

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

IA (IB) No. 1054/ (KB) /2023

In CP(IB) No. 302/(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:

Yes Bank Limited

...Financial Creditor

And

Sarga Hotel Private Limited

....Corporate Debtor

And

In the matter of:

Avishek Gupta, Resolution Professional of Sarga Hotel Private Limited

....Applicant

Date of Pronouncement of order: 04.01.2024

Coram:

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

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

Counsel appeared physically / through video Conferencing

Mr. Ramji Srinivasan, Sr. Adv.] For the Resolution Professional

Ms. Manju Bhuteria, Adv.

Mr. Sourajit Dasgupta, Adv.

Mr. Souvick Mazumdar, Adv.

Mr. Joy Saha, Sr. Adv.] For SRA in IA(I.B.C)/1851(KB)2023

Mr. Ratnanko Banerji, Sr. Adv.

Mr. D.N. Sharma, Adv.

Mr. Kanishk Kejriwal, Adv.

Mr. Orijit Chatterjee, Adv.

Ms. Swati Dalmia, Adv.

Mr. Abhishek Swaroop, Adv.] For Respondent No.3 in

Mr. Dwaipayan Basu Mallick, Adv. IA(I.B.C)/1851(KB)2023

Mr. Mr. Anupm Prakash, Adv.

Ms. Tanvi Luhariwala, Adv.

Mr. Varun Manchanda, Adv.

Ms. Kirti Talreja, Adv.

Sk. Md. Wasim Akram, Adv.

Mr. Abhinav Vashist, Sr. Adv.] For COC in IA(I.B.C)/1851(KB)2023 and

Mr. Pramit Chakraborty, Adv.] IA(I.B.C)/1714(KB)2023

Mr. Arindam Mrinal Pal, Adv.

Mr. Swatarup Banerjee, Adv.] For Rare Asset Reconstruction Co.

Mr. Rahul Auddy, Adv.

Mr. Aditya Gooptu, Adv.

Mr. Shaunak Mitra, Adv.] For SIDCL

Mr. Saurav Jain, Adv.

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 Shri Ram Multicom Private Limited with reliefs and concessions sought for under the Plan. The Application has been preferred under Rule 34 of the NCLT Rules.

3. **Shriram Multicom Private Limited** was **approved** by the **CoC with 100% voting shares**. A copy of the Minutes of the Minutes of the 15th CoC meeting held on 30th May, 2023 along with the E-voting results is annexed with the application as Annexure -23.
4. The Applicant issued Letter of Intent to the Successful Resolution Applicant on 31.05.2023 and received a **Performance Bank Guarantee** dated 27.10.2022 for an amount of **Rs. 25,00,00,000/- (Rupees Twenty-five Crores only)** till the complete implementation of the Resolution Plan in compliance with Regulation 36B(4A) of IBBI(Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and the same is marked with the application as Annexure - 25.

5. The CIRP process and Compliances

- a. The Corporate Debtor was admitted into CIRP vide order dated 11.02.2022 and Mr. Avishek Gupta was appointed as the IRP of the Corporate Debtor.
- b. The Applicant on 14th February, 2022, in terms of Regulation 6 (1) of the CIRP Regulations made a public announcement to invite claims along with proof from the creditors of the Corporate Debtor.
- c. The public announcement was also made in the website of the Corporate Debtor as well as the designated website of the IBBI in terms of the applicable provisions of the Code read with CIRP regulations. The last date of submission was announced as 25th February, 2022. The Applicant published revised Form -G along with a detailed EoI on 28.04.2022 and the last date for submission was written as 18.05.2022.
- d. As per Regulation 36B of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016; the Applicant has provided the RFRP, Information Memorandum and all other documents to the Prospective Resolution Applicants (PRAs) through on 23.07.2022.
- e. Ld. Sr. Counsel for the Applicant further contended that Information Memorandum, Request for Resolution Plan ("RFRP") and Evaluation Matrix, was issued upon with due approval of the CoC. He also states that last date of submission of resolution plans was initially stipulated as 23 July 2022.

