



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

I.A. (IB) No. 2044/KB/2023

In

Company Petition (IB) No. 1905/KB/2019

***An application under Section 30(6) and 31 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 Resolution Plan.***

IN THE MATTER OF:

State Bank of India

... Financial Creditor.

Versus

N.S. Engineering Projects Private Limited

... Corporate Debtor.

And

IN THE MATTER OF:

**Anil Anchalia, Resolution Professional of N.S. Engineering Projects
Private Limited (CIN: U29120WB2007PTC112967)**

... Applicant.

Date of Pronouncement: March 12, 2024.

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

SHRI. D. ARVIND, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For Resolution Professional: Mr. Shaunak Mitra, Adv.

Mr. Rahul Parasrampur, PCS



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
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***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The Court congregated through hybrid mode.

Table of Contents

I.A. (IB) No. 2044/KB/2023	3
<i>Prologue</i>	3
<i>Commencement of the Corporate Insolvency Resolution Process (CIR Process) of the N.S. Engineering Projects Private Limited .</i>	5
<i>Public Announcement</i>	5
<i>Constitution of the Committee of Creditors and its Meetings...</i>	6
<i>Appointment of Registered Valuers</i>	7
<i>Collation of Claims.....</i>	8
<i>Corporate Insolvency Resolution Process and Compliance.....</i>	8
<i>Evaluation and Voting.....</i>	10
<i>Compliance of the Resolution Plan submitted by the SRA with various provisions.</i>	13
<i>Details of the Resolution Plan and/or Payment Schedule</i>	22
<i>Distribution of Financial Outlay</i>	24
<i>Management And Control of Affairs of Corporate Debtor after The Approval of Resolution Plan</i>	30
<i>Reliefs And Concessions sought by Resolution Applicant</i>	30
<i>Our Inference</i>	51

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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

I.A. (IB) No. 2044/KB/2023

2. Heard the Learned Counsel, **Mr. Shaunak Mitra, Adv.** and **Mr. Rahul Parasrampuriah, PCS** appearing on behalf of the Resolution Professional of **N.S. Engineering Projects Private Limited** (Corporate Debtor) and perused the Resolution Plan which has been unanimously approved by the Committee of Creditors (for brevity **“CoC”**) of N.S. Engineering Projects Private Limited.

Prologue

3. The instant application is filed under Section 30(6) and 31 of the Insolvency and Bankruptcy Code, 2016 for brevity **“I&B Code”** read with Regulation 39(4) of IBBI (Insolvency Regulations Process of Corporate Persons) Regulations, 2016, for brevity **“IBBI Corporate Persons Regulations”** for the approval of the Resolution Plan by **Mr. Anil Anchalia** (Registration no.: IBBI/IPA-001/IP-P00049/2017-2018/10123), Resolution Professional of **N.S. Engineering Projects Private Limited**, hereinafter referred to as the “Applicant”.
4. The Learned Counsel, Mr. Shaunak Mitra, Adv. for the Resolution Professional (RP) submits that on the 8th meeting of the Committee of Creditors (CoC) of the N.S. Engineering Projects Private Limited (Corporate Debtor) convened on 08.11.2023, the Resolution Plan,

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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

submitted on 03.08.2023, annexed at Pages 109-193 to the application, as **Annexure “G”**, by the Resolution Applicant, **“M/s. Cosmic CRF Limited”** has been approved unanimously with a **100%** voting share in its favour and declared **M/s. Cosmic CRF Limited as “Successful Resolution Applicant”, for brevity “SRA”**.

5. It is submitted that there are three Resolution Plans received that were put in for e-voting at the 8th CoC meeting. The e-voting of the 8th CoC meeting started on 08.11.2023 and concluded on 05.12.2023.

6. It is contended that the applicant (RP) informed the SRA regarding the decision of the CoC on 05.12.2023, by e-mail and issued a Letter of Intent, for brevity “LoI” which was accepted by the SRA and furnished a Performance Security for an amount of Rs. One Crore in favour of the Corporate Debtor by RTGS. The Copy of the Letter of Intent dated 05.12.2023 and such was duly accepted by the Resolution Applicant vide e-mail dated 07.12.2023 annexed at Pages 103 to 106, as **Annexure “E”** to the application. The Copy of the bank statements towards payment of performance security amounting to Rs. One Crore is annexed to the application as **Annexure “F”** at Pages 107-108.

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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

***Commencement of the Corporate Insolvency Resolution Process
(CIR Process) of the N.S. Engineering Projects Private Limited***

- 7.** Vide an Order dated **31.03.2023**, passed in **Company Petition (IB) 1905/KB/2019**, this Adjudicating Authority admit the application preferred under Section 7 of the I&B Code by the State Bank of India (SBI), the Financial Creditor and put **N.S. Engineering Projects Private Limited** in the Corporate Insolvency Resolution Process, for brevity "CIR Process". The Adjudicating Authority appointed Mr. Anil Anchalia, as Interim Resolution Professional (IRP) of the Corporate Debtor for ascertaining the creditors and constituting the Committee of Creditors and for evolving a resolution plan.
- 8.** The applicant was appointed as the Resolution Professional (RP) in the First meeting of Committee of Creditors (CoC) convened on 28.04.2023, adjourned and concluded on 29.04.2023 (e-voting concluded on 08.05.2023).

Public Announcement

- 9.** Under the order dated **31.03.2023**, the public announcement in Form "A" was made on 03.04.2023, in **Business Standard** (English edition) and **Ekdin** (Bengali-Vernacular Daily edition) of Kolkata edition to call upon the creditors to submit their claims with proof. A copy of the public announcement made is annexed at Pages 26-27 to the application as Annexure "A".

