

3. This Application was moved on 05 August 2022 by Mr. Animesh Mukhopadhyay, Resolution Professional of Zenith Finesee (India) Private Limited (“**Corporate Debtor**”) (CIN: U36998WB2003PTC096317), by invoking the provisions of section 30(6) of the Insolvency and Bankruptcy Code, 2016 (“**the Code**”) read with regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulation**”) for approval of a Resolution Plan in respect of Zenith Finesee (India) Private Limited.
4. The underlying Company Petition in CP (IB) No. 159/KB/2019 was filed by United Bank of India (now Punjab National Bank) against Zenith Finesee (India) Private Limited, the Corporate Debtor, under section 7 of the Insolvency and Bankruptcy Code 2016 which was admitted *vide* order dated 20 November 2019.
5. Initially, Mr. Animesh Mukhopadhyay, the Applicant herein (IBBI Reg. No. IBBI/IPA-001/IP-P00124/2017-2018/10266) was appointed as the Interim Resolution Professional. He was later confirmed as the Resolution Professional of the Corporate Debtor at the 1st meeting of the Committee of Creditors (“CoC”) on 18 December 2019 and the same has been recorded in the order dated 06 January 2020.
6. The IRP made public announcement on 25 November 2019 in Financial Express (*English*) (*Kolkata edition*) and *Aajkal* (*Bengali*) (*Kolkata edition*) newspapers regarding initiation of Corporate Insolvency Resolution Process [hereinafter referred to as “**CIRP**”] and called proof of claims from the financial and operational creditors, workers and employees of the Company in the specified forms.
7. The CoC was constituted with two Financial Creditors, being United Bank of India (now Punjab National Bank) and IDBI Bank. The CoC was reconstituted with State Bank of India, United Bank of India (now Punjab National Bank) and IDBI Bank with 38.04%, 20.56% and 41.40% voting share respectively.
8. The applicant states that a total of 22 CoC meetings have been held during CIRP period.

9. 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' for Expressions of Interest ("EoI") from potential resolution applicants were issued. Form 'G' was published on 02 February 2020 for submission of resolution plans for the Corporate Debtor. The last date for receipt of EoIs was 17 February 2022. This was published in *Business Standard (English) (Kolkata edition)* and *Aajkal (Bengali) (Kolkata edition)* newspapers. The notice was also published on the website of the Insolvency and Bankruptcy Board of India [hereinafter referred to as "IBBI"].
10. The Applicant submits that in response to the invitation for EoI, upto the last date, i.e., 17 February 2020, three EoIs were received from Sayantan Das Adhikari, Bohoboss Entertainment Private Limited and Loka Properties Private Limited. Information memorandum, evaluation matrix and request for Resolution Plan was issued to the three prospective resolution applicants and the last date for submission of Resolution Plan was 02 April 2020 which was further extended due to the Covid-19 lockdown and was further extended. Bohoboss Entertainment Private Limited and Loka Properties Private Limited submitted their Resolution Plans.
11. The Applicant opened the Resolution Plans in the CoC meeting in front of the CoC members and the prospective resolution applicants and the Resolution Professional evaluated the Resolution Plans and sought for certain clarifications from the resolution applicants.
12. The prospective Resolution Applicant Loka Properties Private Limited submitted its revised plan *vide* email on 16.06.2021.
13. The Resolution Plans were put up for e-voting on 22 December 2021 to 24 December 2021 and the Resolution Plan of Loka Properties Private Limited was approved by 79.44% voting percentage. Punjab National Bank abstained from voting as the claim of Punjab National Bank was not considered.

