



**In the National Company Law Tribunal  
Special Bench, (Court-II), Kolkata**

IA (IB) No. 1330/(KB)/2022

In CP(IB) No. 64/(KB)/2021

***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:**

**Sreenath Finvest Pvt Ltd. & Ors.**

**...Financial Creditor**

**And**

**Pami Metals Private Limited**, a company incorporated under the provision of the Companies Act, 1956 having its registered office at 22, Biplabi Trilakya Maharaj Sarani, (Brabourne Road), 3<sup>rd</sup> Floor, Kolkata – 700 001, West Bengal.

**....Corporate Debtor**

**And**

In the matter of:

Jitendra Lohia, Insolvency Professional having Regn. No. IBBI/IPA-001/IP-P00170/2017-18/10339 and working for gain at 2/7, Sarat Bose Road, Vasundhara Building, 2<sup>nd</sup> Floor, Kolkata – 700 020.

**....Resolution Professional / Applicant**

**Date of Pronouncement of order: 05.01.2024**

**Coram:**

**Smt. Bidisha Banerjee** : **Member (Judicial)**

**Shri Balraj Joshi** : **Member (Technical)**

**Counsel appeared physically / through video Conferencing**

1. Mr. Shaunak Mitra, Adv. ] For the Resolution Professional



2. Mr. Jitendra Lohia, Adv.

1. Mrs. Manju Bhuteria, Adv. ] For State Bank of India
2. Ms. Tanvi Luhariwala, Adv.
3. Mr. Debasish Chakraborty, Adv.
4. Mr. Snehasish Chakraborty, Adv.

1. Mr. Jishnu Saha, Sr. Adv. ]For the Petitioner in IA(I.B.C)/1523(KB)2022
2. Mr. Abhijit Sarkar, Adv.
3. Ms. Urmila Chakraborty, Adv.

1. Mr. Ratnanko Banerjee, Sr. Adv. ] For the Respondent in IA(I.B.C)/1523(KB)2022
2. Ms. Madhuj Barman, Adv.
3. Mr. Amandeep Singh, Adv.
4. Mr. Pratim Bayal, RP in person

### **ORDER**

#### **Per Bidisha Banerjee, Member (Judicial):**

1. Heard the Ld. Sr. Counsel / Ld. Counsel for the parties.
2. This application has been preferred to seek approval of Resolution Plan in its entirety along with its annexures, Schedule, Appendices and claims contained therein as submitted by **Eastern Copper Manufacturing Company Private Ltd.** with reliefs and concessions sought for under the Plan. The Application has been preferred under Rule 34 of the NCLT Rules.
3. By a majority vote of 86.02%, Eastern Copper Manufacturing Company Private Ltd. was declared as Successful Resolution Applicant (SRA) in respect of the Corporate Debtor.
4. By a letter dated 21.10.2022, Eastern Copper Manufacturing Company Private Ltd. accepted the Letter of Intent and duly signed and the SRA (Eastern Copper Manufacturing Company Private Ltd.) has duly submitted Performance Security for a sum of Rs. 1.06 Crores by way of a Bank Guarantee valid upto 25.10.2023 and the same shall be continued to be enforceable till all the dues of the Successful Resolution Applicant in relation to the Resolution Plan and / or under or by virtue of RFRP have been fully paid and its claim satisfied.




