

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

IA (IB) No. 571/KB/2021

and

I.A. (IB) No. 789/KB/2021

in

C.P. (IB) No. 764/KB/2020

In the matter of:

Application under section 30(6) for the approval of Resolution Plan under section 31 (1) of the Insolvency and Bankruptcy Code, 2016.

And

In the matter of:

Bank of Baroda & Anr.

...Financial Creditor

Versus

Kilburn Chemicals Limited

...Corporate Debtor

And

IA (IB) No. 571/KB/2021

In the matter of:

Sanjai Kumar Gupta [Resolution Professional of Kilburn Chemicals Limited]

... Applicant

I.A. (IB) No. 789/KB/2021

In the matter of:

GAIL (India) Limited

... Applicant

Versus

Sanjai Kumar Gupta,

Resolution Professional of Kilburn Chemicals Limited

.. Respondent

Coram:

Shri Rohit Kapoor : Member (Judicial)

Shri Harish Chander Suri : Member (Technical)

Appearances (via video conference):

For the Applicant/RP:

1. Mr. Rishav Banerjee, Advocate.
2. Mr. Rahul Auddy, Advocate.

For Successful Resolution Applicant

1. Mr. Joy Saha, Sr. Advocate.
2. Mr. Souvik Mazumdar, Advocate.
3. Ms. Pooja Mahajan, Advocate.
4. Ms. Mahima Singh, Advocate.

For CoC:

1. Mr. Ratnanko Banerji, Sr. Advocate
2. Ms. Somali Mukhopadhyay, Advocate

For GAIL (India) Limited

1. Mr. Akshat Khare, Advocate

Order reserved on: 26.11.2021
Order pronounced on: 16.12.2021

COMMON ORDER

(IA (IB) No. 571/KB/2021 and I.A. (IB) No. 789/KB/2021)

Per: Harish Chander Suri, Member (Technical)

1. This Court convened through video conferencing.

IA (IB) No. 571/KB/2021

2. **IA (IB) No. 571/KB/2021** is an application under section 30 (6) of the Code after approval of the resolution plan by the Committee of Creditors (“CoC”).
3. This Application was moved on 26.11.2021 by Mr. Rishav Banerjee,

Advocate on behalf of Mr. Sanjai Kumar Gupta, Resolution Professional of Kilburn Chemicals Limited (CIN: L24117WB1990PLC199409) by invoking the provisions of section 30 (6) of the Insolvency and Bankruptcy Code, 2016 (“**the Code**” or “**IBC**”) read with regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulation**”) for approval of a Resolution Plan in respect of Kilburn Chemicals Limited.

4. The underlying Company Petition in CP (IB) No. 764/KB/2020 was jointly filed by Bank of Baroda and State Bank of India against Kilburn Chemicals Limited, (“**Corporate Debtor**”), under section 7 of the Insolvency and Bankruptcy Code 2016 which was admitted *vide* order dated 10 August 2020 in CP (IB) No. 764/KB/2020.
5. Initially, Mr. Partha Pratim Ghosh (IBBI Reg. No. [IBBI/IPA-001/IP-P00554/2017-2018/10984]) was appointed as the Interim Resolution Professional and was later confirmed as the Resolution Professional (“**RP**”) by the CoC. However, Mr. Partha Pratim Ghosh was replaced by the Applicant as the RP of the Company, *vide* order dated 04.11.2020.
6. Mr. Partha Pratim Ghosh, the IRP made public announcement on 13.08.2020 in Financial Express (English), AajKal (Bengali) and Divya Bhaskar (Marathi Edition, Gujarat) newspapers regarding initiation of Corporate Insolvency Resolution Process (hereinafter referred to as “**CIRP**”) and called for proof of claims from the financial and operational creditors, workers and employees of the Company in the specified forms till 24.08.2020.
7. The Applicant states he received claims from 2 (two) Secured financial creditors, 281 (Two Hundred and Eighty One) operational creditors, workmen and employee dues and 7 (Seven) related party claims.

8. The Committee of Creditors (“CoC”) was constituted on 01.09.2020 with 2 (two) Secured financial creditors, i.e., State Bank of India and Bank of Baroda, having 49.88% and 50.12% of voting right in CoC, respectively¹.
9. The applicant states that a total of 21 (Twenty-One) CoC meetings have been held during the CIRP Period, as follows:

Particulars	Date of CoC meeting
1 st CoC	08.09.2020
2 nd CoC	24.09.2020
3 rd CoC	13.10.2020
4 th CoC	07.11.2020
5 th CoC	26.11.2020
6 th CoC	19.12.2020
7 th CoC	04.01.2021
8 th CoC	13.01.2021
9 th CoC	25.01.2021
10 th CoC	29.01.2021 & 30.01.2021
11 th CoC	06.02.2021
12 th CoC	17.02.2021
13 th CoC	24.02.2021
14 th CoC	05.03.2021
15 th CoC	15.03.2021
16 th CoC	20.03.2021
17 th CoC	26.03.2021

¹ Annexure C – Report certifying the Constitution of CoC, Pages – 130 – 144 of I.A. 571/KB/2021.

