

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

*Interlocutory Application*  
**I.A. (IB) No. 1652(KB)2023**  
**And**  
**I.A. (IB) No. 1759(KB)2023**  
**And**  
**I.A. (IB) No. 851(KB)2023**  
**In**  
*Company Petition*  
**Company P. (IB) No. 128(KB)2020**

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**IN THE MATTER OF:**  
**HDFC BANK LTD.**

**... Financial Creditor.**

**Versus**

**TAMRA DHATU UDYOG PRIVATE LIMITED**  
**(CIN: U27209WB2006PTC109251)**

**... Corporate Debtor.**

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**I.A. (IB) No. 1652(KB)2023**

*An application filed under Rule 11 of the National Company Law Tribunal Rules,  
2016.*

**IN THE MATTER OF:**

**DAMODAR DAS SINGHEE, Residing at 26 B Alipore Road, Orbit Crystal,  
Kolkata – 700027.**

**... Applicant.**

**Verses**

**MS. MAMTA BINANI,**  
**Resolution Professional of Tamra Dhatu Udyog Private Limited,**  
having Registration no.: **IBBI/PA-002/IP-N00086/2017-2018/10227,**  
having her registered office at:  
Nicco House, Second Floor, 2 Hare Street, Kolkata 700001.

**... Respondent No. 1.**

**And**

**Committee of Creditors of Tamra Dhatu Udyog Private Limited.**

**... Respondent No. 2.**

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**I.A. (IB) No. 851/KB/2023**

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

*Tamra Dhatu Udyog Private Limited*

I.A. (IB) No. 1759(KB)2023

I.A.(IB) No. 1652/KB/2023

In C.P. (IB) No. 128(KB)2020

*An Application filed under Section 60(5) of the Insolvency and Bankruptcy Code,  
2016.*

**IN THE MATTER OF:**

**M/s. Kedarnath Mining Pvt. Ltd.**

... Applicant.

**Verses**

**Mamta Binani, Resolution Professional of Tamra Dhatu Udyog Private Limited**

... Respondent No. 1.

**And**

**Damodar Das Singhee**

... Respondent No. 2.

**And**

**Tarun Kumar Singh**

... Respondent No. 3.

**And**

**Vedx International Pvt Ltd.**

... Respondent No. 4.

**And**

**Krishna Infosystems Private Limited**

... Respondent No. 5.

**And**

**Committee of Creditors through the RP of Tamra Dhatu Udyog Private Limited**

... Respondent No. 6.

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**I.A. (IB) No. 1759(KB)2023**

*An Application under Section 30(6) and 31 of the Insolvency and Bankruptcy Act,  
2016 read with Regulation 39(4) of the Insolvency and Bankruptcy (Insolvency  
Resolution Process for Corporate Persons), 2016.*

**APPROVAL OF RESOLUTION PLAN**

**IN THE MATTER OF:**

**MS. MAMTA BINANI,**

**Resolution Professional of Tamra Dhatu Udyog Private Limited,**

having Registration no.: **IBBI/IPA-002/IP-N00086/2017-2018/10227,**

having her registered office at:

Nicco House, Second Floor, 2 Hare Street, Kolkata 700001.

... Applicant.

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**Date of Pronouncement: January 01, 2024.**

**CORAM:**

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)**

**SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCE:**

**I.A. (IB) No. 1759/KB/2023 (Resolution Plan Application):**

1. Dr. (CS) Mamta Binani, Adv. – Resolution Professional in Person.
2. Ms. Ankita Dutta, PCS.

**For Applicant in I.A. 1652/KB/2023:**

1. Ms. Urmila Chakraborty, Adv.
2. Mr. Raghunath Ghose, Adv.

**For Kedarnath Mktg. P. Ltd.:**

1. Mr. Jishnu Saha, Senior Adv.
2. Mr. Shaunak Mitra, Adv.
3. Ms. A. Rao, Adv.
4. Ms. S. Tibrewal, Adv.

**For CoC in I.A. (IB) 851/KB/2023:**

1. Mr. Santosh Kumar Ray, Adv.
2. Ms. Rituparna Sanyal, Adv.
3. Ms. Swastika Sengupta, Adv.

**For the Respondent No. 2 in I.A. 851/KB/2023:**

1. Ms. Urmila Chakraborty, Adv.
2. Mr. Raghunath Ghose, Adv.

**For the Respondent No. 3 in IA (IB) No. 851/KB/2023:**

1. Mr. Ramji Srinivasan, Sr. Adv.
2. Ms. Shusna Santra, Adv.

**For the Resolution Professional in I.A. (IB) 851/KB/2023:**

1. Mr. Joy Saha, Sr. Adv.
2. Mr. Sidhartha Sharma, Adv.
3. Mr. Arjun Asthana, Adv.
4. Ms. Debarati Das, Adv.
5. Ms. Sriparna Mitra, Adv.

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**ORDER**

***Per: D. Arvind, Member (Technical)***

1. This court is congregated through hybrid mode.

**I.A. (IB) No. 1652(KB)2023**

2. Heard the Learned Counsel, Ms. Urmila Chakraborty, Adv.

***Factual Matrix:***

3. This instant application has been preferred by the Prospective Resolution Applicant, **Mr. Damodar Das Singhee**, hereinafter referred to as “**Applicant**” against the **Resolution Professional, Dr. Mamta Binani** of Tamra Dhatu Udyog Private Limited (Corporate Debtor/ CD herein) and the **Committee of Creditors** (for brevity “CoC”) of the Corporate Debtor, hereinafter referred to as “**Respondent No. 1 and 2**” respectively, seeking the following reliefs as under:

- a. *Direct the Respondents to dismiss the approval of the Resolution Plan of Mr. Tarun Kumar Singh;*
- b. *Direct the Respondent to reconsider the resolution plan of the Applicant in light of the financial consideration extended by the Applicant to the creditors of the corporate debtor;*
- c. *Any other order may be deemed fit and proper.*

***Applicant’s submissions:***

4. The Ld. Counsel, Ms. Chakraborty has argued for the Applicant herein and submitted that the CoC of the Corporate Debtor on 28<sup>th</sup> September, 2023 has approved the Resolution Plan submitted by Mr. Tarun Kumar Singh. It is further

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submitted that if the Promoter of the Corporate Debtor being an MSME, submits the Resolution Plan in the Corporate Insolvency Resolution Process of the Corporate Debtor, then the said Resolution Plan stands at a totally different footing as compared to other Resolution Plans and the promoter has a right of priority to submit resolution plan and also consideration by the CoC.

5. The Ld. Counsel for the Applicant herein has relied upon the Report of the Insolvency Law Committee of March, 2018 issued by the Ministry of Corporate Affairs, wherein it is stated that *“the rationale for this relaxation is that a business of an MSME attracts interest primarily from a promoter of an MSME and may not be of interest to other resolution applicants.”* It is contended that it shall be the duty of the CoC to take into consideration the intent and rationale of the relaxation provided for Corporate Debtor which is an MSME, at the time of consideration of the Resolution Plans placed before the CoC.
6. It is submitted that the Resolution Plan submitted by the Applicant herein being the erstwhile promoter of the Corporate Debtor must have been given priority in consideration by the CoC, even though the overall financial outlay and the plan value need to be taken into account the financial creditors as well as interest of the Corporate Debtor.
7. It is further submitted that the applicant herein being the promoter and director of the corporate debtor possess the technical and operational understanding of the corporate debtor, and is at better footing to implement the Resolution Plan and successful resolution of the Corporate Debtor. The CoC has erred in not considering these crucial aspects for successful resolution of the corporate debtor and for keeping the company as a going concern, and rejected the Resolution Plan submitted by the Applicant herein.

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***Analysis and Findings of this Adjudicating Authority:***

8. We have perused the Resolution Plan dated 30<sup>th</sup> August, 2023 along with the Corrigendum cum Clarification dated 03<sup>rd</sup> September, 2023, submitted by **Mr. Damodar Das Singhee**. We have further perused all the minutes of CoC meeting along with the voting result, annexed to this application.
9. It is evident that the Resolution Plan submitted by **Mr. Tarun Kumar Singh**, hereinafter referred to as “**Successful Resolution Applicant**”, for brevity “**SRA**” on **30.08.2023** read with his Corrigendum cum Clarification documents dated **02.09.2023** has been approved by the CoC of the Corporate Debtor with **99.93%** votes on **28<sup>th</sup> Day of September, 2023**.
10. We are of the view that it is the commercial and/or business decisions of the Financial Creditors being the member of the Committee of Creditors of the Corporate Debtor to select the best resolution plan among the plans submitted before them. In that respect, this Adjudicating Authority has very limited scope of review the decisions of the CoC of the Corporate Debtor.
11. **Precedents which we are relying upon:**
  - (a) ***K. Sashidhar vs. Indian Overseas Bank*** reported in (2019) 12 SCC 150: **MANU/SC/0189/2019** passed by Hon’ble Apex Court:

*“In the present case, however, we are concerned with the provisions of I & B Code dealing with the resolution process. The dispensation provided in the I & B Code is entirely different. In terms of Section 30 of the I & B Code, the decision is taken collectively after due negotiations between the financial creditors who are constituents of the CoC and they express their opinion on the proposed resolution plan in the form of votes, as per their voting share. In the meeting of CoC, the proposed resolution plan is placed for discussion and after full interaction in the presence of all concerned and the resolution professional, the constituents of the CoC finally proceed to exercise their option (business/commercial decision) to approve or not to approve the proposed resolution plan. In such a case, non-recording of reasons would not per se vitiate the collective decision of the financial creditors. The legislature has not envisaged challenge to*

