 9th meeting convened on 27.12.2023 and e-voting conducted from 29.12.2023 to 02.02.2024, has approved **the Resolution Plan dated 26.12.2023 submitted by M/s. Shyam Enterprises** in the matter of **Power Max (India) Pvt. Ltd.** with **100%** voting share and subsequently, M/s. Shyam Enterprises has been unanimously declared as a **Successful Resolution Applicant** (for brevity "SRA"). The copy of the Resolution Plan of M/s. Shyam Enterprises as approved by the CoC is annexed at pages 333-419 as Annexure "O" to the application.

5. The Resolution Professional issued a Letter of Intent (for brevity "LoI") on 02.02.2024 and the SRA unconditionally accepted the same. The Copy of the LoI dated 02.02.2024 with remarks of acknowledgement

and acceptance of the SRA, indicating its unconditional acceptance of the LoI, is annexed at Pages 422-430, as Annexure "P".

Particulars of Corporate Debtor

6. **Power Max (India) Pvt. Ltd** having Corporate Identification Number U31403**WB**1984PTC037436 a company incorporated under the provision of the Companies Act, 1956 having its registered office at Stephen Court, 18A Park Street, 5th Floor, Flat No-5J, lift No-3, Kolkata-700071 in state of West Bengal as approved by the Ministry of Corporate Affairs.

Initiation of Corporate Insolvency Resolution Process (CIRP)

7. C.P. (IB) No. 104/KB/2022 was filed by the Corporate Applicant, under section 10 of the Insolvency and Bankruptcy Code, 2016 for initiating CIRP of Power Max (India) Pvt. Ltd. (Corporate Applicant). Vide an order dated 01.05.2023, this Adjudicating Authority admitted the petition and initiated CIRP in respect of the Corporate Applicant and Mr. Tarun Kumar Ray was appointed as an Interim Resolution Professional.

8. Later, The CoC replaced Mr. Tarun Kumar Ray with **Mrs. Rachna Jhunjhunwala** (Applicant) as the Resolution Professional (hereinafter referred to as "RP") and the Adjudicating Authority allowed the same on **14.07.2023.**

Public Announcement

9. That, a public announcement was made in "Form A" in terms of Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Debtor Regulations, 2016

(hereinafter referred to as "CIRP Regulations") for inviting claims from the creditors in specified forms prescribed by Insolvency and Bankruptcy Board of India (hereinafter referred to as "IBBI") on May 04, 2023.

Constitution of CoC

10. The applicant in terms of Section 15(1)(c) of the I&B Code read with Regulation 12(1) of the CIRP Regulations, 2016 fixed the last date for submission of claims on 15.05.2023 and in terms of Regulation 13(1) of the CIRP Regulations, verified the claims within 7 days from the receipt of the claim, i.e., on 22.05.2023 and constitution of the Committee of Creditors.

11. It is submitted that under Regulation 17(1) of the CIRP Regulations, 2016, The Resolution Professional constituted the Committee of Creditors (CoC) on 27.05.2023 with only one member being Financial Creditors namely, Indian Bank, having 100% of the voting share in the CoC. Further, under Section 22(1) of the I&B Code read with Regulation 17(2) of the CIRP Regulations, 2016, the first meeting of the CoC was convened on 30.05.2023.

12. It is submitted that a total of 10 meetings have been conducted. In the 9th CoC meeting convened on 27.12.2023, two resolution plans received by the RP were evaluated as per the evaluation matrix and put for voting. In 10th CoC meeting convened on 10.01.2023, the sole CoC member resolved to extend the CIRP period by 30 days for concluding voting and on 02.02.2024, the e-voting was concluded, and the resolution plan of M/s. Shyam Enterprises was approved by 100% voting shares.

Appointment of Registered Valuers

13. In terms of Regulation 27 of the CIRP Regulations, the RP appointed two Registered Valuers on 06.06.2023. The average Fair value and the Liquidation value of the Company obtained from the appointed Registered Valuers are as follows:

a. Fair Value: **Rs. 6,44,23,519/-.**
b. Liquidation value: **Rs. 4,08,37,419/-.**

Collation of Claims

14. The Learned Counsel for the RP has submitted the list of creditors as on 25.102.2023 along with the amount claimed and admitted/verified, reproduced hereunder:

List of Secured Financial Creditors as on 25.10.2023:

SN	Name of the Creditors	Amount claimed	Amount Admitted	%Age of voting share in CoC
1.	Indian Bank	Rs. 43,08,27,889/-	Rs. 43,08,27,889/-	100

List of the Operational Creditors as on 25.10.2023:

SN	Category of Creditors	Amount Claimed	Amount Admitted
1.	Employees	Rs. 24,17,579/-	Rs. 18,23,301/-
2.	Government Dues	Rs. 18,73,83,178/-	Rs. 2,01,55,825/-

3.	Other than Workmen, Employees and Government Dues	Rs. 4,01,70,519/-	Rs. 3,09,58,374/-

Corporate Insolvency Resolution Process and Compliance

15. It is submitted that in terms of Regulation 36A of the CIRP Regulations, 2016, Form G inviting the Expression of Interest (EoI) was published in newspapers on 07.07.2023 but till the last date to submit EoI, no EoI was received. Meanwhile, the sole CoC member, Indian Bank, filed IA 1193/KB/2023 for replacing the IRP with the Applicant herein as the RP. The said I.A. was allowed by this Adjudicating Authority on 14.07.2023.

16. Further, it is submitted that Applicant herein published a second Form G on 05.08.2023 in newspapers where the last date of submission of EoI was on 21.08.2023 which was further extended till 28.08.2023. Copies of 'Form G' as published in the newspapers are annexed at Pages 43-46 as Annexure "E" to the application. Till such date, 6 EoIs were received. The Provisional List of the Resolution Applicants was prepared on 07.09.2023 and the Final List of the Resolution Applicants was submitted on 19.09.2023.

17. Further, it is contended that in terms of Regulation 36(1) of the CIRP Regulations, 2016, the Information Memorandum (IM) was submitted before the CoC on 03.08.2023. Further, in terms of Regulation 36B of the CIRP Regulations, the RP issued the Request for Resolution Plan (RFRP) which includes the Evaluation Matrix and Information Memorandum to the Resolution Applicant on 12.09.2023.

18. The Learned Counsel for the Applicant would submit that the last date for submitting the Resolution Plan was fixed on 12.10.2023. The Prospective Resolution Applicants (PRAs) vide email dated 11.10.2023 requested to extend the time for submission of the plan by 15 days, which was approved by the CoC on 12.10.2023 and the last date for submission of the plan was fixed on 27.10.2023. Further, two more extensions were approved by the CoC for 30 days and 15 days respectively and finally, the last date for submitting the Resolution Plan was fixed on 07.12.2023.

19. It is submitted that till the last date for submission of the Resolution Plan, two plans were received from M/s. Shyam Enterprises and IPE Projects & Technical Services (P) Ltd. which were unsealed at the 7th CoC meeting convened on 11.12.2023.

Evolution and Voting

20. The Learned Counsel for the RP would submit that at the 7th CoC meeting held on 11.12.2023, two plans as submitted by two Prospective Resolution Applicants, i.e., M/s. Shyam Enterprises and IPE Projects & Technical Services (P) Ltd. were revealed. The CoC requested both the Resolution Applicants to enhance their financial bids. Copy of the minutes of the 7th CoC meeting is annexed at Pages 315-320 as Annexure "J" to the application.

21. Further, it is submitted that after long deliberations and discussions, at the 9th CoC meeting convened on 27.12.2023, the two plans were scored as per the evaluation matrix. The relevant part of the minutes of the 9th CoC meeting regarding the final discussion on the

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Resolution Plans received from M/s. Shyam Enterprises and IPE Projects & Technical Services Pvt Ltd. is reproduced hereunder:

3. Agenda Item No. 3- To have final discussion on the Resolution Plan received from (i) Shyam Enterprises (ii) IPE Projects & Technical Services Pvt Ltd.

Plan of the both applicants were placed before the house. Feasibility & viability of both are plans were considered and evaluated.

