CARNATION INDUSTRIES LIMITED
9/C KUMAR PARA ROAD 2ND FLOOR,
LILUAH HOWRAH– 711204
CIN: L27209WB1983PLC035920

Date: September 12, 2024

To,
BSE Limited
Listing Department
Floor 25, New Trading Ring,
Rotunda Building,
P. J. Towers,
Dalal Street, Mumbai-40001
Scrip Code: 530609

The Calcutta Stock Exchange Ltd,
7, Lyons Range
Kolkata - 700 001
Scrip Code: 13067

Sub: Disclosure pursuant to Regulation 30 read with Clause 16 of Para A of Part A of Schedule III and other applicable Regulations of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 – Termination of Services of Chief Financial Officer in accordance with the order of Hon'ble NCLT, Kolkata, dated June 5, 2024

Dear Sir,

This disclosure is in reference to the above captioned subject, pursuant to Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (**"SEBI Regulations"**) read with Clause 16 of Para A of Part A of Schedule III of the SEBI Regulations. We wish to disclose and inform your good office that the Hon'ble National Company Law Tribunal, Kolkata vide its order dated June 05, 2024 (**"NCLT Order"**), had approved the resolution plan (**"Approved Resolution Plan"**) submitted by Mr. Vikas Garg (**"Successful Resolution Applicant" or "RA"**) for acquisition of Carnation Industries Limited (CIN: L27209WB1983PLC035920) (**"CIL" or "Company"**) under the Corporate Insolvency Resolution Process ("**CIRP**") under Section 31 of the Insolvency and Bankruptcy Code ('IBC'). A Certified Copy of the NCLT Order is attached as **Annexure-A**.

It is to be noted that in accordance with the Clause III of Para 4 stated in Part II of the Approved Resolution Plan for the Company as approved by the Hon'ble National Company Law Tribunal, Kolkata which states that the resolution applicant reserves the right to replace the key managerial personnel of the Company with the appropriate persons of its choice to revamp the affairs of the Company. In view of the above, the services of the existing Chief Financial Officer of the Company are terminated from the Company w.e.f. June 05, 2024.

Termination and vacation of the office of the Chief Financial Officer of the Company in accordance with the order of Hon'ble NCLT, Kolkata, dated June 5, 2024

The requisite disclosure as required as per the requirements of Regulation 30 read with Clause 7(C) of Para A of Part A of Schedule III of the Listing Regulations, read with SEBI Circular No. CIR/CFD/CMD/4/2015 dated September 9, 2015, is provided below:

CARNATION INDUSTRIES LIMITED
9/C KUMAR PARA ROAD 2ND FLOOR,
LILUAH HOWRAH– 711204
CIN: L27209WB1983PLC035920

Reason for Change	Termination of Mr. Somnath Pradhan as Chief Financial Officer pursuant to exercise of rights by Successful Resolution Applicant as per Approved Resolution Plan.
Date of cessation	Mr. Somnath Pradhan is terminated with effect from June 5, 2024
Brief Profile	Not Applicable
Disclosure of relationships between Directors *inter se* Manager and KMPs	Not Applicable
Disclosure in terms of Regulation 30 read with As Enclosed Clause 7(C) of Para A Part A of Schedule III of SEBI Regulation	The Successful Resolution Applicant is exercising the right as per Clause III of Para 4 stated in Part II of the Approved Resolution Plan to replace the key managerial personnel of the Company terminate the services of Mr. Somnath Pradhan as the Chief Financial Officer of the Company. Hence, the Company confirms that there are no material reasons for the termination of Mr. Somnath Pradhan other than those mentioned above.

We request you to take the above information on record.

Thanking You.

Yours sincerely,
For **Carnation Industries Limited**

BHAWANA
GUPTA

Bhawna Gupta
Director
DIN: 10101543

Encl: As above

Annexure A

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

I.A. (IB) No. 969/KB/2024
And
I.A. (IB) (Plan) No. 7/KB/2024
In
Company Petition (IB) No. 12/KB/2021

IN THE MATTER OF:

LAL BEHARI SINGH

... Operational Creditors.

Versus

CARNATION INDUSTRIES LIMITED

... Corporate Debtor.

And

I.A. (IB) No. 969/KB/2024

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

IN THE MATTER OF:

DHANSAGAR DEALERS PRIVATE LIMITED

... Applicant.

Versus

MR. ANUBRATA GANGOLY, RP of Carnation Industries Limited (In CIRP)

... Respondent No. 1.

And

ICICI BANK

... Respondent No. 2.

And

CERTIFIED TO BE TRUE COPY

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

I.A. (IB) No. 969/KB/2024 and I.A. (IB) (Plan) No. 7/KB/2024
In
Company Petition (IB) No. 12/KB/2021

I.A. (IB) (Plan) No. 7/KB/2024

An application under Section 30(6) and 31(1) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of IBBI (Insolvency Regulations Process of Corporate Persons) Regulations, 2016 for approval of the Resolution Plan.

IN THE MATTER OF:

ANUBRATA GANGOLY, Resolution Professional (RP) of Carnation Industries Limited (Corporate Debtor)

... Applicant/ Resolution Professional.

Date of Pronouncement: June 05, 2024.

CORAM:
SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:
For the Applicant
in I.A. (IB) No. 969/KB/2024: Ms. Manju Bhuteria, Adv.
Ms. Tanvi Luhariwala, Adv.
Ms. R. Dhanuka, Adv.
Ms. Ruchika Dalmia, Adv.

For the Resolution Professional
in I.A. (IB) No. 969/KB/2024
and
I.A. (IB) (Plan) No. 7/KB/2024: Ms. Labanyasree Sinha, Adv.
Mr. Anubrata Gangoly, RP.

ORDER

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

I.A. (IB) No. 969/KB/2024 and I.A. (IB) (Plan) No. 7/KB/2024
In
Company Petition (IB) No. 12/KB/2021

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IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

I.A. (IB) No. 969/KB/2024 and I.A. (IB) (Plan) No. 7/KB/2024
In
Company Petition (IB) No. 12/KB/2021

Per: Bidisha Banerjee, Member (Judicial)

1. The Court congregated through a hydride mode.

I.A. (IB) No. 969/KB/2024

Issues:

2. *The issue has cropped up for consideration whether, after approval of the resolution plan and issuance of the Letter of Intent (LoI), an unsuccessful resolution applicant can question the conduct of the Committee of Creditors and challenge the plan of the successful resolution applicant.*

Fact in a nutshell:

3. In the instant application preferred under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (for brevity "I&B Code"), the Applicant, **Dhansagar Dealers Private Limited**, is an unsuccessful resolution applicant, challenging the resolution plan of the successful resolution applicant as the same has been illegally and arbitrarily voted upon and approved by the Committee of Creditor (CoC). Thus, the applicant has prayed to consider its enhanced/ revised plan and direct the respondents to opt for a challenge mechanism procedure to enable the applicant and the other resolution applicants to improve their plans.

Applicant's Contentions:

4. The Learned Counsel Ms. Manju Bhuteria appearing on behalf of the Applicant would submit that the applicant has submitted its Expression of Interest (EoI) along with other relevant documents on 10.01.2024 which were duly accepted by the RP on 22.01.2024. The final list of the PRAs was issued on 07.02.2024. The applicant on 15.04.2024 duly submitted its Resolution Plan.

5. She further submits that at the 12th CoC meeting on 18.04.2024, in the presence of the authorized representatives of the applicant, the resolution plan was opened and placed before the CoC. The member of the CoC asked whether the applicant could make a one-time payment to the creditors. In response to the query, the authorized representative informed them that if the same is permissible in law, then the applicant would be agreeable to make such payment. Thereafter, the authorized representative was requested to leave the meeting and sit outside. After waiting a long, the authorized representative was neither called into the meeting for further discussions nor asked for any query or clarification by the respondents.

6. The applicant contends that as no communication was received by the applicant, on 22.04.2024, the applicant issued an email to the Resolution Professional (RP) requesting the RP to allow the applicant to revise its plan. In reply, the RP on 23.04.2024, through email asked the specific provisions of law under the Code and relevant regulations to enable the applicant to look into the applicant's request.

7. It is further contended that on 24.04.2024, the applicant issued an email stating the object of the I&B Code is the maximization of the value of the assets which allows the resolution applicant to revise the plan for the stakeholders' interest. In reply, the RP stated that "*However, do let me know, if there is any specific mention in IBC or its Regulations, allowing an applicant to revise its plan after the COC has voted and approved a plan, the voting results circulated and LOI issued to the successful applicant.*"

8. The Applicant claims that prior to the email dated 25.04.2024, the Applicant did not have any knowledge of the approval of the plan and thus, the Applicant issued an email on 25.04.2024, raising concerns regarding the transparency and how the plan was approved and voted upon sans allowing the applicant to revise its plan. On 26.04.2024, the RP replied to the applicant that no provision in the Code which would allow *post-facto* modification of the plan.

9. Further, the Applicant on 27.04.2024, issued an email asking for the evolution matrix with the respective scores of the resolution applicants, voting result done by the CoC, and a copy of the plan as approved by the CoC which was denied by the RP to provide by calling the contentions of the applicant as baseless and false on 29.04.2024.

