

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

**IA(I.B.C)/702(KB)2021
and
IA(I.B.C)/532(KB)2021
and
IA(I.B.C)/812(KB)2021
and
IA(I.B.C)/11(KB)2022
and
IA(I.B.C)/18(KB)2022
and
IA(I.B.C)/383(KB)2021
and
IA(I.B.C)/139(KB)2022
and
IA(I.B.C)/82(KB)2022
and
IA(I.B.C)/115 (KB)2022
In
C.P. (IB)/1214(KB)2018**

In the matter of:
State Bank of India

... Financial Creditor

Versus

Rohit Ferro Tech Limited[CIN:L27104WB2000PLC091629] having its registered office at SKP House 132A, Shyama Prasad Mukherjee Road, Kolkata – 700026, West Bengal

... Corporate Debtor

IA. (I.B.C)/702 /KB/ 2021

In the matter of
State Bank of India

...Applicant/Financial Creditor

-Versus-

Rohit Ferro Tech Limited, a company within the meaning of the Companies Act, 2013 and having its registered office at 35, Chittaranjan Avenue, Kolkata – 700012.

....Respondent/Corporate Debtor

AND

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C.P. (IB)/1214(KB)2018
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State Bank of India v. Rohit Ferro Tech Limited

In the matter of

Tata Steel Mining Limited, a company incorporated under the companies Act, 2013, carrying on its business from Plot No. N-3 / 24, IRC Village, Nayapalli, Bhubaneswar, Odisha 751015;

....Successful Resolution Applicant

-Versus-

Mr. Supriyo Kumar Chaudhuri, Resolution Professional of Rohit Ferro-Tech Limited, having his office at 4th A Floor, Duckback House, 41, Shakespeare Sarani, Kolkata 700017, West Bengal.

....Respondent

IA (I.B.C)/532/ KB/ 2021

An application under Section 30(6) and Section 31 of the Insolvency & Bankruptcy Code, 2016 along with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;

In the matter of

State Bank of India

...Financial Creditor

-Versus-

Rohit Ferro Tech Limited, a company within the meaning of the Companies Act, 2013 and having its registered office at 35, Chittaranjan Avenue, Kolkata – 700012.

....Corporate Debtor

In the matter of

Supriyo Kumar Chaudhuri, Resolution Professional of the Corporate Debtor having its office at BDO Restructuring Advisory LLP, C/o. BDO India LLP, 41, Duckback House, 4th Floor, Shakespeare Sarani, Kolkata – 700017.

...Applicant

IA (I.B.C)/812/ KB/ 2021

In the matter of

An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016

And

In the matter of

State Bank of India

....Financial Creditor

-Versus-

Rohit Ferro Tech Limited, a company within the meaning of the Companies Act, 2013 and having its registered office at 35, Chittaranjan Avenue, Kolkata – 700012.

....Corporate Debtor

AND

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The Deputy Commissioner, CGST and Central Excise, Jajpur Division, Sapagadia,
Jajpur Road, Dist- Jajpur, Pin – 755020

....Applicant

-Versus-

Mr. Supriyo Kumar Chaudhuri, Resolution Professional for Rohit Ferro Tech Limited,
IP Registration No. IBBI/IPA-001/IP-P00644/2017-18/11098, BDO Restructuring
Advisory LLP, C/O BDO India LLP, Floor 4, Duckback House, 41, Shakespeare
Sarani, Kolkata – 7000017.

...Respondent / Resolution Professional.

IA (I.B.C)/ 11/ KB/ 2022

*An application under Section 60(5) of the Code AND Regulation 8 and 12 Insolvency
and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)
Regulations 2016; AND Rule 11 of the National Company Law Tribunal Rules, 2016;*

In the matter of

State Bank of India

...Financial Creditor

-Versus-

Rohit Ferro Tech Limited, a company within the meaning of the Companies Act, 2013
and having its registered office at 35, Chittaranjan Avenue, Kolkata – 700012.

....Corporate Debtor

AND

In the matter of

Universal Mineral Manufacturing Private Limited, a company within the meaning of the
Companies Act, 2013 and having its registered office 14, Roop Chand Roy Street, First
floor, Kolkata 700 007;

...Applicant

-Versus-

Supriyo Kumar Chaudhuri, of the Corporate Debtor having his office at BDO
Restructuring Adversary LLP, C/o. BDO India LLP, 41, Duckback House, 4th Floor,
Shakespeare Sarani, Kolkata – 700 017;

...Respondent / Resolution Professional

IA. (I.B.C)/18 /KB/ 2022

*An application under Rule 11 of the NCLT Rules, 2016; AND an application under
Section 60(5) of the Insolvency & Bankruptcy Code, 2016;*

In the matter of

State Bank of India

...Financial Creditor

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-Versus-

Rohit Ferro Tech Limited, a company within the meaning of the Companies Act, 2013 and having its registered office at 35, Chittaranjan Avenue, Kolkata – 700012.

....Corporate Debtor

In the matter of

Supriyo Kumar Chaudhuri, Resolution Professional of the Corporate Debtor having his office at BDO Restructuring Advisory LLP, C/o. BDO India LLP, 41, Duckback House, 4th Floor, Shakespeare Sarani, Kolkata – 700017.

....Applicant

-Versus-

1. The Chief Inspector of Factories, Directorate of Factories, West Bengal having his office at N.S. Building, 8th Floor, 1 K.S. Rai Road, Kolkata – 700001.

...Respondent No. 1

2. Office of the Inspector of Factories having his office at 3rd Floor, Administrative building, City Centre, P.O. Durgapur, Distt – PaschimiBurdwan – 713216.

....Respondent No. 2

IA. (I.B.C)/ 383 /KB/ 2021

An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016;

In the matter of

State Bank of India

....Financial Creditor

-Versus-

Rohit Ferro Tech Limited, a company within the meaning of the Companies Act, 2013 and having its registered office at 35, Chittaranjan Avenue, Kolkata – 700012.

....Corporate Debtor

AND

In the matter of

MSTC Ltd., a company incorporated under the provisions of the Companies Act, 1956, having its registered office at 225C, Acharya Jagadish Chandra Bose Road, Kolkata – 700 020, having (CIN: L27320WB1964G01026211)

....Applicant

IA. (I.B.C)/ 139 /KB/ 2022

An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016;

In the matter of

State Bank of India

....Financial Creditor

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-Versus-

Rohit Ferro Tech Limited, a company within the meaning of the Companies Act, 2013 and having its registered office at 35, Chittaranjan Avenue, Kolkata – 700012.

....Corporate Debtor

AND

In the matter of

MSTC Ltd., a company incorporated under the provisions of the Companies Act, 1956, having its registered office at 225C, Acharya Jagadish Chandra Bose Road, Kolkata – 700 020, having (CIN: L27320WB1964G01026211)

....Applicant

IA. (I.B.C)/ 82 /KB/ 2022

Section 60(5) of the Insolvency & Bankruptcy Code, 2016.

In the matter of

State Bank of India

....Financial Creditor

-Versus-

Rohit Ferro Tech Limited, a company within the meaning of the Companies Act, 2013 and having its registered office at 35, Chittaranjan Avenue, Kolkata – 700012.

....Corporate Debtor

AND

In the matter of

M/s. GPR Power Solutions Private Limited, a Company within the meaning of the Companies Act, 2013 having its registered office at No. 86,2nd Main Road, Extn-V VGN Mahalakshmi Nagar, Thiruverkadu, Chennai – 600 077.

....Applicant

-Versus-

Mr. Supriyo Kumar Chaudhuri in his capacity as Resolution Professional of Rohit Ferro Tech Limited having his office at C/o. BDO India LLP, 4th Floor, Duckback House, 41, Shakespeare Sarani, Kolkata – 700 017.

....Respondent

IA. (I.B.C)/ 115 /KB/ 2022

Section 60(5) of the Insolvency & Bankruptcy Code, 2016.

In the matter of

State Bank of India

....Financial Creditor

-Versus-

Rohit Ferro Tech Limited, a company within the meaning of the Companies Act, 2013 and having its registered office at 35, Chittaranjan Avenue, Kolkata – 700012.

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....Corporate Debtor

AND

In the matter of

M/s. GPR Power Solutions Private Limited, a Company within the meaning of the Companies Act, 2013 having its registered office at No. 86,2nd Main Road, Extn-V VGN Mahalakshmi Nagar, Thiruverkadu, Chennai – 600 077.

....Applicant

-Versus-

Mr. Supriyo Kumar Chaudhuri in his capacity as Resolution Professional of Rohit Ferro Tech Limited having his office at C/o. BDO India LLP, 4th Floor, Duckback House, 41, Shakespeare Sarani, Kolkata – 700 017.

....Respondent

Appearances (via video conferencing & Offline):

| | | |
|-------------------------------------|---|--------------------------------|
| For RP | : | Mr. Ramji Srinivasan, Sr. Adv. |
| | : | Ms. Swati Dalmia, Adv. |
| | : | Ms. Ojasa Arya, Adv. |
| | : | Ms. Sabarni Mukherjee, Adv. |
| | : | Mr. Shubham Raj, Adv. |
| For CoC in IA/532/2021 | : | Mr. Arun Kathpalia, Sr. Adv. |
| | : | Mr. Abhishek Swaroop, Adv. |
| | : | Mr. Anupm Prakash, Adv. |
| | : | Mr. Naman Kamdar, Adv. |
| | : | Ms. Chhavi Jain Adv. |
| | : | Ms. Diksha Gupta, Adv. |
| GPR Power Solutions Private Limited | : | Mr. Subrata Dutt, Adv. |
| In IA/82/2022 & IA 115/2022 | : | Mr. Soumalya Ganguli, Adv. |
| | : | Ms. Sudarshana Dutta, Adv. |
| For applicant in IA/812/2021 | : | Mr. K. K. Maity, Adv. (CGST) |
| | : | Mr. Tapan Bhanja, Adv. |
| For SRA In IA/702/2021 | : | Mr. Ratnanko Banerji, Sr. Adv. |
| | : | Mr. Soorjya Ganguli, Adv. |
| | : | Ms. Pooja Chakraborty, Adv. |

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In IA/11/2022 : Ms. Kiran Sharma, Adv.
: Mr. Kanishk Kejriwal, Adv.
: Mr. Jishnu Chowdhury, Sr. Adv.
: Ms. Vipra Gang, Adv.
: Mr. Ankan Rai, Adv.:
For applicant in IA/139(KB)2021 & : Mr. Avijit Dey, Adv.
IA/383(KB)2021 : Ms. Noelle Banerjee, Adv. (MSTC)

**Date of hearing: 10.03.2022
Order pronounced on: 07.04.2022**

Coram:

Shri Rohit Kapoor : **Member (Judicial)**
Shri Harish Chander Suri : **Member (Technical)**

ORDER

Per Rohit Kapoor, Member (Judicial)

1. This court convened *via* video conferencing.
2. Pursuant to the Order dated 07 February, 2020 by this Adjudicating Authority Rohit Ferro Tech Limited (***‘Corporate Debtor’***) went under Corporate Insolvency Resolution Plan (***‘CIRP’***) and Mr. Supriyo Kumar Chaudhuri (***‘RP’***) was appointed as the IRP. Later, he was also appointed as the RP.
3. Subsequently, the RP issued the Invitation for Expression of Interest (***‘EoI’***) and published Form G. In response to the publications the RP received two Resolution Plan from potential applicants. However, after few rounds of negotiations, the Committee of Creditors (***CoC’***) found both the plans unsatisfactory, since the same were substantially below the liquidation value. The CoC decided to initiate the process of re-bidding by publishing a fresh Form-G.
4. Upon publication of the new Form-G, the RP received eight EoIs from the respective potential resolution applicant. As on 01 March, 2021, the RP received

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three Resolution Plans. Further, the RP also received three different EoIs at a belated stage and with the objective of maximizing the asset value of the Corporate Debtor; the CoC condoned the delay and accepted the EoIs. Accordingly, as on 14 April, 2021, the RP had received a total of five resolution plan. The members of the CoC have unanimously with 100% voting share, approved the Resolution Plan submitted by Tata Steel Mining Limited, Successful Resolution Applicant ('SRA').

