

# FORM NO. MGT-7

[Pursuant to sub-Section(1) of section 92 of the Companies Act, 2013 and sub-rule (1) of rule 11of the Companies (Management and Administration) Rules, 2014]



सत्यमेव जयते

## Annual Return (other than OPCs and Small Companies)

Form language  English  Hindi

Refer the instruction kit for filing the form.

### I. REGISTRATION AND OTHER DETAILS

(i) \* Corporate Identification Number (CIN) of the company

U29253WB2008PLC123604

Pre-fill

Global Location Number (GLN) of the company

\* Permanent Account Number (PAN) of the company

AABCO0215H

(ii) (a) Name of the company

OM BESCO RAIL PRODUCTS LI

(b) Registered office address

NICCO HOUSE,  
2 HARE STREET, 3RD FLOOR,  
KOLKATA  
Kolkata  
West Bengal  
700001

(c) \*e-mail ID of the company

sanjay@jekay.com

(d) \*Telephone number with STD code

03322484772

(e) Website

(iii) Date of Incorporation

05/03/2008

(iv)	Type of the Company	Category of the Company	Sub-category of the Company
	Public Company	Company limited by shares	Indian Non-Government company

(v) Whether company is having share capital

Yes  No

(vi) \*Whether shares listed on recognized Stock Exchange(s)

Yes  No

(b) CIN of the Registrar and Transfer Agent

Pre-fill

Name of the Registrar and Transfer Agent

Registered office address of the Registrar and Transfer Agents

(vii) \*Financial year From date  (DD/MM/YYYY) To date  (DD/MM/YYYY)(viii) \*Whether Annual general meeting (AGM) held  Yes  No(a) If yes, date of AGM (b) Due date of AGM (c) Whether any extension for AGM granted  Yes  No**II. PRINCIPAL BUSINESS ACTIVITIES OF THE COMPANY**\*Number of business activities 

S.No	Main Activity group code	Description of Main Activity group	Business Activity Code	Description of Business Activity	% of turnover of the company
1	C	Manufacturing	C10	Electrical equipment, General Purpose and Special purpose Machinery & equipment,	0

**III. PARTICULARS OF HOLDING, SUBSIDIARY AND ASSOCIATE COMPANIES (INCLUDING JOINT VENTURES)**\*No. of Companies for which information is to be given **Pre-fill All**

S.No	Name of the company	CIN / FCRN	Holding/ Subsidiary/Associate/ Joint Venture	% of shares held
1	GANPATI INDUSTRIAL PVT LTD	U51109WB1995PTC072201	Holding	100

**IV. SHARE CAPITAL, DEBENTURES AND OTHER SECURITIES OF THE COMPANY****(i) \*SHARE CAPITAL**

(a) Equity share capital

Total number of equity shares	35,000,000	1,000,000	1,000,000	1,000,000
Total amount of equity shares (in Rupees)	350,000,000	10,000,000	10,000,000	10,000,000

Number of classes

Number of equity shares	35,000,000	1,000,000	1,000,000	1,000,000
Nominal value per share (in rupees)	10	10	10	10
Total amount of equity shares (in rupees)	350,000,000	10,000,000	10,000,000	10,000,000

**(b) Preference share capital**

Total number of preference shares	0	0	0	0
Total amount of preference shares (in rupees)	0	0	0	0

Number of classes

0

Number of preference shares				
Nominal value per share (in rupees)				
Total amount of preference shares (in rupees)				

**(c) Unclassified share capital**

Total amount of unclassified shares	0
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**(d) Break-up of paid-up share capital**

Equity shares	Physical	DEMAT	Total			
At the beginning of the year	31,260,000	0	31260000	312,600,000	312,600,000	
Increase during the year	0	0	0	10,000,000	10,000,000	0
i. Public Issues	0	0	0	0	0	0
ii. Rights issue	0	0	0	0	0	0
iii. Bonus issue	0	0	0	0	0	0
iv. Private Placement/ Preferential allotment	0	0	0	0	0	0

v. ESOPs	0	0	0	0	0	0
vi. Sweat equity shares allotted	0	0	0	0	0	0
vii. Conversion of Preference share	0	0	0	0	0	0
viii. Conversion of Debentures	0	0	0	0	0	0
ix. GDRs/ADRs	0	0	0	0	0	0
x. Others, specify				10,000,000	10,000,000	
Preferential Allotment of Equity Share Capital to R						
<b>Decrease during the year</b>	0	0	0	312,600,000	312,600,000	0
i. Buy-back of shares	0	0	0	0	0	0
ii. Shares forfeited	0	0	0	0	0	0
iii. Reduction of share capital	0	0	0	0	0	0
iv. Others, specify				312,600,000	312,600,000	
Cancellation and Extinguishment of existing paid up						
<b>At the end of the year</b>	31,260,000	0	31260000	10,000,000	10,000,000	
<b>Preference shares</b>						
<b>At the beginning of the year</b>	0	0	0	0	0	
<b>Increase during the year</b>	0	0	0	0	0	0
i. Issues of shares	0	0	0	0	0	0
ii. Re-issue of forfeited shares	0	0	0	0	0	0
iii. Others, specify						
<b>Decrease during the year</b>	0	0	0	0	0	0
i. Redemption of shares	0	0	0	0	0	0
ii. Shares forfeited	0	0	0	0	0	0
iii. Reduction of share capital	0	0	0	0	0	0
iv. Others, specify						
<b>At the end of the year</b>	0	0	0	0	0	

ISIN of the equity shares of the company

(ii) Details of stock split/consolidation during the year (for each class of shares)

0

Class of shares		(i)	(ii)	(iii)
Before split / Consolidation	Number of shares			
	Face value per share			
After split / Consolidation	Number of shares			
	Face value per share			

(iii) Details of shares/Debentures Transfers since closure date of last financial year (or in the case of the first return at any time since the incorporation of the company) \*

Nil

[Details being provided in a CD/Digital Media]

Yes

No

Not Applicable

Separate sheet attached for details of transfers

Yes

No

Note: In case list of transfer exceeds 10, option for submission as a separate sheet attachment or submission in a CD/Digital Media may be shown.

Date of the previous annual general meeting		<input type="text"/>	
Date of registration of transfer (Date Month Year)		<input type="text"/>	
Type of transfer	<input type="text"/>	1 - Equity, 2- Preference Shares, 3 - Debentures, 4 - Stock	
Number of Shares/ Debentures/ Units Transferred	<input type="text"/>	Amount per Share/ Debenture/Unit (in Rs.)	<input type="text"/>
Ledger Folio of Transferor		<input type="text"/>	
Transferor's Name	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Surname	middle name	first name
Ledger Folio of Transferee		<input type="text"/>	

Transferee's Name	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Surname	middle name	first name
Date of registration of transfer (Date Month Year) <input type="text"/>			
Type of transfer	<input type="text"/>	1 - Equity, 2- Preference Shares,3 - Debentures, 4 - Stock	
Number of Shares/ Debentures/ Units Transferred	<input type="text"/>	Amount per Share/ Debenture/Unit (in Rs.)	<input type="text"/>
Ledger Folio of Transferor <input type="text"/>			
Transferor's Name	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Surname	middle name	first name
Ledger Folio of Transferee <input type="text"/>			
Transferee's Name	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Surname	middle name	first name

**(iv) \*Debentures (Outstanding as at the end of financial year)**

Particulars	Number of units	Nominal value per unit	Total value
Non-convertible debentures	0	0	0
Partly convertible debentures	0	0	0
Fully convertible debentures	0	0	0
<b>Total</b>			0

Details of debentures

Class of debentures	Outstanding as at the beginning of the year	Increase during the year	Decrease during the year	Outstanding as at the end of the year
Non-convertible debentures	0	0	0	0
Partly convertible debentures	0	0	0	0
Fully convertible debentures	0	0	0	0

(v) Securities (other than shares and debentures)

0

Type of Securities	Number of Securities	Nominal Value of each Unit	Total Nominal Value	Paid up Value of each Unit	Total Paid up Value
Total					

V. \*Turnover and net worth of the company (as defined in the Companies Act, 2013)

(i) Turnover

0

(ii) Net worth of the Company

-245,692,138.4

VI. (a) \*SHARE HOLDING PATTERN - Promoters

S. No.	Category	Equity		Preference	
		Number of shares	Percentage	Number of shares	Percentage
1.	Individual/Hindu Undivided Family				
	(i) Indian	6	0	0	
	(ii) Non-resident Indian (NRI)	0	0	0	
	(iii) Foreign national (other than NRI)	0	0	0	
2.	Government				
	(i) Central Government	0	0	0	
	(ii) State Government	0	0	0	
	(iii) Government companies	0	0	0	
3.	Insurance companies	0	0	0	
4.	Banks	0	0	0	
5.	Financial institutions	0	0	0	

6.	Foreign institutional investors	0	0	0	
7.	Mutual funds	0	0	0	
8.	Venture capital	0	0	0	
9.	Body corporate (not mentioned above)	999,994	100	0	
10.	Others	0	0	0	
	<b>Total</b>	1,000,000	100	0	0

**Total number of shareholders (promoters)**

7

**(b) \*SHARE HOLDING PATTERN - Public/Other than promoters**

S. No.	Category	Equity		Preference	
		Number of shares	Percentage	Number of shares	Percentage
1.	Individual/Hindu Undivided Family				
	(i) Indian	0	0	0	
	(ii) Non-resident Indian (NRI)	0	0	0	
	(iii) Foreign national (other than NRI)	0	0	0	
2.	Government				
	(i) Central Government	0	0	0	
	(ii) State Government	0	0	0	
	(iii) Government companies	0	0	0	
3.	Insurance companies	0	0	0	
4.	Banks	0	0	0	
5.	Financial institutions	0	0	0	
6.	Foreign institutional investors	0	0	0	
7.	Mutual funds	0	0	0	
8.	Venture capital	0	0	0	
9.	Body corporate (not mentioned above)	0	0	0	
10.	Others	0	0	0	



	<b>Total</b>	0	0	0	0
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Total number of shareholders (other than promoters)

Total number of shareholders (Promoters+Public/  
Other than promoters)

**VII. \*NUMBER OF PROMOTERS, MEMBERS, DEBENTURE HOLDERS**  
(Details, Promoters, Members (other than promoters), Debenture holders)

Promoters	2	7
Members (other than promoters)	36	0
Debenture holders	0	0

**VIII. DETAILS OF DIRECTORS AND KEY MANAGERIAL PERSONNEL**

**(A) \*Composition of Board of Directors**

Category	Number of directors at the beginning of the year		Number of directors at the end of the year		Percentage of shares held by directors as at the end of year	
	Executive	Non-executive	Executive	Non-executive	Executive	Non-executive
<b>A. Promoter</b>	0	0	3	0	0	0
<b>B. Non-Promoter</b>	1	4	0	0	0	0
(i) Non-Independent	1	2	0	0	0	0
(ii) Independent	0	2	0	0	0	0
<b>C. Nominee Directors representing</b>	0	0	0	0	0	0
(i) Banks & FIs	0	0	0	0	0	0
(ii) Investing institutions	0	0	0	0	0	0
(iii) Government	0	0	0	0	0	0
(iv) Small share holders	0	0	0	0	0	0
(v) Others	0	0	0	0	0	0
<b>Total</b>	1	4	3	0	0	0

Number of Directors and Key managerial personnel (who is not director) as on the financial year end date

**(B) (i) \*Details of directors and Key managerial personnel as on the closure of financial year**

Name	DIN/PAN	Designation	Number of equity share(s) held	Date of cessation (after closure of financial year : If any)
PANKAJ JALAN	00179590	Additional director	1	
BHAGWATI PRASAD J	00551459	Additional director	1	
NIRAJ JALAN	00551970	Additional director	1	

**(ii) Particulars of change in director(s) and Key managerial personnel during the year**

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Name	DIN/PAN	Designation at the beginning / during the financial year	Date of appointment/ change in designation/ cessation	Nature of change (Appointment/ Change in designation/ Cessation)
MADHUSUDAN TANTI,	00031226	Additional director	08/03/2022	Cessation
ARUNAVA CHATTERJI	00573613	Director	08/03/2022	Cessation
SAMAR JHA	02936104	Director	08/03/2022	Cessation
MANU KUMAR KAPUR	06364490	Director	08/03/2022	Cessation
JAYARAM KARTHIKEY	07572999	Director	08/03/2022	Cessation
MADHUSUDAN TANTI,	ABJPT8584C	CEO	08/03/2022	Cessation
PANKAJ JALAN	00179590	Additional director	08/03/2022	Appointment
BHAGWATI PRASAD J.	00551459	Additional director	08/03/2022	Appointment
NIRAJ JALAN	00551970	Additional director	08/03/2022	Appointment

**IX. MEETINGS OF MEMBERS/CLASS OF MEMBERS/BOARD/COMMITTEES OF THE BOARD OF DIRECTORS****A. MEMBERS/CLASS /REQUISITIONED/NCLT/COURT CONVENED MEETINGS**

Number of meetings held

0

Type of meeting	Date of meeting	Total Number of Members entitled to attend meeting	Attendance	
			Number of members attended	% of total shareholding

**B. BOARD MEETINGS**

\*Number of meetings held

1

S. No.	Date of meeting	Total Number of directors associated as on the date of meeting	Attendance	
			Number of directors attended	% of attendance
1	29/03/2022	3	3	100

**C. COMMITTEE MEETINGS**

Number of meetings held

0

S. No.	Type of meeting	Date of meeting	Total Number of Members as on the date of the meeting	Attendance	
				Number of members attended	% of attendance
1					

**D. \*ATTENDANCE OF DIRECTORS**

S. No.	Name of the director	Board Meetings			Committee Meetings			Whether attended AGM held on
		Number of Meetings which director was entitled to attend	Number of Meetings attended	% of attendance	Number of Meetings which director was entitled to attend	Number of Meetings attended	% of attendance	
		30/09/2022 (Y/N/NA)						
1	PANKAJ JALA	1	1	100	0	0	0	Yes
2	BHAGWATI P	1	1	100	0	0	0	Yes
3	NIRAJ JALAN	1	1	100	0	0	0	Yes

**X. \*REMUNERATION OF DIRECTORS AND KEY MANAGERIAL PERSONNEL**

Nil

Number of Managing Director, Whole-time Directors and/or Manager whose remuneration details to be entered

S. No.	Name	Designation	Gross Salary	Commission	Stock Option/ Sweat equity	Others	Total Amount
1							0
	Total						

Number of CEO, CFO and Company secretary whose remuneration details to be entered

S. No.	Name	Designation	Gross Salary	Commission	Stock Option/ Sweat equity	Others	Total Amount
1							0
	Total						

Number of other directors whose remuneration details to be entered

S. No.	Name	Designation	Gross Salary	Commission	Stock Option/ Sweat equity	Others	Total Amount
1							0
	Total						

**XI. MATTERS RELATED TO CERTIFICATION OF COMPLIANCES AND DISCLOSURES**

\* A. Whether the company has made compliances and disclosures in respect of applicable provisions of the Companies Act, 2013 during the year  Yes  No

B. If No, give reasons/observations

**XII. PENALTY AND PUNISHMENT - DETAILS THEREOF**

(A) DETAILS OF PENALTIES / PUNISHMENT IMPOSED ON COMPANY/DIRECTORS /OFFICERS  Nil

Name of the company/ directors/ officers	Name of the court/ concerned Authority	Date of Order	Name of the Act and section under which penalised / punished	Details of penalty/ punishment	Details of appeal (if any) including present status

(B) DETAILS OF COMPOUNDING OF OFFENCES  Nil

Name of the company/ directors/ officers	Name of the court/ concerned Authority	Date of Order	Name of the Act and section under which offence committed	Particulars of offence	Amount of compounding (in Rupees)

**XIII. Whether complete list of shareholders, debenture holders has been enclosed as an attachment**

Yes  No

**XIV. COMPLIANCE OF SUB-SECTION (2) OF SECTION 92, IN CASE OF LISTED COMPANIES**

In case of a listed company or a company having paid up share capital of Ten Crore rupees or more or turnover of Fifty Crore rupees or more, details of company secretary in whole time practice certifying the annual return in Form MGT-8.