- f. Ld. Sr. Counsel for the Applicant states that with the approval of the CoC passed in the 5th CoC meeting dated 19 July 2022, the applicant filed an application I.A. No. 788 of 2022 before this Adjudicating Authority for extension of 90 days beyond 180 days of CIRP of the Corporate Debtor and the same was passed by this Tribunal vide Order dated 8th August 2022, extending the CIRP of the Corporate Debtor upto 8th November 2022 and the same is attached as Annexure-13 with the Application.
- g. Ld. Sr. Counsel for the Resolution Professional further contended that in the 8th CoC meeting held on 4 October 2022, five Resolution Plans were received from the Resolution Applicants ("RAs") and the same were opened with the requirements of the Code, the CIRP Regulations and the RFRP.
- h. Ld. Sr. Counsel for the Resolution Professional further states that an Application bearing I.A. No. 1376 of 2022 was filed by the applicant for further extension of extension of time by 60 days (i.e., from 270 days to 330 days) to allow sufficient time for completion of the resolution process of the Corporate Debtor with the approval of the 9th CoC meeting held on 21.10.2022. The aforesaid application was passed by this Tribunal vide order dated o 4th November 2022 the extending the CIRP period upto 7th January, 2023.
- i. Ld. Counsel for the SIDCL contended that the land admeasuring 3.5 acres is built on the land which is taken on lease from SIDCL and therefore, an application has been filed by SIDCL bearing No. I.A. No. 690 of 2022 ("SIDCL Application") seeking, inter alia, exclusion of the land admeasuring 3.5 acres out of total land admeasuring 8 acres from the CIRP of the Corporate Debtor and claiming a right to terminate the lease under an alleged 'Framework Agreement', the existence of which was disputed by the Applicant. Ld. Counsel for the SIDCL also contended that all discussions were ongoing with the RAs, conditional on the outcome of the SIDCL Application. The application bearing I.A. No. 690 of 2022 ("SIDCL Application") is already dealt with separately by this Tribunal.

- j. Ld. Sr. Counsel for the Applicant further states that the revised resolution plans were received from the 4 RAs and the same were once again reviewed by the Applicant along with their advisors and legal teams to ensure compliance with the provisions of the Code, the CIRP Regulations and the RFRP.
- k. Ld. Sr. Counsel for the Applicant further states that Shriram Multicom Private Limited was approved by the CoC with 100% voting shares. A copy of the Minutes of the Minutes of the 15th CoC meeting held on 30th May, 2023 along with the E-voting results is annexed with the application as Annexure -23.
- l. Ld. Sr. Counsel for the Applicant further states that the Applicant issued Letter of Intent to the Successful Resolution Applicant on 31.05.2023, the Applicant has received Performance Bank Guarantee dated 27.10.2022 for an amount of Rs. 25,00,00,000/- (Rupees Twenty-five Crores only) till the complete implementation of the Resolution Plan in compliance with Regulation 36B(4A) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and the same is marked with the application as Annexure - 25.
6. The **Shriram Multicom Private Limited** under this Resolution Plan, has provided for a total plan value for the Corporate Debtor of Rs. **30,099.01 Lakhs**. **The amount claimed, amount admitted and the amount provided under the Resolution Plan are enumerated below:**

Class of Creditors / Particulars	Amount Claimed (Amount in Lakhs)	Amount Admitted (Amount in Lakhs)	Amount provided under the Resolution Plan (Amount in Lakhs)
Secured Financial Creditors	76,382.63	76,382.63	30,033.17
Unsecured Financial Creditors	2,329.60	2,327.89	23.28

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Operational Creditors	8,705.25	2,927.56	41.56
Other Debts and Dues	13,289.75	1.00	1.00
Grand Total	1,00,707.23	81,639.08	30,099.01