14. Thereafter, after acceptance of the revised claim by Punjab National Bank, the Applicant *vide* email dated 27 May 2022 sought for approval for the Resolution Plan which contained payment to Punjab National Bank.
15. The State Bank of India *vide* email dated 31 March 2022 and IDBI Bank *vide* email dated 04 June 2022 approved the Resolution Plan whereas Punjab National Bank *vide* email dated 01 June 2022 and 02 June 2022 did not approve the Resolution Plan. Therefore, the Resolution Plan of Loka Properties Private Limited dated 24 May 2022, was approved by the CoC by 79.44% voting percentage.
16. The Applicant issued Letter of Intent on 19 October 2022. A copy of the Letter of Intent is annexed to the supplementary affidavit dated 04 November 2022 and marked as **Annexure “A”**.
17. The successful resolution applicant submitted the performance bank guarantee on 04 November 2022 for Rs.18,50,000/- (Rupees Eighteen Lakh Fifty Thousand only). A copy of the bank guarantee is annexed to the supplementary affidavit dated 04 November 2022 and marked as **Annexure “A”**.
18. The successful Resolution Applicant, Loka Properties Private Limited is a private company incorporated in 1988, having CIN: U45201WB1988PTC044224.
19. The amounts claimed and admitted are summarised below:

a. Financial Creditors

Name of the Lenders	Amount Claimed Rs. in Cr.	Amount Admitted Rs. in Cr.
IDBI Bank Ltd.	Rs.31,56,11,167.94	Rs.31,56,11,167.94
Punjab National Bank	Rs.45,62,22,617.34	Rs.45,62,22,617.34
State Bank of India	Rs.29,00,52,660.06	Rs.29,00,52,660.06
Total	Rs.76,24,38,872.34	Rs.76,24,38,872.34

b. Operational Creditors

Name of the Creditors	Amount Claimed Rs. in Cr.	Amount Admitted Rs. in Cr.
Commercial Taxes, Beliaghata	Rs.7,97,40,509/-	Rs.7,97,40,509/-
ESI Regional Office, Kolkata	Rs.4,35,658/-	Rs.4,35,658/-
Total	Rs.8,01,76,167/-	Rs.8,01,76,167/-

20. The Applicant has filed a Compliance Certificate in prescribed form, *i.e.*, Form 'H' in compliance with regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which has been annexed to the application as **Annexure "Q"**.

21. 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):

Clause of s.30(2)	Requirement	How dealt with in the Plan
(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.	<i>Clauses 4.1 at Page 9 and Clause 5.3 at Page 19 of the Resolution Plan.</i>

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<i>Clause of s.30(2)</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>
(b)	<p>(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</p> <p>(ii) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall be not less than amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher 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><i>Clauses 4.1, 4.5, 4.8 and 4.8.1 at Pages 9-10 of the Resolution Plan.</i></p>
(c)	<p>Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.</p>	<p><i>Clauses 4.1. & 5.4 at Pages 10 and 19 respectively of the Resolution Plan.</i></p>
(d)	<p>Implementation and Supervision.</p>	<p><i>Clauses 4.1, 5 and 6 at Pages 10, 19 and 20 respectively, of the Resolution Plan.</i></p>

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<i>Clause of s.30(2)</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	<i>Clause 4.1 at Page 10 of the Resolution Plan.</i>
(f)	Conforms to such other requirements as may be specified by the Board.	<i>Clause 4.1 at Page 10 of the Resolution Plan.</i>

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;	<i>Not proposed in the Resolution Plan.</i>
(b) sale of all or part of the assets whether subject to any security interest or not;	<i>Not proposed in the Resolution Plan.</i>
(c) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	<i>Clause 4.1 at Page 11 of the Resolution Plan.</i>

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<i>Particulars</i>	<i>Relevant Page of the Resolution Plan dealing aforesaid compliance with Regulation</i>
(d) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	<i>Clause 4.1, 4.3, 4.4. and 5.1 at Pages 11, 15 and 19 of the Resolution Plan.</i>
(e) cancellation or delisting of any shares of the corporate debtor, if applicable;	<i>Not proposed in the Resolution Plan.</i>
(f) satisfaction or modification of any security interest;	<i>Clause 4.1 at Page 11 of the Resolution Plan.</i>
(g) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	<i>Clause 4.1 at Page 11 of the Resolution Plan.</i>
(h) reduction in the amount payable to the creditors;	<i>Clause 4.2 at Pages 14-15 of the Resolution Plan.</i>
(i) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	<i>Not proposed in the Resolution Plan.</i>
(j) amendment of the constitutional documents of the corporate debtor;	<i>Clauses 4.1 at Page 11 of the Resolution Plan.</i>