Name

Whether associate or fellow

Associate  Fellow

Certificate of practice number

**I/We certify that:**

- (a) The return states the facts, as they stood on the date of the closure of the financial year aforesaid correctly and adequately.
- (b) Unless otherwise expressly stated to the contrary elsewhere in this Return, the Company has complied with all the provisions of the Act during the financial year.

**Declaration**

I am Authorised by the Board of Directors of the company vide resolution no. ..  dated

(DD/MM/YYYY) to sign this form and declare that all the requirements of the Companies Act, 2013 and the rules made thereunder in respect of the subject matter of this form and matters incidental thereto have been complied with. I further declare that:

- 1. Whatever is stated in this form and in the attachments thereto is true, correct and complete and no information material to the subject matter of this form has been suppressed or concealed and is as per the original records maintained by the company.
- 2. All the required attachments have been completely and legibly attached to this form.

**Note: Attention is also drawn to the provisions of Section 447, section 448 and 449 of the Companies Act, 2013 which provide for punishment for fraud, punishment for false statement and punishment for false evidence respectively.**

**To be digitally signed by**

Director

**PANKA JALAN** Digitally signed by PANKA JALAN Date: 2023.01.18 13:25:08 +0530

DIN of the director

**To be digitally signed by**

**SHRISTI AGARWAL** Digitally signed by SHRISTI AGARWAL Date: 2023.01.18 13:27:18 +0530

- Company Secretary
- Company secretary in practice

Membership number

Certificate of practice number

**Attachments**

- 1. List of share holders, debenture holders
- 2. Approval letter for extension of AGM;
- 3. Copy of MGT-8;
- 4. Optional Attachment(s), if any

**List of attachments**

<b>Attach</b>	List of Shareholders.pdf
<b>Attach</b>	List of Directors.pdf
<b>Attach</b>	NCLT Order.pdf
<b>Attach</b>	

**Remove attachment**

**Modify**

**Check Form**

**Prescrutin**

**Submit**

**This eForm has been taken on file maintained by the Registrar of Companies through electronic mode and on the basis of statement of correctness given by the company**





# OmBesco Rail Products Limited

(Wholly owned subsidiary of Ganpati Industrial Private Limited)

vide NCIIT order Ref. No. IA(IB) No.692/RB/2021 in CP(IB) No. 1735/KB/2019 Dt. 08.03.2022

CIN No.: U29253WB2008PLC123604

## LIST OF SHAREHOLDERS AS ON THE 31<sup>ST</sup> DAY OF MARCH, 2022

L.F. NO.	NAME	ADDRESS	FATHERS/HUSBAND NAME	NO. OF SHARES	PERCENTAGE OF SHARES
1.	Ganpati Industrial Private Limited	2, Hare Street, NICCO HOUSE, 3 <sup>rd</sup> Floor, Kolkata - 700001	N.A.	9,99,994	100.00 %
2.	Bhagwati Prasad Jalan (as Nominee of Ganpati Industrial Private Limited)	32A, Raja Santosh Road, Alipore, Kolkata - 700027	Late Hasti Prasad Jalan	1	0.00 %
3.	Pankaj Jalan (as Nominee of Ganpati Industrial Private Limited)	32A, Raja Santosh Road, Alipore, Kolkata - 700027	Mr. Bhagwati Prasad Jalan	1	0.00 %
4.	Niraj Jalan (as Nominee of Ganpati Industrial Private Limited)	32A, Raja Santosh Road, Alipore, Kolkata - 700027	Mr. Bhagwati Prasad Jalan	1	0.00 %
5.	Nidhi Jalan (as Nominee of Ganpati Industrial Private Limited)	32A, Raja Santosh Road, Alipore, Kolkata - 700027	Mr. Pankaj Jalan	1	0.00 %
6.	Aditi Jalan (as Nominee of Ganpati Industrial Private Limited)	32A, Raja Santosh Road, Alipore, Kolkata - 700027	Mr. Niraj Jalan	1	0.00 %
7.	Aarav Jalan (as Nominee of Ganpati Industrial Private Limited)	32A, Raja Santosh Road, Alipore, Kolkata - 700027	Mr. Niraj Jalan	1	0.00 %
<b>TOTAL</b>				<b>10,00,000</b>	<b>100.00 %</b>

For Om Besco Rail Products Limited  
OM BESCO RAIL PRODUCTS LIMITED

Additional Director

**Pankaj Jalan**  
Additional Director  
DIN: 00179590

Registered Office : 2-Hare Street (Nicco House), 3rd Floor, Kolkata - 700 001 (INDIA)

2248-4772 / 0675 / 0695 / 3637, Fax : (91-33) 2248-1877 [ombesco@jekay.com](mailto:ombesco@jekay.com) [www.jekay.com](http://www.jekay.com)

Works : P.O. : Mugma, P.S. : Nirsa, Dist. : Dhanbad, Jharkhand - 828204



# OmBesco Rail Products Limited

(Wholly owned subsidiary of Ganpati Industrial Private Limited)

vide NCLT order Ref. No. IA(IB) No.692/RB/2021 in CP(IB) No. 1735/KB/2019 Dt. 08.03.2022

CIN No.: U29253WB2008PLC123604

## LIST OF DIRECTORS AS ON 31/03/2022

Sl. No.	Name	Designation	DIN
1.	Bhagwati Prasad Jalan	Additional Director	00551459
2.	Pankaj Jalan	Additional Director	00179590
3.	Niraj Jalan	Additional Director	00551970

For Om Besco Rail Products Limited  
OM BESCO RAIL PRODUCTS LIMITED

Additional Director

**Pankaj Jalan**  
Additional Director  
DIN: 00179590

Registered Office : 2-Hare Street (Nicco House), 3rd Floor, Kolkata - 700 001 (INDIA)

2248-4772 / 0675 / 0695 / 3637, Fax : (91-33) 2248-1877 ombesco@jekay.com www.jekay.com

Works : P.O. : Mugma, P.S. : Nirsa, Dist. : Dhanbad, Jharkhand - 828204



IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH-1  
KOLKATA

IA (IB) No. 692/KB/2021  
in  
CP (IB) No. 1735/KB/2019

*Application under sections 30(6) and 31(1) of the Insolvency and  
Bankruptcy Code, 2016 read with regulation 39(4) of the Insolvency and  
Bankruptcy Board of India (Insolvency Resolution Process for Corporate  
Persons) Regulations, 2016  
for approval of Resolution Plan.*

*In the matter of:*  
**Foseco India Limited**  
(CIN: L24294PN1958PLC011052)

... Operational Creditor

*Versus*

**Om Besco Rail Products Limited**  
(CIN: U29253WB2008PLC123604)

... Corporate Debtor

*And*

*In the matter of:*  
**Sanjai Kumar Gupta**  
Resolution Professional of Om Besco Rail Products Limited

... Applicant

*Coram:*

Mr. Rajasekhar V.K. : Member (Judicial)

Mr. Balraj Joshi : Member (Technical)

*Appearances (via videoconferencing):*

For the Applicant/RP : Ms. Manju Bhuteria, Advocate

Mr. Rahul Auddy, Advocate

For the successful Resolution Applicant : Mr. Ratnanko Banerji, Senior Advocate

Mr. Vikash Baisya, Advocate

Date of hearing: 10 December, 2021

Date of pronouncement: 08 March, 2022



CERTIFIED TO BE TRUE COPY

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH-1

Fesco India Limited v. Om Besco Rail Products Ltd.  
IA (IB) No.692/KB/2021 in CP (IB) No.1735/KB/2019

**ORDER**

*Per: Rajasekhar V.K., Member (Judicial)*

**1. Preliminary**

- 1.1. This Court convened through videoconferencing.
- 1.2. IA (IB) No. 692/KB/2021 is an application filed by Mr. Sanjai Kumar Gupta, Resolution Professional of Om Besco Rail Products Limited [CIN: U29253WB2008PLC123604], under section 30(6) read with section 31(1) of the Insolvency and Bankruptcy Code, 2016 and regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (*CIRP Regulations*) for approval of the Resolution Plan in respect of Om Besco Rail Products Limited, the Corporate Debtor.
- 1.3. The underlying Company Petition in CP (IB) No.1735/KB/2019 was filed by Foseco India Limited against the Corporate Debtor under Section 9 of the Insolvency and Bankruptcy Code 2016, which was admitted *vide* order dated 20 May, 2020.
- 1.4. Initially, Mr Amit Choraria (Reg. No.IBBI/IPA-001/IP-P01345/2018-2019/12129) was appointed as the Interim Resolution Professional (IRP). Mr. Sanjai Kumar Gupta was confirmed as the Resolution Professional (RP) of the Corporate Debtor at the second meeting of the CoC on 19 October 2019. Appointment of Mr. Sanjai Kumar Gupta, Registration No. IBBI/IPA-001/IP-P00592/2017-18/11045, as the RP of Om Besco Rail Product Ltd., the Corporate Debtor, was approved by this Adjudicating Authority *vide* order dated 12 November, 2020.

**2. Constitution of CoC**

- 2.1. The IRP made public announcement on 25 May, 2020 in Business Standard- English- (Kolkata Edition), Aajkal - Bengali- (Kolkata Edition), Morning India- English- (Ranchi- Edition), Sanmarg - Hindi- (Ranchi Edition) newspapers regarding initiation of Corporate



IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH-1

Fesco India Limited v. Om Besco Rail Products Ltd.  
IA (IB) No.692/KB/2021 in CP (IB) No.1735/KB/2019

Insolvency Resolution Process [CIRP] and called for claims from the financial and operational creditors, workers and employees of the Company in the specified forms till 03 June, 2020.

- 2.2. The CoC was constituted with one Financial Creditor viz. Bank of Baroda, as on 10 June 2020. A report of constitution of CoC was filed with the Adjudicating Authority on 12 June, 2020. The CoC was re-constituted and a report of re-constitution of CoC was filed on 12 November, 2020 and 09 January, 2021, whereby the CoC was constituted with one Secured Financial Creditor and sixteen Unsecured Financial Creditors. The voting share of the members of the CoC<sup>1</sup> is given below:

Sl. No	Name of Claimant	Amount claimed	Amount admitted	Voting Share
1.	Bank of Baroda	₹61,30,31,481.52	₹61,30,31,481.52	90.00%
2.	Blackberry Commosale Private Limited	₹53,77,778.00	53,37,313.00	0.78%
3.	Oriental Vyapar Private Limited	₹15,78,362.00	₹15,76,340.00	0.23%
4.	Jagadamba Commosales Private Limited	₹21,34,767.00	₹21,34,767.00	0.31%
5.	Rajgharana Sales Private Limited	₹21,42,143.00	₹21,34,767.00	0.31%
6.	Navtech Creation	₹99,76,573.00	₹99,76,573.00	1.46%

<sup>1</sup> Page 155 of the I.A.



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Sl. No.	Name of Claimant	Amount claimed	Amount admitted	Voting Share
	Private Limited			
7.	Eiffel Agencies Private Limited	₹98,85,523.00	₹98,85,523.00	1.45%
8.	Arham Construction Private Limited	₹10,52,241.00	₹10,50,300.00	0.15%
9.	Anamika Dealmark Private Limited	₹47,05,782.00	₹47,05,782.00	0.69
10.	Rose Commosale Private Limited	₹58,65,480.00	₹58,65,480.00	0.86%
11.	Purujit Vinimay Private Limited	₹30,00,000.00	30,00,000.00	0.44%
12.	Naviplast Traders Private Limited	₹27,30,240.00	₹27,30,240.00	0.40%
13.	Addarsh Management Pvt. Ltd.	₹27,09,715.36	₹26,89,186.00	0.39%
14.	Astrex Enterprise Pvt. Ltd.	₹42,99,836.00	₹42,69,852.00	0.63%
15.	Indorient Financial Services Limited	₹97,42,055.00	₹96,55,507.00	1.42%



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Sl. No.	Name of Claimant	Amount claimed	Amount admitted	Voting Share
16.	Manikaran Dealtrade Pvt. Ltd.	₹21,20,000.00	₹21,01,195.00	0.31%
TOTAL		₹6,83,81,377.36	₹6,81,70,797.00	100%

- 2.3. The Applicant states that total of 14 (fourteen) CoC meetings have been held during CIRP period, as follows:

Particulars	Date of CoC Meeting
1 <sup>st</sup> CoC Meeting	13.08.2020
2 <sup>nd</sup> CoC Meeting	19.10.2020
3 <sup>rd</sup> CoC Meeting	27.11.2020
4 <sup>th</sup> CoC Meeting	18.12.2020
5 <sup>th</sup> CoC Meeting	13.01.2021
6 <sup>th</sup> CoC Meeting	20.01.2021
7 <sup>th</sup> CoC Meeting	15.02.2021
8 <sup>th</sup> CoC Meeting	15.03.2021
9 <sup>th</sup> CoC Meeting	24.03.2021
10 <sup>th</sup> CoC Meeting	15.05.2021
11 <sup>th</sup> CoC Meeting	27.05.2021
12 <sup>th</sup> CoC Meeting	16.06.2021
13 <sup>th</sup> CoC Meeting	26.06.2021
14 <sup>th</sup> CoC Meeting	01.07.2021

3. **Collation of claims**

- 3.1. The claims of financial creditors, operational creditors, workers, statutory authorities as existing as on the date of filing the present application is as follows:



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(in Crore)

Name of Creditor	Amount claimed	Amount of claim admitted
Operational Creditors	0.28	0.27
Secured Financial Creditors	61.30	61.30
Unsecured Financial Creditors	6.84	6.82
Operational Creditors (Other than workmen & Employees)	9.75	6.09
Financial Creditors (Related Party)	26.31	25.94
Operational Creditors (Other than workman & Employee)(Related party)	3.46	3.46
<b>Total</b>	<b>107.93</b>	<b>103.88</b>

**4. CIRP and compliances**

- 4.1. The Applicant submits that in terms of the provisions of section 25(2)(h) of the Code read with regulation 36A(1) of CIRP Regulations, 2016, invitations in Form 'G' for Expressions of Interest ("EoI") from potential resolution applicants was published in *Business Standard* (English-All Edition), *Aajkal* (Bengali-All Edition) and *Sanmarg* (Hindi-Jharkhand Dhanbad) newspapers on 21 December, 2020 for submission of resolution plans for the Corporate Debtor, in terms of the provisions of section 25(2)(h) of the Code read with regulation 36A (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The last date for receipt of EoIs was 05 January, 2021. The last date of submission of the EoI was extended till 18 January, 2021 by the CoC in its meeting held on 13 January, 2021. A corrigendum to the EoI, extending the date of submission of the EoI was published on 14 January, 2021. It was also published on the website of the Corporate



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Debtor and IBBI.

