



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

IA (IB) No. 1018/KB/2022

in

CP (IB) No. 889/KB/2020

*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:

Suryodaya Realtors Private Limited

... Corporate Applicant

And

In the matter of:

Kamal Nayan Jain, Resolution Professional of
Suryodaya Realtors Private Limited

... Applicant

Date of pronouncement: 02 August 2023

Coram:

Rohit Kapoor, Member (Judicial)

Balraj Joshi, Member (Technical)

Appearances (via hybrid mode):

For the Applicant/RP

Mr. Shaunak Mitra, Advocate

Mr. Kamal Nayan Jain, Resolution Professional

For the Successful Resolution Applicant

Ms. Urmila Chakraborty, Advocate



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ORDER

Per: Balraj Joshi, Member (Technical)

1. This Court convened through hybrid mode.

Preliminary

2. I.A. (IB) No. 1018/KB/2022 is an application under section 30(6) of the Insolvency and Bankruptcy Code, 2016, after approval of the resolution plan by the Committee of Creditors (“CoC”).
3. This application was filed by Mr. Kamal Nayan Jain, Resolution Professional of **Suryodaya Realtors Private Limited (CIN: U70109WB2011PTC157779)**, by invoking the provisions of section 30(6) of the Insolvency and Bankruptcy Code, 2016 (“**the Code**” or “**IBC**”) read with regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”) for approval of a Resolution Plan in respect of Suryodaya Realtors Private Limited (“**Corporate Applicant**”).
4. The underlying Company Petition in C.P. (IB) No. 889/KB/2020 was filed by **Suryodaya Realtors Private Limited**, the Corporate Applicant, under section 10 of the Insolvency and Bankruptcy Code 2016, which was admitted *vide* order dated 30 April 2021.
5. Initially, Mr. Kamal Nayan Jain, the Applicant herein (IBBI Reg. No. IBBI/IPA/P00029/2016-2017/10065) was appointed as the Interim Resolution Professional (**IRP**). Subsequently, the CoC in its 1st CoC meeting held on 31 May 2021 resolved to appoint the Interim Resolution Professional as the Resolution Professional. The Applicant was appointed as the Resolution Professional (**RP**) of the Corporate Applicant *vide* order dated 15 July 2021.



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6. The period of 180 days i.e. from 01.05.2021 to 30.07.2021 *vide* order dated 27 October 2021 in I.A. (IB) No. 913/KB/2021, period of 89 days i.e. from 01.12.2021 to 28.02.2022 *vide* order dated 09 March 2022 in I.A.(IB) No. 207/KB/2022 and and period of 45 days *vide* order dated 26 July 2022 in I.A.(IB) No. 705/KB/2022 were extended and excluded for the purpose of completing the CIRP.

Constitution of CoC

7. The IRP made public announcement on 04 May 2021 in *Financial Express (English) (Kolkata Edition)* and *Ekdin (Bengali) (Kolkata Edition)* newspapers regarding initiation of Corporate Insolvency Resolution Process (**CIRP**) and called proof of claims from the financial and operational creditors, workers and employees of the Corporate Applicant in the specified forms.
8. The CoC was constituted on 24 May 2021 with four Financial Creditors i.e., Madhu Maskara and Pawan Maskara, Nikunj Bhagat and Priya Bhagat, Vikram Aditya Agarwal and Md. Alamgir Khan. A report of the constitution of the CoC was filed before the Adjudicating Authority.
9. The Applicant states that a total of seven CoC meetings have been held during CIRP period, as follows:

Particulars	Date of CoC meeting
1 st CoC Meeting	31.05.2021
2 nd CoC Meeting	10.07.2021
3 rd CoC Meeting	24.08.2021
4 th CoC Meeting	01.10.2021
5 th CoC Meeting	22.02.2022
6 th CoC Meeting	16.06.2022
7 th CoC Meeting	21.08.2022



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Collation of claims

10. The amounts claimed and admitted are summarised below:

Amount in INR

Nature of creditor	Amount claimed	Amount admitted
Unsecured Financial Creditors (Plot Buyers)	51,78,840/-	63,55,259/-
Unsecured Financial Creditors	NIL	NIL
Operational Creditor (Other than Workmen and Employee and Statutory Dues)	NIL	NIL
Operational Creditors (Statutory Dues)	NIL	NIL
Operational Creditor (Workmen & Employee)	NIL	NIL
Related Parties	9,01,89,000/-	9,01,89,000/-
Total	9,53,67,840/-	9,65,44,259/-