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<i>Particulars</i>	<i>Relevant Page of the Resolution Plan dealing aforesaid compliance with Regulation</i>
(k) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	<i>Clauses 4.1 and 5.1 at Pages 11 and 19 respectively of the Resolution Plan.</i>
(l) change in portfolio of goods or services produced or rendered by the corporate debtor;	<i>Clauses 4.1, 7 at Pages 11 and 20 respectively of the Resolution Plan.</i>
(m) change in technology used by the corporate debtor; and	<i>Clauses 4.1, 7 at Pages 11 and 20 respectively of the Resolution Plan.</i>
(n) obtaining necessary approvals from the Central and State Governments and other authorities.	<i>Clause 4.1 at Pages 12 of the Resolution Plan.</i>

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

Regulations:

<i>Reference to relevant Regulation</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>
38(1)	The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.	<i>Clauses 4.1, 4.8, 4.9 at Pages 12, 16, 17 of the Resolution Plan.</i>

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Reference to relevant Regulation	Requirement	How dealt with in the Plan
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors of the corporate debtor.	<i>Clauses 4.1, 4.2, 4.5, 4.6 at Pages 12, 14-16 of the Resolution Plan.</i>
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.	<i>Clause 4.1 at Page 14 of the Resolution Plan.</i>
38(2)	A resolution plan shall provide:	<i>Clauses 4.1, 8 at Pages 13 and 22 respectively of the Resolution Plan.</i>
	(a) the term of the plan and its implementation schedule;	
	(b) the management and control of the business of the corporate debtor during its term; and	<i>Clauses 5.4 at Pages 19 and 20 of the Resolution Plan.</i>
	(c) adequate means for supervising its implementation.	<i>Clauses 4.1 and 6 at Pages 14 and 20 respectively of the Resolution Plan.</i>

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<i>Reference to relevant Regulation</i>	<i>Requirement</i>	<i>How dealt with in the Plan</i>
38(3)	<i>A resolution plan shall demonstrate that –</i>	
	<i>(a) it addresses the cause of default;</i>	<i>Clauses 3.4 and 4.1 at Pages 7, 8 and 14 respectively of the Resolution Plan.</i>
	<i>(b) it is feasible and viable;</i>	<i>Clauses 4.1 at Page 14 of the Resolution Plan.</i>
	<i>(c) it has provisions for its effective implementation;</i>	<i>Clauses 4.1, 6 at Pages 14 and 20 respectively of the Resolution Plan.</i>
	<i>(d) it has provisions for approvals required and the timeline for the same; and</i>	<i>Clauses in the waivers of the Resolution Plan.</i>
	<i>(e) the Resolution Applicant has the capability to implement the resolution plan.</i>	<i>Clause 1.4 at Page 3 of the Resolution Plan.</i>

22. The Applicant submits that the successful Resolution Applicant has submitted a certificate of eligibility under section 29A of the Code, which has been annexed at **Pp. 197 to 200.**

Details of Resolution Plan/Payment Schedule

23. The Applicant submits the relevant information with regard to the amount claimed, amount admitted and the amount proposed to be paid by the Resolution Applicant, *i.e.*, Loka Properties Private Limited, under the said Resolution Plan is tabulated as under:

Sl. No.	Category of Creditor	Claim Admitted (Rs. in Cr.)	Amount provided in the Plan (Rs. in Cr.)	Payable by
1.	Insolvency Resolution Process Cost	0.20	0.20	In priority to the other creditors.
2.	Operational Creditor-Trade Payables	6.27	0.03	within three months from the date of approval of the Scheme by this Adjudicating Authority.
3.	Other current liabilities/statutory dues/ contingent liabilities, including corporate guarantees, if any	8.11	1.81	within three months from the date of approval of the Scheme by this Adjudicating Authority.
4.	Workmen/Employees	0	0	---