- 4.2. It is submitted that in response to the EoI published on 05 January, 2021, the Applicant received seven EoIs. The last date of submission of Resolution Plan was 27 February 2021 and only one Resolution Plan was submitted by Avemore Pte. Limited-Singapore.
- 4.3. The Resolution Plan submitted by Avemore Pte. Limited-Singapore was discussed and opportunities were given to Avemore Pte. Limited-Singapore to revise the Resolution Plan, but the revised Resolution Plan submitted by Avemore Pte. Limited-Singapore on 26 May, 2021 contained reduced financials instead of a better offer.
- 4.4. On 25 May, 2021, Ganpati Industrial Pvt. Ltd, *vide* an email addressed to one of the CoC members, expressed its interest to submit EoI and Resolution Plan. Ganpati Industrial Pvt. Ltd was permitted to submit a Resolution Plan.
- 4.5. Both the Resolution Plans submitted by Avemore Pte. Limited-Singapore and Ganpati Industrial Pvt. Ltd were considered by the CoC and both the resolution Plans were revised from time to time. Avemore Pte. Limited-Singapore submitted its last revised Resolution Plan on 16 June 2021 and Ganpati Industrial Pvt. Ltd. filed its revised Resolution Plan on 01 July, 2021.
- 4.6. The Resolution Plans were discussed in the 14<sup>th</sup> CoC meeting held on 01 July, 2021 and put up for e-voting on 05 July, 2021 to 09 July, 2021.
- 4.7. The CoC voted in favour of the Resolution Plan submitted by Ganpati Industries Pvt. Ltd. with 90.15% voting share.
- 4.8. The RP sent a letter of Intent dated 10 July, 2021<sup>2</sup> to the successful

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<sup>2</sup> Annexure K at Pages 458-460 of the I.A.



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Resolution Applicant which was duly accepted by the successful Resolution Applicant on 12 July, 2021.

4.9. The Successful Resolution Applicant submitted Performance Bank Guarantee of ₹3,01,20,000/- (Rupees Three Crore One Lakh and Twenty Thousand only), *vide* Axis Bank Limited dated 14 July, 2021.<sup>3</sup>

5. ***Compliance with statutory provisions***

5.1. The Applicant has filed a Compliance Certificate in prescribed form, i.e. Form 'H'<sup>4</sup> in compliance with regulation 39(4) of the CIRP Regulations.

5.2. The Applicant has submitted that the Resolution Applicant is eligible to file a Resolution Plan and has filed an affidavit under section 29A of the Code.<sup>5</sup>

5.3. The Applicant has submitted details of various compliances as envisaged within the Code and the CIRP Regulations which a Resolution Plan should adhere to, which are reproduced hereunder:

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

Clause of s.30(2)	Requirement	How dealt with in the Plan
.	Plan must provide for payment of CIRP cost in priority to repayment of other debts of CD in the manner specified by the Board.	Clause 2 of Section XII at Pages 40-41 of the Resolution Plan.

<sup>3</sup> Annexure L at Page 461 of the I.A.

<sup>4</sup> Annexure O at Pages 576-582 of the I.A.

<sup>5</sup> Annexure N at Pages 569-575 of the I.A.





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Clause of s30(2)	Requirement	How dealt within the Plan
2.	(i) Plan must provide for 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 the event of liquidation u/s 53;	Clause 3(c) and Clause 3(d) of Section XII at Page 41 of the Resolution Plan.
	(ii) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher;	Clause 6 in Section XII at Page 47 of the Resolution Plan.
	(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.	Clause 4(c) in Section XII at Page 42 of the Resolution Plan.
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Section XIV at Pages 54-55 of the Resolution Plan.
(d)	Implementation and Supervision	Section XIII at Page 53 and Clause 2 of Section XIV at Pages 55-56 of the Resolution Plan.
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Clause 3 of Section XVII at Page 83 of the Resolution Plan.



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Clause of s.30(2)	Requirement	How dealt with in the Plan
(f)	Conforms to such other requirements as may be specified by the Board.	Clause 13 Section XVII at Page 84 of the Resolution Plan.

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

Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximisation of value of its assets, including but not limited to the following: -	
(a) transfer of all or part of the assets of the corporate debtor to one or more persons;	Not proposed in the Resolution Plan.
(b) sale of all or part of the assets whether subject to any security interest or not;	Not proposed in the Resolution Plan.
(c) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	Clause 2 of Section XVI at Page 77 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;	Clause 1.6 of Section X at Page 37 in the Resolution Plan.



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Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
(e) cancellation or delisting of any shares of the corporate debtor, if applicable;	Clause 1.5 of Section X at Page 36 in the Resolution Plan.
(f) satisfaction or modification of any security interest;	Clause 4(d) of Section XII at Page 42 in the Resolution Plan.
(g) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Section XII at Pages 40-51 in the Resolution Plan.
(h) reduction in the amount payable to the creditors;	Section XII at Pages 40-51 in the Resolution Plan.
(i) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	Not proposed in the Resolution Plan.
(j) amendment of the constitutional documents of the corporate debtor;	Clause 5 of Section XVI at Page 78 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 purpose;	Not proposed in the Resolution Plan.
(l) change in portfolio of goods or services produced or rendered by the corporate debtor;	Not proposed in the Resolution Plan.
(m) change in technology used by the corporate debtor; and	Not proposed in the Resolution Plan.



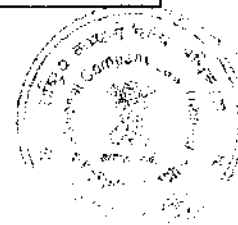
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Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
(n) obtaining necessary approvals from the Central and State Governments and other authorities.	Section XI at Pages 38-39 of the Resolution Plan.

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

Ref to relevant reg	Requirement	How Dealt with in the Plan
38(1)	The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.	Clause 6 in Section XII at Page 47 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 XII at Pages 40 to 52 of the Resolution Plan.
38(1B)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation	Clause 2 of Section XVII at Page 83 of the Resolution Plan.



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Ref to relevant reg.	Requirement	How Dealt with in the Plan
	of any other resolution plan approved by the adjudicating authority at any time in the past.	
38(2)	A Resolution Plan shall provide:	
	(a) The term of the plan and its implementation schedule;	Section XIII at Page 53 of the Resolution Plan.
	(b) The management and control of the business of the corporate debtor during its term; and	Section XIV at Pages 54-56 of the Resolution Plan.
	(c) Adequate means for supervising its implementation.	Clause 2 of Section XIV at Pages 55-56 of the Resolution Plan.
38(3)	A Resolution Plan shall demonstrate that –	
	(a) It addresses the cause of default;	Clause G in Section VI at Pages 27-28 of the Resolution Plan.
	(b) It is feasible and viable;	Section IX at Pages 34-35 of the Resolution Plan.
	(c) It has provisions for its effective implementation;	Section XIII at Page 53 of the Resolution Plan.
	(d) It has provisions for approvals required and the timeline for the same; and	Section XI at Pages 38-39 of the Resolution Plan.
	(e) The resolution applicant has the capability to implement the resolution plan.	Section V at Pages 16-21 of Resolution Plan.

**6. Details of Resolution Plan/ Payment Schedule**

6.1. The Applicant submits the relevant information with regard to the



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amount claimed, amount admitted, and the amount proposed to be paid by the Successful Resolution Applicant, i.e., Ganpati Industrial Private Limited under the said Resolution Plan is tabulated as under:

(in Crore)

Sl. No	Name of Claimant	Claim admitted	Amount proposed		Amount provided (%)
			Upfront Payment (within 30 days)	Within a period of 12 months	
1.	CIRP Cost <sup>6</sup>	0.70	0.70	--	100
2.	Workman & Employees Dues	0.27	0.27	--	100
3.	Secured Financial Creditors	61.30	28.50		46.49
4.	Unsecured Financial Creditors	6.82	0.34	--	4.99
5.	Operational Creditors (Other than Workman & Employees)	6.09	0.24	--	3.94
6.	Related Party	29.40	0.06	--	0.20
7.	Business Improvement (for CAPEX/Renovation/ Synchronisation & Working Capital)	--	--	12.00	--
<b>TOTAL</b>		104.58	30.12	12.00	---
			42.12		

6.2. The Resolution Plan defines "*Effective Date*" as "*means the date of*

<sup>6</sup> CIRP Cost represents estimated CIRP Cost. However, actual cost under this head shall be paid upfront in full.

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*approval of this Plan by Adjudicating Authority."*

***Details on Management/ Implementation and Reliefs as per the Resolution Plan:***

6.3. The Resolution Plan also provides for the following:

- (a) Management of company after resolution in Section XIV at Pages 54-56 of the Resolution Plan.
- (b) Term of the Resolution Plan in Section XIII at Page 53 of the Resolution Plan.
- (c) Implementation and Supervision of the resolution plan in Section XIII at Page 53 and Section XIV at Pages 54-56 of the Resolution Plan.

***7. Reliefs, exemptions and waivers sought and orders passed thereon***

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

Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
1.	1.	<b>Handover of Assets &amp; Units</b>	
	a.	Any and all Encumbrance over the assets (except charge over Fixed Assets to SFCs till the Closing Date), property or bank account of the CD shall stand released and / or extinguished on the NCLT Approval Date. Any Person (including a Creditor or a Government Authority) who is in possession of the assets, property or bank account of the Company shall allow possession of such assets, property or bank account to the Company on and from the	Granted in terms of <i>Ghanshyam Mishra &amp; Sons Pvt Ltd v.</i>

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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		Effective Date, irrespective of any symbolic or actual possession or attachment of assets, property or bank account by such Person prior to NCLT Approval Date.	<i>Edelweiss Asset Reconstruction Company Ltd.</i> <sup>7</sup> the Hon'ble Supreme Court held in paragraph 95, that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.
	b.	No Person (including a Creditor or a Government Authority) shall take possession of and / or create Encumbrance or attach any assets of the Company after the Effective Date on account of any Claim against the Company which relates to a period prior to the Closing Date	
	c.	Manufacturing Unit of the CD is the principal asset of the CD and all the fixed assets at the said premises should be re-vested to CD immediately after the Effective Date.	Granted.
	d.	Any Sale / Agreement to Sale / Lease Agreement / Rent Agreement or any other transaction of similar nature with respect to sale / lease / rent of the said land prior to the Effective Date shall stand terminated, shall be considered null and void and any advance / money received in any form by the CD on account of such transaction shall be forfeited and the CD / RA shall not be liable to refund any such advance / money received in any form or interest, penalty, charges, etc on such money.	If the Corporate Debtor does not wish to proceed with the transaction under any agreement, then it is not understood as to how the Corporate Debtor under new management can forfeit such advance. This prayer is, therefore, not granted unless time is of the essence of the contract and the buyer has not performed his part of the contract and also that the contract expressly provides for such forfeiture.

<sup>7</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.



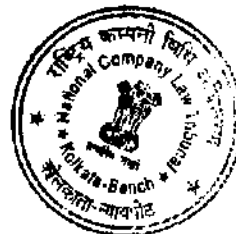


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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
	e.	Where OBRPL <sup>8</sup> is the lessee in respect of any land leased to it by third party, such lease shall continue and nothing herein shall have the effect of terminating the same.	Granted.
	f.	<p>The land owner:</p> <p>i. Should not cancel the Leasehold rights of CD for any breach committed by the CD prior to the Effective Date.</p> <p>ii. Should not cancel the land on account of any past dues, whether in the nature of unpaid rent, unpaid taxes, unpaid lease charges, etc or interest, penalty, etc thereon. In fact, all such past dues are to be treated as Claim and the landowners shall have no claim whatsoever against the Corporate Debtor pertaining to the period prior to the Effective Date except to the extent provided for payment by the Resolution Applicant in this Resolution Plan, if applicable.</p> <p>iii. Should not charge any amount in the form of transfer charge, penalty, premium or in any other form accruing, if any, due to change in management.</p>	A carte blanche of this nature cannot be granted in favour of the corporate debtor.

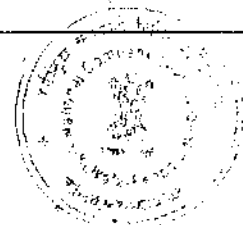
<sup>8</sup> Om Besco Rail Products Limited



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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		<p>iv. Should not terminate or cancel the lease arrangement for any reason whatsoever.</p> <p>v. Should allow the restructured CD to continue operations in a peaceful manner at the above-stated land parcels.</p> <p>vi. Should not withdraw the leasehold right of the land from CD to their own names.</p> <p>vii. Should allow CD to expand capacities, as &amp; when required, on the said land.</p> <p>viii. Immediately after the Effective Date, should acknowledge that its dues from the CD is restricted to the settlement amount proposed under this Plan and shall issue a certificate to the CD to that effect.</p>	
	g.	The RA / CD, if required, shall make necessary applications with respective land owners for registering change in control of the Corporate Debtor from the erstwhile shareholders / management / promoter. No transfer charge / transfer premium will be charged by Lessors on account of such change in control	All necessary charges for noting the change in the records shall be borne by the successful Resolution Applicant.
	h.	The MC shall allow possession of the premises / offices of the	Granted.



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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		Company, all passwords, bank account details, cheque books, statutory registers, minutes books, financial and tax records, all communication with vendors, customers, government and regulatory authorities and all other documents pertaining to the Company and its business, information technology systems (including all software and hardware), access to ERP system, etc to the Resolution Applicant within 30 days of the Effective Date.	
2.	2.	<p><b>Bank Guarantee/ Cash as Security Deposit demanded by the Damodar Valley Corporation ("DVC") or Jharkhand State Electricity Board ("JSEB") for supply of Power</b></p> <p>Approval of the Resolution Plan by NCLT will be treated as Specific Order for Waiver of Bank Guarantee / Cash as Security Deposit by DVC against Regular Power Usage on basis of Contract Demand or for any Specific Reasons (e.g. providing 132 KVA Power Connection with 11.5 MVA Sanction Load) for next 5 years from the Approval Date of the Resolution Plan by NCLT or from the date of reconnection of electricity, whichever is later, as the Corporate Debtor is totally under stress and attempt is being made by the Resolution Applicant to revive the Corporate Debtor in best possible way under this</p>	<p>The bank guarantees/cash already provided to the electricity service provider shall continue. Only the unpaid usage charges prior to the CIRP commencement date shall be resolved in terms of the Resolution Plan. Additionally, all charges required to be paid on the basis of usage and billed periodically, shall be paid by the Corporate Debtor under new management.</p> <p>It is expected that DVC and other electricity suppliers shall act in accordance with the law laid down by the Hon'ble Supreme Court in <i>Ghanshyam Mishra &amp; Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd.</i></p>



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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		<p>Proposed Resolution Plan through Optimal Infusion of Debt and efficient Working Capital Management. The Plan is to increase the production with Optimal Working Capital Infusion so as to ensure better margins and low Interest Costs. The Demand of Bank Guarantee / Cash immediately will cause stress on the Resolution Applicant/Corporate Debtor in terms of Revival as it will take 5 years for the Resolution Applicant to make the Corporate Debtor a Debt Free Company with good bottom-line.</p> <p>Approval of the Resolution Plan by NCLT will be treated as Specific Order to DVC to maintain the supply of electricity without any disconnection of Power due to settlement of past dues of DVC under this Resolution Plan. In the event of disconnection for the stated reasons, DVC would be in contempt of court for violating the Specific Order of NCLT on approving the Resolution Plan.</p>	
3.	3	<p><b>Release of Security Deposit provided by Corporate Debtor</b></p> <p>Approval of the Resolution Plan by NCLT will be treated as specific order for waiver / release of the any kind of security deposits provided by the Corporate Debtor including but not limited to various government authorities, corporates, private</p>	<p>Not granted, unless the service being provided by such authorities or person is being discontinued. Such concessions cannot be granted across the board without understanding the implications thereof.</p>



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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		person, corporations like DVC, JSBB, Various Port Trust, Mines Authorities etc.; government departments (Income Tax Dept, Customs Dept, Excise Dept, Service Tax Dept, Pollution Board etc.) etc. under various statutes, acts, laws, rules and regulations or otherwise for any reason whatsoever, as this would assist in revival of the Corporate Debtor.	
4.	4	<b>Extinguishment of various Liabilities</b>	
	a.	Other than the Persons receiving settlements under Chapter-XII of the Resolution Plan, no other payments or settlements (of any kind) shall be made to any other person in respect of Claims filed under the CIRP or otherwise and all Claims (including for the avoidance of doubt any unverified portion of their Claims) against the Corporate Debtor along with any related legal proceedings, including criminal proceedings shall stand irrevocably and unconditionally abated, settled and extinguished in perpetuity on and with effect from the closing date.	Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , <sup>9</sup> wherein the Hon'ble Supreme Court has held that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt, any State Govt or any local authority, guarantors and other stakeholders.
	b.	All indebtedness of the Corporate Debtor, except IRP Cost, which is not due as of the Insolvency Commencement date but relates to the period prior to the effective date shall stand irrevocably and unconditionally extinguished in perpetuity on and with effect from	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

<sup>9</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.



IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH-1

Fesco India Limited v. Om Besco Rail Products Ltd.  
IA (IB) No.692/KB/2021 in CP (IB) No.1735/KB/2019

Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		the effective Date.	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.
	c.	The payment to Persons contemplated in Chapter-XII of the Resolution Plan shall be the Corporate Debtor's and Resolution Applicant's full and final performance and satisfaction of all its obligations to such Persons and all claims (including for the avoidance of doubt, any unverified portion of their Claims) of such Persons against the Corporate Debtor shall stand irrevocably and unconditionally settled and extinguished in perpetuity on and with effect from the effective Date.	Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd.</i> <sup>10</sup> wherein the Hon'ble Supreme Court has held that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt, any State Govt or any local authority, guarantors and other stakeholders. 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
	d.	The Resolution Professional issued a notice inviting all potential claimants to submit their proofs of Claim. This was published in newspapers in accordance with Applicable Law. Pursuant to this notice the Resolution Professional may also have received letters from Persons	

<sup>10</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.



IN THE NATIONAL COMPANY LAW TRIBUNAL  
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Fesco India Limited v. Om Besco Rail Products Ltd.  
IA (IB) No.692/KB/2021 in CP (IB) No.1735/KB/2019

Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		whose Claims were not yet crystallised as of the Insolvency Commencement Date. The Resolution Applicant assumes that all Persons that have any Claims against the Corporate Debtor have filed their Claims and the Verifiable Claims have been admitted by the Resolution Professional and disclosed in the information Memorandum. Accordingly, the Resolution Applicant and the Corporate Debtor shall not have any responsibility or liability in respect of any Claims against the Corporate Debtor attributable to the period prior to the effective Date (except IRP cost) other than any payments to be made under Section-II of Part-B (Financial Proposal) of the Resolution Plan and all Claims along with any related legal proceedings, including criminal proceedings shall stand irrevocable and unconditionally abated, settled and extinguished in perpetuity against the CD.	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.
	e.	Upon the approval of the Plan by the NCLT under Section 31 of the Code, all pending proceedings relating to the winding-up of the Corporate Debtor, if any, shall stand irrevocably and unconditionally abated in perpetuity and all violation or breach of any agreement of the Corporate Debtor shall stand	Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , <sup>11</sup> wherein the Hon'ble Supreme Court has held that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the

<sup>11</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.

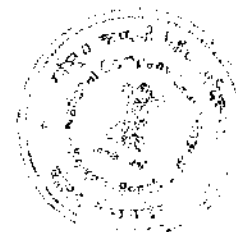


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Fesco India Limited v. Om Besco Rail Products Ltd.  
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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		condoned or waived on closing date and such agreements shall be treated as if no violation or breach has ever been committed.	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 Adjudicating Authority grants its approval under section 31 could be continued.
	f.	On and with effect from the Closing Date, all Encumbrances, security interest, liens and /or attachments (including pursuant to Applicable Law and particularly Sections 281 of the Income Tax Act and Section 81 of the Central Goods and Services Tax Act 1961, created or suffered to exist over the assets of the Corporate	Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , <sup>12</sup> wherein the Hon'ble Supreme Court has held that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the

<sup>12</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.





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Fesco India Limited v. Om Besco Rail Products Ltd.  
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SL No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		Debtor or over the securities of the Corporate Debtor, whether by contract or by Applicable Law, whether or not in favour of Persons receiving settlements under this plan or those who have provided debt to any third party, shall stand unconditionally and irrevocable released and all enforcement proceedings commenced by any Person over any of the assets of the Corporate Debtor or any subsidiary or over any securities of the Corporate Debtor shall stand released and reversed, without the requirements of any further deed or action on part of the Resolution Applicant of the Corporate Debtor, except Security Charged in favour of Secured Financial Creditors, which shall be released on the Closing Date.	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 Adjudicating Authority grants its approval under section 31 could be continued.
	g.	On and with effect from the Closing Date, the guarantors, indemnity providers and like persons that have provided guarantees, indemnities or like arrangements for and on behalf of the Corporate Debtor, in order to secure the Debt availed of by the Corporate Debtor, shall not be entitled to exercise or enforce any	The judgement of the Hon'ble Supreme Court in <i>Lalit Kumar Jain v Union of India &amp; ors</i> , <sup>13</sup> will apply, where in paragraph 133 it was held 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 guarantor's liability.

<sup>13</sup> 2021 SCC OnLine SC 396 decided on 21.05.2021.



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KOLKATA BENCH-I

Fesco India Limited v. Om Besco Rail Products Ltd.  
IA (IB) No.692/KB/2021 in CP (IB) No.1735/KB/2019

Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		subrogation rights (or similar rights) in respect of such arrangements, even where such rights and claims (whether contingent or otherwise) of whatsoever nature of every member of the Promoter Group against the Corporate Debtor and / or its subsidiaries (including subrogation or similar rights) shall stand irrevocably and unconditionally extinguished, waived, withdrawn and abated in perpetuity.	
	h.	On and with effect from the Closing Date, the rights of any person (whether exercisable now or in the future and whether contingent or not) to call for the allotment, issue, sale or transfer of shares or loan capital of the Corporate Debtor, whether on a change of control or otherwise, shall stand unconditionally and irrevocably extinguished.	Granted in terms of <i>Ghanshyam Mishra &amp; Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd</i> , <sup>14</sup> the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.
	i.	All Claims (whether contingent or crystallised and whether or not filed) of Governmental Authorities in relation to all Statutory Dues, Regulatory Dues and Taxes which the Corporate Debtor was or may be liable to pay (including with respect to financial years under assessment), all deductions and all withholding Taxes on any payment, as required under	

<sup>14</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.



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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		Applicable Law and pertaining to the period prior to the effective Date shall stand extinguished on and with effect from the closing Date.	
	j.	All obligations, liabilities (whether contingent or crystallised) claims and proceedings in relation to any corporate guarantees, indemnities and all other forms of credit support provided by the Corporate Debtor prior to the effective date and all contingent liabilities disclosed / undisclosed in the annual audited financial statements as well as financial statement as on Insolvency Commencement Date of the Corporate Debtor and liabilities which are not in notice of Corporate Debtor or not acknowledged by the Corporate Debtor shall stand extinguished and discharged on and with effect from the effective Date including but not limited to any form of credit support for persons that are currently affiliates, promoters or promoter group (including the existing promoters), persons acting in concert with promoters, holding companies, subsidiary companies, associate companies and/or group companies of the Corporate Debtor.	Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , <sup>15</sup> wherein the Hon'ble Supreme Court has held that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt, any State Govt or any local authority, guarantors and other stakeholders. 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

<sup>15</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.



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Fesco India Limited v. Om Besco Rail Products Ltd.  
IA (IB) No.692/KB/2021 in CP (IB) No.1735/KB/2019

Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
			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.
	k.	Notwithstanding anything to the contrary, the powers of attorney or authorisations issued by the corporate debtor shall stand cancelled without any further act, instrument or deed.	Granted, strictly in terms of the Code.
5.	5.	<b>Treatment of Claims of Operational Creditors on matters that are Sub Judice</b>	
		The matters set out in the Information Memorandum (and the corresponding claims against the CD), together with all other claims against the CD which may be pending or sub judice before any forum as on the Effective Date (whether or not such claims are included in the list of claims of Operational Creditors as set out in the Information Memorandum, and, including but not limited to any proceedings in relation to Statutory Dues, Regulatory Dues and Taxes initiated against the CD) are collectively the "Sub Judice Claims".	Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd.</i> <sup>16</sup> wherein the Hon'ble Supreme Court has held that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt, any State Govt or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the
		Each such Sub Judice Claim, is a "claim" and "debt", each as defined under the IBC, and would consequently qualify as "operational debt" (as defined under the IBC) and therefore, the full amount of such Sub Judice Claims shall be deemed to be	

<sup>16</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.



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Fesco India Limited v. Om Besco Rail Products Ltd.  
IA (IB) No.692/KB/2021 in CP (IB) No.1735/KB/2019

Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		<p>owed and due as of the Effective Date, the liquidation value of which is assumed to be NIL and therefore, no amount is payable in relation thereto. All such Sub Judge Claims shall immediately, irrevocably and unconditionally stand fully and finally discharged and settled with there being no further claims whatsoever, and all forms of security created or suffered to exist, or rights to create such a security, to secure any obligations towards the Operational Creditors and other creditors (whether by way of guarantee, bank guarantee, letters of credit or otherwise) shall immediately, irrevocably and unconditionally stand released and discharged, and the Operational Creditors and other creditors shall waive all rights to invoke or enforce the same.</p>	<p>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>Pursuant to the foregoing, any and all legal proceedings (including any notice, show cause, adjudication proceedings, assessment proceedings, regulatory orders etc.) initiated before any forum by or on behalf of any Operational Creditor or any other creditor to enforce any rights or claims against the CD shall immediately, irrevocably and unconditionally stand withdrawn, abated, settled and/ or extinguished, and the Operational Creditors shall deem to have taken all necessary steps to ensure the same. The operational Creditors of</p>	<p>Granted.</p>



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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		the CD shall have no further rights or claims against the CD (including but not limited to, in relation to any past breaches by the CD), in respect of the period prior to the Closing Date, and all such claims shall immediately, irrevocably and unconditionally stand extinguished.	
		By virtue of the order of the NCLT approving this Resolution Plan, new inquiries, investigations, notices, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings will not be initiated or admitted if these relate to any period prior to the Effective Date or arise on account of the acquisition of control by the Resolution Applicant over OBRPL pursuant to this Resolution Plan, against OBRPL or any of its employees or directors who are appointed or who remain in employment or directorship after the acquisition of control by the Resolution Applicant over OBRPL or pursuant to the implementation of the Resolution Plan.	Whatever protection is available to the corporate debtor in terms of section 32A of the Code will in any case continue to be available. Therefore, no specific orders are necessary in this regard.
		However, the existing management, promoters, shareholders, managers, directors, officers, employees, workmen or other personnel of OBRPL shall continue to be liable for all the liabilities, claims, demand, obligations, penalties etc. arising out of any (i) proceedings,	Granted.



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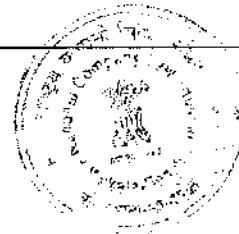
Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		<p>inquiries, investigations, orders, show causes, notices, suits, litigation etc. (including those arising out of any orders passed by the NCLT pursuant to the provisions of the Code, whether civil or criminal, pending before any authority, court, tribunal or any other forum prior to the acquisition of control by the Resolution Applicant over OBRPL, or (ii) that may arise out of any proceedings, inquiries, investigations, orders, show cause, notices, suits, litigation etc. (including any orders that may be passed by the NCLT pursuant to the provisions of the Code), whether civil or criminal, that may be initiated or instituted post the approval of the Resolution Plan by the NCLT on account of any transactions entered into, or decisions or actions taken by, such existing management, promoters, shareholders, managers, directors, officers, employees, workmen or other personnel of OBRPL, the new management of OBRPL and/ or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.</p>	
6.	6	<b>Treatment of Contingent Liabilities</b>	
	a.	<p>The RA understands that the CD may not have recognized all the contingent liabilities in the Balance Sheet and therefore, there might be various other Contingent Liabilities which might not be covered in the Information</p>	Granted.



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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		Memorandum. There might be other contingent liabilities as well which are not known to RA presently.	
	b.	The matters set out in the Balance Sheet & Information Memorandum, together with all other contingent liabilities (whether or not recognized or set out in the Information Memorandum), of the CD until the effective Date are collectively the "Contingent Liabilities". Each such Contingent Liability is a "claim" and "debt", each as defined under the IBC, and would consequently qualify as "operational debt" (as defined under the IBC) and therefore, the full amount of such Contingent Liabilities shall be deemed to be owed and due as of the Closing Date, the liquidation value of which is NIL and therefore, no amount is payable in relation thereto. All such Contingent Liabilities shall immediately, irrevocably and unconditionally stand fully and finally discharged and settled with there being no further claims whatsoever, and all forms of security created or suffered to exist, or rights to create such a security, to secure any obligations towards the Contingent Liabilities (whether by way of guarantee, bank guarantee, letters of credit or otherwise) shall immediately, irrevocably and unconditionally stand released and discharged, and all rights to	





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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		invoke or enforce the same shall be waived.	
	c.	In accordance with the forgoing, all claims disclosed or undisclosed and/or in India or anywhere outside India (whether final or contingent, whether disputed or undisputed and whether or not notified to or claimed against CD) of all Governmental Authorities (including in relation to Taxes, and all other dues and statutory payments to any Governmental Authority) relating to the period prior to the Effective Date or even accruing after the Effective Date, but arising out of matters or actions arising prior to the Effective Date, shall stand fully and finally discharged and settled.	Granted in terms of <i>Ghanshyam Mishra &amp; Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd</i> , <sup>17</sup> the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.
7.	7.	The statutory liabilities set out in the Information Memorandum, together with all other statutory liabilities of the CD until the Effective Date (whether or not recognized or set out in the Information Memorandum), are collectively the "Statutory Liabilities". Each such Statutory Liability is a "claim" and "debt", as defined under the IBC, and would consequently qualify as "operational debt" (as defined under the IBC) and therefore, the full amount of such Statutory Liabilities shall be deemed to be	Granted in terms of <i>Ghanshyam Mishra &amp; Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd</i> , <sup>18</sup> the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.

<sup>17</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.

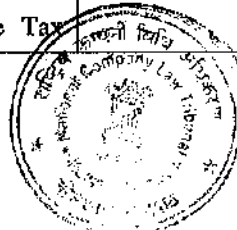
<sup>18</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.