CIRP and compliances

11. The Applicant submits that in terms of the provisions of section 25(2)(h) of the Code read with regulation 36A(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, invitations in Form 'G' for Expressions of Interest (EoI) from potential resolution applicants were issued five times, firstly on 12 July 2021 in *Financial Express (English)* and *Ek Din (Bengali)* newspapers of Kolkata edition then on 25 August 2021, 04 October 2021, 24 February 2022 and 17 June 2022. The last date of receipt of EoI was 24 June 2022.



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12. The notice was also published on the website of the Insolvency and Bankruptcy Board of India (**IBBI**).
13. The Applicant submits that in response to the invitation for EoI published on 17 June 2022, **three EoIs** were received. The provisional list of Prospective Resolution Applicants was issued on 25 June 2022 and the final list of Prospective Resolution Applicants was issued on 30 June 2022. The RP then shared the Information Memorandum, Evaluation Matrix and Request for Resolution Plan (**RFRP**) with the Prospective Resolution Applicants on 25 June 2022.
14. Three Resolution Plans were received, but only the Resolution Plan submitted by the **Plot Buyers of Baruipur Bloomfield Project** was compliant in terms of the provisions of the Code.
15. As per regulation 35(2) of the CIRP Regulations, after receipt of the Resolution Plan, the RP informed the fair value and liquidation value of the Corporate Debtor to the CoC.

Evaluation and voting

16. The Resolution Plan was placed for discussion before the CoC in the 7th CoC meeting held on 21 August 2022. After due discussions, the CoC found the plan to be feasible and viable. Thereafter, the Resolution Professional placed the said Resolution Plan before the CoC for e-voting from 23 August 2022 to 25 August 2022. The Resolution Plan was approved on 25 August 2022 through e-voting with 74.68% voting percentage.
17. In accordance with regulation 36B(4A) of the CIRP Regulations, the Successful Resolution Applicant has submitted the Performance Bank Guarantee of Rs.1,00,000/- (Rupees One Lakh only) which was submitted as the Refundable Deposit during the submission of EoI and then converted into Earnest Money Deposit and the said Earnest Money





Deposit was converted into Performance Bank Guarantee after approval of the Resolution Plan.

18. The Resolution Plan of the Corporate Applicant is interlinked to two group companies viz. **Sampark Land Developers Private Limited** and **Sampark Land and Builders Private Limited** which are under CIRP and similar Resolution Plans have been submitted for both the Companies.

Compliance of the approved Resolution Plan with various provisions

19. The Applicant has filed a Compliance Certificate in prescribed form, i.e., Form 'H' dated 03 September 2022 in compliance with regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.¹
20. The Applicant has submitted details of various compliances as envisaged within the Code and the CIRP Regulations which a Resolution Plan should adhere to, which is reproduced hereunder:

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

Clause of s.30(2)	Requirement	How dealt with in the Plan
1.	Plan must provide for payment of CIRP cost in priority to payment of other debts of CD in the manner specified by the Board.	Clause 8 at Page 40 of the Resolution Plan.

¹ Annexure F of the I.A.



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Clause of s.30(2)	Requirement	How dealt with in the Plan
2.	<p>(i) Plan must provide for payment of debts of OCs in such manner as may be specified by the Board which shall not be less than the amount payable to them in the event of liquidation u/s 53;</p> <p>(ii) Plan must provide for payment of debts of OCs in such manner as may be specified by the Board which shall not be not less than amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher;</p> <p>(iii) provides for payment of debts of financial creditors who do not vote in favour of the resolution plan, in such manner as may be specified by the Board.</p>	<p>Clause 9 and Clause 10 at Pages 41, 43 of the Resolution Plan</p> <p>Clause 9 and Clause 10 at Pages 41-43 of the Resolution Plan</p> <p>Clause 12 at Page 48 of the Resolution Plan.</p>
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Clause 6 at Pages 20-38 of the Resolution Plan. Clause



