



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH,
(COURT-II)
KOLKATA**

**I.A. (IB) No. 1550/KB/2022
in
CP (IB) No. 1632/KB/2018**

*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:

Stressed Assets Stabilisation Fund

... Financial Creditor

Versus

Eastern Sugar & Industries Limited

... Corporate Debtor

And

In the matter of:

Anup Kumar Singh, Resolution Professional of

Eastern Sugar & Industries Limited

... Applicant

Date of hearing: 18 September 2023

Date of pronouncement: 04 October 2023

Coram:

Smt. Bidisha Banerjee, Member (Judicial)

Shri D. Arvind, Member (Technical)

Appearances (via hybrid mode):

For the Applicant/RP


1. Mr. Shaunak Mitra, Advocate
2. Mr. A. Das, Advocate

For the SRA

1. Mr. K. Thakkar, Advocate

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- 
2. Mr. S. Das, Advocate
 3. Mr. A. Mondal, Advocate

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. This Court convened through hybrid mode.

Preliminary

2. I.A. (IB) No. 1550/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 filed by Mr. Anup Kumar Singh, Resolution Professional of Eastern Sugar & Industries Limited (CIN: L1542BR1964PLC006630), 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 Eastern Sugar & Industries Limited (“**Corporate Debtor**”).
4. The underlying Company Petition in C.P. (IB) No. 1632/KB/2018 was filed by Stressed Assets Stabilization Fund, the Financial Creditor to initiate Corporate Insolvency Resolution Process (“**CIRP**”) against Eastern Sugar & Industries Limited, the Corporate Debtor, under section 7 of the Insolvency and Bankruptcy Code 2016, which was admitted *vide* order dated 11 February 2022.
5. Initially, Mr. Ajay Kumar Agarwal was appointed as the Interim Resolution Professional (“**IRP**”). At the first meeting of the CoC held on 11 March 2022, the CoC passed a resolution to appoint Mr. Anup Kumar Singh (IBBI Reg. No. IBBI/IPA-001/IP-P00153/2017-

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2018/10322) as the Resolution Professional (“RP”) which was approved by this Adjudicating Authority on 18 April 2022.

Constitution of CoC

6. The IRP made public announcement on 14 February 2022 *Morning India (English) (Patna Edition)* and *Sanmarg (Hindi) (Samastipur/Chhpara/Siwan/Mazzafarpur Edition)* newspapers regarding initiation of Corporate Insolvency Resolution Process (CIRP) and called for proof of claims from the financial and operational creditors, workers and employees of the corporate debtor in the specified forms till 25 February 2022.
7. The CoC was constituted on 06 March 2022 comprising of Financial Creditors *viz.* Stressed Assets Stabilisation Fund having voting share of 95.69%, Bank of India having voting share of 1.27% and Industrial Finance Corporation of India Limited having a voting share of 3.04.%. A report of the constitution of the CoC was filed before the Adjudicating Authority.
8. A total of seven CoC meetings have been held during CIRP period, which are as follows:

Particulars	Date of CoC meeting
1 st CoC Meeting	11.03.2022
2 nd CoC Meeting	20.04.2022
3 rd CoC Meeting	30.04.2022
4 th CoC Meeting	15.07.2022
5 th CoC Meeting	14.10.2022
6 th CoC Meeting	21.10.2022
7 th CoC Meeting	17.11.2022

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Collation of claims

9. The amounts claimed and admitted are summarised below:

Amount in INR

Nature of creditor	Amount claimed	Amount admitted
Financial Creditors	19,80,14,54,285.73	19,80,14,54,285.73
Operational Creditors	28,00,00,000/-	NIL##
Operational Creditors (other than Workmen and Employees)	22,55,753/-	22,55,753/-
Related Parties	NIL	NIL
Total	20,08,37,10,039/-	19,80,37,10,039/-

A clarification was sought on 13 September 2023 with regard to the claim of the workmen. The Resolution Professional filed an affidavit affirmed on 16 September 2023 stating that a claim in Form E was submitted by Mr. Parmanand Thakur (General Secretary of the Motihari Sugar Mill Labour Union) on 24 February 2022. The claim in Form E stated that 750 workmen were employed in Hanuman Sugar & Industries Limited (lessor and related party of the Corporate Debtor) in which 140 workmen received full and final payment while the remaining 610 workmen did not receive their final payment.

It is further submitted that the claim form was not accompanied by any list of workmen with their names, amount outstanding, identification number etc. The only information which was available was that 610 workmen dues were pending to the tune of Rs.28 Crore approx. from period April 2002 to February 2022. The claim form further mentioned that the documents relied on as evidence of claims were not available with them. The claim form was accompanied by few letters addressed to the erstwhile Interim Resolution Professional stating that various dues were pending to the permanent and seasonal workmen to the tune of Rs.28 Crore approx. the details of which were available with Hanuman Sugar & Industries Ltd. Further, a copy of agreement dated 18-12-20218 arrived at

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between Hanuman Sagan & Industries Ltd. (popularly known as Motihari Sugar Mill) and Motihari Sugar Mill Labour Union was shared along with the claim form. However, no bifurcation of claims or details of workmen were provided with the Claims Form for verification or consolidation of Claims by the Applicant.

