

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

**I.A. (IB) No. 172/KB/2023**  
and

**I.A. (IB) No. 411/KB/2023**

in  
**CP (IB) No. 1567/KB/2019**

*A Petition under section 7 of the Insolvency and Bankruptcy Code, 2016 read  
with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating  
Authority) Rules, 2016.*

*In the matter of:*

**Stressed Asset Stabilization Fund**

... Financial Creditor

Versus

**I.C. Textiles Limited**

... Corporate Debtor

*And*

**I.A. (IB) No. 172/KB/2023**

*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:*

Sandeep Khaitan, Resolution Professional of

I.C. Textiles Limited

... Resolution Professional/ Applicant

*And*

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**I.A. (IB) No. 411/KB/2023**

*Application under section 60(5) of the  
Insolvency & Bankruptcy Code, 2016 read with rule 11 of the NCLT Rules, 2016.*  
***In the matter of:***

1. MG Threads
2. Mahendra G. Modi

... Applicants

Versus

1. Sandeep Khaitan, Resolution Professional of IC Textiles Limited
2. Canara Bank
3. Stressed Assets Stabilization Fund
4. Suzlon Synthetics Limited
5. Drishya Agarwal

... Respondents

**Date of pronouncement: 03 May 2024**

***Coram:***

Shri Rohit Kapoor, Member (Judicial)  
Shri Balraj Joshi, Member (Technical)

***Appearances (via hybrid mode):***

For the Resolution Professional	: Mr. Abhrajit Mitra, Senior Advocate Mr. Vikram Wadehra, Advocate Mr. Mayukh Roy, Advocate
For Applicant in I.A. (IB) No. 411/KB/2023	: Mr. Arjun R. Seth, Advocate Ms. Kriti Kothani, Advocate Ms. Namrata BASu, Advocate
For the CoC	: Mr. Krishnaraj Thakkar, Advocate Mr. Ratul Das, Advocate Mr. Sumit Biswas, Advocate

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Ms. Rajashree Bhowmick, Advocate

For Respondent No. 5 in I.A. (IB) No. : Mr. Pranit Bag, Advocate

411/KB/2023

Mr. Shaunak Mitra, Advocate

Ms. Muskan Baugai, Advocate

**COMMON ORDER**

***Per: Balraj Joshi, Member (Technical)***

1. This Court convened through hybrid mode.
2. I.A. (IB) No. 172/KB/2023 and I.A. (IB) No. 411/KB/2023 are being dealt with in a common order because the prayers are interconnected. I.A. (IB) No. 172/KB/2023 has been filed for approval of Resolution Plan whereas I.A. (IB) No. 411/KB/2023 has been filed as an objection to the approval of the Resolution Plan.

*Preliminary*

3. The underlying Company Petition in C.P. (IB) No. 1567/KB/2019 was filed by Stressed Asset Stabilization Fund, the Financial Creditor against I.C. Textiles Limited, the Corporate Debtor, to initiate Corporate Insolvency Resolution Process (“CIRP”), under section 7 of the Insolvency and Bankruptcy Code 2016, which was admitted *vide* order dated 14 March 2022.
4. Initially, Mr. Sanjay Kumar Agarwal had been appointed as the Interim Resolution Professional. Mr. Sandeep Khaitan was appointed as the Resolution Professional of the Corporate Debtor by this Adjudicating Authority *vide* order dated 01 April 2022 passed in I.A. (IB) No. 299/KB/2022.

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***I.A. (IB) No. 172/KB/2023***

5. I.A. (IB) No. 172/KB/2023 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”).
6. This application was filed by Mr. Sandeep Khaitan, Resolution Professional of **I.C. Textiles Limited** [CIN: **U18101WB1983PLC035976**] 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 **I.C. Textiles Limited** (“**Corporate Debtor**”).

**Constitution of CoC**

7. The IRP, pursuant to Regulation 6(1) of the CIRP Regulations, made public announcement<sup>1</sup> on 15 April 2022 published in **The Telegraph** (“English”) and **E-Samay** (“Bengali”) (Kolkata editions) and **The Financial Express** (English) and **Loksatta-Jansatta** (Gujarati) (Gujarat Edition) newspapers, regarding initiation of Corporate Insolvency Resolution Process and called proof of claims from the financial and operational creditors, workers and

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<sup>1</sup> Annexure C @ Pp. 115-119 of I.A.

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employees of the corporate debtor in the specified forms. The last date of submission of claims was 27 April 2022.

8. The CoC was constituted on 06 May 2022, with the three Secured Financial Creditor *viz.* Stressed Asset Stabilization Fund having 53.28% voting share, Suzlon Synthetic Limited, having 37.25% voting share and Canara Bank having 9.47% voting share. A report on the constitution of the CoC, was filed before the Adjudicating Authority<sup>2</sup>. The list of creditors was updated from time to time and uploaded in the IBBI website.
9. The Applicant states that a total of nine CoC meetings have been held during CIRP period, as follows:

<b>Particulars</b>	<b>Date of the CoC Meeting</b>
1 <sup>st</sup> CoC meeting	13.05.2022
2 <sup>nd</sup> CoC meeting	15.06.2022
3 <sup>rd</sup> CoC meeting	14.07.2022
4 <sup>th</sup> CoC meeting	25.08.2022
5 <sup>th</sup> CoC meeting	14.09.2022
6 <sup>th</sup> CoC meeting	07.10.2022
7 <sup>th</sup> CoC meeting	28.10.2022
8 <sup>th</sup> CoC meeting	10.11.2022 & 11.11.2022
9 <sup>th</sup> CoC meeting	02.12.2022 & 12.12.2022

**Collation of claims**

10. The amounts claimed and admitted are summarised below:

**Amount in INR:**

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<sup>2</sup> Annexure D @ Pp.120-138 of I.A.

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<b>Nature of Creditor</b>	<b>Amount Claimed</b>	<b>Amount Admitted</b>
Secured Financial Creditors and secured portion of Sales Tax Department	40,65,99,08,245/-	33,25,51,88,101/-
Unsecured Financial Creditor	5,39,90,966/-	2,11,27,154/-
Operational Creditors – Government statutory dues and unsecured portion of Sales Tax Department	24,43,41,435/-	24,43,41,435/-
Other Creditors (EPFO)	1,65,407/-	1,65,407/-
Other Creditors	33,76,48,016/-	12,43,59,499/-
<b>Total</b>	<b>41,29,60,54,069/-</b>	<b>33,64,51,81,596/-</b>

**CIRP and compliances**

11. The Applicant submits that in terms of the provisions of section 25(2)(h) of the Code read with regulation 36A(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, invitations in Form ‘G’ for Expressions of Interest (“EoI”) from potential resolution applicants was issued on 25 June 2022 in **Times of India** (English) (Baroda edition), **Loksatta-Jansatta** (Gujarati) (Gujarat Edition), **Business Standard** (English) (Kolkata Edition) and **Aajkal** (Bengali) (Kolkata edition) newspapers wherein the last date of receiving EoI was 29 August 2022. The notices were also published on the website of the Insolvency and Bankruptcy Board of India (**IBBI**).

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12. The Resolution Professional received three EoIs and the provisional list of prospective Resolution Applicants was issued on 22 July 2022 and the Final list of eligible Resolution Applicants containing three Applicants was issued on 29 July 2022. The RP shared the Information Memorandum, Evaluation Matrix and Request for Resolution Plan (“RFRP”) with the Prospective Resolution Applicants on 27 July 2022. The last date of submission of Resolution Plan was extended to 12 September 2022.
13. 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.