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

Sl. No.	Section / Code / Regulation	Requirement	Compliance established
A. For Resolution Applicant			
	25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD	Yes
	Section 29A	The Resolution Applicant must be eligible to submit resolution plan.	Yes complied with
	Section 30 (1)	The Resolution Applicant must submit an affidavit stating that it is eligible.	Yes complied with Para 1.5.1
	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 attract the penal action under	Para 1.4 at page 3 of the Plan

		the Code.	
	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 25 Crores deposited via Bank Guarantee dated 31st May, 2023.
B. For Resolution Plan			
1.	Section 30 (2)(a)	The Resolution Plan must provide for the payment of CIRP costs.	Para 7.5 at page 62-63 of the Resolution Application
2.	Section 30 (2) (b)	The Resolution Plan must provide for the payment to the Operational Creditors.	
3.	Section 30 (2)(a)	The Resolution Plan must provide for the payment of CIRP costs.	Para 7.5 at page 62-63 of the Resolution Application
4.	Section 30 (2) (b)	The Resolution Plan must provide for the payment to the Operational Creditors.	Table 11 at page 52 of the Resolution Application
5.	Section 30 (2)(c)	The Resolution Plan must provide for the payment to the Financial Creditors who did not vote in favour of the Resolution Plan	Para 7.6 at page 79-82 of the Resolution Application
6.	Section 30 (2) (d)	The Resolution Plan must provide for Management of the affairs of the Corporate Debtor	Para 10.3 at page 79-82 of the Resolution Application
7.	Section 30 (2) (e)	The Resolution Plan must provide for implementation and supervision of the Resolution	Para 10 at page 79 of the Resolution Application

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Sl. No.	Section / Code / Regulation	Requirement	Compliance established
		Plan	
8.	Section 30 (2) (f)	Whether Resolution Plan contravenes any of the provisions of the law for the time being in force	Para 1.4 at page 3 of the Resolution Application
9.	Section 30 (4)	Resolution Plan must provide feasibility and viability	Para 10.1 at page 79 of the Resolution Application
10.	Section 30 (4)	Resolution Plan must have been approved by CoC at least 66% voting shares	Resolution Plan has been approved by CoC by 100% voting share
11.	Section 31(1)	The Resolution Plan must provide for its effective implementation plan, according to the CoC.	Yes Para 10 at page 12 of the Resolution Plan
12.	Regulation 38 (1)	The amount payable to the Operational Creditors under the resolution plan shall be given priority in payment over financial creditor	Yes, Para 7.9 of the Resolution Plan
13.	Regulation 38 (1A)	The resolution plan must include a statement as to how it has dealt with the interest of all stakeholders	Yes, para 7.1 & Para 7 of the Resolution Plan

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Sl. No.	Section / Code / Regulation	Requirement	Compliance established
14.	Regulation 38 (1B)	Whether the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code.	No Para 1.5.2 of the Resolution Plan
15.	Regulation 38 (2)(a)	The Resolution Plan must demonstrate that it has provisions for its implementation schedule	Yes Para 10, 12 at page 79-84 of the Resolution Plan
16.	Regulation 38 (2)(b)	The Resolution Plan must provide for management and its control of the business of the Corporate Debtor	Para 10 at page 79-84 of the Resolution Plan
17.	Regulation 38 (2)(c)	The Resolution Plan must provide for adequate means of supervising of its implementation	Para 10 at page 79-84 of the Resolution Plan
18.	Regulation 38 (3)(d)	The Resolution Plan must provide for the manner in which proceedings in respect of avoidance transactions, if any,	Para 11 at page 83 of the Resolution Plan

Sl. No.	Section / Code / Regulation	Requirement	Compliance established
		under Chapter III or fraudulent or Chapter VI of Part II of the Code, will be pursued after the approval of the Resolution Plan	
19.	Regulation 38 (3)(a)	The Resolution Plan must demonstrate that it addresses the cause of default.	Para 6 of the Resolution Plan at page 50
20.	Regulation 38 (3)(b)	The Resolution Plan must demonstrate that it is feasible and viable	Para 10.1 of the Resolution Plan at page 79
21.	Regulation 38 (3)(c)	The Resolution Plan must demonstrate that it has effective implementation provisions	Yes, Para 10, 12 of the Resolution Plan at page 79-84.
22.	Regulation 38 (3)(d)	The Resolution Plan must demonstrate that it has provisions for approvals required and the timeline for the same	Yes, Para 5.7.3 of the Resolution Plan at page 44.
23.	Regulation 38 (3)(e)	The Resolution Plan must demonstrate that the Resolution Applicant has feasibility and capability to implement the resolution plan	Yes, Chapter 2 of page 5-10 and 10.2 at page 79 of the Resolution Plan