5. Various other Applications has been filed before this Adjudicating Authority, the Applications before us are summarized here in after;

I.A. (IB) 702/KB/2021

6. This is an Interlocutory Application filed under section 60(5) of the Code by the SRA against the RP praying for as follows:
- (i) An order directing upon the SRA to identify an Effective Date for implementation of the Resolution Plan, if the RP is unable to provide a final assessment of the CIRP Cost prior to such date, then the SRA shall be entitled to open an escrow account with the State Bank of India, where, inter alia, the estimated amounts of CIRP Cost which may arise in future and cannot be ascertained as on the Effective Date can be deposited and released, and such escrow account shall be operated jointly by the Monitoring Agent or its nominee and one representative as authorized by the Monitoring Committee;
 - (ii) An order directing that the Monitoring Committee and the Monitoring Agent contemplated in the Resolution Plan shall continue to function even after the Effective Date solely for monitoring the distribution of the CIRP Cost certified by the RP and other payments which are required to be made to the creditors as per the Resolution Plan, out of the escrow accounts(s);
 - (iii) An order that upon payment of the CIRP Cost to the extent certified by the RP prior to the Effective Date; and deposit of the estimated amounts of CIRP Cost which may arise in future and cannot be ascertained as on the Effective Date as above in an escrow account, the SRA can make

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payments to creditors of the Corporate Debtor as per the Resolution Plan and can complete closing under the Resolution Plan on the identified Effective Date;

- (iv) Pass an order that in case the remittance details of the operational creditors are not available as on the Effective Date, the SRA is allowed to remit such amounts payable to the operational creditors in an escrow account, to be operated under the instruction of the Monitoring Committee, before making payments to other creditors of the Corporate Debtor as per the Resolution Plan and proceed with the implementation of the Resolution Plan upon deposit of such amounts in the escrow accounts;

7. *The learned Senior Counsel appearing for the Successful Resolution Applicant submitted that:*

- a.* The instant application has been filed for the purposes of bringing on record certain facts and to seek certain reliefs to aid expeditious implementation of the Resolution Plan;

b. **Scheme of Amalgamation:**

- i.* the amalgamation of the Corporate Debtor with the Successful Resolution Applicant as contemplated in Part D of the scheme of restructuring (hereinafter, “**Scheme**”) as detailed in Schedule IX of the Resolution Plan (hereinafter, “**Amalgamation**”), shall be implemented and it shall be made effective within 2 (two) years from the Resolution Plan becoming effective, and such date shall be the effective date of the Amalgamation.

- ii.* The Applicant also undertakes that the entire shareholding held by the other shareholders in the Corporate Debtor immediately prior to the Scheme becoming effective as above, shall be acquired by the Applicant in accordance with Section 3.2.2(f)(IV) of the Resolution Plan, such that, as on such effective date, the Corporate Debtor would be a wholly owned subsidiary of the Successful Resolution Applicant. Considering the Scheme would

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result in the amalgamation of a wholly owned subsidiary (Corporate Debtor) with its holding entity (Successful Resolution Applicant), no shares shall be required to be issued nor any consideration shall be payable. Accordingly, the Scheme, to the extent it provides for a *share exchange ratio* or *consideration* shall be deemed to be not applicable in the instant case.

c. Registered Office of the Corporate Debtor:

- i.* The Resolution Plan provides that the registered office of the Corporate Debtor shall automatically be shifted to such address as may be indicated by the Successful Resolution Applicant prior to the approval of this Resolution Plan by this Adjudicating Authority, without any further act, instrument, or deed on behalf of the Corporate Debtor. The Successful Resolution Applicant has identified *1st Floor, Tata Centre, 43, Jawaharlal Nehru Road, Kolkata 700071, West Bengal* as the new registered office of the Corporate Debtor with effect from the Effective Date of the Resolution Plan.

d. Payment of Corporate Insolvency Resolution Process (“CIRP”)

Costs:

- i.* It is the intention of the Successful Resolution Applicant that the insolvency resolution of the Corporate Debtor be undertaken expeditiously. As per Section 3.2.1 of the Resolution Plan, prior to the Effective Date, the Resolution Professional is required to certify the final assessment of the CIRP Costs along with the details of the persons to whom such costs are to be paid. However, as costs accrue daily, the final amount of CIRP costs may only be known and/or arise later in due course. Hence, the Successful Resolution Applicant apprehends that the final CIRP Costs may not be certified within the timeline for the Effective Date of the Resolution Plan as identified by the Successful

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Resolution Applicant, and this may delay the expeditious resolution.

- ii.* As per the Resolution Plan, in the event the actual CIRP Costs as at Effective Date is higher than Rs. 85 Crore (Rupees Eighty-Five Crore), then such Shortfall CIRP Costs (*as defined in the Resolution Plan*) shall be reduced from FC Payment (*as defined in the Resolution Plan*). As per the latest assessment made by the Resolution Professional, CIRP costs are estimated as Rs. 100 Crore (Rupees One Hundred Crore).
- iii.* For the purposes of expeditious implementation of the Resolution Plan, the Applicant proposes and undertakes that the amount of Rs. 100 Crore (Rupees One Hundred Crore) on account of CIRP Costs shall be deposited in an escrow account with the State Bank of India under the management of the Monitoring Committee (*as defined in the Resolution Plan*), with the Monitoring Agent and Resolution Professional as its joint signatories and will be distributed as per the certification of the CIRP Costs by the Resolution Professional.
- iv.* The Successful Resolution Applicant seeks a specific direction of this Adjudicating Authority that the above deposit made, be treated to be due compliance with the Section 30(2)(a) of IBC (*payment of insolvency resolution process costs to be in priority to other payments*) solely for the purpose of enabling payment to the financial creditors, without which, the Effective Date would not be achieved.

e. Payment to Operational Creditors:

- i.* Section 3.2.3(iii)(c) of the Resolution Plan enables the Successful Resolution Applicant to deposit the amounts payable to such operational creditors, in an escrow account, whose remittance details are not available for payment as on the Effective Date and

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proceed with the implementation of the Resolution Plan, upon deposit of such amounts in the escrow account.

- ii.* To ensure that the payments to be made to the financial creditors are not delayed on account of lack of remittance details of the operational creditors, the Successful Resolution Applicant seeks a specific direction of this Adjudicating Authority to allow the Successful Resolution Applicant to deposit the entire amount payable to the operational creditors in an escrow account, to be operated under the instructions of the Monitoring Committee and treat such deposit of the amount to be due compliance with the Section 30(2)(b) of IBC, read with Regulation 38(1)(a) of CIRP Regulations (*payment to the operational creditors shall be paid in priority over financial creditors*) solely for the purpose of enabling payment to the financial creditors, without which, the Effective Date would not be achieved.

f. **Continuation of Monitoring Committee beyond Effective Date**

- i.* The Monitoring Agent and the Monitoring Committee shall continue to function beyond the Effective date only for the purpose mentioned above.

8. *In response to the I.A. (IB) 702/KB/2021 the Ld. Counsel appearing on behalf of the RP submits that:*

- (i) They do not oppose the prayers of the SRA subject to orders from this Adjudicating Authority. Further, the estimated CIRP costs as on 10 February, 2022 is Rs.100 Crore.

9. *Analysis and Findings for I.A. 702/KB/2021*

- (i) It is pertinent to mention that the term ‘Effective Date’ has been defined in the Resolution Plan¹. “*Effective Date – shall mean a date identified by the Resolution Applicant which shall be date no later than sixty days from the*

¹ Page 918 of the I.A. No. 532/KB/2021

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receipt of the certified copy of the order approving Resolution Plan passed by this Adjudicating Authority under section 31 of the Code, subject to: (a) fulfillment of the Conditions Precedent; (b) there being no stay on such approval; (c) the Resolution Professional having certified the final CIRP Cost payable by the Resolution Applicant in terms of section 3.2.1(i); and/or (d) there is no pending proceeding which, in the reasonable opinion of the Resolution Applicant, would have a material impact on the implementation of this Resolution Plan or any part thereof. It is clarified for avoidance of doubt that 'Effective Date' for the purposes of the Restructuring Scheme shall have the meaning ascribed to it in the Restructuring Scheme.

- (ii) In application filed by the SRA praying to identify the 'Effective Date', We may say same has been defined in the Resolution Plan submitted by the SRA. Be as it may, the ***'Effective Date' shall be the date of approval of the Resolution Plan by this Adjudicating Authority.*** Further, we are allowing prayers (ii), (iii) & (iv) of this instant application. However, in the case of Monitoring Committee continuing to function even after the effective date, the fees/expenses of the Monitoring Committee shall be borne by the SRA.
- (iii) With regard to the registered office of the Corporate Debtor being automatically be shifted to such address as may be indicated by the Successful Resolution Applicant prior to the approval of this Resolution Plan by this Adjudicating Authority shall be subject to filling of adequate forms and approvals from the Appropriate Authority. Hence, ***IA(I.B.C)/702(KB)2021 is disposed of.***

I.A. (IB) 812/KB/2021

10. This is an Interlocutory Application filed under section 60(5) of the Code by the Deputy Commissioner, CGST and Central Excise, Jaipur Division ('CGST') against the RP praying for as follows:

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- (i) An order directing the RP to accept the claim of the Department of Rs. 16,53,87,524/- and to stay the Resolution Plan submitted by the SRA till the disposal of the instant application

11. ***Submissions of the Ld. Counsel for the Applicant***

- (i) The applicant filed proof of claim in Form-B before the Resolution professional in Form-B with requisite documents claiming outstanding demand of Rs.60,16,24,695.59/- against the corporate debtor. The Resolution Professional out of the total amount of Rs.60,16,24,696/- has admitted the claim of Rs.43,62,37,172/- but refused to admit the claim of Rs.16,53,87,524 / - on the plea that claim of Rs.6,92,68,486/- is under appeal and the rest amount is Rs.9,61,19,038/- in respect of which application have been made under SABKA VISHWAS (LEGACY DISPUTE RESOLUTION) SCHEME, 2019.
- (ii) Challenging the said action of the Resolution Professional the applicant filed the application being I.A No- 812 of 2021 before this Adjudicating Authority mainly to direct the Resolution Professional to accept the claim of the Department of Rs.16,53,87,524/- and be pleased to direct the Resolution Professional to consider the claim of the Department on urgent basis.
- (iii) During the pendency of the above application the Resolution professional accepted the applicant's claim amount of Rs.9,61,19,038/- but against the rest of claim amount of Rs.6,92,68,486/- the Resolution Professional accepted notional amount of Rs.1/- only on the ground of appeals pending.
- (iv) In this regard it is submitted that the Word 'Claim' has been defined in the code under section 3(6) which provides as follows;
- (a) Right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured
- (b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured.

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- (v) In terms of section 3(6) of IBC, 2016 claim means a right of payment whether disputed or undisputed. Moreover, it is settled proposition of law that who has a right to claim payment under Section 3(6) of IBC, can file its claim. In this matter claim amount of Rs.6,92,68,486 / - arises out of adjudication proceeding wherein orders have been passed against the Corporate Debtor and in absence of any favorable order to the assessee, the Department has every right to claim the said amount. Since, the said orders have not been set aside by the Appellate Authority thereby, the applicant is entitled to the same and as such included the said amount in their claim.
- (vi) The stand of the Resolution Professional in this regard is not justified nor has any legal basis. In the above facts the Hon'ble Court may be pleased to direct the Resolution Professional to accept the claim of Rs.6,92,68,486/- otherwise, the applicant will suffer irreparable loss and the Government revenue will be jeopardized.
12. ***In response to the I.A. (IB) 812/KB/2021 the Ld. Counsel appearing on behalf of the RP submits that:***
- (i) the claim was filed by the CGST on 28 April, 2020 for Rs. 60.16 crores, out of 60.16 crores, 43.63 crores had been admitted and the remaining 16.53 crores (6.92 crores + 9.61 crores) had not been accepted for the reasons mentioned below: -
- (ii) For 6.92 crore – sub-judice claims in view of appeals pending before CESTAT and Commissioner of Appeals, having been preferred by the Corporate Debtor, details of which are provided @ pg. 4 of the reply affidavit.
- (iii) For 9.61 crores – the Corporate Debtor has opted for an amnesty scheme (SVLDRS). After going through the further clarification provided by the Applicant it was ascertained that although the Corporate Debtor did apply for the amnesty scheme, the corresponding payment (reduced amt), to avail benefit of the scheme was not made.

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(iv) However, the RP has accepted (*email sent on 4.2.22, at pg.6 of reply aff.*) the remaining amount of 16.53 crores in the following manner:-

A. For 6.92 crores – at notional value of Re. 1/-, as permitted by Hon’ble Supreme Court in ***Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta.***

B. For 9.61 crores – admitted.

13. ***Analysis and Findings for I.A. 812/KB/2021***

(i) The Hon’ble Supreme Court in ***Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta***² opined as follows;

“So far as Dakshin Gujarat Vij Co. (Respondent 11 in Civil Appeal Diary No. 24417 of 2019), State Tax Officer (Respondent 12 in Civil Appeal Diary No. 24417 of 2019), Gujarat Energy Transmission Corporation Ltd. (Respondent 17 in Civil Appeal Diary No. 24417 of 2019) and Indian Oil Corporation Ltd. (Respondent 18 in Civil Appeal Diary No. 24417 of 2019) are concerned, the resolution professional admitted the claim of the abovementioned respondents notionally at INR 1 on the ground that there were disputes pending before various authorities in respect of the said amounts. However, NCLT through its judgment dated 8-3-20193 directed the resolution professional to register the entire claim of the said respondents. NCLAT in paras 44, 45 and 201 of the impugned judgment upheld? the order passed by NCLT as aforesaid and admitted the claim of the abovementioned respondents. We therefore hold that this part of the impugned judgment deserves to be set aside on the ground that the resolution professional was correct in only admitting the claim at a notional value of IN 1 due to the pendency of disputes with regard to these claims. (Para 155).”