**Evaluation and voting**

14. The Resolution Professional received three Resolution Plans from three Resolution Applicants viz. MG Threads, Sanjay M Sachapara and Drishya Aggarwal. The Resolution Plans were presented by the Resolution Professional in the 7<sup>th</sup> CoC meeting held on 28 October 2022. The CoC members discussed the Resolution Plan and the feasibility and viability of the Resolution Plans. A weeks time was granted to the prospective Resolution Applicants to file the best compliant Resolution Plan.
15. The revised Resolution Plans were discussed in the 8<sup>th</sup> CoC meeting held on 10 November 2022 and 11 November 2022. After due consideration, the CoC members requested the Resolution Applicants to revise the commercial offer and submit their revised Resolution Plan before 21 November 2022.
16. It is submitted that in the 9<sup>th</sup> CoC meeting held on 02 December 2022 and 12 December 2022, the CoC deliberated and discussed the feasibility and

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viability of each of the Resolution Plans and confirmed that the Resolution Plans were feasible and viable and were put up for vote till 26 December 2022.

17. The resolution Plan submitted by Mr. Drishya Aggarwal dated 12 September 2022 and amended on 18 November 2022 and further amended on 06 December 2022 was approved by the CoC with 100% voting share of the CoC and was declared the Successful Resolution Applicant<sup>3</sup>.
18. The Letter of Intent was issued to the Successful Resolution Applicant on 29 December 2022<sup>4</sup> which was unconditionally accepted by the Resolution Applicant.
19. In accordance with regulation 36B(4A) of the CIRP Regulations, the Successful Resolution Applicant has deposited the Performance Bank Guarantee on 05 January 2023.

***Compliance of the approved Resolution Plan with various provisions***

20. The Applicant has filed a Compliance Certificate in prescribed form, i.e., Form 'H'<sup>5</sup> dated 05 January 2023 in compliance with regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
21. 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:

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<sup>3</sup> Annexure R @ Pp 629-633 of I.A.

<sup>4</sup> Annexure T @ Pp 791-793 of the I.A.

<sup>5</sup> Annexure W @ Pp. 802-808 of I.A.



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

<b>Clause of s.30(2)</b>	<b>Requirement</b>	<b>How dealt with in the Plan</b>
1.	Plan must provide for payment of CIRP cost in priority to payment of other debts of CD in the manner specified by the Board.	Section VII Clause 1 at Page 25 of the Resolution Plan.
2.	<p>(i) Plan must provide for payment 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;</p> <p>(ii) Plan must provide for payment 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;</p> <p>(iii) provides for payment of debts of financial creditors who do not vote in favour of the resolution plan, in such manner as may be specified by the Board.</p>	<p>Section VII Clause 2 at Page 26 of the Resolution Plan.</p> <p>Section VII Clause 2 at Page 26 of the Resolution Plan.</p> <p>Section VII Clause 4 at Page 32 of the Resolution Plan.</p>
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Section VII Clause 8 at Pages 38-39 of the Resolution Plan.

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Clause of s.30(2)	Requirement	How dealt with in the Plan
(d)	Implementation and Supervision	Section IX at Pages 46-55 of the Resolution Plan..
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Not mentioned in the Resolution Plan/ stated “yes” in Form H.
(f)	Conforms to such other requirements as may be specified by the Board.	Not mentioned in the Resolution Plan/ stated “yes” in Form H.

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

Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximisation of value of its assets, including but not limited to the following: -	
(a) transfer of all or part of the assets of the corporate debtor to one or more persons;	Not proposed in the Resolution Plan.
(b) sale of all or part of the assets whether subject to any security interest or not;	Section VII Clause 8 at Pages 37-38 and Section VII at Pages 42-44 of the Resolution Plan.
(ba) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	Not proposed in the Resolution Plan.

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<b>Particulars</b>	<b>Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation</b>
(c) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	Pages 40-41 of the Resolution Plan.
(ca) cancellation or delisting of any shares of the corporate debtor, if applicable;	Pages 40-41 of the Resolution Plan.
(d) satisfaction or modification of any security interest;	Section VII at Page 31 the Resolution Plan.
(e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Not proposed in the Resolution Plan.
(f) reduction in the amount payable to the creditors;	Addendum dated 06 December 2022
(g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	Not proposed in the Resolution Plan.
(h) amendment of the constitutional documents of the corporate debtor;	Section IX at Page 50 of the Resolution Plan.

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<b>Particulars</b>	<b>Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation</b>
(i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	Not proposed in the Resolution Plan.
(j) change in portfolio of goods or services produced or rendered by the corporate debtor;	Section VII at Pages 42-44 of the Resolution Plan.
(k) change in technology used by the corporate debtor; and	Section VII at Pages 42-44 of the Resolution Plan.
(l) obtaining necessary approvals from the Central and State Governments and other authorities.	Section IX at Page 50 of the Resolution Plan.
(m) sale of one or more assets of corporate debtor to one or more successful resolution applicants submitting resolution plans for such assets; and manner of dealing with remaining assets.	Section VII Clause 8 at Pages 37-38 the Resolution Plan.

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

<b>Ref to relevant Reg.</b>	<b>Requirement</b>	<b>How dealt with in the Plan</b>
38(1a)	The amount payable to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.	Section VII Clause 2 at Page 26 of the Resolution Plan.
38(1b)	The amount payable to the financial creditors, who have right to vote and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.	Section VII Clause 4 at Page 32 of the Resolution Plan.
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors of the corporate debtor.	Section X at Pages 56-61 of the Resolution Plan.
38(1B)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating	Section XI at Page 65 of the Resolution Plan.

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Ref to relevant Reg.	Requirement	How dealt with in the Plan
	Authority at any time in the past.	
38(2)	A resolution plan shall provide:	
	(a) the term of the plan and its implementation schedule;	Section IX at Pages 46-55 of the Resolution Plan..
	(b) the management and control of the business of the corporate debtor during its term; and	Section IX at Pages 46-55 of the Resolution Plan..
	(c) adequate means for supervising its implementation.	Section IX at Pages 46-55 of the Resolution Plan..
	(d) Provides for the manner in which proceedings in respect of avoidance transactions, if any, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed.	Section XI at Page 65 of the Resolution Plan.
38(3)	A resolution plan shall demonstrate that –	

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Ref to relevant Reg.	Requirement	How dealt with in the Plan
	(a) it addresses the cause of default;	Section IV at Pages 17-18 of the Resolution Plan.
	(b) it is feasible and viable;	Section XI at Page 66 of the Resolution Plan.
	(c) it has provisions for its effective implementation;	Section XI at Page 66 of the Resolution Plan.
	(d) it has provisions for approvals required and the timeline for the same; and	Section XI at Page 66 of the Resolution Plan.
	(e) the Resolution Applicant has the capability to implement the resolution plan.	Section XI at Page 66 of the Resolution Plan.

22. The Resolution Applicant in Section X at Pages 66-67 has stated its eligibility under section 29A of the Code and has also filed an affidavit dated 10 September 2022 stating that the Resolution Applicant is eligible under section 29A of the Code.