Further, that the factory of the Corporate Debtor Eastern Sugar & Industries Limited situated in Motihari, Bihar was inoperative with no business operations, staff, workmen or employee during its handover to the Interim Resolution Professional and the Applicant herein. Further, it was informed to the Applicant that there were no operations undertaken by the Corporate Debtor since the F.Y. 2004-2005.

A Lease Deed was executed between Shree Hanuman Sugar & Industries Ltd. (Related Party of the Corporate Debtor) and Eastern Sugar & Industries Limited dated 31st May, 1999 wherein the sugar factory and the land and building was leased out to Eastern Sugar & Industries Limited for a term of 30 sugar cane crushing seasons. Due to operational difficulties, the company had suspended its operation of Cane Crushing since F.Y. 2004-05. As per the limited information available Shree Hanuman Sugar & Industries Ltd. by its letter dated 02 May, 2006 terminated the said lease and requested Eastern Sugar & Industries Ltd. to hand over the peaceful possession of the factory to them.

A Deed of Surrender of Lease was executed on 31st May, 2006 between the said parties. In light of the aforesaid was noted that the outstanding claims of the workmen, as submitted during the Corporate Insolvency Resolution Process, were not admitted due to want of documents from the representative of workmen.

The Resolution Professional has not admitted the claim due to lack of Workmen details and lack of supporting documents.

CIRP and compliances

10. The Applicant would 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

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Interest (EoI) from potential resolution applicants was issued on four occasions:

- a. 27 April 2022 in *Business Standard (English) (Kolkata edition) and Ekdin (Bengali) (Kolkata edition) and Morning India (English) and Sanmarg (Hindi) (Patna edition)* newspapers.
 - b. 13 May 2022 in *Business Standard (English) (Kolkata edition) and Ekdin (Bengali) (Kolkata edition) and Morning India (English) and Sanmarg (Hindi) (Patna edition)* newspapers.
 - c. 11 June 2022 in *Business Standard (English) (Kolkata edition) and Ekdin (Bengali) (Kolkata edition) and Morning India (English) and Sanmarg (Hindi) (Patna edition)* newspapers.
 - d. 01 July 2022 in *Business Standard (English) (Kolkata edition) and Ekdin (Bengali) (Kolkata edition) and Morning India (English) and Sanmarg (Hindi) (Patna edition)* newspapers. The last date of submission of EoI was 01 July 2022.
11. The notice was also published on the website of the Insolvency and Bankruptcy Board of India (IBBI).
 12. The Applicant submits that in response to the invitation for EoI published on 01 July 2022, only one EoI was received from Kundan Care Products Limited. The Final list of eligible Resolution Applicant was issued on 27 July 2022. The RP then shared the Information Memorandum, Evaluation Matrix and Request for Resolution Plan (RFRP) with the Prospective Resolution Applicant.
 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.

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Evaluation and voting

14. The Resolution Professional received only one Resolution Plan from Kundan Care Products Limited on 17 September 2022. The Resolution Plan was placed and opened for discussion before the CoC in the 5th CoC meeting held on 14 October 2022. The Resolution Plan was minutely discussed on the 6th CoC meeting held on 21 October 2022.
15. The CoC requested the prospective Resolution Applicant to revise the Resolution Plan. Kundan Care Products Limited submitted its modified Resolution Plan on 17 November 2022.
16. The modified Resolution Plan was discussed in the 7th CoC Meeting held on 17 November 2022, wherein the feasibility and viability of the Resolution Plan was discussed at length.
17. An addendum to the Resolution Plan dated 23 November 2022 was submitted after the discussions in the 7th COC meeting. The Resolution Plan dated 17 November 2022 along with the addendum dated 23 November 2022 was discussed and put to vote.
18. The voting concluded on 27 November 2022, wherein the Resolution Plan submitted by Kundan Care Products Limited (**“Successful Resolution Applicant”**) was approved with 98.73% voting share¹.
19. The Applicant issued the Letter of Intent on 28 November 2022 to the Successful Resolution Applicant² which was duly acknowledged by the Successful Resolution Applicant on 29 November 2022.
20. In accordance with regulation 36B(4A) of the CIRP Regulations, the Successful Resolution Applicant deposited the Performance Bank Guarantee of Rs.59,10,000/- (Rupees Fifty-Nine Lakh Ten Thousand

¹ Annexure J at page 136 of the I.A.

² Annexure L at pages 225-227 of the I.A.

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only) as Bank Guarantee No. 41840ILG005122 in the name of Stressed Asset Stabilisation Fund³.

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 29 November 2022, in compliance with regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.⁴
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, as 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 payment of other debts of CD in the manner specified by the Board.	Page 1 of the Addendum dated 23.11.2022.
2.	(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;	Clause 4 (ii) in Part C at Page 15 of the Resolution Plan.

³ Page 58-61 of S.A. dated 09.12.2022.

⁴ Annexure M at pages 228-240 of the I.A.

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Clause of s.30(2)	Requirement	How dealt with in the Plan
	<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>Clause 4 (ii) in Part C at Page 15 of the Resolution Plan.</p> <p>Clause 6.3.3 (iii) and (iv) in Part D at Page 33 of the Resolution Plan.</p>
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Clause 4 (iii) in Part C at Page 15 of the Resolution Plan.
(d)	Implementation and Supervision	Clause 4 (iv) in Part C at Page 15 and Clause 16 in Part G at page 55 of the Resolution Plan.

