



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
COURT- I
KOLKATA**

**IA (IB) No. 878/KB/2022
in
CP (IB) No. 1601/KB/2019**

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

In the matter of:

Metro Cash & Carry Private Limited

... Operational Creditor

Versus

Synergy Kitchens & Hospitality Private Limited

CIN: U15135WB2008PTC122942

... Corporate Debtor

And

In the matter of:

Mr. Rasik Singhania, Resolution Professional of

Synergy Kitchens & Hospitality Private Limited

... Applicant

Date of pronouncement: 29 November 2022

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (via hybrid mode):

For the Applicant/RP

Mr. Raj Singhania, Advocate

Mr. Rasik Singhania, Resolution Professional



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ORDER

Per: Balraj Joshi., Member (Technical)

1. This Court convened through hybrid mode.

Preliminary

2. I.A. (IB) No. 878/KB/2022 is an application under section 30(6) of the Insolvency and Bankruptcy Code, 2016, after approval of the resolution plan by the Committee of Creditors (**CoC**).
3. This application was moved on 20 September 2022 by Mr. Rasik Singhanian, Resolution Professional of Synergy Kitchens & Hospitality Private Limited (CIN: U15135WB2008PTC122942), by invoking the provisions of section 30(6) of the Insolvency and Bankruptcy Code, 2016 (**“the Code” or “IBC”**) read with regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**CIRP Regulations**) for approval of a Resolution Plan in respect of Synergy Kitchens & Hospitality Private Limited (**Corporate Debtor**).
4. The underlying Company Petition in C.P. (IB) No. 1601/KB/2019 was filed by Metro Cash & Carry India Private Limited against Synergy Kitchens & Hospitality Private Limited, the Corporate Debtor, under section 9 of the Insolvency and Bankruptcy Code 2016, which was admitted *vide* order dated 25 November 2021.
5. Initially, Mr. Madhusudhan Kumar Poddar, was appointed as the Interim Resolution Professional (**IRP**). At the second meeting of the CoC 13 January 2022, the Mr. Rashik Singhanian, (IBBI Reg. No. IBBI/IPA-001/IP-P00390/2017-18/10708), the Applicant herein was proposed to be appointed as the Resolution Professional (**RP**) of the Corporate



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Debtor. The appointment was confirmed by this Adjudicating Authority on 23 March 2022.

Constitution of CoC

6. The IRP made public announcement on 29 November 2021 in *Financial Express (English) (Kolkata Edition)* and *Aajkal (Bengali) (Kolkata Edition)* newspapers regarding initiation of Corporate Insolvency Resolution Process (**CIRP**) and called proof of claims from the financial and operational creditors, workers and employees of the corporate debtor in the specified forms till 11 December 2021.
7. The CoC was constituted with five Financial Creditors i.e., Axis Bank, Bhuwarka Commercial Private Limited, Aditya Birla Finance Limited, IDFC First Bank Limited, Tata Capital Financial Services Limited with 96.42%, 1.40%, 0.46%, 1.32% and 0.40% voting share respectively. A report of the constitution of the CoC was filed before the Adjudicating Authority.
8. The Applicant states that a total of ten CoC meetings have been held during CIRP period, as follows:

Particulars	Date of CoC meeting
1 st CoC Meeting	27.12.2021
2 nd CoC Meeting	13.01.2022
3 rd CoC Meeting	03.02.2022
4 th CoC Meeting	24.02.2022
5 th CoC Meeting	06.04.2022
6 th CoC Meeting	22.04.2022
7 th CoC Meeting	17.06.2022
8 th CoC Meeting	06.07.2022



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Particulars	Date of CoC meeting
9th CoC Meeting	16.07.2022
10 th CoC Meeting	05.08.2022 adjourned and concluded on 08.08.2022

CIRP and compliances

9. The Applicant submits that in terms of the provisions of section 25(2)(h) of the Code read with regulation 36A(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, invitations in Form ‘G’ for Expressions of Interest (**EoI**) from potential resolution applicants was issued on 08 February 2022 in *Business Standard, (English) All India edition and Aajkal (Bengali)* newspaper of Kolkata edition, and on 01 March 2022 in *Financial Express, (English) and EkDin (Bengali)* newspaper of Kolkata edition. The last date of submission of Resolution Plan was 18 April 2022.
10. The notice was also published on the website of the Insolvency and Bankruptcy Board of India (**IBBI**).
11. The Applicant submits that in response to the invitation for EoI published on 01 April 2022, the Applicant received one Expression of Interest from the Prospective Resolution Applicant.
12. The CoC resolved to publish a fresh EoI, hence EoI was published on 28 April 2022 in *Business Standard, (English) and EkDin (Bengali)* newspaper of Kolkata edition.
13. In response to the EoI published on 28 April 2022, the Resolution Professional received EoI from three prospective Resolution Applicants (“PRA”) i.e. from:



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- a. Yaduka Agrotech Private Limited;
 - b. Life Line Foods Private Limited;
 - c. Lone Star Holdings Private Limited.
14. In accordance with regulation 36B of the CIRP Regulations, the Resolution Professional shared the Information Memorandum, Evaluation Matrix and Request for Resolution Plan with the PRAs through email on 21 May 2022.
15. The Resolution Professional received two Resolution Plans on the last date for submission of Resolution Plan i.e. 30 June 2022 from Yaduka Agrotech Private Limited and Life Line Foods Private Limited.
16. As per regulation 35(2) of the CIRP Regulations, after receipt of the Resolution Plan, the RP informed the fair value and liquidation value of the Corporate Debtor to the CoC on 16 July 2022.