10. It is asserted that the applicant is agreeable to enhance its offer from Rs. 1,54,74,522/- to Rs. 1,90,00,000/-.

Reply by the Respondent (RP):

11. Per contra, Learned Counsel Ms. Labanyasree Sinha appearing for the Resolution Professional submits that the RP received two resolution plans within the stipulated timelines, one from the successful resolution applicant and another from the applicant herein. Both the plans were duly deliberated upon and discussed a long and simultaneously put for voting at the 12th CoC meeting on 18.04.2024. The CoC has approved the plan submitted by the SRA by 100% voting on 20.04.2024. Under the I&B Code and CIRP Regulations, there is no requirement for the RP to inform the unsuccessful resolution applicant of the outcome of the voting.

12. Further, it is submitted that the applicant herein requested to revise its plan. However, the proposal for revision of its plan had never been disclosed. Further, there are no provisions under the I&B Code, Regulations as well as the RFRP allowing such *post-facto* modification of a plan when the plan submitted by a resolution applicant has been approved unanimously.

13. Further, the Respondent submits that the instant application has been preferred after the hearing of the resolution plan by this Adjudicating Authority when the confidential aspects of the plan such as plan value, payouts to the creditors, and acquisition structure were submitted before this Bench. If the CoC's decision truly aggrieved the applicant, the instant application may be preferred even after receiving the EMD and Band Guarantee from the RP.

14. Further, it is asserted that approval and rejection of any plan comes within the ambit of "commercial wisdom", thus, interference with

that is not allowable in law. No mechanism under the I&B Code gives an unsuccessful resolution applicant to challenge the score as per the evaluation matrix. A resolution plan can only be challenged on the ground enshrined under Section 31(3)(i) of the Code and no other ground. Further, once the CoC approves a plan, it is a binding contract *inter-se* the CoC, the corporate debtor and all creditors. Even if there is a better plan in terms of value, after the approval of a resolution plan unanimously, it will not be open for the CoC to consider.

15. We have heard the Learned Counsels for both parties and duly considered their submissions.

Analysis and Findings:

16. It is evident from the minutes of the 12th CoC meeting convened on 18.04.2024, that the resolution plans of the applicant and SRA were placed and discussed and the authorized representatives were called in at appropriate times for clarifications and explanations. Both the plans were put in for e-voting. It is further evident from the e-voting result on 20.04.2024, that the plan submitted by the SRA has been approved by the CoC by 100% voting share.

17. As per section 30(6) of the I&B Code, the Resolution Professional shall submit the resolution plan as approved by the CoC to the Adjudicating Authority. Thus, any modifications or revisions of any plan after the approval of the plan by the CoC, even if undertaken as per directions of the CoC, shall not be entertained unless the CoC grants the subsequent approval.

18. Further, in the context of challenging the approval of the resolution plan, we would refer to the judgment rendered by the Hon'ble NCLAT in ***PNC Infratech Ltd. Vs. Deepak Maini*** reported in **2022 SCC OnLine NCLAT 4120: (2022) ibclaw.in 612 NCLAT**, wherein it was held that:

> "*39. Further, there is* ***no such mechanism under the Code that gives the right to the Unsuccessful Resolution Applicant to challenge the score granted as per the evaluation matrix prepared by the CoC and the Resolution Professional as per the provisions of CIRP Regulations***.
>
> **xxx xxx xxx**
>
> *It is unequivocal, in preferring the Appeal by the aggrieved person under the above provision more particularly sub-section (3)(i) of Section 31 thereof which specifically provides that the approved Resolution Plan can be questioned / challenged on the ground that the plan is in contravention of the provisions. This Tribunal in clear terms observes and holds that there is no contravention in approving the Resolution Plan either by the CoC or by the Adjudicating Authority. The plan approved is in accordance with law and there is no material irregularity and cannot go into the technical issues with regard to evaluation and score matrix which is in the exclusive domain of the CoC.*"
>
> **(Emphasis Added)**

19. Further in ***Interups Inc v. Kuldeep Kumar Bassi***, in **Company Appeal (AT) (Insolvency) No. 1079 of 2020**, the Hon'ble NCLAT observed that:

> "*RP issued Form G initially on 01.10.2018, revised on 14th December 2018. EoI was received from 12*

Resolution Applicants, out of which 11 were found eligible. Last date for receipt of Resolution plan was 08th March 2019. Only one resolution plan was received from successful Resolution Applicant, whereas Appellant has asked for EOI on 12th June 2020 when application seeking approval of Resolution Plan was already filed by RP on 10th July, 2019 under section 31 of Code after 'Committee of Creditors' (CoC) Approval on 28th June 2019 with 79.3% voting share. All this reflect that Appellant wanted to enter fray nearly one year after CoC approval of Resolution Plan; it neither qualifies as Resolution Applicant nor as prospective Resolution Applicant or successful or ***unsuccessful Resolution Applicant and hence cannot be termed as aggrieved party****. Appellant may be termed as an outsider standing on the sidelines. Corporate Insolvency Resolution Process is time bound, value maximization has also to be in timebound manner. All this lead us to sum up that Appellant is neither an aggrieved party in the process of CIRP nor he has a locus standi to file the appeal. Hence, Appeal is held to be not maintainable and Appellant has no locus to maintain it. The Appeal is accordingly dismissed."*

(Emphasis Added)

20. Further, the Hon'ble NCLAT in ***Steel Strips Wheels Ltd. v. Shri Avil Menezes, Resolution Professional of AMW Autocomponent Ltd. & Ors.*** reported at **2022 SCC OnLine NCLAT 150: (2022) ibclaw.in 297 NCLAT** held that:

"24. Learned Counsel for the Respondent No.3 has also emphasised that the commercial wisdom of the CoC cannot be questioned by the Appellant. The present is

not a case where issue of commercial wisdom of the CoC regarding approval or disapproval of the plan is under consideration. In exercise of Case commercial wisdom, CoC has already approved the plan of the Appellant in its meeting dated 26.08.2021 on the basis of voting share of 98.55%.'

"25. Learned Counsel for the Respondent No.3 has emphasized that ***the plan*** *which is being submitted by Respondent No.3 is of* ***much higher value and is favourable to the Corporate Debtor****. After approval of the Resolution Plan by the CoC by requisite vote and after expiry of CIRP, it is not open for the CoC to contend that it is ready to consider the plan of Respondent No.3 which according to it may be better plan."*

(Emphasis Added)

21. In the present case in hand, we find that the Committee of Creditors of the Corporate Debtor within its ambit of "Commercial Wisdom" has taken the decision and the Adjudicating Authority has very limited scope to interfere in their decision which is unanimously taken. To fortify the view, we would refer to the judgment of the Hon'ble Apex Court in ***Kalpraj Dharamshi v. Kotak Investment Advisors Ltd.*** reported in **(2021) 10 SCC 401: MANU/SC/0174/2021** wherein, it was observed that *the legislative scheme, as interpreted by various decisions of this Court, is unambiguous. The commercial wisdom of CoC is not to be interfered with, excepting the limited scope as provided Under Sections 30 and 31 of the I&B Code.*

22. Thus, from the foregoing enumerations, we can conclude that an unsuccessful resolution applicant has no vested right to challenge the

approval of a resolution plan. In the instant case, we have noted that the plan value of the Unsuccessful Resolution Applicant is less than the plan value as proposed by the Successful Resolution Applicant and the resolution plan submitted by the SRA has unanimously been approved by the CoC with the majority voting share. Thus, the approval of the plan falls within the arena of "commercial wisdom" which cannot be questioned unless there is a violation of law as enshrined under Sections 30(2) and 31 of the I&B Code. We find that there are no irregulates in approval of the resolution plan by the CoC. Once a resolution applicant fails to succeed in the bid, it neither has a *locus* to question the action of the stakeholders qua members sitting in and controlling the CoC, nor the right to enhance or revise the monetary value of its Resolution Plan to compete with the plan of the Successful Resolution Applicant. Thus, the Applicant herein being an Unsuccessful Resolution Applicant cannot be allowed to cry foul.

23. In terms of the view above, we **dismiss** the Application.

24. No cost.

25. Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

I.A. (IB) (Plan) No. 7/KB/2024

26. Now we would proceed to consider the Resolution Plan application preferred by **Mr. Anubrata Gangoly**, the Resolution Professional (RP) through this I.A. under Section 30(6) and 31(1) of the Insolvency and

Bankruptcy Code, 2016, (I&B Code) read with Regulation 39(4) of IBBI (Insolvency Regulations Process of Corporate Persons) Regulations, 2016, (CIRP Regulations) seeking for the final approval and sanction of the resolution plan as approved by the CoC on 18.04.2024.

Prologue

27. Learned Counsel Ms. Labanyasree Sinha appearing on behalf of the RP would submit that the CoC at its 12th meeting convened on 18.04.2024, approved the Resolution Plan submitted by **Mr. Vikas Garg** by 100% voting shares. A copy of the Minutes of the 12th CoC meeting is annexed at pages 21-22 to the Application.

28. That, subsequently the Resolution Plan submitted on 13.04.2024 by **Mr. Vikas Garg** is declared as a successful resolution plan and **Mr. Vikas Garg** as the "Successful Resolution Applicant" (SRA). The Resolution Professional issued a Letter of Intent (LoI) to **Mr. Vikas Garg, SRA** on 25.04.2024 which is annexed at pages 25-26 to the Application. Upon receiving the LoI, the SRA has deposited an amount equivalent to the sum named in the LoI as the Performance Bank Guarantee to the Applicant, which would be evident from the extract of the relevant Bank Account statement of the Corporate Debtor operated by the Applicant, annexed at pages 130-131 to the Application.