8. In course of hearing, it was submitted by the 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** sought by the Resolution Applicant from this Adjudicating Authority are enumerated below for successful implementation of the Resolution Plan:

1)	To pass an order sanctioning the Resolution Plan submitted by the Resolution Applicant and making the Resolution Plan binding on the Corporate Debtor, all shareholders, Creditors, Statutory Authorities, guarantors and all other stakeholders and persons, and ordering implementation of the Resolution Plan, without the requirement for any further act, deed, document or costs;
2)	To pass an order directing that in accordance with Section 31(1) of the Code, this Resolution Plan shall be binding on the Corporate Debtor together with its employees, members, Creditors (including any assignees and successors), guarantors and all other stakeholders affected by the Resolution Plan and that accordingly, the approval of such employees, members, Creditors, guarantors and other stakeholders (including any Governmental Authorities) shall not be separately required to be undertaken, whether before or after the Effective Date, for implementation of various actions proposed to be taken pursuant to this Resolution Plan;
3)	3. To pass an order confirming that this Resolution Plan for the Corporate Debtor has dealt with the interests of all the stakeholders in the Corporate Debtor, including the Financial Creditors (whether secured or unsecured, assenting or dissenting), Operational Creditors and all other stakeholders and has also accorded fair and equitable treatment in accordance with the Code;
4)	To pass an order directing that in addition to the write-off extinguishment/restructuring/restatement/conversion/ assignment/write-down/ write-off, as the case may be, of liabilities of the Corporate Debtor in accordance with the provisions of the Resolution Plan, all inquiries, investigations or proceedings in relation to any and all claims or demands in connection with or against the Corporate Debtor, in relation to any period prior to the Insolvency

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	<p>Commencement Date, and all the investigations, enquiries or show-cause, whether civil or criminal, in relation to any claims or demands in connection with or against the Corporate Debtor will be written off in full and shall be, and be deemed to be, permanently extinguished, restructured, restated, converted, assigned, written-down or written-off, as the case may be, in accordance with provisions of the Resolution Plan;</p>
5)	<p>To pass an order directing that in accordance with Section 238 of the Code, any action undertaken pursuant to the Resolution Plan by the Resolution Applicant will not require compliance with requirements under any other laws. For the implementation of this Resolution Plan, and except as set out in the Resolution Plan, upon the Resolution Applicant ensuring compliance with the provisions of the Code and the CIRP Regulations, no further compliances, actions or consents will be required under other laws or regulations for undertaking the individual actions contemplated under the Resolution Plan. The Code is a complete code in itself and the Adjudicating Authority acting under the Code functions as a single window clearance for all actions proposed to be undertaken pursuant to a resolution plan approved by the Adjudicating Authority. Accordingly, the process stipulated under the Code for implementation of a resolution plan is a final and binding process on all stakeholders (including any Statutory Authorities);</p>
6)	<p>To pass an order directing that the Corporate Debtor shall, after the date of receipt of the certified copy of the order to be made herein or within such other period as may be permitted by the NCLT, cause a certified copy thereof to be filed electronically to the Registrar of Companies, Kolkata for registration,</p>
7)	<p>To pass an order directing that, the Corporate Debtor shall continue to be given unfettered access to all its Assets, including any movable Assets located on properties that do not belong to the Corporate Debtor, on the same terms and in the same manner as were in existence prior to the Insolvency Commencement Date;</p>