Evaluation and voting

17. The Resolution Plans were opened before the CoC in its the 8th CoC meeting held on 06 July 2022 and it was resolved that the Resolution Plan would be discussed in the next meeting. The Resolution Plan was discussed on the 9th CoC meeting held on 16 July 2022. The PRAs were requested to submit revised Resolution Plans.
18. The CoC reviewed the revised plans in the 10th CoC Meeting held on 05 August 2022 and put up for e-voting which concluded on 18 August 2022 wherein the Resolution Plan submitted by Yaduka Agrotech Private Limited was approved with 97.28% voting share.



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19. The Applicant issued the Letter of Intent on 18 August 2022¹ to the Successful Resolution Applicant.
20. In accordance with regulation 36B(4A) of the CIRP Regulations, the Successful Resolution Applicant has submitted the Performance Bank Guarantee of Rs.26,00,000/- (Rupees Twenty Six Lakh only) issued by ICICI Bank in favour of Axis Bank on 20 August 2022².

Compliance of the approved Resolution Plan with various provisions

21. The Applicant has filed a Compliance Certificate in prescribed form, i.e., Form 'H' dated 20 August 2022³ in compliance with regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
22. The Applicant has submitted details of various compliances as envisaged within the Code and the CIRP Regulations which a Resolution Plan should adhere to, which is reproduced hereunder:

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

Clause of s.30(2)	Requirement	How dealt with in the Plan
1.	Plan must provide for payment of CIRP cost in priority to repayment	Clause 3.2 at Page 27 of the Resolution Plan.

¹ Annexure E at Pages 56-58

² Annexure F at Page 60

³ Annexure I at Pages 144-152



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Clause of s.30(2)	Requirement	How dealt with in the Plan
	of other debts of CD in the manner specified by the Board.	
2.	(i) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than the amount payable to them in the event of liquidation u/s 53; (ii) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be not less 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; (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.	<i>Clause 3.3 at Page 27 to 28 of the Resolution Plan</i> <i>Clause 3.3 at Page 27 to 28 of the Resolution Plan</i> <i>Clause 3.4 at Page 28 of the Resolution Plan</i>



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Clause of s.30(2)	Requirement	How dealt with in the Plan
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	<i>Clause 5 at Page 39 to 43 of the Resolution Plan</i>
(d)	Implementation and Supervision	<i>Clause 4 at Page 36 to 38 of the Resolution Plan</i>
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	<i>Clause 5.7 at Page 41 of the Resolution Plan</i>
(f)	Conforms to such other requirements as may be specified by the Board.	<i>Clause 5.7 at Page 41 of the Resolution Plan</i>

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

Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximisation of value of its assets, including but not limited to the following: -	



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Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
(a) transfer of all or part of the assets of the corporate debtor to one or more persons;	<i>Not proposed in the Resolution Plan.</i>
(b) sale of all or part of the assets whether subject to any security interest or not;	<i>Not proposed in the Resolution Plan.</i>
(c) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	<i>Not proposed in the Resolution Plan.</i>
(d) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	<i>Annexure 2 at Page 61 of the Resolution Plan.</i>
(e) cancellation or delisting of any shares of the corporate debtor, if applicable;	<i>Annexure 2 at Page 61 of the Resolution Plan.</i>
(f) satisfaction or modification of any security interest;	<i>Annexure 2 at Page 61 of the Resolution Plan.</i>



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Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
(g) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	<i>Annexure 2 at Page 61 of the Resolution Plan.</i>
(h) reduction in the amount payable to the creditors;	<i>Clause 3.5 at Page 28 of the Resolution Plan.</i>
(i) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	<i>Not proposed in the Resolution Plan.</i>
(j) amendment of the constitutional documents of the corporate debtor;	<i>Not proposed in the Resolution Plan.</i>
(k) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	<i>Not proposed in the Resolution Plan.</i>
(l) change in portfolio of goods or services produced or rendered by the corporate debtor;	<i>Not proposed in the Resolution Plan.</i>



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Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
(m) change in technology used by the corporate debtor; and	<i>Not proposed in the Resolution Plan.</i>
(n) obtaining necessary approvals from the Central and State Governments and other authorities.	<i>Point 35 at Page 50 of the Resolution Plan.</i>

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

Ref to relevant Reg.	Requirement	How dealt with in the Plan
38(1)	The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.	<i>Clause 3.3 at Page 27 to 28 of the Resolution Plan</i>
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including	<i>Clause 3.5 at Page 28 to 29 of the Resolution Plan</i>