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*the "commercial/business decision" of the financial creditors taken collectively or for that matter their individual opinion, as the case may be, on this count."*

**(Emphasis Added)**

**(b) *Kalpraj Dharamshi vs. Kotak Investment Advisors Ltd.* reported in (2021)**

**10 SCC 401: MANU/SC/0174/2021, passed by the Hon'ble Apex Court:**

*"158. It is also pointed out, that in pursuance of the order dated 5.8.2020 passed by NCLAT, CoC has approved the resolution plan of KIAL on 13.8.2020. However, since we have already held, that the decision of NCLAT dated 5.8.2020 does not stand the scrutiny of law, it must follow, that the subsequent approval of the resolution plan of KIAL by CoC becomes non-est in law. For, it was only to abide by the directions of NCLAT. We are of the view that nothing would turn on it. The decision of CoC dated 13/14.2.2019 is a decision, which has been taken in exercise of its 'commercial wisdom'. As such, we hold, that the decision taken by CoC dated 13/14.2.2019, which is taken in accordance with its 'commercial wisdom' and which is duly approved by NCLT, will prevail. Further, NCLAT was not justified in interfering with the stated decision taken by CoC."*

**(Emphasis Added)**

**(c) *Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited* reported in (2021) 9 SCC 657:**

**MANU/SC/0273/2021 by the Hon'ble Apex Court:**

*"57. It could thus be seen, that the legislature has given paramount importance to the commercial wisdom of CoC and the scope of judicial review by Adjudicating Authority is limited to the extent provided Under Section 31 of I&B Code and of the Appellate Authority is limited to the extent provided Under Sub-section (3) of Section 61 of the I&B Code, is no more res integra."*

**(Emphasis Added)**

12. Relying upon the judgments cited supra, we would infer that it is the commercial wisdom of the Committee of Creditors that is paramount and would prevail,

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unless the process of choosing a particular SRA is not as per the Code and the regulations in force.

13. We have considered the submissions of the Ld. Counsel of the applicant that the Resolution Plan submitted by an erstwhile promoter of the Corporate Debtor must have been given priority in consideration by the CoC as it comes under different footing as compared to the other plans and the promoter has right of priority to submit a plan and to consider it by the CoC also. It is further referred to the **Report of the Insolvency Law Committee (ILC) of March, 2018** issued by the Ministry of Corporate Affairs. Relevant paragraphs of the report read as under:

*“27.4 Regarding the first issue, the Code is clear that default of INR one lakh or above triggers the right of a financial creditor or an operational creditor to file for insolvency. Thus, the financial creditor or operational creditors of MSMEs may take it to insolvency under the Code. However, given that MSMEs are the bedrock of the Indian economy, and the intent is not to push them into liquidation and affect the livelihood of employees and workers of MSMEs, the Committee sought it fit to explicitly grant exemptions to corporate debtors which are MSMEs by permitting a promoter who is not a wilful defaulter, to bid for the MSME in insolvency. The rationale for this relaxation is that a business of an MSME attracts interest primarily from a promoter of an MSME and may not be of interest to other resolution applicants.”*

14. We would refer the relevant statutory provisions relating to the eligibility of resolution applicant as under:

**(i) Section 29A of the I&B Code:**

***Person not eligible to be resolution applicant. –***

*A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—*

**xxx**

**xxx**

**xxx**

*(g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place*



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*and in respect of which an order has been made by the Adjudicating  
Authority under this Code;*

xxx

xxx

xxx

**(ii) Section 240A of the I&B Code:**

***Application of this Code to micro, small and medium enterprises. -***

*(1) Notwithstanding anything to the contrary contained in this Code, the provisions of clauses (c) and (h) of section 29A shall not apply to the resolution applicant in respect of corporate insolvency resolution process<sup>2</sup>[or pre-packaged insolvency resolution process] of any micro, small and medium enterprises.*

*(2) Subject to sub-section (1), the Central Government may, in the public interest, by notification, direct that any of the provisions of this Code shall—*

*(a) not apply to micro, small and medium enterprises; or*

*(b) apply to micro, small and medium enterprises, with such modifications as may be specified in the notification.*

xxx

xxx

xxx

15. Further we would refer the judgment passed by the Hon'ble Apex Court in the case of ***Hari Babu Thota vs. Other*** in **Civil Appeal No. 4422/2023** decided on **29.11.2023** reported in **MANU/SC/1313/2023**, it is held that:

*“21. We are inclined to accept the aforesaid plea as it is quite obvious that while seeking to protect this category of industries, the disqualification is not to be incurred, especially in view of the "notwithstanding clause".*

*“22. ... Thus, to opine that it is the initiation of the CIRP proceedings which is the relevant date, cannot be said to reflect the correct legal view and thus, we are constrained to observe that the law laid down in Digambar Anand Rao Pigle (supra) case by the Tribunal is not the correct position in law and the cut off date will be the date of submission of resolution plan.”*

*“23. Thus, even on this count, the plan submitted in question will not incur the disqualification. We may also note that the aforesaid intent is reflected in the statutory provision itself that in Section 29A(c) which begins with "at the time of submission of the resolution plan".”*

**(Emphasis Added)**

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16. Thus, a co-joint reading of the ILC Report of 2018, statutory provisions and the judgment in *Hari Babu Thota* cited and referred supra, it is clear that the ‘priority’ shall be given to the promoter of the Corporate Debtor being a Micro, Small & Medium Enterprise (MSME) in terms of ‘submission of the resolution plan’ only, but no priority for consideration of the plan by the Committee of Creditors. Regarding the consideration and selecting a best plan to resolve the corporate person by way of reviving its business and to secure the interests of all its stakeholders, it is the Committee of Creditor of the Corporate Debtor which is the paramount body to exercise its ‘commercial wisdom’ and ‘business decision’ and the scope of judicial review by the Adjudicating Authority is limited to the extent as provided under Section 30(2)(b) of the I&B Code read with regulations made thereunder.
17. Hence, we find that it is not the case of the Applicant that the process employed by the CoC in selecting the best Resolution Plan in its “commercial wisdom” is flawed. When that being the case, we are of the considered view that there is no merit in this interlocutory application and accordingly, **dismiss** this application being **I.A. (IB) No. 1652/KB/2023** as not maintainable.
18. No Costs.

**I.A. (IB) No. 851/KB/2023**

19. Heard the Learned Counsels for the parties.

***Brief Facts of the case:***

20. This instant application has been preferred by one Prospective Resolution Applicant (for brevity “PRA”), M/s. Kedarnath Mining Pvt Ltd under Section 60(5) of the I&B Code, 2016 seeking following reliefs from this Adjudicating Authority as under:

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- a. Declare the Respondent Nos. 2 and 3 as ineligible to participate in the CIR Proceedings of the Corporate Debtor;*
  - b. Restrain the Committee of Creditors from considering the Resolution Plan submitted by the Respondent Nos. 2 and 3;*
  - c. Any other orders deem fit and proper.*
- 21.** The Applicant herein is one of the PRA and actively participated in the Resolution of the Corporate Debtor. It is claimed that after the negotiations completed, the applicant has come across details and documents in respect of collusion and fraudulent activities of two other PRAs, i.e., one Damodar Das Singhee (promoter of the Corporate Debtor), Respondent No. 2 and one Tarun Kumar Singh, Respondent No. 3 herein.
- 22.** Further, it is claimed that the Respondent no 2 and 3 through web of actions and companies have created a proxy group which is otherwise related to the Corporate Debtor, having intention to hijack the Resolution plan and to ensure that the promoters themselves get the control of the company.
- 23.** Further, it is alleged that Mr. Tarun Kumar Singh is nothing but plan B and alter ego the Respondent no 2 as would be evident form the application herein. The intention of the I&B Code is to ensure timely action to ensure that the Corporate Debtor vests in person who can run it and add to economy of the country.
- 24.** Further, it is alleged that it was never the intention of the statue that the Promoters be given an opportunity to defraud the banks and then take over the Corporate Debtor through themselves in garb of MSME and/or through a proxy representative. If the acts of collusion of the Respondent no 2 and 3 along with other officials is not nipped in the bud the very purpose of the I&B Code would be defeated and lead to promoters themselves defaulting and getting back the assets at a haircut at the cost of the public money.

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***Applicant's Submissions:***

25. The Learned Counsel for the applicant submits that Mr. Tarun Kumar Singh is a related party of the Corporate Debtor and there has been no due disclosure of Related Party by the Mr. Damodar Das Singhee (Respondent nos. 2) and Mr. Tarun Kumar Singh (Respondent No. 3) while participating in the CIRP of the Corporate Debtor in compliance of the Mandatory Regulation 39(1)(c) of CIRP Regulation, 2016, as set out in the RFRP dated 3rd September 2023.
26. The Learned Counsel for the Applicant further submits that there web transaction of the management led by Mr. Damodar Das Singhee (Respondent No. 2), who alienated two of the group companies and created an independent corporate structure which is led by Mr. Tarun Kumar Singh in order to clandestinely takeover the Corporate Debtor through proxy in the CIRP.
27. The Ld. Counsel contends that from the records downloaded from the website of MCA, it transpired that the Promoters of Tamra Dhatu Udyog controlled following companies Pvt Ltd. such as:
  - a. Tamra Dhatu Udyog Pvt Ltd.
  - b. Sumo Metallic Pvt Ltd (Since Merged with Tamra Dhatu Udyog Pvt Ltd)
  - c. Tamra Limited
  - d. Zalco Metals DMCC
  - e. Krishna Infosystems Pvt Ltd
  - f. Vedx International Limited
  - g. Gagan Suppliers Pvt. Ltd.
28. The Ld. Counsel brought to our attention particularly the shareholding of two companies namely Vedx International Limited and Krishna Infosystems Pvt Ltd.
29. It has been pointed out that the movement of shareholding, change of directors and the registered office of Vedx International Limited (at Page 20 of the