The Particulars of the Corporate Debtor

29. **Carnation Industries Limited** is a Private Limited Company incorporated on 23rd February 1983 bearing CIN: L27209WB1983PLC035920, registered office situated at 9/C Kumar Para Road 2nd Floor, Liluah, Howrah-711204, West Bengal, India. Carnation

Industries Limited was promoted by Shri Ravindra Prakash Sehgal, Shri Gautam Sengupta, Shri Sanatan Kundu and Shri Madan Mohan Kundu to carry on the business of ferrous and non-ferrous metals.

Initiation of Corporate Insolvency Resolution Process (CIRP)

30. The Operational Creditor, Lal Behari Singh filed an application under Section 9 of the I&B Code, 2016 which was admitted on September 12, 2023, and the Applicant was appointed as the Interim Resolution Professional (IRP). Later, on November 18, 2023, the Applicant was appointed as Resolution professional of the Corporate Debtor.

Public Announcement

31. The Applicant, as per Regulation 6(1) of the CIRP Regulations, 2016, the public announcement, in Form A was published by the Applicant in newspapers at Kolkata namely (i) Morning India in English and (ii) Duranto Barta in Bengali on September 15, 2023, for inviting claims from the creditors in specified forms prescribed by Insolvency and Bankruptcy Board of India (hereinafter referred to as "IBBI"). The last date for submission of claim was September 26, 2023.

Constitution of CoC

32. No claims were received from any Financial Creditors, although the books of accounts of the Corporate Debtor showed that ICICI Bank was a Financial Creditor of the Corporate Debtor, having advanced financial assistance to the tune of Rs. 174.79 lakhs. Only one Operational Creditor viz., Oswal Minerals Limited, filed its claim, which was admitted upon due verification.

33. Accordingly, the Committee of Creditors (CoC) was duly formed on October 5, 2023, with the sole Operational Creditor.

34. However, the said sole CoC member refused to participate in the CIRP of the Corporate Debtor. On or about November 13, 2023, ICICI Bank Limited, being a Financial Creditor of the Corporate Debtor submitted its claim, after written follow up by the IRP, and was inducted into the CoC by the Applicant after due verification. Accordingly, the CoC stood reconstituted with ICICI Bank Limited being 100% voting share thereof. A Report on the reconstitution of the CoC was duly filed by the Applicant along with the 2nd Progress Report being I.A. No. 1980/KB/2023 which was taken on record by this Learned Tribunal by its order dated April 16, 2024.

35. The total number of meetings of the CoC held is 12.

Appointment of Registered Valuers

36. The Applicant appointed registered valuers in accordance with Regulation 27 of the CIRP Regulations, 2016 to determine the fair value and liquidation value of the Corporate Debtor in accordance with Regulation 35 thereof. Such valuation exercise was completed on December 15, 2023. The average Fair value and the Liquidation value of the Company obtained from the appointed Registered Valuers are as follows:

a) **Fair Value: Rs. 129,04,109/-.**
b) **Liquidation value: Rs. 96,46,907/-.**

Collation of Claims

37. The Learned Counsel for the RP has submitted the list of creditors along with the amount claimed and admitted/verified, reproduced hereunder:

Sr. No.	Category of Stakeholders	Amount Claimed (Rs.)	Amount Admitted (Rs.)
1.	**Secured Financial Creditors (ICICI Bank)**	**1,76,04,204/-**	**1,76,04,204/-**
2.	Unsecured Financial Creditors	21,86,215/-	21,86,215/-
3.	Operational Creditors	32,66,275/-	28,98,464/-
Total (1+2+3)		**2,30,56,694/-**	**2,26,88,883/-**

Corporate Insolvency Resolution Process and Compliance

38. The Application issued the Information Memorandum in terms of Regulation 36 of the CIRP Regulations, 2016 to the CoC on December 20, 2023, while the Form "G" inviting Expression of Interest (EoI) was published on December 27, 2023, in terms of Regulation 36A thereof. Three expressions of interest were received till the last date, i.e., January 11, 2024.

39. Thereafter, the Applicant issued a Request for Resolution Plan (RFRP) to the eligible applicants on March 6, 2024, in terms of Regulation 36B of the said Regulations. The last date for submitting the Resolution Plan was 4th April 2024, which was extended till April 15, 2024, by the CoC at its meeting held on April 9, 2024.

Evolution and Voting

40. The Applicant Received two resolution plans-one from Mr. Vikas Garg and the other from Dhansagar Dealers Private Limited. These two plans being compliant with the requirements of the IBC, 2016 and accompanying Regulations, the applicant duly placed the same for evaluation and voting before the Coc at a meeting held on April 18, 2024. A copy of the notice calling the meeting of the CoC on April 18, 2024, is annexed at Pages 17-20 to the application.

41. In accordance with the invitation given to the Resolution Applicants by the Applicant, both the said Mr. Vikas Garg and the said Dhansagar Dealers Private Limited attended the Meeting and deliberated their respecvtive Plans with CoC. Thereafter, both resolution plans were put to vote simultaneously. A copy of the Minutes of the meeting dated April 18, 2024, is annexed at pages 21-22 to the Application.

42. That, the CoC has voted in favour of the resolution plan submitted by Mr. Vikas Garg. A copy of the e-voting report as received by the Applicant is annexed at Pages 23-24 to the Application.

43. The Applicant has issued a Letter of Intent ("LoI") to the SRA on April 25, 2024, annexed at Pages 25-26 to the Application. The Resolution Plan of the SRA as approved by the CoC is annexed at Pages 27-129 to the Application. Upon receiving the LoI, the SRA has deposited an amount equivalent to the sum named in the LoI, in lieu of the Performance Bank Guarantee to the Applicant, which is evidenced from an extract of the relevant Bank Account Statement of the Corporate

Debtor operated by the Applicant, annexed at Pages 130-131 to the Application.

44. Upon having examined the Resolution Plan of the SRA, the Applicant submits that:

a. The resolution plan of the SRA provides for the payment of insolvency resolution process costs, in priority to the payment of the other debts of the corporate debtor, in accordance with the requirements laid down by the Insolvency & Bankruptcy Board of India.

b. The resolution plan of the SRA provides for the payment of debts of operational creditors in a manner which is not less than the amount to be paid to such creditors in the event of the liquidation of the corporate debtor under Section 53 of the IBC, 2016.

c. The resolution plan of the SRA provides for the management of the affairs of the corporate debtor after approval of the resolution plan.

d. The resolution plan of the SRA does not contravene any of the provisions of law for the time being in force and also conforms to all requirements a specified by the Insolvency and Bankruptcy Board of India as on date.

45. The Applicant has duly affirmed the Compliance Certificate in "Form H" of the CIRP Regulations, 2016 which is annexed at Pages 136-144 to the Application.

Compliance of the Resolution Plan submitted by the SRA with various provisions.

46. The Applicant has submitted that in terms of Regulation 39(4) of the Insolvency and Bankruptcy Code (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the RP has filed a Compliance Certificate in prescribed form i.e., Form "H", annexed at Pages 136-144 to the Application.

47. It is submitted that contended that the Successful Resolution Applicant has met the criteria approved by the CoC having regard to the complexity and scale of operations of the business of the Corporate Debtor in terms of Section 25(h)(2) of the I&B Code.

48. Further it is submitted that the Successful Resolution Applicant is eligible to submit a resolution plan in terms of Section 29A of the I&B Code and accordingly, an affidavit has also been furnished by the SRA. The Due Diligence Report concerning Section 29A of the I&B Code prepared by the RP along with the Affidavit furnished by the SRA is annexed at pages 113-116.

49. Further, the Learned Counsel for the Resolution Professional would submit the details of various compliances as envisaged within the I&B Code and the CIRP Regulations to which a Resolution Plan has been adhered to. Further, it is submitted that the Resolution Applicant has submitted its eligibility in terms of Section 30(1) of the I&B Code, 2016.

50. It is further submitted that in terms of Section 30(2) of the I&B Code, 2016, (as amended vide Amendment dated August 16, 2019) the Resolution Plan, submitted by **Mr. Vikas Garg (SRA)** provides the compliance as under:

Section of the Code / Regulation No.	**Requirement with respect to Resolution Plan**	**Clause of Resolution Plan**	**Compliance (Yes / No)**
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	6 of Part I	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	13 of Part III	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	13 of Part III	Yes
Section 30(2)	Whether the Resolution Plan-	4 of Part III	Yes

	(a) provides for the payment of insolvency resolution process costs? (b) provides for the payment to the operational creditors? (c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan? (d) provides for the management of the affairs of the corporate debtor? (e) provides for the implementation and supervision of the resolution plan? (f) contravenes any of the provisions of the law for the time being in force?]		
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?		Yes Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan,	Part II	Yes

	according to the CoC?		
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?]	4 of Part I	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	14 of Part III	Yes
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?]	16 of Part III	Yes
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule?	1, 2 and 4 of Part II	Yes

	(b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising its implementation?		
38(3)	Whether the resolution plan demonstrates that – (a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan?	5, 19.3, 19.4, 10.5 and 19.6 of Part III	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?		Yes
Regulation 39(4)	Provide details of performance security	SRA has deposited	Yes

	received, as referred to in sub-regulation (4A) of regulation 36B.]	entire performance security in lieu of PGB on 03.04.2024 and 01.05.2024	

Details of the Resolution Plan and/or Payment Schedule

51. The Learned Counsel for the Applicant herein has submitted that the total plan outlay/ value is of **Rs. 1,70,34,621**/- wherein CIRP Costs has been proposed of Rs. 20,00,000/- amount allocated to the Secured Financial Creditor is of Rs.1,42,00,000/-, amount proposed to the Operational Creditor (Employees) is of Rs. 3,18,621/- and to the Operational Creditor (other than Workmen and Employees and Government Dues) is of Rs. 5,16,000/-.