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Ref to relevant Reg.	Requirement	How dealt with in the Plan
	financial creditors and operational creditors of the corporate debtor.	
38(1B)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.	<i>Clause 4.2 at Page 37 of the Resolution Plan</i>
38(2)	A resolution plan shall provide:	
	(a) the term of the plan and its implementation schedule;	<i>Clause 4.1 at Page 36 of the Resolution Plan</i>
	(b) the management and control of the business of the corporate debtor during its term; and	<i>Clause 5 at Page 38 of the Resolution Plan</i>



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Ref to relevant Reg.	Requirement	How dealt with in the Plan
	(c) adequate means for supervising its implementation.	<i>Clause 4 at Page 36 to 38 of the Resolution Plan</i>
38(3)	A resolution plan shall demonstrate that –	
	(a) it addresses the cause of default;	<i>Clause 1.1 at Page 5 of the Resolution Plan</i>
	(b) it is feasible and viable;	<i>Clause 5.8 at Page 41 to 43 of the Resolution Plan</i>
	(c) it has provisions for its effective implementation;	<i>Clause 4 at Page 36 to 38 of the Resolution Plan</i>
	(d) it has provisions for approvals required and the timeline for the same; and	<i>Clause 4.4 at Page 37 to 38 of the Resolution Plan</i>
	(e) the Resolution Applicant has the capability to implement the resolution plan.	<i>Clause 2.1, 2.2, 2.3, 2.4 and 2.5 at Page 16 to 21 of the Resolution Plan</i>



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23. The Resolution Applicant has submitted affidavit of eligibility under section 29A of the Code, affirmed on 30 June 2022⁴.

Details of Resolution Plan/Payment Schedule

24. The Applicant submits that the Resolution Applicant had filed a Resolution Plan on 30 June 2022 which was further amended on 13 August 2022.
25. The relevant information with regard to the amount claimed, amount admitted and the amount proposed to be paid by the Resolution Applicant, *i.e.*, Yaduka Agrotech Private Limited (CIN: U01111WB2006PTC195255) under the said Resolution Plan is tabulated as under:

Sl. No.	Category of Creditors	Amount of Claim	Claim Admitted (Rs. in Lakhs)	Amount provided in the Plan (Rs. in Lakhs)	Payment Term
1.	Insolvency Resolution Process Cost		Nil	Nil	The actual CIRP cost considered to be paid out of the internal accruals of the Corporate Debtor. Shortage if any will be paid by RA as per actuals.

⁴ Annexure J at Pages 153-156



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Sl. No.	Category of Creditors	Amount of Claim	Claim Admitted (Rs. in Lakhs)	Amount provided in the Plan (Rs. in Lakhs)	Payment Term
		Actual			
2.	Operational Creditor- (Government Dues)	199.84	169.47	5.24	OCs will be paid upfront in priority over the FCs
3.	Operational Creditors (Related Parties)	0	0	Nil	-----
4.	Operational Creditors (Workmen and Employees)	3.31	1.66	1.66	OCs will be paid upfront in priority over the FCs
5.	Operational Creditors (Supplier of goods and services)	868.07	867.20	26.80	OCs will be paid upfront in priority over the FCs
6.	Secured Financial Creditor		667.53	485.02	Rs.200 Lakhs will be paid upfront and rest



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Sl. No.	Category of Creditors	Amount of Claim	Claim Admitted (Rs. in Lakhs)	Amount provided in the Plan (Rs. in Lakhs)	Payment Term
		667.53			amount will be paid within one year from the approval of the Resolution Plan in two Instalments. 85.02 before 9 months of end of effective date and balance before 11 months of end of effective date
7.	Unsecured Financial Creditor	26.53	24.81	1.17	Full amount will be paid upfront
8.	Other Creditor (Other than operational and financial creditors)	3.54	3.54	0.11	Full amount will be paid upfront
	Total-A (1+2+3+4+5+6+7+8)	1768.82	1734.21	520	
9.	Capex	--	--	50.00	--
10.	Working Capital	--	--	80.00	--



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Sl. No.	Category of Creditors	Amount of Claim	Claim Admitted (Rs. in Lakhs)	Amount provided in the Plan (Rs. in Lakhs)	Payment Term
	Total-B (Sum 1 to 10)			650.00	

26. The Resolution Plan defines “***Effective Date***” as “*shall be treated as the date on which upfront payment is paid as by the Resolution Applicant in the Binding Resolution Plan (ie., within 30 days from the approval date)*”.

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

27. The Resolution Plan also provides for –
- a. Management of Company after resolution in Clause 5 at Page 38 of the Resolution Plan;
 - b. Term of the resolution plan in Clause 4.1 at Page 36 of the Resolution Plan; and
 - c. Implementation and Supervision of the resolution plan in Clause 4 at Page 36 to 38 of the Resolution Plan

Relinquishment/Waiver of liabilities and Approvals

28. 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.



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Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
1.	Approval of the Adjudicating Authority and the COC shall constitute adequate approval and cancellation of the existing share capital and accordingly, no approval/ consent shall be necessary from any other person/ governmental authority in relation to either of these . actions under any agreement, the constitutional documents or under any Applicable Law, It is also clarified that the Resolution Applicant shall not be required to deal with the dissenting / abstaining Financial Creditors in any manner other than as provided under the Code.	As far as meetings of shareholders for issue of such new equity shares and for cancellation of existing equity shares of the corporate debtor are concerned, approval to the Resolution Plan accorded by this Adjudicating Authority shall be deemed to be requisite approval for all such meetings or dispensation from conducting meetings of shareholders. However, all regulatory compliances such as filing with the RoC, payment of filing fees on documents etc. will have to be complied with. RoC cannot be expected to grant automatic approval for such activities without the forms being filed on behalf of the corporate debtor. This fact has also been recognised to be so 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.