(ii) Upon perusal of the record it is apparent that out of Rs.60,16,24,695.59/- a sum of Rs. Rs.43,62,37,172/- and Rs.9,61,19,038/- has been accepted by

² 2019 SCC OnLine 1478

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the RP. However, claim amount of Rs.6,92,68,486/- has been accepted at notional amount of Rs.1/- . Further, we are of the view that the IRP/RP has verified and collated the claims received by him, accordingly. Hence, **IA(I.B.C)/812(KB)2021** is *dismissed*.

(iii)

I.A. (IB) 82/KB/2022

14. This is an Interlocutory Application filed under section 60(5) of the Code by GPRower Solutions Private Limited (*'GPR'*) against the RP praying for as follows:

(i) For direction on the RP to accept the claim of GPR in light of the judgment by the Hon'ble Supreme Court in Civil Appeal being no. 6553 of 2021 dated 29 November, 2021.

15. ***In response to the I.A. (IB) 82/KB/2022 the Ld. Counsel appearing on behalf submits that:***

(i) This Application has become infructuous on the ground of Application being ***I.A. (IB) 115/KB/2022*** filed by GPR before this Adjudicating Authority..

16. ***IA(I.B.C)/82(KB)2022*** stands *infructuous*

I.A. (IB) 115/KB/2022

17. This is an interlocutory application filed under section 60(5) of the Code by GPR against the RP praying for as follows;

(i) An order to set aside the order of the RP dated 19.01.2022 purportedly deciding the claim of GPR at a notional value of Rs. 1/- as in Annexure B herein view of the Judgment and Order of the Hon'ble Supreme Court dated 29.11.21, as in the Annexure A herein.

(ii) And further be pleased to direct the RP to admit GPRs claim along with the proof of claim and take steps in accordance with the provisions of the Code and the order of the Hon'ble Supreme Court dated 29.11.21 as in Annexure A herein.

(iii) Further ad-interim order maybe passed restraining the Respondent from giving any effect and/or further effect to the impugned decision dated

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19.01.2022 as in Annexure B herein pending determination of this Application.

18. *Submissions of the Ld. Counsel for the Applicant*

- (i) The Applicant is an Operational Creditor and has a claim of Rs.1,13,38,651/- that arises because of non payment of the Arbitral Award by the Corporate Debtor. On or about 9th July, 2021, the Applicant moved an application being I.A. No. 344/KB/2021 under section 60(5) of the I.B.C, 2016 before this Adjudicating Authority, since the said claim was not accepted by the Resolution Professional on the alleged ground that the same was not filed within the stipulated period of time, inter alia on the following relief :
- a.** Delay if any, be condoned to file the instant application
 - b.** The Adjudicating Authority may be pleased to direct the Resolution Professional, being the Respondent herein, to consider and to entertain the Applicant's claim for a sum of Rs.1,13,38,651/- against Rohit Ferro Tech Pvt. Ltd., being the Corporate Debtor;
 - c.** And further be pleased to direct the said Insolvency Resolution Professional to admit the applicant's claim along with the Proof of Claim and take steps in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 and the Regulations framed there under;
- (ii) However, the said application was dismissed by this Adjudicating Authority on 09.07.2021. Thereafter the Hon'ble Appellate Forum also dismissed the appeal, being preferred against the said order, on 15.09.2021.
- (iii) Finally, the Hon'ble Supreme Court, in Civil Appeal No. 6553 of 2021 by a judgment and order dated 29.11.2021, was pleased to allow the said appeal of the Applicant. The impugned judgment and order of the Learned NCLAT was set aside. The impugned order dated 09.07.2021 was also set aside and the application of the Appellant under section 60(5) of the I.B.C. was allowed. As in Annexure "A" (pages 19 to 25).

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- (iv) Despite the said judgment and order of the Hon'ble Supreme Court, the Resolution Profession once again purportedly proceeded to determine the said rightful claim of the Applicant and purportedly admitted the said claim of Rs. 1,13,38,651/- at a Notional Value of Rs. 1/- on the alleged ground that the said claim is the subject matter of an application under section 34 of the Arbitration and Conciliation Act, 1996, filed by the Corporate Debtor before the Learned District Judge at Alipore and passed an impugned order dated 19.01.2022 to that effect. As in Annexure "B" (page 29).
- (v) The Applicant submits that the purported order is bad in law and is passed out of total non application of mind without considering the settled position of law and also otherwise contrary to the solemn judgment and order of the Hon'ble Supreme Court. Thus, the said order is liable to be set aside by this Adjudicating Authority on the following grounds:
- (a) The said Respondent cannot take up the issue regarding the said claim of the Applicant since the same has already been determined by the Hon'ble Supreme Court as per its judgment and order dated 29.11.2021. In view of the admitted position that as per the said order The Hon'ble Supreme Court was pleased to allow the application of the Appellant under section 60(5) of the I.B.C. thereby allowed all the prayers made in the said application being I.A. No. 344/KB/2021 before this Adjudicating Authority.
- (b) The Respondent had failed to take into consideration of the settled position of law that there is no scope for automatic stay of the valid arbitral award, which was passed by the Learned Arbitrator, appointed by the Hon'ble High Court at Calcutta, merely by filing an application under section 34 of the Arbitration and Conciliation Act, 1996 in view of the substitution of section 36 of the said Amended Act, with effect from 23.10.2015. Section 36(2), 36(3) and also the proviso of the said Amended Act which did away with the automatic stay provision together with further fact that after the same amendment right to

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obtain an automatic stay under section 36 was not a vested one and there would be no automatic stay of award unless a separate application was successfully made for a stay.

- (vi) In view of as submitted above, there is a valid Arbitration Award against the Corporate Debtor which has neither been set aside nor been stayed by the said Learned Court till date. Thereby during the pendency of the said application does not have any effect on the validity of the Arbitration Award and such view of the matter the. said award, which has been passed in favour of the Applicant, is fully executable as on date in accordance with law.

19. ***In response to the I.A. (IB) 115/KB/2022 the Ld. Counsel appearing on behalf of the RP submits that:***

- (i) Vide order dated 29.11.2021 the Hon'ble Supreme Court had condoned the delay of the GPR in filing of claim with the RP.
- (ii) Further, the RP in its mail dated 19.01.2022 to GPR (*at pg.29 of the application*) stated the following reason to not accept the claim of GPR;
- (iii) GPR has submitted its claim in Form B dated 16.12.20 claiming an amount of Rs. 1,13,38,651/- from Rohit Ferro-Tech Limited.
- (iv) The aforesaid claim has been made pursuant to an arbitral award dated 30.11.18 wherein the following has been held in your favour:
- “(a). The claimant shall be awarded a sum of Rs. 55,01,661/- as mentioned morefully and particularly in paragraph 46 hereof;*
- (b). The claimant shall be entitled to interest on the aforesaid sum at the rate of two percent higher than the current rate of interest prevalent on the date of the award on and from August 8, 2014 till the date of payment.*
- (c). The claimant shall be entitled to costs assessed at Rs. 5,00,000/-.”*
- (v) The aforesaid arbitral award dated 30.11.2018 has been challenged by Rohit Ferro-Tech Limited by filing an application bearing Misc. Case No. ARB 11 of 2019 [*Rohit Ferro-Tech Limited vs. GPR Power*

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Solutions (P) Limited] under **section 34** of the Arbitration and Conciliation Act, 1996 before the Learned District Judge at Alipore. The said application has been filed on 27th February, 2019 and the same is pending adjudication.

- (vi) Accordingly, since the total amount of Rs. 1,13,38,651/- claimed by GPR is under dispute and pending adjudication before the competent Courts having jurisdiction in the matter, the claim of GPR is being admitted at a notional value of Re. 1/- as permitted by Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta*.
- (vii) Reliance has also been placed in the Judgment by the Hon'ble Supreme Court in (2018) 17 SCC 662 [*K. Kishan Vs. Vijay Nirman Company Private Limited*] has held that "filing of S. 34 of Act against an arbitral award shows that a pre-existing dispute which culminates at the first stage of proceedings in an award, continues even after the award at least till the final adjudicatory process U/s 34 & 37 of Act has taken place." [para 18]. The aforesaid judgment has also been relied upon by the Hon'ble NCLT, Bangalore in an order dated 27.4.21 in C.P. (IB) No.276/BB/2019 [*M/s. K.K. Ropeways Limited v. M/s. Billion Smiles Hospitality Pvt. Ltd.*]. Rohit Ferro-Tech / Corporate Debtor had availed its statutory remedy of appeal. However, GPR has also failed to initiate any proceedings under section 36 of the Arbitration Act.
- (viii) The claim in question is disputed since the same is challenged under section 34 of the Arbitration & Conciliation Act, 1996. The RP cannot adjudicate the claim, therefore has rightly admitted the same on a notional value.

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20. ***Analysis and Findings for I.A. 115/KB/2022***

- (i) We have considered the contentions of the Resolution Professional and perused the record referred above and produced before this Adjudicating Authority.
- (ii) After considering the submissions of Ld. Counsel appearing for the applicant in the Resolution Plan, we are of the view;-
 - (a) The Hon'ble Supreme Court vide order dated 29th of November, 2021 condoned the delay of the GPR in filing the claims with the Resolution Plan. However, this claim was rejected by the RP and the applicant was informed of this by an e-mail dated 19th of January, 2022. It is clear that the said claim has been made pursuant to an arbitral award mentioned hereinabove and admittedly the said award is under challenge under Section 34 of Arbitration and Conciliation Act, 1996, before the Learned District Judge at Alipore.
 - (b) It is also an admitted position that the same is pending adjudication. Keeping in view the fact that the award is pending adjudication, the Resolution Professional relying on the judgment of the Hon'ble Supreme Court in case of Committee of Creditors of *Committee of Creditors of Essar Steel India Limited (Supra)* has rightly concluded that the RP cannot adjudicate the claim and has rightly admitted the same on a notional value in view of the judgment of the Hon'ble Supreme Court referred hereinabove.
- (iii) Therefore, in view of the position as stated hereinabove ***IA 115 / KB/ 2022*** is hereby ***dismissed***.

I.A. (IB) 139/KB/2022

21. This is an interlocutory application filed under section 60(5) of the Code by MSTC Limited ('*MSTC*') praying for as follows;

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- (i) A declaration that the status of the applicant be regarded as a secured creditor in priority to the claims of the other creditors of the corporate debtor.
- (ii) Admitted claim of Rs. 44.32 crores be treated in priority to other claims against the corporate debtor in accordance with section 53(1) of the Code.
22. ***In response to the I.A. (IB) 139/KB/2022 the Ld. Counsel appearing on behalf of the RP submits as that;***
- (i) Thesame issue has already been agitated before this Adjudicating Authority by MSTC in IA 611/20 and they failed. [Paras 3(*last line*), 9, 12, 13, 14, 17, 18 of the order dated 21.8.20 passed by this Adjudicating Authority at pg. 36 of the Reply Affidavit filed in IA 383 of 2021].
- (ii) Security documents not in place – no charge filed with RoC under section 77 of the Companies Act, 2013. Reliance is being placed on the order dated 18.12.2019 in Company Appeal (AT) (Insolvency) No. 830 of 2019[***India Bulls Finance Ltd. V/s. Samir Kumar Bhattacharya and Ors.***] [paras 5 and 9]
- (iii) For the aforesaid proposition reliance is also placed on the judgment of the Hon’ble Supreme Court in 2019 SCC Online SC 1487 [***Committee of Creditors of Essar Steel India Limited through Authorized Signatory vs. Satish Kumar Gupta &Ors.***] [see paras 128 and 131].

I.A. (IB) 383/KB/2021

23. This is an interlocutory application filed under section 60(5) of the Code read with Rule 11 of the National Company Law Tribunal Rules, 2016 by MSTC Limited(‘***MSTC***’) praying for as follows;
- (i) An order to direct a full-fledged investigation be launched in the instant matter, by a government agency to ascertain the reasons of the alleged discrepancy of stocks of the corporate debtor pledged to the applicant and bring to book the offender

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24. ***In response to the I.A. (IB) 383/KB/2021 the Ld. Counsel appearing on behalf of the RP submits that;***

- (i) An application being IA 611/20 was already filed by MSTC praying for inspection of goods and deployment of guards and the same was dismissed by this Adjudicating Authority vide order dated 21.08.2020 and also by Hon'ble NCLAT vide order dated 26.11.20.
- (ii) Further, the Applicant i.e., MSTC has been admitted as the Operational Creditor.

25. ***Analysis and Findings for I.A. 383/KB/2021 and I.A. 139/KB/2022***

- (i) ***IA(I.B.C)/383(KB)2021*** and ***IA(I.B.C)/139(KB)2022*** is also ***dismissed*** on the ground that matter has been previously Adjudicated by this Adjudicating Authority in IA(I.B.C)/611(KB)2020 vide order dated 21 August, 2020 and the same was upheld by the Hon'ble NCLAT vide order dated 26 November, 2020.