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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		<p>owed and due as of the Effective Date, the liquidation value of which is assumed NIL and therefore, no amount is payable in relation thereto. However, the RA has proposed a payment towards settlement of Statutory liabilities as set out in clause no.7 of section XII of this plan. of this plan. All such Statutory Liabilities (including but not limited to admitted claim of (i) Commissioner of Commercial Taxes, Directorate of Commercial Taxes, Government of West Bengal, (ii) Employees' State Insurance Corporation (iii) The Commissioner, Central Goods &amp; Service Tax and Central Excise) shall immediately, irrevocably and unconditionally stand fully and finally settled at the price contemplated under this Plan, with there being no further claims whatsoever, and all forms of security created or suffered to exist, or rights to create such a security, to secure any obligations towards the Statutory Liabilities (whether by way of guarantee, bank guarantee, letters of credit, letter of comfort, or otherwise) shall immediately, irrevocably and unconditionally stand released and discharged, and all rights to invoke or enforce the same shall be waived.</p>	
8.	8.	<p><b>Income Tax Assessment, &amp; Indirect Tax (GST, VAT, Sales Tax, Commercial Tax, Entry Tax, Excise Duty, etc), Municipal Tax, Labour Taxes (PF, ESI, etc) Assessment</b></p>	
		<p>All dues of the respective Tax</p>	



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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		departments in relation to the period prior to the Effective Date, whether claimed or not and whether admitted or not, is a "claim" and "debt", each as defined under the IBC, and would consequently qualify as "operational debt" (as defined under the IBC). Thus, the full amount of such claims shall be deemed to be owed and due as of the CIRP Date. No further assessment / reassessment of such taxes upto the FY 2020-21 should be done by respective Tax Departments. Further, upon approval of the Plan by NCLT, RA would not be liable to pay any income tax pertaining to period upto the Effective date. Accordingly,....	
	a.	All pending dues under the provisions of respective Acts, including taxes, duties, penalties, interest, fines, cesses, etc, whether admitted or not, due or contingent, crystallised or un-crystallised, known or unknown, secured or unsecured, disputed or undisputed, shall stand extinguished by virtue of the order of the NCLT approving this plan and the Corporate Debtor shall not be liable to pay any amount against such demand save and except to the extent of the amount stated in Section XII of this plan.	Granted in terms of <i>Ghanshyam Mishra &amp; Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd</i> , <sup>19</sup> the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.
	b.	All assessment/re-	Granted in terms of <i>Ghanshyam</i>

<sup>19</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.



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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		assessment/revision/penalty/appeal or other proceedings pending in the case of the Corporate Debtor as on the Effective Date, relating to the period prior to that date, shall stand terminated and all consequential liabilities, if any, shall be waived and shall be considered to be not payable by the corporate debtor by virtue of the NCLT order approving this Plan.	<i>Mishra &amp; Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd,</i> <sup>20</sup> the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.
	c.	All notices issued under the provisions of the respective Acts to initiate any proceedings viz. assessment/re-assessment/revision/penalty/etc. against the Corporate Debtor in relation to the period prior to the Effective Date shall be considered withdrawn and shall not be proceeded against.	Granted in terms of <i>Ghanshyam Mishra &amp; Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd,</i> <sup>21</sup> the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan
	d.	No notices should be issued under the provisions of the respective Acts to initiate any proceedings viz. assessment/re-assessment/revision/penalty/etc. against the Corporate Debtor in relation to the period prior to the Effective Date.	Granted in terms of <i>Ghanshyam Mishra &amp; Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd,</i> <sup>22</sup> the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.
	e.	Any proceedings which were kept	Granted in terms of <i>Ghanshyam</i>

<sup>20</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.

<sup>21</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.

<sup>22</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.



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IA (IB) No.692/KB/2021 in CP (IB) No.1735/KB/2019

Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		in abeyance in view of insolvency process or otherwise shall not be revived post the order of the NCLT.	<i>Mishra &amp; Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd,</i> <sup>23</sup> the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.
	f.	No further demand for period prior to the Effective Date shall be raised by respective Departments.	
	g.	AA to pass necessary orders/ give appropriate directions to direct tax authorities/ Principal Commissioner of Income-tax to not apply/ invoke section 79 of IT Act on implementation of the Resolution Plans and allow benefit of carry forward and set-off of losses of Corporate Debtor existing and arising pursuant to implementation of Resolution Plan post change in majority shareholding.	The Resolution Plan is expected to be compliant with other laws, as envisaged under section 30 of the Code. However, it is for the Income Tax Authorities to consider the same, keeping in mind the objective of the Code.
	h.	AA to pass necessary orders/ give appropriate directions to direct tax authorities to grant waiver from getting No Objection Certificate from direct tax authorities as contemplated under section 281 of IT Act. Similar directions to be given to indirect tax authorities as well.	Granted in terms of <i>Ghanshyam Mishra &amp; Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd,</i> <sup>24</sup> the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.
	i.	All tax litigations, prosecutions, tax legal proceedings, suits, demands, notices, show-cause notices, demand notices, actions,	Granted in terms of <i>Ghanshyam Mishra &amp; Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd,</i> <sup>25</sup> the Hon'ble

<sup>23</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.

<sup>24</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.

<sup>25</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.



IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH-1

Fesco India Limited v. Om Besco Rail Products Ltd.  
IA (IB) No.692/KB/2021 in CP (IB) No.1735/KB/2019

Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		arbitration or administrative, judicial, quasi-judicial, regulatory, government or any enforcement agencies, pending or threatened against the Corporate Debtor or whose outcome adversely affects the Corporate Debtor (including but not limited to the proceedings set out in the Process Memorandum and financial statements of Corporate Debtor) arising prior to or after the Date of approval of plan, shall be deemed to have been withdrawn or dismissed and will be deemed to have been barred with effect from the Date of approval of plan.	Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.
	j.	Not prejudice to above, all tax litigations or proceedings either civil or criminal against the Corporate Debtor shall be withdrawn and necessary assistance / support shall be provided as may be required and called for in this regard. Resolution Applicant prays to AA to give appropriate directions regarding termination/revocation of all ongoing litigations and proceedings against the Corporate Debtor including but not limited to the proceedings as mentioned under this plan.	Granted in terms of <i>Ghanshyam Mishra &amp; Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd.</i> <sup>26</sup> the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.
	k.	AA to pass necessary orders/ give appropriate directions for Waiver of any past liabilities irrespective whether claimed or unclaimed	Granted in terms of <i>Ghanshyam Mishra &amp; Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd.</i> <sup>27</sup> the Hon'ble

<sup>26</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.

<sup>27</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.

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Fesco India Limited v. Om Besco Rail Products Ltd.  
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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		from any authority including but not limited from direct tax authority / indirect tax authority/ land revenue authority/ gram panchayat or any other revenue authority on settlement of dues as per Resolution Plan. Not prejudice to above, AA to give specific directions to Ministry of Corporate Affairs, Government of India, Provident Fund, Sales Tax Authorities, commercial tax authorities, VAT authorities, Service Tax authority, GST authority, Excise Duty Authorities, Fringe Benefit Tax authorities, Wealth tax authorities, etc. to waive demand, interest and penal charges for past dues pertaining to period up to date of approval of plan.	Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.
	1.	AA to pass necessary orders/ give appropriate directions for waiver of any liabilities/ penalty/ prosecution arising from non-compliance in relation to not filing return relating to Direct Tax/ Indirect Tax for period prior to date of approval of resolution plan.	Granted in terms of <i>Ghanshyam Mishra &amp; Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd</i> , <sup>28</sup> the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.
	m.	Further, i. In terms of the third proviso to Sec. 79 of the Income Tax Act, 1961, the resolution applicant is not required to comply with the provisions of Sec. 79 for carry forward and set off of loss of the	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.

<sup>28</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.

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Fesco India Limited v. Om Besco Rail Products Ltd.  
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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		<p>corporate debtors. Reasonable opportunity of being heard may be provided to the Jurisdictional Principal Commissioner or Commissioner of Income Tax as required under the said provisions of the IT Act;</p> <p>ii. Allow setting off of losses and unabsorbed depreciation for the purpose of computation of book profit as permitted under section 115JB of Income Tax Act, 1961;</p> <p>iii. Exemption from any tax liability arising due to implementation of the Resolution Plan both in computing total income under the normal provisions of the IT Act and in the computation of book profit u/s 115JB of the IT Act;</p> <p>iv. Allow the benefit of carry forward of losses and unabsorbed depreciation quantified in the Income Tax Returns filed / to be filed by the CD;</p> <p>v. The brought forward Business Loss &amp; Unabsorbed Depreciation as on the Effective Date shall be deemed to be the Business Loss &amp; Unabsorbed Depreciation for the previous year in which the Effective Date falls and accordingly, the period allowed for setting off such loss / unabsorbed depreciation shall be counted from the AY in which the Effective Date falls;</p> <p>vii. Waiver of any income-tax and Minimum Alternate Tax (MAT) liability or consequences (including interest, fine, penalty,</p>	





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SL No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		<p>etc) on OBRPL., Resolution Applicant and its shareholders on account of various steps as proposed in the Resolution Plan, including but not limited to liabilities if any under Section 41 (1), Section 56, Section 43, Section 43 B, Section 28, Section 115JB and Section 79 of the Income-tax Act, 1961, including, without limitation waiver of MAT and income tax implication arising due to write back/write off of liabilities in the books of accounts of OBRPL without any impact on brought forward tax and book loss / depreciation, pursuant to this Resolution Plan.</p> <p>viii. Allow the benefit of GST Receivable of Rs.1.26 crore &amp; CENVAT Credit of Rs.5.95 Crore and Other Statutory Advances / Receivable as quantified in the Audited Balance Sheet as on 31/03/2020.</p>	
9.	9.	<p><b>Waiver/Exemption from requirement of No Objection Certificate</b></p> <p>Approval of the Resolution Plan by NCLT will be treated as waiver approval for requirement of certificate under Sec 281 of the Income Tax Act, 1961 for all the stakeholders concerned under this section and provision of taking over predecessor's tax liability under Sec 170 of the Income Tax Act, 1961 and Specific Order for not treating such Transactions as VOID under Sec 281 of the Income Tax Act, 1961 for any</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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Fesco India Limited v. Om Besco Rail Products Ltd.  
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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		claims in respect of tax or any other sum payable to existing Shareholders.	
10.	10.	<b>Litigation</b>	
	a.	All legal suits, proceedings, certificate proceedings and/or quasi-legal proceedings that have been initiated against the Corporate Debtor upto the Effective Date (whether filed prior to CIRP commencement date or filed during CIRP Period shall be deemed to have been quashed upon approval of the Resolution Plan by the NCLT	Granted in terms of <i>Ghanshyam Mishra &amp; Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd.</i> <sup>29</sup> the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.
	b.	Directions from the NCLT, by way of approval of this Resolution Plan would result in the quashing of all legal proceedings for recovery of any debt from the Corporate Debtor or enforcement of any existing security interest against the Corporate Debtor. It is hereby clarified that the courts / forums shall consider the resolution plan as adequate proof to quash all such litigation / pending matters	
	c.	By virtue of the order of the NCLT approving this Resolution Plan, new inquiries, investigations, notices, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings will not be initiated	

<sup>29</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.

<sup>30</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.



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Fesco India Limited v. Om Besco Rail Products Ltd.  
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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		or admitted disclosed or undisclosed and/or in India or anywhere outside India if these relate to any period prior to the Effective Date or even accruing after the Effective Date, but arising out of matters or actions arising prior to the Effective Date or arise on account of the acquisition of control by the Resolution Applicant over OBRPL pursuant to this Resolution Plan, against OBRPL or any of its employees or directors who are appointed after the acquisition of control by the Resolution Applicant over OBRPL or pursuant to the implementation of the Resolution Plan.	claims which are not part of the Resolution Plan.
	d.	However, the existing management, promoters, shareholders, managers, directors, officers, employees, workmen or other personnel of OBRPL shall continue to be liable for all the liabilities, claims, demand, obligations, penalties etc. arising out of any (i) proceedings, inquiries, investigations, orders, show causes, notices, suits, litigation etc. (including those arising out of any orders passed by the NCLT pursuant to the provisions of the Code or pursuant to any order passed/ imposed by the SEBI), whether civil or criminal, pending before any authority, court, tribunal or	In <i>Lalit Kumar Jain v Union of India &amp; ors</i> , <sup>31</sup> 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 guarantor's liability.  The provisions of section 32A of the IBC will also apply.

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2021 SCC OnLine SC 396 decided on 21.05.2021.



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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		<p>any other forum prior to the acquisition of control by the Resolution Applicant over OBRPL, or (ii) that may arise out of any proceedings, inquiries, investigations, orders, show cause, notices, suits, litigation etc. (including any orders that may be passed by the NCLT pursuant to the provisions of the Code), whether civil or criminal, that may be initiated or instituted post the approval of the Resolution Plan by the NCLT on account of any transactions entered into, or decisions or actions taken by, such existing management, promoters, shareholders, managers, directors, officers, employees, workmen or other personnel of OBRPL, OBRPL, the new management of OBRPL and/ or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.</p>	
11.	11.	<p><b>Waiver of Valuation of Pricing of Shares by Registered Valuer</b> Approval of Resolution Plan by NCLT will treated as waiver of the requirements of the Valuation of Pricing of Shares by Registered Valuer(s) to be computed for Issuance of further Equity Shares to RA or any investors or Directors or Key Management persons or any other persons as allowed under the Companies Act 2013 on preferential basis. The request for such waiver is due to the fact that current valuation of</p>	<p>Granted, however, wherever applicable the company shall file necessary forms along with applicable fee with the Registrar of Companies.</p>

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Fesco India Limited v. Om Besco Rail Products Ltd.  
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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		the Company basis Book Value or Net Assets Value basis or Realisable Valuation of Assets adjusted to Current Liabilities basis or Discounted Cash Flow of the Business basis will be "Negative", whereas the RA is paying Premium over Face Value considering the Future Potential of the Business.	
12.	12.	<p><b>Treatment of Workman / Employees dues</b></p> <p>The employment terms of the employees of the Corporate Debtor shall be in accordance with the standard policies of the Resolution Applicant. For avoidance of doubt, it is clarified that, except expressly set forth herein, no obligations or Liabilities of the Corporate Debtor in respect of the employees pertaining to the period up to the Effective Date are being assumed by the Resolution Applicant. No employee of the Corporate Debtor shall have any claim whatsoever against the Corporate Debtor pertaining to the period prior to the Effective Date except to the extent provided for payment by the Resolution Applicant in this Resolution Plan, if applicable.</p>	Granted.
13.	13.	<b>Human Capital</b>	
	a.	The Corporate Debtor & Resolution Applicant be allowed to re-build the Human Capital as per the requirement without any obligations.	Granted, but all acts shall be done in compliance with the existing law.



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<b>Sl. No.</b>	<b>Ref to Clause</b>	<b>Relief, concessions, and approvals sought</b>	<b>Orders thereon</b>
	b.	The Resolution Applicant is free to reorganise the business of the Corporate Debtor and to adopt suitable measure, including re-aligning the manpower requirement and changing the use of its land in such manner as is likely to benefit in the turnaround process of OBRPL.	Granted, but all acts shall be done in compliance with the existing law.
	c.	Further, the Resolution Applicant would be allowed to start and operate any business or enterprise freely without any pending Legal & Statutory hassles related to the period prior to the Effective Date.	Granted, but all acts shall be done in compliance with the existing law.
	d.	For financial sustainability and also keeping in view the fact that the unit requires major revamping, the Resolution Applicant shall be free to appoint its own resources including manpower, labour, workforce and shall not, subject to the applicable laws, be bound by any Government authority to appoint any of the old employee / workmen or follow requirement of employing from particular state or region. Subject to applicable laws, Resolution Applicant will follow its own well-designed model of employment which will include contractual / fix term/ probation/ regular or deputation or on consultant basis.	Granted, but all acts shall be done in compliance with the existing law.
14.	14.	<b>Contractual Claims &amp; Liabilities</b>	
	a.	The RA will, after the Effective Date, make an assessment of whether it wants to continue with or terminate the contracts / agreements entered into by	Such blanket reliefs cannot be granted at this stage since the parties against whom these orders will operate, are not before us at



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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		OBRPL. It is clarified that in case the Resolution Applicant terminates any such old contract / agreements, no termination payments or liquidated damages shall be payable by the RA or CD on account of such termination.	this stage.
	b.	All Claims & all liabilities, disclosed or un-disclosed and/or in India or anywhere outside India (statutory or otherwise) of OBRPL, arising from any contractual arrangements entered into by OBRPL, any claims against OBRPL, or liabilities of OBRPL, arising or having crystallized prior to the Effective Date or even accruing after the Effective Date, but arising out of matters or actions arising prior to the Effective Date shall be deemed to be cancelled and written off on the Effective Date pursuant to NCLT Approval Order. Further, any claim against OBRPL, arising from any contractual arrangements disclosed or un-disclosed and/or in India or anywhere outside India, whether set out herein or not, whether admitted or not, due or contingent, asserted or unasserted, present or future, whether or not set out in the Information Memorandum, including but not limited to any claims liabilities of OBRPL in relation to its products arising or having crystallized prior to the	<p>In <i>Ghanshyam Mishra &amp; Sons Pvt Ltd v. Edel-weiss Asset Reconstruction Company Ltd</i>,<sup>32</sup> the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.</p> <p>The exemptions sought for in this row should measure up to this judgment, and section 32A of the IBC. Those exemptions or waivers sought which are outside the scope of this judgment and of section 32A of the Code, are not granted.</p>

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2021 SCC OnLine SC 313 decided on 13.04.2021.