52. The Applicant submits that the summary proposal of the Resolution Plan submitted by the SRA, which is in Clause d at pages 51-52 to the Resolution Plan, is attached hereunder in a tabular form:

Sr. No.	Category of Stakeholders	Amount Claimed (Rs.)	Amount Admitted (Rs.)	Amount Provided under the Plan (Rs.)	Amount Provided to Amount Claimed (%)

1.	**CIRP Cost**	-	-	**20,00,000/-**	-
2.	**Secured Financial Creditors**	1,76,04,204/-	1,76,04,204/-	**1,42,00,000/-**	80.66
3.	**Unsecured Financial Creditors**	21,86,215/-	21,86,215/-	**NIL**	0.00
4.	**Operational Creditors**	32,66,275/-	28,98,464/-	**8,34,621/-**	28.79

53. As per Form "H" annexed to the application, the allocation of the amount as provided for all the stakeholders under the Resolution Plan submitted by the SRA in detail is as under:

Sl. No.	**Category of Stakeholder**	**Sub-Category of Stakeholder**	**Amount Claimed**	**Amount Admitted**	**Amount Provided under the Plan**	**Amount Provided to the Amount Claimed (%)**
(1)	(2)	(3)	(4)	(5)	(6)	(7)
I	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2)	0	0	0	0

	of section 21				
	(b) Other than (a) above:				
	(i) who did not vote in favour of the resolution Plan	0	0	0	0
	(ii) who voted in favour of the resolution plan	Rs. 1,76,04,204/-	Rs. 1,76,04,204/-	Rs. 1,42,00,000/-	80.66
	Total[(a) + (b)]	**Rs. 1,76,04,204/-**	**Rs. 1,76,04,204/-**	**Rs. 1,42,00,000/-**	**80.66**

2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	Rs. 21,86,215/-	Rs. 21,86,215/-	0	0
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan				

		Total[(a) + (b)]	**Rs. 21,86,215/-**	**Rs. 21,86,215/-**	**0**	**0**
3	Operational Creditors	(a) Related Party of Corporate Debtor	-	-	-	-
		(b) Other than (a) above:				
		(i)Government	NA	NA	NA	NA
		(ii)Workmen	NA	NA	NA	NA
		(iii)Employees	Rs. 6,59,144/-	Rs. 3,18,621	Rs. 3,18,621	48.34
		(iv)Others	Rs. 26,07,131/-	Rs. 25,79,843/-	Rs. 5,16,000/-	20
		Total[(a) + (b)]	**Rs. 32,66,275/-**	**Rs. 28,98,464/-**	**Rs. 8,34,621/-**	**28.79**

4	Other debts and dues		-	-	-	-
Grand Total			**Rs. 2,30,56,694/-**	**Rs. 2,26,88,883/-**	**Rs. 1,50,34,621/-**	**59.60**

54. It is evident that in Form H submitted by the Applicant, the Grant Total in "Amount Claimed" and "Amount Admitted" is wrongly recorded in the Form H as Rs. 2,52,42,909/- and Rs. 2,48,75,098/-. The correct one, we have noted in this order at **Para 53**. We find that the "Amount Claimed" and "Amount Admitted" for the Unsecured Financial Creditors have wrongly calculated twice. We have noted that as the wrong calculation by the Applicant does not prejudice the total Plan Value as well as the allocation of the Plan Value to the Stakeholders, we deem it fit to pass the appropriate order on the face of the merits of the application.

55. Further, the Applicant submits that summery to be included in the Resolution Plan submitted by the SRA, annexed at page 48 to the Plan as under:

Sr. No.	DETAILS	AMOUNT
1.	Amount of upfront payment to creditors	Rs. 1,70,34,621 (Rupees One Crore Seventy Lakhs Thirty-Four Thousand

	(Upfront Cash Recovery)	Five Hundred and Ninety Only) in the following manner: • CIRP Costs: Rs. 20,00,000 (Rupees Twenty Lakhs Only) • Secured Financial Creditor- Rs. 1,42,00,000 (Rupees One Crore Forty-Two Lakhs Only) • Unsecured Financial Creditor- Nil • Operational Creditor (Employees)-Rs.3,18,621 (Rupees Three Lakhs Eighteen Thousand Six Hundred and Twenty-One Only). • Operational Creditor (other than Workmen and Employees and Government Dues)- Rs.5,16,000 (Rupees Five Lakhs Sixteen Thousand Only).
2.	Proposed Distribution of Repayment to various creditors i.e., Financial Creditor, Operational Creditors, Statutory Creditors,	Rs.1,70,34,621 (Rupees One Crore Seventy Lakhs Thirty-Four Thousand Five Hundred and Ninety Only) in the following manner:

	Employee and Workmen, etc.	• CIRP Costs: Rs. 20,00,000 (Rupees Twenty Lakhs Only) • Secured Financial Creditor_Rs.1,42,00,000 (Rupees One Crore Forty-Two Lakhs Only) • Unsecured Financial Creditor- Nil • Operational Creditor (Employees)- Rs.3,18,621 (Rupees Three Lakhs Eighteen Thousand Six Hundred and Twenty-One Only) • Operational Creditor (other than Workmen and Employees and Government Dues)- Rs.5.16,000 (Rupees Five Lakhs Sixteen Thousand Only)
3.	Balance repayment obligations to creditors (other than upfront payment)	N.A.
4.	Proposed instruments for repayment	a. Loan/Debt Instruments- Not Applicable b. Quasi Equity, if any-Not Applicable

		c. Equity, if any- Not Applicable
5.	Interest Rate/ Coupon and Frequency of Payment	a. Loan/Debt Instruments-Not Applicable b. Quasi Equity-Not Applicable
6.	Repayment Schedule	a. Loan/Debt instruments- Not Applicable b. Quasi Equity- Not Applicable
7.	Security	Not Applicable
8.	Conversion terms for quasi equity instruments	Not Applicable
9.	Any equity being offered to lenders/non promoter/non promoter group and terms for the same.	Not Applicable
10.	Amount of fresh equity being infused into the company	a. Purpose- Business b. Amount-2,00,000 (Two Lakhs) equity shares of Rs.10 each amounting to Rs. 20,00,000 (Rupees Twenty Lakhs Only)

		c. Timing of Infusion-within 50 business days of approval of Resolution Plan. d. Terms- As per the provisions of Companies Act, 2013.

Our Inference

On the Conduct of CoC:

56. Upon hearing, the submission made by the Learned Counsel appearing on behalf of the Resolution Professional of Corporate Debtor herein and perusing the record and/or documents placed before this Adjudicating Authority, we would find that **the Resolution dated April 13, 2024,** submitted by **Mr. Vikas Garg, the Successful Resolution Applicant** has been approved by the CoC of the Corporate Debtor by **100%** voting share on 18.04.2024 and **Mr. Vikas Garg,** is declared as the **"Successful Resolution Applicant".** As per the CoC, the plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. Preponderantly, all the compliances have been done by the Resolution Applicant for making the plan effective after approval by this Adjudicating Authority.

57. In the course of the hearing, the Ld. Counsel for the applicant would submit that the Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code, 2016, read with relevant Regulations of the Insolvency and Bankruptcy Board of India (Insolvency

Resolution Process for Corporate Persons) Regulations, 2016 and does not contravene any of the provisions of law for the time being in force.

58. Upon perusal of the documents on record and/or documents, we are satisfied that **the Resolution dated April 13, 2024,** submitted by **Mr. Vikas Garg, the Successful Resolution Applicant**, is in accordance with sections 30 and 31 of the I&B Code, 2016 and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

On the Statutory Obligations or Seeking Approvals from the Authorities:

59. As far as the question of granting time to comply with the statutory obligations or seeking approvals from authorities is concerned, the Resolution Applicant is directed to do so within one year from the date of this order, as prescribed under section 31(4) of the I&B Code.

On the Reliefs, Waivers and Concessions:

60. We have perused the reliefs, waivers and concessions as sought and as provided in the Resolution Plan. It is evident that some of the reliefs, waivers and concessions sought by the Resolution Applicant come within the ambit of the I&B Code and the Companies Act 2013, while many others fall under the power and jurisdiction of different government authorities/departments. This Adjudicating Authority has the power to grant reliefs, waivers and concessions only concerning the reliefs, waivers and concessions that are directly with the I&B Code and the Companies Act (within the powers of the NCLT). The reliefs, waivers and concessions that pertain to other governmental authorities/departments may be dealt

with by the respective competent authorities/forums/offices, Government or Semi-Government of the State or Central Government concerning the respective reliefs, waivers and concession, whenever sought for. The competent authorities including the Appellate authorities may consider granting such reliefs, waivers and concessions keeping in view the spirit of the I&B Code, 2016 and the Companies Act, 2013.