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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

Constitution of the Committee of Creditors and its Meetings

10. Upon receiving the claims from various creditors, the “Committee of Creditors” (CoC) of **N.S. Engineering Projects Private Limited (Corporate Debtor)** was constituted on April 23, 2023, with three Secured Financial Creditors, i.e., the State Bank of India (60.76%), the Punjab National Bank (19.93%) and the South Indian Bank Limited (19.31%). Later, on 22.05.2023 the voting share of the Secured Financial Creditor changed due to the revision of claim admissions and updated the list of creditors was filed with this Adjudicating Authority on 26.05.2023 and uploaded on the IBBI Website. The revised voting share of the members of the CoC is as under:

SN	Secured Financial Creditors	Voting Shares (%)
1.	State Bank of India	60.64
2.	Punjab National Bank	19.99
3.	South Indian Bank	19.37
Total Voting Shares		100.00

11. The members of the CoC have rendezvoused on eight (8) occasions by convening meetings on the following dates:

S.N.	Particulars	Date of CoC Meeting
1.	1 st Meeting	28.04.2023, adjourned and concluded on 29.04.2023.
2.	2 nd Meeting	16.05.2023

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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

3.	3 rd Meeting	24.05.2023
4.	4 th Meeting	28.06.2023
5.	5 th Meeting	08.08.2023
6.	6 th Meeting	05.09.2023
7.	7 th Meeting	11.10.2023
8.	8 th Meeting	06.11.2023

Appointment of Registered Valuers

- 12.** In terms of Regulation 27 of the CIRP Regulations, the RP appointed registered valuers on 16.05.2023, to determine the fair and liquidation value of the Corporate Debtor. Further, following Regulation 35(2) of the CIRP Regulations, the RP has catered to the fair value and the liquidation value to the members of the CoC on 08.08.2023 after the receipt of the Resolution Plans on 03.08.2023.
- 13.** It is submitted that the members of the CoC had submitted an undertaking to the effect that it will maintain the confidentiality of the fair value and the liquidation value and shall not use such valuers to cause undue gain or undue loss to itself or any other person and comply with the requirements under 29(2) of the I&B Code. The average fair value and the liquidation values obtained from the appointed Registered valuers are as follows:
- a.** Fair Value: **Rs. 26,69,31,546/-.**
 - b.** Liquidation Value: **Rs. 20,90,80,511/-.**

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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

Collation of Claims

- 14.** The Learned Counsel for the RP submits the amounts claimed and admitted are summarized below:

Financial Creditors	Amount Claim Submitted	Amount Claim Admitted	Voting Shares (%)
State Bank of India	Rs. 91,61,85,251	Rs. 91,15,59,634	60.64
Punjab National Bank	Rs. 30,05,67,174	Rs. 30,05,67,174	19.99
South Indian Bank Limited	Rs. 29,12,52,612	Rs. 29,12,52,612	19.37
Total	Rs. 150,80,05,037	Rs. 150,33,79,420	100.00

Corporate Insolvency Resolution Process and Compliance

- 15.** It is submitted that in terms of the provisions of Section 25(2)(h) of the I&B Code read with regulation 36A (1) of the Insolvency and Bankruptcy Board, (Insolvency Resolution Process for Corporate Person) Regulations, 2016, the RP has published the invitation of for Expression of Interest (“EoI”) i.e., “Form G” on 30.05.2023 in **Business Standard** (English edition) and **Ekdin** (Bengali-Vernacular Daily edition) of Kolkata edition, annexed at Page 99-100 to the application as Annexure “C”. The last date for receipt of an Expression of Interest was fixed on 14.06.2023. Further, the

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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

date of issue of the provisional list of prospective resolution applicants was fixed on 24.06.2023 and the last date for submission of objections to the provisional list was fixed on 29.06.2023.

- 16.** It is contended that in response to the Invitation for Expression of Interest published in Form “G” on 30.05.2023, the RP received EoIs from four Prospective Resolution Applicants (PRAs) till the last of submission of EoI, i.e., on 14.06.2023.
- 17.** Further, it is contended that pursuant to Regulation 36B of the CIRP Regulations, the RP shared the Information Memorandum, Evaluation Matrix and the Request for Submission of Resolution Plan with the PRAs on 04.07.2023.
- 18.** Vide an Order dated 31.07.2023, an application being I.A. (IB) 1362/KB/2023 preferred by one M/s. Timely Financial Consultants Pvt. Ltd. seeking direction upon RP to accept its EoI which has been filed belated with the RP. It is recorded that as the RP does not have any objection if the delay is condoned in the submission of EoI, this Adjudicating Authority with having a view that a wider participation may result in value maximization, allows the condonation of delay in submission of the EoI and directs M/s. Timely Financial Consultants Pvt. Ltd. to file its Resolution Plan on the designated date, i.e., on 03.08.2023.

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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

- 19.** It would be submitted that in response to the EoI published on 30.05.2023 and pursuant to the Order dated 31.07.2023, three (3) Resolution Plans were received from the following Resolution Applicants (RAs) till the last date of submissions of the Plans, i.e., on 03.08.2023. The Resolution Applicants (RAs) are as follows:
- a.** Balaji Solar Systems
 - b.** Cosmic CRF Limited
 - c.** Timely Financial Consultants Pvt. Ltd.

Evaluation and Voting

- 20.** The Learned Counsel for the Applicant submits that in the 6th CoC meeting held on 05.09.2023, the modality to be adopted to enable Resolution Applicants to improve their Resolution Plans was discussed at length and after discussion, it was decided to use the Challenge Mechanism to enable Resolution Applicants to improve their Plans. Later, the observations made by the RP and his process advisor on each Resolution Plan were discussed with the RAs individually and the challenge mechanism to enable Resolution Applicants to improve the Resolution Plans was also explained to the RAs in detail.
- 21.** Further, it is submitted that in the 7th CoC Meeting held on 11.10.2023, the Applicant/Chairperson presented all three compliant Resolution Plans before the CoC and briefed the representatives of the RAs about the challenge mechanism, negotiation process notes, base price, incremental bid amount, etc. Subsequently, the challenge mechanism took place and the

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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

negotiation process continued till round no. 11, after which Cosmic CRF Limited was declared as the Highest Bidder.

- 22.** Further, it is submitted that after the challenge mechanism was over, the RP requested the RAs to submit their modified Resolution Plans after making the changes in the financials and period of the Plan as per their final offer given during the negotiation process within the stipulated date. It was also informed the RAs that if any RA fails to submit the modified Resolution Plan as per their final offer, then the plan previously submitted by them shall be considered for voting by the CoC. However, only one RA, i.e., **M/s Cosmic CRF Limited** submitted their revised Resolution Plan within the stipulated date and the other Two Resolution Applicants chose not to modify/revise their Resolution Plan
- 23.** It would be contended that in the 8th CoC Meeting held on 06.11.2023, the RP placed all three compliant Resolution Plans before the CoC and requested the CoC to evaluate the Resolution Plans in accordance with the Evaluation Matrix as per Regulation 39(3) of CIRP Regulations after considering feasibility and viability and vote on all the three Resolution Plans simultaneously.
- 24.** That, the CoC was informed that as per Regulation 39(4) of CIRP Regulations 2016, the RP shall submit the Resolution Plan approved by the CoC to the Adjudicating Authority along with Form "H", annexed at Pages 207-214, as Annexure "J" to the application, and the evidence of receipt of performance security

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

N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019

required under Regulation 36B(4A) of CIRP Regulations 2016 for its consideration and necessary approval. The CoC members evaluated all the Plans as per the evaluation matrix, reviewed the scores of all the Resolution Applicants as prepared by the RP and considered it appropriate. The feasibility and viability of all the resolution plans were deliberated in detail.

