



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

**I.A. (IB) (Plan) No. 7/KB/2025**

**And**

**I.A. (IB) No. 72/KB/2023**

**In**

**Company Petition (IB) No. 393/KB/2021**

**IN THE MATTER OF:**  
**STATE BANK OF INDIA**

**... Financial Creditor.**

***Versus***

**REFORM FERRO CAST LIMITED**

**... Corporate Debtor.**

**And**

**I.A. (IB) (Plan) No. 7/KB/2025**

***An Application under Section 30(6) read with Section 31 of the Insolvency and Bankruptcy Code, 2016, and under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution process for Corporate Persons) Regulations, 2016, for the approval of the Resolution Plan.***

**IN THE MATTER OF:**

**ARUN KUMAR GUPTA,**  
Resolution Professional of Reform  
Ferro Cast Ltd. (Corporate  
Debtor), having Registration No.  
IBBI/IPA-001/IP-P00013/2016-  
2017/10037, having office at P-  
15, Bentinck Street, 3<sup>rd</sup> Floor,  
Kolkata – 700 001.

**... Applicant/ Resolution Professional (RP)**

**And**

**I.A. (IB) No. 72/KB/2023**

***An application under Section 19(2) of the Insolvency and Bankruptcy Code, 2016, read with Regulation 30 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution process for Corporate Persons) Regulations, 2016.***



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**In**

**Company Petition (IB) No. 393/KB/2021**

**IN THE MATTER OF:**

**ARUN KUMAR GUPTA,**  
Resolution Professional of Reform  
Ferro Cast Ltd. (Corporate  
Debtor), having Registration No.  
IBBI/IPA-001/IP-P00013/2016-  
2017/10037, having office at P-  
15, Bentinck Street, 3<sup>rd</sup> Floor,  
Kolkata – 700 001.

**... Applicant/ Resolution Professional (RP)**

***Versus***

1. **Basant Saha**, residing at  
264, Vivekanand Road,  
Kolkata 700 006, West  
Bengal.
2. **Shila Saha** residing at 264,  
Vivekanand Road, Kolkata  
700 006, West Bengal.
3. **Sakti Adhikari**, residing at  
28/1 D Road, Bamangachi,  
Liluah, Howrah 711106,  
West Bengal.

**... Respondents.**

**Date of Pronouncement: March 24, 2025.**

**CORAM:**

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)  
CMDE. SIDDHARTH MISHRA, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCE:**

**For the RP: Ms. Urmila Chakraborty, Adv.  
Mr. Arun Kumar Gupta, RP in Person.**



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**ORDER**

**Per: Bidisha Banerjee, Member (Judicial):**

1. The Court congregate through a hybrid mode.

**I.A. (IB) (Plan) No. 7/KB/2025**

2. Heard Ms. Urmila Chakraborty, Adv. appearing on behalf of the Resolution Professional (RP) and Mr. Arun Kumar Gupta (RP) in extenso.

3. By way of this application preferred under Section 30(6) read with Section 31 of the Insolvency and Bankruptcy Code, 2016, for brevity "I&B Code", the RP has sought for the approval of the resolution plan submitted by Algoquant Financials LLP and approved by the Committee of Creditor (CoC) by 100% voting shares.

**A. Prologue:**

4. At the 16<sup>th</sup> CoC meeting convened on 17.02.2025 and e-voting concluded on 21.02.2025, the CoC approved the Resolution Plan submitted by M/s Algoquant Financials LLP (Successful Resolution Applicant, for brevity "SRA") by a majority of 100% voting share.

5. The Letter of Intent, annexed at pages 628 – 629 to the application, was issued on 26.02.2025 by the RP upon instruction by the CoC and the same was unconditionally accepted by the SRA on 27.02.2025.

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6. The SRA deposited a Performance Security of an amount of Rs. 96,70,836/- that is equal to 10% of the total plan value proposed by the SRA, in terms of Clause 4.4.8 of the Request for Resolution Plan (RFRP).