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Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
2.	Approval of this plan shall be deemed approval for waiver from filing of statutory returns .(including but not limited to any filings for registrar of Companies, Direct and indirect tax authorities, plant related annual filings, etc.) for a period prior to the Approval date. Certified copy of the order approving Resolution Plan shall be a direction on such statutory authorities to allow SKHPL to do compliance(s) with effect from and after the approval date.	Granted.
3.	Approval of this plan shall be deemed approval for removal of directors from the record of the Company as appearing on the MCA portal/ website/ income tax website/ any indirect website. Certified copy of the order approving Resolution Plan shall be a direction on such statutory authorities to do the needful.	Granted.
4.	The change in the shareholding of the Corporate Debtor pursuant to this Resolution Plan approved by the Adjudicating Authority shall not result in lapse of any losses of the Corporate Debtor that are brought forward under the	This is for the relevant tax authorities to consider, and not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority.



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Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
	provisions of section 79 read with section 2(18) Income-tax Act, 1961.	
5.	The requirement of obtaining a no objection certificate under section 281 of the 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 115JB of the Income-tax Act, 1961, is deemed to have been granted upon approval of this Resolution Plan and with effect from the Approval Date.	This is for the relevant tax authorities to consider, and not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority.
6.	The Central Board of Excise and Customs to not void the transactions contemplated under the Resolution Plan (including a potential sale of Assets) under section 81 of the Central Goods and Service Tax Act, 2017 and not to impose any successor	This is for the relevant tax authorities to consider, and not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority.



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Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
	liability on the Resolution Applicant and/or the Corporate Debtor.	
7.	Act as necessary directions to Central Board of Direct Taxes: a) For exemption from the provisions of Income Tax. Act, 1961, including but not limiting to the provisions of Minimum Alternate Tax, arising as a result of giving effect to the Resolution Plan, including write-back of liabilities. b) For Claim set-off of the entire Minimum Alternate Tax (MAT) credit as available to the Corporate Debtor, against the normal income-tax as would be payable by the Corporate Debtor post the Approval Date, i.e., no normal taxation should be applicable until the MAT credit is adjusted/utilized in full.	This is for the relevant tax authorities to consider, and not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority.
8.	Act as grant of exemption and relief to the Corporate Debtor from the provisions of Section 41(1), 45, 72(3), 438, 56, 79, 80 read with 139, 1153B and 269-SS, 269-T and 281 provisions of Chapter XVII of the	This is for the relevant tax authorities to consider, and not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority.



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Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
	Income Tax Act, effective from the Approval Date for implementation of the Resolution Plan.	
9.	That all the assets of the corporate debtor including but not limiting to the current assets, bank balances and fixed deposits will vest to the benefit of the Corporate Debtor and under control of the Resolution Applicant. Any attachment and/or freezing order against the assets of the Corporate Debtor by any authority, including but not limited to IT, GST, ED will stand vacated and the Corporate Debtor will be free to use the assets to its benefits to ensure that the unit continues to be a going concern.	Granted in terms of In <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , ⁵ the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan. Such grant shall not apply to any attachment made under PMLA.
10.	On the date of Adjudicating Authority order approving, the resolution plan, all Encumbrances, Security interest, liens and/or attachments (including pursuant to applicable law) created or suffered to exist over the assets of the Corporate debtor,	In <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , ⁶ the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate

⁵ 2021 SCC OnLine SC 313 decided on 13.04.2021

⁶ 2021 SCC OnLine SC 313 decided on 13.04.2021



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Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
	whether by contract or by Applicable law shall be allowed .to exist only to the extent of the balance amount as contemplated in the resolution plan due to the creditors and commenced by any person over any assets of the Corporate debtors or over any securities of the corporate debtors shall stand irrevocably released and reversed upon full and final settlement of the dues of the secured financial creditors as contemplated in the resolution plan without the requirement of any further deed or actions on part of the Resolution Applicant.	proceedings for recovery of claims which are not part of the Resolution Plan. The provisions of section 32A of the Code shall also apply.
wi11.	The losses already lapsed/not lapsed as on the date of approval of the Resolution Plan shall be allowed to be carried forward for a period of eight (8) Assessment Years from the Financial Year relevant to the Assessment Year in which Resolution Plan is approved.	Granted.
12.	There arising no liability of the Resolution Applicant in respect of any reassessment, reopening, revision, review or other proceedings under the Income-tax Act, 1961, or any other law or statute for any period prior to the Effective Date.	In <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset</i>



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Sl. No.	Relief and/or Concessions and Approvals Sought	Orders Thereon
		Reconstruction Company Ltd, ⁷ the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan. The provisions of section 32A of the Code shall also apply.
13.	There being waiver of interest and penalty on delayed payment of income tax and tax deducted at source, or any other statutory liability, if any, for any period prior to the Effective Date.	This is for the relevant tax authorities to consider keeping in mind the object of the Code.
14	There being waiver of the penalty in respect of late filing of TDS returns or returns under any other law for any period prior to the Effective Date.	This is for the relevant tax authorities to consider keeping in mind the object of the Code.
15.	There being waiver of the penalty levied under the Income Tax Act, 1961, and all pending penalty proceedings under the Income Tax Act, 1961 to stand closed.	This is for the relevant tax authorities to consider keeping in mind the object of the Code.