**Details of Resolution Plan/Payment Schedule**

23. The relevant information with regard to the amount admitted and the amount proposed to be paid by the Successful Resolution Applicant, *i.e.*, *Mr. Drishya Aggarwal*, under the said Resolution Plan and the Addendum dated 06 December 2022 is tabulated hereunder:

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<b>Category</b>	<b>Amount (Rs.)</b>	<b>Payment Schedule</b>
CIRP Expenses	45,00,000/-	Within 90 days (Upfront)
OC / Statutory Claims	3,34,593/-	
Other Creditors i.e. EPFO Department	1,65,407/-	
Workmen & Staff claims	NIL	
Upfront payment of FC	8,10,00,000/-	
Payment to secured FC	7,50,00,000/-	From 91 to 180 days
Payment to secured FC	9,00,00,000/-	From 181 to 270 days
Payment to secured FC	9,90,00,000/-	From 271 to 360 days
<b>Total</b>	<b><u>35,00,00,000/-</u></b>	

28. The Resolution Plan defines “*Effective Date*” as “*the date on which Resolution Plan is approved by the Adjudicating Authority*”.

**Relinquishment/Waiver of liabilities and Approvals**

29. 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.



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<b>Sr. No.</b>	<b>Relief, concessions and approvals sought</b>
1.	<p>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 of the Income Tax Act, 1961, is deemed to have been granted upon approval of this plan and with effect from the Effective Date.</p>
2.	<p>With effect from the Effective Date, the Corporate Debtor shall be allowed to carry forward all losses (business loss, unabsorbed depreciation, capital loss, etc.):</p> <ul style="list-style-type: none"><li>(i) for an indefinite period irrespective of the period prescribed under the provisions of the Income Tax Act, 1961, for the respective different types of losses (the period prior to the NCLT Approval Date will in no case be counted to compute the number of years for the purpose of carry forward of losses); and</li><li>(ii) such losses should also be allowed to be carried forward in case of any restructuring of the Corporate Debtor by the Resolution Applicant during the implementation of the Resolution Plan and such losses shall not lapse on account of subsequent change of the shareholding of the Corporate Debtor or due to any other reason.</li><li>(iii) if the corporate debtor is having any of the losses to be carried forward as per section 72 of Income Tax Act, 1961. Such losses should also be allowed to be carried forward of the Corporate Debtor by the Resolution Applicant during the implementation of the Resolution Plan and such losses shall not lapse on account of subsequent change of the shareholding of the Corporate Debtor or due to any other reason.</li></ul>
3.	<p>The change in the shareholding of the Corporate Debtor pursuant</p>

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	to this RP being approved by the Adjudicating Authority shall not result in lapse of any losses of the Corporate Debtor that are brought forward under the provisions of Section 79 read with Section 2(18) Income Tax Act, 1961
4.	<p>The order of the Adjudicating Authority shall act as necessary directions to the Central Board of Direct Taxes:</p> <p>a. For exemption from provisions of Income Tax, 1961, including but not limited to provisions of Minimum Alternate Tax, in respect of implementation and/or giving effect to the plan, including write back of liabilities, arising out of waiver, transfer of assets, whether movable or immovable, and any gain or loss. Income Tax exemption shall be required during the year(s) of implementation of the resolution plan and RA shall not be liable for any taxes arising from the adjustments being made.</p> <p>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 Effective Date, i.e., no normal taxation should be applicable until the MAT credit is adjusted/utilized in full.</p>
5.	The order of the Adjudicating Authority shall act as necessary for grant of exemption and relief to the Corporate Debtor from the provisions of Section 28, 41(1), 45, 47, 72(3), 43-B, 50B, 50C, 50CA, 56, 72A, 79, 80 read with 139, 115JB, 194R and 269-SS, 269-T and 281 provisions of the Income Tax Act as well as the Central Goods and Services Tax Act, 2017 Integrated Goods & Services Tax Act, 2017; Assam State Goods & Services Act 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, effective from the Effective Date
6.	The losses already lapsed/not lapsed as on the date of approval of

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	the 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 plan is approved.
7.	There being no liability of the RA in respect of any assessment, reassessment, reopening, revision, review or other proceedings under the Income Tax Act, 1961, or any other law or statute for any period prior up to the Effective Date.
8.	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.
9.	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.
10.	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 upon completion of the Effective Date.
11.	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 may be 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 or any of its new promoters/ directors/ shareholders; and accordingly, issues raised and/or proceeding outstanding or pending to stand closed and/or dropped, as the case may be.
12.	No claim, demand/reassessment/liabilities whether crystallized or otherwise, present or future, unseen or foreseen, by whatever name

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	or under any head whatsoever will be raised after the Effective Date by any creditors and/or statutory authorities including but not limiting to the Income Tax/ VAT/ Sales Tax/ Service Tax/ GST/ Entry Tax/ Excise/ Customs/ Provident Fund/ ESI/ Gratuity Department pertaining to the period prior to the Effective Date, and shall not be payable or binding on either the Corporate Debtor or the RA
13.	<p>For the purpose of clarity, the following ongoing proceedings under the Income Tax Act shall stand extinguished, and no liability shall be attached to the incoming promoters/ management after the effective date: -</p> <ul style="list-style-type: none"><li>• Scrutiny Proceedings under section 143(3) of the Income Tax Act, 1961 for AY 2010-11.</li><li>• Penalty Proceedings u/s 271(1)(c) of the Income Tax Act, 1961 for AY 2003-04.</li><li>• Recovery Proceedings under section 226 of the Income Tax Act, 1961 pertaining to AY 2003-04 and 2010-11.</li><li>• Penalty Proceedings u/s 274 read with section 271(1)(c) of the Income Tax Act, 1961 for AY 2009-10.</li><li>• Penalty Proceedings under section 271(1)(c) of the Income Tax Act, 1961 for AY 2007-08.</li></ul>
14.	<p>In addition, as is evidenced from the books of accounts of the company, no depreciation has been claimed since A.Y. 2015-16. The RA shall be appropriately adjusting the unclaimed depreciation and carrying forward losses as per the applicable provisions of the income tax, 1961. Thus, all benefits arising out the same will be availed by the RA.</p>
15.	<p>The Corporate Debtor and the RA shall not be required to deal with the dissenting Financial Creditors in any manner other than as provided in the IBC.</p>

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16.	<p>All pending litigations as has been brought out in the Annexure C, as is also a part of the IM will stand extinguished on the date of passing of this resolution plan. The company shall not be liable for any further scrutiny or proceedings. Furthermore:</p> <ul style="list-style-type: none"><li>a. the Sales Tax related claims are being settled as full and final settlement of claims along with the resolution plan.</li><li>b. No claims have been received from the Excise Duty Department by the RP. The Resolution Applicant shall not be liable for any claims which might arise pertaining to the pre-CIRP period of the company. Further, an NOC has already been obtained by the erstwhile promoters but as per information the bond is yet to be released. In accordance with the same. The department be and hereby be directed to release the bond in the name of the Corporate Debtor</li></ul>
17.	<p>All Government / Statutory Authorities (including but not limited to Income Tax/ VAT/ Sales Tax/ Service Tax/ GST/ Entry Tax/ Excise/ Customs/ Provident Fund/ ESI/ Gratuity Department) to waive all claims of Government / Statutory 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 Effective Date. Further any un-availed Input Tax Credit either on account of Central and/or State Government shall be allowed/granted for availing the same by Corporate Debtor and/or RA.</p>
18.	<p>All Governmental Authorities (including but not limited to Income Tax/ VAT/ Sales Tax/ Service Tax/ GST/ Entry Tax/ Excise/ Customs/ Provident Fund/ ESI/ Gratuity 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 the Effective Date.</p>
19.	<p>On and from the effective date, the ongoing CBI case initiated</p>