61. It is almost trite and fairly well-settled that the Resolution Plan must be consistent with the extant law. The Resolution Applicant shall make necessary applications to the concerned regulatory or statutory authorities for the renewal of business permits and supply of essential services, if required, and all necessary forms along with filing fees etc. and such authority shall also consider the same keeping in mind the objectives of the Code, which is essentially the resolving the insolvency of the Corporate Debtor.

62. In this context, we would rely upon the judgment in ***Embassy Property Developments Pvt. Ltd. vs. State of Karnataka*** reported at **MANU/SC/1661/2019: (2020) 13 SCC 308**, wherein, the Hon'ble Apex Court has laid down that:

> "*39. If NCLT has been conferred with jurisdiction to decide all types of claims to property, of the corporate debtor, Section 18(f)(vi) would not have made the task of the interim resolution professional in taking control and custody of an asset over which the corporate debtor has ownership rights, subject to the determination of ownership by a court or other authority. In fact an asset owned by a third party, but which is in the possession of the corporate debtor under contractual arrangements, is specifically kept out of the definition of the term "assets" under the Explanation to Section 18. This*

assumes significance in view of the language used in Sections 18 and 25 in contrast to the language employed in Section 20. Section 18 speaks about the duties of the interim resolution professional and Section 25 speaks about the duties of resolution professional. These two provisions use the word "assets", while Section 20(1) uses the word "property" together with the word "value". Sections 18 and 25 do not use the expression "property". Another important aspect is that Under Section 25(2)(b) of IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings. Section 25(1) and 25(2)(b) reads as follows:

25. Duties of resolution professional -

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of Sub-section (1), the resolution professional shall undertake the following actions:

(a).....

(b) represent and act on behalf of the corporate debtor with third parties, ***exercise rights for the benefit of the corporate debtor in judicial, quasi judicial and arbitration proceedings****.*

This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).

40. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right."

(Emphasis Added)

63. The reliefs sought for subsisting contracts/agreements can be granted, and no blanket orders can be granted in the absence of the parties to the contracts and agreements.

On the Extinguishment of Claims:

64. Concerning the waivers with regard to the extinguishment of claims which arose prior to the initiation of the CIR Process and which have not been claimed are granted in terms of the law laid down by the Hon'ble Apex Court in ***Ghanashyam Mishra and Sons Private Limited* vs. *Edelweiss Asset Reconstruction Company Limited*** reported in **MANU/SC/0273/2021: (2021)9SCC657: [2021]13SCR737** 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 Government, any State Government 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." **(Emphasis Added)**

65. Further, the relevant part of the ***Ghanshyam Mishra*** **judgment (supra)** in this regard is given below:

> "**61.** *All these details are required to be contained in the information memorandum so that the resolution applicant is aware, as to what are the liabilities, that he may have to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure, that the Corporate Debtor is revived and made a running establishment. The legislative intent of making the resolution plan binding on all the stake-holders after it gets the seal of approval from the Adjudicating Authority upon its satisfaction, that the resolution plan approved by CoC meets the requirement as referred to in Sub-section (2) of Section 30 is, that after the approval of the resolution plan, no surprise claims should be flung on the successful resolution applicant. The dominant purpose is, that he should start with fresh slate on the basis of the resolution plan approved.*'
>
> "**62.** *This aspect has been aptly explained by this Court in the case of Committee of Creditors of Essar Steel India Limited through Authorised Signatory (supra).*'
>
> "**107.** *For the same reason, the impugned NCLAT judgment [Standard Chartered Bank v. Satish Kumar Gupta] in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution*

applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count."

(Emphasis Added)

66. In this regard we also rely on the judgement of the Hon'ble High Court of Rajasthan in the matter of ***EMC* v. *State of Rajasthan*, Civil Writ Petition No. 6048/2020 with 6204/2020** reported in **(2023) ibclaw.in 42 HC,** wherein it has been inter-alia held that:

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

(Emphasis Added)

67. Thus, on the date of approval of the resolution plan by the Adjudicating Authority, all such claims, that are not a part of the 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 of India further laid down 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 before the date on which the Adjudicating Authority grants its approval under Section 31 of the I&B Code could be continued.

On Guarantors:

68. Concerning the waivers sought in relation to guarantors, the Hon'ble Apex Court held in ***Lalit Kumar Jain v. Union of India*** reported in **MANU/SC/0352/2021: (2021) 9 SCC 321: (2021) ibclaw.in 61 SC** that *the sanction of a resolution plan and finality imparted to it by Section 31 does not per se operate as a discharge of the guarantor's liability. As to the nature and extent of the liability, much would depend on the terms of the guarantee itself.* **(Emphasis Added)**

69. Further, we would rely upon the judgment rendered by the NCLAT in ***Roshan Lal Mittal v. Rishabh Jain*** reported in **(2023) ibclaw.in 803 NCLAT** that:

> *"The Resolution Plan does not absolve the personal guarantors from their guarantee. The law well settled by the Hon'ble Supreme Court in the matter of "Lalit Kumar Jain vs. Union of India & Ors. – (2021) 9 SCC 321), that by approval of resolution plan the guarantees are not ipso facto discharged."*
>
> **(Emphasis Added)**

70. The CoC comprises all the financial creditors of the corporate debtor as per Section 21(2) of the I&B Code. In the present case, the CoC

is constituted with only one financial creditor, i.e., ICICI bank having 100% voting share. It is a trite, axiomatic and settled position of law that the CoC has a statutory role and serves as the custodian of the public confidence. The CoC is entrusted with the task of unlocking the valuable assets of the Corporate Debtor for their optimum contribution to the gross domestic production. Thus, the decision of the CoC impacts not only the life of the corporate debtor as well as its stakeholders, but also the have wider ramifications for the public interest. Thus, it is the duty of the CoC to maximize the assets of the Corporate Debtor by all means which would include the invocation of the personal guarantee, if any, and identification of PUFE transactions and preferring avoidance application accordingly. We have noted that avoidance applications have already been filed. If any personal guarantee(s) exists, the CoC shall invoke the same and will take appropriate action against them, as per law, if not done already.

On Inquiries, Litigations, Investigations, and Proceedings:

71. For the reliefs and waivers sought for all inquiries, litigations, investigations, and proceedings shall be granted strictly as per section 32A of the I&B Code, 2016 and the provisions of the law as may be applicable.

72. In this context, we would infer that upon the approval of the Resolution Plan, the Corporate Debtor avails the limbs of new management to revive its business. Thus, all the past liabilities of the Corporate Debtor including criminal liability prior to the initiation of the CIR Process shall stand effaced and the new management will step into the shoes of the company with a fresh or clean slate. Hence, the old

management shall be liable to face all the offences committed prior to the commencement of the CIR Process. At this junction, we would rely upon the judgment rendered by the Hon'ble Apex Court in ***Ajay Kumar Radheyshyam Goenka vs. Tourism Finance Corporation of India Ltd.*** reported in **MANU/SC/0244/2023: (2023) 10 SCC 545** that:

> *"67. Thus, Section 32A broadly leads to:*
>
> *a.* ***Extinguishment of the criminal liability of the corporate debtor, if the control of the corporate debtor goes in the hands of the new management which is different from the original old management****.*
>
> *b. The prosecution in relation to "every person who was a "designated partner" as defined in Clause (j) of Section 2 of the Limited Liability Partnership Act 2008 (6 of 2009), or an "officer who is in default", as defined in Clause (60) of Section 2 of the Companies Act, 2013 (18 of 2013), or was in any manner in charge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence" shall be proceeded and the law will take it's own course. Only the corporate debtor (with new management) as held in Para 42 of P. Mohanraj will be safeguarded.*
>
> *c. If the old management takes over the corporate debtor (for MSME Section 29A does not apply (see 240A), hence for MSME old management can takeover) the corporate debtor itself is also not safeguarded from prosecution Under Section 138 or any other offences."*

(Emphasis Added)

73. Further, in a very recent judgment rendered by the **Hon'ble High Court of Madras** in ***Vasan Healthcare Pvt. Ltd. vs. The Deputy Director of Income Tax (Investigation), Unit 3(2)*** reported in **MANU/TN/0243/2024: (2024) ibclaw.in 80 HC** that:

> *"9. In the above judgement, the Apex Court after dealing with the provision in detail, came to a categoric conclusion that insofar as the criminal prosecution is concerned, the criminal liability of the corporate debtor viz., company gets completely wiped off and the new management is allowed to take over the company on a clean slate. However, the Apex Court also made it clear that the persons who are involved in the day today affairs of the company and were incharge and responsible for running of the company, will be liable to face all the* ***offence committed prior to the commencement of the Corporate Insolvency Resolution Process. There is no escape for those persons from criminal liability even though the corporate debtor is given a clean slate and is handed over to the new Management****.*
>
> *10. Useful reference can also be made to the judgement of* ***the Calcutta High Court*** *in* ***[Tantia Constructions Limited Vs. Krishna Hi-Tech Infrastructure P Ltd] in CRP No. 172 of 2022****. The relevant portions in the order are extracted hereunder :-*
>
> *4. For the* ***application of Section 32A of IBC, 2016*** *and in light of the present matter, it is pertinent to determine the following two issues, i.e.,*
>
> ***i. Whether the offence as complained in the impugned criminal proceedings has been alleged to be committed before the initiation of corporate insolvency resolution process or during such process?***

ii. Whether the resolution plan has resulted in change in the management or corporate debtor in consonance with the provisions of Section 32A(1) of IBC, 2016?