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Application), to demonstrate the link between the SRA and Corporate Debtor, as under:

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**a. Movement of shareholding of Vedx**

Shareholder at Incorporation			Shareholding as on 21/06/2017			Shareholding as on 31/12/2019	
Ram Kumar Singhee	5000		Ram Kumar Singhee	5000	Transferred on 31/12/2019	Vivek Kumar Soni	100
Amol Ashwani Mehra	5000	Transferred on 21/06/2017	Tarun Kumar Singh	5000		Tarun Kumar Singh	9900

**b. Change of Directors of Vedx**

SNo	NAME	Date of Appointment/Resignation	Date of Filing of Form- DIR-12 with MCA
1	Ram Kumar Singhee	Incorporation	
2	Amol Ashwani Mehra	Incorporation	
3	Amol Ashwani Mehra ( Resigned)	21/06/2017	13/07/2017
4	Tarun Kumar Singh ( Appointed)	21/06/2017	13/07/2017
5	Vivek Kumar Soni ( Appointment)	27/11/2019	26/06/2020
6.	Ram Kumar Singhee ( Resignation)	02/12/2019	29/06/2020
7.	Vivek Kumar Soni ( Removed on Death)	30/03/2022	29/11/2022
8.	Ayush Taparia ( Appointed)	30/09/2022	30/10/2022

**c. Registered office of Vedx**

Sl No	Registered office of Vedx	Connection with CD	Date of Change
1.	402-B1, 4 <sup>th</sup> Floor, Marathon Innova, Ganpatrao Kadam Marg, Lower Parel Mumbai	Property owned by the CD	
2.	101, Meadows, Sahar Plaza, Andheri Kurla Road, J B Nagar, Andheri 400059	The CD is the Lessee of the said property and rented the same to Vedx rent free	08/04/2015

Copies of the MGT- 7 filed by Vedx are enclosed herewith marked with **Letter "F"**.

Copies of relevant DIR-12 filed by Vedx are enclosed herewith marked with **Letter "G"**.

Copies of INC 22 filed by Vedx is enclosed herewith marked with **Letter "H"**.

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30. Further, it has been pointed out about the movement of shareholding, change of directors and the registered office of Krishna Infosystems Pvt Ltd, (at Page 22 of the Application) in the Corporate Debtor's owned premises to demonstrate the link between the SRA and Corporate Debtor, as under:

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**B. Krishna Infosystems Pvt Ltd Limited ( In Short Krishna)**

The shareholding of the company was transferred to one Tarun Kumar Singh and Tarun Kumar Singh was inducted as a Director while Damodar Singhee and Ram Singhee resigned as Directors from the company. The movement of the shares and other details are as follows:

**a. Movement of shareholding of Krishna**

SNo	Transferor	Transferee	No of shares	Date of transfer as per annual return
1	Mrs. Madhu Singhee	Mr. Tarun Kumar Singh	5000	23.03.2022
2	Mr. Damodar Das Singhee	Mr. Vivek Kumar Soni	5000	23.03.2022
3	Mrs. Sushma Singhee	Mr. Tarun Kumar Singh	10000	23.03.2022

**b. Change of Directors of Krishna**

S. No	NAME	Date of Appointment/Resignation	Date of Filing of Form- DIR-12 with MCA
1	Tarun Kumar Singh (Appointment)	23.03.2022	17.06.2022
2	Vivek Kumar Soni (Appointment)	23.03.2022	17.06.2022
3	Damodar Das Singhee (Resignation)	24.03.2022	12.04.2022
4	Ram Kumar Singhee (Resignation)	24.03.2022	12.04.2022
5	Ayush Taparia (Appointment)	30.09.2022	07.12.2022

**c. Registered office of Krishna**

Sl No	Registered office of Krishna	Connection with CD
1.	2, N. C. DUTA SARANI SAGAR ESTATE, 7th FLOOR , R.NO.709, Kolkata, West Bengal	Property owned by the CD and it is also the registered office of the CD

Copies of the MGT- 7 filed by Krishna are enclosed herewith marked with Letter "K".

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31. It has been further pointed out that one Mrs. Madhu Singhee on 23.03.2022 transferred 5,000 shares to Tarun Kumar Singh and on Mrs. Sushma Singh transferred 10,000 shares to Mr. Tarun Kumar Singh on 23.03.2022.
32. Further, it is brought to our attention that the registered office of Vedx International Limited and Krishna Infosystems Pvt Ltd. is in a property owned by the Corporate Debtor and Vedx International Limited and Corporate Debtor shared the same office premises. It is also submitted that the companies shared one common email id which later changed in 2022. Thus, it is established that all the companies are under control of one management which exercised the management of business and control of these companies.
33. Further, it is submitted that the original promoters of the two companies, Vedx International Limited and Krishna Infosystems Pvt Ltd. are the promoters of the corporate debtor. The shares of above companies were transferred to the Tarun Kumar Singh in order to bypass the requirement under section 29A of the I&B Code and allowing him to participate in the bid in the CoC.
34. The Ld. Counsel further submits that though promoters are themselves participating in CIRP of Corporate Debtor, Mr. Tarun Kumar Singh was the backup created to ensure that the assets of the Corporate Debtor remained within the control of the management of Corporate Debtor.
35. The Ld. Counsel further pointed out that only in the balance sheet for the year 2022 of the Corporate Debtor, they were not shown as “related party” as on 31.03.2021.
36. He submits that such a statement proves before the specific date, i.e., 31.03.2021 they were a “related party”.
37. Ld. counsel relying upon the judgment passed in ***Arcelormittal India Private Limited v. Satish Kumar Gupta***, reported in (2019) 2 SCC 1. The relevant paras are as under:

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*“57. It is important for the competent authority to see that persons, who are otherwise ineligible and hit by sub-clause (c), do not wriggle out of the proviso to sub-clause (c) by other means, so as to avoid the consequences of the proviso. For this purpose, despite the fact that the relevant time for the ineligibility under subclause (c) to attach is the time of submission of the resolution plan, antecedent facts reasonably proximate to this point of time can always be seen, to determine whether the persons referred to in Section 29A are, in substance, seeking to avoid the consequences of the proviso to sub-clause (c) before submitting a resolution plan. If it is shown, on facts, that, at a reasonably proximate point of time before the submission of the resolution plan, the affairs of the persons referred to in Section 29A are so arranged, as to avoid paying off the debts of the non-performing asset concerned, such persons must be held to be ineligible to submit a resolution plan, or otherwise both the purpose of the first proviso to sub-section (c) of Section 29A, as well as the larger objective sought to be achieved by the said sub-clause in public interest, will be defeated.”*

**xxx**

**xxx**

**xxx**

*“60. When we come to sub-clause (j), a “connected person” is defined as meaning the three categories of persons mentioned in the three sub-clauses therein. The first sub-clause of Explanation 1 again takes us back to the same three definitions of “promoter”, “management” and “control” of the resolution applicant. Under sub-clause (ii), again, a “connected person” is a person who is either the promoter, or in management or control, of the business of the corporate debtor during implementation of the resolution plan. And under sub-clause (iii), holding companies, subsidiary companies and associate companies as defined under the Companies Act, 2013, or related parties of persons referred to in clauses (1) and (2) also become connected persons.”*

**(Emphasis Added)**

- 38.** He also brought to our attention on Regulation 39(1) (c) of CIRP Regulation, 2016, envisaging that *the undertaking an undertaking by the prospective resolution applicant that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to*



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*continue in the corporate insolvency resolution process, forfeit any refundable deposit, and attract penal action under the Code.*

39. He has also relied on two other judgments of the Hon'ble NCLAT i.e.,
- i. ***Naushad Ahmed v. Sudershan Gupta reported in 2022 SCC OnLine NCLAT 2403*** and
  - ii. ***T. Johnson, of St. John Freight Systems Limited v. St. John Freight Systems Limited reported in 2020 SCC OnLine NCLAT 867.***

to demonstrate that Corporate Debtor has obtained MSME Registration after the commencement of CIRP, thus the Corporate Debtor is disqualified, the benefit of being a MSME for the purpose of section 29A of the I&B Code.

***Submissions of the Resolution Professional of Tamra Dhatu Udyog Pvt Ltd.:***

40. The Ld. Sr. Counsel for the Resolution Professional of the Corporate Debtor After the judgment of the Hon'ble Supreme Court of India in the case of ***Hari Babu Thota vs. Other*** in **Civil Appeal No. 4422/2023** decided on **29.11.2023** reported in **MANU/SC/1313/2023:**

*“MSME certificate obtained after the commencement of the CIRP but before the submission of resolution plan would not bar the resolution applicant for the purpose of section 29A of the I&B Code and consequently the resolution applicant will be eligible to submit the resolution plan.”*

**(Emphasis Added)**

41. Thus, this issue is settled that a corporate entity can obtain an MSME registration before the submissions of Resolution Plan and that would not bar the entity to be a resolution applicant under the provisions of Section 29A of the I&B Code.
42. It is further submitted bald allegation of “related party” cannot be made without any proof. “Related party” should be proved by pointing out, under which sub-clause of Section 5(24) of the I&B Code, is attracted.