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Sl. No.	Category of Creditor	Claim Admitted (Rs. in Cr.)	Amount provided in the Plan (Rs. in Cr.)	Payable by
5.	Financial Creditor	47.30	1.54	Payment would be in equal monthly instalment of Rs.8.54 Lakh starting after the month from the plan Approval Date. In case of delay in the proposed payment, interest will be payable @ 6% p.a. starting from the month of approval of the plan during the payment period.
6.	Corporate Guarantee	59.00		
7.	Unsecured Financial Creditors [related party]	0.63	0	---
	Capex	---		--
	Working Capital	---		--
	Total	121.51	1.81	--

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

24. The Resolution Plan also provides for –

- a) Management of Company after resolution in Clause 5.4. at Page 19 and 20 of the Resolution Plan;
- b) Term of the resolution plan in Clause 4.1. at Page 13 of the Resolution Plan; and
- c) Implementation and Supervision of the resolution plan in Clause 6 at Page 20 of the Resolution Plan.

25. **Relinquishment/Waiver of liabilities and Approvals**

Sl. No.	Relief and/or Concessions and Approvals Sought
1.	<p><i>Liabilities that may accrue to KMDA License</i></p> <p>The RA proposes to increase the extension of time for completion of the construction to 18 months from NCLT approval date. Further CIRP time is proposed to be excluded from the License period of the said agreement.</p> <p>As suggested earlier – the RA proposes to include other purposes like Commercial Leasing, Co-working space, Health and Leisure Club, Educational Institute etc in the License Agreement with KMDA so that the project can be made viable.</p> <p>The Resolution Applicant is planning to look at getting approval from KMDA for change of purpose of the Lease of the Land. KMDA has notified that the purpose of lease / license may be changed after payment of particular fees. RA will apply to KMDA for change of the purpose of the lease of the land only after the judgment of NCLT goes in its favor and post takeover of the business of the company, it may take 3-6 months for obtaining approval from KMDA. The RA is very much aware of the legal process for the modification as required and for which the informal meeting has also been held with the competent authorities. It has been duly advised by the competent authority to apply for the change in purpose once the entire takeover has been approved with all formalities.</p>
2.	<p><i>Income Tax Demands in relation to earlier years</i></p> <p>a. The Approval of the Resolution Plan by NCLT shall be treated as an order to Income Tax Authorities to the effect that all the demands raised by Income Tax authorities whether crystallised /</p>

Sl. No.	Relief and/or Concessions and Approvals Sought
	<p>not crystallised upto the date of the approval by NCLT shall be waived.</p> <p>b. The Approval of the Resolution Plan by NCLT shall be treated as an order to Income Tax Authorities to the effect that any Income Tax Demand in respect of pending assessments up to assessment year 2019-20 or in respect of pending cases/disputes shall be waived.</p> <p>c. Waiver or Reduction in amount payable to financial creditors and operational creditors as per Resolution plan proposed above is expected to result in booking of income which can be subject to normal tax or Minimum Alternate Tax as per Income Tax Act. Since entire projected sources of cash flow are being used for payment to meet CIRP cost, financial creditors, etc., Corporate Debtor shall have no funds available for payment of Income Tax. Income Tax including MAT on this account may accordingly be waived.</p>
3.	<p><i>Corporate Guarantee, if any.</i></p> <p>The guarantor will be paid <i>as per</i> proportionate share of Rs. 1.54 crores.</p>
4.	<p><i>Issuance/ Renewal of all kinds of Licenses Permissions/ Approvals required for operation of the Business /Factory Operations</i></p> <p>a) Central/ State Government Departments/ Local Bodies to Renew/ Issue Fresh licenses/ permissions/ approvals on application of the same within 30 days of the Application.</p> <p>b) Temporary License shall be granted/ provided to operate the Business/ Factory Operations within 7 days of application for the Interim Period.</p>
5.	<p><i>Grace period to comply with various future statutory/ regulatory requirements</i></p> <p>a) Six (6) months grace period (from the date of NCLT approval) to be provided to the Corporate Debtor to comply with the provisions of the various Acts / Regulations, to enable Corporate Debtor to ascertain the status of various compliances and take necessary steps to regularize the same.</p>