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Clause of s.30(2)	Requirement	How dealt with in the Plan
		23 at Pages 59-60 of the Resolution Plan.
(d)	Implementation and Supervision	Clause 24 at Page 60-61 of the Resolution Plan.
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Clause 30 at Page 68 of the Resolution Plan
(f)	Conforms to such other requirements as may be specified by the Board.	Clause 30 at Page 68 of the Resolution Plan

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

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



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Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
(a) transfer of all or part of the assets of the corporate debtor to one or more persons;	Pages 11 and 23-24 of the Resolution Plan.
(b) sale of all or part of the assets whether subject to any security interest or not;	Clause 6.13 at Pages 37 in the Resolution Plan.
(ba) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	Clause 6 at Page 22 of the Resolution Plan.
(c) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	Clause 21 at Pages 56-59 of the Resolution Plan.
(ca) cancellation or delisting of any shares of the corporate debtor, if applicable;	Clause 21 at Pages 56-59 of the Resolution Plan.
(d) satisfaction or modification of any security interest;	Pages 49 and 71 of the Resolution Plan.



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Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
(e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Clause 34 at Page 69 of the Resolution Plan.
(f) reduction in the amount payable to the creditors;	Clause 7 at Page 38 of the Resolution Plan.
(g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	Clause 33 at Page 69 of the Resolution Plan.
(h) amendment of the constitutional documents of the corporate debtor;	Clause 21 at Page 58 of Resolution Plan.
(i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	Not proposed in the Resolution Plan.
(j) change in portfolio of goods or services produced or rendered by the corporate debtor;	Clause 6.4 at Page 25-26 in the Resolution Plan.
(k) change in technology used by the corporate debtor; and	Not proposed in the Resolution Plan.



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Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
(l) obtaining necessary approvals from the Central and State Governments and other authorities.	Clause 31 at pages 68-69 of the Resolution Plan.
(m) sale of one or more assets of corporate debtor to one or more successful resolution applicants submitting resolution plans for such assets; and manner of dealing with remaining assets.	Not proposed in the Resolution Plan. Part B of Format V at Pages 11 of the Resolution Plan

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

Ref to relevant Reg.	Requirement	How dealt with in the Plan
38(1a)	The amount payable to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.	Not applicable to the Resolution Plan.



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Ref to relevant Reg.	Requirement	How dealt with in the Plan
38(1b)	The amount payable to the financial creditors, who have right to vote and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.	Clause 12 at Page 48 of the Resolution Plan.
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors of the corporate debtor.	Clause 7 at Pages 38-39 of the Resolution Plan.
38(1B)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.	Clause 29 at Page 68 of the Resolution Plan.



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Ref to relevant Reg.	Requirement	How dealt with in the Plan
38(2)	A resolution plan shall provide:	
	(a) the term of the plan and its implementation schedule;	Clause 22 and 28 at Pages 59 and 66-68 respectively of the Resolution Plan.
	(b) the management and control of the business of the corporate debtor during its term; and	Clause 6.2 and Clause 23 at Pages 23-24 and Pages 59-60 respectively of the Resolution Plan.
	(c) adequate means for supervising its implementation.	Clause 24 at Pages 60-61 of the Resolution Plan.
	(d) Provides for the manner in which proceedings in respect of avoidance transactions, if any, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed.	Clause 18 at Page 55 of the Resolution Plan.



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Ref to relevant Reg.	Requirement	How dealt with in the Plan
38(3)	A resolution plan shall demonstrate that –	
	(a) it addresses the cause of default;	Clause 4 at Pages 16-19 of the Resolution Plan.
	(b) it is feasible and viable;	Clause 32 at Page 69 of the Resolution Plan.
	(c) it has provisions for its effective implementation;	Clause 6 and Clause 32 at Pages 20-38 and 69 respectively of the Resolution Plan.
	(d) it has provisions for approvals required and the timeline for the same; and	Clause 31 at Pages 68-69 of the Resolution Plan.
	(e) the Resolution Applicant has the capability to implement the resolution plan.	Clause 32 at Pages 69 of Resolution Plan.

21. The Resolution Applicant has submitted affidavit of eligibility under section 29A of the Code, affirmed on 15 July 2022².