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	through an FIR with No. RCBDI/2017/E/0005 dated 29.05.2017 on the company and its directors shall stand withdrawn and extinguished upon passing of the resolution plan by the Adjudicating Authority. This withdrawal shall be without any recourse or liability arising towards the company.
20.	Upon approval, all the assets of the Corporate Debtor, over which the Corporate Debtor has any right, title, and/or interest of whatsoever nature or character, including but not limited to the current assets, bank balances and fixed deposits, and whether or not such assets are duly reflected in the IM and/or the documents, public documents / Due diligence, made available by the resolution professional, shall vest in Corporate Debtor under control of the RA without any further act or deed whatsoever. 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 automatically stand vacated and the Corporate Debtor will be free to use the assets to its benefits to ensure that it continues to operate as a going concern and is revived.
21.	On and from the Effective Date, 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, whether by contract or by Applicable law shall be allowed to exist only to the extent of the balance amount as contemplated in the plan due to the creditors, and shall stand extinguished without any recourse upon payment of the settlement amounts to the creditors of the Corporate Debtor under the terms of the plan. Furthermore, any action/ proceeding commenced by any person

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	over and assets of the Corporate Debtor or over any securities pertaining to the dues of the Corporate Debtor shall stand irrevocably released, withdrawn, abated and/or forebear upon full and final settlement of the dues of the creditors as contemplated in the plan without the requirement of any further act or deed on part of the RA and/ or the Corporate Debtor.
22.	The approval of the plan by the Adjudicating Authority shall constitute adequate and final approval of the Adjudicating Authority for: (a) cancellation of the share capital of the Corporate Debtor; (b) for issuance of equity shares/ preference shares/ and/or convertible or redeemable securities as may be considered appropriate in terms of Section 42 and/ or Section 62 (1) (c) of the Companies Act, 2013 and/or other applicable laws; and (c) the amount infused by the RA in the Corporate Debtor for payment of the dues of the Financial Creditors as part of the plan shall not be considered as deposits within the meaning of Section 73 to 76 of the Companies Act, 2013 and/or the rules framed there under, shall be effective without following the other requisite provisions of the Companies Act, 2013 and that no approval and/or consent shall be necessary from any other person and/or authority in relation to the aforementioned actions under the plan to effected either under any agreement, or the constitutional documents of the Corporate Debtor or any applicable laws.
23.	All relevant authorities (including Reserve Bank of India) to waive and close all claims and/or proceedings, investigations, and/or inquiries against the Corporate Debtor and/or its board of directors, and shall not initiate any fresh assessment/ demand and/or

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	proceeding pertaining to all non-compliances, defaults, dues of the Corporate Debtor prior to the Effective Date, including but not limited to matters relating to Income Tax, Goods and Services Tax, Customs and Excise, Prevention of Money Laundering Act, 2002 (PMLA), Foreign Exchange Management Act, 1999 (FEMA), Central Bureau of Investigation (CBI), Enforcement Directorate, local authorities. All penalties, liabilities and claims of whatever description shall stand extinguished permanently. The Corporate Debtor and/or RA will be granted a further waiver of 12 months from the Effective Date, of the aforementioned nature in the interest of effective implementation of the RP.
24.	This plan shall become binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues is owed, guarantors and other stakeholders of the Corporate Debtor or any other person on the Effective Date.
25.	The RA and/or its affiliates and/or future buyers of the assets of the Corporate Debtor shall not be liable and/or bound in any way in relation to any liabilities and/or encumbrances on the assets of the Corporate Debtor created at the behest of the erstwhile promoters, shareholders, directors and/or employees at any time prior to Effective Date.
26.	The Department of Registration and Stamps and any other relevant authorities of West Bengal or Gujrat and/or other State Governments where the Corporate Debtor or the RA carries on its



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	business and operations or where its assets are located, shall exempt the RA and/or the Corporate Debtor from the levy of stamp duty and fees, applicable in relation to this plan and its implementation, including issuance of equity shares and/ or convertible securities to give effect to this approved resolution plan
27.	The Ministry of Corporate Affairs shall exempt the RA and the Corporate Debtor from the levy of duties and fees applicable in relation to this plan and its implementation, including issuance of equity shares and/ or convertible securities to give effect to this plan. There shall be no requirement to add "and reduced" in the name of the Corporate Debtor.
28.	Upon approval of the 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 Effective Date will continue from Effective Date till the Completion Date and post Completion Date for such time as it considered necessary and essential for effective implementation of this plan (to be sought from the Hon'ble NCLT as and when required); 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-Closing Date, for such term as is considered necessary and effective implementation of this plan.
29.	All relevant Governmental Authorities to grant relief/waiver from payment of stamp duty for the successful implementation of the plan, <i>inter alia</i> , including but not limited to the increase in authorized share capital, issuance/transfer of shares or debentures (optionally convertible debentures/non-convertible debentures) etc.
30.	All creditors (including but not limited to the Financial Creditors and Operational Creditors) of the Corporate Debtor shall withdraw all legal proceedings commenced in relation to the dues of the

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	Corporate Debtor, including proceedings commenced against the Corporate Debtor under various acts prior to the approval of the said resolution plan.
31.	The RA seeks a time period of 12 months from the Effective Date to ensure compliances in relation to the non-compliance of applicable laws by the Corporate Debtor pertaining to any period up to Effective Date, which shall, if otherwise found to be as per information within the possession of the RA, 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 RA or the new management to be appointed by the RA (upon acquisition of control and management of the Corporate Debtor by the RA, including the members of the reconstituted board of directors, in relation to any non-compliance with applicable laws by the Corporate Debtor pertaining to any period up to Effective Date, including waiver of penalty for any such non-compliance.
32.	Neither the RA or the Corporate Debtor, its officers and employees to be appointed after the Effective Date, be liable for any violations, liabilities, penalties or fines with respect to or pursuant to the Corporate Debtor, amongst others to the extent they pertain to or relate to requisite licenses and approvals required to undertake its business as per applicable laws and the RA will have a time period of 12 months from the Effective Date, to ensure renewal of such consents/licenses and approvals.
33.	Licenses, registrations, permits, clearances, exemptions, rights, incentives, lease and approvals held by the Corporate Debtor under the relevant applicable laws, which were invoked, rescinded or expired prior to the Effective Date or which will expire within a period of 12 (twelve) months thereafter shall be deemed to have been renewed/extended by the relevant Governmental Authorities or vendors/ creditors and the Corporate Debtor shall continue its business as going concern and assets in the manner as operated up to the Effective Date.
34.	The RA reserves its right to institute any investigation pertaining to

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	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 RA 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.
35.	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 RA reserves right to cancel such instruments/agreements/term sheets and upon cancellation the title of 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
36.	With the approval of the present plan, the relevant government authorities shall be deemed to have provided/extended to the Corporate Debtor all licenses, permits and approvals required by the RA for implementation of the terms of this RP and for the 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. Pursuant to the above, all concerned Governmental Authorities shall provide to the Corporate Debtor a period of one year after the approval of the RP to obtain all necessary approvals required under relevant Applicable Laws for the purpose of continuing the business of the Corporate Debtor as a going concern and as may be required for efficacious implementation.
37.	The local district administrators of the States where the assets and/or business activities of the Corporate Debtor are situated shall provide and extend all requisite assistance to the RA for the implementation of the plan.