IPE Projects & Technical Services Pvt. Ltd. with Mr Rajesh Ranjan Jha is newly

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formed company with on two years of track record providing Engineering & Technical Consultancy Services and having expertise in (1) Integrated Project Engineering Management System: Proprietary Methodology, (2) Process and/or Operational improvement, (3) Competency Development. The company is promoted by technocrats including Mr Rajesh Ranjan Jha who has worked for Tata Group and now are promoting the applicants. It is startup company with increasing turnover over fast two years. Coc as special case had given relaxation in the eligibility criteria for turnover as per the EOI which was five crores.

M/s Shyam Enterprises is a proprietorship with a history of 7 years in the construction industry specifically in the field of Civil Engineering and contracting heavy earthmoving equipment and machinery. The applicant is in the same industry where CD was operating. Financial turnover, net worth and ability to meet financial obligation appeared much better and since very beginning their intent appeared to make early payment. Being in same line of business they will be in better position to revive the company.

The financial plan and implementation schedule of both of the applicants were discussed. On the basis of the same, the committee evaluated their plan as per the evaluation matrix and gave the following scores:

Applicant	Quantitative	Qualitative	Total
M/s Shyam Enterprises	11	11	22
IPE Projects & Technical Services Pvt. Ltd. with Mr Rajesh Ranjan Jha	10	6	16

After discussion at length COC asked to put the plan to vote.

22. It is further submitted that both plans were kept for e-voting from 29.12.2023 to 02.02.2024. A copy of the minutes of the 9th CoC meeting is annexed at Pages 321-324 as Annexure "K" to the application. The e-voting line was extended till 12.01.2024. The sole Financial Creditor, having a 100% voting share, informed in the 10th CoC meeting held on 10.01.2024, that more time is required for approval of the plan and accordingly, the e-voting was extended till 02.02.2024. A copy of the minutes of the 10th CoC meeting is annexed at Pages 325-328 as Annexure "L" to the application.

23. That, on 02.02.2024, the e-voting was concluded, and the RP received the voting result. The Resolution Plan submitted by **M/s. Shyam Enterprises** was finally approved by the sole CoC member, Indian Bank with a **100%** voting share on 02.02.2024. A copy of the Voting Result is annexed at Page 331 as Annexure "N" to the application is reproduced hereunder:

eVoting

Linkstar Infosys Private Limited

Summary Report

Report Generation Date and Time :- 02-Feb-2024 18:17:46

Name of Entity :- POWER MAX INDIA PRIVATE LIMITED
Name of Scrutinizer :- RACHNA JHUNJHUNWALA

EVSN	No. of folios voted	Total no. of members
12108	1	1

Voting Start Date and Time :- 29-Dec-2023 12:00:00
Voting End Date and Time :- 02-Feb-2024 18:00:00
Voting Finalisation Date and Time :- 02-Feb-2024 18:17:46

Resolution	Voted Assent			Voted Dissent			Voted Abstain			Not Voted (Absent)			Total Voting Shares		
	No of Voters	Voting of Share	% of Assent	No of Voters	Voting of Share	% of Dissent	No of Voters	Voting of Share	% of Abstain	No of Not Voted	Voting of Share	% of Absent	No of Members	Voting of Share	% of Total Share
Sl. No.1 Item no. 3 "Resolved that the resolution plan of IPE Projects & Technical Services Pvt. Ltd. & Mr. Rajesh Ranjan Jha is be and hereby approved and RP is hereby authorized to file an application with Hon'ble NCLT for approval of the same.	0	0	0	1	100	100	0	0	0	0	0	0	1	100	100
Sl. No.2 Item no. 3 "Resolved that the resolution plan of M/s Shyam Enterprises is be and hereby approved and RP is hereby authorized to file an application with Hon'ble NCLT for approval of the same.	1	100	100	0	0	0	0	0	0	0	0	0	1	100	100
Sl. No.3 Item no. 5 "Resolved that the expenses amount to Rs 39,190 incurred by the RP, stands ratified and shall form the part of the CIRP expenses.	1	100	100	0	0	0	0	0	0	0	0	0	1	100	100

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N Annexure

24. It is further submitted that after the voting outcome, the RP issued a Letter of Intent (LoI) to M/s. Shyam Enterprises, Successful Resolution Applicant (SRA) on 02.02.2024 which was unconditionally accepted by the SRA on 03.02.2024 and the same is annexed at Page 420-423 as Annexure "P" to the Application. Subsequently, **M/s. Shyam Enterprises** was declared as a **Successful Resolution Applicant (SRA).**

25. It is further submitted that the SRA vide an email dated 07.02.2024, requested to extend the time for submission of the performance guarantee in terms of RFPR by 5(five) days on account of health issues which was allowed by the CoC on 08.02.2024. The Email communications are annexed at pages 424-429 as Annexure "Q" to the application.

26. The Learned Counsel of the RP would assert that the SRA duly deposited the amount of Rs. 25 Lakh towards the performance guarantee on 11.02.2024 and informed the applicant vide email dated 12.02.2024, annexed at page 430 an Annexure "R" to the Application.

Compliance of the Resolution Plan submitted by the SRA with various provisions.

27. The Applicant has submitted that in terms of Regulation 39(4) of the Insolvency and Bankruptcy Code (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the RP has filed a Compliance Certificate in prescribed form i.e., Form "H", annexed at pages 460-466 to the Application as Annexure "U".

28. It is submitted that contended that the Successful Resolution Applicant has met the criteria approved by the CoC having regard to the complexity and scale of operations of the business of the Corporate Debtor in terms of Section 25(h)(2) of the I&B Code.

29. Further it is submitted that the Successful Resolution Applicant is eligible to submit a resolution plan in terms of Section 29A of the I&B Code and accordingly, an affidavit has also been furnished by the SRA. The Due Diligence Report concerning Section 29A of the I&B Code prepared by the RP along with the Affidavit furnished by the SRA is annexed at pages 431-455, as Annexure "S".

30. Further, the Learned Counsel for the Resolution Professional would submit the details of various compliances as envisaged within the I&B Code and the CIRP Regulations to which a Resolution Plan has been adhered to. Further, it is submitted that the Resolution Applicant has submitted its eligibility in terms of Section 30(1) of the I&B Code, 2016.

31. It is further submitted that in terms of Section 30(2) of the I&B Code, 2016, (as amended vide Amendment dated August 16, 2019) the Resolution Plan, submitted by **M/s. Shyam Enterprises (SRA)** provides the compliance as under:

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause(s) and Relevant Pages of Resolution Plan	Compliance (Yes / No)
Submission of the Resolution Plan in terms of the Provisions of the I&B Code, 2016.			
Section 25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?		Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?		Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?		Yes

Section of the Code / Regulation No.	**Requirement with respect to Resolution Plan**	**Clause(s) and Relevant Pages of Resolution Plan**	**Compliance (Yes / No)**
Section 30(2)	Whether the Resolution Plan-		
	(a) provides for the payment of insolvency resolution process costs?	Clause 5.5 (Page 39) and 6.3.2 (Page 42).	Yes
	(b) provides for the payment to the operational creditors?	Clause 6.3.3 (Page 43)	Yes
	(c) provides for the payment to the financial creditors who did **not vote** in favour of the resolution plan?	Clause 6.3.4 (Page 46)	Yes
	(d) provides for the management of the affairs of the corporate debtor?	Clause 15 (Page 60) and	Yes

Section of the Code / Regulation No.	**Requirement with respect to Resolution Plan**	**Clause(s) and Relevant Pages of Resolution Plan**	**Compliance (Yes / No)**
		Part F (Page 65)	
	(e) provides for the implementation and supervision of the resolution plan?	Clause 15 (Page 60) and Part F (Page 65)	Yes
	(f) contravenes any of the provisions of the law for the time being in force?]		No
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC?		Yes. [The CoC at its 9th meeting convened on 27.12.2023

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause(s) and Relevant Pages of Resolution Plan	Compliance (Yes / No)
			at its Agenda 3 have deliberated upon and considered the same. Minutes of 9th CoC is annexed at Page 321-324 to the application.]
	(b) has been approved by the CoC with 66% voting share?		Yes. [The Resolution Plan submitted by **M/s. Shyam Enterprises**

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause(s) and Relevant Pages of Resolution Plan	Compliance (Yes / No)
			was approved by the CoC, with a **100%** voting share on 02.02.2024]
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?		Yes. [The CoC at its 9th meeting convened on 27.12.2023 at its Agenda 3 have deliberated upon and considered the same.]