² Pages 226-238 of the I.A.





22. Clause 18 at Page 55 of the Resolution Plan envisages that the Resolution Applicant may continue to pursue proceedings filed under section 43, 45, 47, 49, 50 or 66 of the Code after approval of the resolution Plan and any cost or expenditure incurred in relation to such proceedings shall be borne by the Corporate Debtor/Resolution Applicant.

Details of Resolution Plan/Payment Schedule

23. The Applicant submits that the Resolution Applicant had filed a Resolution Plan on 15 July 2022.
24. It is submitted that the Financial Proposal is to be read in conjunction with the Resolution Plan of the Corporate Applicant and the Resolution Plans proposed for its group companies viz. Sampark Land Developers Private Limited and Sampark Land and Builders Private Limited.
25. The Resolution Applicant, i.e., Plot Buyers of Baruipur Bloomfield Project states that based on the information received from the Resolution Professional, the unpaid CIRP cost till the Effective date is likely to be NIL, according the Resolution Applicant has proposed NIL payment towards unpaid CIRP Cost. In case any CIRP cost is outstanding as on the Effective Date then the Resolution Applicant shall make the payment in full towards the unpaid CIRP Cost from the funds raised through Share Capital Contribution and Cost Escalation Charges from the Existing Plot Buyers within 90 days from the Effective date³.
26. The Resolution Applicant has proposed to make NIL payment to the stakeholders under the said Resolution Plan. No cash component has been provided under the Resolution Plan, the Resolution Plan offers to complete the project and handover the plots to the allottees.

³ Page 40 of the Resolution Plan



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27. The Resolution Applicant has proposed to raise funds through the collection of Outstanding Amount Due from Existing Plot Buyers, if any on case-to-case basis, Share Capital Contribution of SPV and Cost Escalation Charges. The said funds raised will be used for execution and completion of Baraipur Bloomfield Project.
28. The Special Purpose Vehicle that will be formed after approval of the Resolution Plan shall raise funds from the Existing Plot Buyers by charging Cost Escalation Charges as per the following timeline:

Particulars	Charges (In Rs. Per Kottah)
Within 30 Days from the Effective Date	20,000/-
Within 30-60 Days from the Effective Date	22,000/-
Within 60-90 Days from the Effective Date	25,000/-

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

29. The Resolution Plan also provides for –
- Management of company after resolution in Clause 23 at Pages 59-60 of Resolution Plan.
 - Term of the resolution plan in Clause 22 at Page 59 of Resolution Plan.



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- c. Implementation and Supervision of the resolution plan in Clause 24 at pages 60-61 of the Resolution Plan.
30. The three group Companies purchased 139 bighas of land, out of which 120 Bighas is registered and 10 bighas is not yet registered but advance payment for acquiring the said 19 bighas has been made to the seller. The agreement for sale has been entered into in respect of 108-110 Bighas of land. The Corporate Debtor herein between 2011 and till date purchased total of 85.19 bighas land and out of the said 85.19 Bighas, 13.31 Bighas has been registered in the name of the plot buyers. The Resolution Professional filed a supplementary affidavit stating that the original deed of the registered plot of land being 120 Bighas as well as the possession of the said land is with the Resolution Professional. Further, *vide* another supplementary affidavit dated 27 December 2022, the Resolution Professional submitted that the remaining 19 Bighas is not yet registered in the name of the Corporate Debtor although advance payment for the same has been made to the seller.
31. Clause 6.11 at page 35 of the Resolution Plan envisages that the SPV or the Managing Committee of the SPV shall undertake all efforts to carry out the acquisition of the land which are pending to be acquired.

Relinquishment/Waiver of liabilities and Approvals

32. The Reliefs, Exemptions and Waivers sought by the Resolution Applicant from the Adjudicating Authority are set out below for the successful implementation of the Resolution Plan. The orders thereon are indicated against each.