## **5. The CIRP process and Compliances**

- a. The Corporate Debtor was admitted into CIRP vide order dated 05.11.2021. Thereafter, the Applicant / Insolvency Resolution Professional was confirmed as RP by the this NCLT vide order dated 12.01.2022.
- b. The applicant as per the provision of the IBC 2016 and IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (for short "CIRP Regulations") has made the public announcement. The same was uploaded on the designated website of the IBBI.
- c. Upon approval by the COC, the applicant had sought exclusion of 89 days and extension of 90 days from this Tribunal by filing an application being numbered as I.A. No.277/KB/2022. The same was granted by the NCLT, Kolkata Bench vide order dated 24.05.2022 and accordingly the revised date for closure of CIRP stood at 27.10.2022.
- d. The applicant published by the applicant in 'Form G' in leading widely circulated newspapers i.e., Business Standard (English Newspaper) Kolkata and Ahmedabad edition, Financial Express (English Newspaper), Ek Din (Bengali Newspaper) Kolkata edition and Lok Mitra (Gujrati Newspaper) Ahmedabad edition inviting EoI from the interested and eligible Prospective Resolution Applicants and the last date for the submission of EOI expired on 2<sup>nd</sup> February, 2022.
- e. On request of the PRAs the members of the COC passed a resolution to extend the last date for submission of Resolution Plan upto 6<sup>th</sup> April, 2022. ` `
- f. The Applicant states that according to the terms of the RFRP, as approved by the CoC Members, EMD for an amount of Rs. 1 Crore must be submitted by all the Prospective Resolution Applicants within the due date i.e. 6<sup>th</sup> April, 2022.
- g. The applicant has shared the details of valuation as required under Regulation 27 of CIRP Regulations, with the CoC members prior to the voting on Resolution Plan, after receiving confidentiality undertaking. The applicant has

shared the Liquidation Value with the CoC members through email. The CoC Meetings held and decisions / issues are as under:


<b>The Date of Meeting</b>	<b>Details of CoC Meeting</b>	<b>Decisions / Issues</b>
<b>03.12.2021</b>	<b>1<sup>st</sup> CoC Meeting</b>	<b>The Applicant appointed as Resolution Professional (RP) with 99.54% votes</b>
<b>19.01.2022</b>	<b>2<sup>nd</sup> CoC Meeting</b>	<b>Discussions eligibility criteria to be fixed for the purpose of EoI</b>
<b>03.02.2022</b>	<b>3<sup>rd</sup> CoC Meeting</b>	<b>Discussions were held about the RFRP documents</b>
<b>11.04.2022</b>	<b>5<sup>th</sup> CoC Meeting</b>	<b>Discussions raising interim finance for the purpose of CIRP</b>
<b>22.06.2022</b>	<b>6<sup>th</sup> CoC Meeting</b>	<b>Discussions of Resolution Plans submitted by the PRAs</b>
<b>23.08.2022</b>	<b>7<sup>th</sup> CoC Meeting</b>	<b>Approval of the Resolution Plan received</b>
<b>08.10.2022</b>	<b>8<sup>th</sup> CoC Meeting</b>	<b>Discussions with various matters including consideration of Resolution Plan submitted by Mr. Rajesh Damani.</b>



<b>15.10.2022</b>	<b>9<sup>th</sup> CoC Meeting</b>	<b>Discuss the Resolution Plan submitted by Mr. Damani and final decisions were taken</b>
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- h. Ld. Counsel for the Applicant further states that Mr. Damani although submitted the Resolution Plan within the due date but the EMD which would be submitted mandatorily, was not submitted and the same violating the terms of RFRP as approved by the CoC. The same was communicated to Mr. Damani at the 5<sup>th</sup> CoC Meeting held on 11<sup>th</sup> April, 2022 and the same was duly recorded in the said meeting.
- i. Ld. Counsel for the Applicant further states that in the 6<sup>th</sup> CoC Meeting, the RAs gave a presentation of their respective resolution plans. Thereafter, the Applicant and CoC members decided to go for a challenge mechanism for negotiating with the RAs so as to derive the maximum resolution value towards the interest of all the stakeholders.
- j. The Resolution Plan of Mr. Rajesh Damani along with plan of two other complaint plan of Prospective Resolution applicant was circulated amongst all the members of the CoC. Thereafter, the two compliant plans were put to vote in the seventh CoC meeting wherein the voting window initially was 26.08.2022 which was further extended till 20.10.2022.
- k. Thereafter, the Applicant had put on record that the Resolution Plan submitted by the Rajesh Kumar Damani was non-compliant with RFRP since Mr. Damani had submitted the Resolution Plan without the EMD of Rs. 1 Crore, stating that he is eligible to claim exemption under the MSME category with respect to EMD.
- l. Thereafter Mr. Damani had filed an application, being IA (IB) NO. 900/KB/2022 under Section 60(5) and the same was passed by this Tribunal on 30.09.2022, with direction for revert back of Resolution Plan submitted by Mr. Damani to CoC and to the RP for consideration afresh subject to deposition of

required EMD amount of Rs. 1 Crore within two days from the date of this order.