Section of the Code / Regulation No.	**Requirement with respect to Resolution Plan**	**Clause(s) and Relevant Pages of Resolution Plan**	**Compliance (Yes / No)**
Mandatory contents of the Resolution Plan in terms of the Regulations of CIRP Regulations, 2016.			
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?]	Clause 6.3.3 (Page 43).	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Clause 5.6 (Page 39).	Yes
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any	Clause 19.8 (C)(iv) at Page 74.	No

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause(s) and Relevant Pages of Resolution Plan	Compliance (Yes / No)
	resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?]		
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term?	 Clause 18 (Page 65) Clause 15 (Page 60)	 Yes Yes

Section of the Code / Regulation No.	**Requirement with respect to Resolution Plan**	**Clause(s) and Relevant Pages of Resolution Plan**	**Compliance (Yes / No)**
	(c) adequate means for supervising its implementation?	Clause 15 (Page 60)	Yes
Regulation 38(3)	Whether the resolution plan demonstrates that -		
	(a) it addresses the cause of default?	Clause 3(a) at Page 23.	Yes
	(b) it is feasible and viable?	Clause 19.8 (C)(x) at Page 74.	Yes
	(c) it has provisions for its effective implementation?	Clause 17-18 (Page 65)	Yes
	(d) it has provisions for approvals required and the timeline for the same?	Clauses 11 (Page 55) & 18.3 (Page 65)	Yes

Section of the Code / Regulation No.	**Requirement with respect to Resolution Plan**	**Clause(s) and Relevant Pages of Resolution Plan**	**Compliance (Yes / No)**
	(e) the resolution applicant has the capability to implement the resolution plan?	Clause 19.8 (Page 70)	Yes
39(2)	(a) Whether the RP has filed applications in respect of transactions observed, found or determined by him?		The RP submits that **no** such transactions were observed.
Regulation 39(4)	(b) Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]		The RP submits that a sum of Rs. 50 Lakh has been received.

Details of the Resolution Plan and/or Payment Schedule

32. The Learned Counsel for the Applicant herein has submitted that the total plan outlay/ value is of **Rs. 5.27 Crore** wherein **Rs. 4.29 Crore** is the resolution amount and **Rs. 0.98 Crore** will be infused by the SRA as working capital.

33. The Applicant submits that the summary proposal of the Resolution Plan submitted by the SRA, which is in Clause 5.5 at pages 38-39 to the Resolution Plan, is attached hereunder in a tabular form:

SN	Nature of Debt	Claim Received	Claims Admitted	Resolution Applicant Proposal		Number of days to make the proposed payments.
				Amount Allocated	%Age of total claim amount	
1.	**Secured Financial Creditors (Unrelated)**	Rs. 43.08 Crore	Rs. 43.08 Crore	Rs. 3.82 Crore	8.87%	All payments within a period of 30 days of the effective date.
2.	Unsecured Financial Creditors (Others)	NIL	NIL	NIL	NA	
3.	**Operational Creditors**	Rs. 18.73 Crore	Rs. 2.01 Crore	Rs. 0.03 Crore	1.65%	

	(Government Dues)			[It includes Provident Fund dues of Rs. 73,120/-]		
	Operational Creditors (Other than Employees, Workmen and Govt. dues)	Rs. 4.02 Crore	Rs. 3.09 Crore	Rs. 0.03 Crore	1.00%	
5.	**Employee Dues**	Rs. 0.24 Crore	Rs. 0.18 Crore	Rs. 0.13 Crore [It includes the Gratuity amount of Rs. 12,61,211/-]	99.00%	
6.	**Workmen Dues**	NIL	NIL	NIL	NA	
7.	**IRP Cost**	The estimated Cost as on 30.11.2023 is Rs. 0.182 Crore		Actual unpaid IRP Cost shall be paid in priority and estimated Rs. 0.28 Crore. [It is submitted that any amount in excess of Rs.		

			0.28 Crore shall be adjusted from the amount offered to the Secured Financial Creditors and in case actual IRP cost is less than Rs. 0.28 Crore then excess shall be paid to the Secured Financial Creditor]		
	Total Plan Value		**Rs. 4.29 Crore**	NA	
8.	Working Capital by the Resolution Applicant [towards completion of the project over a period of 12 months]		Rs. 0.98 Crore	-	-
	Total Outlay under the Resolution Plan submitted by the SRA.		**Rs. 5.27 Crore**	-	-

34. As per Form "H" annexed to the application at Pages 460-466, the allocation of the amount as provided for all the stakeholders under the Resolution Plan submitted by the SRA in detail is as under:

(Amount in Rs. lakh)

Sl. No.	Category of Stakeholders	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub section (2) of section21	0	0	0	0
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan,	0	0	0	0
		(ii) who voted in favour of the resolution plan	4308.00	4308.00	382.00	8.87%
		Total [(a) + (b)]	**4308.27**	**4308.27**	**382.00**	
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section21	0	0	0	0
		(b) Other than (a)				

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Kolkata
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		above: (i) who did not vote in favour of the resolution Plan	0	0	0	0
		(ii) who voted in favour of the resolution plan	0	0	0	0
		Total[(a) + (b)]	0	0	0	0
3	Operational Creditors	(a) Related Party of Corporate Debtor	0	0	0	0
		(b) Other than (a) above: (i)Government (ii)Workmen (iii) Employees (iv)	 1873.83 401.70 24.17	 201.56 309.58 18.23	 3* 3 13**	 1.65% 1% 99%
		Total[(a) + (b)]	**2,299.70**	**529.37**	**19**	
4	Other debts anddues					
Grand Total			**6,607.97**	**4,837.64**	**401**	

*It includes Provident Fund dues Rs. 73,120

**It includes Gratuity amount Rs. 12,61,211

*If there are sub-categories in a category, please add rows for each sub-category.

Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.]

35. Further, the details of the Settlement Plan to various creditors which are in Clause 5.6 at pages 39-40 to the Resolution Plan are as under:

5.6 Details of Settlement Plan to various creditors

S. No.	Parameters	Amount Payable (Rs Cr)	Sources of Funds	Description of Proposal
1	Upfront cash recovery for financial creditors (unrelated)	INR 3.82 crores	Please refer clause 8	Please refer clause 6.3.4
2	Related Financial creditors	Nil	-	-
3	NPV based on evaluation matrix	INR 3.82 crores	NA	NA
4	Equity allotment to financial creditors	NIL	NA	NA
5	Treatment of other stakeholders (other than Financial Creditors)			

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5a	Operational creditors, including statutory liabilities excluding employees and workmen and provident fund for Workmen & Employees	INR 0.06 crores	Please refer clause 8	Please refer clause 6.3.3
5b	Employees and Workmen dues including PF, ESI, Gratuity, Leave Encashment & other retirement dues, if any	INR 0.13 crores	Please refer clause 8	Please refer clause 6.3.5 and clause 6.3.6
5c	Any other unadmitted/ known or unknown liabilities and Contingent Liabilities	NIL as no claims admitted	NA	NA
5d	Shareholders	Nil	-	-

The Gratuity Payable to the Employees of the Corporate Debtor

36. The Learned Counsel Mr. Shaunak Mitra appearing for the RP during the course of the argument submits that payment of the gratuity payable to the employees of the Corporate Debtor of Rs. 12.60 Lakh as against Rs. 15.99 Lakh shall be provided by way of a Supplementary Affidavit.