⁷ 2021 SCC OnLine SC 313 decided on 13.04.2021



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16.	There being no issue to be raised by the Income Tax Department or any other Statutory body or authority under any law to question any acts, deed/s or thing/s as maybe carried out by the Corporate Debtor and/or any person In control of or acting under instruction of the Corporate Debtor or vice-versa, for which a demand, liability or charge . can be framed on the Corporate Debtor; and accordingly, issues raised and/or proceeding outstanding or pending to stand closed and/or dropped, as the case maybe.	Granted.
17.	No claim, demand/ reassessment/ liabilities whether crystallized or otherwise, present or future, unseen or foreseen, by whatever name or under any head whatsoever will be raised by any creditors and/or statutory authorities including but not limiting to the Income Tax department pertaining to the period prior to the effective date after the Effective Date	In <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , ⁸ the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan. The provisions of section 32A of the Code shall also apply.

⁸ 2021 SCC OnLine SC 313 decided on 13.04.2021



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18.	The Corporate Debtor and the Resolution Applicant shall not be required to deal with the Dissenting Financial Creditors in any manner other than as provided in the Code	Granted.
19.	The approval of resolution Plan by Adjudicating Authority shall constitute adequate and final approval of the Adjudicating Authority for: (a) cancellation of the share capital of the Corporate Debtor (as may be agreed upon) in terms of provisions of the Companies Act, 2013 and other Applicable Law without any compliance of any provisions of the Act which shall stand exempted without any further actions on part of any Party; (b) for issuance of new Equity Shares/preference shares and/or convertible securities as may be considered appropriate to issue in terms of the Section 42 and Section 62(I)(c) of the Companies Act 2013 and other Applicable Law and accordingly; and (c) the amount infused by the Resolution Applicant in the Corporate Debtor for	As far as meetings of shareholders for issue of such new equity shares and for cancellation of existing equity shares of the corporate debtor are concerned, approval to the Resolution Plan accorded by this Adjudicating Authority shall be deemed to be requisite approval for all such meetings or dispensation from conducting meetings of shareholders. However, all regulatory compliances such as filing with the RoC, payment of filing fees on documents etc. will have to be complied with. RoC cannot be expected to grant automatic approval for such activities without the forms being filed on behalf of the corporate debtor. This fact has also been recognised to be so by the Ministry of Corporate Affairs <i>vide</i> General



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	payment of . dues of financial creditors as per this Resolution Plan shall not be termed as deposits under section 73 to 76 of the Companies Act, 2013 and the rules made thereunder, shall be effective without following the provisions of the Companies Act, 2013, and that no approval/ consent shall be necessary from any other person in relation to any of these actions including under any agreement, the constitution documents of the Corporate Debtor or any Applicable Law.	Circular No.IBC/01/2017 dated 25.10.2017 issued under File No.30/14/2017-Insolvency.
20.	Post approval of Resolution Plan by COC, all the penal Interest, interest, damages and penalties charged or chargeable for non-compliance of the various clauses of the SEBI (Listing Obligation and Disclosures Requirements) Regulations, 2015 and other SEBI Regulations read with SEBI Circulars issued thereunder (if applicable), including balance of the principal amount shall be treated as waived off/extinguished. All the compliances required to relist the Equity Shares of the company and to relist the new structure of equity shares of the company	In <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , ⁹ the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan. The provisions of section 32A of the Code shall also apply.

⁹ 2021 SCC OnLine SC 313 decided on 13.04.2021



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	immediately upon filing of the NCLT approval order shall be exempted by Stock exchanges in India.	
21.	All Relevant Authorities (including RBI) to waive and close matters and not to raise any fresh assessment/ demand pertaining to any and all non-compliances/ defaults/ dues of the Corporate Debtor prior to the Effective Date, including but not limited to those relating to Income Tax, Service Tax, Goods and Service Tax, Customs and Excise Act, Foreign Exchange Management Act, Prevention of Money Laundering Act, PMLA, FEMA, CBI, Provident fund Act and Employee State Insurance Act, Tax/ Value Added Tax Acts of the relevant State or the Central Government, Real Estate Regulatory Act of the relevant States or the Central Government). All penalties, liabilities and claims by whatever name called, shall in relation to the aforesaid non-compliances/ demand/ defaults/ dues shall stand extinguished permanently. The	In <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , ¹⁰ the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan. The provisions of section 32A of the Code shall also apply.

