In the National Company Law Tribunal
Division Bench, (Court-I), Kolkata

IA (IBC) (PLAN) No. 12/ (KB) /2025
In CP(IB) No. 73/(KB) /2023

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

In the Matter of:

Shri Arihant Merchants Private Limited

...Financial Creditor

And

NKR Realty Private Limited

....Corporate Debtor

And

In the matter of:

Bimal Kanti Choudhury

....Applicant / RP

Date of Pronouncement of order: 29.08.2025

Coram:

Smt. Bidisha Banerjee	**:**	**Member (Judicial)**
Shri Siddharth Mishra	**:**	**Member (Technical)**

Counsel appeared physically / through video Conferencing

Mr. Nikunj Berlia, Adv.] For the Personal Guarantor

Mr. Aishwarya Kr. Awasthi, Adv.] For the RP

ORDER

Per Siddharth Mishra, Member (Technical):

1. The Court convened through hybrid mode.

2. Ld. Counsel for the parties were heard at length.
3. This application has been preferred by the Resolution Professional of **NKR Realty Private Limited** to seek approval of Resolution Plan in its entirety along with all annexures, Schedule, Appendixes including the claims contained therein as submitted by **Md. Ehtesham Uddin** the Successful Resolution Applicant (SRA in short) along with reliefs and concessions sought for under the Plan.
4. The CoC has approved the Resolution Plan of **Md. Ehtesham Uddin by 100% vote in its 10th CoC Meeting held on 01.02.2025 and Md. Ehtesham Uddin was declared as Successful Resolution Applicant (SRA)** in respect of the Corporate Debtor.
5. **Brief facts of the CIRP process are as submitted by the Resolution Professional:**
   - **a.** The Corporate Debtor was admitted into CIRP vide order dated 12.03.2024 of this Adjudicating Authority and Mr. Bimal Kanti Choudhury was appointed as IRP. Further, the Applicant namely Mr. Bimal Kanti Choudhury was confirmed as the Resolution Professional ("RP") of the Corporate Debtor by this Adjudicating Authority vide an order dated 12.03.2024.
   - **b.** Further, the RP has made a public announcement in the newspapers on 15.03.2024 inviting claims from the Creditors of the Corporate Debtor.
   - **c.** Thereafter, the Resolution Professional constituted the CoC in terms of Section 18 of the Code on 30.03.2024.

d. Further, the Ld. Counsel for the Applicant submits that Form "G" (Expression of Interest) was published on 11.05.2024 by Resolution Professional /Applicant. In view of the same 20 (Twenty) Prospective Resolution Applicants expressed their interest and out of that only one Applicant submitted the EoI documents and the same was declared in final list of Resolution Applicant.

e. On 08.05.2024, the Applicant has made a revised list of Creditors of the Corporate Debtor. A copy of the same is attached with the Application as Annexure – D.

f. In the 5th CoC Meeting held on 04.09.2024, the Applicant observed that the PRAs did not submit any Resolution Plan and therefore, fresh Form G for the purpose of a few interested parties who had informally expressed their desire to participate in the resolution process of the CD but were unable to do so due to the expiration of the EoI submission deadline. Therefore and in this context, the CoC indicated a strong inclination towards extension of the CIR Process period by another 90 days and the Applicant had filed an application IA(IBC)2056/KB/2024 for enlargement of time. Thereafter, the same IA was allowed by this Tribunal and enlarged the CIR Process period till 13th January, 2025.

g. Thereafter, a fresh "Form G" for the third time, was issued by the Applicant on 18.10.2024.

h. In the 6th CoC meeting held on 17.10.2024, the terms and conditions of the application for resolution plan as contained in the RFRP were discussed in details and evaluation matrix together were approved.

i. It is further stated that as per Form G published on 18.10.2024, one Md. Ehtesham Uddin having residential address at 168/Keshab Chandra Sen Street, Amhersht Street, Raja Ram Mohan Sarani, Kolkata – 700 009 submitted Expression of Interest.

j. In the 7th CoC Meeting held on 17.11.2024, the Applicant informed the CoC members about the sole prospective resolution applicant namely Md. Ehtesham Uddin.

k. The prospective resolution applicant submits his Resolution Plan with the Applicant on 14.12.2024 with a copy of his affidavit under Section 29A.

l. Thereafter, the Resolution Plan submitted by Md. Ehtesham Uddin was deliberated upon and was put to vote without any modification thereto in the 10th CoC Meeting held on 01.02.2025.

m. The Resolution Plan submitted by **Md. Ehtesham was approved by the CoC by 100% majority** and a copy of the same is attached with the plan approval application as Annexure-X.

n. The details of the CIRP are as provided in the Form H as under:

Sl. No.	Particulars	Description
1	Name of the CD	NKR Realty Private Limited
2	Date of Initiation of CIRP	12.03.2024
3	Date of Appointment of IRP	12.03.2024
4	Date of Publication of Public Announcement	15.03.2024
5	Date of Constitution of CoC	30.03.2024
6	Date of First Meeting of CoC	08.04.2024
7	Date of Appointment of RP	08.04.2024
8	Date of Appointment of Registered Valuers	18.04.2024
9	Date of Issue of Invitation for EoI	1st issue on 11.05.2024 2nd issue on 18.10.2024
10	Date of Final List of Eligible Prospective Resolution Applicants	11.11.2024
11	Date of Invitation of Resolution Plan	17.11.2024
12	Last Date of Submission of Resolution Plan	20.12.2024
13	Date of Approval of Resolution Plan by CoC	01.02.2025
14	Date of Filing of Resolution Plan with Adjudicating Authority	08-04-2025
15	Date of Expiry of 180 days of CIRP	08.09.2024
16	Date of Order extending the period of CIRP	14.10.2024
17	Date of Expiry of Extended Period of CIRP	13.01.2025
18	Fair Value	58,39,622
19	Liquidation value	45,42,819
20	Number of Meetings of CoC held	Eleven

6. Further, Ld. Counsel for the Applicant / RP submits that SRA has submitted an amount of Rs. 10,00,000/- with Demand Draft bearing No. 103615 dated 6th February, 2025 drawn on the State Bank of India as Performance Security.

7. **However, the Successful Resolution Applicant (SRA) namely Md. Ehtesham** under the Resolution Plan has provided for a total plan value

for the Corporate Debtor of **Rs.90,00,000/- including actual CIRP cost as approved by the CoC and the said amount will be paid in terms of Sections 30(2)(a) of the Code and Regulation 38(1) of the CIRP Regulations(Clause 5.5 of the Resolution Plan).** The amounts claimed, amount admitted and the amount provided under the Resolution Plan are as under:

(Amount in Rs. lakh)

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)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NA	NA	NA	NA
		(b) Other than (a) above:	NA	NA	NA	NA
		(i) who did not vote in favour of the resolution Plan	NA	NA	NA	NA
		(ii) who voted in favour of the resolution plan	NA	NA	NA	NA
		Total[(a) + (b)]	NA	NA	NA	NA
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-	NA	NA	NA	NA

		section (2) of section 21				
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan	NA	NA	NA	NA
		(ii) who voted in favour of the resolution plan	3,04,83,132	3,04,83,132	90,00,000	29.52%
		Total[(a) + (b)]	3,04,83,132	3,04,83,132	90,00,000	29.52%
3	Operational Creditors	(a) Related Party of Corporate Debtor	1,05,87,975	1,05,87,975	NA	NA
		(b) Other than (a) above:	NA	NA	NA	NA
		(i)Government (ii)Workmen (iii)Employees (iv) ………	NA NA NA 0 0	NA NA NA	NA NA NA 0 0	NA NA NA 0 0
		Total [(a) + (b)]	1,05,87,975	1,05,87,975	0	0
4	Other debts and dues	NA	0	0	0	0
	Grand Total		4,10,71,107	4,10,71,107	90,00,000	21.91%

8. Synopsis of mandatory Provisions / Sections / Regulations and their compliance are as under:

9. The compliance of the Resolution Plan is 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?	Clause 4 of the Resolution Plan	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?	Clause 2.5 & Appendix to the Resolution Plan. Section 29A declaration was independently verified by Liver Up Consultancy	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Affidavit dt.13.12.2024 submitted along with the Resolution Plan	Yes
Section 30(2)	Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process costs? (b) provides for the payment to the operational creditors?	(a) Clause 5.5, Page 16 of Resolution Plan (b) Clause 5.7, Page 16 & 17. Operational Creditors will not be paid any amount due to the value of the	a) Yes b) No

		property of the CD not covering the CIRP costs and dues of the Financial Creditors. The only operational creditor is a related party of the corporate debtor.	
	(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	(c) Not applicable	c) NA
	(d) provides for the management of the affairs of the corporate debtor?	(d) Clause 7, Page 41	d) Yes
	(e) provides for the implementation and supervision of the resolution plan?	(e) Clause 7.6, Page 48	e) Yes
	(f) contravenes any of the provisions of the law for the time being in force?]	(f) Clause 2.5, Page 4	f) No
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC?	a) Feasible & viable	a) Yes
	(b) has been approved by the CoC with 66% voting share?	b) Approved by CoC with 100 % assent voting	b) Yes
Section 31(1)	Whether the Resolution Plan has provisions for its	Clause 7, Page 41 of the Resolution Plan	Yes

	effective implementation plan, 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?]	Clause 5.2, Page 13 and Clause 5.7, Page 16	Operational creditors will not be paid anything. The only operational creditor is a related party of the corporate debtor.
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Clause 5, page 13 to 34 of the Resolution Plan	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?]	The Resolution Applicant declares that he had never failed in implementation in any resolution plan. Page 55 Not Applicable	No NA
Regulation 38(2)	Whether the Resolution Plan provides:	Clause 7, Page 41	Yes

	(a) the term of the plan and its implementation schedule? (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?	Clause 4.1, Page 8 & Clause 7, Page 41 of the Resolution Plan	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	The RP has filed application u/s 66 against the suspended directors	Yes
Regulation 39(4)	Provide details of performance security	Performance Security of Rs. 10.00 lakh has	Yes

9. In the course of the hearing, the Learned Counsel for the Resolution Professional 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.