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43. Further, it is submitted that the opportunity to all the PRAs were given for raising objections before the plan was put to vote during that period. The applicant herein has not challenged or raised any objection about the eligibility of the PRAs who submitted resolution plans including the eligibility of successful SRA. Having not challenged this before RP during the CIR Process when the opportunity was given, the applicant cannot now put up a challenge at the time of approval of resolution plan.
44. It is further submitted that one of the PRA challenged Damodar Singhee's eligibility and the same was rejected by the NCLT, Kolkata Bench, holding that Damodar Singhee is not disqualified under Section 5(24)(a) of the I&B Code. It is further stated that this order has been challenged before the Hon'ble NCLAT, however, no stay of the order has been obtained by the party.
45. Therefore, he submits that no case has been made out by the applicant for successful resolution applicant to be treated as a "related party" within Section 5(24) of the I&B Code.
46. The very fact is that Mr. Damodas Singhee has also objected to the plan submitted by the Successful Resolution Applicant, goes to prove that Mr. Tarun Kumar Singh is not back up as alleged.

***Submissions of the Ld. Counsel for the SRA:***

47. Ld. Counsel for the SRA submits that the plan has been approved by the CoC with **99.93%** voting share. The applicant in this case is a PRA. He has no vested right to claim that his plan should be approved. Scope of his application should be limited to consider or otherwise, its resolution plan before the CoC and the applicant has no locus to challenge the eligibility of the SRA, as it is the job of the Resolution Professional to take care of all the compliances relating to the

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plans including the verification of eligibility of the PRAs before those plans are put for voting.

48. He submits that in any event successful resolution applicant has nothing to do with the Corporate Debtor. It is Ram Kumar Singhee, who transferred shares in Vedex and that too before three years of commencement of the CIRP. Even in Krishna, the same was transferred by Ms. Sushama Singhee to Tarun Kumar Singh on 23/02/2022.
49. He further submits that the applicant has not been able to provide or prove under which sub-clause of section 5(24) of the I&B Code, Tarun Kumar Singh, the successful resolution applicant is related to the Corporate Debtor. Common E-mail ID., common office etc. are not relevant for determination of relationship under section 5(24) of the I&B Code. It is not uncommon to have several offices in the same building and that cannot be a basis for claiming someone as related to another party.
50. In any event, he submits that the applicant has no locus to file this application as a disgruntled unsuccessful resolution applicant.

***Analysis and findings:***

51. It is not in dispute between the parties during the course of hearing that by virtue of Hon'ble Supreme Court's judgment referred in the case of ***Hari Babu Thota vs. Other*** in **Civil Appeal No. 4422/2023** decided on **29.11.2023** reported in **MANU/SC/1313/2023** that the MSME certificate obtained after commencement of the CIRP but before submission of Resolution Plan would not make a resolution applicant to be ineligible under section 29A of the I&B Code. Therefore, Mr. Damodar Das Singhee is eligible to submit resolution plan. However, his resolution plan was rejected because he was H3 bidder and not because he was ineligible to participate. When he is eligible to participate, the

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question of creating back up through Tarun Kumar Singh, successful resolution applicant cannot arise and therefore we dismiss this allegation.

52. In any event, we will deal with the submissions made by the Ld. Counsel for the Applicant relating to the claim that SRA being a related party to the Corporate Debtor.
53. It has to be shown that Tarun Kr. Singh, successful resolution applicant is a related party to the Corporate Debtor, in terms of Section 5(24) of the I&B Code
54. The applicant relies on section 5(24)(h) and 5(24)(m)(i) of the I&B Code to contend that SRA is a related party to the Corporate Debtor.
55. For the purpose of understanding meaning of “related party” in relation to corporate debtor, we have to look both sections 5(24)(h) and 5(24)(m)(i) of the I&B Code. Section 5(24)(h) defines “related party” in relation to Corporate Debtor means any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act. Section 5(24)(m)(i) is concerned, it defines any person who is associated with the corporate debtor on account of participation in policy making processes of the corporate debtor would be treated as “related party”.
56. Coming to section 5(24)(h) of the Code, the applicant has not been able to show that it is based on advice of Mr. Tarun Kumar Singh (SRA), the Corporate Debtor is accustomed to act. No evidence whatsoever has been placed on record to substantiate the claim that the SRA is a related party under section 5(24)(h) of the Code.
57. Now under section 5(24)(m)(i) of the Code, it would be required to show that successful resolution applicant is associated with the Corporate Debtor on account of participating in any policy making process of the Corporate Debtor. Nothing on record is produced to show that SRA was involved in or participating in policy making process of the Corporate Debtor. Mere shareholding in the group company and share transfer by the promoters of the Corporate Debtor in

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some other group company to SRA would not make him “related party” to Corporate Debtor. If someone is called as a “related party” with respect to section 5(24) of the Code, it has to be demonstrated and/or clearly proved that he is covered under various sub-clause of the section 5(24)(a) to (m) of the I&B Code, which is not made out in this case. Therefore, we have no hesitation in dismissing this application, as not maintainable.

- 58.** In terms of forgoing discussion, we **dismiss** this application being **I.A. (IB) 851/KB/2023.**
- 59.** No Costs.

**I.A. (IB) No. 1759(KB)2023 (Resolution Plan)**

- 60.** Now we proceed to consider the Resolution Plan filed before this Adjudicating Authority through **I.A. (IB) No 1759/KB/2023.**
- 61.** Heard the Resolution Professional (hereinafter referred to as “RP”), Dr. Mamta Binani of the Tamra Dhatu Udyog Private Limited, Corporate Debtor herein and perused the Resolution Plan as approved by the Committee of Creditors, for brevity “CoC”.

**Preliminary**

- 62.** This instant application is filed under Section 30(6) and 31 of the Insolvency and Bankruptcy Act, 2016 (for brevity “I&B Code”) read with Regulation 39(4) of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons), 2016 (for brevity “CIRP Regulations”) by the **Ms. Mamta Binani**, Resolution Professional of **Tamra Dhatu Udyog Private Limited**, Corporate Debtor herein, seeking approval and final sanction from this Adjudicating Authority of the Resolution Plan as approved by the Committee of Creditors,

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(“CoC”), in the matter of Corporate Insolvency Resolution Process of the Tamra Dhatu Udyog Private Limited.

- 63.** The Resolution Professional (RP) of the Corporate Debtor submits that the Resolution Plan submitted by one **Mr. Tarun Kumar Singh**, hereinafter referred to as “**Successful Resolution Applicant**”, for brevity “**SRA**” on **30.08.2023** read with his Corrigendum cum Clarification documents dated **02.09.2023** as approved by the CoC of the Corporate Debtor with **99.93%** votes on **28<sup>th</sup> Day of September, 2023**. Copy of the revised and/or enhanced Resolution Plan submitted by Mr. Tarun Kumar Singh dated 30.08.2023 along with Corrigendum cum Clarification documents dated 02.09.2023, **is annexed at page 99-216 as Annexure 1 Colly to this Application.**
- 64.** The RP of the Corporate Debtor further submits that the Letter of Intent (for brevity “LoI”) has been issued on 28.09.2023 by the RP on behalf of the CoC of Tamra Dhatu Udyog Private Limited (Corporate Debtor) indicating that the SRA shall have to unconditionally accept the LoI and along with the acceptance of the LoI provide unconditional Performance Security in terms of Part 4 of Request for Resolution Plans (RFRP), within seven days ending on 05.10.2023. The SRA, Mr. Tarun Kumar Singh unconditionally accepted the LoI on 30.09.2023 and in terms of the RFRP, the SRA has furnished by depositing the said unconditional Performance Security amounting to Rs. 10,06,00,000.00/- (Ten Crore Six Lakh Only), i.e., an amount equivalent to 10% of the Resolution Fund drawn/given in favour of the Corporate Debtor, by way of a Demand Draft dated 03.10.2023 drawn in favour of the Corporate Debtor. The Copy of the LoI dated 28.09.2023 issued by the RP as unconditionally accepted by SRA **is annexed at page 679-682 as Annexure “27”** and the Copy of the Demand Draft dated 03.10.2023 **is annexed at Page 683 as Annexure “28” to the Application.**
- 65.** It is submitted that the CIR Process was initiated on 25.05.2022. The date of expiry of 180 days of CIR Process was on 21.11.2022. the date of expiry of

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extended period of CIR Process on 06.10.2023. The date of approval of Resolution Plan by CoC is on 28.09.2023. the Date of filing the Resolution Plan with this Adjudicating Authority is on 03.10.2023.

**Particulars of the Corporate Debtor**

66. Tamra Dhatu Udyog Private Limited, Corporate Debtor herein, is a private company, limited by its shares, registered with the Registrar of Companies, West Bengal, bearing CIN: U27209WB2006PTC109251, having registered office at 2, N.C. Dutta Sarani, Sagar Estate, 7th Floor, Room No.709, Kolkata – 700001, West Bengal.

**Initiation of Corporate Insolvency Resolution Process of Tamra Dhatu Udyog**

**Private Limited**

67. Vide an Order dated **May 25, 2022**, this Adjudicating Authority has admitted the application filed under Section 7 of the I&B Code by HDFC Bank (Financial Creditor) for initiating the Corporate Insolvency Resolution Process, for brevity “CIR Process” against Tamra Dhatu Udyog Private Limited and appointed Ms. Mamta Binani as the Interim Resolution Professional, in short “IRP” to carry out her functions as contemplated under the I&B Code and to constitute the Committee of Creditors (CoC).

**Constitution of CoC**

68. The IRP communicated the commencement of CIR Process of the Directors of the Corporate Debtor on **25.05.2022** to take immediate charge of the company. Further, the IRP made the public announcement on 27.05.2022 in *Business Standard* (in English-All India Edition), *Aajkal* (in Bengali-West Bengal Edition)

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and *Dainik Bhaskar* (in Hindi-Rajasthan Edition) to invite claims from the creditors of the Corporate Debtor be submitted by 08.06.2022.