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Clause of s.30(2)	Requirement	How dealt with in the Plan
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Clause 4 (v) in Part C at Page 15 of the Resolution Plan.
(f)	Conforms to such other requirements as may be specified by the Board.	Clause 4 (vi) in Part C at Page 16 of the Resolution Plan.

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.

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Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
(b) sale of all or part of the assets whether subject to any security interest or not;	Not proposed in the Resolution Plan.
(ba) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	Not proposed in the Resolution Plan.
(c) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	Not proposed in the Resolution Plan.
(ca) cancellation or delisting of any shares of the corporate debtor, if applicable;	Clause D at pages 3-5 of Addendum dated 23.11.2022.
(d) satisfaction or modification of any security interest;	Clause 15.1. (e) in Part F at Page 52 of 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.

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Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
(f) reduction in the amount payable to the creditors;	Addendum dated 23.11.2022.
(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;	Clause 15.1 (c) (ii) in Part F at Page 50 of Resolution Plan.
(i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	Clause D at pages 3-5 of Addendum dated 23.11.2022.
(j) change in portfolio of goods or services produced or rendered by the corporate debtor;	Not proposed in the Resolution Plan.
(k) change in technology used by the corporate debtor; and	Point 2 at page 11 of the Resolution Plan.
(l) obtaining necessary approvals from the Central and State Governments and other authorities.	Clause 4.6 in Part C at Page 20 and Clause 17 in Part G at Page 56 of the Resolution Plan.

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Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
<p>(m) sale of one or more assets of corporate debtor to one or more successful resolution applicants submitting resolution plans for such assets;</p> <p>and manner of dealing with remaining assets.</p>	Not proposed in the Resolution Plan.

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(1a)	The amount payable to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.	Page 3 of Addendum dated 23.11.2022.
38(1b)	The amount payable to the financial creditors, who have right to vote and did not vote in	Clause 6.3.3 (iii) and (iv) in Part D at Page 33 of the Resolution Plan.

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Ref to relevant Reg.	Requirement	How dealt with in the Plan
	favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.	
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors of the corporate debtor.	Clause 4.3 in Part C at page 17 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 Authority at any time in the past.	Clause 4.4 in Part C at Pages 17-18 and Clause 6.3 at pages 26-of the Resolution Plan.
38(2)	A resolution plan shall provide:	

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Ref to relevant Reg.	Requirement	How dealt with in the Plan
	(a) the term of the plan and its implementation schedule;	Page 6 and Clause 4.5 (i) in Part C at Page 18 and Clause 17 in Part G at Pages 55-56 of the Resolution Plan.
	(b) the management and control of the business of the corporate debtor during its term; and	Clause 4.5. (ii) in Part C at Page 18 of the Resolution Plan.
	(c) adequate means for supervising its implementation.	Clause 4.5. (iii) in Part C at Page 18 and Clause 16 in Part G at page 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.	Clause H at page 8 of the Addendum dated 23 November 2022.

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Ref to relevant Reg.	Requirement	How dealt with in the Plan
38(3)	A resolution plan shall demonstrate that –	
	(a) it addresses the cause of default;	Clause 4.6. (i) in Part C at Page 18 of the Resolution Plan.
	(b) it is feasible and viable;	Clause 4.5. (ii) in Part C at Pages 18-19 of the Resolution Plan.
	(c) it has provisions for its effective implementation;	Page 20 of the Resolution Plan.
	(d) it has provisions for approvals required and the timeline for the same; and	Pages 19-20 of the Resolution Plan.
	(e) the Resolution Applicant has the capability to implement the resolution plan.	Pages 19-20 of the Resolution Plan.

23. The Resolution Applicant has submitted affidavit of eligibility under section 29A of the Code.

24. The Resolution Plan also provides for Severability and the right to modify in Clause 18.4 in Part G at Pages 57-58 of the Resolution Plan.

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Details of Resolution Plan/Payment Schedule

25. The Resolution Applicant had filed a Resolution Plan dated 17 November 2022 along with the addendum dated 23 November 2022.
26. Summary of the financial proposal/payment under the Resolution Plan dated 17 November 2022 along with the addendum dated 23 November 2022, is tabulated hereunder:

Particulars	Amount
Admissible Debt to be paid as CIRP costs.	Rs.65,00,000/- (Rupees Sixty Five Lakh) within 60 days from the effective date. If the CIRP cost goes over Rs.65,00,000/-, the remaining amount shall be borne by Secured Financial Creditors.
Admissible Debt to be paid to the Financial Creditors	Rs.5,16,00,000/- (Rupees Five Crore Sixteen Lakh only) to be paid within 60 days from the effective date.
Admissible Debt to be paid to Operational Creditors being Employees and Workmen	Rs.10,00,000/- (Rupees Ten Lakh only) to be paid within 60 days from the Effective Date.
Capex	Rs.50,00,00,000/- (Rupees Fifty Crore only) as and when required.
Total	Rs.55,91,00,000/-

27. The Resolution Plan defines "**Effective Date**" as "*the date on which the Resolution Plan is approved by NCLT*".

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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.