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	b) During grace period, no additional charges/ fees etc. to be charged including on account of Interest, Penal Interest, Penalty, Interest on Penalty, any kind of Late Fee or Damages.
6.	<i>Extinguishing of existing Onerous contracts by Corporate Debtor</i> Any onerous contract made by the Corporate Debtor subsisting before the approval of Resolution Plan shall be duly extinguished and be ineffective.
7.	<i>Termination of all existing Negotiable Instruments</i> As on the insolvency commencement date, all outstanding negotiable instruments, issued by Corporate Debtor or any other person on behalf of Corporate Debtor shall stand terminated and no liability shall arise on the same.
8.	<i>Revocation of Power of Attorneys</i> All the power of attorneys provided to any person by the Corporate Debtor stands revoked with effect from the date of NCLT approval.
9.	<i>Liabilities that may accrue under Various Corporate Laws and Acts, Rules and Regulations</i> Approval of the Resolution Plan will be treated as Waiver Approval by NCLT for any past liabilities, penalties and any form of payment by way of Late Fees, Damages etc which occurred or become due because of any non-compliances related to the below stated Acts from Commencement of Insolvency Process till 6 months from the Date of the NCLT Approval of Proposed Resolution Plan as it will provide Resolution Applicant, the time period to review the current compliance status of the Corporate Debtor under these Acts, Rules and regulations in terms of Compliances and action to be taken in this regard. The stated list is inclusive but not exhaustive of – <ul style="list-style-type: none">• The Companies Act, 1956 (the Act) and the Rules made there under;

Sl. No.	Relief and/or Concessions and Approvals Sought
	<ul style="list-style-type: none"> • The Companies Act, 2013 (the Act) and the Rules made there under
10.	<p><i>Liabilities accrued/may accrue under Various Acts & Laws</i></p> <p>Approval of the Resolution Plan will be treated as Waiver Approval from past Liabilities, Payments of Fees and all Dues including any Penalties as well as any form of payment by way of Interest, Late Fees, Damages etc, related to all Government Authorities with regard to non-compliances of various Statutes to be adhered related to Consent, Fees, Certification etc. by the Corporate Debtor prior to the Effective Date which is inclusive but not exhaustive of –</p> <ul style="list-style-type: none"> • Factories Act, 1948 • Industrial Disputes Act, 1947 • Payment of Wages Act, 1936 • The Minimum Wages Act, 1948 • The Employees State Insurance Act, 1948 • The Employees Provident Fund and Miscellaneous Provisions Act, 1952 • The Bonus Act, 1965 • The Payment of Gratuity Act, 1972 • Legal Metrology Act, 2009 • Negotiable Instruments Act, 1881 • Environment (Protection) Act, 1986 • Water (Prevention and Control of Pollution) Act, 1981 • Air (Prevention and Control of Pollution) Act, 1974 • Hazardous Waste (Management and handling) Rules, 1989 • State Fire Safety Act • The MSME Act • Electricity Act, 2003 • Trademarks Act, 1999 <p>The Waiver also includes any dues relating to Interest, Penal Interest, Penalty, Interest on Penalty, any kind of Late Fee as well as Damages.</p>
11.	<p>Liability which may accrue to Provisions of MAT and Other Sections of Income Tax Act</p> <p>Approval of the Resolution Plan will be treated as Waiver by NCLT for any liability (includes Tax, MAT, interest, fine, penalty etc) on Corporate Debtor, RAs on account of various actions proposed in the</p>