- 69.** In the First meeting of the CoC was held dated **June 23, 2022** at 11:30 AM. The IRP constituted the Committee of Creditors on receiving the claims submitted by the creditors of the Corporate Debtor that consisted of Eleven (11) Financial Creditors as the Members of the CoC as under:

S.N.	Name of the Members of the CoC	Voting Share (%)
<b>1.</b>	Bank of Baroda	28.20
<b>2.</b>	Indian Bank	38.00
<b>3.</b>	Punjab National Bank	10.40
<b>4.</b>	Union Bank of India	14.80
<b>5.</b>	Anisha Estate & Finance Pvt Ltd	0.10
<b>6.</b>	Axis Bank Limited	3.70
<b>7.</b>	Gateway Leasing Pvt Ltd	0.10
<b>8.</b>	HDFC Bank Limited	4.30
<b>9.</b>	Infosoft Global Private Limited	0.20
<b>10.</b>	Med Biogenex Private Limited	0.10
<b>11.</b>	Patni Financial Services Pvt Ltd.	0.10

- 70.** Further, on 04.07.2022, by requisite majority the IRP was appointed as the Resolution Professional (RP).
- 71.** Total number of meetings of CoC held is 21 and on the 20th CoC meeting held on **28.09.2023** the Resolution Plan submitted by the Successful Resolution Applicant (SRA) has been approved. The CoC meetings have been held during the CIRP Period are as under:

Particulars	Date of CoC Meeting
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1 <sup>st</sup> CoC Meeting	23.06.2022
2 <sup>nd</sup> CoC Meeting	05.07.2022
3 <sup>rd</sup> CoC Meeting	28.07.2022
4 <sup>th</sup> CoC Meeting	22.08.2022
5 <sup>th</sup> CoC Meeting	19.09.2022
6 <sup>th</sup> CoC Meeting	18.10.2022
7 <sup>th</sup> CoC Meeting	21.11.2022
8 <sup>th</sup> CoC Meeting	06.12.2022
9 <sup>th</sup> CoC Meeting	17.12.2022
10 <sup>th</sup> CoC Meeting	02.01.2023 adjourned on 10.01.2023 and 16.01.2023.
11 <sup>th</sup> CoC Meeting	06.02.2023
12 <sup>th</sup> CoC Meeting	17.04.2023
13 <sup>th</sup> CoC Meeting	20.04.2023
14 <sup>th</sup> CoC Meeting	04.05.2023
15 <sup>th</sup> CoC Meeting	11.05.2023
16 <sup>th</sup> CoC Meeting	04.07.2023
17 <sup>th</sup> CoC Meeting	11.08.2023
18 <sup>th</sup> CoC Meeting	21.08.2023
19 <sup>th</sup> CoC Meeting	28.08.2023
20 <sup>th</sup> CoC Meeting	31.08.2023 continued after adjournment on 01.09.2023, 02.09.2023 and 04.09.2023.

72. Upon post-receipt of further information or documents in the matter, the RP has updated the list of the creditors owing to further communications received from stakeholders. The list of Creditors was lastly updated and placed on record with this Adjudicating Authority as the List of Creditors Version 5 was drawn on 23.09.2022. After the closure of e-voting on the Resolution Plans but just before

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filing of this application for approval of Resolution Plan, the Additional Director General, Directorate of Revenue Intelligence, Kolkata Zonal Unit vide its email correspondence dated 03.10.2023, submitted its further clarifications along with the judgment of the Hon'ble Supreme Court with a request to update and admit its claim which was hitherto lying as contingent claim in the last drawn List of Creditors, Version 5.0. The Resolution Professional after taking the same on record on due verification and clarification from the officers of the Corporate Debtor, updated and admitted the same along with the latest updates on the claims that still lies uncondoned/rejected and consequently drew up the List of Creditors, Version 6.0 dated 03.10.2023. The list final position of the Financial Creditors reflecting the amount of admitted claim, percentage of exposure in terms of share in the CoC. i.e., voting share is here under:

SN	Name of the Members (Financial Creditors) of the CoC	Amount of Claims admitted (in INR)	Voting Share (%)
<b>Secured Financial Creditor</b>			
<b>1.</b>	Bank of Baroda	1,50,00,39,847.29	26.79
<b>2.</b>	Indian Bank	1,99,58,91,633.34	35.64
<b>3.</b>	Punjab National Bank	54,78,47,479.45	9.78
<b>4.</b>	Union Bank of India	77,90,14,821.37	13.91
<b>Unsecured Financial Creditors</b>			
<b>5.</b>	Anisha Estate & Finance Pvt Ltd	50,69,041.00	0.09
<b>6.</b>	Axis Bank Limited	19,57,85,402.16	3.50
<b>7.</b>	Gateway Leasing Pvt Ltd	40,84,384.00	0.07
<b>8.</b>	HDFC Bank Limited	22,73,61,179.29	4.06
<b>9.</b>	Infosoft Global Private Limited	81,31,178.00	0.15
<b>10.</b>	Med Biogenex Private Limited	50,28,767.00	0.09

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<b>11.</b>	Patni Financial Services Pvt Ltd.	51,19,041.00	0.09
<b>12.</b>	Pionus Traders Private Limited	32,42,49,366.20	0.04
<b>13.</b>	Union Bank of India, DIFC Branch, Dubai	20,00,000.00	5.79
<b>Total</b>		<b>5,59,96,22,140.10</b>	<b>100</b>

**Collation of Claims**

**73.** The amounts claimed and verified/ admitted are summarised below:

<b>SN</b>	<b>Category of Claims</b>	<b>Claimed amount (In Rs. Crore)</b>	<b>Admitted Amount (In Rs. Crore)</b>
<b>1.</b>	Financial Creditors	564.52	559.96
	- Secured Financial Creditors	483.12	482.28
	- Unsecured Creditors	81.40	77.68
<b>3.</b>	Operational Creditors (Other than workmen and employee dues and Statutory Dues	120.65	62.00
<b>4.</b>	Statutory Dues	18.93	1.53
<b>5.</b>	Workmen and Employee dues	NIL	NIL
<b>6.</b>	Other Creditors	NIL	NIL
<b>Total</b>		<b>704.10</b>	<b>623.50</b>

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**CIR Process and Compliance**

74. The Resolution Professional submits that on 11.07.2022, she has appointed two Registered valuers to determine the fair value and the liquidation value of the Corporate Debtor in accordance with the Regulation 35 of the CIRP Regulations.
75. Further, the RP has appointed M/s Kansal Single & Associates (Chartered Accountants) as the transaction auditor to assist RP in the task forming an opinion as per the provisions of Regulation 35A of the CIRP Regulations that whether the Corporate Debtor has been subjugated to any transaction covered under Sections 43, 45, 50 or 66 of the I&B Code, 2016.
76. Further, the RP submits that in terms of the provisions of Section 25(2)(h) of the I&B Code read with regulation 36A(1) of the Insolvency and Bankruptcy Board, (Insolvency Resolution Process for Corporate Person) Regulations, 2016, the RP has published the invitation of for Expression of Interest (“EoI”) i.e., “Form G” on 03.08.2022 by mentioning the last date of receipt of the EoIs on 19.08.2022 in the following newspapers:
- a) *Business Standard* (All Edition) in English Languages;
  - b) *Aajkal* (All West Bengal) in Bengali Languages;
  - c) *Dainik Bhaskar* (All Rajasthan) in Hindi Languages;
  - d) *Dainik Bhaskar* (All Haryana) in Hindi Languages;
  - e) *Dainik Bhaskar* (Delhi) in Hindi Languages;
77. The Applicant herein as received the **EoIs** from the 24 Prospective Resolution Applicants (PRAs). Vide an Order dated 30.09.2022 passed by the Hon’ble NCLAT in Company Appeal (AT) (Ins.) No. 1207 of 2022, a new PRA namely “Amit Auto Credit Company Private Limited” allowed to submit the EoI with 2 days.
78. The Resolution Professional up to the last date of submission of Resolution Plans i.e., 19.11.2022, received the Resolution Plans from the following five PRAs that:

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- a) Damodar Das Singhee
  - b) Kedarnath Mining Private Limited
  - c) Laser Power & Infra Private Limited
  - d) Tarun Kumar Singh
  - e) Techno Mercantile private Limited
- 79.** The RP submits that the members of the CoC have time to time requested the RP to extend the voting lines as the CoC felt constrained to vote due to ongoing litigations. On 04.05.2023, as instructed by the COC, the RP has sent an email to all five PRAs, requesting them to submit the Revised Financial Offer in a sealed envelope/ password protected pdf by 10.05.2023 by 6:00PM.
- 80.** Pursuant to the email dated 04.05.2023, Revised Financial Offers were received in sealed envelope from the three Resolution Applicants as under:
- a) Damodar Das Singhee
  - b) Kedarnath Mining Private Limited
  - c) Tarun Kumar Singh
- 81.** Vide an Order dated 25.08.2023, in I.A. (IB) No. 1459/KB/2023, the Adjudicating Authority allowed allow all the Participating Resolution Applicants by giving a last, equal and fair opportunity to submit their revised and/or enhanced resolution plans to the RP of the Corporate Debtor and if required fresh timelines may be provided to all the Participating Resolution Applicants who wish to enhance and/or revise their resolution plans. In light of the order dated 25.08.2023, fresh timelines were intimated to all five Resolution Applicants as approved by the CoC. That on 30.08.2023, following Resolution Applicants had submitted their revised and/or enhanced Resolution Plans:
- a) Damodar Das Singhee
  - b) Kedarnath Mining Private Limited
  - c) Tarun Kumar Singh
  - d) Techno Mercantile private Limited

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82. That the aforesaid revised and/or enhanced Resolution Plans were opened in the 20th meeting of CoC held on 31.08.2023. The RP confirmed that based on their assessment and due-diligence exercise, the revised and/or enhanced Resolution Plans as submitted by the five Resolution Applicants are all in compliance with the requirements of the provisions of Section 30(2) of the Insolvency and Bankruptcy Code, 2016 (the Code) read with Section 29A of the Code and IBBI (Insolvency Resolution Process for Corporate Persons) Regulations (CIRP Regulations).
83. That the RP has further submitted that certificates of compliance dated 02.09.2023, under Section 30(2) of the I&B Code, for all the five Resolution Plans to the CoC. The CoC in its 20<sup>th</sup> meeting held on 02.09.2023 carried out the evaluation exercise.
84. That based on the documents submitted by Resolution Applicants, the CoC in details discussed and deliberated on feasibility and viability of each of the Resolution Plans as submitted by each of the Resolution Applicant and after due consideration, the CoC advised the RP to proceed to vote on the revised and/or enhanced Resolution Plans along with the existing Resolution Plan of Laser Power & Infra Private Limited. It was also taken into account that if any of the members of the CoC have already exercised their voting, they would have the liberty given by law to modify their votes, till the time of closure of the voting lines. Reference was laid to omission of Regulation 26(2) of the CIRP Regulations which read as, '*Once a vote on a resolution is cast by a member of the committee, such member shall not be allowed to change it subsequently*'.