Sl. No.	Relief, concessions and approvals sought
1.	The CBDT and/or any other relevant Governmental Authority to allow the Company to enjoy and avail in future all tax benefits, deductions, exemptions including carry forward of losses under Income tax Act, 1961 as per the relevant provisions of the applicable law which the Company was entitled to weather Income Tax return was filed in time or not as per the relevant provisions of the Applicable Law. The Resolution Applicant shall be given an opportunity to file such Income Tax Returns and these returns shall be treated as filled in time. The Adjudication Authority in its sole discretions may consider giving notice to the Income Tax Department as contemplated in Section 79 of the Income Tax Act, 1961.
2.	The CBDT to provide relief to the Company from all direct tax litigations pending at different levels and provide waiver from all tax dues including interest, penalty and prosecution on such litigations and to condone the delay in filing the Income tax Return, TDS Return and Reports under various sections of income Tax Act, 1961 and not to disallow any benefit to the company on account of delay in filing of Income Tax Return, TDS Return and Reports.
3.	All licenses and Government approvals granted to the company whether lapsed, expired, suspended, cancelled, revoked or terminated shall be renewed for the period for which they were originally granted, starting from the effective date without any additional fees, charges or penalty or interest and the company shall be permitted to continue to operate its business and assets

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Sl. No.	Relief, concessions and approvals sought
	in the manner that all the approvals and licenses are valid, until renewal/extension of such licenses and approvals. It will be treated as the Company is compliant with them without initiating any investigations, actions or proceedings in relation to such non-compliances and the Adjudicating Authority shall pass an order to that effect.
4.	That all the relevant Governmental Authorities to waive any and all demand or relation to the properties of the Company on account of the transactions contemplated in the Resolution Plan.
5.	All Governmental Authorities to waive all penalties, taxes, dues, charges, levies, and cess on past non-compliances of the Company under Applicable Laws, and the Company, Applicant shall not be liable for any non-compliance under Applicable laws for the period prior to the Completion Date and the Adjudicating Authority shall pass an order to that effect. Six (6) months grace period (from the date of NCLT approval) to be provided to the Corporate Debtor to comply with the provisions of the various Acts and Regulations to enable Corporate Debtor to ascertain the status of various compliances and take necessary steps to regularize the same. During grace period, no additional charges/fees etc. To be charges including on account of Interest penal interest, Penalty, Interest on Penalty, any kind of Late Fee or Damages.
6.	The rights of any person (whether exercisable now or in the future and whether contingent or not) to call for the allotment, issue, sale or transfer of shares or loan of the Company or the Applicant, whether on a change of control or otherwise shall stand unconditionally and irrevocably extinguished.
7.	All Governmental Authorities including SEBI and Stock Exchanges to waive the non-compliances of the Company prior to the effective dates including but not limited to Companies Act, 2013, the Industrial Disputes Act, 1947, the Labour Laws, Income Tax Act, 1961, VAT, Service Tax Act, GST, Sales Tax, the Relevant Shops and Establishment Acts, Department of Energy, Ministry of Power (State/Central Government) or any

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Sl. No.	Relief, concessions and approvals sought
	other similar authority and rules, circulars and regulations of each of the above legislations and to consider providing relief to the Company from all litigations pending at different levels and provide waiver from tax dues including interest and penalty on such litigants.
8.	All Governmental Authorities to grant any relief, concession or dispensation as may be required for implementation of the transactions contemplated under the Resolution Plan in accordance with its terms and conditions.
9.	Any dues in the form of penalties/levies/compensation/fines/property taxes/lease rent/electricity dues will be applicable and calculated only up to the date of admission into CIRP. After the approval of the Resolution Plan by NCLT such amount will be paid as envisaged in the Resolution Plan and no additional amount will be paid from the date of approval of the Resolution Plan by the NCLT till the date of payment as envisaged in the Resolution Plan.
10.	Any civil or criminal proceedings against the erstwhile Directors/Management should not be enforced on the Resolution Applicant.
11.	The existing shareholders, managers, directors, officers, employees, workmen or other personnel of the Company shall continue to be liable for all the claims, demand, obligations, penalties etc. arising out of any (i) proceedings, inquiries, investigations, orders, show causes, notices, suits, litigation etc. (including those arising out of any orders passed by the NCLT pursuant to Sections 43, 45, 49, 50, 66, 68, 70, 71, 72, 73 and 74 of the IBC) whether civil or criminal, pending before any authority, court, tribunal or any other forum prior to the effective date or (ii) that may arise out of any proceedings, inquiries, investigations, orders, show cause, notices, suits, litigation etc. (including any orders that may be passed by the NCLT pursuant to Sections 43, 45, 49, 50, 66, 68, 70, 71, 72, 73 and 74 of the IBC) whether civil or criminal, that may be initiated or instituted post the approval of the resolution Plan by the NCLT on account