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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		Effective Date or even accruing after the Effective Date, but arising out of matters or actions arising prior to the Effective Date the balance sheet or the books of accounts of OBRPL, in relation to any period prior to the Effective Date, will be written off in full and will be deemed to be permanently extinguished by virtue of the NCLT Approval Order and the Resolution Applicant, OBRPL and/ or the new management of OBRPL shall, at no point, be made directly or indirectly responsible or liable for the same.	
	c.	It is clarified that all shareholders' agreements, sale purchase agreements, share subscription agreements and any other agreements governing the affairs of OBRPL and/ or governing the inter-se rights of the shareholders, disclosed or un-disclosed and/or in India or anywhere outside India shall stand terminated, without any recourse against the Resolution Applicant, OBRPL and/ or the new management of OBRPL.	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. However, the decision of the Hon'ble Supreme Court in <i>Ghanashyam Mishra &amp; Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , <sup>33</sup> shall apply.
15.	15.	<b>Failure to submit Claims &amp; Rejected / Unverified Claims</b>	
	a.	The Interim Resolution Professional had issued public notice in accordance with the Code, inviting all creditors of the Company to submit their claims	Granted in terms of <i>Ghanashyam Mishra &amp; Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd</i> , <sup>34</sup> the Hon'ble

<sup>33</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.

<sup>34</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.





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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		<p>within a specified time. Further, a significant time has lapsed from the date of public notice, thereby providing sufficient time to all creditors of the Company to submit their Claims. Hence, we assume that all persons who have Claims against the Company in any form (including Financial Creditors, Operational Creditors, Other Creditors, Government Authorities, Land Lessees, Power Supply Companies, person who have advances to the Company against supply of goods or services, SEBI, Stock Exchanges) have all filed their claims and all verifiable claim as on date of approval of this Plan by CoC, have been admitted by the Resolution Professional and are disclosed in the IM.</p>	<p>Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.</p>
	b.	<p>Hence if any person that has any Claim(s) against the Company have not submitted its Claims (whether or not it was aware of such Claims) or of the Claim filed by any person has been rejected and / or not admitted and / or not verified by the Resolution Professional, then, subject to payment proposed in this Plan, (a) all such Claims (whether final or contingent, whether disputed or undisputed and whether or not notified to or claimed against CD); (b) all outstanding disputes or legal proceedings in respect of such claims and (c) all rights or claims of such persons against the Company; in each case, relating to</p>	



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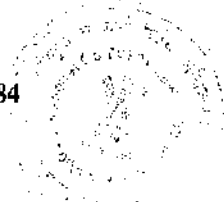
Fesco India Limited v. Om Besco Rail Products Ltd.  
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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		the period prior to the Effective Date, shall immediately, irrevocably and unconditionally stand extinguished and / or settled at NIL value on the NCLT Approval Date, and the Company or the RA shall have no liabilities in respect of such Claims.	
16.	16.	<b>Related Party Transactions</b>	
	a.	The RA shall have the right to terminate requisite related party transactions (whether known or unknown), entered into between the CD and its related parties (as of the date prior to the Effective Date) without incurring any liability in respect of such termination.	Granted.
	b.	Provided, however, in case any amounts are due from any related party as on NCLT Approval Date, the Company shall retain all rights to recover such amounts and / or take any action to recover such amounts from such related party.	Granted.
	c.	All Corporate Guarantees, indemnities, letter of comfort, undertakings, post-dated cheques and like instruments provided by the CD, in respect of any third party liabilities (including for any related party) shall stand revoked and extinguished on the Effective Date pursuant to NCLT Approval Order without the requirement of any further deed by the RA or CD.	Granted in terms of <i>Ghanshyam Mishra &amp; Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd</i> , <sup>35</sup> the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.

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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
17.	17.	<b>Dues of Creditors during CIRP</b>	
	a.	The dues incurred by the Resolution Professional (on behalf of OBRPL) during the CIRP, towards the operational & financial creditors shall be paid in terms of agreements with such Operational Creditors.	Granted.
	b.	The Resolution Plan has been made on the assumption that all dues incurred by the Resolution Professional (on behalf of OBRPL) during the CIRP and prior to the Effective Date, have been or will be paid as CIRP Costs. Therefore, except for CIRP Costs, any liabilities and/ or claims that arise between the Insolvency Commencement Date and the Effective Date whether disclosed or un-disclosed and/or in India or anywhere outside India shall stand waived, extinguished, abated, discharged in perpetuity as on the Effective Date, pursuant to the NCLT Approval Order and after making the payment proposed under this plan.	Granted.
	c.	Further, except as provided herein, no interest shall be paid for the CIRP Period, on any claim against OBRPL (as on the Insolvency Commencement Date) be it of the financial creditor, Operational Creditor or any other claim arising on account of any financial liability, operational liability or any other contingent liability or dues, demands in connection with or against OBRPL.	Granted, provided there is no undue, unreasonable, or unwarranted delay.



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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
18.	18.	<b>Treatment of Corporate Guarantee and like instrument issued by the Corporate Debtor</b> Any Corporate Guarantee, Indemnities, Letter of Comfort, Undertakings provided by the Corporate Debtor, in respect of any third party liability shall stand extinguished on the effective date pursuant to the approval of the Resolution Plan by the order of NCLT, without requirement of any further Act or Deed by the Resolution Applicant and / or Corporate Debtor.	Granted.
19.	19.	<b>Subsidiary Companies of CD</b>	
	a.	RA is not aware about any Subsidiary of CD or any liabilities and other status of the Subsidiaries & Step-down Subsidiaries if any.	It was for the Resolution Applicant to undertake proper due diligence, and not thrust its carelessness on the Adjudicating Authority and expect concession in this regard. Further, the subsidiary Companies or the Associate Companies have their own identity and cannot be struck out.
	b.	Therefore, upon approval of this Plan by AA, all the subsidiaries & step-down subsidiaries (whether Indian or Foreign) and the present associate Companies of the Corporate Debtor shall be strike out and shall no longer remain subsidiary or associate of such companies. The approval of Resolution Plan by AA shall be deemed to have all the approval for procedural requirements in	The concessions sought are explicitly refused.



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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		terms of relevant Section of the Companies Act, 2013 & Rules and RA will comply with all the procedural requirements, if any. Investments of CD in such Companies, if any, shall be treated purely as Investment and such Companies shall not be considered as Subsidiaries or Associate of CD.	
	c.	Further, the Resolution Applicant & the Corporate Debtor shall not be liable towards any claims or obligation (present or future, due or contingent, asserted or unasserted, crystallized or uncrystallised, known or unknown, disputed or undisputed, disclosed or un-disclosed) towards or relating to the subsidiaries or associate companies of the Corporate Debtor in India or anywhere outside India that relates to period prior to the Closing Date, including in relation to any Guarantees or Undertaking issued by CD for such subsidiaries or associate in any manner whatsoever.	In <i>Lalit Kumar Jain v Union of India &amp; ors</i> , <sup>36</sup> 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 guarantor's liability.  The provisions of section 32A of the IBC will also apply.
	d.	All present or future claims or dues against such Subsidiaries or Associate Companies under Applicable Law (including Taxes), or in relation to any breach, contravention or non-compliance of any Applicable Law (including criminal laws), shall not be the responsibility of the CD or RA and the CD or RA	The provisions of section 32A of the IBC will also apply.

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2021 SCC OnLine SC 396 decided on 21.05.2021.



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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		shall no way be held accountable for such dues / breach.	
	e.	For the sake of clarity, it is once again clarified that such Subsidiary & Associate shall no longer remain part of the restructured CD and therefore, shall not form part of the group. Such Subsidiaries / Associate shall be treated as separate legal entity having no relationship whatsoever with CD / RA.	Not granted. The shareholding of the Corporate Debtor in such subsidiary or associate companies cannot just be wished away.
20.	20.	<p><b>CLAIMS BY OBRPL</b></p> <p>All existing and future claims by OBRPL and all its existing and future rights, entitlement, etc. with Governmental Authorities or any other Person (including third parties) shall not be affected and shall remain enforceable after the Effective Date. Nothing in this Resolution Plan shall be deemed to affect the rights of OBRPL and/ or the new management of OBRPL to recover from and/or asset claims or rights against any Person and there shall be no set off of any such amounts recoverable by OBRPL or any liability of third party towards OBRPL extinguished pursuant to this Resolution Plan.</p>	<p>Granted in terms of <i>Ghanshyam Mishra &amp; Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd</i>,<sup>37</sup> the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.</p> <p>In <i>Lalit Kumar Jain v Union of India &amp; ors</i>,<sup>38</sup> 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 guarantor's liability.</p> <p>The provisions of section 32A of the IBC will also apply.</p>
21.	21.	<b>Liabilities claimed by the</b>	Granted.

<sup>37</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.

<sup>38</sup> 2021 SCC OnLine SC 396 decided on 21.05.2021.



IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH-1

Fesco India Limited v. Om Besco Rail Products Ltd.  
IA (IB) No.692/KB/2021 in CP (IB) No. 1735/KB/2019

Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		<p><b>Erstwhile Promoters / Claims / Rights of Existing Promoter and Promoter Group</b></p> <p>Approval of the Resolution Plan will be treated as Waiver Approval by NCLT for all Liabilities claimed by erstwhile Promoters and Related Parties for Unsecured Loans and Operational/Other Creditors as on insolvency commencement date to be treated as Fully and Finally Settled with "Value" as stated in the Resolution Plan and No Due remains to be paid ever after the stated waiver. Further, Approval of the Resolution Plan will be treated as Approval by NCLT that all claims, rights of existing promoter / promoter group against the Corporate Debtor, unless covered in the Resolution Plan, shall stand irrevocably and unconditionally extinguished and ineffective on approval of Resolution Plan.</p>	
22.	22.	<p><b>Claims by Government Authorities / Public Sector Enterprises</b></p> <p>Approval of the Resolution Plan will be treated as Approval by NCLT that claims of government authorities and all public Sector Enterprises, in relation of all taxes, dues, litigation, all pending unresolved matters etc. for period pertaining prior to the insolvency commencement date shall stand extinguished and ineffective. Prior</p>	<p>Granted in terms of <i>Ghanshyam Mishra &amp; Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd</i>,<sup>39</sup> the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.</p>

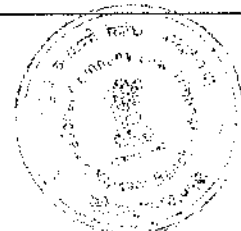
<sup>39</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.



IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH-1

Fesco India Limited v. Om Besco Rail Products Ltd.  
IA (IB) No.692/KB/2021 in CP (IB) No. 1735/KB/2019

Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		<p>disputes, if any, will be treated as Fully and Finally settled at "NIL" value upon approval of the Resolution Plan by NCLT.</p> <p>Past Registration of CD with all Public Sector Enterprises, Indian Railways, SAIL Rites etc, if any, will be treated as effective under RA for future supply of products as per their terms.</p>	
23.	23.	<p><b>Status Quo of existing approvals / Default Renewal of all expired approvals by Railways/ RDSO</b></p> <p>Approval of the Resolution Plan by NCLT will be treated as Specific Order to approve extension of current approvals of Products / Standards stated for maintenance of the Plant &amp; Machinery / Factory etc for another 2 years (approvals which Corporate Debtor already received to supply) given the fact that the viability of the CD Business depends on such approvals and the CD was unable to restart its business in entire period of 2020 and even in current scenario due to COVID Pandemic which is a Force majeure issue.</p> <p>Further, Approval of the Resolution Plan by NCLT will be treated as Specific Order to approve participation in various tenders as was permissible to the CD prior to commencement of CIRP given the fact that the</p>	<p>The Corporate Debtor under new management will approach the authorities concerned, who shall consider the same based on the judgment of the Hon'ble Supreme Court in <i>Ghanshyam Mishra &amp; Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd</i>, where the Corporate Debtor start on a clean slate.</p> <p>Granted, subject to other compliances.</p>





IN THE NATIONAL COMPANY LAW TRIBUNAL  
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Fesco India Limited v. Om Besco Rail Products Ltd.  
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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		viability of the CD Business depends on participation of such tenders and the CD was unable to participate in entire period of 2019 & 2020 and even in current scenario due to COVID Pandemic which is a Force majeure issue.	
24.	24.	<b>Revocation of Power of Attorneys</b> Approval of the Resolution Plan will be treated as Specific Order and Approval by NCLT to treat all the power of attorneys provided to any person by the Corporate Debtor stands revoked after the Effective Date.	This cannot be granted in such general terms.
25.	25.	<b>Claim of PF Authority &amp; Pending Litigation filed against them by the CD</b> Claim of PF Authority of Rs.0.99 crores is in relation to erstwhile establishment at the location of the unit of the CD and not relating to the dues of CD and the same has not been admitted by the RP. The CD has already filed a petition before EPF appellate tribunal Dhanbad, which is still pending for final order. Directions from the NCLT, by way of approval of this Resolution Plan would result in the quashing of all legal proceedings for recovery of any amount in respect of the same or enforcement of any existing security interest against the Corporate Debtor. It is hereby clarified that the courts / forums shall consider the resolution plan as adequate proof to quash all	The Corporate Debtor under the successful Resolution Applicant shall abide by the decision of the EPF Appellate Tribunal, Dhanbad, subject to the outcome of any appeal that may be filed in the matter. This relief is explicitly refused.



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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		such litigation / pending matters including the notice of PF Authority.	
26.	26.	<p><b>GST registration</b></p> <p>Since the Resolution Applicant has been provided with limited information in relation to the GST and its current status, it is probable that GST Registration for Mugma of the Corporate Debtor has lapsed, expired, suspended, cancelled, revoked or terminated or the Corporate Debtor has non-compliances in relation thereto. Accordingly, all Authorities to provide reasonable time period of at least 12 months after the Effective Date in order to enable Resolution Applicant to assess the status of the same ensure that the Corporate Debtor is compliant with the terms of such GST permit and Applicable Law.</p>	This is for the appropriate Tax Authorities to consider keeping in mind the objective of the Code.
27.	27.	<b>Licenses / Approval for Operations</b>	
	a.	Neither the Resolution Applicant nor OBRPL, nor their respective directors, officers and employees appointed as on or after the Effective Date shall be liable for any violations, liabilities, penalties, interests on statutory payments and/ or fines with respect to or pursuant to any order of any Governmental Authority or on account of non-compliance of Applicable Laws by OBRPL or due to OBRPL not having in place requisite approvals and licenses to undertake its business as per	Granted in terms of section 32A of the IBC will also apply.