5. With respect to Issue No. 1, it is pertinent to note that the corporate insolvency resolution process as against the Petitioner/Corporate Debtor was initiated on 13.03.2019 when the application was accepted and the Order of Moratorium under Section 14 of the IBC, 2016 was imposed by NCLT, Kolkata in the aforementioned case. The complaint that commenced the impugned criminal proceedings was filed on 22.07.2019 before the concerned court by the opposite party. Whereby, said alleged offence so complained, took place before or during the corporate insolvency resolution process and is covered under the ambit of Section 32A of IBC, 2016.

6. With respect to Issue No. 2, it is observed that the petitioner has not made specific submission in this regard. However, it is the submission of the opposite party that the ***impugned complaint case does not concern itself with the new directors that were appointed after takeover by the Resolution Applicant in line with the Resolution Plan so approved by NCLT dated 24.02.2022. It is their submission that they are primarily aggrieved by the actions of petitioner when it was in control of erstwhile Directors****.*

11. The above judgement clearly lays down the law on the subject. The moment the Corporate Insolvency Resolution Process is initiated against the corporate debtor and the application is accepted by the NCLT, the moratorium comes into operation. ***Once the resolution plan is accepted by the NCLT and orders are passed and the Corporate debtor gets into hands of the new management, all the past liabilities including the criminal liability of the***

Corporate debtor gets wiped off and the new Management takes over the company with clean slate."
(Emphasis Added)

74. For the sake of convenience, the reliefs, concessions and approvals sought by the Applicant from us are catered to as below and the orders thereon are indicated against each as under:

SN	Clause	*Reliefs, Concessions, and Approvals sought for*	Our Inference with the Relevant Provisions and/or Case laws	Our Orders thereon
Reliefs and Concessions for the implementation of the Resolution Plan.				

1.	7. a) (i)	*The Resolution Applicant has considered that by virtue of the Order of the Adjudicating Authority approving this Resolution Plan and since the Resolution Applicant would acquire the Corporate Debtor on a 'going concern' basis, all consents, licences, approvals, rights, entitlements benefits and privileges whether under law, contract, lease or license or any registration, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled or accustomed to shall, notwithstanding any provision to the contrary in their terms and*	However, the Corporate Debtor is being acquired on a 'going concern' basis (as is where is basis, as is what is basis, whatever there is basis), this Adjudicating Authority is not the proper forum to consider and/or grant such relief. This is for the relevant and/or appropriate authorities to consider, and not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority.	**Not Granted.** We direct to approach the appropriate authority/ Authorities.

		notwithstanding that may have already lapsed or expired due to any non-compliance or efflux of time, be deemed to continue without disruption for the benefit of the Corporate Debtor and the Resolution Applicant from the NCLT plan approval date, i.e., the Effective Date or until the period mentioned in such Business Licences, whichever is later.		

SN	Clause	*Reliefs, Concessions, and Approvals sought for*	Our Inference with the Relevant Provisions and/or Case laws	Our Orders thereon
2.	7. a) (ii)	*The Resolution Applicant shall be handed over with clear title of the Building and being the true, legal, and beneficial owner of the Corporate Debtor and shall have peaceful and quite enjoyment of the Building without any hindrance of exercise of its rights from any third party including but not limited to any litigations against the Corporate Debtor.*	Whatever the immunity is granted strictly under Section 32A of the I&B Code and the law laid down in ***Ajay Kumar Radheyshyam Goenka*** **(Supra),** ***Tantia Constructions Limited*** **(Supra)** and in ***Vasan Healthcare Pvt. Ltd.*** **(Supra),** nothing more and nothing less.	**Granted**, in accordance with law.
3.	7. a) (iii)	*For the avoidance of doubt, it is hereby clarified that all consents, licenses, approvals, rights,*	This is for the relevant and/or appropriate authorities to consider, and not in	**Not Granted.** We direct to approach

SN	Clause	*Reliefs, Concessions, and Approvals sought for*	Our Inference with the Relevant Provisions and/or Case laws	Our Orders thereon
		entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled to, which were in place shall be deemed to continue without disruption for the benefit of the Corporate Debtor.	the nature of a waiver, concession or relief to be granted by this Adjudicating Authority.	the appropriate authority/ Authorities.
4.	**7. a) (iv)**	*The Registrar of Companies of relevant jurisdiction to take on record and implement the Plan upon approval of the Plan by the NCLT, without any further compliances;*	All regulatory compliances such as filing with the RoC, payment of filing fees on documents etc. will have to be complied with. The RoC	**Granted**, in accordance with law.

SN	Clause	*Reliefs, Concessions, and Approvals sought for*	Our Inference with the Relevant Provisions and/or Case laws	Our Orders thereon
			cannot be expected to grant *suo moto* approval for such activities without the forms being filed or necessary compliances being done on behalf of the corporate debtor.	
5.	7. a) (v)	*All Governmental Authorities to waive the Non-Compliances of the Corporate Debtor prior to the Closing Date (including Non-Compliances under Companies Act, 2013, Employees' Provident Fund & Miscellaneous Provisions Act, 1952 and other Applicable*	Whatever the immunity is granted strictly under Section 32A of the I&B Code and the law laid down in ***Ajay Kumar Radheyshyam Goenka*** **(Supra),** ***Tantia Constructions Limited*** **(Supra)**	**Granted**, in accordance with law.

SN	Clause	***Reliefs, Concessions, and Approvals sought for***	**Our Inference with the Relevant Provisions and/or Case laws**	**Our Orders thereon**
		Laws, and Non-Compliances in relation to non-payment of any outstanding charges and dues by the Corporate Debtor (including stamp duty, registration fee and property Taxes);	and in ***Vasan Healthcare Pvt. Ltd.*** **(Supra),** nothing more and nothing less.	
6.	**7. a) (vi)**	*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 Business Permits of the Corporate Debtor have lapsed, expired, suspended, cancelled, revoked or terminated or the*	This is for the relevant and/or appropriate authorities to consider, and not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority.	**Not Granted.** We direct to approach the appropriate authority/ Authorities.

SN	Clause	*Reliefs, Concessions, and Approvals sought for*	Our Inference with the Relevant Provisions and/or Case laws	Our Orders thereon
		Corporate Debtor Group has Non-Compliances in relation thereto. Accordingly, all Governmental Authorities to provide reasonable time period, if required, in order for the Resolution Applicant to assess the status of these Business Permits and ensure that the Corporate Debtor is compliant with the terms of such Business Permits and Applicable Law without initiating any investigations, actions or proceedings or imposing any costs in relation to such Non-Compliances and		

SN	Clause	***Reliefs, Concessions, and Approvals sought for***	**Our Inference with the Relevant Provisions and/or Case laws**	**Our Orders thereon**
		permit the Resolution Applicant to continue to operate the business of the Corporate Debtor,		
7.	**7. a) (vii)**	*All Governmental Authorities to grant any relief, concession or dispensation as may be required for the implementation of the transactions contemplated under the Plan in accordance with its terms and conditions, and to waive the Non-Compliances of the Corporate Debtor,*	This is for the relevant and/or appropriate authorities to consider, and not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority.	**Not Granted.** We direct to approach the appropriate authority/ Authorities.
8.	**7. a) (viii)**	*All Governmental Authorities shall grant any relief, concession or dispensation as may be*	This is for the relevant and/or appropriate authorities to	**Not Granted.**

SN	Clause	*Reliefs, Concessions, and Approvals sought for*	Our Inference with the Relevant Provisions and/or Case laws	Our Orders thereon
		required for implementation of the transactions contemplated under the Plan in accordance with its terms and conditions.	consider, and not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority.	We direct to approach the appropriate authority/ Authorities.
9.	**7. a) (ix)**	*Notwithstanding anything contained in this Resolution Plan, this Resolution Plan and the amounts and payments contemplates and set out in this Plan have been arrived at on the basis of the (i) information provided by the Resolution Professional in the Information Memorandum, (ii) information provided*	The reliefs fall within the ambit of "commercial wisdom". Upon the submission of the plan by the Resolution Applicant, it can be believed that the Resolution Applicant has verified the informational memorandum, RFRP and inspected	**Not Granted.**

SN	Clause	*Reliefs, Concessions, and Approvals sought for*	Our Inference with the Relevant Provisions and/or Case laws	Our Orders thereon
		through the RFRP (iii) Physical inspection of Assets (iv) details and other information provided by the Resolution Professional. It is clarified that the rights of the Resolution Applicant, set forth in this Chapter are without prejudice or detriment to any rights, remedies or powers that the Resolution Applicant may have in under applicable laws, under any document or on equity. In the event that any of the assumptions set out in this Plan are breached, the Resolution Applicant and the	the assets of the corporate debtor. After verification and inspection of all the aspects, the Resolution Applicant has expressed its willingness to participate in the bid. Further, in the CoC meeting, the Plan of the Resolution Applicant has thoroughly been discussed and the Resolution Applicant has availed every possible opportunity to raise its demur and/or	