- 25.** It is submitted that all Three Resolution Plans were put for e-voting for approval under Section 30(4) of the I&B Code, 2016, which meets the requirements as prescribed in Section 30(2) of the Code. The e-voting of the 8th CoC meeting started on 08.11.2023 and concluded on 05.12.2023, wherein the Resolution Plan was submitted by **M/s. Cosmic CRF Limited** was approved unanimously with a **100%** voting share in its favour and declared as a **“Successful Resolution Applicant” (SRA)**.
- 26.** Further, it is submitted that in the 8th CoC Meeting held on 06.11.2023, the RP placed an agenda for performance-linked incentive fee for timely resolution and value maximization of the Corporate Debtor was proposed to be payable to the Resolution Professional. After due deliberation and discussion on this matter, the CoC approved a lump-sum amount of Rs. 15,00,000/- (Rupees Fifteen Lakh only) plus GST shall be payable to Mr. Anil Anchalia, Resolution Professional, as the performance-linked incentive fee for timely resolution and value maximisation of the Corporate Debtor.

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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

- 27.** It is contended that the Applicant (RP) informed the Successful Resolution Applicant about the decision of the CoC immediately on 05.12.2023 by e-mail and issued a Letter of Intent (“LOI”). The terms of approval shall form part of the Resolution Plan. Copy of the Letter of Intent duly accepted by the Resolution Applicant along with the e-mail dated 07.12.2023 is annexed as **Annexure-E** at pages 103-106 to the application.
- 28.** Further, in terms of the RFRP, the Successful Resolution Applicant transferred the fund of **Rs. One Crore** on 07.12.2023 towards Performance Security. A copy of the bank statements towards payment of performance security amounting to Rs. 1 crore and mail thereto are annexed as **Annexure - F**, at Pages 107-108 to the application.

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

- 29.** 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 Page 207-214 to the Application as Annexure “J”.
- 30.** It is submitted that contended that the 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.



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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

- 31.** Further is it submitted that the 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.
- 32.** It is further submitted that the Resolution Applicant has submitted an affidavit stating its eligibility in terms of Section 30(1) of the I&B Code, 2016.
- 33.** Further, it is submitted that details of various compliances as envisaged within the I&B Code and the CIRP Regulations to which a Resolution Plan has been adhered to, which is reproduced.
- 34.** 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 **M/s. Cosmic CRF Limited** provides the compliance as under:

Mandatory section and regulations.	Requirement concerning Resolution Plan.	Compliance with the Relevant Clause and Page nos. of the Plan.
<i>Submission of Resolution Plan in terms of the provisions of the I&B Code, 2016.</i>		

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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

Sec 25(2)(h)	Whether the Resolution Applicant meet the criteria approved by the CoC having regard to the complexity and scale of operations of business of the Corporate Debtor?	Yes.
Sec 29A	Whether the Resolution Applicant is eligible to submit the resolution plan as per the final list of Resolution Professionals or Order, if any, of the Adjudicating Authority?	Clause B1 (1) at Pages 35-36 of the Plan.
Sec 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Yes, mentioned in Form "H".
Sec 30(2)	Whether the Resolution plan: <ul style="list-style-type: none"> a. Provides of 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 	<p>Clause B1 (3) at page 36 of the Plan.</p> <p>Clause B1(4) at page 37 of the Plan.</p> <p>Clause B1 (5) at pages 37 to</p>



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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

	<p>did not vote in favour of the resolution plan.</p> <p>d. Provides for the management of the affairs of the corporate debtor.</p> <p>e. Provides for the implementation and supervision of the resolution plan.</p> <p>f. contravenes any of the provisions of the law for the time being in force.</p>	<p>38 of the Plan.</p> <p>Clause A4 (IV) at pages 31 to 33 of the Plan.</p> <p>Clause A4 (I to III) at pg. 24 to 30 of the Plan.</p> <p>Clause B1 (10) (f) at page 38 of the Plan.</p>
Section 30(4)	<p>Whether the Resolution Plan</p> <p>a. is feasible and viable, according to the CoC?</p>	<p>Yes,</p> <p>Page 3 of the 8th CoC meeting. (Item No. 5). Voting report</p>



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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

	b. Has been approved by the CoC with 66% voting share?	annexed at Pages 94-98 to the application. Yes, Page 4 of the 8 th CoC Meeting. The voting report is annexed at Pages 94-98 to the application.
Section 31 (1)	Whether the Resolution plan has provisions for its effective implementation plan, according to the CoC.	Clause A4 at pages 24-34 of the Plan.
<i>Mandatory contents of the Resolution Plan in terms of the Regulations of CIRP Regulations, 2016.</i>		
Regulation 38(1)	Whether the amount due to the operational creditors under the resolution plan has been given priority.	Clause A4 (2.1.3.) at pages 24 to 25 of the Plan.



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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

Regulation 38 (1A)	Whether the resolution plan includes a statement as to how it has dealt with the interest of all stakeholders.	Clause 6 at page 38 of the Plan.
Regulation 38 (1B)	<p>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.</p> <p>ii. If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation.</p>	Clause 2 at Page 36 of the plan.
Regulation 38(2)	Whether the Resolution Plan provides: <p>a. the term of the plan and its implementation schedule?</p>	Clause II at Page 29 of the Plan.