37. We have noted that on 28.03.2024, the RP filed a Supplementary Affidavit in compliance with our Order dated 13.03.2024, and stated that:

"*a) The total gratuity payable to the employees of CD is 15.99 lakhs (approx.) and Rs. 3.61 lakhs (approx.) of gratuity fund is with LIC. Therefore, the successful resolution applicant, as per the resolution plan, is paying Rs. 12.61 Lakhs (approx.) to the employees of CD. A copy of the calculation of gratuity payable and a chart of the statement of LIC are annexed hereto and marked with the letters "S1" and "S2" respectively.*"

38. Further, the RP provides the valuation summary of the Corporate Debtor as under:

b) The valuation summary of the CD is as follows:

Valuation Summary - Power Max India (P) ltd			
Valuer -1	Fidem Corporate Advisors LLP		
Summary	Book Value	Fair Value	Liquidation Value
Plant and Machinery	1,35,03,194.00	52,36,279.00	42,17,649.00
Land and Building	89,72,320.00	4,06,80,000.00	3,25,43,000.00

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Securities and Financial Assets	44,21,81,310.00	1,91,22,000.00	63,10,000.00
	46,46,56,824.00	**6,50,38,279.00**	**4,30,70,649.00**
Valuer -2	Name of Valuer	Fair Value	Liquidation Value
Plant and Machinery	ParthaPartim Chattopadhyay	35,55,070	28,43,660
Land and Building	Sandeep Bhattacharya	4,02,02,959	3,07,47,841
Securities and Financial Assets	Shri Pranab Kumar Chakrabarty	2,00,50,730	50,12,683
		6,38,08,759.00	**3,86,04,184.00**
Average Value		Avg Fair Value	Avg Liquidation Value
Plant and Machinery		43,95,674.50	35,30,654.50
Land and Building		4,04,41,479.50	3,16,45,420.50
Securities and Financial Assets		1,95,86,365.00	56,61,341.50
Valuation Summary - TOTAL		**6,44,23,519.00**	**4,08,37,416.50**

39. Further, it is submitted that the transaction auditors were appointed but no preferential, undervalued, fraudulent or extortionate transactions were found during the transaction audit period.

Supervision, Monitoring and Implementation of the Resolution Plan

40. Clause 15 at page 60 to the Resolution Plan deals with the supervision, monitoring and implementation of the Resolution Plan. At Clause 15.1, it is submitted that till all the payments are made, the Monitoring Agency shall be constituted by the RP, as Chairperson, and the COC member and two nominees of the Resolution Applicant may be included in the monitoring agency, to be aware of the operations of the company. However, the CoC and the Resolution Applicant shall have the right to appoint any firm or person as a nominee member of the Monitoring Agency at their own cost. The Monitoring Agency shall manage the Corporate Debtor in trust and manage the day-to-day affairs of the Corporate Debtor under its supervision until the full hand-over of

assets of the Corporate Debtor including business records and all statutory records, tax filings, account books and account records are taken into custody by the Resolution Professional under Sections 17 and 18 of the I&B Code read with Sections 23 and 25 of the I&B Code. Upon appointment of the Monitoring Agency, the Resolution Professional shall be released of his statutory duties and responsibilities, however, he shall continue to be liable for the complete handover of all the available records, assets and information.

41. Further, Clause 18.2 at page 65 of the Resolution Plan provides the implementation schedule for this Resolution Plan set out below:

18.2 The implementation schedule for this Resolution Plan is set out below:

S No.	Activity	Timeline (Date)
1	Submission of proposed Resolution plan by the applicant	07th December 2023
2	NCLT order for approval of the Resolution Plan	T
3	Appointment of Monitoring Agency	T + 5 days
4	Reorganization of Equity share capital	T + 15 days
5	Payment of outstanding CIRP costs	T+30 days
6	Payment of / operational creditors/ Workmen / dissenting financial creditors	T+30 days
7	Payment of assenting secured financial creditors / assenting unsecured financial creditors	T+30 days
8	Reconstitution of the Board of Directors, handing over of peaceful possession of assets, removal of all charge / encumbrance on any of the assets of PMIPL in all records, including but not limited to Companies Act, 2013/1956, revenue records including 7/12 or any kind of title documents as provided in the Resolution Plan	T + 30 days

Reliefs And Concessions sought by Resolution Applicant

42. The Successful Resolution Applicant has sought the reliefs, concessions, and approvals in Clause 11 at pages 55-58 to the Resolution Plan.

Our Inference

On the Conduct of CoC:

43. Upon hearing, the submission made by the Learned Counsel appearing on behalf of the Resolution Professional of Corporate Debtor herein and perusing the record and/or documents placed before this Adjudicating Authority, we would find that **the Resolution dated 26.12.2023** submitted by **M/s. Shyam Enterprises, the Successful Resolution Applicant** has been approved by the CoC of the Corporate Debtor by **100%** voting share on 02.02.2024 and **M/s. Shyam Enterprises,** is declared as the **"Successful Resolution Applicant".** As per the CoC, the plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. Preponderantly, all the compliances have been done by the Resolution Applicant for making the plan effective after approval by this Adjudicating Authority.

44. In the course of the hearing, the Ld. Counsel for the applicant would submit that the Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code, 2016, read with relevant Regulations of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and does not contravene any of the provisions of law for the time being in force.

45. Upon perusal of the documents on record and/or documents, we are satisfied that **the Resolution dated 26.12.2023** submitted by **M/s. Shyam Enterprises, the Successful Resolution Applicant**, is in accordance with sections 30 and 31 of the I&B Code, 2016 and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

On the Statutory Obligations or Seeking Approvals from the Authorities:

46. As far as the question of granting time to comply with the statutory obligations or seeking approvals from authorities is concerned, the Resolution Applicant is directed to do so within one year from the date of this order, as prescribed under section 31(4) of the I&B Code.

On the Reliefs, Waivers and Concessions:

47. We have perused the reliefs, waivers and concessions as sought and as provided in the Resolution Plan. It is evident that some of the reliefs, waivers and concessions sought by the Resolution Applicant come within the ambit of the I&B Code and the Companies Act 2013, while many others fall under the power and jurisdiction of different government authorities/departments. This Adjudicating Authority has the power to grant reliefs, waivers and concessions only concerning the reliefs, waivers and concessions that are directly with the I&B Code and the Companies Act (within the powers of the NCLT). The reliefs, waivers and concessions that pertain to other governmental authorities/departments may be dealt with by the respective competent authorities/forums/offices, Government or Semi-Government of the State or Central Government

concerning the respective reliefs, waivers and concession, whenever sought for. The competent authorities including the Appellate authorities may consider granting such reliefs, waivers and concessions keeping in view the spirit of the I&B Code, 2016 and the Companies Act, 2013.

48. It is almost trite and fairly well-settled that the Resolution Plan must be consistent with the extant law. The Resolution Applicant shall make necessary applications to the concerned regulatory or statutory authorities for the renewal of business permits and supply of essential services, if required, and all necessary forms along with filing fees etc. and such authority shall also consider the same keeping in mind the objectives of the Code, which is essentially the resolving the insolvency of the Corporate Debtor.

49. In this context, we would rely upon the judgment in ***Embassy Property Developments Pvt. Ltd. vs. State of Karnataka*** reported at **MANU/SC/1661/2019: (2020) 13 SCC 308**, wherein, the Hon'ble Apex Court has laid down that:

> **"***39. If NCLT has been conferred with jurisdiction to decide all types of claims to property, of the corporate debtor, Section 18(f)(vi) would not have made the task of the interim resolution professional in taking control and custody of an asset over which the corporate debtor has ownership rights, subject to the determination of ownership by a court or other authority. In fact an asset owned by a third party, but which is in the possession of the corporate debtor under contractual arrangements, is specifically kept out of the definition of the term "assets" under the Explanation to Section 18. This assumes significance in view of the language used in Sections 18 and 25 in contrast to the language employed in Section 20. Section 18 speaks about the duties of the interim resolution*

professional and Section 25 speaks about the duties of resolution professional. These two provisions use the word "assets", while Section 20(1) uses the word "property" together with the word "value". Sections 18 and 25 do not use the expression "property". Another important aspect is that Under Section 25(2)(b) of IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings. Section 25(1) and 25(2)(b) reads as follows:

25. Duties of resolution professional -

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of Sub-section (1), the resolution professional shall undertake the following actions:

(a).....

(b) represent and act on behalf of the corporate debtor with third parties, ***exercise rights for the benefit of the corporate debtor in judicial, quasi judicial and arbitration proceedings****.*

This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).

40. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise

> ***a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right*.**"
> **(Emphasis Added)**

50. The reliefs sought for subsisting contracts/agreements can be granted, and no blanket orders can be granted in the absence of the parties to the contracts and agreements.