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85. It is submitted that the “Resolution Plan” submitted by Mr. Tarun Kumar Singh dated 30.08.2023 read with Corrigendum cum Clarification document dated 20.09.2023 was **approved** by the CoC with **99.93%** voted on **28.09.2023** and accordingly **Mr. Tarun Kumar Singh** was declared as the “**Successful Resolution Applicant**” (for brevity “SRA”).

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

86. The Applicant has submitted that in terms of Regulation 39(4) the Insolvency and Bankruptcy Code (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, she has filed a Compliance Certificate in prescribed form i.e., Form “H” dated 03.10.2023.
87. The Applicant has contended that the Resolution Applicant has met the criteria approved by the CoC having regard to the complexity and scale of operations of the business of the Corporate Debtor in terms of Section 25(h)(2) of the I&B Code.
88. Further is it submitted that the Resolution Applicant is eligible to submit a resolution plan in terms of Section 29A of the I&B Code and accordingly, an affidavit has also been furnished by the SRA.
89. It is further submitted that the Resolution Applicant has submitted an affidavit stating its eligibility in terms of Section 30(1) of the I&B Code, 2016.
90. Further, it is submitted that details of various compliances as envisaged within the I&B Code and the CIRP Regulations to which a Resolution Plan should adhere to, which is reproduced.
91. It is further submitted that in terms of **Section 30(2) of the I&B Code, 2016**, (as amended vide Amendment dated August 16, 2019) the Resolution Plan provides the compliance as under:

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SN	Sections of the I&B Code and/or the Regulations of the CIRP Regulations, 2016	Requirement	How dealt with in the plan
<b><i>Submission of Resolution Plan in terms of the provisions of the I&amp;B Code, 2016.</i></b>			
a.	Section 25(2)(h)	The Resolution Applicant meets the criteria approved by the CoC having regards to the complexity and scale of the operations of the business of the Corporate Debtor.	In Preface part of the Resolution Plan at Page 4.
b.	Section 29A	The Resolution Applicant is eligible to submit the Resolution Plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority.	Affidavit has been provided by the Resolution Applicant along with the Resolution Plan.
c.	Section 30(1)	The Resolution Applicant has submitted affidavit stating it is eligible.	Affidavit has been provided by the Resolution Applicant along with the Resolution Plan.



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d.	Section 30(2)	The Resolution Plan provides for the payment of insolvency resolution process.	Clause 3.1 (a) at Page 21 of the Plan provided.
e.	Section 30(2)	The Resolution Plan provides for the payment to the Operational Creditors.	Clause 3.1 (b), (c), and (d) at Page 22-27.
f.	Section 30(2)	The Resolution Plan provides for the payment to the financial creditors who did not vote in favour of the Resolution Plan.	Clause 3.1(e)(ix) at page 27 of the Plan.
g.	Section 30(2)	The Resolution Plan provides for the management of the affairs of the Corporate Debtor.	Clause 9.2 at Page 56 of the Plan.
h.	Section 30(2)	The Resolution Plan provides for the implementation and supervision of the Resolution Plan.	Clause 8 at Pages 50-52, Schedule – 1 at Page 72, Clause 9.1 at Page 53-56, read with corrigendum dated 02.09.2023 of the Plan.
i.	Section 30(2)	The Plan is not in contravention of provisions of any applicable law.	Clause 10 at Page 57 of the Plan.
j.	Section 30(4)	The Resolution Plan is feasible and viable according the Committee of Creditors of the Corporate Debtor.	In terms of the minutes recorded on the 20 <sup>th</sup> CoC

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			meeting, this requirement is not applicable.
k.	Section 30(4)	The Resolution Plan has been approved by the CoC with 66% voting share.	In terms of the minutes recorded on the 20 <sup>th</sup> CoC meeting, the CoC has approved the Resolution Plan by 99.93% voting share. Summery of the decision taken in 20 <sup>th</sup> CoC meeting is annexed at Page 670 as Annexure “24” to this Application.
l.	Section 31(1)	The Resolution Plan has provisions for its effective implementation of the Plan, according to the CoC.	Schedule -1 at Page 72 of the Plan.
<b><i>Mandatory contents of the Resolution Plan in terms of the Regulations of CIRP Regulations, 2016.</i></b>			
m.	Regulation 38(1)	The amount due to the Operational Creditors under the Resolution Plan has been given priority in payment over financial creditors.	Clause 3.1 (b), (c), and (d) at Page 22-27 of the Plan.

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n.	Regulation 38(1A)	The Resolution Plan includes a Statement as to how it has dealt with the interests of all the stakeholders.	Clause 3 at Pages 20-39 to the Plan.
o.	Regulation 38(1B)	The Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any Resolution Plan under the I&B Code, 2016.	Clause 10 at Page 57 of the Plan.
p.	Regulation 38(1B)	If so, the Resolution Applicant has submitted the statement giving the details of such non-implementation.	Clause 10 at Page 57 of the Plan.
q.	Regulation 38(2)	The Resolution Plan provides the terms of the plan and its implementation schedule.	Schedule 1 at Page 72-74 of the Plan.
r.	Regulation 38(2)	The Resolution Plan provides the management and control of the business of the corporate debtor during its terms.	Clause 9 at Page 53-56 of the Plan read with corrigendum dated 02.09.2023.
s.	Regulation 38(2)	The Resolution Plan provides adequate means for supervising its implementation.	Clause 9 at Pages 53-56 of the Plan read with corrigendum dated 02.09.2023.

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t.	Regulation 38(3)	The Resolution Plan demonstrates that it addresses the cause of default.	Clause 13.1 at Page 60 of the Resolution Plan.
u.	Regulation 38(3)	The Resolution Plan demonstrates that it is feasible and viable.	Clause 4 at Page 40 of the Plan.
v.	Regulation 38(3)	The Resolution Plan demonstrates that it has provisions for its effective implementation.	Clause 9.1 at Pages 53 and Schedule 1 at Page 72-74.
w.	Regulation 38(3)	The Resolution Plan demonstrates that it has provisions for approvals required and the timeline for the same.	No such approvals sought in the plan except this Adjudication Authority that is provided in Clause 14.2 at Page 63.
x.	Regulation 38(3)	The Resolution Plan demonstrates that the Resolution Applicant has the capacity to implement the resolution plan.	Clause 2 at Page 16-19.
y.	Regulation 39(2)	The Resolution Professional has filed the capability to implement the resolution plan.	N.A.
z.	Regulation 39(4)	The details of the performance security received, as referred to in sub-regulations (4A) of Regulation 36B.	Clause 14.13 at Page 66. The Successful Resolution Applicant has

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			deposited the sum of performance security vide Demand Draft Drawn on Axis Bank; number 078493 dated 03.10.2023.
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**Details of the Resolution Plan and/or Payment Schedule**

- 92.** The Resolution Plan has been submitted by Mr. Tarun Kumar Singh on 30.08.2023 read with his Corrigendum cum Clarification documents dated 02.09.2023.
- 93.** As per Clause 3.1. at Pages 20-21 of the Resolution Plan that the Plan outlines the payment to be made to creditors and stakeholders of the Corporate Debtor. The Resolution Plan provides for a total upfront payment of Rs. 100.60 Crore (“Resolution Plan Value”) to the creditors and stakeholders. The amount of Rs. 100.60 Crore shall be paid out of the funds to be infused or arranged to be infused by the Resolution Applicant. Additionally, Rs. 25.00 Crore shall be infused or arranged to be infused in the Corporate Debtor for improving operations upon takeover of the management of the Corporate Debtor by the Resolution Applicant within six months of Effective Date on need basis as per requirements of the business. The proposed bifurcation of an amount aggregating to Rs. 100.60 Crore amongst all the creditors and stakeholders of the Corporate Debtor is as follows:

S.N.	Category of Claims	Claimed Amount	Verified Amount	Total Proposed
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				<b>payment (In Rs. Crore)</b>
A.	Payment towards CIRP costs and creditors			
1.	Insolvency and Resolution Process Cost	-	-	At Actuals
2.	Financial Creditors	564.52	559.96	99.00
	- Secured Financial Creditors	483.12	482.28	93.00
	- Unsecured Financial Creditors	81.40	77.68	6.00
3.	Operational Creditors, other than workmen and employee dues and statutory dues	120.65	62.00	1.25
4.	Statutory Dues	18.93	1.53	0.35
5.	Workmen and Employee Dues	-	-	-
6.	Other Creditors	-	-	-
	<b>Total</b>	<b>704.10</b>	<b>623.50</b>	<b>100.60</b>
B.	Late Claim (any claim filed after 90 days of commencement of CIRP and not admitted)		0.00	.
C.	Infusion for working capital/capex for improving business operations			25