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Sl. No.	Relief, concessions and approvals sought
	of any transactions entered into, or decisions or actions taken by the existing shareholders, managers, directors, officers, employees, workmen or other personnel of the Company, and the Company or the Resolution Applicant or incoming directors shall at no point of time be directly or indirectly held responsible or liable in relation thereto and the Adjudicating Authority shall pass an order to that effect.
12.	While settling the claim of workmen/employees any amount to be deducted towards TDS/PF/ESI from such claim will be made and paid to Income Tax/PF/ESI Authorities. The remaining balance amount will be paid to workmen/employees. No interest/penalties will be levied by Income Tax/PF/ESI Authorities on such amounts being deposited and the Adjudicating Authority shall pass an order to that effect.
13.	Any interest or penalty or charge payable during the CIRP period should be waived off under any law for the time being in force.
14.	From the effective date, any claim of the Enforcement Director under the prevention of Money Laundering Act, 2002 against the Corporate Debtor arising out of the actions of the erstwhile management of the Corporate Debtor before initiation of CIRP shall stand extinguished and no action under the said statute shall stand against the Resolution Applicant or the Corporate Debtor.
15.	From the effective date, any claim of the Income Tax Department under the Benami Transactions (Prohibition) Act, 1988 against the Corporate Debtor arising out of the actions of the erstwhile management of the Corporate Debtor pertaining to period before initiation of CIRP shall stand extinguished and no action under the said statute shall stand against the Resolution Applicant or the Corporate Debtor.
16.	All the permits/license/approval held or availed of by, and all rights and benefits that have accrued to, the Company, shall without any further act, instrument or deed, be transferred to, and vest in, or be deemed to have been vested in, and be availed to,

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	the Company so as to become as and from the effective date, the permits, estates, assets, rights, title, interests and authorities of the Company shall remain valid, effective and enforceable on the same terms and conditions to the extent permissible in applicable laws. Upon the effective date, the company shall be authorized to carry on business under the relevant license and/or permit and/or approval as the case may be.
17.	All licenses and Government Approvals granted to the Company whether lapsed, expired, suspended, cancelled, revoked or terminated, shall be renewed for the period for which they were originally granted, starting from the effective date without any additional fees, charges or penalties or interests and the company shall be permitted to continue to operate its business and assets in the manner that all the approvals and licenses are valid, until renewal/extension of such licenses and approvals. It will be treated as the company is complaint with them without initiating any investigations, actions or proceedings in relation to such non-compliances and the Adjudicating Authority shall pass an order to that effect.
18.	The Resolution Applicant will obtain necessary approvals from various authorities as required from the completion date on approval of the resolution Plan by the Adjudicating Authority. Any other approvals or any authority or other person that may be required under any law for the time being in force, granted to the Company whether lapsed, expired, suspended, cancelled, revoked or terminated, shall be renewed for the period for which they were originally granted, starting from the effective date without any additional fees, charges or penalty or interest and the Company shall be permitted to continue to operate its business and assets in the manner that all the approvals and licenses are valid, until renewal/extension of such licenses and approvals. It will be treated as the Company is complaint with them without initiating any investigations, actions or proceedings in relation to such non-compliances and the Adjudicating Authority shall pass an order to that effect.

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19.	Necessary direction needs to be given to previous Management/Directors/Key Personnel to handover all the assets/documents/ records etc. of the Corporate Debtor to the Resolution Applicant.
20.	Direction to be given to concerned SHO, SDM, Dy. Commissioner, Superintendent of Police to provide us the adequate security at the costs and expenses o RA, so that RA can implement Resolution Plan without any interruption by any local/outside people. The above said authorities to ensure that there should be any hindrance in the smooth implementation/possession of the assets. Whatever is the cost of the security, to be advised in writing to RA, the same shall be paid regularly on monthly/quarterly basis as decided by the Police Department. In case, if RA discontinues making the payment of the policy security a per bill provided by the police Department, Bihar, Police Department can withdraw the security without giving any notice but it is important that the above authority to maintain law and order so that without any hindrance the project can be continued and implemented.
21.	All the permits/license/approval held or availed of by and all rights and benefits that have accrued to, the Company from the exchanges wherein the Corporate Debtor is listed and been traded, shall without any further act, instrument or deed, be transferred to and vest in or be deemed to have been vested in and be available to, the Company so as to become as and from the effective date, the permits, estates, assets, rights, title, interests and authorities of the Company and shall remain valid, effective and enforceable on the same terms and conditions to the extent permissible in Applicable laws. Upon the effective date, the Company shall be authorized to carry in business under the relevant license and/or permit and/or approval, as the case may be.
22.	The Adjudicating Authority may be pleased to order that the approval of the Resolution Plan by this Adjudicating Authority shall be deemed to be grant if unconditional permission for