I.A. (IB) 11/KB/2022

26. This is an interlocutory application filed under section 60(5) of the Code by Universal Minerals Manufacturing Private Limited ('**UMMPL**') praying for as follows;

- (i) Directions upon the respondent to collate, admit and update the claim submitted by the Applicant;
- (ii) Directions upon the Resolution Professional to submit a fresh information memorandum with the committee of creditors for re-consideration;
- (iii) Directions upon the Committee of Creditors to reconsider the viability and feasibility of the resolution plan pursuant to the incorporation of the claim of the Applicant;
- (iv) Condonation of delay for filing the present application, if any.

27. ***The Applicant submits that:***

- (i) The Corporate Debtor availed an unsecured loan of Rs.35 25,00,000 from the Applicant under three separate loan agreements for infusing funds and

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sustenance of its business. Copies of the loan agreements are annexed at pages 11 to 16 of the application.

- (ii) Pursuant to initiation of the CIRP of the Corporate Debtor, the Applicant filed its claim in Form-C with Interim Resolution Professional (IRP) for realization of its outstanding dues to the tune of Rs.1,46,56,055/-. Copy of Form-C along with the requisite documents is annexed from pages 18 to 40 of the application.
- (iii) Thereafter, on various occasions, the respondent adopted several dilatory tactics to deny the applicant of its legitimate claims under one or the other pretext. The same would appear from the letters annexed from pages 41 to 47 of the application marked as annexure C, D, E, F & G. The respondent with an ulterior motive made the applicant submit FORM "B" and also directed to FORM "F" despite FORM "C" of the applicant was admitted.
- (iv) Finally, by an email dated 2nd March 2020, the Respondent rejected the claim of the Applicant on the purported ground that the loan granted did not fall within the definition of section 5(8) of IBC 2016 as there was no loan agreement executed and the financial debt was purportedly without an interest and was not for a specific period of time. Copy of the said email dated 2nd March 2020 is annexed at page 48.
- (v) Immediately thereafter, by an email dated 24th July 2020 the Applicant submitted the loan agreements along with audited balance sheet of the corporate debtor wherein the financial debt was admitted, with the Respondent to substantiate its claim.
- (vi) Pursuant to such rejection, on several occasions, the Applicant enquired about the fate of its claim from the Respondent in view of the fact that loan agreements were submitted with the Respondent. However, the Respondent deliberately neglected to respond to any of the emails of the Applicant and remained silent for over a year. The aforesaid fact will appear from the letters issued by the Applicant which will appear at pages 50 to 53 of the application.

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- (vii) It is submitted that the Resolution Professional has acted arbitrarily and in excess of his jurisdiction and also in violation of the provisions of the Insolvency and Bankruptcy Code by rejecting the claims of the Applicant on its merits. It is settled law that the role of the Resolution Professional is of a facilitator and not as an adjudicator. The Resolution Professional is not empowered to adjudicate the claim filed before it and only has the responsibility of collating and verifying the claims. Reliance is placed on (2019) 4 SCC 17 paras 88 to 91 and 2019 SCC NCLAT 114. However, in the instant case, the Respondent has adjudicated the merits of the claim and rejected the same.
- (viii) In any event, the ground on which the claim was rejected is also untenable and non-est in law in view of the judgment passed by the Hon'ble Supreme Court in the case of M/s. Orator Marketing Pvt. Ltd. vs. M/s. Samtex Designs Pvt. Ltd., 2021 SCC online SC 513 Paras 21,23, 28 and 31 and also in view of the fact that the loan agreements executed between the Applicant and the Corporate Debtor were in existence and were for a specific period of 13 years.
- (ix) In the Orator Judgement, the Hon'ble Supreme Court in unequivocal Terms clarified that any person who supports a corporate debtor sustenance of its business is to be regarded as a financial debt.
- (x) Further, interest free loans advanced to finance the business operations of a corporate body are also to be considered as a Financial Debt.
- (xi) In that view, it is established without any doubt that the claim of the corporate debtor has been incorrectly rejected. The Applicant further submits that the Adjudicating Authority is empowered under section 60(5) of the Insolvency and Bankruptcy Code to direct the Respondent to admit the claim of the Applicant despite the fact that the resolution plan has been approved by CoC and is pending approval before the Adjudicating Authority. Reliance is placed on 2019 SCC online NCLT 478, para 29 to

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32 of the application). The order passed in the said case was upheld by the Hon'ble NCLAT (2019 SCC online NCLAT

(xii) The petitioner submits that it has been vigilant throughout and has followed up the fate of its claim with the respondent on several occasions. There has been no delay or laches on part of the Applicant and it has taken all possible measures to get its claim admitted. The application was filed in December 2021 as the applicant had been continuously enquiring about admissibility of its claim by way of emails. However, since the respondent sat tight over the issue over a year, the applicant filed the instant application.

(xiii) In view of the aforesaid, the Petitioner submits that its claim be admitted and collated and updated in the Information Memorandum of the Corporate Debtor in terms of IBC, 2016 and prayers (a) and (b) of the application may be allowed.

28. ***In response to the I.A. (IB) 11/KB/2022 the Ld. Counsel appearing on behalf of the RP submits as follows;***

- i) On 21.2.20 UMMPL filed its claim in Form C for Rs. 1.46 crores on account of interest free unsecured loan extended to the Corporate Debtor. However, no loan agreement was submitted.
- ii) On 02.03.20, the RP rejected the claim since it does not come within the purview of 'financial debt' in consonance with the order passed by the Appellate Tribunal in ***Company Appeal (AT) (Ins) No. 6161 of 2018 [Shailesh Sangani vs. Joel Cardoso & Ors.]*** and the order passed by the Mumbai Bench in ***CP No. 4376/ IBC/NCLT/MB/MAH/2018 [Agarwal Associates & Agencies vs. Vinay Fabrics Private Limited]*** holding as follows:-

*“Since the petitioner is not a promoter, director or shareholder of the Company and no other interest of the Petitioner could be proved in the Respondent Company hence the money given by the Petitioner to the Respondent Company **cannot be said to be a transaction having***

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commercial effect of borrowing and given against the time value of money, hence cannot be said to be financial debt as defined under the I&B Code.

- iii) On 24.07.2020 copies of three loan agreements provided by the Applicant. The same had not been executed as per applicable law. Furthermore, it also appears therefrom, that the loan is against *supplies made by Rohit Ferro-Tech Limited on credit to the Applicant and may be forfeited if the Applicant fails to pay for the supplies.*
- iv) Resolution Plan approved by the Committee of Creditors and the application for approval of the said plan had been filed on 07.06.2021 before this Adjudicating Authority. It is pertinent to mention here that the Resolution Plan provides for payment only to the Secured Financial Creditors. 270th day of the CIRP expired on 07.06.2021 after considering the extension and exclusions.
- v) After 22 months i.e, 27.12.2021 – UMMPL has filed this application. It is pertinent to mention no reason has been stated in the application as to why the claimant did not challenge the decision of the Resolution Professional in a time bound manner. The same is therefore barred by delay, laches, negligence.
- vi) All orders in relation to the progress of the CIRP of a Corporate Debtor is available at the website, however, the claimant failed to avail its remedies in a time bound manner. It was the duty of the Applicant to pursue its claims diligently. “*Vigilantibus Et Non-dormientibus Jura Subveniunt*” is a well-settled principle of law which means that it is vigilant and not the lethargic who are assisted by the law.
- vii) UMMPL pleaded in the Application, that the Corporate Debtor had obtained an unsecured loan for infusing funds and running its business. The same is incorrect, false, and contrary to the documents placed on record by the Applicant itself. The same is stated to take advantage of the decision passed by the Hon’ble Supreme Court in **Civil Appeal No. 2231 of 2021 [Orator**

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Marketing Pvt. Ltd. v. SamtexDesinz Pvt. Ltd.], The facts in the instant matter, are completely distinct and separate from the issue that had been considered by the Hon'ble Supreme Court.

viii) In reliance of the decision of the Supreme Court in 2022 SCC Online SC 142 [*Consolidate Construction Consortium Limited vs. Hitro Energy Solutions Private Limited*], at the highest, the applicant can be treated as an Operational Creditor [see paras 56, 61, and 83].

29. ***Analysis and Findings for I.A. 11/KB/2022***

- (i) After hearing the Ld. Counsel for the parties and considering their submissions made hereinabove and the record relied upon, we are of the view;
- (ii) It is correct on the part of the applicant so far as the legal possession is concerned, the Resolution Professional is only a facilitator and not an adjudicator. Here in the present case, It is the CoC which has approved the Resolution Plan of the Successful Resolution Applicant. After its deliberations as referred in various minutes of its meetings placed on record before us.
- (iii) Therefore, it does not correct on the part of the applicant to say that the Resolution professional in the present case cannot say that the CoC has not considered the various aspects of the Resolution Plan submitted before it by the Resolution Professional. It is the decision of the CoC that approved the Resolution Plan. When this application was filed it was the stage when the Resolution Professional was in the process of collating the information and verifying the claims before it.
- (iv) It is also an admitted position that the applicant filed its claim in Form- C of Rs. 1.46 Crores on account of interest free unsecured loan extended to the Corporate Debtor. The RP has taken the stand that no loan agreement was submitted before it to establish this stand taken by the applicant.

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- (v) We have also noticed the Resolution Professional rejected the claim since it did not come within the purview of financial debt and while doing so the RP has relied upon an order passed by the Appellate Authority in *Company Appeal (AT) (Ins) No. 6161 of 2018 [Shailesh Sangani vs. Joel Cardoso & Ors.]* and the order passed by the Mumbai Bench in *CP No. 4376/IBC/NCLT/MB/MAH/2018 [Agarwal Associates & Agencies vs. Vinay Fabrics Private Limited]* holding as follows:-

“Since the petitioner is not a promoter, director or shareholder of the Company and no other interest of the Petitioner could be proved in the Respondent Company hence the money given by the Petitioner to the Respondent Company cannot be said to be a transaction having commercial effect of borrowing and given against the time value of money, hence cannot be said to be financial debt as defined under the I&B Code.”

- (vi) The Resolution Professional while collating the claim of the applicant and while verifying the admissibility of these claims as referred to, copies of 3 loan agreements provided by the applicant however, it was found that the same were not executed in accordance with law. It is also significant to note that applicant filed the application before this Adjudicating Authority after 22 months that is on 27th December, 2021.
- (vii) Be that as it may, it is the decision of the CoC which has approved the Resolution Plan in terms as indicated in the Resolution Plan. The Resolution Applicant while consolidating the information regarding the claims of the applicant which has now been approved by the CoC, had considered the plea of the applicant that the Corporate Debtor had obtained an unsecured loan for infusing funds and renting its business and the same has been found to be not correct and contrary to the documents placed on record.
- (viii) It is the stand taken by the Ld. Counsel appearing for the RP that at the most the applicant can be treated as an Operational Creditor. Reference in terms of the judgment of the Hon’ble Supreme Court of India in 2022 SCC Online

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SC 142 [*Consolidate Construction Consortium Limited vs. Hitro Energy Solutions Private Limited*] as indicated hereinabove. From the above it is clear that the Resolution Plan was approved by the CoC on 27.12.21 and the instant application was filed on 05.06.2021 i.e., after twenty-two months of the rejection of the claim by the RP. It is also matter of record, the progress of the CIRP of the Corporate Debtor is available on the website. Suffice it to say that there has been a considerable delay in filing this particular application.

- (ix) We do not find any substance in the contentions of the applicant. In view of the facts stated hereinabove and those records available before us as a part of the Resolution Plan, as a consequence of which we *reject* this application being

I.A. (IB) 18/KB/2022

30. This is an interlocutory application filed under section 60(5) of the Code by the RP against Chief Inspector of factories, Directorate of Factories, West Bengal praying for as follows;
- (i) The respondents to manually accept the application for renewal of License to Work a Factory' in relation to the Bishnupur plant of the Corporate Debtor;
- (ii) The respondent be directed to permit the Corporate Debtor to continue its operations as Bishnupur plant during the pendency of the application and/or till the date of renewal of the license.
31. ***In response to the I.A. (IB) 18/KB/2022 the Ld. Counsel appearing on behalf of the RP submits as that;***
- (i) the Resolution Professional has subsequently filed the application with the factories department for renewal of license and has also deposited the requisite fees. Therefore, at this juncture, this Adjudicating Authority may kindly direct the factories department to process the renewal application in accordance with law.