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8)	8. To pass an order that the Resolution Applicant or the Corporate Debtor shall not be liable to pay any Taxes whatsoever arising (directly or indirectly on such entity) as a result of the actions taken by the Corporate Debtor or the Resolution Applicant to implement the Resolution Plan approved by the NCLT;
9)	9. To pass an order granting a restraint on, and prohibition of, all Adverse Actions against the Corporate Debtor until the implementation of this Resolution Plan in full;
10)	10. To pass orders in respect of such incidental, consequential and supplemental matters as are necessary to ensure that the Resolution Plan is fully and effectively carried out;
11)	That liberty be reserved to the Corporate Debtor, Resolution Applicant and to all other persons interested in the Resolution Plan to apply to the NCLT for any direction(s) that may be necessary for the purpose of carrying out the Resolution Plan,
12)	To pass an order that as time the essence of the Code, and to preserve the value of the assets of the Corporate Debtor, the speedy implementation of the Resolution Plan is of utmost importance, and therefore, all Governmental Authorities are required to take all necessary actions (if required) for the implementation of the Resolution Plan approved by the NCLT, without delay:
13)	For such further or other order/s be made and/or directions be given as the NCLT may deem fit and proper in the facts and circumstances of the case and in the interests of justice,
14)	o pass an order directing that any and all claims, demands, debts and financial liabilities in respect of the Corporate Debtor arising on or after Insolvency Commencement Date, payable to any Related Party Operational Creditor, and until the Effective Date by virtue of the order of the NCLT approving this Resolution Plan will be: (a) permanently extinguished, and written-off, as the case may be, and (b) deemed to have stopped accruing to the Corporate Debtor, and the Resolution Applicant and shall at no point of time be, directly or indirectly, held

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	responsible or liable in relation thereto for any reason whatsoever,
15)	15. All Governmental Authorities (including the New Kolkata Development Authority) shall waive the non-compliances of the Corporate Debtor or further claims of the Governmental Authorities on the Corporate Debtor arising out of or in relation to the past claims or non-compliances, prior to the Effective Date;
16)	The Resolution Applicant states that the net assets value of the Corporate Debtor less the purchase consideration will be treated as a capital reserve;
17)	The lenders (including Financial Creditors) to the Corporate Debtor shall regularize all the loan accounts of the Corporate Debtor and shall ensure that the asset classification of such loan accounts is "standard" in their books with effect from the Effective Date;
18)	18. Il creditors (including the Secured and Unsecured Creditors and the Operational Creditors) of the Corporate Debtor to withdraw all legal proceedings commenced against the Corporate Debtor in relation to Claims including proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Recovery of Debt and Bankruptcy Act, 1993 and seek quashing of criminal proceedings including proceedings under Section 138 of the Negotiable Instruments Act, 1881, within a period of ninety (90) days of the Effective Date;
19)	The relevant Governmental Authorities shall not initiate any investigations, actions or proceedings against the Corporate Debtor or the Resolution Applicant or the new management (upon acquisition of the Corporate Debtor) including the Board of Directors, in relation to any non-compliance with Applicable Laws by the Corporate Debtor pertaining to any period up to Effective Date,
20)	Neither shall the Resolution Applicant nor the Corporate Debtor nor their respective directors, officers, and employees to be appointed after

	<p>the Effective Date be liable for any violations, liabilities, penalties or fines with respect to or pursuant to the Corporate Debtor not having in place the requisite licenses and approvals required to undertake its business as per Applicable Laws and the Resolution Applicant seeks a time period of 12 months from the Effective Date, to ensure renewal of such consents/licenses and approvals. Licenses and approvals held by the Corporate Debtor which expired prior to the Effective Date or which will expire within a period of 3 months thereafter shall be renewed/extended by the relevant Governmental Authorities and the Corporate Debtor shall be permitted to continue its business and assets in manner operated prior to submission of this Plan. Resolution Applicant seeks a time period of 12 months from the Effective Date, to ensure compliances,</p>
21)	<p>21. The Resolution Applicant assume that, in compliance of his duties under Regulation 35A of the CIRP Regulations, the Resolution Professional shall determine whether the Corporate Debtor has been subjected to any transactions covered under sections 43, 45, 50 or 66 of the Code or not and applied to the Adjudicating Authority for seeking appropriate relief. Accordingly, though the Resolution Applicant reserve their right to institute any investigation pertaining to any transaction(s) carried out by the ex-management of the Corporate Debtor or to file appropriate applications before the court/tribunal of competent jurisdiction, the Resolution Applicant and its officers, directors, employees and the new management of the Corporate Debtor, shall never be liable/responsible for any such transactions carried out by the ex-management of the Corporate Debtor,</p>
22)	<p>The various deposits under protest made with various authorities shall be unconditionally made available as assets of the Corporate Debtor immediately upon approval of this Resolution Plan as the underlying claims are being settled in terms of this Resolution Plan;</p>