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Fesco India Limited v. Om Besco Rail Products Ltd.  
IA (IB) No.692/KB/2021 in CP (IB) No.1735/KB/2019

Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		Applicable Law.	
	b.	Since the Resolution Applicant has been provided with limited information in relation to the Business Permits and their current status, it is probable that certain of the Business Permits / Statutory Approvals of the Corporate Debtor have lapsed, expired, suspended, cancelled, revoked or terminated or the Corporate Debtor has Non-Compliances in relation thereto.	Renewal of expired licences shall be subject to application in this behalf to the authority concerned who shall consider for approval keeping in view the spirit of the Code, which is to achieve resolution of the Corporate Debtor.  Such applications shall also be subject to payment of the prescribed fee in this regard, and blanket exception from payment of fees is not granted.
	c.	Accordingly, all Government Authorities i. to provide reasonable time period of at least 12 months after the Effective Date in order to enable Resolution Applicant to assess the status of these Business Permits / Statutory Approvals and ensure that the Corporate Debtor is compliant with the terms of such Business Permits / Statutory Approvals and Applicable Law ii. should not initiate any investigations, actions or proceedings in relation to such Non-Compliances; iii. should co-operate with the CD to renew / obtain for such permits / approvals; iv. permit the Resolution Applicant to continue to operate the business of the Corporate Debtor pending such permits / approvals at least till a period of 12 months from the Effective Date &; v. not to charge any charges.	

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Fesco India Limited v. Om Besco Rail Products Ltd.  
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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		penalty, interest, etc till the time such Permits / Approvals are received.	
28.	28.	<b>Non-Compliance under Applicable Laws</b>	
	a.	There may be penalty and other charges due to non-compliance of various SEBI and Stock Exchange regulations, ROC, MCA and other regulatory authorities. Such penalties and charges are part of Operational Dues, the liquidation value of which is NIL. RA proposes to NIL amount as settlement of such penalties, charges, etc. Accordingly, such penalties, charges, etc shall stand extinguished by virtue of the order of the NCLT approving this plan and the Corporate Debtor shall not be liable to pay any amount against such demands.	All filing fees etc. shall be paid by the successful Resolution Applicant.
	b.	The Resolution Applicant would be entitled to remedy and / or rectify any breach, violation, defects, deficiencies etc. which the Corporate Debtor has committed and would also be entitled to do all such legal compliances which were not done by the CD without paying any penalties / interest / charges / taxes/ etc. All penalties, prosecution, compounding, etc relating prior to Effective Date will be condoned off.	Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd.</i> <sup>40</sup> wherein the Hon'ble Supreme Court has held that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt, any State Govt or any local authority, guarantors and other

<sup>40</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.



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Fesco India Limited v. Om Besco Rail Products Ltd.  
IA (IB) No.692/KB/2021 in CP (IB) No.1735/KB/2019

Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
			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.
	c.	All Government Authorities to waive the Non-Compliances of the Corporate Debtor prior to the effective date;	Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd</i> , <sup>41</sup> wherein the Hon'ble Supreme Court has held that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt, any State Govt or any local authority, guarantors and other stakeholders.
	d.	Resolution Applicant and the Corporate Debtor after the successful acquisition by the Resolution Applicant shall not be responsible for any defaults for the period prior to effective date, of any nature under any law as may be applicable from time to time including but not limited to ED/ RBI/ CBI/ CVC/ PMLA/ FEMA / FERA, BSE, SEBI, Customs, Excise, VAT, GST, ST/CST/ Octroi, Property Tax,	

<sup>41</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.



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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		EPFO, ESI and any other law/enforcement agencies even if not mentioned here.	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. However, all necessary filings shall be made.
	e.	Post-acquisition of CD, the new management shall require 12 months for appointment of Auditors, Company Secretary and other Statutory Compliances including but not limited to compliances of SEBI, BSE, etc. The RA should therefore be allowed 12 months' time from the effective date to comply with all statutory approval and requirements including but not limited to filing of Balance Sheet, rectifying SEBI compliances, BSE compliances, etc without any charges, penalties, interest, etc.	Granted in terms of section 30(4) of the Code.



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Fesco India Limited v. Om Besco Rail Products Ltd.  
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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
29.	29.	<p><b>Treatment of debts barred by limitation</b></p> <p>As of the Effective Date, any debt owed by the CD to any Operational Creditor, which is barred by limitation under the Applicable Laws, shall immediately, irrevocably and unconditionally stand extinguished, waived and withdrawn on and from the Effective Date, and no person shall have any further rights or claims against the CD in this regard.</p>	<p>If such debt is already barred by limitation, then it is not clear as to what orders are expected from this Adjudicating Authority.</p>
30.	30.	<p><b>Third Party Collaterals / Right of Subrogation</b></p> <p>a.</p> <p>There may be any Collateral Securities (owned directly / indirectly by the original promoters and their affiliates) mortgaged / hypothecated to Financial Creditors; the Resolution Applicant doesn't wish to acquire such properties and thus proposes to secured financial Creditors to take over and adjust the same against their respective unrealized claim.</p>	<p>This is between the Resolution Applicant and the secured creditors. No specific orders are necessary in this regard.</p>



IN THE NATIONAL COMPANY LAW TRIBUNAL  
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Fesco India Limited v. Om Besco Rail Products Ltd.  
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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		It is hereby clarified that the Resolution Plan does not deal with Personal Guarantor or Corporate Guarantor of the Corporate Debtor, in any way. The creditors retain their right against such Personal/ Corporate Guarantor and the Right of the Creditors against them do not get extinguished/effected and they can proceed against them to recover their balance outstanding (i.e., haircut plus interest plus charges, if any) from any of the Guarantors who have given Guarantees/ to secure the debts/ borrowings of the Corporate Debtor, in whatsoever manner at the discretion of the Creditors	In <i>Lalit Kumar Jain v Union of India &amp; ors</i> , <sup>42</sup> 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 guarantor's liability.
	b.	Notwithstanding any claims that any of the creditors of the Company or the Resolution Applicant may have against third parties/ existing promoters/ shareholders/personal or corporate guarantors of the Company ("Third Parties") under any guarantees/ contractual comforts/collateral provided by the Third Parties, no right of subrogation shall be available to these Third Parties (or any other person claiming through them), in case creditors proceed against Third Parties for balance payment or in case of invocation of/ payment by such Third Parties (at	Granted in terms of <i>Ghanshyam Mishra &amp; Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd</i> , <sup>43</sup> the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.

<sup>42</sup> 2021 SCC OnLine SC 396 decided on 21.05.2021.

<sup>43</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.





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IA (IB) No.692/KB/2021 in CP (IB) No.1735/KB/2019

Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		any time before or after the NCLT Approval Date) under their guarantees/contractual comforts/collateral and all such subrogation rights shall stand permanently waived/ extinguished on the NCLT Approval Date, pursuant to NCLT Approval Order.	
	c.	<p>The Secured Creditors may pursue their residual unrealised claims against the existing guarantors (both personal and corporate) of the corporate debtor. The existing guarantors against whom such action may be taken for recovery of residual dues shall expressly waive any right of subrogation against the corporate debtor.</p> <p>The right of subrogation, if any, to be exercised by the guarantors, shall only be exercised against the erstwhile promoters of the corporate debtor and not against the resolved corporate debtor with the new management or any of the member of the new promoter group.</p>	<p><i>In Lalit Kumar Jain v Union of India &amp; ors,</i><sup>44</sup> 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 guarantor's liability.</p> <p>The provisions of section 32A of the IBC will also apply.</p>
	d.	It should be noted that Resolution Applicant shall not be responsible for the above said potential recovery either directly or indirectly towards the realization of sale of above investments/ collateral property etc., to the financial creditors.	No orders are necessary.

<sup>44</sup> 2021 SCC OnLine SC 396 decided on 21.05.2021.



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Fesco India Limited v. Om Besco Rail Products Ltd.  
IA (IB) No.692/KB/2021 in CP (IB) No.1735/KB/2019

Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
31.	31.	<b>Right to recover any amount from the existing debtors of the CD</b> Upon approval of the plan by NCLT the Resolution Applicant will have all the rights to recover from the Debtors of the CD any amount lying as due in the books of account as on the CIRP date.	Granted, if otherwise permissible in law.
32.	32.	The Adjudicating Authority shall have approved this Plan in accordance with its terms in entirety and should direct:	
	a.	DVC (i) to settle all its dues upto the Effective Date at the price offered by Resolution Applicant under this Plan, (ii) to restore Power Connection at the factory site immediately after the Effective Date and (iii) to commit uninterrupted supply of Power to CD after approval of this Plan.	Granted. The Resolution Applicant shall submit the requisite forms for restoration of power connection and the Appropriate Authorities shall consider the same keeping in mind the spirit of the Code.
	b.	The Land Lessor i.e. Jauhar Firebricks & Refractory Works Pvt Ltd to allow the Restructured CD to allow operations on the leasehold lands as per the Lease Deed without any hassles or any charges / penalties / etc in any form for the past deeds done prior to the Effective Date.	Granted.
33.	33.	AA to pass necessary orders/ give appropriate directions for specific waiver of transaction costs related leading to implementation of the Resolution Plan including but not limited to any incidence of Stamp Duty, ROC fee, Income-tax, any statutory levy, renewal charges, etc. The resolution plan envisages increase in authorized share capital for implementation, the	The Resolution Plan is expected to be compliant with other laws, as envisaged under section 30 of the Code. Such applications shall also be subject to payment of the prescribed fee in this regard, and blanket exception from payment of fees is not granted.



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KOLKATA BENCH-1

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SL No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		ROC fees towards the same shall be specifically waived.	
34.	34.	All relevant Government Authorities to grant relief from payment of stamp duty, registration fees and applicable fees (including fees payable to the jurisdictional Registrar of Companies) for the successful implementation of the Plan (including for the Merger, capital reduction, issuance and transfer of shares or debentures and assignment of Debt).	The Resolution Plan is expected to be compliant with other laws, as envisaged under section 30 of the Code. Such applications shall also be subject to payment of the prescribed fee in this regard, and blanket exception from payment of fees is not granted.
35.	35.	CD & RA shall be granted an exemption from all taxes, duties, levies, fees, transfer charges, transfer premiums, and surcharges that arise from or relate to implementation of the Resolution Plan, since payment of these amounts may make the Resolution Plan unviable.	The Resolution Plan is expected to be compliant with other laws, as envisaged under section 30 of the Code. Such reliefs cannot be granted.
36.	36.	AA to pass necessary orders / give appropriate direction for granting extension of current approvals of Products / Standards (including but not limited to approvals of Railways and / or RDSO) stated for maintenance of the Plant & Machinery / Factory etc for another 2 years (approvals which Corporate Debtor already received to supply) given the fact that the viability of the CD Business depends on such approvals and the CD was unable to restart its business in entire period of 2020 and even in current scenario due to COVID Pandemic which is a	Granted. However, formal applications shall be made to the appropriate authorities for orders.



IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH-I

Fesco India Limited v. Om Besco Rail Products Ltd.  
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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		Force majeure issue.	
37.	37.	The Resolution Applicant will acquire control over the Corporate Debtor pursuant to the order of the Adjudicating Authority by the Completion Date and not pursuant to the usual acquisition process which would ordinarily include a detailed due diligence and representation, warranties and indemnities in relation to the affairs of the Corporate Debtor from its Existing Promoters. Therefore, the Resolution Applicant may take some time to discover any non-compliances that may exist in relation to the Corporate Debtor on the date of acquisition of control by the Resolution Applicant over the Corporate Debtor. As such the Resolution Applicant may take some time to identify such non-compliances and to address them.	This is not in the nature of a waiver, concession or approval requiring the attention of this Adjudicating Authority.
38.	38.	In light of this, the Resolution Applicant and the Corporate Debtor shall have immunity from any actions and penalties (of any nature) under any laws for any non-compliance of laws in relation to the Corporate Debtor or by the Corporate Debtor, as well as with the terms of any agreement or arrangement entered into by the Corporate Debtor, which was existing as on the Completion Date and which continues for a period of up to 12 months after the acquisition of control by the Resolution Applicant over the Corporate Debtor. Without any	Whatever has been granted in terms of section 32A of the Code, alone shall prevail.

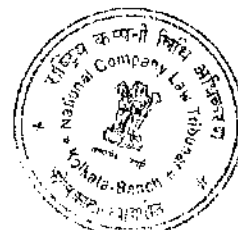


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Fesco India Limited v. Om Besco Rail Products Ltd.  
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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		liability for the non-compliance during the time specified above, the Resolution Applicant undertakes to cause the Corporate Debtor to expeditiously identify such non-compliances, evaluate the steps required to address such non-compliances and take steps to remedy such non-compliances to the extent practically possible. The Resolution Applicant and the Corporate Debtor shall be entitled to apply to and approach the Adjudicating Authority for relief for continued implementation of the approved Resolution Plan before or after any coercive action is taken against the Corporate Debtor or the Resolution Applicant, especially in view of the limited due diligence offered to the Resolution Applicant.	
39.	39	This Resolution Plan will be implemented pursuant to an order of the Adjudicating Authority, and all actions stated in this Resolution Plan shall be deemed to be approved by the Adjudicating Authority. Accordingly, any action or implementation of this Resolution Plan shall not be a ground for termination of any contracts entered into by the Corporate Debtor.	This is not in the nature of a waiver, concession or approval requiring the attention of this Adjudicating Authority.
40.	40	Resolution Applicant and the Corporate Debtor after the successful acquisition by the Resolution Applicant shall not be	Granted in terms of <i>Ghanshyam Mishra &amp; Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd</i> , <sup>45</sup> the Hon'ble

<sup>45</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.



IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH-1

Fesco India Limited v. Om Besco Rail Products Ltd.  
IA (IB) No.692/KB/2021 in CP (IB) No.1735/KB/2019

Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		responsible for any defaults for the period prior to effective date any nature under any law as may be applicable from time to time including but not limited to ED/ RBI/ CBI/ CVC/ PMLA/ FEMA / FERA, customs, excise, VAT, GST, ST/CST/ Octroi, Property Tax and any other law/ enforcement agencies even if not mentioned here.	Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.  In <i>Lalit Kumar Jain v Union of India &amp; ors</i> , <sup>46</sup> 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 guarantor's liability.  The provisions of section 32A of the IBC will also apply.
41.	41.	Upon approval of this Resolution Plan by the Adjudicating Authority, all inquiries, investigations and proceedings, whether civil or criminal, notices, causes of action, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings against, or in relation to, or in connection with the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future, (including without limitation, any investigation, action, proceeding, prosecution, whether civil or criminal, by the Central Bureau of Investigation, the Enforcement Directorate or any other regulatory	Granted in terms of <i>Ghanshyam Mishra &amp; Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd</i> , <sup>47</sup> the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.

<sup>46</sup> 2021 SCC OnLine SC 396 decided on 21.05.2021.

<sup>47</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.