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32. In **IA(I.B.C)/18(KB)2022**, since the filling of adequate forms has been done and approvals from the Appropriate Authority for the approval of the License is pending, the application is **disposed of**. However, the Chief Inspector of factories, Directorate of factories, West Bengal is directed to process the renewal of license in accordance with law.
33. We have dealt with all the I.A's, now we shall deal with the approval of the Resolution Plan

I.A. (IB) 532/KB/2021

34. The present application has been filed by Mr. Supriyo Kumar Chaudhuri, the Resolution Professional (“**RP**”), of Rohit Ferro Tech Limited, the corporate debtor under section 30(6) of Insolvency and Bankruptcy Code 2016 (“**the Code**”) 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 the corporate debtor.
35. The RP submits that the claims of financial and operational creditors as existing as on the date of filing the present application are as follows: *(Amount in Rupees)*

| S.No. | Particulars | Amount Claimed | Amount Admitted |
|--------------|--|--------------------------|--------------------------|
| 1. | CIRP Cost | ---- | ₹ 85,00,00,000 |
| 2. | Claims of Secured Financial Creditors | ₹ 40,22,35,23,838 | ₹ 38,85,55,51,058 |
| 3. | Claims of unsecured financial creditors | ₹ 74,26,56,055 | ₹ 62,69,50,000 |
| 4. | Claims of operational creditor (statutory dues) | ₹ 1,28,20,97,771 | ₹ 1,10,72,50,017 |
| 5. | Claims by the operational creditor (other than statutory dues and workmen and employees) | ₹ 2,61,52,76,108 | ₹ 1,50,11,38,525 |

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| | | | |
|--------------|--|--------------------------|--------------------------|
| 6. | Claims by operational creditor (workmen and employees) | ₹ 9,91,38,241 | ₹ 2,12,78,895 |
| TOTAL | | ₹ 44,96,26,92,013 | ₹ 42,84,34,96,917 |

36. The RP states that a total of 31 CoC meetings have been held during the CIRP period, which are as follows:

| S.No. | COC MEETING | DATE OF MEETING |
|-------|------------------------------|----------------------------------|
| 1. | 1 st CoC Meeting | 5 th March, 2020 |
| 2. | 2 nd CoC Meeting | 22 nd May, 2020 |
| 3. | 3 rd CoC Meeting | 17 th June, 2020 |
| 4. | 4 th CoC Meeting | 3 rd July, 2020 |
| 5. | 5 th CoC Meeting | 16 th July, 2020 |
| 6. | 6 th CoC Meeting | 17 th August, 2020 |
| 7. | 7 th CoC Meeting | 16 th September, 2020 |
| 8. | 8 th CoC Meeting | 25 th September, 2020 |
| 9. | 9 th CoC Meeting | 6 th October, 2020 |
| 10. | 10 th CoC Meeting | 3 rd November, 2020 |
| 11. | 11 th CoC Meeting | 17 th November, 2020 |
| 12. | 12 th CoC Meeting | 19 th November, 2020 |
| 13. | 13 th CoC Meeting | 2 nd December, 2020 |
| 14. | 14 th CoC Meeting | 5 th December, 2020 |
| 15. | 15 th CoC Meeting | 7 th December, 2020 |
| 16. | 16 th CoC Meeting | 28 th December, 2020 |
| 17. | 17 th CoC Meeting | 27 th January, 2021 |
| 18. | 18 th CoC Meeting | 2 nd March, 2021 |
| 19. | 19 th CoC Meeting | 8 th March, 2021 |
| 20. | 20 th CoC Meeting | 12 th March, 2021 |
| 21. | 21 st CoC Meeting | 18 th March, 2021 |
| 22. | 22 nd CoC Meeting | 25 th March, 2021 |

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| S.No. | COC MEETING | DATE OF MEETING |
|-------|------------------------------|---|
| 23. | 23 rd CoC Meeting | 5 th April, 2021 |
| 24. | 24 th CoC Meeting | 7 th April, 2021 |
| 25. | 25 th CoC Meeting | 9 th April, 2021 |
| 26. | 26 th CoC Meeting | 13 th April, 2021 |
| 27. | 27 th CoC Meeting | 14 th April, 2021 |
| 28. | 28 th CoC Meeting | 11 th May, 2021 |
| 29. | 29 th CoC Meeting | 15 th May, 2021 |
| 30. | 30 th CoC Meeting | 17 th May, 2021 |
| 31. | 31 st CoC Meeting | 31 st May, 2021 adjourned to and concluded on 1 st June, 2021 |

32. The Applicant submits details of various compliances as envisaged within the Code and the CIRP Regulations which requires a Resolution Plan to adhere to, which is reproduced hereunder:

I. Submission of Resolution Plan in terms of section 30(2) of the Code:

| <i>Clause of s. 30(2)</i> | <i>Requirement</i> | <i>How dealt with in the Plan</i> |
|----------------------------------|--|--|
| (a) | The plan must provide for payment of CIRP cost in priority to the repayment of other debts of CD in the manner specified by the Board. | Section 3.2.1 at pages 59 & 60 of the Resolution Plan and section 4.3.1(ix) at page 107 of the Resolution Plan |
| (b) | (i) The plan must provide for the repayment 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 | Section 3.2.3 at pages 69 & 70 of the Resolution Plan and section 4.3.1(ix) at page 107 of the Resolution Plan |

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| Clause of s. 30(2) | Requirement | How dealt with in the Plan |
|-----------------------------------|---|--|
| | <p>the event of liquidation u/s 53; or</p> <p>(ii) The plan must provide for the repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than the 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 and</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>Section 3.2.3 at pages 69 & 70 of the Resolution Plan and section 4.3.1(ix) at page 107 of the Resolution Plan</p> <p>Section 3.2.2(i)(b) at page 61 of the Resolution Plan</p> |
| (c) | Management of the affairs of the Corporate Debtor after approval of the Resolution Plan. | Section 5 at pages 111 – 114 of the Resolution Plan. |
| (d) | Implementation and Supervision. | Section 5 at pages 111 - 114 of the Resolution Plan. |
| (e) | Plan does not contravene any of the provisions of the law for the time being in force. | Section 3.1.3 at page 58 of the Resolution Plan. |
| (f) | Conforms to such other | — |

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| Clause of s. 30(2) | Requirement | How dealt with in the Plan |
|---------------------------|--|-----------------------------------|
| | requirements as may be specified by the Board. | |

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 with aforesaid compliance with Regulation |
|---|---|
| <i>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:-</i> | |
| (a) transfer of all or part of the assets of the corporate debtor to one or more persons; | Not Proposed by the RA |
| (b) sale of all or part of the assets whether subject to any security interest or not; | Section 3.4.6(iv) and Section 3.4.6(v) at pages 88 – 89 of the Resolution Plan. |
| (c) restructuring of the corporate debtor, by way of merger, amalgamation and demerger | Section 3.4.6(i), (ii), and (iii) at page 88 of the Resolution Plan read with Schedule IX 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; | Section 3.4.4 at page 87 of the Resolution Plan. |
| (e) cancellation or delisting of any shares of the corporate debtor, if applicable; | Section 3.4.1 at page 85 – 86 of the Resolution Plan. |

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| <i>Particulars</i> | <i>Relevant Page of the Revised Resolution Plan dealing with aforesaid compliance with Regulation</i> |
|--|---|
| (f) satisfaction or modification of any security interest; | Sections 3.2.2(iii)(d), 3.2.2(iii)(e), and 3.2.2(iii)(f) at page 67 – 68 of the Resolution Plan, and Section 4.3.1 (xi) at page 108 of the Resolution Plan. |
| (g) curing or waiving of any breach of the terms of any debt due from the corporate debtor; | Section 3.2.2(iii) at page 65 – 69 and Section 3.2.3(iv) at page 70 – 74 of the Resolution Plan. |
| (h) reduction in the amount payable to the creditors; | Section 3.2.2(i)(a) at page 60 – 61 of the Resolution Plan and Section 3.2.3(iii)(b) at page 70 of the Resolution Plan |
| (i) extension of a maturity date or a change in the interest rate or other terms of a debt due from the corporate debtor; | Not Proposed by the RA. |
| (j) amendment of the constitutional documents of the corporate debtor; | Section 3.4.2 at page 86 of the Resolution Plan. |
| (k) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purposes; | Section 3.4.4 at page 87 of the Resolution Plan and section 3.2.2(I)(f) at page 62 of the Resolution Plan. |
| (l) change in portfolio of goods or services produced or rendered by the corporate debtor; | Not proposed by the RA. |
| (m) change in technology used by the corporate debtor; and | Not proposed by the RA. |

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| <i>Particulars</i> | <i>Relevant Page of the Revised Resolution Plan dealing with aforesaid compliance with Regulation</i> |
|---|---|
| (n) obtaining necessary approvals from the Central and State Governments and other authorities. | Section 3.5.1(ix) at page 91 of the Resolution Plan. |

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

| <i>Reference to relevant Regulation</i> | <i>Requirement</i> | <i>How dealt with in the Plan</i> |
|---|---|---|
| 38(1) | The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors. | Sections 3.2.3 at page 69 – 70 of the Resolution Plan and 4.3.1(ix) at page 107 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. | Section 3.1.3 at page 58 of the Resolution Plan, section 3.1.4 at page 58-59 of the Resolution Plan and 3.2.13 at page 84 of the Resolution Plan. |
| 38(1B) | A resolution plan shall include a statement giving details of 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. | Section 2.16 at page 57 of the Resolution Plan. |

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| <i>Reference to relevant Regulation</i> | <i>Requirement</i> | <i>How dealt with in the Plan</i> |
|---|---|--|
| 38(2) | A resolution plan shall provide: (a) the term of the plan and its implementation schedule; | Section 4 at page 102- 104 of the Resolution Plan. |
| | (b) the management and control of the business of the corporate debtor during its term; and | Section 5.3 at page 113- 114 of the Resolution Plan. |
| | (c) adequate means for supervising its implementation. | Section 5.2 at page 111- 113 of the Resolution Plan. |
| 38(3) | A resolution plan shall demonstrate that – (a) it addresses the cause of default; (b) it is feasible and viable; (c) it has provisions for its effective implementation; (d) it has provisions for approvals required and the timeline for the same; and (e) the Resolution Applicant has the capability to implement the resolution plan. | Section 2.15 at pages 56 – 57 of the Resolution Plan. Section 2.14 at pages 52 – 56 of the Resolution Plan and Section 2.18 at page 57 of the Resolution Plan. Section 4 at pages 102- 104 of the Resolution Plan. Section 3.5 at pages 89 – 93 of the Resolution Plan and Section 3.6 at pages 93 – 98 of the Resolution Plan. Section 3.3 at page 84 of the Resolution Plan. |

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33. Further, *Ld. Counsel appearing for the CoC* while put to see the compliance of Regulation 39 of the Insolvency and Bankruptcy Code, 2016 (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 particularly with regard to recording the deliberation of the Resolution Plan, has stated as follows;

- (i) Regulation 39(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, inter alia, states that the Committee of Creditors shall record its deliberations on the feasibility and viability of each resolution plan.
- (ii) In the 30th CoC meeting held on 17.5.21 [*@ pgs. 445 – 459, Vol III of the Application*] the Resolution Professional had placed all five resolution plans before the members of the CoC for voting. Each resolution plan had been placed one after the other and had been followed by detailed deliberations. The deliberations of the members of the CoC made regarding each resolution plan including its feasibility and viability has been recorded in the minutes of the CoC meeting. Additionally, a power point presentation had also been given by the process advisor [*and has been included in the minutes of the 30th CoC meeting by specific reference*] detailing the financial proposal, scoring as per evaluation matrix, feasibility and viability, and broad contours regarding all five resolution plans [*@ pgs. 596 – 674, Vol IV of the Application*].
- (iii) On perusal of the minutes of the 30th CoC meeting held on 17.5.21 it will appear that regarding each resolution plan certain issues were raised/highlighted by the Resolution Professional or his team members/ legal advisors / process advisors. However, in addition thereto, further issues were raised, discussed, and deliberated, and it was decided that the Resolution Professional would seek further clarification from the resolution applicants in regard thereto.
- (iv) In Re: *Resolution Plan submitted by ESL Steel Limited the following issues had been discussed, deliberated, and recorded in the minutes of the meeting* [*@ pgs. 453 – 454, Vol III of the Application*].

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- a. Implementing entity not identified in the plan.
 - b. Manner in which CIRP cost over 55 crores would be paid off by ESL.
 - c. Performance Bank Guarantee submitted by ESL would be valid only upto date of issuance of Non-convertible Debentures and not upto the date of redemption of the NCDs.
 - d. NCD proposed to be secured by creating a charge on movable fixed assets.
 - e. Monitoring committee to be constituted by 2 representatives of Resolution Applicant and Financial Creditor.
 - f. Plan does not contemplate insurance claim, if received, would be kept in trust for the benefit of the financial creditors.
 - g. Plan does not contemplate if any amount received after disposal of the application for seeking avoidance transaction, would be transferred to the financial creditors.
- (v) In Re: *Resolution Plan submitted by Tata Steel Mining Limited the following issues had been discussed, deliberated, and recorded in the minutes of the meeting* [@ pg. 455 – 456, Vol III of the Application].
- a. Plan does not contemplate insurance claim if received, would be kept in trust for the benefit of the financial creditors.
 - b. Monitoring committee proposed to be constituted with only one representative of financial creditor.
 - c. In the clause contained in the resolution plan relating to transfer of amount received by the Corporate Debtor upon disposal of the application relating to the avoidance transaction, the specific reference to Section 66 of the Code is not there.
 - d. No certificate from chartered accountant has been furnished with regard to the source of funds, however, support letter from parent company has been provided.