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38.	That the concerned Registrar of Companies do waive off the fees as may be payable in course of implementation of the plan including but not limiting to fees and charges payable for increase in the authorized capital, both for Equity shares, preference shares or any other, of the Corporate Debtor as may be required in course of equity infusion by the RA.
39.	That the concerned Registrar of Companies to associate the director 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 granted by the adjudicating authority
40.	<p>That upon approval of the present RP by the Adjudicating Authority, all essential services required by the Corporate Debtor to continue and/or recommence operation as a going concern, including <i>inter alia</i>, electricity and/or power at the units of the Corporate Debtor, shall be restored and/or reconnected to the Corporate Debtor by the relevant authorities and/or entities without any further act or deed on the part of the RA. It is clarified that the relevant authorities and/or entities responsible for providing essential services, including <i>inter alia</i> power, to the Corporate Debtor shall not impose any additional and/or extraordinary conditions over and above the usual commercial terms upon which such essential services are rendered to commercial consumers in the usual course of business, for resumption of the essential services to the Corporate Debtor immediately upon approval of this plan. It is stated that such essential service providers shall not be entitled to make any claims pertaining to resolved dues under the terms of the plan directly or indirectly as a condition for resumption of such services to the Corporate Debtor.</p> <p>It is further clarified that all relevant authorities and/or entities shall be deemed to have granted all requisite consents, no-objections and/or approval necessary for procurement of essential services by</p>

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	the Corporate Debtor, including, but not limited to, power supply at its units.
41.	It is further clarified that the Corporate Debtor shall be entitled to continue as, and to all rights under all existing contracts, licenses, approvals and/or permits as may be applicable, necessary for the purpose of carrying on its business upon approval of the present plan by the Adjudicating Authority, including the power supply agreement or restarting of supply of full electricity to the factory premises of the Corporate Debtor.
42.	It is stipulated that with the approval of the present plan, all purported security interest, third party rights, interests and/or Encumbrances of whatever nature and character, purportedly created in favour of an entity other than an admitted Financial Creditor, including any related party of the Corporate Debtor, shall not bind the Corporate Debtor and/or the RA in any manner whatsoever and shall be deemed to have been extinguished without any recourse.
43.	The change of ownership of the Corporate Debtor shall not be construed as a breach of legal obligation or as an event of default by any counterparty of the Corporate Debtor in relation to any contract, agreement and/or arrangement undertaken with such counterparty or by any government/statutory authority and the same shall not be used as a reason for non-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 may be.
44.	The Powers of Attorney (POA) and/or other authorizations or mandates (including the sub-delegations of POA, if any, by the Attorneys), in whatsoever form, negotiable instruments, letters of credit issued by Corporate Debtor prior to the Effective Date to any person shall stand revoked and rescinded. However, it is understood that the pending proceedings against the erstwhile promoters/directors will be in subsistence which shall not include the Corporate Debtor.
45.	Right to Receivables: Nothing in this plan shall affect the rights of

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	the Corporate Debtor to recover any amounts due to the Corporate Debtor from any third party including any related parties of the Corporate Debtor and there shall be no set-off of any such amounts recoverable by the Corporate Debtor against any amount paid by the Corporate Debtor or any liability extinguished pursuant to this plan. It is further clarified that the Corporate Debtor shall be entitled to continue all proceedings pertaining to its claims against third parties, whether pending or not, before the appropriate forum post the Effective Date.
46.	The RA has assumed that upon approval of this plan by the AA, all subsisting consents, licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled or accustomed to (whether applied for renewal by the Corporate Debtor or not), shall, notwithstanding any provision to the contrary in their terms, be deemed to continue without disruption for the benefit of the Corporate Debtor / Resolution Applicant for a period of 2 (two) years and till such time, the RA or CD will apply for fresh licenses if required.
47.	For the avoidance of doubt, it is hereby clarified that all consents, licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled or accustomed to, which have expired as of the Effective Date, shall be deemed to continue without disruption for the benefit of the Corporate Debtor for a period of 2 (two) years or until renewed by the relevant authorities, whichever is later. Without any liability for the non-compliance during the time specified above, the Resolution Applicant undertakes to cause the Corporate Debtor to expeditiously identify such expired consents, licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor / Resolution Applicant or to which the Corporate Debtor is entitled or accustomed to, evaluate the steps required to address the same and take steps to remedy the same to the extent practically possible.

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48.	The Resolution Applicant has assumed that upon approval of this Resolution Plan by the NCLT, all essential services required by the Corporate Debtor to continue operations shall be restored to the Corporate Debtor / Resolution Applicant by the relevant authorities.
49.	The Resolution Applicant and the Corporate Debtor shall have immunity from any actions and penalties (of any nature) under the Companies Act, 1956; Companies Act, 2013 and under any laws for any non-compliance of laws in relation to the Corporate Debtor or by the Corporate Debtor prior to the Effective Date, as well as with the terms of any agreement or arrangement entered into by the Corporate Debtor. Without any liability for the aforesaid non-compliance for the past period before the Effective Date, the Resolution Applicant shall endeavour to cause the Corporate Debtor to identify such non-compliances, evaluate the steps required to address such non-compliances and take steps to remedy such non-compliances to the extent practically possible. The Resolution Applicant and the Corporate Debtor shall be entitled to apply to and approach the NCLT for relief for continued implementation of the approved Resolution Plan before or after any coercive action is taken against the Corporate Debtor or the Resolution Applicant, especially in view of the limited due diligence offered to the Resolution Applicant. However, under no circumstances shall the Resolution Applicant be held liable for any penalty, fines, charges, fees or any other charge on account of any non – compliance by the Corporate Debtor.
50.	This Resolution Plan will be implemented pursuant to an order of the NCLT, and all actions stated in this Resolution Plan shall be deemed to be approved by the NCLT. Accordingly, any action or implementation of this Resolution Plan shall not be a ground for termination of any contracts entered into by the Corporate Debtor by the counter party(ies) to such contracts.
51.	The Resolution Applicant and the Corporate Debtor shall be entitled to share a certified copy of this Resolution Plan and the order of the NCLT approving this Resolution Plan with third

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	parties, including Governmental authorities.
52.	The measures and declarations set-out in this Resolution Plan, and the order of the NCLT approving this Resolution Plan shall take effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.
53.	In the event it is determined that any provision of the Resolution Plan is unenforceable either on its face or as applied to any claims or transaction and/or in the event any provision of the Resolution Plan becomes invalid for reasons other than by breach of any party, the Resolution Applicant may apply to the NCLT for appropriate modification of such provisions of the Resolution Plan, to satisfaction of the NCLT, and such invalidity and/or unenforceability of the provision of the Resolution Plan shall not render the whole Resolution Plan ineffective, unless otherwise directed by the NCLT by order. On account of such invalidity and / or unenforceability of any provision of the Resolution Plan, the Resolution Applicant shall have the option of withdrawal of its Resolution Plan if the execution of the same becomes commercially unviable.
54.	In case any such modification is required in the Resolution Plan after the receipt of NCLT approval, to comply with any laws currently in force or to apply for certain approvals as required under the Resolution Plan or for any other requirements, not jeopardising the rights of the creditors under the current plan, the Resolution Applicant can do so only after approval of NCLT.