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

N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019

	<p>b. for the management and control of the business of the corporate debtor during its term?</p> <p>c. adequate means for supervising its implementation?</p> <p>d. Provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed.</p>	<p>Clause IV at Pages 31 to 33 of the Plan.</p> <p>Clause 9 at Page 38 of the Plan.</p> <p>Clause 9 at Page 38 of the Plan.</p> <p>It is contended that <u>the Secured Financial Creditors</u> may continue to pursue pending proceedings filed under Sections 43,</p>
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**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

		<p>45, 47, 49, 50 or 66 of the I&B Code</p> <p>after the approval of the Resolution Plan at their own cost and the proceeds of recovery under those proceedings, if any, will accrue to such Financial Creditors.</p>
Regulation 38 (3)	<p>Whether the resolution plan demonstrates that:</p> <p>a. It addresses the cause of default.</p>	<p>Clause B1 (10) (a) at page 38 of the Plan.</p>



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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

	<p>b. It is feasible and viable.</p> <p>c. It has provisions for its effective implementation.</p> <p>d. It has provisions for approvals required and the timeline for the same.</p> <p>e. The resolution applicant has the capability to implement the resolution plan?</p>	<p>Clause B1 (10) (b) at page 38 of the Plan.</p> <p>Clause B1 (10) (c) at page 38 of the Plan.</p> <p>Clause B1 (10) (d) at page 38 of the Plan.</p> <p>Clause B1 (10) (e) at page 38 of the Plan.</p>
Regulation 39 (2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Yes.
Regulations 39 (4)	Provide details of performance security received, as referred to in	Performance security



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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

	sub-regulation (4A) of regulation 36B.	worth Rs. One crore provided by way of transfer of the amount to the CIR Process account of the Corporate Debtor (Corresponding pages of the bank statement enclosed)
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Details of the Resolution Plan and/or Payment Schedule

35. It is submitted that the outstanding debts of the Corporate Debtor are to be settled in the proportionate basis payment against the consideration payable for assets to be acquired. The details of outstanding debts of the Corporate Debtor and claims provisionally admitted by the Resolution Professional are listed below with the proposed amount to be paid.

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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

36. The Applicant submits that the summary proposal of the Resolution Plan submitted by the SRA is attached hereunder in a tabular form:

Particulars	Dues Considered /Admitted (Rs.)	The amount provided under the Plan (Rs.)	% Age of admitted debt
CIRP Cost	Rs. 90,00,000/-	Rs. 90,00,000/-	100.00%
Operational Creditors (Govt. Dues)	Rs. 4,10,27,965/-	Rs. 9,00,000/-	2.19%
Operational Creditors (Other than Workmen, Employees and Govt. Dues)	Rs. 9,18,868/-	Rs. 20,156/-	2.19%
Operation Creditors (Workmen & Employees)	NIL	NIL	
Other Creditors (As per Regulation 9A)	NIL	NIL	



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

N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019

Unsecured financial creditor (other than financial creditors belonging to any class of creditors)	NIL	NIL	
Secured financial creditor (other than financial creditors belonging to any class of creditors)	Rs. 150,33,79,420/-	Rs. 27,76,80,844/-	18.47%
Total	Rs. 155,43,26,253/-	Rs. 28,76,01,000/-	

37. As per the Form “H” annexed to the application at Page 209, the allocation of the amount as provided for all the stakeholders under the Resolution Plan submitted by the SRA on 03.08.2023 in details are as under:

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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

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	NIL	NIL	NIL	NIL
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	NIL	NIL	NIL	NIL
		(ii) who voted in favour of the resolution plan	Rs. 15080.0 5 Lakh	Rs. 15033.7 9 Lakh	Rs. 2776.8 1 Lakh	18.47
		Total[(a) + (b)]	Rs. 15080.0 5 Lakh	Rs. 15033.7 9 Lakh	Rs. 2776.8 1 Lakh	18.47
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-	NIL	NIL	NIL	NIL



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

N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019

		section (2) of section 21				
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	NIL	NIL	NIL	NIL
		(ii) who voted in favour of the resolution plan	NIL	NIL	NIL	NIL
		Total[(a) + (b)]	NIL	NIL	NIL	NIL
3	Operational Creditors	(a) Related Party of Corporate Debtor	NIL	NIL	NIL	NIL
		(b) Other than (a) above:				
		(i)Government	Rs. 410.99 Lakh	Rs. 410.28 Lakh	Rs. 9.00 Lakh	2.19
		(ii)Workmen	NIL	NIL	NIL	NIL
		(iii)Employees	NIL	NIL	NIL	NIL

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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

		(iv) Suppliers of goods and services	Rs. 73.81 Lakh	Rs. 9.19 Lakh	Rs. 0.20 Lakh	2.19
		Total[(a) + (b)]	Rs. 484.80 Lakh	Rs. 419.47 Lakh	Rs. 9.20 Lakh	2.19
4	Other debts and dues		NIL	NIL	NIL	NIL
Grand Total			Rs. 15564.85 Lakh	Rs. 15453.26 Lakh	Rs. 2786.01 Lakh	18.03

Distribution of Financial Outlay

38. Para 15 of Clause B2 at Pages 42-43 of the Resolution Plan provides the distribution of financial outlay, as under:

Particulars	Within 30 days	Within 90 days	Total (Rs.)
CIRP Cost	Rs. 90,00,000/-	-	Rs. 90,00,000/-
Operation Creditors (Government Dues)	Rs. 9,00,000/-	-	Rs. 9,00,000/-

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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

Operation Creditors including Statutory dues (other than workmen, Employees and Govt Dues)	Rs. 20,156/-	-	Rs. 20,156/-
Operation Creditors (Workmen & Employees)	-	-	-
Other Creditors (As per Regulation 9A)	-	-	-
Unsecured financial creditor (other than financial creditors belonging to any class of creditors)	-	-	-
Secured financial creditor (other than financial	Rs. 4,00,79,844/-	Rs. 23,76,01,000/-	Rs. 27,76,80,844/-

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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

creditors belonging to any class of creditors)			
Sub-Total	Rs. 5,00,00,000/-	Rs. 23,76,01,000/-	Rs. 28,76,01,000/-
Business Improvement (for Refurbishment/ Renovation)	-	Rs. 2,00,00,000/-	Rs. 2,00,00,000/-
Grand Total	Rs. 5,00,00,000/-	Rs. 25,76,01,000/-	Rs. 30,76,01,000/-
Funded By:			
Equity	Rs. 5,00,00,000/-	-	Rs. 5,00,00,000/-
Bank Loan	0	Rs. 25,00,00,000/-	Rs. 25,00,00,000/-
Own Contribution of RA and/or its SPV/Affiliates (in the form of Unsecured Loans /Equity/ Convertible Debentures/ any other instrument	-	Rs. 76,01,000/-	Rs. 76,01,000/-

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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

at the sole discretion of RA)			
Total	Rs. 5,00,00,000/-	Rs. 25,76,01,000/-	Rs. 30,76,01,000/-

***Management And Control of Affairs of Corporate Debtor after
The Approval of Resolution Plan***

39. Clause A4 at Pages 24-34 of the Resolution Plan deals with the implementation and supervision of the Resolution Plan. Further Clause IV at Page 31-34 of the Resolution Plan deals with the management and control of affairs of the Corporate Debtor after approval of the Resolution Plan.