On the Extinguishment of Claims:

51. Concerning the waivers with regard to the extinguishment of claims which arose prior to the initiation of the CIR Process and which have not been claimed are granted in terms of the law laid down by the Hon'ble Apex Court in ***Ghanashyam Mishra and Sons Private Limited* vs. *Edelweiss Asset Reconstruction Company Limited*** reported in **MANU/SC/0273/2021: (2021)9SCC657: [2021]13SCR737** that "*once a resolution plan is duly approved by the Adjudicating Authority Under Sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any 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*." **(Emphasis Added)**

52. Further, the relevant part of the ***Ghanshyam Mishra* judgment (supra)** in this regard is given below:

"61. *All these details are required to be contained in the information memorandum so that the resolution applicant is aware, as to what are the liabilities, that he may have to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure, that the Corporate Debtor is revived and made a running establishment. The legislative intent of making the resolution plan binding on all the stake-holders after it gets the seal of approval from the Adjudicating Authority upon its satisfaction, that the resolution plan approved by CoC meets the requirement as referred to in Sub-section (2) of Section 30 is, that after the approval of the resolution plan, no surprise claims should be flung on the successful resolution applicant. The dominant purpose is, that he should start with fresh slate on the basis of the resolution plan approved***.'**

"62. *This aspect has been aptly explained by this Court in the case of Committee of Creditors of Essar Steel India Limited through Authorised Signatory (supra)***.'**

> **"107.** *For the same reason, the impugned NCLAT judgment [Standard Chartered Bank v. Satish Kumar Gupta] in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate*

> *debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count.*"
>
> **(Emphasis Added)**

53. In this regard we also rely on the judgement of the Hon'ble High Court of Rajasthan in the matter of ***EMC* v. *State of Rajasthan*, Civil Writ Petition No. 6048/2020 with 6204/2020** reported in **(2023) ibclaw.in 42 HC,** wherein it has been inter-alia held that:

> "*Law is well-settled that with the finalization of insolvency resolution plan and the approval thereof by the NCLT, all dues of creditors, Corporate, Statutory and others stand extinguished and no demand can be raised for the period prior to the specified date*."
>
> **(Emphasis Added)**

54. Thus, on the date of approval of the resolution plan by the Adjudicating Authority, all such claims, that are not a part of the resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court of India further laid down that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period before the date on which the Adjudicating

Authority grants its approval under Section 31 of the I&B Code could be continued.

On Guarantors:

55. Concerning the waivers sought in relation to guarantors, the Hon'ble Apex Court held in ***Lalit Kumar Jain* v. *Union of India*** reported in **MANU/SC/0352/2021: (2021) 9 SCC 321: (2021) ibclaw.in 61 SC** that *the 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. As to the nature and extent of the liability, much would depend on the terms of the guarantee itself.* **(Emphasis Added)**

56. Further, we would rely upon the judgment rendered by the NCLAT in ***Roshan Lal Mittal v. Rishabh Jain*** reported in **(2023) ibclaw.in 803 NCLAT** that:

> **"***The Resolution Plan does not absolve the personal guarantors from their guarantee. The law well settled by the Hon'ble Supreme Court in the matter of "Lalit Kumar Jain vs. Union of India & Ors. – (2021) 9 SCC 321), that by approval of resolution plan the guarantees are not ipso facto discharged***."**
>
> **(Emphasis Added)**

57. Hence, we would infer that if there are any personal guarantors, the CoC shall be liable to invoke those guarantees and will take appropriate action against them, as per law.

On Inquiries, Litigations, Investigations, and Proceedings:

58. For the reliefs and waivers sought for all inquiries, litigations, investigations, and proceedings shall be granted strictly as per section

32A of the I&B Code, 2016 and the provisions of the law as may be applicable.

59. In this context, we would infer that upon the approval of the Resolution Plan, the Corporate Debtor avails the limbs of new management to revive its business. Thus, all the past liabilities of the Corporate Debtor including criminal liability prior to the initiation of the CIR Process shall stand effaced and the new management will step into the shoes of the company with a fresh or clean slate. Hence, the old management shall be liable to face all the offences committed prior to the commencement of the CIR Process. At this junction, we would rely upon the judgment rendered by the Hon'ble Apex Court in ***Ajay Kumar Radheyshyam Goenka vs. Tourism Finance Corporation of India Ltd.*** reported in **MANU/SC/0244/2023: (2023) 10 SCC 545** that:

> **"***67. Thus, Section 32A broadly leads to:*
>
> *a.* ***Extinguishment of the criminal liability of the corporate debtor, if the control of the corporate debtor goes in the hands of the new management which is different from the original old management****.*
>
> *b. The prosecution in relation to "every person who was a "designated partner" as defined in Clause (j) of Section 2 of the Limited Liability Partnership Act 2008 (6 of 2009), or an "officer who is in default", as defined in Clause (60) of Section 2 of the Companies Act. 2013 (18 of 2013), or was in any manner in charge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence" shall be proceeded and the law will take it's own course. Only the corporate debtor (with new management) as held in Para 42 of P. Mohanraj will be safeguarded.*

*c. If the old management takes over the corporate debtor (for MSME Section 29A does not apply (see 240A), hence for MSME old management can takeover) the corporate debtor itself is also not safeguarded from prosecution Under Section 138 or any other offences***."**

(Emphasis Added)

60. Further, in a very recent judgment rendered by the **Hon'ble High Court of Madras** in ***Vasan Healthcare Pvt. Ltd. vs. The Deputy Director of Income Tax (Investigation), Unit 3(2)*** reported in **MANU/TN/0243/2024: (2024) ibclaw.in 80 HC** that:

"*9. In the above judgement, the Apex Court after dealing with the provision in detail, came to a categoric conclusion that insofar as the criminal prosecution is concerned, the criminal liability of the corporate debtor viz., company gets completely wiped off and the new management is allowed to take over the company on a clean slate. However, the Apex Court also made it clear that the persons who are involved in the day today affairs of the company and were incharge and responsible for running of the company, will be liable to face all the* ***offence committed prior to the commencement of the Corporate Insolvency Resolution Process. There is no escape for those persons from criminal liability even though the corporate debtor is given a clean slate and is handed over to the new Management****.*

10. Useful reference can also be made to the judgement of ***the Calcutta High Court*** *in* ***[Tantia Constructions Limited Vs. Krishna Hi-Tech Infrastructure P Ltd] in CRP No. 172 of 2022****. The relevant portions in the order are extracted hereunder :-*

4. For the ***application of Section 32A of IBC, 2016*** *and in light of the present matter, it is pertinent to determine the following two issues, i.e.,*

i. Whether the offence as complained in the impugned criminal proceedings has been alleged to be committed before the initiation of corporate insolvency resolution process or during such process?

ii. Whether the resolution plan has resulted in change in the management or corporate debtor in consonance with the provisions of Section 32A(1) of IBC, 2016?

5. With respect to Issue No. 1, it is pertinent to note that the corporate insolvency resolution process as against the Petitioner/Corporate Debtor was initiated on 13.03.2019 when the application was accepted and the Order of Moratorium under Section 14 of the IBC, 2016 was imposed by NCLT, Kolkata in the aforementioned case. The complaint that commenced the impugned criminal proceedings was filed on 22.07.2019 before the concerned court by the opposite party. Whereby, said alleged offence so complained, took place before or during the corporate insolvency resolution process and is covered under the ambit of Section 32A of IBC, 2016.

6. With respect to Issue No. 2, it is observed that the petitioner has not made specific submission in this regard. However, it is the submission of the opposite party that the ***impugned complaint case does not concern itself with the new directors that were appointed after takeover by the Resolution Applicant in line with the Resolution Plan so approved by NCLT dated 24.02.2022. It is their submission that they are primarily aggrieved by the actions of petitioner when it was in control of erstwhile Directors****.*

> *11. The above judgement clearly lays down the law on the subject. The moment the Corporate Insolvency Resolution Process is initiated against the corporate debtor and the application is accepted by the NCLT, the moratorium comes into operation.* ***Once the resolution plan is accepted by the NCLT and orders are passed and the Corporate debtor gets into hands of the new management, all the past liabilities including the criminal liability of the Corporate debtor gets wiped off and the new Management takes over the company with clean slate****."*
> **(Emphasis Added)**

61. For the sake of convenience, the reliefs, concessions and approvals sought by the Applicant from us are catered to as below and the orders thereon are indicated against each as under:

SN	Clause	***Reliefs, Concessions, and Approvals sought for***	**Our Inference with the Relevant Provisions and/or Case laws**	**Our Orders thereon**
a.	11 (i)	*All Governmental Authorities/Local Authorities/Electricity Boards / Industrial Board are requested to waive the Non-Compliances of the Corporate Debtor prior to the Effective Date and to*	This is for the relevant and/or appropriate authorities to consider, and not in the nature of a waiver,	Not Granted. We direct to approach the appropriate authority(ies).