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23)	The Resolution Applicant be permitted to claim set-off of the entire Minimum Alternate Tax (MAT) credit as available to the Corporate Debtor, against the normal income-tax as would be payable by the Corporate Debtor post the Effective Date i.e., no normal taxation should be applicable until the MAT credit is adjusted/utilized in full;
24)	All the losses already lapsed/not lapsed as on the Effective Date should be allowed to be carried forward for a period till the same are utilised/set-off fully by the Corporate
25)	Debtor; . Any carried forward losses or unabsorbed depreciation or any other benefit shall not be set-off or adjusted against any write back of liabilities, gain due to fair value of assets or any other gain on account of implementation of the Resolution Plan as the Resolution Applicant are purchasing the Corporate Debtor under the Code at fair value;
26)	26. Any write off of the loans and advances given whether long term or short term, unbilled revenue shall be allowed as expenditure under section 37 of the Income Tax Act for the computation of Income under Income Tax Act, 1961;
27)	The requirement of obtaining a no objection certificate under section 281 of the Income Tax Act, 1961 and provisions of taking over its predecessor's tax liability under section 170 of the Income Tax Act, 1961 shall not be applicable. Further, the transaction shall not be treated as void/ voidable under section 281 of Income Tax Act, 1961 for any claims in respect to tax or any other sum payable by the Corporate Debtor. Similarly, any requirement to obtain waivers from any tax authorities including in terms of section 79 and section 115B of the Income Tax Act, 1961 is deemed to have been granted upon the approval of this Resolution Plan on the Transfer Date with effect from Effective Date;
28)	The Corporate Debtor will continue to have all the rights in as far as availing any tax or fiscal incentives or benefits, under any tax laws, including carry forward/set-off of losses and unabsorbed depreciation under Income-tax Act, and including any credits, carry forward/set-off

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	of book losses and unabsorbed depreciation or other benefits for the purposes of calculation of Minimum Alternate Tax under Section 115JB of the Income Tax Act. It is clarified that the aforesaid right of the Corporate Debtor shall not get affected on account of extinguishment of Claims under this Resolution Plan;
29)	Issuance of necessary directions for the segregation of data of Corporate Debtor and SIDCL any other associate company of the Corporate Debtor will be allowed;
30)	SIDCL. shall cooperate with the Resolution Applicant in successful implementation of the Resolution Plan including extending support in obtaining necessary and required licenses for the operation and management of the Corporate Debtor,
31)	The Resolution Applicant reserves its right to re-negotiate with the Licensee, ie, Westin Hotel Management, L.P:
32)	The investments made by the Resolution Applicant in the Corporate Debtor shall be considered as fresh investment in hotel/hospitality/tower sector and the Corporate Debtor/Resolution Applicant shall be entitled to all such benefits for such investments including any interest subvention scheme of any bank/financial institution and/or any scheme of the State/Central Government or any of its institutions;
33)	The Registered office of the Corporate Debtor shall be shifted to Premises No. CBD/2, Action Area-II, Street No. MAR, Kolkata-700156 from Effective date;
34)	The Corporate Debtor shall have right to enter into any other business other than the current business and no separate approval for the same would be required from any person other than MCA:
35)	The Corporate Debtor would be entitled for new electricity connection in its own name and utilise its space for new transformer and the West Bengal State Electricity Development Corporation shall provide the new connection on payment of requisite charges;