Reliefs And Concessions sought by Resolution Applicant

40. The Resolution Applicant, **M/s. Cosmic CRF Limited**, pray for the following reliefs and concessions from the Adjudicating Authority:

SN	Clause	Relief and Concessions
i.	a.	All utility suppliers, including but not limited to WBSEDCL, shall commit supplies on and from the Effective Date. No utility supplier, including but not limited to WBSEDCL, should withhold / delay supply of utility on the ground of non-payment of dues prior to the Effective Date. The



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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

		Resolution Plan, once approved, will be binding on all stakeholders and all the utility suppliers, including WBSEDCL, should consider approval of this Resolution Plan as direction of Adjudicating Authority to supply respective utilities, including Power.
ii.	b.	Waiver of all transaction costs related to implementation of the Resolution Plan Including but not limited to any incidence of Stamp Duty, ROC fee, Income-tax, any statutory levy, renewal charges, etc. The resolution plan envisages increase in authorized share capital for implementation, the ROC fees towards the same shall be specifically waived.
iii.	c.	The Corporate Debtor and the Resolution Applicant (as its shareholder) shall be entitled to modify contracts which: i) are entered into with parties prior to the Insolvency Commencement Date, and ii) Impose onerous conditions hindering the resolution process / turnaround process, day-to-day operations for the Corporate Debtor.
iv.	d.	N. S. Engineering Projects Private Limited and the Resolution Applicant shall be granted an exemption from all taxes, duties, levies, fees, transfer charges, transfer premiums, and



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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

		surcharges that arise from or relate to implementation of the Resolution Plan.
v.	e.	Resolution Applicant and the Corporate Debtor after the successful acquisition by the Resolution Applicant shall not be responsible for any defaults for the period prior to effective date any nature under any law as may be applicable from time to time Including but not limited to ED/ RBI/ CBI/ CVC/ PMLA/ FEMA / FERA, customs, excise, Income Tax, VAT, GST, ST/CST/ Octroi, Property Tax/Provident Fund/Gratuity and/or any other law/enforcement agencies even if not mentioned here.
vi.	f.	This unit of the CD (NSEPPL) to be treated as new enterprise eligible under the West Bengal Incentive Scheme – Bangla Shree for MSMEs and/or any other such scheme of the State Govt. Accordingly NSEPPL should be eligible for all the benefits extended by State Government like Capital Subsidy, Interest Subsidy, Power Subsidy, SGST, Waiver of Electricity Duty, PF and ESI benefits and/ or any other benefits
vii.	g.	The unit of the CD (NSEPPL) is to be treated as New Enterprise and all the benefits accrued to a new enterprise in terms of the various Central



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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

		Government Policies including but not limited to Direct and Indirect Taxation policy etc.
viii.	h.	The Land and property shall be deemed to be exempted from applicability of any ceiling limit under any Applicable Law and all ceiling limits shall be waived and all necessary permissions, consents, approvals, no objections, applications and compliances required under any Applicable Law for purchasing, owning, holding, using in any manner and transferring the same without any restriction shall be deemed to have been granted and/or complied with by all concerned Persons.
ix.	i.	All statutory and other liabilities and dues relating to the property including but not limited to entire Lease Rent, land revenue, khazna, municipal taxes, mutation fees, conversion fees, etc. whether outstanding or demanded till date or not, or whether recorded in the books of accounts or not, Including all interest, penalties, fines, etc. as also all other taxes, levies, charges, outgoings, etc. by whatsoever name called and payable to any Government Authority or any other Person under any Applicable Law for the time be waived and/or the liability in respect of the same be fully extinguished upon approval of the Plan by



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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

		Adjudicating Authority except to the extent of any related claim admitted in this CIRP and amount provided in the resolution plan against the same.
x.	j.	All the original Deeds including link deeds/mother deeds and related documents of NSEPPL whether mortgaged or unencumbered are to be handed over by Financial Creditors to NSEPPL on payment of settlement amount as contemplated in this Plan. In case if any deeds are with any other individual or entity other than the Financial Creditors, then RP should ensure that the same is peacefully handed over to NSEPPL after the closing date.
xi.	k.	<p>The Resolution Applicant seeks the following reliefs and concessions from NCLT and from the other relevant government authorities:</p> <p style="padding-left: 40px;">A. In terms of the third provision to Sec. 79 of the Income Tax Act, 1961, the resolution applicant Is not required to comply with the provisions of Sec. 79 for carry forward and set-off of loss of the corporate debtors. Reasonable opportunity of being heard may be provided by the Jurisdictional Principal Commissioner or Commissioner of</p>



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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

		<p>Income Tax as required under the said provisions of the IT Act.</p> <p>B. Allow setting-off of losses and unabsorbed depreciation for the purpose of computation of book profit as permitted under section 115JB of Income Tax Act, 1961 and any amendment thereto from time to time.</p> <p>C. Exemption from any tax liability arising due to implementation of the Resolution Plan both in computing total income under the normal provisions of the IT Act and in the computation of book profit u/s 115JB of the IT Act.</p> <p>D. Allow filing return of income and/or revised return of income, for the Assessment years prior to the Effective Date,</p> <ul style="list-style-type: none">i. if the said returns have not been filed within the due date of filing the said returns; orii. have been filed based on financial statements prepared by the Corporate Debtor in violation of the provisions of Sec. 129 and Sec. 134 of the Companies Act, 2013.
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**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019