SN	Clause	*Reliefs, Concessions, and Approvals sought for*	Our Inference with the Relevant Provisions and/or Case laws	Our Orders thereon
		members of the erstwhile Committee of Creditors (represented through their authorised representative), as applicable, shall mutually discuss and agree on a suitable redressal method;	negotiate with the members of the CoC during the approval of its plan. It is a trite law that the I&B Code does not restrict negotiation. Therefore, post-approval of the plan by the Adjudicating Authority, the Resolution Applicant can neither turn volta face to fulfil its payment obligations nor be allowed to be withdrawn or modified by the SRA. It is a settled position of law as	

SN	Clause	*Reliefs, Concessions, and Approvals sought for*	Our Inference with the Relevant Provisions and/or Case laws	Our Orders thereon
			laid down in ***Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited reported in (2022) 2 SCC 401*** that "*the existing insolvency framework in India provides no scope for effecting further modifications or withdrawals of CoC-approved Resolution Plans, at the behest of the successful Resolution Applicant, once the plan has been submitted to the Adjudicating*	

SN	Clause	*Reliefs, Concessions, and Approvals sought for*	**Our Inference with the Relevant Provisions and/or Case laws**	**Our Orders thereon**
			Authority. A Resolution Applicant, after obtaining the financial information of the Corporate Debtor through the informational utilities and perusing the IM, is assumed to have analyzed the risks in the business of the Corporate Debtor and submitted a considered proposal. A submitted Resolution Plan is binding and irrevocable as between the CoC and the successful Resolution Applicant	

SN	Clause	*Reliefs, Concessions, and Approvals sought for*	Our Inference with the Relevant Provisions and/or Case laws	Our Orders thereon
			in terms of the provisions of the IBC and the CIRP Regulations."	
10.	7. a) (x)	*Regulation 37(l) of the CIRP Regulations provides that a resolution plan may provide for the measures required for implementing it, including but not limited to obtaining necessary approvals from the Central and State Governments and other authorities. Accordingly, the Resolution Applicant requires all Governmental Authorities to grant any*	This is for the relevant and/or appropriate authorities to consider, and not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority. However, as per Section 37(l) of the CIRP Regulations, a resolution plan may provide **for the measures** required	**Not Granted.** Liberty is granted to approach the appropriate authority/ authorities.

SN	Clause	*Reliefs, Concessions, and Approvals sought for*	Our Inference with the Relevant Provisions and/or Case laws	Our Orders thereon
		relief, concession or dispensation as envisaged in the Resolution Plan for its implementation. In this regard, upon the NCLT approving the Plan, the Resolution Applicant will pursuant to the NCLT's order, make necessary applications to the relevant Governmental Authorities to seek such waivers and reliefs, as appropriate. In particular, and without limiting the foregoing, the Resolution Applicant requires the measures as stated in Part I and from the other relevant Governmental	for implementing the same. Thus, in terms of the CIRP Regulations, we hereby grant the liberty to move any application, if required, in connection with the successful implementation of this Resolution Plan.	

SN	Clause	***Reliefs, Concessions, and Approvals sought for***	**Our Inference with the Relevant Provisions and/or Case laws**	**Our Orders thereon**
		Authorities, which the Resolution Applicant believe are required for implementing this Plan;		
11.	7. a) (xi)	*The Resolution Applicant and Corporate Debtor shall not be liable for any payments against any contingent liability whether mentioned in the Information Memorandum or not included in the Information Memorandum but not limited to liabilities on account of bank guarantees given to customers or any other entity, Income Tax, GST, Sales Tax, VAT,*	This is for the relevant and/or appropriate authorities to consider, and not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority.	**Granted**, in accordance with law.

SN	Clause	***Reliefs, Concessions, and Approvals sought for***	**Our Inference with the Relevant Provisions and/or Case laws**	**Our Orders thereon**
		Excise Duty, Custom Duty and any other duty, Tax, Cess, levies etc. due to Centre, State, or Local Bodies other than as proposed in this Resolution Plan;		
12.	**7. a) (xii)**	*The Corporate Debtor, Resolution Applicant and their Board of Directors (appointed after NCLT Plan approval date i.e. the Effective Date) shall not be liable for any breach or non- compliance of the terms and conditions of the agreements, lease deeds, buy back arrangements and maintenance*	Whatever the immunity is granted strictly under Section 32A of the I&B Code and the law laid down in ***Ajay Kumar Radheyshyam Goenka*** **(Supra),** ***Tantia Constructions Limited*** **(Supra)** and in ***Vasan Healthcare Pvt. Ltd.*** **(Supra),**	**Granted**, in accordance with law.

SN	Clause	*Reliefs, Concessions, and Approvals sought for*	Our Inference with the Relevant Provisions and/or Case laws	Our Orders thereon
		agreements and such other clearances/approvals, etc., by the Corporate Debtor, for a period until the NCLT plan approval date i.e. the Effective Date and any penalty /claim for any such breach or non-compliance shall stand waived and extinguished on and from the NCLT plan approval date i.e. the Effective Date and accordingly all such payments shall be deemed to be settled in terms of this Resolution Plan by virtue of settlement of dues of the Operational	nothing more and nothing less.	

SN	Clause	*Reliefs, Concessions, and Approvals sought for*	Our Inference with the Relevant Provisions and/or Case laws	Our Orders thereon
		Creditors or creditors in class, as the case may be.		
13.	7. a) (xiii)	*Upon approval of this Resolution Plan by the Hon'ble NCLT, all actions stated in this Resolution Plan shall be deemed to be approved. Accordingly, any action or implementation of this Resolution Plan shall not be a ground for termination of any clearances or the like that has been granted to the Corporate Debtor or for which the Corporate Debtor has made an application for renewal or grant.*	We allow the reliefs, waivers and concessions that are directly with the I&B Code and the Companies Act (within the powers of the NCLT) only. For the rest, we direct to approach the appropriate authority/ authorities to be dealt with.	**Granted** in accordance with law.

SN	Clause	*Reliefs, Concessions, and Approvals sought for*	Our Inference with the Relevant Provisions and/or Case laws	Our Orders thereon
14.	7. a) (xiv)	*Upon the approval of the Resolution Plan by the NCLT, any claims by any person whether submitted to Resolution Professional or not, admitted by Resolution Professional or not, due or contingent, asserted or un-asserted, crystallized or uncrystallized, known or unknown, secured or unsecured, disputed or undisputed, present or future against the Corporate Debtor accrued as on the insolvency commencement date against the Corporate Debtor, whether arising under the subsisting*	The law laid down in ***Ghanashyam Mishra* (Supra),** 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 Government, any State Government or any local	**Granted** in accordance with law strictly.

SN	Clause	*Reliefs, Concessions, and Approvals sought for*	Our Inference with the Relevant Provisions and/or Case laws	Our Orders thereon
		contents licenses, approvals, sights, entitlements, benefits and privileges whether under laws, contract, lease or licence, granted in favour of the Corporate Debtor or any contractual arrangements entered into by the Corporate Debtor, shall notwithstanding any provision to the contrary in their terms, stand extinguished without any recourse;	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.	

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

I.A. (IB) No. 969/KB/2024 and I.A. (IB) (Plan) No. 7/KB/2024
In
Company Petition (IB) No. 12/KB/2021

SN	Clause	***Reliefs, Concessions, and Approvals sought for***	**Our Inference with the Relevant Provisions and/or Case laws**	**Our Orders thereon**
15.	7. a) (xv)	*The submission of this Resolution Plan shall not in any manner prejudice or affect the ability of the Resolution Applicant to be a Resolution Applicant under the Code in respect of any other person or in respect of any other CIRP under the Code.*	It is the capacity of the Resolution Applicant, and the Code does not bar the Resolution Applicant from being a Resolution Applicant of any other Corporate Debtor. If the Resolution Applicants meets the criterion as envisaged under Sections 25(2)(h), 29A and other provisions under the I&B Code in respect of in respect of any other person or in respect of any other CIRP, it shall have the right to	**Granted** in accordance with law.

SN	Clause	*Reliefs, Concessions, and Approvals sought for*	Our Inference with the Relevant Provisions and/or Case laws	Our Orders thereon
			participate in the bid.	
16.	7. b)	***Liabilities for Past Actions or Omissions***	Whatever the immunity is granted strictly under Section 32A of the I&B Code and the law laid down in ***Ajay Kumar Radheyshyam Goenka*** **(Supra),** ***Tantia Constructions Limited*** **(Supra)** and in ***Vasan Healthcare Pvt. Ltd.*** **(Supra),** nothing more and nothing less.	**Granted**, in accordance with law.
17.	8.	***Relevant Tax Authorities.***	Whatever the immunity is granted strictly under	**Granted** in accordance with law.

SN	Clause	*Reliefs, Concessions, and Approvals sought for*	Our Inference with the Relevant Provisions and/or Case laws	Our Orders thereon
			Section 32A of the I&B Code and the law laid down in ***Ajay Kumar Radheyshyam Goenka* (Supra)**, ***Tantia Constructions Limited* (Supra)** and in ***Vasan Healthcare Pvt. Ltd.* (Supra)**, and the law relating to the claim of a creditor after approval of a plan, as laid down in ***Ghanashyam Mishra* (Supra)**, shall strictly be followed, nothing more, nothing less.	