SN	Clause	***Reliefs, Concessions, and Approvals sought for***	**Our Inference with the Relevant Provisions and/or Case laws**	**Our Orders thereon**
		provide 12 months' time after the effective date to complete all the subsequent compliances required, however, all the non-compliances prior to the effective date stands ratified by this order. Further, any security deposit/refundable deposit with any Governmental Authorities / Local Authorities / Electricity Boards / Industrial Board shall be adjusted/accounted and considered for new connections/licenses/ permits,	concession or relief to be granted by this Adjudicating Authority.	

SN	Clause	***Reliefs, Concessions, and Approvals sought for***	**Our Inference with the Relevant Provisions and/or Case laws**	**Our Orders thereon**
b.	11 (ii)	*It is probable that certain of the Business Permits/ Import Licenses/DGFT Licenses/Health & Safety License/DIC approvals/Factory License etc. of the Corporate Debtor have lapsed, expired, suspended, cancelled, revoked or terminated or the Corporate Debtor has Non-Compliances in relation thereto, accordingly, the Resolution Applicant requests all Governmental Authorities to provide reasonable time period after the Effective Date in order for the Resolution Applicant to assess the status of these Business Permits and*	This is for the relevant and/or appropriate authorities to consider, and not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority.	Not Granted. We direct to approach the appropriate authority(ies).

SN	Clause	***Reliefs, Concessions, and Approvals sought for***	**Our Inference with the Relevant Provisions and/or Case laws**	**Our Orders thereon**
		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 all such non compliances stands ratified by this order. Further, time period with regard to such Business Permits/ Import Licenses/ DGFT Licenses/Health & Safety License/DIC approvals/Factory License etc. should be extended for 1 year;		

SN	Clause	***Reliefs, Concessions, and Approvals sought for***	**Our Inference with the Relevant Provisions and/or Case laws**	**Our Orders thereon**
c.	11 (iii)	*As a part of Resolution Plan, the equity shares of the company will get unconditionally reduced. Accordingly, all the relevant authorities including but not restricted to Ministry of Corporate Affairs, etc. are requested to give their approvals to the said arrangement, if required. The procedures and application to be done by Resolution Applicant.*	As far as meetings of shareholders for the issue of such new equity shares and for cancellation of existing equity shares of the corporate debtor are concerned, approval to the Resolution Plan accorded by this Adjudicating Authority shall be deemed to be requisite approval for all such meetings or dispensation	Granted in accordance with law.

SN	Clause	*Reliefs, Concessions, and Approvals sought for*	Our Inference with the Relevant Provisions and/or Case laws	Our Orders thereon
			from conducting meetings of shareholders. However, all regulatory compliances such as filing with the RoC, payment of filing fees on documents etc. will have to be complied with. The RoC cannot be expected to grant automatic approval for such activities without the forms being filed on behalf of the	

SN	Clause	*Reliefs, Concessions, and Approvals sought for*	Our Inference with the Relevant Provisions and/or Case laws	Our Orders thereon
			corporate debtor. This fact has also been recognized and clarified to be so by the Ministry of Corporate Affairs vide **General Circular No. IBC/01/2017 dated 25.10.2017** issued under File No. 30/14/2017-Insolvency.	
d.	11 (iv)	*Waiver of any fee payable to or any regulatory body/lessors/land*	Immunity is granted strictly in terms of	Granted in accordance with law.

SN	Clause	***Reliefs, Concessions, and Approvals sought for***	**Our Inference with the Relevant Provisions and/or Case laws**	**Our Orders thereon**
		development authority/municipal corporation/gram panchayat towards <u>any past dues</u> or towards fee dues pursuant to any of the steps as contemplated in the Resolution Plan.	Section 32A of the Code, nothing more and nothing less.	
e.	11 (v)	*The Department of Registration and Stamps, Government of Orissa, Chhattisgarh, Delhi and other State level Government/ Department and the Ministry of Corporate Affairs are requested to exempt the Resolution Applicant and the Corporate Debtor from any tax obligation under*	This is for the relevant and/or appropriate authorities to consider, and not in the nature of a waiver, concession or relief to be granted by this	Not Granted. The Appropriate Authority will consider the same.

SN	Clause	***Reliefs, Concessions, and Approvals sought for***	**Our Inference with the Relevant Provisions and/or Case laws**	**Our Orders thereon**
		various taxing statutes, including but not limited to Sections 508, 50C, 50CA, 56 and 115JB under the Income-tax Act as well as the Central Goods and Services Tax Act, 2017 (as amended from time to time) and the provisions of the Indian Stamp Act, 1899 (as amended from time to time) and other laws relating to payment of stamp duty applicable in any state. The procedures and application to be done by Resolution Applicant.	Adjudicating Authority.	
f.	11 (vi)	*The Resolution Plan envisages an amount for creditors for their admitted*	The law laid down in ***Ghanashyam***	Granted in accordance with law.

SN	Clause	***Reliefs, Concessions, and Approvals sought for***	**Our Inference with the Relevant Provisions and/or Case laws**	**Our Orders thereon**
		claims for full and final settlement of their claims. Any claims by any person (whether admitted or not, due or contingent, asserted or unasserted, crystallized or uncrystallized, known or unknown, secured or unsecured, disputed or undisputed, present or future) including government/s (Central and State) dues against the Corporate Debtor accruing due to the commencement or pendency of insolvency proceedings against the Corporate Debtor, whether arising under the terms of subsisting consents, licenses, approvals, rights,	***Mishra* (Supra),** that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan. The claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its stakeholders.	

SN	Clause	***Reliefs, Concessions, and Approvals sought for***	**Our Inference with the Relevant Provisions and/or Case laws**	**Our Orders thereon**
		entitlements, benefits and privileges whether under law, contract, lease or license. granted in favour of the Corporate Debtor or any contractual arrangements entered into by the Corporate Debtor, shall, notwithstanding any provision to the contrary in their terms, stand extinguished without any recourse.		
g.	11 (vii)	*The Resolution Applicant plead Adjudicating Authority to consider its plea for relief from any hardship due to any claims (whether contingent or crystallized, known or*	The law relating to the claim of a creditor after approval of a plan, as laid down in ***Ghanashyam***	Granted in accordance with law.

SN	Clause	***Reliefs, Concessions, and Approvals sought for***	**Our Inference with the Relevant Provisions and/or Case laws**	**Our Orders thereon**
		unknown) of Governmental Authorities in relation to all Taxes which the Corporate Debtor, all deductions and all withholding Taxes on any payment, as required under Applicable Law and pertaining to the period prior to Insolvency Commencement Date and for which no claim has been admitted. Further, post the order of the Hon'ble NCLT, no re-assessment/ revision or any other proceedings under the provisions of any of the indirect tax laws should be initiated on the Corporate Debtor in relation to the period prior to acquisition of control by the	***Mishra* (Supra),** shall strictly be followed, nothing more, nothing less.	

SN	Clause	*Reliefs, Concessions, and Approvals sought for*	Our Inference with the Relevant Provisions and/or Case laws	Our Orders thereon
		Resolution Applicant and any consequential demand shall be considered non-existing and as not payable by the Corporate Debtor. Any proceedings which were kept in abeyance in view of insolvency process or otherwise shall not be revived post the order of Hon'ble NCLT.		
h.	11 (viii)	*The Resolution Applicant plead Adjudicating Authority to entitle Corporate Debtor to carry forward the unabsorbed depreciation and accumulated losses, if any and to utilize such amounts to set off future tax*	This Adjudicating Authority is not the appropriate forum to consider this relief. Thus, the Resolution Applicant shall	Not Granted.