		<p>E. Allow the benefit of carry forward of losses quantified in the returns and/or revised returns filed as per D above.</p> <p>F. The brought forward Business Loss as on the Effective Date shall be deemed to be the Business Loss for the previous year in which the Effective Date falls.</p>
xii.	1.	Waiver of any income-tax and Minimum Alternate Tax (MAT) liability or consequences (including interest, fine, penalty, etc.) on NSEPPL, Resolution Applicant and its shareholders on account of various steps as proposed in the Resolution Plan, including but not limited to liabilities if any under Section 41 (1), Section 56, Section 43, Section 43B, Section 28, Section 115JB and Section 79 of the Income-tax Act, 1961, including, without limitation waiver of MAT and income tax implication arising due to write back/write off of liabilities in the books of accounts of NSEPPL without any impact on brought forward tax and book loss/ depreciation, pursuant to this Resolution Plan.
xiii.	m.	Any requirements to obtain waivers from any Tax Authorities including in terms of section 79



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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

		of the IT Act Is deemed to have granted upon approval of this Resolution Plan on the Effective Date.
xiv.	n.	Any approvals that may be required from Governmental Authorities (including tax authorities) in connection with the implementation of the Resolution Plan including on account of change in ownership/control of NSEPPL shall be deemed to have been granted on the Effective Date.
xv.	o.	The Corporate Debtor & Resolution Applicant be allowed to re-build the Human Capital as per the requirement without any obligations.
xvi.	p.	All Government Authorities to waive the Non-Compliance of the Corporate Debtor prior to the Effective Date.
xvii.	q.	Post-acquisition of CD, the new management shall require 12 months for appointment of Auditors, Company Secretary, and other Statutory Compliances. The RA should therefore be allowed 12 months' time from the effective date to comply with all statutory approval and requirements Including but not limited to filing of Balance Sheet, without any charges, penalties, Interest, etc.



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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

xviii.	r.	<p>Since the Resolution Applicant has been provided with limited information in relation to the Business Permits and their current status, it is probable that certain of the Business Permits / Statutory Approvals of the Corporate Debtor have lapsed, expired, suspended, cancelled, revoked or terminated or the Corporate Debtor has Non-Compliances In relation thereto. Accordingly, all Government Authorities (i) to provide reasonable time period of at least 12 months after the Effective Date in Order to enable Resolution Applicant to assess the status of these Business Permits/ Statutory Approvals (Including NOC from Pollution Control Board) and ensure that the Corporate Debtor is compliant with the terms of such Business Permits / Statutory Approvals and Applicable Law (ii) should not initiate any Investigations, actions or proceedings in relation to such Non-Compliances,(iii) should co-operate with the CD to renew / obtain for such permits /approvals, (iv) permit the Resolution Applicant to continue to operate the business of the Corporate Debtor pending such permits/ approvals at least till a period of 12 months from the Effective Date & (v) not to charge any</p>
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**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

		charges, penalty, Interest, etc. till the time such Permits /Approvals are received.
xix.	s.	It is assumed from the Effective Date; all accounts of the Corporate Debtor shall stand regularized and their Asset Classification Is "Standard" for the purpose of Applicable RBI laws.
xx.	t.	On Discharge of all the liabilities to the secured financial creditors, all the charges registered with ROC to be satisfied.
xxi.	u.	(a) The Central Board of Direct Taxes to- i) not to take any other actions with respect to the transactions contemplated under this Plan under Section 281 of the TT Act ii) exempt the Resolution Applicant from any liability pursuant to Sections 56 and 170 of the IT Act and iii) not levy any Tax (including minimum alternate tax) arising as a result of giving effect to, or otherwise in relation to, the Plan, in the hands of Corporate Debtor or the Resolution Applicant. The Central Board of Excise and Customs to not void or take any other actions with respect to the transactions contemplated under this Plan (including the



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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

		<p>Merger and the sale of Collateral) under Section 81 of the Central Goods and Services Tax Act, 2017 and not to impose any successor liability on the Resolution Applicant and the Corporate Debtor.</p> <p>v. Neither the Resolution Applicant nor NSEPPL nor their respective directors, officers and employees appointed as on or after the effective date shall be liable for any violations, liabilities, penalties, interests on statutory payments and/ or fines with respect to or pursuant to any Order of any Governmental Authority or on account of non-compliance of Applicable Laws by NSEPPL or due to NSEPPL not having in place requisite approvals and licenses to undertake its business as per Applicable Law.</p>
xxii.	w.	<p>All Government Authorities (including the RBI) to grant any relief, concession or dispensation as may be required for implementation of the transactions contemplated under the Plan in accordance with its term and conditions;</p>

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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

xxiii.	x.	The Jurisdictional Registrar of Companies, West Bengal to take on record the necessary status of the corporate debtor not in CIRP, upon approval of the Plan by NCLT, without any further compliances.
xxiv.	y.	All Designated Authorized Dealer Category I Banks to grant any approval or dispensation as maybe required for actions contemplated under the Plan in accordance with its terms and conditions
xxv.	z.	All creditors of the Corporate Debtor to withdraw all legal proceedings commenced against the Corporate Debtor in relation to Claims, Including all criminal proceedings. Proceedings under Section 138 of the Negotiable Instruments Act, 1881 and proceeding under SARFAESI and RDDBFI on the corporate debtor, within 30 (thirty) days of the Closing Date.
xxvi.	aa.	(b) All enquiries, investigations, notices, causes of action, suits, claims, liabilities, demand, obligations, penalties, disputes, litigations, arbitrations or other judicial, regulatory or administrative proceedings against, the CD or the affairs of the CD, pending or threatened, present or future,



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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

		<p>(including without limitation, any investigation by Central Bureau of Investigation or the Serious Fraud Investigation Office), whether or not on account of acts or omissions in breach of applicable law (including but not limited to environmental laws, foreign exchange laws and regulations, labour and employment laws, and laws relating to anti-corruption and prevention of money laundering) and including but not limited to the proceedings specifically set out in point no vii of Section 3 of Part A of this Plan (Details of Pending Litigation)in relation to any period prior to the Effective Date shall stand extinguished and accordingly, all such proceedings, inquires, investigations, etc. shall be disposed of and all liabilities or obligations in relation thereto, whether or not set out in the Provisional Balance Sheet, the balance sheet of the CD or the profit and loss account statements of the CD or the List of Creditors, shall, in accordance with Regulation 37 of the CIRP Regulations, be deemed to have been written off in full and permanently extinguished by virtue of the Order of NCLT approving this plan and the Resolution Applicant, shall at no</p>
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**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