10. A bare perusal of the extracts / excerpts from the Plan establishes that the **Resolution Plan has been approved with 100% voting share**. As per the CoC, the plan meets the requirement of being viable and feasible for revival of the Corporate Debtor. By and large, all the compliances have been done by the RP and the Resolution Applicant for making the plan effective after its approval.

11. On perusal of the documents on record, supported by an affidavit of the Resolution Professional, we accord our satisfaction that the Resolution Plan as approved by the CoC, is in accordance with sections 30 and 31 of the IBC and also comply with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, as enumerated supra.

12. We have perused the reliefs, waivers and concessions as sought for in the application. 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.

13. 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.

14. 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 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.

15. 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)

16. 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.

17. 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**, wherein the Hon'ble Apex 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.*"

(Emphasis Added)

18. Further, the relevant part of the ***Ghanshyam Mishra*** **judgment (supra)** in this regard is reproduced 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.*"

19. In this regard, we would also rely on the judgement of 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*."

20. 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 as per the law laid down by the Hon'ble Supreme Court in **Ghanashyam Mishra** supra. 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.

21. With respect to the waivers sought in relation to guarantors, we seek to place reliance on the judgment of **Lalit Kumar Jain v. Union of India reported in MANU/SC/0352/2021: (2021) 9 SCC 321: (2021) ibclaw.in 61 SC**, wherein the Hon'ble Supreme Court held in para 133 that sanction of a resolution plan and finality imparted to it by section 31 does not per se operate as a discharge of the guarantor's liability shall apply.

22. 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)

23. 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 and the provisions of the law as may be applicable.

24. In this context, we would note 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 juncture, 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)

25. Further, would also rely on the judgment of **Hon'ble High Court of Madras** in the matter of ***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,** wherein it was held 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)

26. Very recently, the Hon'ble Madras High Court in **M/s. Vasan Healthcare Pvt Ltd v. M/s. India Infoline Finance Ltd, Crl O.P. No. 1772 of 2024, reported in (2024) ibclaw.in 700 HC**, (hereinafter referred to as 'Vasan Healthcare Pvt. Ltd. II') has observed that:

> **"***13. As a result of the above discussion and the law laid in* ***Ajay Kumar Radheshyam Goenka*** *case, it is clear that the corporate debtor cannot be prosecuted for the prior liability after the approval of the Resolution Plan. At the same time, it is to be bear in mind* ***the protection under Section 32-A of Insolvency & Bankruptcy Code, 2016 is restricted only to the Corporate debtor and not to its Directors who were in-charge of the affairs of the Company when the offence committed*** *or the signatory of the cheque***."**

(Emphasis Added)

27. 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)**

28. **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)**

29. Hence, we would infer that if there are any personal guarantors of the corporate debtor, the personal guarantees shall be invoked and an appropriate action against them, in accordance with law, be taken.

30. 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.

31. In case of non-compliance of this order or withdrawal of Resolution Plan, the CoC shall have the right to forfeit the EMD amount already paid by the Resolution Applicant.

32. In the light of the enumerations and observations made in this Order supra, we hereby **APPROVE the Resolution Plan submitted on by Md. Ehtesham (Successful Resolution Applicant).**

33. 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.

34. 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.

35. The Moratorium imposed under section 14 shall cease to have effect from the date of this order.

36. 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.

37. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.

38. Liberty is hereby granted for moving any Application if required in connection with implementation of this Resolution Plan.

39. A copy of this Order is to be submitted in the Office of the Registrar of Companies, West Bengal.

40. It is not on record that whether the Financial Creditors have invoked Personal Guarantees or not. It is essential for the purpose of maximization for wealth of the Corporate Debtor, personal guarantees need to be invoked. Therefore, we direct the Financial Creditors to invoke Personal Guarantees, if not already done.

41. The Resolution Professional may 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 30 of the order subject to comply the direction, which the creditors should bear in mind.

42. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.

43. 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.

44. **On PUFE Application(s):** The RP has also preferred one interlocutory application being I.A. (IBC) 7/KB/2025. We would infer that approval of the Resolution Plan shall not affect the proceedings of the PUFE application and the Resolution Applicant shall continue to pursue those applications.

45. 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.

46. The Interlocutory Application being **IA (IB)/(PLAN)/12(KB)2025 along with main Company Petition vide CP(IB) No. 73(KB) /2023 shall stand disposed of** accordingly.

47. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

(Siddharth Mishra)	**(Bidisha Banerjee)**
Member (Technical)	**Member (Judicial)**

Signed on this, the 29th day of August, 2025

M. Jana (P.S.)