SN	Clause	***Reliefs, Concessions, and Approvals sought for***	**Our Inference with the Relevant Provisions and/or Case laws**	**Our Orders thereon**
		obligations during next 8 years.	approach the Income Tax Authority for the appropriate relief as per Income Tax Law.	
i.	11 (ix)	*The NCLT order passed shall be binding on all the concerned Government (Central and State) Departments / Authorities. Further, any overdue stamp duty, property tax, Lease Rent, Municipal Corporation/ Gramp Panchayat dues, West Bengal State Power Distribution/ Generation Company Limited*	The law relating to the claim of a creditor after approval of a plan, as laid down in ***Ghanashyam Mishra* (Supra),** shall strictly be followed, nothing more, nothing less.	Granted.

SN	Clause	***Reliefs, Concessions, and Approvals sought for***	**Our Inference with the Relevant Provisions and/or Case laws**	**Our Orders thereon**
		clearance, income tax/Sales Tax/Goods & Service Tax/Customs Duties/Excise Duties and or any other statutory penalty/charges etc. with respect to the Corporate Debtor shall be assumed to be settled/ foregone. *Further, following approvals shall be automatically provided, application and procedures shall be followed by the resolution applicant:* *a. Change of status of the corporate debtor at the MCA website as active for filing of various forms.*	Further, waivers relating to the change of status of the corporate debtor at the MCA website as active for filing of various forms is granted in accordance with law.	

SN	Clause	***Reliefs, Concessions, and Approvals sought for***	**Our Inference with the Relevant Provisions and/or Case laws**	**Our Orders thereon**
j.	11 (x)	*The Resolution Applicant plead Adjudicating Authority to consider its plea for relief from all new inquiries, investigations, whether civil or otherwise, notices, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings in relation to any period prior to the acquisition of control by the Resolution Applicant over the Corporate Debtor.*	Immunity is granted strictly in terms of Section 32A of the Code, nothing more and nothing less.	Granted in accordance with law.
k.	11 (xi)	*Pursuant to Section 32 A of the Code and approval of the plan,*	Immunity is granted strictly in terms of Section 32A of	Granted in accordance with law.

SN	Clause	***Reliefs, Concessions, and Approvals sought for***	**Our Inference with the Relevant Provisions and/or Case laws**	**Our Orders thereon**
		a. notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31 *b. No action shall be taken against the property of the*	the Code, nothing more and nothing less. Whatever protection is available to the corporate debtor in terms of section 32A of the Code will in any case continue to be available.	

SN	Clause	***Reliefs, Concessions, and Approvals sought for***	**Our Inference with the Relevant Provisions and/or Case laws**	**Our Orders thereon**
		corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31		
1.	11 (xii)	*The Central Board of Direct Taxes (CBDT) or any other relevant Governmental Authority to exempt the Resolution Applicant individually and the Company from the applicability of and payment of all Taxes under*	The law laid down in ***Ghanashyam Mishra* (Supra),** that once a Resolution Plan is approved, a creditor cannot initiate	Granted in accordance with law and with reference to dues accrued prior to commencement of the CIRP and for the

SN	Clause	***Reliefs, Concessions, and Approvals sought for***	**Our Inference with the Relevant Provisions and/or Case laws**	**Our Orders thereon**
		the Income Tax Act, 1961 (including Section 115JB). including any liability under the Self-Assessment Tax or Minimum Alternate Tax which may arise on account of the transactions envisaged under this Resolution Plan either on the Applicant, the Acquiring Entity or the Company or any other Person who is likely to be impacted due to implementation of the Resolution Plan, and the Adjudicating Authority shall pass an order to that effect.	proceedings for recovery of claims which are not part of the Resolution Plan. The claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its stakeholders.	transactions envisaged in the Resolution Plan.
m.	11 (xiii)	*All Governmental Authorities to waive the Non-Compliances of the*	Whatever protection is available to the	Granted in accordance with law.

SN	Clause	*Reliefs, Concessions, and Approvals sought for*	Our Inference with the Relevant Provisions and/or Case laws	Our Orders thereon
		Company prior to the Effective Date, including but not limited to Companies Act, 2013, the Industrial Disputes Act, 1947, the Labour Laws, Income tax Act 1961, RERA Orissa, VAT, Service Tax Act, GST and the relevant shops and establishment acts and rules, circulars and regulations of each of the above legislations.	corporate debtor in terms of section 32A of the Code will in any case continue to be available.	
n.	11 (xiv)	*All encumbrances on land or any other property of corporate debtor attached by any of the stakeholders whether financial/statutory/other known unknown shall*	This is for the relevant and/or appropriate authorities to consider, and not in the nature of a	Not Granted.

SN	Clause	*Reliefs, Concessions, and Approvals sought for*	Our Inference with the Relevant Provisions and/or Case laws	Our Orders thereon
		stand discharged with order of the adjudicating authority.	waiver, concession or relief to be granted by this Adjudicating Authority.	
o.	11 (xv)	*In relation to any alleged transfer of any economic interest or other beneficial interest by the corporate debtor to any party in the past pertaining to the land parcels where the title and ownership is still lying with the corporate debtor, the Resolution Applicant shall have a right to terminate/ cancel such arrangement without any liability (monetary or otherwise) on*	This is for the relevant and/or appropriate authorities to consider, and not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority.	Not Granted.

SN	Clause	***Reliefs, Concessions, and Approvals sought for***	**Our Inference with the Relevant Provisions and/or Case laws**	**Our Orders thereon**
		the PMIPL/Resolution Applicant. Also, any agreement, MOU, transfer of rights or contract that hampers the assets/rights of PMIPL shall be considered void if the same has not been registered/ presented before the concerned authority up to the Effective Date.		
p.	11 (xvi)	*The acquisition of the Corporate Debtor shall be subject to the Resolution Applicant getting title of land owned by the Corporate Debtor and Title of such properties (whether or not movable) that are attached to such immovable*	This Adjudicating Authority is not the appropriate forum to consider and grant the relief.	Not Granted. The Resolution Applicant is directed to approach he concerned authorities for the appropriate

SN	Clause	***Reliefs, Concessions, and Approvals sought for***	**Our Inference with the Relevant Provisions and/or Case laws**	**Our Orders thereon**
		properties or and title of such movable properties lying on such immovable properties.		action as per law.
q.	11 (xvii)	*The Adjudicating Authority may direct the statutory authorities, as applicable, to grant renewal of respective licenses, approvals and permissions, subject to compliance of the procedural and other requirements under applicable governing Law, Statute, Rules and/or Regulations, etc., for time being in force.*	This is for the relevant and/or appropriate authorities to consider, and not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority.	Not Granted.

SN	Clause	*Reliefs, Concessions, and Approvals sought for*	Our Inference with the Relevant Provisions and/or Case laws	Our Orders thereon
r.	11 (xviii)	*Any interest or penalty payable during the CIRP period should be waived off under any law for the time being in force. For any default in making payment as specified in this plan, a cure period of 30 days would be provided to cure the default/delayed payment.*	Whatever protection is available to the corporate debtor in terms of section 32A of the Code will in any case continue to be available.	Granted in accordance with law.
s.	11 (xix)	*The leasehold rights in respect of leasehold land rights in the name of the company shall be deemed to be reinstated to its original tenor, on the effective date, for revival of the corporate debtor.*	For the implementation of the Resolution Plan, we grant the reliefs. However, for any non-compliance or violation, the	Granted subject to the terms and conditions of the lease deed/ agreement and in accordance with law.

SN	Clause	*Reliefs, Concessions, and Approvals sought for*	Our Inference with the Relevant Provisions and/or Case laws	Our Orders thereon
			aggrieved party may approach the appropriate authority.	

62. As far as the question of granting time to comply with the statutory obligations or seeking approvals from authorities is concerned, the Resolution Applicant is directed to do so within one year from the date of this order, as prescribed under section 31(4) of the I&B Code.

63. In case of non-compliance with this order or withdrawal of the Resolution Plan, the payments already made by the Resolution Applicant shall be liable for forfeiture.