		<p>point of time be, directly or indirectly, held responsible or liable in relation thereto. By virtue of the Order of the NCLT approving this Resolution Plan, any new inquiries, investigations, notices, suits, claims, disputes, litigations, arbitration or other judicial, regulatory or administrative proceedings not be initiated or admitted if these relate to any period prior to the Effective Date or on account of the acquisition of control by Resolution Applicant over the CD pursuant to this Resolution Plan, against the CD or any of its employees or directors who are appointed or who remain in employment or directorship after the Effective Date or pursuant to the implementation of the Resolution Plan.</p>
xxvii.	bb.	<p>(c) It is clarified that the existing promoters, shareholders, managers, directors, officers or such other person in charge of the affairs and management of the CD (including any person who was an 'officer in default' or 'occupier') prior to the Effective Date shall continue to be responsible and liable for all the liabilities, claims, demand, obligations, penalties etc.</p>



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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

		<p>arising out of any (i) proceedings, inquiries, investigations, Orders, show causes, notices, suits, litigation etc. (including those arising out of any Orders passed by the NCLT pursuant to Sections 43, 45, 49, 50, 66, 68, 70, 71, 72, 73, 74 of the IBC (including without limitation, any investigation by Central Bureau of Investigation or the Serious Fraud Investigation Office).) or any acts or omissions in breach of applicable law (including but not limited to environmental laws, foreign exchange laws and regulations, labour and employment laws, and laws relating to anti-corruption and prevention of money laundering or diversion of funds) which occurred prior to the Effective Date, whether civil or criminal, pending before any authority, court, tribunal or any other forum prior to the effective Date or (ii) that may arise out of any proceedings, inquiries investigations, Orders, show cause, notices, suits, litigation etc. (including any Orders passed by the NCLT pursuant to Sections 43, 45, 49, 50, 66, 68, 70, 71, 72, 73, 74 of the IBC), whether civil or criminal, that may be initiated or instituted post the approval of the Resolution Plan by the NCLT on account of</p>
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**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

		<p>any transactions entered into, or decisions or actions taken by, such existing promoters, shareholders, managers, directors, officers, employees, workmen or other personnel of the CD, and the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.</p> <p>The financial creditors may continue to pursue pending proceedings filed under Section 43, 45, 47, 49, 50 or 66 of the IB Code, if any, after the approval of the Resolution Plan at their own cost and the proceeds of recovery under those proceedings, if any, will accrue to such Financial Creditors.</p>
xxviii.	cc.	<p>(d) There might be certain litigations/proceeding against the CD regarding (a) the CD may have conducted its business in breach of certain applicable laws; and (b) an adverse outcome of such proceedings would interrupt the business of the CD as a going concern. Accordingly, all such proceedings should be extinguished / dropped immediately on approval of the Plan by the Adjudicating Authority.</p>



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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

xxix.	dd.	All domain names, servers, being currently used by the CD to the extent not owned shall continue to be available for use by the CD for a period of 3 months for the Effective Date.
xxx.	ee.	There is no adverse effect on the rights of the CD over its immovable properties.
xxxi.	ff.	Upon approval of this Resolution Plan by NCLT, the rights of any person (whether exercisable now or in the future), either directly or indirectly, and whether contingent or not, to call for the allotment, issue, sale or transfer of shares of the CD or whether through any exchange or otherwise, shall stand unconditionally and irrevocably extinguished. All employee stock options shall stand extinguished.
xxxii.	gg.	All concerned state revenue or stamp authorities to waive penalties for non-registration and inadequate or non-stamping of documents executed by the Corporate Debtor.



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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

xxxiii.	hh.	If Corporate Debtor applies for credit rating / grading with any agency/bank/financial Institutions etc., past performance should not be considered for fiscal fillip. The New Promoters or New Promoters Group and its controlled company/concerns who are proposed to be the shareholders of corporate debtor has got certain synergy with corporate debtors as has been mentioned in Resolution Plan. Therefore, it is possible that some of the products of Resolution applicant or its associate concern may be common with the products of the corporate debtor. Therefore, to attain the financial stability of the corporate debtor, exemption will be available to the Resolution Applicant and its members/associates as well as Corporate Debtor with regard to provisions of the conflict of Interest due to common shareholding of the corporate debtor and Resolution Applicant including its associates from all the customers-- Including but not limited to Government/ Semi-Government / PSUs/ Non-Government/ Research & Development Centers / Subsidiaries / Division/ Zones/ Workshop/ Sheds or any other entitles not mentioned here.



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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

xxxiv.	ii.	(All Departments and Authorities, including but not limited to Government/ Semi-Government /PSUs/ Non-Government/ Research & Development Centers / Subsidiaries / Division/ Zones/ Workshop/ Sheds or any other entities not mentioned here, shall allow the Corporate Debtor to submit their offers/ Proposal/ tenders etc., for the period of 3 (three) years from the date of NCLT Order, without insisting for the details on past revenue, profitability records, net worth and supply and performance records or any other credentials, as Resolution Applicant will be starting the business for the Products of the Corporate Debtor afresh as there had been discontinuity in the business for past few years.
xxxv.	jj.	All Government Authorities to waive the Non-Compliance of the Corporate Debtor prior to the effective date.
xxxvi.	kk.	Resolution Applicant shall not be liable and will be kept indemnified financially or otherwise against any of the negative impact/ observation/ findings of Forensic Audit and/or transaction audit Further neither the Corporate



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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

		Debtor nor any member of the New Promoters or New Promoters group shall be made party to any of the legal cases arising out of such forensic audit.
xxxvii.	ll.	The restructuring of Capital of CD may require increase in the Authorized Capital of CD and consequently amendment of constitutional documents i.e., Memorandum & Articles of Association of the CD. As per regulation 37 of CIRP regulation the resolution plan may provide for amendment of constitutional documents of CD. Accordingly, as an integral part of the Resolution Plan, the authorized share capital of the CD shall be Increased (If required) to allow such restructuring, without any further act, Instrument or deed by CD and without any liability for payment of any fees or duty towards increment of such Authorized Capital.
xxxviii.	mm	The Resolution Applicant shall have the right without obtaining any approval of NCLT under this Plan for changing the name of the Corporate Debtor as suitable to the RA after implementation of the Resolution Plan.