Particulars	Date of CoC meeting
18 th CoC	03.04.2021
19 th CoC	09.04.2021 & 06.05.2021
20 th CoC	13.05.2021 & 17.05.2021
21 st CoC	11.06.2021

10. The Applicant submits that in terms of the provisions of section 25(2)(h) of the Code read with regulation 36A(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, invitations in Form ‘G’² for Expressions of Interest (“**EoI**”) from potential resolution applicants were issued. Form ‘G’ was published on 21.10.2020 for submission of resolution plans for the Corporate Debtor. The last date for receipt of EOIs was 05.11.2020. This was published in *Business Standard* (English), *AajKal* (Bengali) and *Western Times* (Gujarati). The notice was also published on the website of the Insolvency and Bankruptcy Board of India (“**IBBI**”).

11. The applicant submits that the last date for receipt of EoIs, as per Form G, was extended from time to time and was last extended till 20.01.2021, by that date 6 (Six) plans were received by the Applicant³. Subsequently, on 25.01.2021 in 9th CoC meeting all the 6 (Six) sealed Resolution Plans were opened in the presence of the CoC members (present physically) and respective Potential Resolution Applicants (“**PRA**”) (Present through audio video means)⁴. The List of the PRAs who have submitted the Resolution Plans are as under:

(i) Meghmani Organics Limited

² Annexure – E, Pages – 343 – 344 of I.A. 571/KB/2021.

³ Para 10 of I.A. 571/KB/2021.

⁴ Agenda item no. 7, Pages 236-241.

- (ii) Rescom Mineral Trading FZE
- (iii) KLJ Resources Ltd
- (iv) DCM Shriram Industries Ltd
- (v) Inland Power Ltd.
- (vi) Kiri Industries Limited

Further, in the 9th CoC meeting it was also noticed by the RP that one of the PRA, i.e., Kiri Industries Limited has not given the Bank Guarantee with the plan and they were requested to submit the Bank Guarantee or to remit the equivalent amount in the bank account of the Corporate Debtor by the end of the day, failing which the plan submitted by the PRA will not be considered and it will be disqualified⁵.

12. In the 10th, 11th, 12th, 13th, 14th, 15th, 16th & 18th CoC meetings, presentations were made by the Resolution Applicants and RP on the Resolution Plans, the Financial Proposals stated thereunder and details about the Plan. Detailed discussion on the plans also took place.
13. Subsequently, in 20th CoC meeting, held on 13.05.2021 and 17.05.2021, the Applicant informed the CoC along with other attendees that the Compliance Report of four of the PRAs (*i.e., Inland Power Ltd., Meghmani Organics Limited, Rescom Mineral Trading FZE, United Arab Emirates (Lead)(Trimex Industries Private Limited) and KLJ Resources Limited*) have been shared with them through email and the applicant has also evaluated the Plans as per the RFRP and Evaluation Matrix and confirmed that the contents of the Resolution Plans submitted by Resolution Applicants met all the requirements as contained under section 30(2) of the Insolvency and Bankruptcy Code, 2016 and the CIRP Regulations and does not contravene any of the provisions of law for the time being in force⁶. The applicant also informed that the plan submitted by DCM Shriram

⁵ *Ibid.*

⁶ Para 12 of I.A. 571/KB/2021

Industries Limited is non-Compliant⁷.

14. Thereafter, all the 4 (four) Resolution Plans were put up for voting by electronic method. The voting was kept open from 11:00 am on 20.05.2021 to 8:00 pm on 15.06.2021.
15. Further, the applicant states that after the voting had started at 11:00 am on 20.05.2021, 2 (two) PRAs, namely, Rescom Mineral Trading FZE & KLJ Resources Limited, wrote to the RP/CoC for revision of their financial plan. However, the issue was considered by the RP and the CoC in 21st CoC meeting, held on 11.06.2021, where it was unanimously decided by the CoC that such an opportunity should not be given because enough opportunity was given to all and the same would lead to delay and uncertainty in the CIRP process and the Resolution Plan submitted by Meghmani Organics Limited (“Resolution Applicant”) was approved by 100% voting percentage of the CoC.
16. The decision of the CoC was communicated by the Applicant to the Successful Resolution Applicant on 15.06.2021 *vide* email. The Applicant also issued the Letter of Intent on 16.06.2021 *vide* email dated 18.06.2021 and the same was accepted by the Successful Resolution Applicant on 18.06.2021 by endorsing its acceptance on the Letter of Intent. The Successful Resolution Applicant in accordance with Regulation 36B (4A) of the CIRP Regulation has also submitted the Performance Bank Guarantee on 19.06.2021⁸ (Bank Guarantee No. 006GT02211700004 issued by HDFC Bank).
17. The CoC was informed of the fair market value and liquidation value of the Corporate Debtor, as per the valuation reports.
18. The amount proposed in the Resolution Plan are tabulated below:

⁷ Agenda item no. 5, Pages 299 – 336.

⁸ Annexure K, Pages 578 - 581 of I.A. 571/KB/2021.