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- m. In the 7<sup>th</sup> CoC Meetings, the Plan of Mr. Damani along with other two Plans of applicants being Eastern Copper Manufacturing Company Private Limited and Sreenath Finvest Private Limited was found compliant in terms of the RFRP and the same were circulated amongst all the members of CoC.
- n. Thereafter, the applicant had conducted the Eighth and Ninth COC Meeting on 8<sup>th</sup> October, 2022 and 15<sup>th</sup> October, 2022 respectively wherein the resolution plan of Rajesh Damani being an Promoter of the Corporate Debtor, was placed as per the direction of the NCLT for afresh consideration by the CoC. The resolution plan was placed and discussed at length by the members of the COC and thereafter the same was also put to vote with the already ongoing voting on the remaining two plans. Revised evaluation matrix considering all the resolution plans and revised plan submitted by Mr. Rajesh Damani was circulated to the CoC members through email. The voting window was extended till 20<sup>th</sup> October, 2022.
- o. In the 9<sup>th</sup> CoC Meeting, in terms of the order by NCLT dated 30.09.2022, the Resolution Plan of Mr. Rajesh Damani placed before the CoC to be considered afresh and finally the same was put to vote and the voting lines kept open upto 06:00 P.M. of 20.10.2022. It was noted by agenda of 9<sup>th</sup> CoC Meeting that the Resolution Plan submitted by Mr. Rajesh Damani was rejected / not approved with 73.41% votes against the agenda, the same not being termed as Non-viable by the CoC.
- p. In the 7<sup>th</sup> CoC Meeting held on 23.08.2022, CoC Members found the Resolution Plan of **Eastern Copper Manufacturing Company Private Limited** to be **feasible and viable**. The Resolution Plan of **Eastern Copper Manufacturing Company Private Ltd. has been approved by 86.02% votes in favour of the plan** through e-voting which ended on 20.10.2022.

- q. The Letter of Intent was issued to Eastern Copper Manufacturing Company Private Limited and the same was accepted and signed by the SRA. Eastern Copper Manufacturing Company Private Limited., **Successful Resolution Applicant (SRA)** in terms of Regulation 36B (4A) has duly submitted **Performance Security** in the form of **bank guarantee for Rs. 1.06 Cores being 10% of the resolution amount issued by Federal Bank.**
- r. The Applicant has filed a Compliance Certificate in prescribed form, i.e., Form 'H' dated 27.10.2022 in compliance with regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- s. **Eastern Copper Manufacturing Company Private Ltd**, under this Resolution Plan, has provided for a total plan value for the Corporate Debtor of **Rs. 10.51 Crores**. The amount claimed, amount admitted and the amount provided under the Resolution Plan are enumerated below:

Category of Stakeholder	Amount Claimed (In INR)	Amount Admitted (In INR)	Amount Provided under the Plan (In INR)
CIRP Costs	32,00,000.00	32,00,000.00	32,00,000.00
Secured Financial Creditors	44,96,33111.97	44,96,33,111.97	9,68,00,000.00
Unsecured Financial Creditor	19,95,97,982.79	18,99,60,812.61	51,00,000.00
Operational Creditor	20,90,80,014.42	14,38,90,474.47	-
<b>Grand Total</b>	<b>85,83,11,109.20</b>	<b>78,34,84,399.05</b>	<b>10,51,00,000.00</b>

**6. Synopsis of mandatory Provisions / Sections / Regulations and their compliance are as under:**

Sl. No.	Section of the Code / CIRP Regulation	Requirement with respect to Resolution Plan	Relevant Clause and Provision in the Resolution Plan
1.	Section 30 (1)	Affidavit stating that the Resolution Applicants are	Yes, Submitted with the Resolution Plan



		eligible under Section 29A of the Code.	
2.	Section 30(2)(a)	Resolution Plan must provide for the payment of corporate insolvency resolution process costs (CIRP costs) in priority to the payment of other debt.	Clause 2.1 of Part B of this Resolution Plan.
3.	Section 30(2)(b) read with Regulation 38(1)	<p>Resolution Plan must provide for the payment of debts of operational creditors which shall not be less than-</p> <p>(i) Liquidation value due to operational creditors in the event of a liquidation of the corporate debtor under Section 53 of the Code; or</p> <p>(ii) The amount that would have been paid to operational creditors, if the amount distributed under the resolution plan had been distributed in accordance with order of priority under</p>	<p>Para 2.3.2 of the Resolution Plan</p> <p>Clause 2.2 and 2.3 of Part B of this Resolution Plan.</p>