¹⁰ 2021 SCC OnLine SC 313 decided on 13.04.2021



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	Resolution Applicant shall be granted a waiver, from all actions, proceedings or penalties under any Applicable Law for any non-compliance, for an additional period of 12 (twelve) months starting from the day following the Effective Date, which is considered necessary and essential for the effective implementation of this Resolution Plan.	
22.	The Resolution Applicant is free to re-organize the business of the Corporate Debtor and to adopt suitable measure, including re-aligning the manpower requirement and changing the use of its land in such manner as is likely to benefit in the turnaround process of SKHPL	Granted.
23.	All assets (including movable & immovable properties whether free hold, lease hold or license basis and intangible assets including technical knowhow, licenses, patents, copyrights, logo, knowledge, brand, franchise agreement etc.) held by the Corporate Debtor shall be re-vested with the Corporate Debtor from the Effective Date, free and clear off all Encumbrances and with good and	Granted.



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	marketable title and possession with full and unrestricted right to own, hold, possess, use for any purpose and transfer, deal with and dispose of the same or any portion thereof in any manner whatsoever without any interference or hindrance or requirement of any consent or no objection from any Person, except for charge created on Fixed Assets by respective Secured Lenders of SKHPL till the Closing Date.	
24.	The Resolution Applicant shall not be liable for any advance licenses, EPCG. benefit availed by the Corporate Debtor, which remained undischarged as on the Approval Date and there shall be complete waiver of any interest, penalty or prosecution against the Corporate, Debtor, Resolution Applicant and its nominees.	Granted.
25	The Resolution Applicant (and its Affiliates) and any future buyers of the Assets of the Corporate Debtor shall not be liable, in any way, for any criminal proceedings or actions . that have been initiated against the Corporate Debtor or its	In <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , ¹¹ the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate

¹¹ 2021 SCC OnLine SC 313 decided on 13.04.2021



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	existing or former promoters, shareholder or directors, employees, officers, at any point of time, before or after the Approval Date.	proceedings for recovery of claims which are not part of the Resolution Plan. The provisions of section 32A of the Code shall also apply.
26.	The Department of Registration and Stamps, local municipal taxes (if pending) and any other relevant authorities of West Bengal and/or Other State Governments where the Corporate Debtor or the Resolution Applicant carries on its business and operations or where its Assets are located, 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 issuance of Equity Shares as provided in this Resolution Plan.	Not granted. The Resolution Plan cannot be in violation of any law for the time being in force. Therefore, if there are any documents on which stamp duty is required to be paid, or in respect of which non-registration will have adverse consequences, they shall apply with full force and no waiver can be granted in this regard.
27	The Ministry of Corporate Affairs shall exempt the Resolution Applicant and the Corporate Debtor from the levy of duties and fees applicable in relation to this Resolution Plan and its Implementation,	Not granted. The Resolution Plan cannot be in violation of any law for the time being in force. Therefore, if there are any documents on which stamp duty is required to be paid, or in respect of which non-registration



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	including issuance of Equity Shares as provided in this Resolution Plan.	will have adverse consequences, they shall apply with full force and no waiver can be granted in this regard.
28	Upon approval of the Resolution Plan by the Adjudicating Authority: a) moratorium granted to the Corporate Debtor from any actions/ penalties under any Laws for any non-compliance, existing on or prior to the Approval Date will continue from Approval Date to Effective Date and post Effective Date for such time as is considered necessary and essential for effective implementation of this Resolution Plan; and b) waiver shall be deemed to have been granted to the Corporate Debtor from all actions, proceedings or penalties under a Law for any non-compliance, post Effective Date, for such term as is	Not Granted.



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	considered necessary and effective implementation of this Resolution	
29	All relevant Governmental Authorities to grant relief/ waiver from payment of stamp duty for the successful implementation of the Plan, inter alia, including but not limited to the increase in authorized share capital, issuance/ transfer of shares or debentures (optionally convertible debentures / non-convertible debentures) etc,	Not granted. The Resolution Plan cannot be in violation of any law for the time being in force. Therefore, if there are any documents on which stamp duty is required to be paid, or in respect of which non-registration will have adverse consequences, they shall apply with full force and no waiver can be granted in this regard.
30	All Governmental Authorities (including but not limited to Income Tax Authority, Service tax Department, VAT Department and GST Department) to waive the non-compliances of the Corporate Debtor or further claims of the Governmental Authorities on the Corporate Debtor arising out of or in relation to the past claims, and/or actions, deed/s or thing/s prior to the Insolvency Commencement Date.	This is for the respective authorities to consider, keeping the spirit of the IBC in view, which is to enable a fresh start for the Corporate Debtor.
31	All Governmental Authorities (including but not limited to Income Tax Authority,	In <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset</i>



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	Service tax Department, VAT Department and GST Department) to provide relief to the Corporate Debtor from all past litigations pending and or proposed to be raised at different levels and provide waiver from tax dues, including interest and penalty on such litigations as on Insolvency Commencement Date.	<i>Reconstruction Company Ltd</i> , ¹² the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.
32.	All creditors (including but not limited to the Financial Creditors and other Operational Creditors) of the Corporate Debtor shall withdraw all legal proceedings commenced against the Corporate Debtor in relation to Claims, including proceedings commenced against the Corporate Debtor under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Recovery of Debt Due to Banks Act, 1993 within a period of 90(ninety) days of the Approval Date, and in the meanwhile the creditors shall not pursue the legal and other actions	In <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , ¹³ the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.