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	waiver of any charges/fees/penalties/maintenance charges/dues of any nature on the properties of the Corporate Debtor and necessary direction shall be passed to respective societies for possession of the properties of CD to RA by waiving unconditionally all the dues till the completion date.
23.	The shares of Corporate Debtor shall continue to be listed on the stock exchange after capital restructuring under this Resolution Plan and all penalty till effective date towards stock exchange shall stand extinguished. Pursuant to approval of Resolution Plan, Stock exchange shall continue to allow free trading of shares of Corporate Debtor subject to compliance of Security Laws. All non-compliances pertaining to period prior to effective date shall stand complied. The concerned Stock Exchanges be directed to revoke the suspension of the listing of the shares of the company for present and future.
24.	PUFE transactions- Any amount received under PUFE application arising out of any orders passed by the Hon'ble NCLT pursuant to Section 43, 45, 49, 50, 66, 68, 70, 71, 72, 73 and 74 of the IBC to accrue to Financial Creditors.
25.	Any and all claims or demands made by, or liabilities or obligations owed or payable to (including any demand for any losses or damages, principal interest, penal interest, liquidated damages, penalty and other costs or charges already accrued/accruing in connection with any third party claims) any actual or potential Operational Creditors of the Corporate Debtor or in connection with any operational debt of the Corporate Debtor, whether admitted or not, due to contingent, asserted or unasserted, crystallized or un-crystallized, known or unknown, secured or unsecured, disputed or undisputed, present or future, in relation to any period prior to the completion date or arising on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan, will be written off in full and shall stand permanently extinguished and the Corporate Debtor or the Resolution

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	Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.
26.	Any and all rights and entitlements of any actual or potential Operational Creditors of the Corporate Debtor, whether admitted or not, due or contingent, asserted or unasserted, crystallized or un-crystallized, known or unknown, disputed or undisputed, present or future, in relation to any period prior to the completion date or arising on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan, shall stand permanently extinguished and the Corporate Debtor or the Resolution Applicant shall at no point of time, directly or indirectly, have any obligation, liability or duty in relation therein.
27.	Upon approval of this Resolution Plan by the Hon'ble NCLT, all dues under the provisions of Income Tax Act, 1961, including taxes, duty, penalties, interest fines, cesses, unpaid tax deducted at source/tax collected at source, whether admitted or not, due to contingent, whether part of above claim of Income Tax Authorities or not, asserted or unasserted, crystallized or un-crystallized, known or unknown, secured or unsecured, disputed or undisputed, present or future, in relation to any period prior to the completion date shall stand extinguished and the Corporate Debtor shall not be liable to pay any amount against such demand. All assessments/appellate or other proceedings pending in case of the Corporate Debtor, on the date of the order of Hon'ble NCLT relating to the period prior to the date, shall stand terminated and all consequential liabilities, if any, stand abated and should be considered to be not payable by the Corporate Debtor. All notices proposing to initiate any proceedings against the Corporate Debtor in relation to the period prior to the date of Hon'ble NCLT order and pending on that date, shall stand abated and should not be proceeded against. Post the order of the Hon'ble NCLT, no-reassessment/revision or any other proceedings under the provisions of the Income Tax Act shall be initiated on the corporate debtor in relation to period prior to acquisition of control by the Resolution Applicant and any

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	consequential demand should be considered non-existing and as not payable by the Corporate Debtor. Any proceedings which were kept in abeyance in view of the insolvency process or otherwise shall not be revived post the order of Hon'ble NCLT.
28.	Upon approval of this Resolution Plan by the Hon'ble NCLT, all dues under the provisions of all the indirect taxes, including but not limited to, the Central Excise Act, 1994, the Finance Act, 1994 (Service Tax), the Customs Act, 1962, the Central Sales Tax Act, 1956, the Goods and Service Tax Act, 2017 and any other indirect tax laws, including taxes, duty, penalties, interest, fines, cesses, charges, unpaid TDS/TCS (to the extent applicable), whether admitted or not, due or contingent, whether part of the above mentioned contingent liability schedule dues or not, whether claimed by the tax authorities or not, asserted or unasserted, crystallized or un-crystallized, known or unknown, secured or unsecured, disputed or undisputed, present or future, in relation to any period prior to the completion date shall stand extinguished and the Corporate Debtor will not be liable to pay any amount against such demand. Upon approval of this Resolution Plan by the Hon'ble NCLT, all outstanding litigations/demands, assessments/appellate or other proceedings, including but not limited to any audits, investigations, search and seizure, pending in case of the Corporate Debtor relating to the period prior to the completion date, shall stand terminated and all consequential liabilities, if any, will stand abated and shall be considered to be not payable by the Corporate Debtor. All notices proposing to initiate any proceedings against the Corporate Debtor in relation to the period prior to the date of Hon'ble NCLT order and pending on that date, shall be considered deleted and shall not be proceeded against. Post the order of the Hon'ble NCLT, no re-assessment/revision of any other proceedings under the provisions of any of the indirect tax laws should be initiated on the Corporate Debtor in relation to the period prior to acquisition of control by the Resolution Applicant and any consequential demand shall be considered non-existing and as not payable by the Corporate Debtor. Any proceedings