SN	Clause	*Reliefs, Concessions, and Approvals sought for*	**Our Inference with the Relevant Provisions and/or Case laws**	**Our Orders thereon**
			For the rest, we direct to approach the appropriate authority/ Authorities.	
18.	9.	***Waiver under the Companies Act, 2013, SEBI Laws and Stock Exchange bye-laws***	The reliefs, waivers and concessions which are directly with the Companies Act, 2013 and the I&B Code are granted in accordance with the law. For others, we direct to approach the appropriate authority/ Authorities.	**Granted** in accordance with law.
19.	10.	***Inquiries, Investigations etc.***	Whatever the immunity is granted strictly under Section 32A of the	**Granted**, in accordance with law.

SN	Clause	*Reliefs, Concessions, and Approvals sought for*	Our Inference with the Relevant Provisions and/or Case laws	Our Orders thereon
			I&B Code and the law laid down in ***Ajay Kumar Radheyshyam Goenka*** **(Supra),** ***Tantia Constructions Limited*** **(Supra)** and in ***Vasan Healthcare Pvt. Ltd.*** **(Supra),** nothing more and nothing less.	
20.	**11.**	***No legal action by creditors***	The law relating to the claim of a creditor after approval of a plan, as laid down in ***Ghanashyam Mishra*** **(Supra),** shall strictly be	**Granted** in accordance with law.

SN	Clause	*Reliefs, Concessions, and Approvals sought for*	Our Inference with the Relevant Provisions and/or Case laws	Our Orders thereon
			followed, nothing more, nothing less.	

Conclusion:

75. As far as the question of granting time to comply with the statutory obligations or seeking approvals from authorities is concerned, the Resolution Applicant is directed to do so within one year from the date of this order, as prescribed under section 31(4) of the I&B Code.

76. In case of non-compliance with this order or withdrawal of the Resolution Plan, the payments already made by the Resolution Applicant shall be liable for forfeiture.

77. In so far as the approval of **the Resolution dated April 13, 2024,** submitted by **Mr. Vikas Garg, the Successful Resolution Applicant,** is concerned, this Adjudicating Authority is bound by the judgement of the Hon'ble Supreme Court of India in ***K. Sashidhar vs. Indian Overseas Bank and Ors.*** reported in **(2019) 12 SCC 150: MANU/SC/0189/2019,** wherein it is held that:

> *"35. [...] Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides: **(i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other***

debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board*. [...]. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan Under Section 30(4) of the I & B Code."*

(Emphasis Added)

78. Further, the Hon'ble Apex Court in ***Jaypee Kensington Boulevard Apartments Welfare Association and Ors. vs. NBCC (India) Ltd. and Ors.*** reported in **(2022) 1 SCC 401: MANU/SC/0206/2021** at Para 216, has laid down that:

"***The Adjudicating Authority has limited jurisdiction in the matter of approval of a resolution plan, which is well-defined and circumscribed by Sections 30(2) and 31 of the Code.*** *In the adjudicatory process concerning a resolution plan under IBC,* ***there is no scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for substituting any commercial term of the resolution plan approved by Committee of Creditors****. ... ."*

(Emphasis Added)

79. Further, in ***Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta*** reported at **(2020) 8 SCC 531: MANU/SC/1577/2019**, the Hon'ble Apex Court has propounded that:

> "*38. This Regulation fleshes out Section 30(4) of the Code, making it clear that ultimately it is the* ***commercial wisdom of the Committee of Creditors*** *which operates to approve what is deemed by a majority of such creditors to be the best resolution plan, which is finally accepted after negotiation of its terms by such Committee with prospective resolution applicants.*"
>
> **(Emphasis Added)**

80. In the case at hand, we would note that **the Resolution dated April 13, 2024,** submitted by **Mr. Vikas Garg,** has been approved by the Committee of Creditors of the Corporate Debtor by **100%** voting share on 02.02.2024. We have further noted that the LoI was issued on 02.02.2024, which has been unconditionally accepted by the SRA. Accordingly, **the Resolution dated April 13, 2024,** submitted by **Mr. Vikas Garg,** defeats all other plans submitted before the applicant and **Mr. Vikas Garg,** has unanimously declared as a **"Successful Resolution Applicant"**. Hence, given the aforesaid decisions of the Hon'ble Apex Court as well as in light of the overall facts and circumstances of the present case, this Adjudicating Authority has not interfered with the viability of the Commercial Wisdom as exercised by the Committee of Creditors of the Corporate Debtor.

81. Subject to the observations made in this Order, **the Resolution dated April 13, 2024,** submitted by **Mr. Vikas Garg, the Successful**

Resolution Applicant, is hereby **APPROVED** and **FINALLY SANCTIONED** by this Adjudicating Authority.

On PUFE Application(s):

82. We find that the Applicant has submitted in Form H that the Resolution Professional has opined and determined the existence of PUFE transactions within the timelines and appointed the Transaction Auditor also within the timeline. The RP has also preferred two interlocutory applications being I.A. (IB) 415/KB/2024 and I.A. (IB) No. 630/KB/2024 on March 18, 2024. We would infer that approval of the Resolution Plan shall not affect the proceedings of the PUFE applications and the Resolution Professional shall continue to pursue those applications sans any barrier with the approval of the CoC of the Corporate Debtor upon communication to the SRA. We would refer to the judgment rendered by the Hon'ble Delhi High Court in ***Tata Steel BSL Vs Venus Recruiters*** reported at **2023/DHC/000257** wherein it is held that:

> "89. ***Conclusion***
>
> xxx xxx xxx
>
> *d) It follows that the RP will not be functus officio with respect to adjudication of avoidance applications in a situation, as described hereinabove. There being a clear demarcation between the scope and nature of the CIRP and avoidance application within the scheme of the IBC, the RP can continue to pursue such applications. The method and manner of the RP's remuneration ought to be decided by the Adjudicating Authority itself.*"
>
> **(Emphasis Added)**

83. The Resolution Plan shall form part of this Order and shall be read along with this order for implementation. The Resolution Plan thus approved shall be binding on the Corporate Debtor and all other

stakeholders involved in terms of Section 31 of the I&B Code, so that the revival of the Corporate Debtor Company shall come into force with immediate effect without any delay.

84. The Moratorium imposed under section 14 of the Code by virtue of the order initiating the CIR Process, shall cease to have effect from the date of this order.

85. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record and also return them to the Resolution Applicant or New Promoters.

86. Liberty is hereby granted for moving any application, if required, in connection with the successful implementation of this Resolution Plan.

87. A copy of this Order is to be submitted to the Registrar of Companies (RoC) to whom the company is registered, by the Resolution Professional.

88. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order. However, he is required to comply with our direction mentioned in **Para 82** of the order, subject to comply the direction.

89. The Resolution Professional is further directed to hand over all records, premises/ factories/ documents to the Resolution Applicant to finalise the further line of action required for starting 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 the operation.

90. The **Registry of this Adjudicating Authority** is directed to send e-mail copies of the order forthwith to all the parties and their Learned Counsels for information and for taking necessary steps.

91. In terms of the view above, the interlocutory application being **I.A. (IB) (Plan) No. 7/KB/2024** along with the main company petition being **Company Petition (IB) No. 12/KB/2021** shall stand **disposed of** accordingly.

Summarization:

92. I.A. (IB) No. 969/KB/2024: Dhansagar Dealers Private Limited (applicant in I.A. (IB) No. 969/KB/2024) being an unsuccessful resolution applicant has no vested right to challenge the approval of a resolution plan. Once it fails to succeed in the bid, it has neither a *locus* to question the action of the CoC nor can enhance or revise its plan value to compete with the plan of the Successful Resolution Applicant. **I.A. (IB) No. 969/KB/2024** is **dismissed** accordingly.

93. I.A. (IB) (Plan) No. 7/KB/2024: the Resolution dated April 13, 2024, submitted by Mr. Vikas Garg, is hereby **APPROVED** and this I.A. along with the main company petition is **disposed of** accordingly, subject to the direction given regarding the PUFE Applications mentioned in **Para 82** of the Order.

94. Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

95. File be consigned to the record.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on the 05th Day of June, 2024.

Later:

96. At the time of the pronouncement of **I.A. (IB) (PLAN) No. 7/KB/2024** for approval of the plan, the Learned Counsel Ms. Urmila Chakraborty appearing on behalf of the member of the suspended board of the Corporate Debtor submitted that after reserving the plan approval application for orders on May 07, 2024, her client, preferred an application on May 24, 2024, seeking the dismissal of the plan approval application and therefore, in the event, plan is approved, her application would become infructuous.

97. Since the Applicant had not taken any steps while the plan was receiving consideration and was deliberated upon in open court, also while the time was ripe to get the pronouncement deferred, we are afraid, such a request cannot be entertained on the date of pronouncement as it will create a bad precedent. The Applicant may have his recourse to other remedies in accordance with law.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on the 05th Day of June, 2024.

Bose, R. K. [LRA]

CERTIFIED TO BE TRUE COPY

Application No. 917/2024
Date of Presentation of Application for Copy 12/07/2024
No. of Pages Seventy Nine
Copying Fee 5/-
Registration & Postage Fee
Total ₹ 500/-
Date of Receipt & Record of Copy 16/07/2024
Date of Preparation of Copy 16/07/2024
Date of Deliver of Copy 16/07/2024

JR/DR/AR / Court Officer
National Company Law Tribunal
Kolkata Bench

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