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

In Re. Resolution Plan of Kilburn Chemicals Limited
IA (IB) No. 571/KB/2021 and I.A. (IB) No. 789/KB/2021
in C.P. (IB) No. 764/KB/2020

Stakeholder	Admitted Claim (INR) (X)	Total Pay-out (INR) (Y)
CIRP Costs	NA	Unpaid CIRP Costs outstanding as on the NCLT Approval Date shall be paid on actuals, in priority to any payments to any creditor, within 30 days from the NCLT Approval Date. Such outstanding CIRP Costs shall be paid from the internal accruals of the Corporate Debtor as on the Closing Date. If the internal accruals of the Corporate Debtor are not sufficient to pay all the outstanding CIRP Costs, the Resolution Applicant shall fund the additional CIRP Costs to the extent of INR 1,55,00,000/- (Rupees One Crore Fifty-Five Lakhs only) (“Allocated CIRP Costs Amount”). However, if the unpaid CIRP Costs also exceed the Allocated CIRP Costs Amount, the excess amount (i.e., amount in excess of Allocated CIRP Costs Amount) shall be deducted from the FC Payment (“Excess CIRP Costs”).
Financial Creditors	INR 2,09,58,83,539	INR 128,51,58,349 (Rupees One Hundred Twenty-Eight Crore Fifty-One Lakhs Fifty-Eight Thousand Three Hundred Forty-Nine) be paid

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

In Re. Resolution Plan of Kilburn Chemicals Limited
IA (IB) No. 571/KB/2021 and I.A. (IB) No. 789/KB/2021
in C.P. (IB) No. 764/KB/2020

Stakeholder	Admitted Claim (INR) (X)	Total Pay-out (INR) (Y)
		to the Financial Creditors, as against and in settlement and discharge of their Claims (admitted or not), within 30 days from the NCLT Approval Date.
Employees and Workmen (excluding Related party)	INR 4,78,05,389	INR 1,40,00,000 (Rupees One Crore Forty Lakhs) Workers will get 61.32% of their dues and Employees will get 17.20% of their dues.
Operational Creditors (other than Employees and Workmen)	INR 22,41,65,084	INR 22,41,651 (Rupees Twenty-Two Lakh Forty-One Thousand Six Hundred Fifty-One)
Certain other unverified or claimed liabilities	NA	INR 6,00,000 (Indian Rupees Six Lakh)
Related party claims	INR 24,07,56,199 (FCs)	INR 1,00,000 (Indian Rupees One Lakh)
Existing shareholders	NA	NIL
TOTAL (Excluding CIRP Costs)		INR 130,21,00,000

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

In Re. Resolution Plan of Kilburn Chemicals Limited
IA (IB) No. 571/KB/2021 and I.A. (IB) No. 789/KB/2021
in C.P. (IB) No. 764/KB/2020

19. The % of the recovery of all the stakeholders are as follows:-

Particulars	Claim Admitted (in Rs.)	Amount provided in the Resolution Plan	% of settlement to the amount admitted
Secured Financial Creditors	2,09,58,83,538.60	128,51,58,349.00	61.32%
Related Party Unsecured Financial Creditors + Related Party Employee	24,64,48,484.71	1,00,000.00	0.00040576%
Employee	3,47,11,917.76	5971084	17.20%
Workmen	1,30,93,469.86	8028916	61.32%
Operational Creditors (other than staff/workmen & statutory dues)	23,06,92,647.18	22,41,651.00	0.97%

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

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

<i>Clause of S.30(2)</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>	<i>Page No. in Resolution Plan</i>
(a)	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 6.2 of Chapter VI (Treatment of Stakeholders)	43
(b)	(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; or (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	Clause 6.4 and Clause 6.5 of Chapter VI (Treatment of Stakeholders) Clause 6.3.5 of Chapter VI (Treatment of Stakeholders)	46-50

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

In Re. Resolution Plan of Kilburn Chemicals Limited
IA (IB) No. 571/KB/2021 and I.A. (IB) No. 789/KB/2021
in C.P. (IB) No. 764/KB/2020

<i>Clause of S.30(2)</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>	<i>Page No. in Resolution Plan</i>
	<p>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, which ever is higher and</p> <p>(iii) Provides for payment of debts of financial creditors who do not vote in favour of the resolution plan, in such manner as may be specified by the Board.</p>	<p>Clause 6.5 of Chapter VI (Treatment of Stakeholders)</p>	<p>44</p>
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Chapter IX (Management and Control of KCL)	65 & 66
(d)	Implementation and Supervision.	Chapter X (Term, Implementation and Supervision) and Chapter	67 - 73

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

In Re. Resolution Plan of Kilburn Chemicals Limited
IA (IB) No. 571/KB/2021 and I.A. (IB) No. 789/KB/2021
in C.P. (IB) No. 764/KB/2020

<i>Clause of S.30(2)</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>	<i>Page No. in Resolution Plan</i>
		XI (Implementation Steps and Schedule)	
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Chapter XIII (Miscellaneous)	76 - 78
(f)	Conforms to such other requirements as maybe specified by the Board.	N/A	N/A

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

<i>Particulars</i>	<i>Relevant Page of the Resolution Plan dealing aforesaid compliance with Regulation</i>
<i>A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximisation of value of its assets, including but not limited to the following: -</i>	
(a) transfer of all or part of the assets of the corporate debtor to one or more persons;	Not proposed by the SRA.

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

In Re. Resolution Plan of Kilburn Chemicals Limited
IA (IB) No. 571/KB/2021 and I.A. (IB) No. 789/KB/2021
in C.P. (IB) No. 764/KB/2020

Particulars	Relevant Page of the Resolution Plan dealing aforesaid compliance with Regulation
(b) sale of all or part of the assets whether subject to any security interest or not;	Not proposed by the RA
(c) restructuring of the corporate debtor, by way of merger, amalgamation and demerger	Not proposed by the RA.
(d) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	The Resolution Applicant proposes cancellation of all existing share capital of the Corporate Debtor and delisting of its shares from the recognised stock exchange on the Closing Date. Simultaneous with the cancellation of the existing share capital of the Corporate Debtor, the Resolution Applicant/ SPV ⁹ and its nominees shall infuse share application money of INR 12,15,00,000 (Indian Rupees Twelve Crore Fifteen Lakh) and shall be allotted 1,21,50,000 shares (Face Value Rs 10 per share) of the Corporate Debtor such that the

⁹ SPV means a special purpose Company, incorporated by the Resolution Applicant as a wholly owned subsidiary for purpose of implementation of Resolution Plan.