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	which were kept in abeyance in view of insolvency process or otherwise shall not be revived post the order of Hon'ble NCLT.
29.	Upon approval of this Resolution Plan by the Hon'ble NCLT, all liabilities (including without limitation, for any penalty, interest, fines or fees) or obligations of the Corporate Debtor, in relation to: (A) any investigation, inquiry or show-cause, whether civil or criminal; (B) any non-compliance of provisions of any laws, rules, regulations, directions, notifications, circulars, guidelines, policies, licenses, approvals, consents or permissions; (C) changes of control, transfer charges, unearned increase, compensation, or any other such liability whatsoever under any contract, agreement, lease, license, approval, consent, privilege or permission to which the Corporate Debtor or its subsidiaries, joint ventures or associates are entitled; (D) any leasehold rights or freehold rights to movable or immovable properties in the possession of the Corporate Debtor; (E) any contracts, agreements or commitments made by the Corporate Debtor, whether admitted or not, due or contingent, asserted or unasserted, crystallized or un-crystallized, known or unknown, secured or unsecured, disputed or undisputed, present or future, whether or not set out in the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor, in relation to any period prior to the completion date or arising on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan, shall be written off in full and shall stand permanently extinguished and the Corporate Debtor shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.
30.	Upon approval of this Resolution Plan by the Hon'ble NCLT, any and all rights and entitlements recovery disgorgement, penalty, fees, recoupment of loss of the Central Government, the State Governments, any regulatory or local authority or body or any agency or instrumentality thereof or any other party or entity (under any agreement, lease, license, approval, consent, privilege or permission or under statute, rules or regulations), whether

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	admitted or not, due or contingent, asserted or unasserted, crystallized or un-crystallized, known or unknown, secured or unsecured, disputed or undisputed, present or future, in relation to any period prior to the completion date or arising on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan, shall stand permanently extinguished and the Corporate Debtor or the Resolution Applicant shall at no point of time, directly or indirectly, have any obligation liability or duty in relation thereto.
31.	Upon approval of this Resolution Plan by the Hon'ble NCLT, any trademarks, permissions, Brand, Licenses, copyrights, marketing rights and any other intangible assets, as per the schedule of Fixed Assets of latest Audited Balance Sheet or as per any other records of the Corporate Debtor or otherwise, shall be unconditionally transferred to the Resolution Applicant. Any permission, licenses, copyrights, marketing rights etc. granted to associates/third parties etc. shall stand terminated.
32.	Any claim from any person claiming to be a Financial Creditor of the Corporate Debtor, that has not been filed with the Resolution professional, or if filed, has not been accepted by the Resolution professional as payable by the Corporate Debtor, shall stand extinguished and shall no longer be payable.
33.	Other than as specified in Clause 6.3.4 any and all other claims or demands made by or liabilities or obligations owed or payable to (including any demand for any losses or damages, principal interest, compound interest, penal interest, liquidated damages, notional or crystallized mark to market losses on derivatives and other charges already accrued/accruing or in connection with any third party claims) any actual or potential financial creditors of the Corporate Debtor or in connection with any financial debt of the Corporate Debtor (including any transactions in derivatives), whether admitted or not, due to contingent, asserted or unasserted, crystallized or un-crystallized, known or unknown, secured or unsecured, disputed or undisputed, present or future,

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	whether or not set out in the profit and loss statement, the balance sheets of the Corporate Debtor, in relation to any prior to the completion date or arising on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan, shall be written off in full and the Corporate Debtor or the Resolution Applicant shall at no point of time be directly or indirectly, held responsible or liable in relation thereto.
34.	Any and all rights and entitlements of any actual or potential financial creditors of the Corporate Debtor not addressed Clause 6.3.4, whether admitted or not, due or contingent, asserted or unasserted, crystallized or uncrystallized, known or unknown, disputed or undisputed, present or future, in relation to any period prior to the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan or arising on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan, shall stand permanently extinguished and the Corporate Debtor or the Resolution Applicant shall at no point of time, directly or indirectly, have any obligation, liability or duty in relation thereto.
35.	Any invocation or appropriation or other enforcement action or demand made in respect of any security, letter of credit, letter of undertaking, letter of comfort, letter of awareness, pledge, charge, encumbrance, hypothecation or collateral provided in connection with any financial debt or any other debt or obligation of the Corporate Debtor, at any time prior to the completion date, shall stand permanently extinguished. All liabilities and obligations in relation to any security, letter of credit, letter of undertaking, letter of comfort, letter of awareness, pledge, charge, encumbrance, hypothecation or collateral provided in connection with any financial debt or any other debt or obligation of the Corporate Debtor, at any time prior to the completion date shall stand permanently extinguished on the approval of the Resolution Plan by the Hon'ble NCLT.

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36.	For the purpose hereof, all the corporate guarantees provided by the Corporate Debtor to any third parties prior to the completion date, shall stand permanently extinguished on the approval of the Resolution Plan by Hon'ble NCLT. For the avoidance of doubt, it is further clarified that any guarantors who have settled the claims of the lenders and creditors of the Corporate Debtor including the Financial Creditors on behalf of the Corporate Debtor shall not have any claim against the Corporate Debtor and their claims against the Corporate Debtor shall stand permanently extinguished on the approval of this Resolution Plan by Hon'ble NCLT.
37.	Upon approval of this Resolution Plan by the Hon'ble NCLT, any and all rights and entitlements of claims or demands made by or liabilities or obligations owed or payable to, any present or past, direct or indirect, permanent or temporary employee, contract worker and/or workman of the Corporate Debtor, whether admitted or not, due or contingent, asserted or unasserted, crystallized or un-crystallized, known or unknown, disputed or undisputed, present or future, in relation to any period prior to the completion date or arising on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan, except for payments contemplated under this Clause 6.3.5 shall stand permanently extinguished and the Corporate Debtor or the Resolution Applicant shall at no point of time, directly or indirectly, have any obligation, liability or duty in relation thereto.
38.	Any liabilities claims and debts, both current or future arising out of the on-going litigations as mentioned in the Information Memorandum, shall not be a liability on the Resolution Applicant or the Financial Creditors in the event of adverse outcome. However, the Hon'ble NCLT is at liberty to decide the claim of such parties by issuing notices to such parties and making them Respondents before approving the Resolution Plan. In any event, the Resolution Applicant shall not increase the total consideration proposed under this Resolution Plan, towards any