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KOLKATA BENCH-1

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LA (IB) No.692/KB/2021 in CP (IB) No.1735/KB/2019

Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		<p>or enforcement agency), in relation to any period prior to the Completion Date or arising on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan shall stand withdrawn or dismissed and all liabilities or obligations in relation thereto, whether or not set out in the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor, will be deemed to have been written off in full and permanently extinguished and the Corporate Debtor or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto notwithstanding any adverse order that may be passed in respect of the same by any authority prior to or after the Completion Date. Upon approval of this Resolution Plan by the Adjudicating Authority, all new inquiries, investigations, whether civil or criminal, notices, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings will be deemed to be barred and will not be initiated or admitted against the Corporate Debtor in relation to any period prior to the acquisition of control by the Resolution Applicant over the Corporate Debtor or on account of the acquisition of control by the</p>	



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		<p>Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan.</p> <p>However, nothing mention herein above shall be applicable to investigation, action, proceeding, prosecution, suits, etc, whether civil or criminal, regulatory or administrative actions against the erstwhile promoters/directors/employees of the CD.</p>	
42.	42.	<p>As the Resolution Applicant will acquire control over the Corporate Debtor pursuant to the order of the Adjudicating Authority and not pursuant to the usual acquisition process which would ordinarily include a detailed due diligence and representation, warranties and indemnities in relation to the affairs of the Corporate Debtor from its Existing Promoters, the Resolution Applicant may take some time to discover all the non-compliances that may exist in relation to the Corporate Debtor on the date of acquisition of control by the Resolution Applicant over the Corporate Debtor.</p>	<p>This does not require any orders from the Adjudicating Authority.</p>
43.	43.	<p>The jurisdictional Registrar of Companies to take on record and implement the Plan, upon approval of the Plan by NCLT, without any further compliances.</p>	<p>It is incumbent upon the Resolution Applicant to see that the plan is implemented properly. It is not for the Registrar of Companies to Kolkata to take on record and implement the Plan. Wherever, the indulgence of Registrar of Companies is</p>





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			required, the company shall file all necessary forms along with applicable fee with the Registrar of Companies, who shall then act as per law.
44.	44.	AA to permit that the necessary form to be filed with the MCA intimating cessation of existing Directors and appointment of new Directors shall be concluded without affixation of Digital signatures.	Granted.
45.	45.	AA to issue suitable order that any change in the members managing the CD shall not affect the validity and enforceability of any agreement, lease deed, contract, etc. executed by the CD with various parties, authorities, companies, etc. save and except the provisions and scope of alterations / modifications / amendments as also such reliefs and concessions provided to the Resolution Applicant and the CD under this Resolution Plan.	Granted.
46.	46.	All Designated Authorised Dealer Category I Banks to grant any approval or dispensation as may be required for actions contemplated under the Plan in accordance with its terms and conditions.	The nature of this relief is not clear at this stage.
47.	47.	It is clarified that the existing promoters, shareholders, managers, directors, officers or such other person in charge of the affairs and management of the CD	In <i>Lalit Kumar Jain v Union of India &amp; ors</i> , <sup>48</sup> the Hon'ble Supreme Court held in para 133 that sanction of a resolution plan

<sup>48</sup> 2021 SCC OnLine SC 396 decided on 21.05.2021.



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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		<p>(including any person who was an 'officer in default' or 'occupier') prior to the Effective Date shall continue to be responsible and liable for all the liabilities, claims, demand, obligations, penalties etc. arising out of any (i) proceedings, inquiries, investigations, orders, show causes, notices, suits, litigation etc. (including those arising out of any orders passed by the NCLT pursuant to Sections 43, 45, 49, 50, 66, 68, 70, 71, 72, 73, 74 of the IBC (including without limitation, any investigation by Central Bureau of Investigation or the Serious Fraud Investigation Office) or any acts or omissions in breach of applicable law (including but not limited to environmental laws, foreign exchange laws and regulations, labour and employment laws, and laws relating to anti-corruption and prevention of money laundering or diversion of funds) which occurred prior to the Effective Date, whether civil or criminal, pending before any authority, court, tribunal or any other forum prior to the effective Date or (ii) that may arise out of any proceedings, inquiries investigations, orders, show cause, notices, suits, litigation etc. (including any orders passed by the NCLT pursuant to Sections 43, 45, 49, 50, 66, 68, 70, 71, 72, 73, 74 of the IBC ), whether civil or criminal, that may be initiated or instituted post the approval of</p>	<p>and finality imparted to it by section 31 does not <i>per se</i> operate as a discharge of the guarantor's liability. The provisions of section 32A of the IBC will also apply.</p>



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		the Resolution Plan by the NCLT on account of any transactions entered into, or decisions or actions taken by, such existing promoters, shareholders, managers, directors, officers, employees, workmen or other personnel of the CD, and the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.	
48.	48.	All domain names, servers, being currently used by the CD to the extent not owned shall continue to be available for use by the CD for a period of 3 months for the Effective Date.	Granted, strictly in terms of the Code.
49.	49.	The consent of the shareholders of the Corporate Debtor for (a) issue and allotment of the Promoter Equity Shares as required under Sections 42 and 62 of the Companies Act; and (b) availing of borrowings in respect of the Loan Amount under Section 180(1)(c) of the Companies Act shall be deemed to have been obtained.	Granted, strictly in terms of the Code.
50.	50.	To permit RA for appointment of new Statutory Auditors as per the applicable laws. Appointment of Key Managerial Personnel and Company Secretary will be done by RA as per applicable law.	Granted, strictly in terms of the Code.
51.	51.	Resolution Applicant shall not be liable and will be kept indemnified financially or	Granted in terms of <i>Ghanshyam Mishra &amp; Sons Pvt Ltd v.</i>



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Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		otherwise against any of the negative impact / observation / findings of Forensic Audit and/or transaction audit. Further neither the Corporate Debtor nor any member of the New Promoters or New Promoters group shall be made party to any of the legal cases arising out of such forensic audit.	<i>Edelweiss Asset Reconstruction Company Ltd.</i> <sup>49</sup> the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.
52.	52.	There might be certain litigations/proceeding against the CD regarding the CD may have conducted its business in beach of certain applicable laws; and (b) an adverse outcome of such proceedings would interrupt the business of the CD as a going concern. Accordingly, all such proceedings should be extinguished / dropped immediately on approval of the Plan by the Adjudicating Authority.	Granted in terms of <i>Ghanshyam Mishra &amp; Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd.</i> <sup>50</sup> the Hon'ble Supreme Court held that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan.
53.	53.	Resolution Applicant shall be completely free for Restructuring / Re-alignment/Re-location/ merger/demerger/amalgamation of business operations/ Units of the Corporate Debtors depending on the cost effectiveness, market requirement, change in the business scenario in the interest of successful revival of business of Corporate Debtor.	Granted, strictly in terms of the Code. However, all necessary approvals as required under law shall be obtained. Only internal approvals such as that of shareholders and creditors during the implementation period shall be deemed to have been granted.
54.	54.	It is further stated that all the lenders / creditors / interested	The Corporate Debtor under new management shall apply to the

<sup>49</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.

<sup>50</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.



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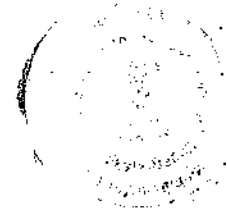
Sl. No.	Ref to Clause	Relief, concessions, and approvals sought	Orders thereon
		parties shall undertake all such steps to ensure that the account of the Corporate Debtor is classified as "standard" and any other adverse action taken by them under the regulatory regime against the CD in relation to the facilities given to the Corporate Debtor (whether or not the same is outstanding as on the date of this Resolution Plan), including but not limited to initiation of proceedings under Section 138, wilful defaulter proceedings, any other complaint to any regulator, administrative body, judicial body, etc. irrespective of whether there is a notice of the same to the CD, shall stand automatically discharged, at the time of NCLT order as per the Guidelines of RBI and law of the nation.	appropriate authorities in this regard.
55.	55.	If Corporate Debtor applies for credit rating / grading with any agency/bank/financial institutions etc., past performance (during the closure period for around 3 years) should not be considered for fiscal fillip. The New Promoters or New Promoters Group and its controlled company/concerns who are proposed to be the shareholders of corporate debtor has got certain synergy with corporate debtors as has been mentioned in Resolution Plan. Therefore, it is possible that some of the products of Resolution applicant or its associate concern may be common with the products of the corporate debtor. Therefore,	The Corporate Debtor under new management shall apply to the appropriate authorities in this regard.



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		to attain the financial stability of the corporate debtor, exemption will be available to the Resolution Applicant and its members/associates as well as Corporate Debtor with regard to provisions of the conflict of Interest due to common shareholding of the corporate debtor and Resolution Applicant including its associates from all the customers- -- including but not limited to Government/ Semi-Government / PSUs/ Non-Government/ Research & Development Centres / Subsidiaries / Division/ Zones/ Workshop/ Sheds or any other entities not mentioned here.	
56.	56.	The Memorandum of Association of the CD shall stand revised. The amendment to the Memorandum of Association, including the revisions to the capital clause therein, shall be pursuant to the order of the NCLT and shall not require any additional approval from the shareholders or otherwise. The Resolution Applicant may cause amendments to the Articles of Association of the CD, upon the authorised persons who will be part of managing and operating the affairs of the CD are identified.	Granted. The Resolution Applicant shall file all necessary forms along with the requisite fees with the appropriate authorities.
57.	57.	Upon approval of the Plan by the NCLT, the Resolution Applicant be permitted to recast the balance sheet for last 3 financial years, if required, and to draw up the financial statements of the CD for	Granted, strictly in terms of the Code.



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		<p>a period ending on the Effective Date (or any date closest to that date as may be practicable) in compliance with applicable accounting standards such that it truly reflects the claims verified and the realisable, fair value of the assets as may be determined by the board of directors of the Resolution Applicant. For the above purpose, the Resolution Applicant will be permitted to carry out necessary write off of assets, creation of additional liability or expenses or write back of liability or provision (as the case may be) in the books of accounts of the CD pertaining to the period between the cut-off date and the Effective Date. Pursuant to the order of the NCLT approving this Plan, any debit or credit, being the balancing figure, shall be adjusted in the capital reserve at the sole discretion of RA and the same shall be deemed to be in compliance with the applicable accounting standards.</p> <p>The restated balance sheet of the CD as would appear on Effective Date, considering the restructuring and payments proposed in the present Resolution Plan form an integral part of this Resolution Plan. Upon approval of the Plan by the NCLT, the Resolution Applicant be permitted to recast the balance sheet for last 3 financial years, if required, and to draw up the financial statements</p>	



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		of the CD for a period.	
58.	58.	All existing and future claims by OBRPL and all its existing and future rights, entitlement, etc. with Governmental Authorities or any other Person (including third parties) shall not be affected and shall remain enforceable after the Effective Date. Nothing in this Resolution Plan shall be deemed to affect the rights of OBRPL and/or the new management of OBRPL to recover from and/or asset claims or rights against any Person and there shall be no set off of any such amounts recoverable by OBRPL or any liability of third party towards OBRPL extinguished pursuant to this Resolution Plan.	Granted.
59.	59.	This Plan has been prepared on the assumption that there is no liability towards the Risk Purchase against past Purchase Orders / Sale Orders / Agreements / Contracts (Prior to the Effective Date) by any Customers / Suppliers / Vendors / Contractors / Consultants / Clients against the Corporate Debtor. Resolution Applicant shall in no case will be responsible for the past claims.	No orders are necessary.
60.	60.	Notwithstanding anything to the contrary, the powers of attorney or authorisations issued by the corporate debtor shall stand cancelled without any further act, instrument or deed.	Granted.
61.	61.	Carry forward and brought forward losses for all preceding 8	This is for the Income Tax authorities to consider.





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		years be allowed for a further period of 8 years.	mind the spirit of the Code.
62.	62.	Income Tax Authority to consider any income arising due to waiver and/or write off of liabilities should not be treated as income and no tax/book profit tax shall be levied. Section 41(1) of the Income Tax Act, 1961 should not be applied in respect of the execution of the Plan, as approved by this Tribunal.	This is for the Income Tax authorities to consider keeping in mind the spirit of the Code.
63.	63.	Income Tax Authority to consider grant of exemption and relief to the CD from the provisions of Section(s) 45, 43B, 56, 79, 115JB, 269-SS, 269-T of Chapter XVII of the Income Tax Act, 1961, effective from the Approval Date for implementation of Resolution Plan.	This is upto the appropriate authorities to consider keeping in mind the spirit of the Code.
64.	64	The approval of resolution plan by Adjudicating Authority shall constitute adequate and final approval of Adjudicating Authority for:	
	a.	cancellation of the share capital of the Corporate Debtor (as may be agreed upon) in terms of the provisions of the Companies Act, 2013 and other applicable law without any compliance of any provisions of the Act which shall stand exempted without any further action on part of any Party;	Granted. The company shall file all necessary forms along with applicable fee with the Registrar of Companies.
	b.	issuance of new Equity Shares / Preference shares and/or convertible securities as may be considered appropriate to issue in terms of Section 42 and Section 62(1)(c) of the Companies Act, 2013 and other applicable law;	Granted. The company shall file all necessary forms along with applicable fee with the Registrar of Companies.



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		and;	
	c.	the amount infused by the Resolution Applicant in the Corporate Debtor for payment of dues of financial creditors as per this Resolution Plan shall not be termed as "deposits" under Section 73 to 76 of the Companies Act, 2013 and the rules made thereunder, shall be effective without following the provisions of the Companies Act, 2013, and that no approval/consent shall be necessary from any other person in relation to any of these actions including under any agreement, the constitution documents of the Corporate Debtor or any applicable law.	Granted.

8. *Analysis and Orders*

- 8.1. On hearing the submissions made by the Resolution Professional, and perusing the record, we find that the Resolution Plan has been approved with 90.15% 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 Resolution Professional and the Resolution Applicant for making the plan effective after approval by this Bench.
- 8.2. On perusal of the documents on record, we are 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.
- 8.3. As far as the question of granting time to comply with the statutory obligations or seeking approvals from authorities is concerned, the



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Resolution Applicant is directed to do so within one year from the date of this order, as prescribed under section 31(4) of the Code.

- 8.4. In case of non-compliance of this order or withdrawal of Resolution Plan, the payments already made by the Resolution Applicant shall be liable for forfeiture.
- 8.5. Subject to the observations made in this Order, the Resolution Plan dated 01 July, 2021, is hereby **APPROVED** by this Bench. **The Resolution Plan shall form part of this Order.**
- 8.6. The Resolution Plan thus approved shall be binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect.
- 8.7. The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
- 8.8. The Resolution Professional shall submit copies of the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters.
- 8.9. The Resolution Professional shall stand discharged from his duties with effect from the date of this order.
- 8.10. The Resolution Professional is further directed to hand over all records, and properties 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 and premises of the corporate debtor through the Resolution Professional to finalise the further line of action required for starting of the operation.
- 8.11. Liberty is hereby granted for moving applications, if required, in connection with implementation of this Resolution Plan.



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- 8.12. The Resolution Applicant shall file a copy of this order with the Registrar of Companies, West Bengal, *inter alia* for updating the status of the Corporate Debtor.
- 8.13. The application bearing IA (IB) No. 692/KB/2021 along with the Company Petition bearing C.P. (IB)No. 1735/KB/2019 are disposed of accordingly.
- 8.14. Additionally, the Registry shall send a copy of this order to the Registrar of Companies, West Bengal.
- 8.15. Certified copy of this order be issued on demand to the concerned parties, upon due compliance.

  
Balraj Joshi  
Member (Technical)

  
Rajasekhar V.K.  
Member (Judicial)

08 March, 2022

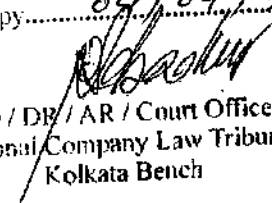
GGRB[LRA]

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ED / DE / AR / Court Officer  
National Company Law Tribunal  
Kolkata Bench