**I.A. (IB) No. 411/KB/2023**

30. I.A. (IB) No. 411/KB/2023 has been filed by the unsuccessful Resolution Applicant under section 60(5) of the Code against the Resolution Professional, members of the CoC and the successful Resolution Applicant seeking the following reliefs:



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- a. Pass appropriate order setting aside and quashing the resolution passed by the CoC approving the resolution plan of Mr. Drishya Aggarwal;
  - b. Pass appropriate order reconstituting the CoC of the CD by reducing the voting share of the Respondent No. 4 from 37% to 21% as initially admitted by the Respondent no. 1;
  - c. Pass appropriate order directing the old/reconstituted CoC (as applicable) to consider the revised offer/resolution plan of the Applicant;
  - d. Pass appropriate order such that Swiss Challenge Method or any other appropriate, fair and transparent method be adopted for submission and consideration of resolution plans by resolution applicants to achieve the maximization of value of the assets of the CD;
  - e. Pass appropriate order to hear and dispose of the present Application before hearing and disposal of application, if any, filed for the purpose of approval of the resolution plan by the Respondent No. 1 qua the CD;
31. Pursuant to the publication of Form G, the Applicant submitted its Expression of Interest *vide* its email dated 05 June 2022 to the Resolution Professional. Thereafter, the Resolution Professional *vide* email dated 22 July 2022 sent the list of Prospective Resolution Applicants, which constituted of the Applicant, Mr. Drishya Aggarwal and Mr. Sanjay M Sachpara.
32. The Applicant was provided with the documents in relation to Request for Resolution Plan (“RFRP”), Evaluation Matrix (“EM”) and Information Memorandum (“IM”) for the Corporate Debtor *vide* email dated 27 July 2022.
33. According to the Information Memorandum sent to the Applicant, the CoC constituted of three financial Creditors, being Stressed Assets Stabilization

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Fund having voting share of 49.55%, Suzlon Synthetics Limited having voting share of 21.30% and Canara Bank having voting share of 29.15%. The list of CoC was updated wherein the voting share of Suzlon Synthetics Limited was increased to 37.24% as Suzlon Synthetics Limited claimed to be the assigner of Loans disbursed by IFCL.

34. The Resolution Plan submitted by the Applicant was discussed in the 5<sup>th</sup> CoC meeting held on 14 September 2022 and certain clarifications were sought and the Applicant revised the Resolution Plan accordingly and the Final Resolution Plan was submitted on 19 November 2022. After several discussions the Applicant revised the amounts and submitted an addendum to the Resolution Plan.
35. The Resolution Professional *vide* email dated 26 December 2022 informed the Applicant that the CoC had rejected the Resolution Plan of the Applicant. The Applicant *vide* email dated 30 December 2022 gave an offer of Rs.40,00,00,000/- (Rupees Forty Crore only) to the Resolution Professional which was rejected by the Resolution Professional on 02 January 2023.
36. It came to the knowledge of the Applicant that Mr. Drishya Agarwal was the successful Resolution Applicant and had offered a sum of Rs.36Crore.
37. The learned Counsel submitted that the directors of Suzlon Synthetics Limited and Mr. Drishya Aggarwal are siblings. The increase of voting percentage was admitted on the basis of the assignment deed and were not reflected in the Financial Statements of the Corporate Debtor.
38. Further the Director of Suzlon Synthetics Limited, Mr. Kush Aggarwal has an NPA account with Canara Bank along with J And K Industrial Promotions Private Limited and the siblings of the successful Resolution Applicant are the Directors.
39. The learned Counsel argued that the resolution Plan of the Successful Resolution Applicant was done in collusion with Suzlon Synthetics Limited

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as Mr. Drishya Agarwal would have access to the resolution plans of the other Resolution Applicants.

40. The learned Counsel submitted that Mr. Drishya Agarwal is only 20 years of age and hence it not fit to be the Successful Resolution Applicant.
41. It is submitted that the Applicant is also involved in the business of textile industry and hence is in the best position to revive the Corporate Debtor.

Submissions of the learned Counsel on behalf of the Resolution Professional

42. The learned Counsel submitted that the Applicant, being the unsuccessful resolution applicant has participated in the entire process with sufficient and equal opportunities having been accorded to all the resolution applicants in the course of the CIRP to submit their respective resolution plan's and to revise and/or improve on the offer under the resolution plan during the negotiations process. The Applicant, all through the CIRP, has not raised a single dispute as to the participation of the Respondent no. 5 in the CIR process.
43. The present I.A. has been filed as an after-thought after not having been able to secure the required voting percentage and adjudged the successful resolution applicant has now challenged the entire process. It is a settled proposition in law that one cannot be permitted to approbate and reprobate at the same time.
44. It is submitted the applicant is a 'third party' and has no 'vested interest' in perusing a resolution plan rejected with 100% voting share of the Committee of Creditors. The unsuccessful resolution applicant is not 'privy' to the approved resolution plan and is not an 'aggrieved person' to the CIRP of the Corporate Debtor. The learned Counsel placed reliance on ***M.K. Rajagopalan v. S. Rajendran & Ors. [Company Appeal (AT) (CH) (INS) No. 58 of 2023]***, the Hon'ble Appellate Tribunal, Chennai Bench has observed as follows:

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“On a careful consideration of the respective contentions advanced on either side, this ‘Tribunal’ keeping in mind of a vital fact that the ‘Petitioner/Appellant’ being an ‘Unsuccessful Resolution Applicant’ has no ‘Locus’ to ‘assail’ a ‘Resolution Plan’ or its ‘implementation’ coupled with a candid fact that he is not a ‘Stakeholder’ as per Section 31(1) of the I&B Code, 2016 in relation to the ‘Corporate Debtor’, this Tribunal without any ‘haziness’ holds that the ‘Petitioner/Appellant’ is not an ‘Aggrieved Person’ coming within the ambit of Section 61(1) of the I&B Code, 2016 especially, when he is not ‘Privy’ to the ‘Resolution Plan’.”

45. The learned Counsel further placed reliance on ***IMR Metallurgical Resources AG Through Mr. Sumit Agarwal (Authorised Representative) v. Ferro Alloys Corporation Limited & Ors. [2020 SCC OnLine NCLAT 1213]*** a three-judge bench has held as follows:

“5. It is essential to mention that the Resolution Applicant has no vested right that his Resolution Plan must be considered. It is settled position of law as laid down by Hon’ble Supreme Court in (2019) 2 SCC 1 in case of *Arcelor Mittal India Pvt. Ltd. vs. Satish Kumar Gupta* that the resolution applicant does not have any vested right that his resolution plan must be considered’ 6. The commercial wisdom of the COC is paramount and it has the absolute prerogative to decide the viability and feasibility of the Resolution Plans presented before them and the same is not to be interfered even by the Adjudicating Authority”.

The judgment in ***IMR Metallurgical Resources AG (supra)*** was upheld and not interfered by the Hon’ble Supreme Court of India. (Civil Appeal No. 2720/2020).

46. The following issues have been factually raised by the unsuccessful resolution application:

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- a) **ISSUE – 1** It is alleged that the successful resolution applicant, arrayed as respondent no. 5 to the instant application, is a related party of a Director of the Financial Creditor, i.e., the Respondent no. 4 and in spite of being a financial creditor has participated in the resolution process and been adjudged the successful resolution applicant was ineligible with their being a reasonable apprehension of bias that the successful resolution applicant had access to the bids and the amounts under the business plan of the rival resolution applicants.
  - b) **ISSUE – 2** The unsuccessful resolution applicant has alleged an abrupt change to the constitution to the Committee of Creditors with share of Suzlon Synthetics Limited having been increased from 21% to 37% voting share during the CIR process.
  - c) **ISSUE – 3** It has been alleged that the successful resolution applicant is only 20 years of age and unlikely to have been adjudged as Successful Resolution Applicant based on his age and experience.
47. With respect to ISSUE-1, the learned Counsel submitted that has relied upon an e-mail dated 22 July 2022 issued in the course of the CIRP calling upon each prospective resolution applicant (“PRA’s”) to raise any objection to the inclusion or exclusion of a PRA together with supporting documents within 5 days i.e. on or before 27 July 2022.
48. However, no objections were received to the inclusion of the respondent no. 5 from either of the prospective resolution applicant’s including the Applicant. The Applicant, as a matter of fact, wrote multiple e-mail(s) to the answering respondent from 28 July 2022 to 19 August 2022 seeking certain clarifications and documents to facilitate the process of submission of the resolution plan. Upon the list of PRA’s having been finalized, the access to available information was made available to all PRA’s and the site visits enabled to enable them to file their respective resolution plan’s. In fact, even after issuance of the final list of PRAs no objections were ever

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received on the score of inclusion or exclusion of PRAs during the entire CIRP till the belated filing of the instant application for approval of resolution plan.