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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

xxxix.	nn	The RA shall be allowed to take new GST Registration number from the concerned GST Authority to successfully run the business after takeover of the CD.
xl.	oo	Resolution Applicant shall be completely free for Restructuring /Re-alignment/Re location/merger/demerger/amalgamation of business operations/ Units of the Corporate Debtors
xli.	pp	All legal suits, proceedings, certificate proceedings and/or quasi-legal proceedings that have been initiated against the Corporate Debtor up to the Effective Date (whether filed prior to CIRP commencement date or filed during CIRP Period shall be deemed to have been quashed upon approval of the Resolution Plan by the NCLT. All legal proceedings for recovery of any debt from the Corporate Debtor or enforcement of any existing security interest against the Corporate Debtor will be quashed.
	qq	New inquiries, investigations, notices, suits, claims, disputes, litigation, arbitration or other Judicial, regulatory or administrative proceedings will not be Initiated or admitted disclosed or un-disclosed and/or in India or

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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

		anywhere outside India if these relate to any period prior to the Effective Date.
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- 41.** At hearing the Learned Counsel, Mr. Shaunak Mitra, Adv. appearing on behalf of the Resolution Professional of **N.S. Engineering Projects Private Limited** (Corporate Debtor) would submit that the Resolution Plan submitted by **M/s. Cosmic CRF Limited (Successful Resolution Applicant)** has been approved by the CoC by **100%** voting share complies with all the provisions of the Code and the Regulations and does not contravene any provisions of law for the time being in force.

Our Inference

- 42.** Upon hearing, the submission made by the Learned Counsel, Mr. Shaunak Mitra, Adv. appearing on behalf of the Resolution Professional of **N.S. Engineering Projects Private Limited**, Corporate Debtor herein and perusing the record and/or documents placed before this Adjudicating Authority, we would find that the **Resolution Plan dated August 03, 2023**, submitted by **M/s. Cosmic CRF Limited** has been approved by the CoC of the Corporate Debtor by 100% voting share in its 8th meeting convened on 06.11.2023 (e-voting started on 08.11.2023 and concluded on 05.12.2023). the copy of the Revised Resolution Plan dated 03.08.2023, is annexed at Pages 109-193 as Annexure “G” to the Application, and subsequently **“M/s. Cosmic CRF Limited”** is declared as the **“Successful Resolution Applicant”**.

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

N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019

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.

- 43.** In the course of the hearing, Ld. Counsel for the applicant would further 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.
- 44.** Upon perusal of the documents on record and/or documents, we are satisfied that the **Resolution Plan dated August 03, 2023**, submitted by **M/s. Cosmic CRF Limited, 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.
- 45.** 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.

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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

- 46.** 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.
- 47.** 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

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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

the same keeping in mind the objectives of the Code, which is essentially the resolving the insolvency of the Corporate Debtor.

- 48.** 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

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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

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

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

N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019

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)

49. 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.
50. 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*

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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

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)**

- 51.** 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.’

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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

“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*

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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

hereinabove. For these reasons, NCLAT judgment must also be set aside on this count.”

(Emphasis Added)

- 52.** 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)

- 53.** 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 could be continued.

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

N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019

54. 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)

55. 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)

56. 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.

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

N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019

57. 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 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

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

N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019

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."

- 58.** 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***

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

N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019

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

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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

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***

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

N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019

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)

- 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.
- 60.** 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.
- 61.** In so far as the approval of the Resolution Plan submitted by **M/s. Cosmic CRF Limited on August 03, 2023**, 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. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan "as approved" by the requisite percent of voting share of

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

N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019

financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. 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.** The Board referred to is established Under Section 188 of the I & B Code. The powers and functions of the Board have been delineated in Section 196 of the I & B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan Under Section 30(4) of the I & B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including

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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

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)

62. 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. If, within its limited jurisdiction, the Adjudicating Authority finds any shortcoming in the resolution plan vis-à-vis the specified

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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

parameters, it would only send the resolution plan back to the Committee of Creditors, for re-submission after satisfying the parameters delineated by the Code and expositied by this Court.”

(Emphasis Added)

63. 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:

“37. Regulation 18 to 26 of the 2016 Regulations deal with meetings to be conducted by the Committee of Creditors. The quorum at the meeting is fixed by Regulation 22, and the conduct of the meeting is to take place as under Regulation 24. Voting takes place under Regulation 25 and 26. Most importantly, Regulation 39(3) states:

39. Approval of resolution plan

xxx xxx xxx

(3) The committee shall evaluate the resolution plans received under sub-regulation (1) strictly as per the evaluation matrix to identify the best resolution plan and may approve it with such modifications as it deems fit.

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

N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019

Provided that the committee may approve any resolution plan with such modifications as it deems fit.

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)

64. In the case at hand, we would note that the **Resolution Plan** submitted by the Resolution Applicant, **M/s. Cosmic CRF Limited** on **August 03, 2023**, has been approved by the Committee of Creditors of the Corporate Debtor by **100%** voting share in its 8th meeting convened on 06.11.2023, through e-voting which started on 08.11.2023 and concluded on 05.12.2023. Accordingly, the Resolution Plan of **M/s. Cosmic CRF Limited** defeats all other plans submitted before the applicant and **M/s. Cosmic CRF Limited** 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.



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

N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019

- 65.** Subject to the observations made in this Order, the **Resolution Plan dated August 03, 2023**, submitted by **M/s. Cosmic CRF Limited** is hereby **APPROVED** and **FINALLY SANCTIONED** by this Adjudicating Authority.
- 66.** 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.
- 67.** The Moratorium imposed under section 14 of the Code by virtue of the order dated March 31, 2023, shall cease to have effect from the date of this order.
- 68.** 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.
- 69.** Liberty is hereby granted for moving any application, if required, in connection with the successful implementation of this Resolution Plan.

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

N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019

- 70.** A copy of this Order is to be submitted to the Registrar of Companies, West Bengal by the Resolution Professional.
- 71.** The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.
- 72.** 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.
- 73.** 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.
- 74.** In terms of the view above, the interlocutory application being **I.A. (IB) No. 2044/KB/2023** along with the main company petition being **C.P. (IB) No. 1905/KB/2019** shall stand **disposed of** accordingly.
- 75.** 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.



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

***N.S. Engineering Projects Private Limited
I.A. (IB) No. 2044/KB/2023 in C.P. (IB) No. 1905/KB/2019***

76. File be consigned to the record.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This Order is signed on the 12th Day of March, 2024.

Bose, R. K. [LRA]
Tiwari, V. [LRA]