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- (vi) Re: Resolution Plan submitted by **RimjhimIspat Limited** the following issues had been discussed, deliberated, and recorded in the minutes of the meeting [*@ pg. 456 – 457, Vol III of the Application*].
- a. The Resolution Applicant has taken aggressive figures for the EBIDTA projects of the corporate debtor for the next five years. The EBIDTA projections has been assumed to be 944 crores for the next five years, however, in the initial plan submitted by the resolution applicant, the EBIDTA figures were assumed to be 347 crores for the next five years.
 - b. Monitoring committee proposed to be constituted with one representative of financial creditors.
 - c. Performance bank guarantee submitted by resolution applicant would be valid only upto the date of payment of upfront amount and not upto payment of deferred amount.
 - d. Plan does not provide for corporate guarantee as security.
 - e. Plan does not contemplate insurance claim if received, would be kept in trust for the benefit of the financial creditors.
 - f. Plan contemplates release of all personal and corporate guarantees furnished by promoters and extinguishment of their liabilities.
- (vii) Re: Resolution Plan submitted by **Maithan Alloys Limited** the following issues had been discussed, deliberated, and recorded in the minutes of the meeting [*@ pg. 458 – 459, Vol III of the Application*].
- a. Not furnished details regarding source of funds.
 - b. No certificate from CA furnished.
- (viii) For each resolution plan, it has been categorically recorded in the minutes that the CoC deliberated on the viability and feasibility of the resolution plan and decided to put up the plan for e-voting. The e-voting had, accordingly, commenced on 19.5.21 as decided in the said meeting [*@ pg. 452, Vol III of the Application*].

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- (ix) After granting several extensions the e-voting was to conclude on 1.6.21. In the meanwhile, in the 31st CoC meeting held on 31.5.21 [*@ pgs. 460 – 472, Vol III of the Application*], the members of the CoC, by majority, agreed that the financial proposal in the resolution plans were still below their expectation and therefore unsatisfactory. The CoC deliberated and it was decided that all five resolution applicants be requested to submit their revised resolution plans with improved financial proposal latest by 1.6.21 (12 PM) for consideration of the CoC. Accordingly, the CoC, by majority vote, decided to re-call the voting on all five resolution plans [*@ pgs. 465 – 467, Vol III of the Application*].
- (x) The meeting was, thereafter, adjourned to 1.6.21 at 12.30PM to discuss further issues including considering the revised resolution plans with improved financial proposals that may be submitted.
- (xi) In the adjourned 31st CoC meeting held on 1.6.21 at 12.30 PM, two amongst the five resolution applicants submitted a revised resolution plan. ESL Steel Limited submitted a revised resolution plan. ESL's representative furnished clarifications to the queries raised by the members of CoC. [*@pg 468 Vol III*]. Another revised financial proposal had been submitted by Tata Steel Mining Limited. Representative of TSML also furnished clarifications to the queries raised by the members of CoC. [*@pg 468 Vol III*]
- (xii) The 31st CoC Meeting was once again adjourned to 4.00 PM (same day, i.e., 1.6.21) to discuss further items including considering the evaluation matrix and the resolution plans. [*@pg 468 Vol III*]
- (xiii) In the adjourned 31st CoC meeting held on 1.6.21 at 4.00 PM, the Resolution Professional informed that he has determined the final computation in accordance with the evaluation matrix on the resolution plans received by him [*@pg 469 Vol III*]. The Process Advisor, presented the final computation in accordance with the evaluation matrix and gave a detailed overview on the quantitative and qualitative parameters for all five

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resolution plans. Furthermore, he presented a comparative overview of all resolution plans as per the evaluation matrix and listed out the rankings of the resolution plans in accordance with the computation as per evaluation matrix approved by the CoC [@pg 469 Vol III]. The detailed power point presentation made by the process advisor [@ pgs. 835 – 903, Vol VI of the Application] including the qualitative and quantitative parameter on each resolution plan, key highlights, and broad contours *has been included in the minutes of the 31st CoC meeting by specific reference.*

- (xiv) During the power point presentation, few members of the CoC, raised certain queries with regard to the scoring computed. The same were addressed by the process advisor to the satisfaction of the members of the CoC. Thereafter, all five resolution plans were placed before the members of the CoC for their consideration and approval. After deliberating and considering the viability and feasibility of the five resolution plans, it was agreed by the members of the CoC to put the approval of the five resolution plans for e-voting.
- (xv) The e-voting commenced on 2.6.21 and concluded on 5.6.21. At the conclusion of the e-voting, the resolution plan of Tata Steel Mining Limited had been unanimously approved by the members of the CoC with 100% voting share casted in its favour [@ pg. 474, Vol III].

34. The Applicant submits that the Successful Resolution Applicant has submitted an Affidavit under Section 29A of the Code, which has been annexed with the application and marked with the **letter “A-21.”**

35. The Applicant submits that two registered valuers as required under Regulation 27 were appointed. A summary of the valuation determined is as below-

(in INR)

| | Name of the Registered Valuer | Fair Value | Liquidation Value |
|----|--------------------------------------|-------------------|--------------------------|
| 1. | Anil Pai Kakode | 638.26 Crores | 428.60 Crores |
| 2. | RBSA Valuation Advisors LLP | 649.09 Crores | 412.55 Crores |
| | AVERAGE | 643.68 Crores | 420.58 Crores |

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36. The Applicant has filed a Compliance Certificate in the prescribed form, *i.e.*, Form ‘H’ in compliance with regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which has been annexed marked with the **letter “A-22”** at pages 1113-1123 of the Application.

Details of Resolution Plan/Payment Schedule

37. The Applicant submits the relevant information about the amount claimed, amount admitted, and the amount proposed to be paid by the Successful Resolution Applicant under the said Resolution Plan is tabulated as under:

(Amount in Rupees)

| | Particulars | Amount Admitted | Amount proposed to be paid |
|----|---|-------------------------|-----------------------------------|
| 1. | CIRP Cost | ₹85,00,00,000 | ₹85,00,00,000 |
| 2. | Secured Financial Creditors | ₹38,85,55,51,058 | ₹5,15,00,00,000 |
| 3. | Unsecured Financial Creditors who are related parties | ₹ 62,69,50,000 | NIL |
| 4. | Unsecured Financial Creditors who not related parties | NIL | NIL |
| 5. | Operational Creditors who are workmen and employee | ₹2,12,78,899 | ₹2,12,78,899 |
| 6. | Operational Creditors (other than workmen and employee) | ₹2,60,83,88,542 | ₹15,00,00,000 |
| 7. | Others | NIL | NIL |
| | TOTAL | ₹42,96,21,68,499 | ₹617,12,78,899 |

38. Summary of the financial proposal/payment under the Resolution Plan dated 01.06.2021 of Rohit Ferro Tech Limited submitted by Tata Steel Mining Limited, as provided under the Resolution plan is tabulated hereunder for the sake of clarity.

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| Particulars | Amount |
|---|--|
| CIRP Cost | Rs. 85,00,00,000/- (Rupees Eighty Five Crores Only) reserved towards CIRP Cost to be paid upfront on the Effective Date. In the event the actual CIRP Cost is lower than the aforesaid amount, the obligation of the Resolution Applicant shall be limited to the extent of such lower amount. In the event the actual CIRP Cost at Effective Date is higher than the aforesaid amount, then such Shortfall CIRP Cost shall be reduced from FC Payment (i.e., the payment proposed to be made to the financial creditors). |
| Financial Creditors (excluding any Related Party) | Rs. 515,00,00,000/- (Rupees Five Hundred and Fifteen Crores Only) [less Priority Payment, if any, i.e., shortfall in CIRP Cost, Interim Management Cost (to the extent not discharged from the internal accruals of the corporate debtor)] to be paid upfront on the Effective Date. Additionally, the financial creditors will be allotted equity shares of the corporate debtor aggregating to 10% Paid-Up Share Capital on a fully diluted basis. |
| Operational Creditors who are Workmen and Employees (excluding any Related Party) | Rs. 2,12,78,899/- (Rupees Two Crore Twelve Lakhs Seventy Eight Thousand Eight Hundred and Ninety Nine Only) to be paid upfront on the Effective Date. |
| Operational Creditors other than Workmen and employees (excluding any Related Party) | Rs. 15,00,00,000 (Rupees Fifteen Crores Only) to be paid upfront on the Effective Date. |
| Additional amount proposed to be infused/ arranged by the Resolution | Rs. 164,00,00,000/- (Rupees One Hundred and Sixty Four Crores Only). The 50% of the Additional Funding would be infused by way of equity in the first 6 months, and the balance over the next |

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| Applicant towards capex and operations | 6- 9 months from external financing. |
| TOTAL | Rs. 781,12,78,899/- (Rupees Seven Hundred Eighty One Crores Twelve Lakhs Seventy Eight Thousand Eight Hundred and Ninety Nine Only) |

39. The Resolution Plan defines “*Effective Date*” as “a date identified by the Resolution Applicant which shall be a date no later than 60 (sixty) days from the receipt of the certified copy of the order approving Resolution Plan passed by the Adjudicating Authority under section 31 of the Code,” subject to certain conditions as laid down in the plan.

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

40. The Resolution Plan also provides for –

- a. Appointment of Monitoring Agency in Section 5.2.6 of Chapter 5;
- b. Management of Company after resolution in Chapter 5; and
- c. Term and implementation of the Resolution Plan in Chapter 4.

Reliefs and Concessions

41. The Reliefs and Concessions sought by the Resolution Applicant in section 7 of the Resolution Plan for the successful implementation of the Resolution Plan, from the Adjudicating Authority are set out below. The orders thereon are indicated against each.

| S. No. | Relief and/or Concessions Sought | Orders thereon |
|--------|---|--|
| 1. | <i>As the Resolution Applicant is required to takeover the Corporate Debtor’s business on a ‘going concern’ basis, all consents, licenses, approvals, clearances, rights, entitlements, benefits and privileges</i> | If there is any such condition in any specific contract, then this should be specifically mentioned in the |

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| | <i>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, shall continue to remain valid, notwithstanding any provision to the contrary in their terms, and provided that in case of consents, licenses, approvals, rights, entitlements, benefits and privileges that have expired or lapsed, notwithstanding that they may have already lapsed or expired due to any breach, non-compliance or efflux of time, be deemed to continue without disruption for the benefit of the Corporate Debtor, till the implementation of the Resolution Plan, as envisaged or such other period as required under Applicable Law of the RPlan, and the Adjudicating Authority shall pass an order to that effect.</i> | Resolution Plan. A carte blanche of this nature cannot be granted in favour of the corporate debtor. Further, necessary applications to the concerned regulatory or statutory authorities for renewal of such business permits, licenses, approvals, clearances in terms of s.31(4) of the IBC, and such authority shall also consider the same keeping in mind the objectives of the Code. |
| 2. | All licences, approval and consents available to the Corporate Debtor for conduct of its Jajpur Undertaking business shall be transferred in the name of and for the benefit of the Resolution Applicant to continue the business on a going concern basis. All licenses, approval and consents which have expired or are due to expire within 1 (one) year from the Sanction Date shall be deemed to have been renewed for the maximum period permitted by Applicable Law. Without prejudice to the generality of the foregoing, the licenses listed in Schedule VIII (Licenses) shall be deemed to have been renewed. | Granted subject that the Resolution Applicant shall make necessary applications to the concerned regulatory or statutory authorities for renewal of such business permits in terms of s.31(4) of the IBC, and such authority shall also consider the same keeping in mind the objectives of the Code. |
| 3. | No consents, licences, approvals, rights, | Such blanket reliefs cannot be granted at this |

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| | entitlement, privileges, whether under law, contract, lease or license, granted in favour of the Corporate Debtor be discontinued or terminated on the basis of the fact of admission of CIRP or change of management/ownership of the Corporate Debtor. The name of new management will be endorsed on all such rights and entitlements as may be required only to the extent necessary for operating the Corporate Debtor. | stage since the parties against whom these orders will operate are not before us at this stage. |
| 4. | An order directing OIIDC (IDCO) to accord expeditiously their consent/ approval/ sanction/no-objection certificate for transfer of leases in favour of the Resolution Applicant on going concern basis, in the event that the Restructuring Scheme is made effective and for change of control of the Corporate Debtor. Further, any penalty, transfer charges or fee or lease rent that is due or is chargeable upon such transfer, change in shareholding as envisaged in the Resolution Plan and the Restructuring Scheme shall be waived and completely relinquished. | The Resolution Applicant shall make necessary applications and pay the requisite fees to the concerned authorities and such authority shall also consider the same keeping in mind the objectives of the Code. |
| 5. | An order directing West Bengal Industrial Infrastructure Development Corporation to accord expeditiously their consent/ approval/ sanction/no-objection certificate for transfer of leases in favour of NewCo on going concern basis, in the event that the demerger option under the Restructuring Scheme is made effective. Further, any penalty, transfer charges or fee or lease rent that is due or is chargeable upon such | The Resolution Applicant shall make necessary applications and pay the requisite fees to the concerned authorities and such authority shall also consider the same keeping in mind the objectives of the Code. |