¹² 2021 SCC OnLine SC 313 decided on 13.04.2021

¹³ 2021 SCC OnLine SC 313 decided on 13.04.2021



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	taken by any and/or all of them against the Corporate Debtor.	
33.	The Resolution Applicant seeks a time period of 12 months from the Approval Date to ensure compliances In relation to the non- compliance of Applicable Laws by the Corporate Debtor pertaining to any period up to Approval Date, which shall, if otherwise found to be as per information within the possession of the Resotution Applicant, be considered to be final and effective, without any further costs or liabilities or consequences. Further, the relevant Governmental Authorities shall not initiate any investigations, action or proceedings against the Resolution Applicant or the new management to be appointed by the Resolution Applicant (upon acquisition of control and management of the Corporate Debtor by the Resolution Applicant), including the members of the Reconstituted Board of Directors, in relation to any non-	Granted. Whatever protection is available to the corporate debtor in terms of section 32A of the Code will in any case continue to be available. Therefore, no specific orders are necessary in this regard



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	compliance with Applicable Laws by the Corporate Debtor pertaining to any period up to Approval Date, including waiver of penalty for any such non-compliance.	
34.	Neither the Resolution Applicant nor the Corporate Debtor nor their respective directors, officers, and employees to be appointed after the Approval Date, be liable for an violations, liabilities, penalties or fines with respect to or pursuant to the Corporate Debtor, amongst others to be extent they pertain to or relate to requisite licenses and approvals required to undertake its business as per Applicable laws and the Resolution Applicant will have a time period of 12 months from the Approval Date, to ensure renewal of such consents/ licenses and approvals.	Whatever protection is available to the corporate debtor in terms of section 32A of the Code will in any case continue to be available. Therefore, no specific orders are necessary in this regard
35.	Licenses and approvals held by the Corporate Debtor which expired prior to the Approval Date or which will expire within a period of 12 (twelve) months thereafter shall be . renewed/ extended by the relevant Governmental Authorities and	Whatever protection is available to the corporate debtor in terms of section 32A of the Code will in any case continue to be available. Therefore, no specific orders are necessary in this regard



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	the Corporate . Debtor shall continue its business and assets in the manner as operated up to the Approval Date.	
36.	The Resolution Applicant assumes that, in compliance of its duties under Regulation 35A of the CIRP Regulations, the Interim Resolution Professional had determined whether the Corporate Debtor has been subjected to any transactions covered under sections 43, 45, 50 or 66 of the Code or not and applied to the Adjudicating Authority for seeking appropriate relief. Accordingly, though the Resolution Applicant reserve its right to Institute any Investigation pertaining to any transaction(s) carried out by the ex-management of the Corporate Debtor or to file appropriate applications before the court/ tribunal of competent jurisdiction as may be considered necessary for the purposes. The Resolution Applicant and its officers, directors, employees and the new management of the Corporate Debtor, shall not be considered liable or responsible for any such transactions carried out by the ex- management of the Corporate Debtor.	No blanket orders can be given.



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37.	With respect to any alleged transfer of property of the Corporate Debtor by the Corporate Debtor to third parties without any proper agreement/sub-lease deeds and where the consideration amount has not been paid to the Corporate Debtor, the Resolution Applicant reserves right to cancel such instruments/ agreements/ term sheets and upon cancellation the title in such land parcels will continue to be legally vested in the Corporate Debtor without any liability/ obligation to the counter-party or a claim of the latter or legal or other proceeding to be initiated by the latter, and the expression counter party and latter to mean and include any person acting through one or more of such person/s.	No blanket orders can be given as the parties who entered into the contract are not before us.
38	For the purpose of consolidation of the books of the Corporate Debtor with Resolution Applicant, the Effective Date shall be treated as the date on which Corporate Debtor shall issue its equity shares to the Resolution Applicant against upfront amount paid to the Financial Creditors in terms of this Resolution Plan, which eventually results In takeover of the	Granted.



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	Corporate Debtor by the Resolution Applicant on that day.	
39.	For a period of three (3) years from the Approval Date the Resolution Applicant shall not in any manner be held to be ineligible in terms of Section 29-A of the Code on account of the implementation of this Resotution Plan.	Such blanket order cannot be granted.
40	The Adjudicating Authority be pleased to direct all relevant government authorities to provide/ extend to the Corporate Debtor ail licenses, permits and approvals required by the Resolution Applicants for implementation of the terms of this Resolution Plan and for an efficient functioning of the business of the Corporate Debtor. Further, all licenses and permits required by the Corporate Debtor shall be continued to be made available to the Corporate Debtor.	Whatever protection is available to the corporate debtor in terms of section 32A of the Code will in any case continue to be available. Therefore, no specific orders are necessary in this regard.