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	liabilities arising in future on account of such on-going or new litigations arising on account of any actions/deeds before the Effective Date.
39.	The Resolution Professional may not have received claims for certain liabilities of the Corporate Debtor on the IC Date whether arising on account of contractual obligation or otherwise and which are also not identified as liabilities/contingent in financial statements provided in information, memorandum. Such liabilities shall be called as “Unidentified Potential Liabilities” Without prejudice to the rights of the Corporate Debtor to challenge the validity of or any claims relating to such Unidentified Potential Liabilities, such Unidentified Potential Liabilities shall stand extinguished and fully discharged without any monetary payments
40.	Any remaining claims and debts and other dues from the Corporate Debtor to any person from the period prior to the effective date, that is not expressly provided for in this Resolution Plan, including any claims from third parties relating to any contract entered into by the Corporate Debtor including damages on account of termination of such contracts pursuant to this Resolution Plan or claims which are in the nature of recovery, disgorgement, penalty, fees or recoupment of loss, shall be deemed to have been extinguished upon approval of this Resolution Plan, without any liability whatsoever on the Corporate Debtor.
41.	Any outstanding lease amount will not be considered as breach and the lease will be continued. All the outstanding lease amount will be considered as NIL

Orders

29. On hearing the submissions made by the Ld. Counsel for the Resolution Professional, and perusing the record, we find that the Resolution Plan has been approved with 98.73% voting share. As per the CoC, the plan meets

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the requirement of being viable and feasible for revival of the Corporate Debtor. By and large, all the compliances have been done by the RP and the Resolution Applicant for making the plan effective after approval by this Bench.

30. On perusal of the documents on record supported by an affidavit of the Resolution Professional, we accord our satisfaction that the Resolution Plan as approved by the CoC, 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. We have perused the reliefs, waivers and concessions as sought and as given in Clause 10 in Part E at pages 40-45 of the Resolution Plan. While some of the reliefs, waivers and concessions sought by the Resolution Applicant come within the purview of the Code while many others fall under the power and jurisdiction of different government authorities/departments. This Adjudicating Authority has power to grant reliefs, waivers and concessions only with respect to the reliefs, waivers and concessions that are directly in relation to the Code and the Companies Act 2013 (within the powers of the NCLT), and these are granted keeping in mind the object of the Code. No reliefs, waivers and concessions that fall within the domain of other government department/authorities are granted. The reliefs, waivers and concessions that pertain to other governmental authorities/departments shall be dealt with the respective competent authorities/forums/offices, Government or Semi Government of the State or Central Government with regard to the respective reliefs, waivers and concessions. The competent authorities including the Appellate authorities may consider grant such reliefs, waivers and concessions keeping in view the spirit of the Code.
32. The Resolution Plan should 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



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of the Code, which is essentially the resolving of the insolvency of the Corporate Debtor.

33. The reliefs sought with respect to subsisting contracts/agreements can be granted, and no blanket orders can be granted in the absence of the parties to the contracts and agreements.
34. With respect to the waivers with regard to extinguishment of claims which arose Pre-CIRP and which have not been claimed are granted in terms of **Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd**,⁵ 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.

In this regard we also rely on the 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.

Thus 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 as per the law laid down by the Hon'ble Supreme Court in **Ghanashyam Mishra supra**.. 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

⁵ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.

35. With respect to the waivers sought in relation to guarantors, we seek to place reliance on the judgment of *Lalit Kumar Jain v Union of India & ors*,⁶ 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.
36. 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 and the provisions of the law as may be applicable.
37. As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.
38. In case of non-compliance of this order or withdrawal of Resolution Plan, the CoC shall have the right to forfeit the EMD amount already paid by the Resolution Applicant.
39. Subject to the observations made in this Order, the Resolution Plan in question is hereby **APPROVED** by this Bench. **The Resolution Plan shall form part of this Order.**
40. The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect.
41. The Moratorium imposed under section 14 shall cease to have effect from the date of this order.
42. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters.

⁶ 2021 SCC OnLine SC 396 decided on 21.05.2021

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43. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.
44. Liberty is hereby granted for moving any Application if required in connection with implementation of this Resolution Plan.
45. A copy of this Order is to be submitted in the Office of the Registrar of Companies, West Bengal.
46. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.
47. 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/premises/factories/documents through the Resolution Professional to finalise the further line of action required for starting of the operation.
48. **IA (IB) No. 1550/KB/2022 in the main Company Petition i.e., CP (IB) No. 1632/KB/2018** shall stand disposed of accordingly.
49. C.P. (IB) No. 1623/KB/2018 shall be listed on 16 November 2023 along with I.A.(IB) No. 1717/KB/2022.
50. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
51. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order signed on the 4th day of October 2023.

GGRB_LRA