		<p>Section 53 (1) of the Code.</p> <p>whichever is higher.</p> <p>The liquidation value due to the operational creditors under the Resolution Plan shall be given priority of payment over financial creditors.</p>	
4.	Section 30 (2)(b) and Regulation 38(1)(b)	<p>Resolution Plan must provide for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, which shall not be less than the amount to be paid to such creditors under Section 53 (1) of the Code in the event of liquidation of the corporate Debtor.</p> <p>Resolution Plan must provide for payment to the financial creditors, who have a right to vote under Section 21 (2) of the Code and did not vote in favour of the resolution plan, in priority to financial creditors who voted in favour of the plan.</p>	Clause 2.5 of Part B of this Resolution Plan.
5.	Section 30(2)(c) read with Regulation 38(2)(b)	The Resolution Plan must provide for the management of the affairs of the corporate	Clause 14, 15, 16, 17 and 20 of Part B of this Resolution Plan.



		debtor after the approval of the Resolution Plan and during the term of the Resolution Plan.	
6.	Section 30(2)(d) read with Regulation 38 (3) (c )	The Resolution Plan must provide for the implementation and supervision of the resolution plan and have provisions for the effective implementation.	Clause 19 of Part B of this Resolution Plan ( <i>Adequate means for implementation and Supervision</i> ).
7.	Section 30(2)(e)	The Resolution Plan does not contravene any of the provisions of the law for the time being in force.	Clause 23 of Part B of this Resolution Plan.
8.	Regulation 38(1A)	The Resolution Plan must include a statement as to how it has dealt with the interests of all stakeholders.	Clause 2 of Part B of this Resolution Plan.
	Regulation 38(1B)	Confirmation that neither the Resolution Applicant(s) nor any of its related parties have failed to implement or contribute to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past under the Code.	Clause 22 of Part B of this Resolution Plan.
9.	Regulation 38(2)(a)	Term of Resolution Plan and its implementation schedule must be provided in the Resolution Plan.	Clause 21 of Part B of this Resolution Plan.



10.	Regulation 38(2)(c )	The Resolution Plan must contain adequate means for supervising its implementation.	Clause 16, 19 and 20 of Part B of this Resolution Plan.
11.	Regulation 38(3)(a)	Resolution Plan should demonstrate that it addresses the cause of default.	Part B of this Resolution Plan for our proposed strategy for PMPL.
12.	Regulation 38(3)(b)	Resolution Plan should demonstrate that it is feasible and viable.	Part A ( <i>About the Resolution Applicant</i> ) and Clause 4 of Part B under the heading “Turnaround Strategy” read with other sections of the Plan.
13.	Regulation 38(3)(c )	Resolution Plan should have provisions for its effective implementation.	Clause 19 and 21 of Part B of this Resolution Plan.
14.	Regulation 38(3)(d)	Resolution Plan should have provisions for approvals required and the timeline for the same.	Clause 24 of Part B of this Resolution Plan.
15.	Regulation 38(3)(e )	Resolution Plan should demonstrate that the Resolution Applicant has the capability to implement the Resolution Plan.	Part A ( <i>About the Resolution Applicant</i> )
	Regulation 39(1)(c )	Resolution Applicant must provide an undertaking that every information and records provided in the Resolution Plan are correct and any false information will render the applicant ineligible forfeiting the refundable deposit and	Yes, complied with  Attached as Annexure -O with the Application



		attract the penal action under the Code.	
	Regulation 39(2)	The Resolution Plan must provide for the manner in which proceedings in respect of avoidance applications, if any, will be pursued after the approval of the Resolution Plan	Yes
	Regulation 39(4)	Resolution Applicant must provide details of Performance Security, as referred to Sub-Regulation (4A) of regulation 36B.	Yes, an amount of Rs. INR 1.06 Crores deposited via Bank Guarantee dated 26.10.2022.