36)	<p>The liability or claim with respect to taxes, dues to Government authority, stamp duty etc., if any, upon such revaluation/impair of the assets of the Corporate Debtor shall be deemed to have been arisen on the Appointed Date being the period prior to the Effective Date and therefore shall be the Claim of Operational Creditor. In view of the provisions of the Code and in terms of this Resolution Plan, no amount shall be payable to the aforesaid Operational Creditors in accordance with the section 30 read with section 53 of the Code and therefore stands extinguished.</p>
37)	<p>Any income/gain/profits, if any, that may arise on account of reversal or write back or extinguishment of liabilities or Claims of the Financial Creditors, Operational Creditors, etc. or on transfer of assets for the payment against dues of such Claims of the Financial Creditors and/ or Operational Creditors and/or Other Creditors, or due to any reason pursuant to the implementation of the Resolution Plan, shall be deemed to be have been arisen in the books of the Corporate Debtor on 31st March, 2023 (or such other date as decided by the Resolution Applicant, being the Appointed Date) before the Effective Date, irrespective of the timing of the completion of documentation/formalities of the transaction and shall be Claim of an Operational Creditor and accordingly being treated/ dealt with in the Resolution Plan. In view of the provisions of the Code, no amount shall be payable to the aforesaid Operational Creditors in accordance with the section 30 read with section 53 of the Code and therefore stands extinguished. Any obligation, claim, demand, assessments, liabilities etc. on account of any such income/gain/profits under the Income Tax Act, 1961 including provision of the Minimum Alternate Tax arising on account of Creditor the provisions of the Code, no amount shall be payable to the aforesaid Operational Creditors in accordance with the section 30 read with section 53 of the Code and implementation of the Resolution Plan shall be considered as Claim pertaining to period prior to Effective Date and accordingly shall be deemed to be pre-transfer</p>

	<p>liabilities of the Corporate Debtor and shall and shall be Claim of an Operational and accordingly being treated/ dealt with in the Resolution Plan. In view of therefore stands extinguished, without obligation of payment of the same on the part of the Corporate Debtor or the Resolution Applicant. Further, the reversal/ write back/extinguishment of liabilities as referred under this clause shall mean any extinguishment as mentioned in this Resolution Plan including the difference of all liabilities as appearing in the books of the Corporate Debtor as reduced by actual payments made by the Resolution Applicant towards such liabilities. A Separate Profit & Loss Account and Balance Sheet may be drawn up and get audited by the Corporate Debtor or Resolution Applicant for this purpose from the Commencement of the financial year up to the Appointed Date, which shall be accepted by the Income Tax Authorities for the purpose of extinguishment of MAT liability of the Corporate Debtor upto the Effective Date and/or Appointed Date. If so desired by the Corporate Debtor and/or Resolution Applicant, in the alternative, the effect of write-back as mentioned in this clause or in this Resolution Plan may be reduced from the computation of book profit by way of adjustment in the computation of book profit under section 115JB of the Income Tax Act of the Corporate Debtor for the concerned previous year.</p>
38)	<p>The balance sheet will be drawn and all the liabilities upto that date, Claimed or not but has arises or already increased, recognised or not shall stand extinguished. On this occasion all Claims of all Creditors including Financial Creditors shall be discharged by as mentioned hereinabove in the Resolution Plan. The gain may arises on any extinguishment of liabilities/Claims, as consideration may not be equal to the same. All these sacrifices by Creditors including Secured Financial Creditors may amount to income in the hand of Corporate Debtor and tax liabilities will arise on that point of time on Appointed Date. There may be a situation that assets so given in exchange of the Claim /liability at current rate, might have acquired at lower costs and</p>