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	<b>Total Value</b>			<b>125.00</b>
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94. It is submitted in the Plan in Clause 3.1. at page 21, that an case of any adjustment in terms of (a) proportionate amount of Liquidation Values as per Section 53(1) of the I&B Code allocated towards Workmen and Employees, Statutory Dues and Operational Creditors (Other than Workmen and Employees and Statutory Dues), or (b) the proportionate amount of the Resolution Plan Values allocable towards Workmen and Employees, Statutory Dues and Operational Creditors (Other than Workmen and Employees and Statutory Dues), had been distributed in accordance with Section 53(1) of the I&B Code, 2016 then such amount would be adjusted from the upfront payment to be made to the Secured Financial Creditors.
95. The Resolution Applicant proposes in Clause 3.1. at page 21 to the Plan to infuse or arrange to infuse, in an escrow account be opened and operated by the Monitoring Agent specifically for the purpose of CIRP, an aggregate amount of Rs. 100.60 Crore in the Corporate Debtor on the Closing Date along with unpaid CIRP Cost as intimated by the Resolution professional. It will be the responsibility of the Monitoring Committee to distribute the above-mentioned amount to various creditors in terms of distribution mechanism as may be approved by the CoC. The distribution of Resolution Plan value proposed by the Resolution Applicant to various creditors is mention in Schedule 14 of the Resolution Plan.

**Effective Date and Closing Date**

96. The “Effective Date” has been defined in the Plan at Page 9 that *the date on which a copy of the order of NCLT approving this Resolution Plan in accordance with Section 31 of the Code is received by the Resolution Applicant.*

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97. The Closing Date has been defined in the Plan at Page 9 that *in relation to the Scheme means the date on which all actions as envisaged under Schedule 1 to the Resolution Plan are consummated which shall in any case not be later than 30 calendar dates from the Effective Date.*

**Rationale for Acquisition of Corporate Debtor**

98. As per Clause 12, the Resolution Applicant submits the rationale for the acquisition of the Corporate Debtor as under:
- i. Vision to expand in the manufacturing space. [Clause 12.1.];
  - ii. Bright outlook for the Copper Industry. [Clause 12.2.];
  - iii. Short gestation period. [Clause 12.3.];
  - iv. Strong experience in copper segment [Clause 12.4.];

**Details of the Revival of the Business of the Corporate Debtor**

99. The Successful Resolution Applicant has mentioned various reasons for the default of the Corporate Debtor in Clause 13.1. at Page 60 to the Plan and also has provided the revival plan in Clause 13.2. at page 60-62, through the implementation of measures as Sustainable leveraging, Manufacturing Analysis, Funds Infusion, Expand Client Base, Human Resources and Management, Technology Enhancement, Financial Controls and Market Analysis.



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**Mechanism regarding the management and control of the affairs of the Company**

- 100. The management and control of the Business of the Corporate Debtor during the term** i.e., the period from the Effective Date to the Closing Date shall be dealt with by Clause 9.1. at Pages 53-55 of the Plan.
- 101.** As per Clause 9.1.1., on the date of approval of this Resolution Plan, the Resolution Applicant hereby requests the Insolvency professional, who was acting as RP and therefore experienced in managing the affairs during the CIR Process, to act as a monitoring agent (“Monitoring Agent”) from the Effective Date till the Closing Date on such terms as may be mutually decided between the Resolution Applicant and monitoring Agent, subject to the approval of the said terms by the Monitoring Committee. In the event the Insolvency professional refuses to or is unable to continue post-approval of this Plan by the NCLT, the Monitoring Committee shall appoint an independent person to act as the Monitoring Agent and such person shall discharge all functions of the Monitoring Agent as envisaged under this Plan.
- 102.** As per Clause 9.1.3., during the Term, a monitoring committee shall be constituted (“Monitoring Committee”) which during the period between the date of approval of this Resolution Plan until the Closing Date, shall comprise of 1 (one) representative of the assenting Financial Creditors having the highest voting right in the CoC, 1 (one) representative of the Resolution Applicant and the Monitoring Agent. It is clarified that the representative of Resolution Applicant shall not be entitled to vote. During the period between the date of approval of this Resolution Plan and the Closing Date, the Resolution Applicant shall have the right to appoint an observer on the Monitoring Committee, who will be entitled to receive all notices, agendas, explanatory statements, and minutes of meetings sent to the members of the Monitoring Committee and

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participate in all meetings of the Monitoring Committee but not vote in any such meetings.

**103.** Further, **the management and control of the Business of the Corporate Debtor after the term**, shall be dealt with by Clause 9.2. at Page 56 of the Plan.

**104.** As per Clause 9.2.1. of the Plan, after the term, the Resolution Applicant proposes to reconstitute the board of directors of the Corporate Debtor as necessary, to spearhead their business plan and the proposed nominated member on the board of directors of the Corporate is Tarun Kumar Singh.

**Reliefs, Concessions and Dispensations**

**105.** The Reliefs, Concessions and Dispensations sought by the Resolution Applicant from the Adjudicating Authority are set out below for the successful implementation of the Resolution Plan and effective resolution of the Corporate Debtor.

SN	Relevant Clauses of the Plan	Relief, concessions and dispensations sought for
1.	8.1	The Resolution Applicant/Corporate Debtor be exempted from the provisions of Section 41 of the Income Tax Act, 1961 as no amount has been proposed to be paid against the non-current liabilities, deferred liabilities, liabilities towards subsidies whether or not appearing in the books of accounts of the Corporate Debtor.
2.	8.2.	The Corporate Debtor shall not be denied any benefit under any Applicable Law including but not limited to

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		the Income Tax Act, 1961, Goods and Service Tax Act, merely on the account of the unavailability of supporting documents (including but not limited to purchase invoices, shipping bill, bill of export, etc.).
<b>3.</b>	<b>8.3.</b>	The Resolution Applicant proposes to intimate the relevant Governmental Authorities (including but not limited to the Central Board of Direct Taxes. Central Board of Excise and Customs: respective Value Added Tax/ GST Authorities, Securities Exchange Board of India (“SEBI”), Reserve Bank of India (“RBI”), tribunals, arbitral body, land revenue records of the Resolution Plan and prays for the continuation for a period of 12 months from the Effective Date or till the term of Permits, consents, licenses, approvals, rights, entitlements, benefits and privileges granted in favour of the Company or to which the Company is entitled or accustomed to, whichever is later, without any disruption, notwithstanding such licenses, Permits, consents, approvals, rights, entitlements, benefits and privileges are lapsed or expired due to any non-compliance or efflux of time. In the event, any Permits, approval, consent or permission that may be required from any Person (including Governmental Authorities) for or pursuant to change in control/management ownership of the Company in accordance with the terms of any Permits, consent, license, approval, right, entitlement, benefit and privilege, whether under

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		Applicable Law, contract, lease or license. granted in favour of the Company or to which the Company is entitled or accustomed to, it is prayed that all such Person shall provide such approvals, Permits, consents or permission for the same upon the request of the Corporate Debtor.
<b>4.</b>	<b>8.4.</b>	It is prayed that on and after the effective date, all the contracts with the Related Party of the Corporate Debtor or Related Party of the existing promoters (including but not limited to existing leasehold contracts or rent agreements or plantation contracts) shall remain in existence on the same terms and conditions except to the extent the Resolution Applicant/ SPV/ Corporate Debtor at its sole discretion reserves the right to terminate the said contracts without assigning any reasons thereof and without any penalty, charges, fees, fines, liabilities, damages in relation thereto. In relation to the contracts with the Unrelated Party of the Corporate Debtor or of the existing promoters (including but not limited to existing leasehold contracts or rent agreements or plantation contracts), the Resolution Applicant prays for the right to modify/change terms of such contracts and may terminate any of them with notice period as mentioned in such contracts or two months from the Effective Date, whichever is shorter, without any penalty, charges, fees, fines or liabilities. In relation to

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		any contracts whether with the Unrelated party or Related Party of the Corporate Debtor or of the existing promoters (including but not limited to existing leasehold contracts or rent agreements or plantation contracts), which are expired or to be expired within a period of six months from the Effective Date, the Resolution Applicant prays that to the extent such contracts, deeds or arrangements which are necessary for or incidental to continuing or carrying on the operations and business of the Corporate Debtor, such contracts, agreements or arrangements shall remain in existence for smooth management transition of the Corporate Debtor and implementation of Resolution Plan and shall continue for a period of at least six months from the Effective Date, notwithstanding the fact that such contracts are lapsed or expired due to any Non-Compliance or efflux of time.
<b>5.</b>	<b>8.5.</b>	It is prayed that all the contracts or agreement or arrangements to which the Corporate Debtor is a party to (including but not limited to existing leasehold contracts or rent agreements with Related Party Unrelated Party of Corporate Debtor.) shall remain in existence and continue on the existing terms, without any further act and without payment of any premium penalty on account of change in ownership, wherever expressly required under the relevant contracts or agreements.