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

In Re. Resolution Plan of Kilburn Chemicals Limited
IA (IB) No. 571/KB/2021 and I.A. (IB) No. 789/KB/2021
in C.P. (IB) No. 764/KB/2020

Particulars	Relevant Page of the Resolution Plan dealing aforesaid compliance with Regulation
	Resolution Applicant/ SPV and its nominees are the sole shareholders of the Corporate Debtor. Chapter – VIII – Change in Shareholding ¹⁰
(e) cancellation or delisting of any shares of the corporate debtor, if applicable;	Cancellation of existing shareholding is envisaged. The Company shall within 30 days of the NCLT Approval Date, submit an application to the concerned stock exchanges and SEBI for clarification/approval to delist its shares from the recognised stock exchanges. The liquidation value due to the equity shareholders in terms of the Code is NIL. Hence, no amount shall be paid to any shareholder against cancellation of their shares ¹¹ . In the aforesaid application, the Company shall disclose (i) the details of delisting of its Equity Shares; (ii) the justification for

¹⁰ Resolution Plan, Pages – 61 – 62.

¹¹ Resolution Plan, Pages – 61 – 62, Point 8.2.2.

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

In Re. Resolution Plan of Kilburn Chemicals Limited
IA (IB) No. 571/KB/2021 and I.A. (IB) No. 789/KB/2021
in C.P. (IB) No. 764/KB/2020

Particulars	Relevant Page of the Resolution Plan dealing aforesaid compliance with Regulation
	not paying any exit price to the public shareholders. Further, the shares of the Corporate Debtor shall be delisted within a period of 60 days from the NCLT Approval Date ¹² .
(f) satisfaction or modification of any security interest;	Upon payment to the FCs, the Underlying Company Security shall stand irrevocably released in terms of the Resolution Plan. The approval of the NCLT shall be deemed to be approval of the Financial Creditors for release/ modification/ revision of the Underlying Company Security for purpose of securing/ guaranteeing the FC Payment. Clause 6.3.4 of the Resolution Plan Pg 623-624
(g) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Clause 6 of the Resolution Plan deals with settlement of debt due from the Corporate Debtor.

¹² *Ibid.*

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

In Re. Resolution Plan of Kilburn Chemicals Limited
IA (IB) No. 571/KB/2021 and I.A. (IB) No. 789/KB/2021
in C.P. (IB) No. 764/KB/2020

Particulars	Relevant Page of the Resolution Plan dealing aforesaid compliance with Regulation
	Pg 622-636
(h) reduction in the amount payable to the creditors;	Clause 6 of the Resolution Plan deals with payment to stakeholders. Since full payment is not being proposed for all stakeholders, there is reduction in the amount payable to creditors ¹³ .
(i) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	N/A
(j) amendment of the constitutional documents of the corporate debtor;	Clause 8.3.3 (g) of the Resolution Plan provides that the Articles of Association and the Memorandum of Association of the Company shall be amended and replaced by new Articles of Association and Memorandum of Association (as provided by the Resolution Applicant). Such amendment may also provide

¹³ Resolution Plan, Pages – 42-57.

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

In Re. Resolution Plan of Kilburn Chemicals Limited
IA (IB) No. 571/KB/2021 and I.A. (IB) No. 789/KB/2021
in C.P. (IB) No. 764/KB/2020

Particulars	Relevant Page of the Resolution Plan dealing aforesaid compliance with Regulation
	for change in registered office of KCL, increase in the authorized share capital of KCL in case required for capital restructuring, as an integral part of the Resolution Plan ¹⁴ .
(k) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	N/A
(l) change in portfolio of goods or services produced or rendered by the corporate debtor;	N/A
(m) change in technology used by the corporate debtor; and	N/A
(n) Obtaining necessary approvals from the Central and State Governments and other authorities.	Clause 10.2 ¹⁵ of the Resolution Plan contains provisions regarding the approvals required for the Resolution Plan, which includes the following –

¹⁴ Resolution Plan, Page – 63.

¹⁵ Resolution Plan, Pages – 67 – 69.

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

In Re. Resolution Plan of Kilburn Chemicals Limited
IA (IB) No. 571/KB/2021 and I.A. (IB) No. 789/KB/2021
in C.P. (IB) No. 764/KB/2020

Particulars	Relevant Page of the Resolution Plan dealing aforesaid compliance with Regulation
	<ul style="list-style-type: none">- NCLT approval under Section 31 of the Code- Approvals required under the Companies Act, 2013- SEBI approval for delisting of shares of the Corporate Debtor- GIDC approval for registering change in control of the Corporate Debtor from erstwhile shareholders/ management to the SPV/Resolution Applicant.

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

Reference to relevant Regulation	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 6.5.1 of Chapter VI (Treatment of Stakeholders) ¹⁶

¹⁶ Resolution Plan, Pages – 48.