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	Approved Resolution Plan including but not limited to liabilities, if any, under Sec 56, Sec 43, Sec 28, Sec 115JB and Section 79 of the Income Tax Act, 1961.
12.	Claims by Government Authorities Approval of the Resolution Plan will be treated as Approval by NCLT that claims of government authorities, in relation of all taxes etc. for period pertaining prior to the insolvency commencement date and till the date of NCLT orders, shall stand extinguished and ineffective.
13.	Extinguishment/Revocation of Workmen Contract Approval of the Resolution Plan will be treated as Specific Order and Approval by NCLT that any contract subsisting with respect to Workmen contractual labor before the approval of Resolution Plan shall be duly extinguished and be ineffective.

Sl. No.	Relief and/or Concessions and Approvals Sought
14.	<p><i>Liability to earlier promoters /recourse against the Personal or Corporate Guarantees / Right of Subrogation</i></p> <p>It is to be noted that Post approval of the Resolution Plan by the NCLT, the RAs/New Management by virtue of the Approved Resolution Plan will have no obligation or any liability towards the earlier promoters under any circumstances whatsoever.</p> <p>It is to be noted that the recourse against the Personal or Corporate Guarantees shall be free from any subrogation rights of the Guarantors. This arrangement in relation to the Personal or Corporate Guarantees relies that it shall in no way or manner permit the Guarantors to claim any right of subrogation, indemnity, security, recompense or any Claim of whatsoever nature (whether under contract, equity or Applicable Law) against the Corporate Debtor or the RA, and all such rights and obligations stand irrevocably and unconditionally extinguished in perpetuity.</p> <p>In the event, any transaction is avoided/ set aside by the NCLT in terms of Sections 43, 45, 47, 49, 50 or 66 of the Insolvency and Bankruptcy Code, 2016 and any amount is received by the resolution professional or the corporate debtor in furtherance thereof, such sum shall be deemed to have been received for the benefit of the Secured Financial Creditors and shall be paid to the Secured Financial Creditors (“Pass-Through Amount”). For the avoidance of doubt, the Pass-Through Amount shall be paid to the Secured Financial Creditors in addition to the pay-out envisaged for the Secured Financial Creditors under this Resolution Plan. Further, the RA shall ensure that all the actions initiated pursuant to Sections 43, 45, 47, 49, 50 or 66 of the Insolvency and Bankruptcy Code, 2016 shall be pursued and the Corporate Debtor and the RA shall ensure all cooperation is provided for such actions being pursued, at all times even after the approval of the resolution plan by the Adjudicating Authority. It is to be noted that any such Pass-Through Amount will be allocated to Secured Financial Creditors in proportion of their Admitted Claims to Total Admitted Claims of Secured Financial Creditors.</p>

Sl. No.	Relief and/or Concessions and Approvals Sought
15.	<p><i>Waiver/Exemption from requirement of No Objection Certificate under Sec 281 of the Income Tax Act, 1961</i></p> <p>Waiver/Exemption from requirement of No Objection Certificate under Sec 281 of the Income Tax Act, 1961 by the Selling Shareholders and provision of taking over predecessor's tax liability under Sec 170 of the Income Tax Act, 1961 and Specific Order for treating such Transactions as VOID under Sec 281 of the Income Tax Act, 1961 for any claims in respect of tax or any other sum payable by Selling Shareholders.</p>
16.	<p><i>Waiver of Valuation of Pricing of Shares by Registered Valuer</i></p> <p>Approval of Resolution Plan by NCLT will treated as waiver of the requirements of the Valuation of Pricing of Shares by Registered Valuer to be computed for Issuance of Equity Shares through Preferential Allotment / Warrants / Preference Shares / Convertible Debentures to RA for a period of 24 Months. The request for such waiver is due to the fact that current valuation of the Company basis Book Value or Net Assets Value Basis Realizable Valuation of Assets adjusted to Current Liabilities or Discounted Cash Flow of the Business will be "Negative", whereas the RA is paying Premium over Face Value considering the Future Potential of the Business.</p>

Analysis and Findings

26. On hearing the submissions made by the Ld. Counsel for the Resolution Professional, and perusing the record, we find that the Resolution Plan has been approved with 79.44% 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.