49. It is submitted that in the course of various meetings, the plan's were discussed and equal opportunities were given to all the Resolution Applicant's to improve their respective resolution plan's. Following the entire process on the negotiations having been concluded, the Resolution Plan of the Drishya Agarwal, the successful resolution applicant stood approved without any protest or demur having been raised by the Applicant until communication of voting results.
50. It is submitted that even after the voting process was completed on 26 December 2022 and results informed to the Applicant No. 1 together with the other Resolution Applicant's, no objection of bias was raised. The Applicant No. 1 revised its bid through an email with on line of offer on 30 December 2022 i.e. post the process having stood concluded and hence, the revision to the business plan stood rejected.
51. Earnest Money Deposit was refunded to the Applicant which also was accepted without any demur or protest. The Applicant did not have any objection or protest or demur to the process in the resolution of the Corporate Debtor but has only instituted the instant proceedings in an attempt to have its chance reinstated to acquire the Corporate Debtor
52. The Learned Counsel placed reliance on the judgment of *Ebix Singapore v. Mahendra Khandelwal (Civil Appeal No. 3224 of 2020)*, the CIRP could not have been reopened and revised bids could not be considered after parties were given fair opportunity to place bids, it would become an unending process.
53. The learned Counsel submitted that the Resolution Professional has ensured that each member to the CoC has executed necessary confidentiality undertaking as are required under the provisions of the Code. It is reiterated

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that even after issuance of the final list, no objections were received from either of the prospective resolution applicants through the entire process.

54. The process adopted in regarding submission of plans with the answering respondent was that no resolution plans (or related documents) were shared with the CoC until the deadline for such submission had elapsed. Therefore, the plans were received by the Resolution Professional and disclosed to the CoC after the cut-off date of submission of plans or re-submissions post negotiations.
55. It is submitted that the revised claims were to be submitted by the prospective resolution applicants on 6 December 2022 up to 6 p.m., Mr. Drishya Agarwal submitted its bid at 5:36 p.m. and the Applicant submitted the same on 5:48 p.m. i.e. after the submission of bid by the successful resolution applicant, hence the contention that Mr. Drishya Agarwal got the benefit of submission of last claim and therefore could have improved on their offer is not tenable.
56. The learned Counsel argued that the Code contemplates a situation where any person being a Financial Creditor is eligible to vote on a resolution plan submitted by itself under section 30(5) of the Code. Since, the Code itself permits a financial creditor sitting on the Committee of Creditors to vote on resolution plan submitted by itself.
57. Moving on to ISSUE – 2, the learned Counsel submitted that in terms of an email dated 27 July 2022, the Resolution Professional updated the list of creditors together with their voting percentage after due verification of the claims and the same was also updated in the website being maintained by the Resolution Professional for the Corporate Debtor as well as on the portal maintained by IBBI.
58. The revised percentage share of each creditor was duly communicated to all stakeholders without there being any objection from any corners or more so by the CoC hereto. It is submitted that the Applicant itself has adopted

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the said voting share allocated to each financial creditor for the purpose of distribution of upfront sums under the resolution plan. Therefore, at this stage of the proceedings, the Applicant, being a 'third party' cannot be permitted to challenge the approval of resolution plan when it has itself participated in the process and adopted the voting percentage.

59. With respect to ISSUE – 3, the learned Counsel submitted that there is no disqualification of the Resolution Applicant on the basis of his age. Section 29A of the Code does not bar any person of 20+ years of age not to participate in a CIRP. Therefore, the apprehension of the Applicant is baseless and unfounded. The Applicant has neither indicated any provision of law to the contrary or made out any case of legal bar in the pleadings.
60. The learned Counsel submitted that CIRP was conducted in a fair, transparent manner and the resolution plan was approved by the Members of the CoC unanimously with 100% votes by exercise of its commercial wisdom. Therefore, there is no plausible case made out by the Applicant for 12 rejection of the resolution plan.

***Submissions of the learned Counsel appearing on behalf of Respondent No. 2 to***  
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61. The learned Counsel submitted that the objections of the Applicant are that a related party i.e. the Director of the Financial Creditor and hence, the approval is done in collusion with the Successful Resolution Applicant. Another contention raised by the Applicant is that the Successful Resolution Applicant is 20 years old.
62. The learned Counsel submitted that firstly, there is no disqualification of Mr. Drishya Agarwal on the basis of his age under section 29A of the Code, hence the apprehension of the Applicant that Mr. Drishya Agarwal would not be able to revive the Corporate Debtor is baseless and unfounded.



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63. The learned Counsel placed reliance on *Arcelormittal India Private Limited v. Satish Kumar Gupta* and *Trimex Industries Private Limited v. Sathavahana Ispat Limited & Ors.* and submitted that the related party of the Financial Creditor is not barred under section 29 A of the Code to submit Resolution Plan.
64. The learned Counsel submitted that as per section 30(5) of the Code, a Financial Creditor is entitled to submit a Resolution Plan and can also vote on it.
65. It is further submitted that no objection was raised by the Applicant during the deliberations and discussions of the Resolution Plans and has now raised an objection as an after thought.
66. The learned Counsel submitted that the CIRP cannot be reopened and revised bids could not be considered after parties were given fair opportunity to place bids and placed reliance on the judgment of the Hon'ble Supreme Court *Ebix Singapore v. Mahendra Singh Khandelwal* and the judgment of the Hon'ble NCLAT in *Indian Overseas Bank v Rathi TMT Saria Pvt. Ltd. and Ors.*

***Submissions of the learned Counsel appearing on behalf of the Respondent No.***

67. The learned Counsel submitted that the primary contentions of the applicant against the respondent no. 5 can be broadly categorized under the following heads:
- a. The age of the SRA being 20 years.
  - b. The representative of the financial creditor, Suzlon Synthetics Limited being the brother of the respondent no. 5 and Suzlon Synthetics Limited holding a 37% voting share in the CoC.
  - c. The sister of the SRA being the director in a company wherein the promoter/ director of the corporate debtor is also a director.