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| | transfer, change in shareholding as envisaged in the Resolution Plan and the Restructuring Scheme shall be waived and completely relinquished. | |
| 6. | An order directing Urban Development (T&CP) Department and Haldia Development Authority to accord expeditiously their consent/approval/sanction/no-objection certificate for transfer of leases in favour of the Resolution Applicant on going concern basis, in the event that the Restructuring Scheme is made effective. Further, any penalty, transfer charges or fee or lease rent that is due or is chargeable upon such transfer, change in shareholding as envisaged in the Resolution Plan and the Restructuring Scheme shall be waived and completely relinquished. | The Resolution Applicant shall make necessary applications and pay the requisite fees to the concerned authorities and such authority shall also consider the same keeping in mind the objectives of the Code. |
| 7. | In the interest of keeping the Corporate Debtor as a 'going concern', unless otherwise specified in the Resolution Plan, all contracts and agreements shall continue to remain valid and notwithstanding any lapse, non-compliance, breach or expiry of underlying terms of such contracts and agreements; these contracts and agreements shall be deemed to continue without disruption and without any further acts, deeds, cost, penalty, etc. for the benefit of the Corporate Debtor for their original tenure including subsequent tenures wherever the Corporate Debtor is entitled for renewals. | Such blanket reliefs cannot be granted at this stage since the parties against whom these orders will operate, are not before us at this stage. |
| 8. | Notwithstanding the terms of any relevant | Granted. |

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| | <p>agreements with third parties, the prior approval of such counterparties shall not be required to be obtained for change in control/constitution of the Corporate Debtor pursuant to the terms of this Resolution Plan and such counterparties:</p> <p>(i) shall waive all objections/Liabilities of the Corporate Debtor arising out of the initiation of corporate insolvency resolution /bankruptcy proceedings involving the Corporate Debtor, appointment of the Resolution Professional and in respect of the implementation of this Resolution Plan;</p> <p>(ii) shall waive the right to suspend these agreements due to any previous delays / failures by the Corporate Debtor to make payments under such agreements or any other breach committed by the Corporate Debtor; and</p> <p>(iii) shall not terminate the relevant agreements or take any adverse actions against the Corporate Debtor.</p> | <p>Granted.</p> <p>Such blanket reliefs cannot be granted at this stage since the parties against whom these orders will operate are not before us at this stage.</p> <p>Such blanket reliefs cannot be granted at this stage since the parties against whom these orders will operate are not before us at this stage.</p> |
| 9. | <p>The Restructuring Scheme forms an integral part of this Resolution Plan. In order to effectively implement this Resolution Plan and the Restructuring Scheme, the Resolution Applicant, Corporate Debtor and/or New Co shall be deemed to have been granted an extension of the time period for filing a certified copy of the order approving this Resolution Plan</p> | <p>Granted.</p> |

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| | under section 232(5) of the Companies Act, 2013 until the Restructuring Scheme becoming effective. | |
| 10. | All contractual arrangements (except for any contracts that vest property rights (including but not limited to tenancy rights, intellectual property rights, actionable claims and/or those rights which are beneficial to the Corporate Debtor) entered into by the Corporate Debtor with Related Parties of the Corporate Debtor shall be deemed to be terminated on and from the Effective Date, without payment of any compensation or incurring any financial Liabilities on account of such termination. | Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , ³ wherein the Hon'ble Supreme Court has held in para 95(i) 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. 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 |

³ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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| | | plan. 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. |
| 11. | All Governmental Authorities, including but not limited to the Reserve Bank India, the Ministry of Environment and Forests, the Central and State Pollution Boards shall be deemed to waive any non-compliances by the Corporate Debtor on or prior to the Effective Date. | Granted, subject to the condition that this is not in violation of any statute. Such authorities shall keep in mind the objectives of the Code while considering grant of reliefs, which is to enable the corporate debtor to start on a clean slate enabling a fresh start. |
| 12. | Upon approval of the Resolution Plan by the Adjudicating Authority, all non-compliances, breaches and defaults of the Corporate Debtor for the period prior to the Effective Date (including but not limited to those relating to tax), shall be deemed to be waived by the concerned Governmental Authorities. Immunity shall be deemed to have been granted to the Corporate Debtor from all proceedings and penalties under all | Granted, subject to the condition that this is not in violation of any statute. Such authorities shall keep in mind the objectives of the Code while considering grant of reliefs, which is to enable the corporate debtor to start on a clean slate enabling a fresh start. |

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| | <p>Applicable Laws for any non-compliance for the period prior to the Effective Date and no interest/penal implications shall arise due to such noncompliance/default/breach prior to the Effective Date. Notwithstanding the generality of the foregoing, breaches, contraventions or non-compliances of the Applicable Laws set out in Schedule V (Compliances) shall be deemed to be permanently extinguished by virtue of the order of the Adjudicating Authority approving this Resolution Plan, and the Corporate Debtor or the Resolution Applicant shall at no point of time, directly or indirectly, have any obligation, Liability or duty in relation thereto.</p> | |
| 13. | <p>The relevant Governmental Authorities shall not initiate any investigations, actions or proceeding in relation to any non-compliances with Applicable Law by the Corporate Debtor during the period prior to the Effective Date. Neither shall the Resolution Applicant, nor the Corporate Debtor, nor their respective directors, officers and employee appointed on and as of 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 requisite licences and approvals required to undertake its business as per Applicable Law, or any non-compliances of Applicable Law by the Corporate Debtor. Further, the relevant Governmental</p> | <p>Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i>,⁴ wherein the Hon'ble Supreme Court has held in para 95(i) 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</p> |

⁴ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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| | <p>Authorities will provide a reasonable period of time after the Effective Date, for the Resolution Applicant to assess the status of any non-compliances under the Applicable Law (including with respect to applicable environmental laws, directions or orders by the Ministry of Environment and Forest, permits clearances and forest related clearances) and to procure that the Corporate Debtor regularises such non-compliances under the Applicable Law existing prior to the Effective Date.</p> | <p>Govt, any State Govt or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. 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.</p> <p>The Resolution Applicant shall make necessary applications and pay the requisite fees to the concerned authorities and such authority shall also consider the same</p> |
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| | | keeping in mind the objectives of the Code. |
| 14. | Any approvals that may be required from Governmental Authorities (including tax authorities) in connection with the implementation of the Resolution Plan including on account of change in ownership/ control of the Corporate Debtor shall be deemed to have been granted on the Effective Date. | The Resolution Applicant shall make necessary applications and pay the requisite fees to the concerned authorities and such authority shall also consider the same keeping in mind the objectives of the Code. |
| 15. | That the Hon'ble Adjudicating Authority be pleased to give or issue necessary directions and instructions to the Tax authorities, to exempt/waive the applicability of the provisions of Sections 28, 41, 79, 179, 281 and other applicable provisions of the Income-tax Act, 1961 for the purposes of implementation of this Resolution Plan. | This is for the relevant tax authorities to consider, and not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority. |
| 16. | The Corporate Debtor or the Resolution Applicant shall not, at any point of time, be held financially liable under the provisions in relation to the Liability of the Corporate Debtor as per Section 170 of the Income Tax Act, 1961 in respect of any transaction carried out before the Effective Date or contemplated under the Resolution Plan. | Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , ⁵ wherein the Hon'ble Supreme Court has held in para 95(i) 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 |

⁵ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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| | | <p>its employees, members, creditors, including the Central Govt, any State Govt or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. 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.</p> |
| 17. | That the Hon'ble Adjudicating Authority be pleased to give or issue necessary directions to the CBDT and other relevant Tax authorities to waive/exempt the applicability of Sections 56 and 50CA of | This is for the appropriate taxing authorities to consider the same in accordance with the relevant law. |

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| | <p>the Income Tax Act, 1961 in respect of reduction of capital of the Existing Shareholders of the Corporate Debtor, issuance of shares by the Corporate Debtor and increase of authorised share capital in terms of Resolution Plan, and any of these transactions shall not result in any tax incidence in the hands of the Corporate Debtor or the Resolution Applicant under the aforesaid sections whether on account of valuation or otherwise.</p> | |
| 18. | <p>The CBDT under its notification dated 6 January 2018 has eased the applicability of provisions relating to levy of Minimum Alternate Tax (“MAT”) for companies against whom CIRP has commenced. In accordance with the aforesaid notification, the CBDT is requested to allow the reduction of total amount of loss brought forward (including unabsorbed depreciation) from the book profits of the Corporate Debtor for the purposes of levy under Section 115JB of the Income Tax Act, 1961. The CBDT is also requested to waive and exempt all MAT and other income tax Liabilities arising on the Corporate Debtor and/or its successors on account of settlement of Financial and Operational Creditors pursuant to implementation of this Plan.</p> | <p>This is for the appropriate taxing authorities to consider the same in accordance with the relevant law.</p> |
| 19. | <p>That the Corporate Debtor and Resolution Applicant shall be entitled to the benefit of carry forward losses, notwithstanding any default of the Corporate Debtor to file tax</p> | <p>This is for the appropriate taxing authorities to consider the same in accordance with the relevant law.</p> |

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| | returns within the due date and in accordance with the provisions of the Income Tax Act, 1961. | |
| 20. | That all pending assessments be waived and neither the Corporate Debtor nor the Resolution Applicant shall be subject to any tax Liability on account of such pending assessments. Post the order of the Adjudicating Authority approving the Resolution Plan, no re-assessment/revision or any other proceedings under the Income Tax Act, 1961 shall be initiated against the Corporate Debtor/Resolution Applicant in relation to period prior to the Effective Date and any consequential demand shall be considered non-existing and not payable by the Corporate Debtor/Resolution Applicant. Any proceedings kept in abeyance in view of CIRP shall not be revived post Sanction Date. | Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , ⁶ wherein the Hon'ble Supreme Court has held in para 95(i) 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. 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 |
| 21. | That the Hon'ble Adjudicating Authority be pleased to give or issue necessary directions, instructions to the CBDT, Customs, and Value Added Tax authorities, Central Sale Tax authorities, GST authorities, entry tax and other Tax authorities whether central or state to exempt income/gain/profits, if any, arising as a result of giving effect to the Resolution Plan and from being subjected to income tax in the hands of the Corporate Debtor or the Resolution Applicant under the provisions of Income Tax Act, 1961, value added tax, customs, octroi, excise duty, | |

⁶ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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| | <p>service tax, goods and service tax, including but not limited to any income tax and MAT Liability arising on capital reduction in the Corporate Debtor, waiver/write off/ write down of current amounts due to employees, vendors, Operational Creditors/ Financial Creditors, value of assets, value of inventories, etc. without any impact on brought forward tax and book loss / depreciation; and waive all Liabilities whether crystallised or not in respect of Taxes (including interest and penalty) arising in respect of periods up to the Sanction Date and arising out of implementation or sanction of the Resolution Plan.</p> | <p>no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court 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.</p> |
| 22. | <p>The Central Board of Excise and Customs / respective value-added Tax / entry Tax authorities / to consider providing relief to the Corporate Debtor from all past litigations (including all proceedings and appeals) pending at different levels and provide waiver from Tax dues (including those arising out of assessment claims) including interest and penalty on such litigations and proceedings.</p> | |
| 23. | <p>That the Adjudicating Authority be pleased to give or issue necessary directions, instructions to all relevant Governmental Authorities to grant relief/concessions from payment of fees, charges, transfer charges, assignment charges, stamp duty, registration fees (including fees payable to the jurisdictional RoC) for various actions contemplated under this Resolution Plan</p> | <p>No general reliefs can be granted in the manner sought for. It is for the appropriate Tax Authorities to consider the same in accordance with the relevant law.</p> |

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| | <p>(including capital reduction, issuance of shares by the Corporate Debtor, increase in authorised share capital, demerger and/or merger in accordance with the Restructuring Scheme), appointment of Board of Directors including Key Managerial Personnel and any other action taken to implement the Resolution Plan and that the fees payable to the RoC in respect of amendment of the memorandum of association and articles of association of the Corporate Debtor be waived and the RoC be directed to approve the relevant forms under Companies Act and rules thereto without payment of fees in respect thereof. Similarly, the stamp duty arising on issuance of shares by the Corporate Debtor and on the transactions contemplated under the Restructuring Scheme, be waived.</p> | |
| 24. | <p>That the Financial Creditors shall issue no-dues certificate(s) in favour of the Corporate Debtor and release their respective security interest or Encumbrances in any on the assets in full and complete satisfaction of all debt owed to the Financial Creditors by the Corporate Debtor. That in the event any approval/filing is required under Applicable Law for purposes of release of security interest, then, upon approval of the Adjudicating Authority pursuant to Section 31 of the Code, such approval shall be deemed to be provided and filing shall be deemed to have been made.</p> | Granted. |