Sl. No.	Relief, concessions and approvals sought
1.	Upon approval of this Resolution Plan by the NCLT, all permits, consents, concessions, approvals, licenses, authorizations, rights, entitlements, lease, etc. that had been granted to the Corporate



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Sl. No.	Relief, concessions and approvals sought
	Debtor shall, notwithstanding any provision to the contrary in their terms, continue and would not be terminated upon the implementation of this plan. The Resolution Applicant undertakes to make necessary application/ representation before the relevant judicial/government authority for implementation of the Resolution Plan wherever required.
2.	Upon the approval of this Resolution Plan by the NCLT, the Resolution Applicant are exempted from paying any taxes and any stamp duty in respect of any of the actions that they undertake pursuant to this Resolution Plan.
3.	Upon approval of this Resolution Plan by NCLT, waiver be given by the Central Governments, State Governments or any other authorities, from payment of any stamp duty on account of change in shareholdings or any transfer of assets which may arise due to any action undertaken pursuant to this Resolution Plan.
4.	Upon the approval of this Resolution Plan by NCLT, the actions undertaken pursuant to this Resolution Plan shall be exempt from any tax obligation under various taxing provisions, including but not limited to Sections 28, 41, 50B, 50C, 50CA, 56 and 115JB under the Income-tax Act.
5.	Upon the approval of this Resolution Plan by NCLT, the actions undertaken pursuant to this Resolution Plan shall be exempt from any tax obligation under the Goods & Services Tax Act.
6.	Dispensation is sought from all the cases whether listed or not in the Information Memorandum and not proposed to be settled as per this Resolution Plan.
7.	Dispensation is further sought 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.
8.	All statutory liability or government dues pertaining to the period prior to the Insolvency Commencement Date gets settled with



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Sl. No.	Relief, concessions and approvals sought
	approval of this Resolution Plan after the payments, if any, as envisaged under this Resolution Plan are made. No additional payment would be made by the Resolution Applicant in respect of any liability except to the extent of payment as envisaged in this Resolution Plan.
9.	Upon approval of this Resolution Plan, the Resolution Applicant assumes that all essential services including electricity and water connection required by the Corporate Debtor to carry out its operations shall be restored by the relevant authorities without seeking payment of any outstanding amount except for any payment as envisaged under this Resolution Plan.
10.	Upon approval of this Resolution Plan dispensation is sought from any applicable provisions of the Companies Act 2013 or rules made thereunder, relating to the capital restructuring, financial restructuring, cancellation of existing shares or any other portion of this Resolution Plan for its implementation including re-casting of the financial statements of the Corporate Debtor. Requisite filings may however be done within the period of 1 (one) year from the date of receipt of certified copy of the order approving the Resolution Plan by NCLT and that no further order be required from any regulator or authority and that approval of the Resolution Plan be deemed to be approval of all such action.
11.	Upon approval of this Resolution Plan by NCLT, any dues, liabilities, charges, interest, penalty or cost on the Corporate Debtor relating to any period prior to Insolvency Commencement Date is deemed to be waived/ written-off and all the cases, show cause notices or proceeding pending at any forum or before any authority be un-conditionally withdrawn against the Corporate



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Sl. No.	Relief, concessions and approvals sought
	Debtor for matters pertaining to Income Tax, GST, Provident Fund, Employee State Insurance, Labour Laws, etc.
12.	Upon approval of this Resolution Plan by NCLT, the Resolution Applicant may take some time to discover and redress all the non-compliances that may exist in relation to the Corporate Debtor on the date of acquisition of control by the Resolution Applicant over the Corporate Debtor. As such the Resolution Applicant shall have immunity from any actions, fines, penalties, etc. under any laws for any non-compliance of laws in relation to the Corporate Debtor.
13.	Nothing in this Resolution Plan shall affect the rights of the Resolution Applicant / Corporate Debtor to recover any amounts due to the Corporate Debtor from any third party including any related parties of the Corporate Debtor as defined in Sec 5(24) of the Code, and governmental and statutory authorities as described in the Information Memorandum and there shall be no set off of any such amounts recoverable by the Corporate Debtor against any amount paid by the Corporate Debtor or any liability discharged, satisfied or extinguished pursuant to this Resolution Plan. The Resolution Applicant can demand their due or initiate recovery proceedings against the unpaid debtors and various amounts due from various parties, the amount may include disputed amount.
14.	Upon approval of this Resolution Plan, set-off and carry forward of all losses pertaining to the period prior to the takeover by the Resolution Applicant would continue during the balance remaining period as provided under Section 79 of the Income Tax Act, 1961. It is further envisaged that any tax benefit, which the Corporate Debtor is eligible whether under section 115JB or any other applicable section of the Income Tax Act, 1961, is seamlessly allowed to the Corporate Debtor pursuant to the change of management. Resolution Applicant further envisages that no additional tax liability should arise pursuant to the re-casting and re-structuring of the financial statement including for the write-off and/or write-back of infructuous or excess creditors liabilities,