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

In Re. Resolution Plan of Kilburn Chemicals Limited
IA (IB) No. 571/KB/2021 and I.A. (IB) No. 789/KB/2021
in C.P. (IB) No. 764/KB/2020

<i>Reference to relevant Regulation</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors of the corporate debtor.	Clause 6.14 of Chapter VI (Treatment of Stakeholders) ¹⁷
38(1B)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.	Clause 13.5 of Chapter XIII (Miscellaneous) ¹⁸
38(2)	A resolution plan shall provide: (a) the term of the plan and its implementation schedule;	Clause 10.1 of Chapter X (Term, Implementation and Supervision) and Chapter XI (Implementation Steps and Schedule) ¹⁹

¹⁷ Resolution Plan, Pages – 57.

¹⁸ Resolution Plan, Pages – 76 – 77.

¹⁹ Resolution Plan, Pages – 67 – 73.

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

In Re. Resolution Plan of Kilburn Chemicals Limited
IA (IB) No. 571/KB/2021 and I.A. (IB) No. 789/KB/2021
in C.P. (IB) No. 764/KB/2020

<i>Reference to relevant Regulation</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>
	(b) the management and control of the business of the corporate debtor during its term; and	Chapter IX (Management and Control of KCL) ²⁰
	(c) Adequate means for supervising its implementation.	Chapter X (Term, Implementation and Supervision) ²¹
38(3)	A resolution plan shall demonstrate that—	Chapter V (Strategy for the Company) ²²
	(a) it addresses the cause of default;	
	(b) it is feasible and viable;	Chapter III (About the Resolution Applicant) and Chapter V - (Strategy for the Company) ²³
	(c) it has provisions for its effective implementation;	Clause 10.3 of Chapter X (Term, Implementation and Supervision) and Chapter XI (Implementation Steps and Schedule) ²⁴

²⁰ Resolution Plan, Pages – 65 – 66.

²¹ Resolution Plan, Pages – 67 – 71.

²² Resolution Plan, Pages – 34 – 41.

²³ Resolution Plan, Pages – 17 – 26 & 34 – 41.

²⁴ Resolution Plan, Pages – 69 – 70 & 72 – 73.

<i>Reference to relevant Regulation</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>
	(d) it has provisions for approvals required and the timeline for the same; and	Clause 10.2 of Chapter X (Term, Implementation and Supervision) and Chapter XI (Implementation Steps and Schedule) ²⁵
	(e) the Resolution Applicant has the capability to implement the resolution plan.	Chapter III (About the Resolution Applicant) ²⁶

IV. Mandatory contents of Resolution Plan in terms of Regulation 39 of CIRP Regulations

<i>Reference to relevant Regulation</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>
39(1)(a)	An affidavit stating RA is eligible under section 29A to submit resolution plans;	Annexure M of the Approval Petition ²⁷

²⁵ Resolution Plan, Pages – 67 – 73.

²⁶ Resolution Plan, Pages – 17 – 26.

²⁷ Annexure – M, Pages – 664 - 666 of I.A. 571/KB/2021

39(1)(c)	An undertaking by the prospective resolution applicant that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency resolution process, forfeit any refundable deposit, and attract penal action under the Code	Letter dated 17.05.2021 ²⁸
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21. Applicant submits that the Successful Resolution Applicant has submitted a affidavit of eligibility under Section 29A of the Code, which has been annexed as [**Annexure M**] at **pages 664 -666** of the Application.
22. Applicant submits that the RP has submitted the certificate certifying and confirming the eligibility of the SRA under Section 29A of the Code, which has been annexed as [**Annexure H**] at **pages 565 -567** of the Application.
23. The Applicant has filed a compliance certificate in the prescribed form, *i.e.*, Form ‘H’ in compliance with regulation 39(4) of the CIRP Regulations which has been annexed as **Annexure N** at **Pages [667-673]** with the Application.

²⁸ Annexure – L, Page – 582 of I.A. 571/KB/2021

Details of Resolution Plan/ Payment Schedule

24. The Applicant submits the relevant information with regard to the amount claimed, amount admitted and the amount proposed to be paid by the Successful Resolution Applicant i.e. Meghmani Organics Ltd, under the said Resolution Plan is tabulated as under:

Stakeholder	Admitted Claim (INR) (X)	Total Pay-out (INR) (Y)	Timing of Payments
CIRP Costs (Clause 6.2. of Resolution Plan)	NA	<p>Outstanding CIRP Costs to be paid as per actuals on priority basis.</p> <p>Estimated as up to INR 1,55,00,000 (Indian Rupees One Crore Fifty-Five Lakhs)</p> <p>Note: If the internal accruals of the CD are not sufficient to pay all the outstanding CIRP Costs, the SRA shall fund the additional CIRP Costs to the extent of INR 1,55,00,000 (Indian Rupees One Crore Fifty-Five Lakhs) (“Allocated CIRP Costs Amount”). If the unpaid CIRP Costs also exceeds the Allocated CIRP Costs Amount, the excess amount shall be deducted from the FC Payment (“Excess CIRP Costs”).</p>	<p>Closing Date: Within 30 days of the NCLT Approval Date (in priority to any other payments)</p>
Financial Creditors	INR 2,09,58,83,539	INR 128,51,58,349 (Indian Rupees One	Closing Date: Within 30

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

In Re. Resolution Plan of Kilburn Chemicals Limited
IA (IB) No. 571/KB/2021 and I.A. (IB) No. 789/KB/2021
in C.P. (IB) No. 764/KB/2020