	<p>hence there arises business income or capital gain, as the nature of the assets so transferred, the income tax liability/Claim on all such income will be calculated and will be recognised as Claim of the Operational Creditor as on Appointed Date. The Resolution Applicant shall discharge Claim/Liabilities of all the Operational Creditor as per the Resolution Plan. It is stated that any payment towards the Financial Creditors shall be first adjusted towards the interest accrued and payable towards their debt and balance shall be adjusted towards principal amount outstanding. The remaining principal amount of the loan which remained to be paid shall be written off in the books of the Corporate Debtor and shall be credited to Capital Reserve. Since, the Resolution Applicant are acquiring the Corporate Debtor at fair value i.e. at current value and transferring the assets as such at current value may bring the gain on transfer of assets in the books of the Corporate Debtor and thereby attracting income tax on the same. Such liability or Claim with respect to taxes, dues to Government authority, if any, shall be deemed to have been arisen on the Appointed. Date, being the period prior to the Effective Date and therefore shall be the Claim of Operational Creditor. In view of the provisions of the Code and in terms of this Resolution Plan, no amount shall be payable to the aforesaid Operational Creditors in accordance with the section 30 read with section 53 of the Code and therefore stands extinguished.</p>
39)	<p>39. The carrying amount of asset(s) (tangible or intangible, as the case may be) standing in the books of the Corporate Debtor, shall be derecognised on its disposal for Dissenting Financial Creditors and the consideration for such disposal shall be recognised at a value being determined under Ind AS 113 read with Section 30 of the Code, while derecognising the carrying amount and recognising the consideration for such disposal as aforesaid, the Resolution Applicant shall also consider the substance of the transaction or other event and not merely its legal form, Such de-recognition and recognition shall be without prejudice to the right of Resolution Applicant for reinstating the</p>

	financials of the Corporate Debtor in terms of Ind AS including but not limited to selecting and applying accounting policies, and accounting for changes in accounting policies, changes in accounting estimates and corrections of prior period errors.
40)	40. On Transfer Date, all claims, demands, levies etc. pertaining to interest and penalty under applicable laws including but not limited to, on delayed payment of income tax, tax deducted at source late filing of TDS returns, in respect of all the dues (including interest and penalty) of the Corporate Debtor arising for period up to the Effective Date (including such dues for period prior to the Effective Date that may crystallize subsequent to the Effective Date) or arising on account of acquisition of control over the Corporate Debtor by the Resolution Applicant pursuant to this Resolution Plan, will be deemed to be fully and permanently extinguished with effect from Effective Date and the Corporate Debtor or the Resolution Applicant shall neither be directly nor indirectly held liable for the same. Further, no transaction contemplated in this Resolution Plan shall be treated as void or non-compliant with any provisions of the Income-tax Act, 1961.
41)	Save and except as provided in the Resolution Plan, all claims, debts, demands and dues of the Development Authority, whether raised or contingent, likely to made in future and other statutory authorities, pertaining or related to the period prior to the Effective Date or pertaining to or arising out of any transaction pertaining to Leased Land or arising on account of acquisition of control over the Corporate Debtor by the Resolution Applicant pursuant to this Resolution Plan shall be deemed to have arisen on the Insolvency Commencement Date and/or Effective Date and shall stand satisfied and extinguished, and no such existing claim, debt or due or demand shall subsist against the Corporate Debtor and the Resolution Applicant by the Development Authority and other statutory authorities.

10. A bare perusal of the extracts / excerpts from the Plan establishes that the **Resolution Plan has been approved with 100% 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 Para 18 (Reliefs and Concessions) of page 114 to 126 of the Resolution Plan. While some of the reliefs, waivers and concessions sought by the Resolution Applicant come within the purview of the Code and the Companies Act 2013, 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, in the spirit of the code, which is the revival of the Corporate Debtor.
14. It is 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 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 and putting the Corporate Debtor back on its feet.

15. The reliefs sought with respect to subsisting contracts/agreements cannot be granted, in the absence of the parties to these contracts and agreements and these shall have to be dealt with on terms and conditions of these contracts by the parties themselves.
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.

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

IA (IB) No. 1054/ (KB) /2023

In CP(IB) No. 302/(KB) /2021

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. 1054/KB/2023 along with main Company Petition vide CP (IB) No. 302/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.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee,
Member (Judicial)**

Signed on this the 04th day of January, 2024

M. Jana, PS