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Sl. No.	Relief, concessions and approvals sought
	which would be done after the approval of Resolution Plan by the Adjudicating Authority.
15.	Relief be granted to the Corporate Debtor and/or its two group companies as referred above from complying with conditions of the Urban Land (Ceiling and Regulation) Act, 1976 and/or the Land Reforms Act in order to safeguard the interest of the numerous plot buyers.

Orders

33. On hearing the submissions made by the Ld. Counsel for the Resolution Professional, and perusing the record, we find that the Resolution Plan has been approved with 74.68% voting share. As per the CoC, the plan meets the requirement of being viable and feasible for revival of the Corporate Debtor. By and large, all the compliances have been done by the RP and the Resolution Applicant for making the plan effective after approval by this Bench.
34. 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.
35. We have perused the reliefs, waivers and concessions as sought and as given in Clause 6.11 and Clause 25 and 26 at pages 63-67 of the Resolution Plan. While some of the reliefs, waivers and concessions sought by the Resolution Applicant come within the purview of the Code while many others fall under the power and jurisdiction of different government authorities/departments. This Adjudicating Authority has power to grant reliefs, waivers and concessions only with respect to the reliefs, waivers and concessions that are directly in relation to the Code and the Companies



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Act 2013 (within the powers of the NCLT), and these are granted keeping in mind the object of the Code. No reliefs, waivers and concessions that fall within the domain of other government department/authorities are granted. The reliefs, waivers and concessions that pertain to other governmental authorities/departments shall be dealt with the respective competent authorities/forums/offices, Government or Semi Government of the State or Central Government with regard to the respective reliefs, waivers and concessions. The competent authorities including the Appellate authorities may consider grant such reliefs, waivers and concessions keeping in view the provisions and spirit of the Code.

36. The Resolution Applicant shall make necessary applications consistent with extant law 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 provisions and objectives of the Code, which is essentially the resolving of the insolvency of the Corporate Debtor.
37. 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.
38. With respect to the waivers with regard to extinguishment of claims which arose Pre-CIRP and which have not been claimed are granted in terms of **Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd**,⁴ 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.

⁴ 2021 SCC OnLine SC 313 decided on 13.04.2021.



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In this regard we also rely on the judgement of Hon'ble High Court of Rajasthan in the matter of **EMC v. State of Rajasthan** wherein it has been inter-alia held that :

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

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

39. 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**,⁵ wherein the Hon'ble Supreme Court held in para 133 that sanction of a resolution plan and finality imparted to it by section 31 does not per se operate as a discharge of the guarantor's liability shall apply.
40. 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.
41. 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.

⁵ 2021 SCC OnLine SC 396 decided on 21.05.2021



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42. 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.
43. Subject to the observations made in this Order, the Resolution Plan is hereby **APPROVED** by this Bench. **The Resolution Plan shall form part of this Order.**
44. 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.
45. The Moratorium imposed under section 14 shall cease to have effect from the date of this order.
46. 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.
47. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.
48. Liberty is hereby granted for moving any Application if required in connection with implementation of this Resolution Plan.
49. A copy of this Order is to be submitted in the Office of the Registrar of Companies, West Bengal.
50. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.
51. 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.
52. **IA (IB) No. 1018/KB/2022 in CP (IB) No. 889/KB/2020** shall stand disposed of accordingly.





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53. CP (IB) No. 889/KB/2020 to be listed on 11.09.2023 along with the connected I.A.s.
54. 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.
55. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.


Balraj Joshi
Member (Technical)


Rohit Kapoor
Member (Judicial)

Order signed on the 2nd day of August 2023.

GGRB_LRA



CERTIFIED TO BE TRUE COPY

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Court Officer
National Company Law Tribunal
Kolkata Bench