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

<b>Particulars</b>	<b>Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation</b>
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;	Para 16.1.6 (E) of the Resolution Plan
(b) sale of all or part of the assets whether subject to any security interest or not;	Para 7.7 of the Resolution Plan



<b>Particulars</b>	<b>Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation</b>
(c) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	Para 16.1.3 of the Resolution Plan
(d) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	Para 16.1.3 & 16.1.6 (F) of the Resolution Plan
(e) cancellation or delisting of any shares of the corporate debtor, if applicable;	Para 16.1.3 (b) & (c) of the Resolution Plan
(f) satisfaction or modification of any security interest;	<b>Para 16.1.5 &amp; Para 25.7.2</b> of the Resolution Plan
(g) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Para 25.7.1 of the Resolution Plan
(h) reduction in the amount payable to the creditors;	16.1.3(b) of the Resolution Plan
(i) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	NA



<b>Particulars</b>	<b>Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation</b>
(j) amendment of the constitutional documents of the corporate debtor;	NA
(k) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	NA
(l) change in portfolio of goods or services produced or rendered by the corporate debtor;	NA
(m) change in technology used by the corporate debtor; and	NA
(n) obtaining necessary approvals from the Central and State Governments and other authorities.	Para 9 of the Resolution Plan

8. In course of hearing it was submitted by the Ld. Advocate General/ Ld. Sr. Counsel for the Applicant that the Resolution Plan is in compliance of the provisions of under Section 30 of IBC read with relevant Regulations of the CIRP Regulations and has been approved by 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 financial crisis.



9. **Reliefs and Concessions** for successful implementation of the Resolution Plan sought by the Resolution Applicant from this Adjudicating Authority are enumerated below:

1) Contents and approvals, authorizations etc.	Upon approval of this Resolution Plan by the NCLT, all actions stated in this Resolution Plan shall be deemed to be approved to make the Resolution Plan effective. Accordingly, any action or implementation of this Resolution Plan shall not be a ground for termination of any consents, approvals, lease & licenses, concessions, authorizations, permits or the like that has been granted to the Corporate Debtor or for which the Corporate Debtor has made an application for renewal or grant.
2) Licenses/ Approvals/Contractual Rights and Benefits	<p>The Resolution Applicant has assumed that upon approval of this Resolution Plan by the NCLT all subsisting consents, lease &amp; licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled or accustomed to (whether applied for renewal by the Corporate Debtor or not) shall, notwithstanding any provision to the contrary in their terms, be deemed to continue without disruption for the benefit of the Corporate Debtor for a period of minimum 60 months and till such time, the Resolution Applicant will apply for fresh licenses.</p> <p>For the avoidance of doubt, it is hereby clarified that all consents, lease &amp; licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled or accustomed to, which have expired as of the Effective Date, shall be deemed to continue without disruption for the benefit of the Corporate Debtor for a period of minimum 60 months or until renewed by the relevant authorities, whichever is later. Without any liability for the non-compliance during the time specified above, the</p>



	<p>Resolution Applicant undertakes to cause the Corporate Debtor to expeditiously identify such expired consents lease &amp; licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled or accustomed to evaluate the steps required to address the same and take steps to remedy the same to the extent practically possible.</p> <p>It is further clarified that on approval of the Resolution Plan, the Resolution Applicant would make necessary application/representation before the relevant judicial/government authority for implementation of the Resolution Plan wherever and if required.</p>
3) Tax and stamp duty exemptions	<p>Upon the approval of this Resolution Plan by the NCLT, an exemption shall be deemed to have been granted to the Resolution Applicant from the obligation to pay any taxes and any stamp duty or salami on transfer in respect of actions as envisaged undertaken pursuant to the approval of the Resolution Plan by the NCLT, since such taxes and duties, if any required to be paid, will render the Resolution Plan unviable for the Resolution Applicant in monetary terms.</p> <p>It is envisaged that, dispensation/ waiver be given by the State Governments, Central Governments or any other authorities, from payment of any stamp duty on transfer of land, salami on transfer, transfer fees on account of change in shareholdings pursuant to this plan, Khazana, land taxes, conversion of land including interest, penalty or other charges/fees relating to the transfer/takeover of assets or state levies which may arise in the event of change in management of PMPL pursuant to the acceptance of this Resolution Plan. Further direction be issued to the state authorities for suitably amending all the licenses and rights pursuant to the change of management on acceptance of the Resolution Plan, Any</p>