64. In so far as the approval of **the Resolution dated 26.12.2023** submitted by **M/s. Shyam Enterprises, the Successful Resolution Applicant,** is concerned, this Adjudicating Authority is bound by the judgement of the Hon'ble Supreme Court of India in ***K. Sashidhar vs. Indian Overseas Bank and Ors.*** reported in **(2019) 12 SCC 150: MANU/SC/0189/2019,** wherein it is held that:

> "*35. […] Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides:* ***(i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board****. […]. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan Under Section 30(4) of the I & B Code*."
>
> **(Emphasis Added)**

65. Further, the Hon'ble Apex Court in ***Jaypee Kensington Boulevard Apartments Welfare Association and Ors. vs. NBCC (India) Ltd. and Ors.*** reported in (**2022) 1 SCC 401: MANU/SC/0206/2021** at Para 216, has laid down that:

> "***The Adjudicating Authority has limited jurisdiction in the matter of approval of a resolution plan, which is well-defined and circumscribed by Sections 30(2) and 31 of the Code.*** *In the adjudicatory process concerning a resolution plan under IBC,* ***there is no scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for***

> ***substituting any commercial term of the resolution plan approved by Committee of Creditors****. … .*"
>
> **(Emphasis Added)**

66. Further, in ***Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta*** reported at **(2020) 8 SCC 531: MANU/SC/1577/2019**, the Hon'ble Apex Court has propounded that:

> "*38. This Regulation fleshes out Section 30(4) of the Code, making it clear that ultimately it is the* ***commercial wisdom of the Committee of Creditors*** *which operates to approve what is deemed by a majority of such creditors to be the best resolution plan, which is finally accepted after negotiation of its terms by such Committee with prospective resolution applicants*."
>
> **(Emphasis Added)**

67. In the case at hand, we would note that **the Resolution dated 26.12.2023** submitted by **M/s. Shyam Enterprises,** has been approved by the Committee of Creditors of the Corporate Debtor by **100%** voting share on 02.02.2024. We have further noted that the LoI was issued on 02.02.2024, which has been unconditionally accepted by the SRA. Accordingly, **the Resolution dated 26.12.2023** submitted by **M/s. Shyam Enterprises, the Successful Resolution Applicant** defeats all other plans submitted before the applicant and **M/s. Shyam Enterprises,** has unanimously declared as a **"Successful Resolution Applicant".** Hence, given the aforesaid decisions of the Hon'ble Apex Court as well as in light of the overall facts and circumstances of the present case, this Adjudicating Authority has not interfered with the viability of the Commercial Wisdom as exercised by the Committee of Creditors of the Corporate Debtor.

68. Subject to the observations made in this Order, **the Resolution dated 26.12.2023** submitted by **M/s. Shyam Enterprises, the Successful Resolution Applicant** is hereby **APPROVED** and **FINALLY SANCTIONED** by this Adjudicating Authority.

On the PUFE Transactions:

69. However, it is evident that the CoC has been constituted with only one member which is Indian Bank (Secure Financial Creditor). The claim received from Indian Bank is for Rs. 43.08 Crore that has been admitted in full by the Resolution Professional (RP).

70. We find that the amount allocated to Indian bank in the Resolution Plan of SRA is of Rs. 3.82 Crore only resulting in a huge reduction of 91.15%, compared to the admitted claim. Similarly, in the case of Government dues, against the admitted claim of Rs. 2.01 Crore, only Rs. 0.03 Crore has been provided resulting in massive reduction of 98%. Further, in case of Operational Creditors other than the employees, workman and Government dues, against the admitted claim of Rs. 3.09 Crore, only a Rs. 0.03 Crore has been allocated, again leading to large scale reduction of 99%.

71. We find that against total admitted claim from various creditors for Rs. 48.36 Crore, only Rs. 4.01 Crore has been proposed and allocated which is almost 92% "haircut". If we consider the total claims received as against the admitted claim, then the "haircut" is even more at 95%.

72. We find that the Resolution Professional in Form H as well as in the Supplementary Affidavit stated that no transactions were observed

under Regulation 39(2) of the CIRP Regulations which envisages that the RP shall submit to the committee, all resolution plans which comply with the requirements of the Code and regulations made thereunder along with the details of following transactions, if any, observed, found or determined by him: (a) preferential transactions under section 43; (b) undervalued transactions under section 45; (c) extortionate credit transactions under section 50; and (d) fraudulent transactions under section 66, and the orders, if any, of the adjudicating authority in respect of such transactions.

73. The Insolvency and Bankruptcy Code, 2016 casts huge responsibilities on the Resolution professional to deal with avoidance transactions under Sections 43, 45, 50 and 66 during the corporate insolvency resolution process of a corporate debtor. In fact, the Code contemplates that it is the Resolution Professional alone who would form an opinion and determine avoidance transactions and take it up with the Adjudicating Authority by way of application for appropriate orders.

74. The members of the committee of creditors who participate in the CIR Process neither can devote their time on a full-time basis nor equipped to form an opinion and determine the avoidance transactions in a corporate debtor undergoing CIRP/ liquidation.

75. If the Resolution Professional misses to determine the avoidance transactions and fail to file applications before the Adjudicating Authority, then no way diverted or syphoned of funds if any can be got back and made available for distribution and insolvency resolution of the corporate debtor.

76. In the present case, we find that total admitted claims is of Rs. 48.36 Crore, the liquidation value is Rs. 4.08 Crore and the value of the Resolution Plan is of Rs. 4.01 Crore, leading to a "haircut" of about 92%.

77. It is the duty of the Resolution Professional to bring it to the notice of the CoC, as to where the borrowed funds have gone, particularly in case where the "haircut" is as high as 92% like in the present case.

78. We have noted that during the CIR Process, the RP has appointed a transactional auditor who has examined only two financials' years i.e., 2020-2021 and 2021-2022, and unaudited Trial Balance of 2022-2023, and came to conclusion that there are no avoidance transactions. While the look back period for fraudulent transactions under Sections 43, 45 and 50 is two years and there is no limit on look back period for fraudulent transactions under Section 66 of the I&B Code.

79. Unless the audit period covers a period beyond two years, at least from the period when the corporate debtor starting making losses / default in payment of debts, we are of the view that no fraudulent transactions can meaningfully be found or unearthed. Further, the transactional audit report merely reports changes in various accounts when compared to the previous year.

80. Hence, we direct the Resolution Professional to examine the last 6 years Financial Statements, IT Returns, GST Returns, cash flow and fund flow statements in detail and place it before the CoC of the Corporate Debtor with appropriate justification and the basis for forming opinion that there were no avoidance transactions, in the form of a report. A copy of the said report also be filed with this Adjudicating Authority.

81. The RP shall comply with the direction within a period of four weeks from the date of pronouncement of the order. This direction shall not affect the approval of the Resolution Plan.

82. The Resolution Plan shall form part of this Order and shall be read along with this order for implementation. The Resolution Plan thus approved shall be binding on the Corporate Debtor and all other stakeholders involved in terms of Section 31 of the I&B Code, so that the revival of the Corporate Debtor Company shall come into force with immediate effect without any delay.

83. The Moratorium imposed under section 14 of the Code by virtue of the order initiating the CIR Process, shall cease to have effect from the date of this order.

84. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record and also return them to the Resolution Applicant or New Promoters after completing the report mentioned in para 80 of this order.

85. Liberty is hereby granted for moving any application, if required, in connection with the successful implementation of this Resolution Plan.

86. A copy of this Order is to be submitted to the Registrar of Companies (RoC) to whom the company is registered, by the Resolution Professional.

87. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order. However, she is required to comply with our direction mentioned in Para 80 of the order.

88. The Resolution Professional is further directed to hand over all records, premises/ factories/ documents to the Resolution Applicant to finalise the further line of action required for starting the operation. The Resolution Applicant shall have access to all the records/ premises/ factories/ documents through the Resolution Professional to finalise the further line of action required for starting the operation.

89. The **Registry of this Adjudicating Authority** is directed to send e-mail copies of the order forthwith to all the parties and their Learned Counsels for information and for taking necessary steps.

90. In terms of the view above, the interlocutory application being **I.A. (IB) (Plan) No. 2/KB/2024** along with the main company petition being **Company Petition No. 104/KB/2022** shall stand **disposed of** accordingly.

91. Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

92. File be consigned to the record.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on the 17th Day of May, 2024.
Bose, R. K. [LRA]