Stakeholder	Admitted Claim (INR) (X)	Total Pay-out (INR) (Y)	Timing of Payments
(Clause 6.3.of Resolution Plan)		Hundred Twenty-Eight Crore Fifty-One Lakhs Fifty-Eight Thousand Three Hundred Forty-Nine) (“FC Payment”). Note: In case the internal accruals of the CD on the Closing Date as well as Allocated CIRP Costs Amount is not sufficient to pay the CIRP Costs in full, the FC Payment shall stand reduced by Excess CIRP Costs.	days of the NCLT Approval Date
Employees and Workmen (excluding Related party) (Clause 6.4.of Resolution Plan)	INR 4,78,05,389	INR 1,40,00,000 (Indian Rupees One Crore Forty Lakhs) as against and in settlement and discharge of all their Claims (admitted or not) in the following manner: a) Non-related workmen shall be paid a percentage of their respective admitted claim equal to percentage of admitted claims being paid to secured financial creditors. For instance, if secured financial creditors are paid 61.32% of their admitted claims, non-related workmen shall also be paid 61.32% of their admitted claims; b) The balance amount	Closing Date: Within 30 days of the NCLT Approval Date (in priority to Financial Creditors)

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

In Re. Resolution Plan of Kilburn Chemicals Limited
IA (IB) No. 571/KB/2021 and I.A. (IB) No. 789/KB/2021
in C.P. (IB) No. 764/KB/2020

Stakeholder	Admitted Claim (INR) (X)	Total Pay-out (INR) (Y)	Timing of Payments
		of Workmen and Employees' Payment shall be paid to non-related employees.	
Operational Creditors (other than Employees and Workmen) (Clause 6.5. of Resolution Plan)	INR 22,41,65,084	<p>INR22,41,651 (Indian Rupees Twenty-Two Lakh Forty-One Thousand Six Hundred Fifty-One</p> <p>Note: A claim under the Export Promotion Capital Goods Scheme ("EPCG") has been submitted for an amount of INR 9,18,56,663 (Indian Rupees Nine Crore Eighteen Lakh Fifty-Six Thousand Six Hundred Sixty-Three) of which INR 8,55,00,000 (Indian Rupees Eight Crore Fifty-Five Lakh) has been admitted by the RP. Since the CD may not be able to fulfil export related requirements within the stipulated time, the SRA proposes a settlement in terms of Clause 6.5.2 (i.e., pro rata re-distribution of the Non-Workmen/Employee OC Payment amount, to include such further claims, without increasing the total amount allocated to Operational</p>	Closing Date: Within 30 days of the NCLT Approval Date (in priority to Financial Creditors)

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

In Re. Resolution Plan of Kilburn Chemicals Limited
IA (IB) No. 571/KB/2021 and I.A. (IB) No. 789/KB/2021
in C.P. (IB) No. 764/KB/2020

Stakeholder	Admitted Claim (INR) (X)	Total Pay-out (INR) (Y)	Timing of Payments
		Creditors (other than Workmen and Employees). Such settlement shall be in settlement of all liabilities of the CD in respect of its export obligations in the past or arising in future.	
Certain other unverified or claimed liabilities (As per Annexure 4)	NA	INR 6,00,000 (Indian Rupees Six Lakh)	(As per Annexure 4) ²⁹
Related party claims (Clause 6.6. of Resolution Plan)	INR 24,07,56,199 (FCs)	INR 1,00,000 (Indian Rupees One Lakh)	Closing Date: Within 30 days of the NCLT Approval Date
Existing shareholders (Clause 8.3.3 (d) of Resolution Plan)	NA	NIL	NA
TOTAL (Excluding CIRP Costs)		INR 130,21,00,000	

Notes:

i) *Contractual Claims and Liabilities (Clause 6.7. of Resolution Plan)*

A. Contract with GAIL (Clause 6.7.3)

- The SRA understands that, in July 2016, KCL had entered into a Long-term Contract (10 years) for sourcing Natural Gas from Gas Authority of India Limited (“GAIL”), Ahmedabad Zonal

²⁹ Resolution Plan, Pages – 84 – 85.

Office, at a minimum level of consumption of 51000 standard cubic metres (scm) per day (“GAIL Contract”).

- *Certain disputes arose with GAIL and KCL referred the matter to arbitration, which is currently pending. GAIL has continued to raise monthly and annual claims/ invoices against the GTA and the GSA. GAIL has filed a claim of INR 5,39,75,00,000 on the CD, which has been rejected by the RP (“GAIL Claim”). The SRA believes that the GAIL Contract is onerous and commercially unviable and its continuation is not in the long-term interest of the CD. Further, since the SRA does not propose to use gas from GAIL for purpose of its revival, the GAIL Contract is not required to be continued. Hence, as an integral part of this Resolution Plan, the GAIL Contract shall stand terminated on the NCLT Approval Date without the requirement of any further act or deed on the part of the SRA, SPV, KCL and/ or the new management.*
- *Any claims or liabilities against KCL, arising under the GAIL Contract, including GAIL Claim and any other contingent, unclaimed, disputed or undisputed, asserted or unasserted, present or future Claims of GAIL, including Claims in respect of termination of the GAIL Contract shall be settled by the CD at NIL value.*

B. GIDC Lease (Clause 6.7.4)

- *The SRA affirms that after the Closing Date, the CD shall make payment to GIDC under the GIDC Lease in accordance with the terms thereof. Further, the SRA / SPV/ CD shall make necessary applications with GIDC for registering change in control of the CD from erstwhile shareholders/ management to the SPV/SRA. The relevant transfer charges/ transfer premium will be paid to GIDC for such transfer. The SRA estimates the transfer charges/premium to be INR 18.00 Crores (Indian*

Rupees Eighteen Crores) and clarifies that this is over and above the payments to be made to the creditors under this Resolution Plan and payment of CIRP costs and in no way will impact implementation of the plan.