	<p>subsidies or entitlements, which are accruing to the Corporate Debtor either before or after the approval of the resolution plan, are to be continued.</p>
	<p>Accordingly, upon the Resolution Plan being approved by the NCLT, the actions undertaken pursuant to the implementation of the Resolution Plan shall be exempt from any tax obligation under various taxing statutes, including but not limited to Sections 28, 41, 50B, 50C, 50CA, 56 and 115JB under the Income-Tax Act as well as the goods and Services Tax Act, 2017 (As amended from time to time) and the provisions of the Indian Stamp Act, 1899 (as amended from time to time) and other laws relating to payment of stamp duty applicable in any state.</p>
<p>4) Dispensation from all the cases whether listed or not in the information Memorandum and not proposed to be settled as per the Resolution Plan</p>	<p>Dispensation from fresh initiation of any case or proceedings including for decreed cases, against the Corporate Debtor or the Resolution Applicant relating to any period prior to the Insolvency Commencement Date, no amount would be paid to any creditor or authority under any circumstance relating to the period prior to the insolvency commencement date except as specifically provided under this resolution plan and that any such amount would consequently qualify as “operational debt” (as defined under the IBC) and therefore, the full amount of such Liabilities shall be deemed to be owed and due as of the Insolvency Commencement date and therefore no amount is payable in relation thereto.</p>
<p>5) Restoration of Essential Services including electricity and water</p>	<p>Upon approval of this Resolution Plan by the NCLT, all essential services including electricity and water connection required by the Corporate Debtor to continue operations as a going concern shall be restored to the Corporate Debtor on the Effective Date by the relevant authorities without payment of any outstanding amount pertaining to a period prior to Effective Date except payment, if any, as envisaged under this Resolution Plan.</p>



10. A bare perusal of the extracts / excerpts from the Resolution Plan establishes that the Resolution Plan has been approved with 86.02% voting share. As per the CoC, the plan meets the requirement of being viable and feasible for revival of the Corporate Debtor. By and large, all the compliances have been mentioned by the RP and the Resolution Applicant for effective implementation of the Resolution Plan.
11. 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, as enumerated supra.
12. We have also perused the **reliefs, waivers and concessions as sought and as given in Clause 9 of FORMAT VI situated at page 59 to 63 of the Resolution Plan**. While some of the reliefs, waivers and concessions sought by the Resolution Applicant come within the purview of the Code, 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. Reliefs, waivers and concessions that fall within the domain of other government department/authorities are not granted.
13. However, the reliefs, waivers and concessions that pertain to other governmental authorities/departments may 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, whenever sought for.
14. It is trite law 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 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 resolving the insolvency of the Corporate Debtor.



15. 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.
16. 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 Vs. Edelweiss Asset Reconstruction Company Ltd**, 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.
17. 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.”*
18. Thus on the date of approval of resolution plan by the Adjudicating Authority, all such claims, which do not form 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).
19. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.
20. 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. [(2021) 9 SCC 321]**, wherein the Hon'ble Apex Court held 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”*.



21. 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.
22. 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.
23. 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.
24. 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.
25. 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.
26. The Moratorium imposed under section 14 shall cease to have effect from the date of this order.
27. 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.
28. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.
29. Liberty is hereby granted for moving any Application if required in connection with implementation of this Resolution Plan.
30. A copy of this Order is to be submitted in the Office of the Registrar of Companies, West Bengal.
31. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.
32. 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.
33. 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.



34. The Application being **IA (IB) No. 1330/KB/2022** along with main Company **Petition vide CP (IB) No. 64/KB/2021** shall stand disposed of accordingly.
35. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

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

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

Signed on this the 05<sup>th</sup> day of January, 2024

M. Jana (P.S.)