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<b>6.</b>	<b>8.6.</b>	Upon the approval of this Resolution Plan by the NCLT, the Corporate Debtor/ Resolution Applicant shall file this Resolution Plan with all the Governmental Authorities and other relevant Person for seeking their approvals, exemptions and waivers as may be applicable and necessary in respect of the transaction contemplated under this Plan and the Resolution Applicant prays that such Governmental Authorities and Person shall expeditiously and favourably grant such approvals, waivers and exemptions to the Corporate Debtor.
<b>7.</b>	<b>8.7.</b>	It is prayed that pending the occurrence of the Effective Date, no workmen or employee, no Operational Creditor including but not limited to any Governmental Authority, no Financial Creditor (whether secured or unsecured) and no Other Creditor shall be entitled to take, initiate or continue any steps or proceedings against the Company or its assets (whether by way of demand, legal proceedings, alternative determination process including arbitration or an expert determination process), the levying of distress, execution of judgement or otherwise) in any jurisdiction whatsoever for the purpose of obtaining payment of any liability, or for the purpose of placing the Company into liquidation or any analogous proceedings.

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<b>8.</b>	<b>8.8.</b>	It is prayed that the top management and key employees of the Corporate Debtor including the C-level executives such as the Chief Executive Officer (CEO), Chief Operating Officer (COO), Chief Financial Officer (CFO) etc., the President, the Vice President, the Plant Heads, etc., shall not be entitled to terminate their existing relationship with the Corporate Debtor for a period of at least 1 (one) year from the Effective Date, provided that the Corporate Debtor post the Effective Date is entitled to review the performance and terms of their employment with the Corporate Debtor and amend or terminate their employment contract as it may deem fit.
<b>9.</b>	<b>8.9.</b>	It is prayed that the Corporate Debtor be entitled to carry forward the unabsorbed losses for a period of 8 years from the effective date.
<b>10.</b>	<b>8.10.</b>	On and from the Closing Date, any leasehold or freehold immovable properties, which are in the name of the predecessor-in-title and which have not been transferred to the name of the Corporate Debtor, will stand transferred to and be vested in the name of the Corporate Debtor, without any further act, instrument or deed and no amount shall be payable for any liability of the Corporate Debtor towards transfer charges, earned increase, stamp duty or registration fee arising in relation to corporate reorganizations or transfers of immovable property from predecessors-in-title to the

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		Corporate Debtor and such liability shall stand fully discharged.
<b>11.</b>	<b>8.11.</b>	It is prayed that any non-submission of data post the Effective Date with any Governmental Authority by the Corporate Debtor due to lack of data availability or any other reasons for the period prior to the Effective Date shall stand settled, waived off and extinguished and the Corporate Debtor or the Resolution Applicant shall at no point of time directly or indirectly, be held responsible or liable in relation thereto.
<b>12.</b>	<b>8.12.</b>	Any liabilities, claims, demands, dues related to lax or otherwise arising due to the reduction of liabilities of Creditors in the books of account of the Corporate Debtor shall stand settled at NIL value.
<b>13.</b>	<b>8.13.</b>	Except as otherwise provided in this Plan, in relation to any contracts entered into with the Corporate Debtor, which are expired or to be expired within a period of One year from the Effective Date to the extent such contracts, deeds or arrangements which are necessary for or incidental to continuing or carrying on the operations and business of the Corporate Debtor, such contracts, agreements or arrangements shall remain in existence or smooth management transition of the corporate debtor and implementation of Resolution Plan and shall continue for a period of at least 1 year from the Elective Date, notwithstanding the



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		fact that such contracts are lapsed or expired due to any Non-Compliance or efflux of time.
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**106.** It has been clarified that this Resolution Plan will not be conditional upon any conditions or any reliefs, waivers and concessions as extinguished listed out in Clause 8 of the Resolution Plan sought from the NCLT or relevant government, statutory, regulatory or judicial authorities and the obligations of the Resolution Applicant under terms of this Resolution Plan, (including in respect of the quantum of payment or settlement to be made to a creditor and the timeline within which the payment or settlement is to be made), shall remain unaffected even if any relief, waivers or concession as exhaustively listed out in Clause 8 is not granted by the NCLT or relevant government, statutory, regulatory or governmental authorities.

**Our Inference**

- 107.** At the hearing, the submissions made by Dr. Mamta Binani, RP of the Tamra Dhatu Udyog Private Limited (Corporate Debtor) and perusing the record and/or documents placed before this Adjudicating Authority, we find that the Resolution Plan filed by Mr. Tarun Kumar Singh dated 30.08.2023 read with Corrigendum cum Clarification document dated 20.09.2023, has been **approved** by the CoC of the Corporate Debtor with **99.93%** voting share on **28.09.2023**. As per the CoC, the plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. Preponderantly, all the compliances have been done by the Resolution Applicant for making the plan effective after approval by this Adjudicating Authority.
- 108.** In the course of the hearing, Dr. Binani further submitted that the Resolution Plan complies with the provisions of under Section 30 of the I&B Code, 2016, read

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with relevant Regulations of the CIRP Regulations, 2016 and has been approved by the CoC and the Plan if approved, would result in maximization of the value of assets of the Corporate Debtor and avoid corporate death due to liquidation by reviving it from the financial crisis.

- 109.** Upon perusal of the documents on record and/or documents, we are satisfied that the Resolution Plan submitted by Mr. Tarun Kumar Singh, is in accordance with sections 30 and 31 of the I&B Code, 2016 and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- 110.** As far as the question of granting time to comply with the statutory obligations or seeking approvals from authorities is concerned, the Resolution Applicant is directed to do so within one year from the date of this order, as prescribed under section 31(4) of the I&B Code.
- 111.** We have perused the reliefs, waivers and concessions as sought and as provided in Clause 8 at Pages 50-52 of the Resolution Plan. It is evident that some of the reliefs, waivers and concessions sought by the Resolution Applicant come within the ambit of the I&B Code and the Companies Act 2013, while many others fall under the power and jurisdiction of different government authorities/departments. This Adjudicating Authority has the power to grant reliefs, waivers and concessions only concerning the reliefs, waivers and concessions that are directly with the I&B Code and the Companies Act (within the powers of the NCLT). The reliefs, waivers and concessions that pertain to other governmental authorities/departments may be dealt with by the respective competent authorities/forums/offices, Government or Semi-Government of the State or Central Government concerning the respective reliefs, waivers and concession, whenever sought for. The competent authorities including the Appellate authorities may consider granting such reliefs, waivers and

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concessions keeping in view the spirit of the I&B Code, 2016 and the Companies Act, 2013.

- 112.** It is almost trite and fairly well-settled that the Resolution Plan must be consistent with the extant law. The Resolution Applicant shall make necessary applications to the concerned regulatory or statutory authorities for the renewal of business permits and supply of essential services, if required, and all necessary forms along with filing fees etc. and such authority shall also consider the same keeping in mind the objectives of the Code, which is essentially the resolving the insolvency of the Corporate Debtor.
- 113.** The reliefs sought for subsisting contracts/agreements can be granted, and no blanket orders can be granted in the absence of the parties to the contracts and agreements.
- 114.** Concerning the waivers with regard to the extinguishment of claims which arose prior to the initiation of the CIR Process and which have not been claimed are granted in terms of the law laid down by the Hon'ble Apex Court in ***Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited*** reported in **MANU/SC/0273/2021: (2021)9SCC657: [2021]13SCR737** that “once a resolution plan is duly approved by the Adjudicating Authority Under Sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.” (Emphasis Added)
- 115.** Further, the relevant part of the ***Ghanashyam Mishra*** judgment (*supra*) in this regard is given below:

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

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

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

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

**(Emphasis Added)**

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

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

**(Emphasis Added)**

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

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- 118.** Concerning the waivers sought in relation to guarantors, the Hon'ble Apex Court held in ***Lalit Kumar Jain v. Union of India*** reported in **MANU/SC/0352/2021: (2021) 9 SCC 321** that *the sanction of a resolution plan and finality imparted to it by Section 31 does not per se operate as a discharge of the guarantor's liability. As to the nature and extent of the liability, much would depend on the terms of the guarantee itself.*
- 119.** With respect to the reliefs and waivers sought for all inquiries, litigations, investigations and proceedings shall be granted strictly as per section 32A of the I&B Code and the provisions of the law as may be applicable.
- 120.** 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.
- 121.** In case of non-compliance of this order or withdrawal of the Resolution Plan, the payments already made by the Resolution Applicant shall be liable for forfeiture.
- 122.** Subjugated to the observations made above, the Resolution Plan filed by Mr. Tarun Kumar Singh dated 30.08.2023 read with Corrigendum cum Clarification document dated 20.09.2023, is hereby **APPROVED** and **FINALLY SANCTIONED** by this Adjudicating Authority. 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 the revival of the Corporate Debtor Company shall come into force with immediate effect.
- 123.** The Moratorium imposed under section 14 of the Code by virtue of the order dated May 25, 2022, shall cease to have effect from the date of this order.
- 124.** The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of

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India for their record and also return them to the Resolution Applicant or New Promoters.

125. Liberty is hereby granted for moving any application if required in connection with the implementation of this Resolution Plan.
126. A copy of this Order is to be submitted to the Registrar of Companies, West Bengal by the RP.
127. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.
128. The Resolution Professional is further directed to hand over all records, premises/factories/documents to the Resolution Applicant to finalise the further line of action required for starting the operation. The Resolution Applicant shall have access to all the records/premises/factories/documents through the Resolution Professional to finalise the further line of action required for starting the operation.
129. The Registry of this Adjudicating Authority is directed to send e-mail copies of the order forthwith to all the parties and their Learned Counsel for information and for taking necessary steps.
130. In terms of the view above, the interlocutory application being **I.A. (IB) No. 1759(KB)2023** along with the main Company Petition **C.P. (IB) No. 128(KB)2020** shall stand **disposed of** accordingly.
131. Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

**D. Arvind**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

**This Order is signed on the 1<sup>st</sup> Day of January, 2024.**

Bose, R. K. [LRA]