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

Monitoring and Supervision (Clause 10.4)

- a. An appropriate monitoring committee shall be constituted on the NCLT Approval Date (Monitoring Committee), which shall comprise of:
 1. Resolution Professional
 2. Two representatives as appointed by the SRA
 3. Two representatives of the Financial Creditors
- b. Resolution Professional shall act as the Chairman of the Monitoring Committee and shall hold office from the NCLT Approval Date till the Closing Date.
- c. The Monitoring Committee shall convene its first meeting within 7 days of the NCLT Approval Date. All decisions of the Monitoring Committee shall be undertaken with unanimous consent until the Closing Date. After the NCLT Approval Date, RP/ Monitoring Committee shall run the Corporate Debtor in ordinary course, without undertaking or incurring any liabilities on behalf of the Corporate Debtor (except liabilities arising in ordinary course). The roles and responsibilities of the Monitoring Committee have been specified in the Resolution Plan.

Management and Control of KCL by SRA (Clause 9.1)

- a. The SPV and its nominees proposes to hold 100% (hundred percent) shareholding in the restructured share capital of KCL, as elaborated in Chapter VIII (Change in Shareholding)

- b. On and from the Closing Date, the SPV and the SRA shall be in control and management of affairs of the CD and the business of the CD shall be carried on by the new management as appointed by the SRA/ SPV. On the Closing Date, the board of directors of KCL shall stand reconstituted, wherein all existing directors shall be deemed to have vacated their offices and new directors will be appointed to the board of directors of KCL by the SRA/SPV.
- c. Any approvals that may be required from Governmental Authorities (including tax authorities) in connection with the implementation of the Resolution Plan including on account of change in ownership / control of KCL shall be deemed to have been granted on the NCLT Approval Date. Where required, after Closing Date, the SRA/ SPV/ CD shall make necessary applications with Governmental Authorities (including GIDC) for registering change in control of the CD from erstwhile shareholders/ management to the SPV/SRA.

26. Reliefs and Concessions (Chapter XII of Resolution Plan)

Sl.No.	Relief and/or Concessions Sought	Orders Thereon
a.	Waiver from the levy of stamp duty and fees by the stamp authorities and Ministry of Corporate Affairs, applicable in relation to this Resolution Plan and its implementation, including an increase of authorised capital and issuance of Equity Shares to Resolution Applicant.	Not granted.

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

In Re. Resolution Plan of Kilburn Chemicals Limited
IA (IB) No. 571/KB/2021 and I.A. (IB) No. 789/KB/2021
in C.P. (IB) No. 764/KB/2020

b.	KCL and the Resolution Applicant shall be granted an exemption from all taxes, levies, fees, transfer charges (except to GIDC), 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.	No general reliefs can be granted in the manner sought for. It is for the appropriate taxing authorities to consider the same in accordance with the relevant law.
c.	The Resolution Applicant except for the payment mentioned in Annexure 4 shall not be liable to pay any Taxes (direct or indirect) whatsoever arising (directly or indirectly on such entity) as a result of the actions taken by the Corporate Debtor prior to the Closing Date. It may also be clarified that any Tax liabilities pertaining to any period or action prior to the Effective Date, whether assessed or unassessed, whether crystallized or not crystallized by any of the relevant Government Authority shall be deemed to have been extinguished and written off on the NCLT Approval date.	Granted in terms of the <i>Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd³⁰</i> .

³⁰ 2021 SCC OnLine SC 313 decided on 13.04.2021.

d.	Waiver of any income-tax and Minimum Alternate Tax (MAT) liability or consequences (including interest, fine, penalty, etc) on KCL, Resolution Applicant and its shareholders, including but not limited to waiver from applicability of Section 50CA and liabilities, if any, arising on account of Section 41 (1), Section 56, , Section 28, Section 115JB and of the Income-tax Act, 1961, arising as a result of giving effect to all the steps as proposed in the Resolution Plan without any impact on brought forward tax and book loss / depreciation, pursuant to this Resolution Plan.	No general reliefs can be granted in the manner sought for. It is for the appropriate taxing authorities to consider the same in accordance with the relevant law.
e.	Any requirements to obtain reliefs / exemptions / waivers from any Tax Authorities including in terms of Sections 170 and 281 of the Income-tax Act is deemed to have granted upon approval of this Resolution Plan on the NCLT Approval Date.	No general reliefs can be granted in the manner sought for. It is for the appropriate taxing authorities to consider the same in accordance with the relevant law.

I.A. (IB) No. 789/KB/2021

27. This is an application filed by GAIL (India) Limited under section 60(5) of the Insolvency and Bankruptcy Code, 2016 seeking for admission of

it's claim by the Resolution Professional of Kilburn Chemicals Limited ("Corporate Debtor").

Submissions of the learned Counsel appearing on behalf of the Applicant.