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| 25. | That the relevant authorities/Government Authorities shall waive all rent, rates, taxes, compensation, claims/ amounts claimed (including but not limited to any interest thereat), contingent Liabilities along with any such additional Liabilities added thereto until the Effective Date. | Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , ⁷ wherein the Hon'ble Supreme Court has held in para 95(i) 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. 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. The Hon'ble Supreme Court also held that all the dues |
| 26. | The Resolution Applicant, or the Corporate Debtor shall not be liable to pay any Taxes (direct or indirect) whatsoever arising (directly or indirectly on such entity) as a result of the actions taken by the Corporate Debtor prior to the Effective Date or arising from the actions under this Resolution Plan. It may also be clarified that any Tax Liabilities pertaining to any period or action prior to the Effective Date, whether assessed or unassessed, by the relevant Government and statutory authority shall be deemed to have been extinguished and written-off on the Effective Date. | |
| 27. | Following discharge of the Creditors in accordance with the Resolution Plan, all claims, demands and Liabilities actual or potential towards any Person, including any Tax liability whether admitted or not, due or contingent, asserted or unasserted, crystallised or uncrystallised, known or unknown, recorded in the books or not relating to the period prior to the Effective Date or arising on account of acquisition of the management and control by the Resolution Applicant or due to implementation of the Plan will be | |

⁷ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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| | waived/written off in full and the Corporate Debtor and the Resolution Applicant shall at no point of time be directly or indirectly have any obligation, Liability or duty in relation thereto. | 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. |
| 28. | Given that the Resolution Applicant will acquire control of the affairs of the Corporate Debtor on the Effective Date, all Governmental Authorities (since they are Operational Creditors) to waive any penalties (including any financial penalties, or any other financial Liabilities) and dues on the basis of Applicable Laws that may arise from any defaults or non-compliances by the Corporate Debtor prior to the Effective Date, including but not limited to the provisions of the environmental laws and consents, industrial and operational laws, all relevant and applicable labour laws, all relevant and applicable Direct and Indirect tax laws, the relevant stamp acts of the different States of India, relevant environmental laws and any other government instrumentality. | Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , ⁸ wherein the Hon'ble Supreme Court has held in para 95(i) 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. On the date of approval of |
| 29. | That any corporate guarantee issued by the Corporate Debtor in favour of or on behalf of any of its subsidiaries, associates, group | |

⁸ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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| | companies or any third party shall stand relinquished. | 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. 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. |
| 30. | All statutory Liabilities pertaining to the period prior to the Effective Date or pertaining to or arising out of implementation of this Resolution Plan shall not be required to be paid and the same shall be binding on all such statutory authorities. For avoidance of doubt, any transfer/assignment charges payable for transfer of leasehold right (be it on account of change in control of management) shall be waived off. | |
| 31. | Other than actions taken by the CoC/ it's individual member/ Resolution Professional against the personal guarantees/ corporate guarantees extended by the Related Parties of the Corporate Debtor, all legal suits, proceedings, certificate proceedings and/or quasi legal proceedings that have been initiated against the Corporate Debtor or the Related Parties of the Corporate Debtor, which may have | In <i>Lalit Kumar Jain v Union of India & ors</i> , ⁹ 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 <i>per se</i> operate as a discharge of the |

⁹2021 SCC OnLine SC 396 decided on 21.05.2021.

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| | <p>an adverse impact on the Corporate Debtor of any nature whatsoever, shall stand automatically abated, revoked, released, extinguished, withdrawn, quashed and deemed null and void without the Corporate Debtor/Resolution Applicant having to incur any Liability and no fresh proceedings shall be entertained in respect of any Liability pertaining to the period prior to the Effective Date. Notwithstanding the generality of the foregoing, all Proceedings shall be deemed to have been withdrawn or dismissed and will be deemed to have been barred with effect from the Effective Date.</p> | <p>guarantor's liability. The provisions of section 32A of the IBC will also apply. Therefore, the reliefs sought for are granted, but shall be ringfenced by the judgment of the Hon'ble Supreme Court in so far as extinguishment of liabilities that are not part of the resolution plan, and non-extinguishment of personal guarantees are concerned.</p> |
| 32. | <p>Any litigation/suit/arbitration/cases by whatever name called, against the Corporate Debtor, including proceedings initiated under Negotiable Instruments Act, 1881, whether or not initiated before the CIRP, whether or not continuing on the Sanction Date, shall be deemed to be withdrawn. Any claim, damages, Liabilities in any form arising out of the same whether or not defined as operational debt, shall be completely waived and extinguished.</p> | <p>Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i>,¹⁰ wherein the Hon'ble Supreme Court has held in para 95(i) 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,</p> |
| 33. | <p>That the Corporate Debtor or Resolution Applicant shall not be required to refund any benefit (subsidy / incentive or any monetary benefit) already availed by the Corporate Debtor or pay any interest, penalty, late fees, liquidated damages on account of failure of the Corporate Debtor to comply with the terms and conditions for</p> | |

¹⁰ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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| | grant of such incentive/subsidy/benefit or due to change in management arising due to implementation of the Resolution Plan and no litigation/proceedings shall be instituted against the Corporate Debtor or Resolution Applicant on this account and any pending litigation/proceedings shall stand quashed/withdrawn without any Liability on the Corporate Debtor/Resolution Applicant and the relevant authority including any district industrial center / State Government / Central Government or any implementing authority appointed under any law for the time being in force shall act in accordance with the aforesaid directions. | guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. 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. |
| 34. | The lenders (including Secured 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. | Such relief cannot be granted at this stage. |
| 35. | The Resolution Applicant seeks a time period of 12 (twelve) months from the | Granted. |

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| | <p>Effective Date, to ensure compliances which are not otherwise exempted/waived in terms of the Resolution Plan, in relation to the non-compliance of Applicable Laws by the Corporate Debtor pertaining to any period up to Effective Date. Further, the relevant Governmental Authorities shall not initiate any investigations, actions or proceedings against 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 the Effective Date.</p> | |
| 36. | <p>That the Resolution Applicant be exempted from the compliances under the prevailing laws of the SEBI and related stock exchanges to implement this Resolution Plan.</p> <p>Any statutory Liabilities pertaining to the period prior to the Effective Date shall not be required to be paid and the same shall be binding on the SEBI and the related stock exchanges.</p> | <p>The Resolution Plan is to be compliant with the prevailing law. All compliances shall be adhered to.</p> <p>Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i>,¹¹ wherein the Hon'ble Supreme Court has held in para 95(i) 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</p> |

¹¹ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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| | | <p>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. 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. 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.</p> |
| 37. | The Corporate Debtor shall not be held to be in default for payments as contemplated | Granted, the payments should be made within the stipulated timeframe |

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| | in this Resolution Plan towards statutory dues or any other dues till the payments are made in accordance with the Resolution Plan. | proposed by the Resolution Applicant. |
| 38. | The Corporate Debtor/Resolution Applicant shall not be held to be in default for the past non-compliances and be exempted and not be required to comply with such non-compliances which have occurred prior to the Effective Date. | Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , ¹² wherein the Hon'ble Supreme Court has held in para 95(i) 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. 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 |

¹² 2021 SCC OnLine SC 313 decided on 13.04.2021.

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| | | to a claim, which is not part of the resolution plan. 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. | The Corporate Debtor shall, at the option of the Resolution Applicant, recast its books of accounts to give effect to this Resolution Plan i.e., to <i>inter alia</i> give effect to reduction of capital, set off the balance in the security premium reserve, impairment of assets, write back/write off the debt/Liabilities etc., and make the consequential adjustment in retained earning without requiring to comply with any procedure. | All procedures shall be complied with by the Resolution Applicant other than approval required by the shareholders and this Adjudicating Authority. |
| 40. | The Resolution Applicant shall have the right to recover and take necessary action of all actionable claims including loans and advances (provided or not provided or written off). | Granted. |
| 41. | The assets/properties which are owned and/or recorded in the books of the Corporate Debtors for which the title | The Resolution Applicant shall make necessary applications to obtain the same. |

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| | deeds/agreements/any other documents are not traceable shall be deemed to be the assets of the Corporate Debtor and the Corporate Debtors shall be entitled to obtain the certified true copy from such authority where such documents are registered or the photo copy thereof would be treated as the valid original documents for claiming the title over such properties and/or for dealing with such properties. | |
| 42. | Any and all unauthorised possession/encroachments on the movable/immovable assets of the Corporate Debtor, irrespective of period and irrespective of any claim on adverse possession basis, to be declared vacated immediately and the Corporate Debtor's ownership and possession to be admitted and established. The Corporate Debtor should have right to recover and take possession of all such assets and/or land not under its possession, for which, whether or not any agreements have been made and/or, whether or not such recovery is barred by limitation or otherwise. | Such blanket reliefs cannot be granted at this stage since the parties against whom these orders will operate are not before us at this stage. |
| 43. | The lease for the leasehold land shall be continued without requirement to pay any rent in arrears, taxes, salami, interest, penalty, registration charges, stamp duty or any other cost/charges (including without limitation the transfer charges), without any requirement of compliances relating to any past defaults in respect of any other statutory provision. | Such carte blanche relief cannot be granted at this stage. |
| 44. | The intangible assets to which the | Such carte blanche relief cannot be granted |

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| | Corporate Debtor is entitled to and/or applied for and/or whether registered or not, whether in possession or not, whether in use or not shall continue to be the assets of the Corporate Debtor and all infringement and/or use by any third party shall become invalid. All agreements/documents where any such asset has been allowed to be used by any Related Party of the existing Promoters shall stand null and void. | at this stage. |
| 45. | All investments held by the Corporate Debtor shall be free from all encumbrances. Any charge/pledge created in respect of securities of the Corporate Debtor and all such agreements/documents shall be annulled. All such securities/certificate held by pledgee shall be released and returned back to the Corporate Debtor on the Effective Date. | Such blanket reliefs cannot be granted at this stage since the parties against whom these orders will operate are not before us at this stage. |
| 46. | Transfer of any amount lying in the banks for more than 7 (seven years) or otherwise to investor protection fund under the provisions of Companies Act shall be exempted and use of such funds in operating the Corporate Debtor shall be allowed in the interest of all stakeholders. | Not granted. |
| 47. | All contracts/ agreements / understandings which have been entered into by the Corporate Debtor without proper approvals/authority of the Board of Directors and/or Existing Shareholders shall stand cancelled at the discretion of the Resolution Applicant. No claim for loss can | Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , ¹³ wherein the Hon'ble Supreme Court has held in para 95(i) that once a |

¹³ 2021 SCC OnLine SC 313 decided on 13.04.2021.

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| | <p>be claimed by the other party. Further, the Resolution Applicant shall not be liable under such contracts, agreements, and understandings.</p> | <p>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. 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. 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</p> |
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| | | Adjudicating Authority grants its approval under section 31 could be continued. |
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Analysis and Findings for Resolution Plan (IA(I.B.C)/532(KB)2021)

32. 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 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 done by the RP and the Resolution Applicant for making the plan effective after approval by this Bench.
33. On perusal of the documents on record, we are also satisfied that the Resolution Plan 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.
34. 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.
35. In case of non-compliance of this order or withdrawal of Resolution Plan, the CoC shall forfeit the EMD amount already paid by the Resolution Applicant.
36. Subject to the observations made in this Order, the Resolution Plan in question is hereby **approved** by this Bench. Hence, *I.A. (IB) 532/KB/2021* is **disposed of**.
The Resolution Plan shall form part of this Order.
37. 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.
38. The Moratorium imposed under section 14 shall cease to have effect from the date of this order.

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39. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for the record and also unto the Resolution Applicant or New Promoters.
40. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.
41. Liberty is hereby granted for moving any Application, if, required in connection with implementation of this Resolution Plan.
42. A copy of this Order is to be submitted in the Office of the Registrar of Companies, West Bengal.
43. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.
44. 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.
45. When this matter was reserved for orders on 10.03.2022, two affidavits have been received by post, which were addressed to the Registry of this Bench on 04.04.2022, one by Smt Rina Devi and Sri. Kedar Prasad Sav. There is no mention of any I.A. wherein these affidavits were sought to be filed. In these affidavits, the deponents have sought to raise some invoices and they are seeking a correction of calculation error. It is further stated in these affidavits that an affidavit had been filed in Durgapur Court. It is mentioned in these affidavits that they have some receivables from Rohit Ferro Tech Limited. Both these affidavits appear to have been executed on 31.03.2022. This Adjudicating Authority is of considered opinion that the errors sought to be corrected cannot be allowed when the orders are ready for pronouncement, otherwise also it is too late a stage i.e. after approval of Resolution Plan by CoC, to raise such claim before this Adjudicating Authority. This appears to be a very casual attempt

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made by the deponents when the matter had already been reserved for orders. Therefore, we decline to take these affidavits on record and consider the averments contained in these affidavits.

46. In view of the above directions, **C.P. (IB) No. 1214/KB/2018 is disposed of.**
47. 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.
48. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
49. File be consigned to the record.

Harish Chander Suri
Member (Technical)

Rohit Kapoor
Member (Judicial)

The order is pronounced on the 7th day of April, 2022.

GGRB (LRA)/SA (LRA)