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- d.* An added advantage of the respondent no. 5 who would know about the bids and timelines as stipulated in the resolution plans of other proposed resolution applicants since the brother of the respondent no. 5 is a part of the CoC.
68. The learned Counsel firstly disputed the locus of the applicant since, upon the approval of the resolution plan by the CoC in exercise of its commercial wisdom, the same cannot be challenged by a disgruntled prospective resolution applicant. It is pertinent to state that the resolution application was approved by 100% voting in favour of the said resolution plan by the CoC.
69. The learned Counsel submitted that there is no provision in the Code for disqualification of an individual on the basis of his age for submission of a resolution plan. The Successful Resolution Applicant is already a director in Silkon Industries Private Limited, Jyotsna Spintex Private Limited, Pellets Green Private Limited, Duotech Polypack Private Limited, Vardhamana Techno Engineering & Machinery Private Limited and Duotech Propack Private Limited. The Successful Resolution Applicant has been successfully discharging his obligations in the said companies.
70. The learned Counsel submitted that the brother of the Successful Resolution Applicant representing one of the financial creditors, Suzion Synthetics Limited in the CoC which holds a voting share of 37%, the Code does not lay down a bar for the brother of the Successful Resolution Applicant to be a part of the CoC through a financial creditor. Moreover, the financial creditor is a company and the brother is a separate entity representing the company and unless a specific case for lifting of corporate veil is made out, the said individuals are separate in eyes of law. Moreover, the voting of 37% would not be an issue in the present facts and circumstances since the plan has been approved by 100% voting in favour of the plan.

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71. The learned Counsel submitted that the sister of the Successful Resolution Applicant being a director in a business where the promoter/director of the corporate debtor is also a director is also ill found. There is no bar in the Code for such a situation acting as an impediment for the Successful Resolution Applicant which would prevent the Successful Resolution Applicant from submitting a resolution plan for consideration of the CoC, merely because his sister is a director of in a company wherein the promoter/director of the corporate debtor is also a director.
72. The contention raised by the Applicant after its plan was rejected upon consideration by the CoC and after the approval of the plan submitted by the SRA by the CoC that the SRA had an unfair advantage in the process with respect to the advantage in submitting a resolution plan is unsubstantiated.
73. The I.A. is a blatant abuse of the legal process by the Applicant wherein the sole motive of the applicant is to delay the resolution of the insolvency process. It is apparent therefrom that the plan was approved and the stakeholders were informed on 26 December 2022. The applicant, however, chose to approach this Adjudicating Authority through the present application only on 02 February 2023 i.e. after almost a month, as a last attempt to stall the time bound process of CIRP.
74. The allegation of purported bias has been raised by the applicant only as an afterthought and the same would be evident from the actions of the applicant whereby the applicant has been participating in the CIRP without raising any objection and chose to raise the objection for the first time after its plan was considered and rejected by the CoC.

***Analysis and Findings***

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75. Heard the learned Counsel appearing on behalf of the Resolution Professional, Applicant in I.A. (IB) No. 411/KB/2023, CoC and Successful Resolution Applicant and perused the records.
76. MG Threads has raised an objection with respect to the approval of the Resolution Plan. Firstly, we would like to state that once the Resolution Plan has been approved by the CoC, the unsuccessful Resolution Applicant has no locus to challenge the commercial wisdom of the CoC.
77. Further, the unsuccessful Resolution Applicant participated in the CIRP after submission of its Resolution Plan and did not challenge the constitution of the CoC at that stage, it is only after rejection of its plan that it has come before us. The Hon'ble NCLAT has held in *M.K. Rajagopalan v. S. Rajendran, RP Vasan Healthcare Pvt. Ltd.*<sup>6</sup> that an unsuccessful Resolution Applicant has no locus to assail a Resolution Plan or its implementation. Similar view has been given by the learned NCLT, Mumbai Bench in *G.S. Constructions v. Mr. Gajesh Labchand Jain*<sup>7</sup>.
78. Even if we consider the said I.A., the contention raised by the unsuccessful Resolution Applicant is that the voting share of the Financial Creditor i.e. Suzlon Synthetics Limited increased to 37.24%, but that contention does not hold water as the Resolution Plan has been approved by 100% voting share. The CoC has approved the Resolution Plan of Mr. Drishya Aggarwal in its commercial wisdom with 100% voting share.
79. We do not find any substance or merit in the objections raised by the Applicant in I.A. (IB) No. 411/KB/2023.
80. We find that the Resolution Plan filed by **Mr. Drishya Aggarwal** has been approved by the CoC with 100% voting share. As per the CoC, the plan meets the requirement of being viable and feasible for revival of the

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<sup>6</sup> (2023) ibclaw.in 191 NCLAT

<sup>7</sup> (20233) ibclaw.in 481 NCLT

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Corporate Debtor. By and large, all the compliances have been done by the Resolution Professional and the Resolution Applicant for making the plan effective after approval by this Bench.

81. On perusal of the documents on record and the replies to the clarifications sought by us, 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.
82. 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.
83. We have perused the reliefs, waivers and concessions as sought and as given in Section XIII at Pages 69-80 of the Resolution Plan, in this regard, we refer to section 31 of the Code and rely upon the law laid down by the Hon'ble Supreme Court in **Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd**,<sup>8</sup> wherein the Hon'ble Supreme Court has held that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt, any State Govt or any local authority, guarantors and other stakeholders.
84. 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*

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<sup>8</sup>2021 SCC OnLine SC 313 decided on 13.04.2021.

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*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, 2019 SCC OnLine NCLAT 388] 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*

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*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.”*

85. We also place reliance on the recent judgement of Hon’ble High Court of Rajasthan in the matter of **EMC v. State of Rajasthan** 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.”*

86. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.

87. With respect to the waivers sought in relation to guarantors, the judgment of **Lalit Kumar Jain v Union of India & ors**,<sup>9</sup> wherein the Hon'ble Supreme Court held in para 133 that sanction of a resolution plan and finality imparted to it by section 31 does not *per se* operate as a discharge of the guarantor's liability shall apply.

88. In view of the above position of law, the Resolution Plan approved by CoC and being approved by this Adjudicating Authority shall be binding on the

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<sup>9</sup> 2021 SCC OnLine SC 396 decided on 21.05.2021.

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- Corporate Debtor and other persons, authorities etc. as specified in section 31 of the Code.
89. With respect to the reliefs and waivers sought for all inquiries, litigations, investigations and proceedings shall be granted strictly as per the section 32A of the Code.
90. The Resolution Plan has to be consistent with extant law. The Resolution Applicant shall make necessary applications to the concerned regulatory or statutory authorities for 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 of the insolvency of the Corporate Debtor and enabling the Corporate debtor to stand on its feet again.
91. 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. Since the plan envisages infusion of Capex and as decided in the 15<sup>th</sup> CoC meeting a definitive plan shall be put in place by the reconstituted board & implementation ensured. The reconstituted board of the Corporate Debtor shall be responsible for infusion of the capex proposed in the plan as envisaged.
92. Subject to the observations made in this Order, the Resolution Plan is hereby **APPROVED** by this Bench. **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 other stakeholders involved in terms of section 31 of the Code, so that revival of the Debtor Company shall come into force with immediate effect.
93. The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
94. The Resolution Professional shall submit copies of the records collected during the commencement of the proceedings to the Insolvency &



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- Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters.
95. Liberty is hereby granted for moving any application if required in connection with implementation of this Resolution Plan.
96. A copy of this Order is to be submitted to the Registrar of Companies, West Bengal.
97. 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.
98. 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.
99. In view of the above the **I.A. (IB) No. 411/KB/2023 is hereby rejected and I.A. (IB) No. 172/KB/2023 and C.P. (IB) No. 1567/KB/2019 is allowed and shall stand disposed of accordingly.**
100. The Registry is directed to send e-mail copies of the order forthwith to all the parties for information and for taking necessary steps.
101. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**Balraj Joshi**  
**Member (Technical)**

**Rohit Kapoor**  
**Member (Judicial)**

Order signed on the 3<sup>rd</sup> day of May 2024.

GGRB\_LRA