28. It is submitted that the Applicant is a Government Company under section 617 of the Companies Act, 1956, bearing CIN: L40200DL1984GO1018976.
29. Learned Counsel appearing on behalf of the Applicant submits that GAIL (India) Limited is one of the Operational Creditors of the Corporate Debtor pursuant to execution of **Gas Sale Agreement ("GSA")** for supply of Re-gasified Liquid Natural Gas **dated 28.07.2016** at Dahej for supply of natural gas 2000 MMBTU/Day from 03.08.2018 to 30.04.2028 and **Gas Transmission Agreement ("GTA") dated 28.07.2016** for transportation of gas from the delivery point to the plant of the Corporate Debtor.
30. It is submitted that *vide* order dated 10.08.2020, this Adjudicating Authority admitted C.P.(IB) No. 764/KB/2020 initiating Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor. The public announcement was issued on 12.08.2020 by the Interim Resolution Professional of the Corporate Debtor.
31. It is submitted that the claim of the applicant was rejected by the Resolution Professional *via* email dated 17.11.2020.
32. It is further submitted due to the second wave of Covid-19 pandemic the Office of the Applicant was restricted to emergency functions only. The Applicant submits that the application is not barred by limitation in view of the Hon'ble Supreme Court *vide* order dated 08.03.2021 directed exclusion of the period from 15.03.2020 till 14.03.2021 in computing the period of limitation which was extended *vide* order dated 27.04.2021.
33. It is further submitted that the Corporate Debtor failed to start the commencement of gas supply as per Article 12.7 of GSA and Article 8.10 of GTA. The Applicant has raised its claim towards "Ship or Pay" under

Article 6.1. of GA for the period of 03.08.2018 to 31.12.2018 *vide* letter dated 09.01.2019 and had raised demand towards TOP claim under GSA and SOP claim under the GTA.

34. It is submitted that the arbitration clause was invoked towards all claims including TOP and SOP claims *vide* letter dated 16.01.2019. Subsequently, CIRP was initiated against the Corporate Debtor and the Applicant filed its claim in Form B on 07.10.2020 of Rs.539.75Crore approximately towards entire contractual obligation under GSA and GTA.
35. It is further submitted that the Resolution Professional rejected the entire claim on 17.11.2020, stating that firstly, no gas was ever supplied, secondly, book of accounts of the Corporate Debtor has debit balance of Rs.1.01Crore on account of Bank Guarantee submitted to the Applicant and thirdly, arbitration proceeding is pending between the Applicant and the Corporate Debtor.
36. In course of the arguments, the learned Counsel for the successful Resolution Applicant submitted that the successful Resolution Applicant would pay the Applicant at par with the Operational Creditors with no additional financial burden on the successful Resolution Applicant. The learned Counsel on behalf of the Applicant agreed to the submission made by the learned Counsel for the successful Resolution Applicant.

Findings

37. On hearing the submissions made by the Ld. Counsel for the Resolution Professional, Ld. Counsel for the Applicant in I.A. (IB) No. 789/KB/2021, learned Senior Counsel for the successful Resolution Applicant and learned Senior Counsel for the CoC and perused the record, we find that the Resolution Plan has been approved with 100% voting share. As per the CoC, the plan meets the requirement of being viable and feasible for revival of the Corporate Debtor. By and large, all the compliances have been done by the RP and the Resolution Applicant for making the plan effective after approval by this Bench. Further, in view of the above

submissions made in I.A. (IB) No. 789/KB/2021, the I.A. becomes infructuous and is hereby dismissed.

38. Clause 6.7.3 given in pages 51-52 of the Resolution Plan wherein it is stated that

“Any claims or liabilities against KCL, arising under the GAIL contract, including GAIL claim and any other contingent, unclaimed, disputed or undisputed, asserted or unasserted, present or future claims of GAIL, including claims in respect of termination of the GAIL contract shall be settled by the Company at NIL value. No amount shall be payable by the Resolution Applicant, SPV, KCL and/or the new management of KCL to GAIL and neither of them shall, at any point, be made directly or indirectly responsible or liable for any claim that GAIL has or may have against KCL.”

is to be struck off and GAIL (India) Limited shall be paid along with the other Operational Creditors. The claim of GAIL (India) Limited shall be verified by the monitoring Committee.

39. On perusal of the documents on record, we are also satisfied that the Resolution Plan is in accordance with sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016.
40. The Corporate Debtor being a listed entity, the successful Resolution Applicant shall ensure compliance of applicable listing guidelines.
41. As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.
42. In case of non-compliance of this order or withdrawal of Resolution Plan, the CoC shall forfeit the EMD amount already paid by the Resolution Applicant.

43. Subject to the observations made in this Order, the Resolution Plan in question is hereby **approved** by this Bench. **The Resolution Plan shall form part of this Order.**
44. The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect.
45. The Moratorium imposed under section 14 shall cease to have effect from the date of this order.
46. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for the record and also unto the Resolution Applicant or New Promoters.
47. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.
48. Liberty is hereby granted for moving any Application if required in connection with implementation of this Resolution Plan.
49. A copy of this Order is to be submitted in the Office of the Registrar of Companies, West Bengal.
50. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.
51. The Resolution Professional is further directed to handover all records, premises/factories/documents to the Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records/premises/factories/documents through the Resolution Professional to finalise the further line of action required for starting of the operation.
52. I.A. (IB) No. 571/KB/2021, I.A. (IB) No. 789/KB/2021 and the main Company Petition i.e. CP(IB)No. 764/KB/2020 shall stand disposed of accordingly.

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH

In Re. Resolution Plan of Kilburn Chemicals Limited
IA (IB) No. 571/KB/2021 and I.A. (IB) No. 789/KB/2021
in C.P. (IB) No. 764/KB/2020

53. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
54. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
55. File be consigned to the record.

(Harish Chander Suri)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on December 16th, 2021

GGRB, LRA / SA, LRA