27. 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.
28. We have perused the reliefs, waivers and concessions as sought and as given in Clause 9 at Pages 23-26 of the Resolution Plan. While some of the reliefs, waivers and concessions sought by the Resolution Applicant come within the purview of the Code while many others fall under the power and jurisdiction of different government authorities/departments. This Adjudicating Authority has power to grant reliefs, waivers and concessions only with respect to the reliefs, waivers and concessions that are directly in relation to the Code and the Companies Act 2013 (within the powers of the NCLT), and these are granted keeping in mind the object of the Code. No reliefs, waivers and concessions that fall within the domain of other government department/authorities are granted. The reliefs, waivers and concessions that pertain to other governmental authorities/departments shall be dealt with the respective competent authorities/forums/offices, Government or Semi Government of the State or Central Government with regard to the respective reliefs, waivers and concessions. The competent authorities including the Appellate authorities may consider grant such reliefs, waivers and concessions keeping in view the spirit of the Code.
29. The Resolution Plan should be consistent with extant law. The Resolution Applicant shall make necessary applications to the concerned regulatory or statutory authorities for renewal of business permits and supply of essential services, if required, and all necessary forms along with filing fees etc. and such authority shall also consider the same keeping in mind the objectives of the Code, which is essentially the resolving of the insolvency of the Corporate Debtor.
30. The reliefs sought with respect to subsisting contracts/agreements can be granted, and no blanket orders can be granted in the absence of the parties to the contracts and agreements.

31. With respect to the waivers with regard to extinguishment of claims which arose Pre-CIRP and which have not been claimed are granted in terms of **Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd**,¹ wherein the Hon'ble Supreme Court has held that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt, any State Govt or any local authority, guarantors and other stakeholders. In this regard we also rely on the judgement of Hon'ble High Court of Rajasthan in the matter of **EMC v. State of Rajasthan** wherein it has been inter-alia held that :

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

Thus on the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.

32. With respect to the waivers sought in relation to guarantors, the judgment of **Lalit Kumar Jain v Union of India & ors**,² wherein the Hon'ble Supreme Court held in para 133 that sanction of a resolution plan and finality imparted to it

¹ 2021 SCC OnLine SC 313 decided on 13.04.2021.

² 2021 SCC OnLine SC 396 decided on 21.05.2021.

- by section 31 does not *per se* operate as a discharge of the guarantor's liability shall apply.
33. With respect to the reliefs and waivers sought for all inquiries, litigations, investigations and proceedings shall be granted strictly as per the section 32A of the Code.
 34. As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.
 35. In case of non-compliance of this order or withdrawal of Resolution Plan, the CoC shall forfeit the EMD amount already paid by the Resolution Applicant.
 36. Subject to the observations made in this Order, the Resolution Plan in question is hereby **APPROVED** by this Bench. **The Resolution Plan shall form part of this Order.**
 37. The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect.
 38. The Moratorium imposed under section 14 shall cease to have effect from the date of this order.
 39. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters.
 40. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.
 41. Liberty is hereby granted for moving any Application if required in connection with implementation of this Resolution Plan.
 42. A copy of this Order is to be submitted in the Office of the Registrar of Companies, West Bengal.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re. Resolution Plan of Zenith Fines
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43. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.
44. The Resolution Professional is further directed to handover all records, premises/factories/documents to the Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records/premises/factories/documents through the Resolution Professional to finalise the further line of action required for starting of the operation.
45. **IA (IB) No. 767/KB/2022 and the main Company Petition i.e., CP (IB) No. 159/KB/2019** shall stand disposed of accordingly.
46. 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.
47. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
48. File be consigned to the record.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Order signed on the 22nd day of February 2023.

GGRB_LRA