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41.	Under the provisions of the Code, namely Section 31(4), a resolution applicant, pursuant to the. resolution plan approved under sub-section (1) of section 31 of the Code, is required to obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the adjudicating authority under sub-section (1) of section 31 of the Code or within .such period as provided for in such law, whichever is later, Pursuant to the above, all . concerned Governmental Authorities shall provide to the Corporate Debtor a period of one year after the approval of the Resolution Plan, to obtain all necessary approvals under the relevant Applicable Laws required for the purpose of implementation of this Resolution Plan, including continuing with the business of the Corporate Debtor.	Whatever protection is available to the corporate debtor in terms of section 32A of the Code will in any case continue to be available. Therefore, no specific orders are necessary in this regard.
42.	The local district administration of the respective States where the assets and/ or business activity of the Corporate Debtor are situated shaft provide and extend	Whatever protection is available to the corporate debtor in terms of section 32A of the Code will in any case continue to be available.



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	assistance to the Resolution Applicant for the implementation of the Resolution Plan.	Therefore, no specific orders are necessary in this regard.
43.	The Resolution Applicant, their respective connected persons and related parties shall .not be deemed to be ineligible under the provisions of the Code, namely Section 29A, from proposing and/or implementing a resolution plan for any other entity/entities .under the provisions of the Code and/ or any other Applicable Law based on the fact that they are Resolution Applicant and/ or connected person(s) and/or related party/ parties in respect of Resolution Plan of the Corporate Debtor.	Such blanket order cannot be granted.
44.	That the Concerned Registrar of Companies do waive off the Fees as may be payable in course of implementation of the Resolution Plan Including but not limiting to Fees and charges payable for increase .in the Authorized Capital of the Corporate debtor in course of allotment of shares to Financial Creditors for the unsustainable	The Resolution Plan cannot be in violation of any law for the time being in force. Therefore, if there are any documents on which fees are required to be paid, or in respect of which non-registration will have adverse consequences, they shall



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	Debts and also increase in authorized capital as maybe required in course of equity infusion by the Resolution Applicant.	apply with full force and no waiver can be granted in this regard.
45.	That the concerned Registrar of Companies to associate the Directors Identification Numbers (DIN) of the Directors who would be taking charge collectively as Reconstituted Board of Directors of the Corporate Debtor pursuant to the approval of the Resolution Plan.	The duties of the Registrar of Companies do not include taking on record and implementing the Plan. In so far as compliances are concerned, all necessary forms along with filing fees shall be filed with the Registrar of Companies to enable him to take the same on record
46.	That the West Bengal State Electricity Distribution Company Limited be directed to approve the application for fresh power connection in the form as may be mandated forthwith to ensure that the units of the corporate debtor are functional.	This is for the respective authorities to consider, keeping the spirit of the IBC in view, which is to enable a fresh start for the Corporate Debtor.
47.	The change in ownership of the Corporate Debtor shall not be construed as a breach of legal obligation or as an event of default by any government/ statutory authority and the same shall not be used as a reason for non-	This is for the respective authorities to consider, keeping the spirit of the IBC in view, which is to enable a fresh start for the Corporate Debtor.



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	grant/denial of extension of any no . objection/ permission/ license as was granted to or is required to be granted to the Corporate Debtor, as the case maybe.	
48.	Any liabilities towards the electricity and common area maintenance charges shall be waived off and the CD be provided relief from all litigations pending at different levels and provide waiver from interest and penalty on such litigations.	In <i>Ghanashyam Mishra & Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , ¹⁴ the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan. The provisions of section 32A of the Code shall also apply.

Orders

29. On hearing the submissions made by the Resolution Professional, and perusing the record, we find that the Resolution Plan has been approved with 97.28% 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

¹⁴ 2021 SCC OnLine SC 313 decided on 13.04.2021



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the Resolution Applicant for making the plan effective after approval by this Bench.

30. 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.
31. As far as the question of granting time to comply with the statutory obligations or seeking approvals from authorities is concerned, the Resolution Applicant is directed to do so within one year from the date of this order, as prescribed under section 31(4) of the Code.
32. In case of non-compliance of this order or withdrawal of Resolution Plan, the payments already made by the Resolution Applicant shall be liable for forfeiture.
33. Subject to the observations made in this Order, the Resolution Plan dated 30 June 2022 which was further amended on 13 August 2022, is hereby **APPROVED** by this Bench. **The Resolution Plan shall form part of this Order.** The Resolution Plan thus approved shall be binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect.
34. The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
35. The Resolution Professional shall submit copies of the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters.
36. Liberty is hereby granted for moving any application if required in connection with implementation of this Resolution Plan.



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37. A copy of this Order is to be submitted to the Registrar of Companies, West Bengal.
38. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except the duties envisaged in the Resolution Plan.
39. The Resolution Professional is further directed to handover all records, premises/factories/documents to the Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records and premises of the corporate debtor through the Resolution Professional to finalise the further line of action required for starting of the operation.
40. **I.A. (IB) No. 878/KB/2022 in the main Company Petition, i.e., C.P. (IB) No. 1601/KB/2019 shall stand disposed of accordingly.**
41. The Registry is directed to send e-mail copies of the order forthwith to all the parties for information and for taking necessary steps.
42. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
43. File be consigned to the record.

Balraj Joshi
Member (Technical)

Rohit Kapoor.
Member (Judicial)

Signed on the 29th day of November 2022.