**B. Particulars of the Corporate Debtor:**

7. The Corporate Debtor – Reform Ferro Cast Limited is an unlisted Public Limited company incorporated in India with corporate identity number U27101WB2006PLC112036, has its registered office at Naupala, Bagnan-II Howrah West Bengal 711303 and works at Naupala, Bagnan-II Howrah West Bengal 711303.

8. The Company is operating in Cast Iron & Ductile Iron Products, Manufacturing Manhole covers, pipe & pipe fittings, engineering castings and automobile engineering - Exhaust Manifold Kits. The factory is closed since mid-2015.

9. The Corporate Debtor was incorporated on 7th December 2006. The authorized share capital of the Corporate Debtor is Rs. 5,25,00,000/-, and the issued and paid-up share capital of the Corporate Debtor is Rs.4,45,95,500/-.

**C. Commencement of Corporate Insolvency Resolution Process:**

10. The corporate debtor – Reform Ferro Cast Limited was admitted into Corporate Insolvency Resolution Process (CIRP) on

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21.11.2022, by this Adjudicating Authority and Mr. Arun Kumar Gupta was appointed as Interim Resolution Professional (IRP).

11. At the 1<sup>st</sup> CoC meeting convened on 21.12.2022, the IRP was appointed as the Resolution Professional (RP) by the CoC with 100% voting share.

**D. Public Announcement:**

12. The IRP made public announcement under Regulation 6(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution process for Corporate Persons) Regulations, 2016, for brevity "IBBI (CIRP) Regulations" on 23.11.2022 in Form A in Financial Express (English) and Aajkaal (Bengali).

13. Ld. Counsel for the RP submit that in terms of Regulation 6A of the IBBI (CIRP) Regulations, the IRP is required to communicate with the all creditors as per the last available books of accounts of the corporate debtor, however, due to non-cooperation on part of the suspended board of directors, the RP could not comply the same except intimating to the Income Tax, GST authorities, EPFO, electricity department and the secured financial creditors.

14. In terms of Section 15(1)(c) of the I&B Code read with Regulation 12(1) of the IBBI (CIRP) Regulations, the last date of the submission of claim was fixed on 05.12.2022.

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**E. Collation of Claims and Constitution of CoC:**

15. In terms of Regulation 13(1) of the IBBI (CIRP) Regulations, IRP has verified the claims of the creditors on 12.12.2022.

16. In compliance with Section 18(1)(c) and 21(1) of the I&B Code, read with Regulation 17(1) of the IBBI (CIRP) Regulations, IRP has constituted the Committee of Creditors as on 14.12.2022 and after several modifications and alterations, the same was finalized on 06.12.2024, which is as under:

<b>SN</b>	<b>Name of the Financial Creditors</b>	<b>Amount Claimed (In Rs.)</b>	<b>Amount Admitted (In Rs.)</b>	<b>Security Interest as per Form C</b>	<b>Voting shares in the CoC</b>
1.	<b>State Bank of India</b>	2,90,59,45,599.16/-	2,90,59,45,599.16/-	Secured.*	99.935 %
2.	<b>Adhunik Dealtrade Pvt. Ltd.</b>	Rs. 15,00,000/-	Rs. 15,00,000/-	Unsecured.	0.0516 %
3.	<b>Shivam Singh</b>	Rs. 4,00,000/-	Rs. 4,00,000/-	Unsecured.	0.0138 %
<b>Total</b>		<b>Rs. 2,90,78,45,599.15/-</b>	<b>Rs. 2,90,78,45,599.15/-</b>		<b>100.00 %</b>

[\* 16.69 bighas of Land together with Office Building and 1<sup>st</sup> charge on book debts, goods, all other movable/ current assets and plant and machineries of Reform Ferro Cast Ltd. at Naupala, Bagnan, Howrah]

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17. List of Operational Creditors (Employees):

<b>SN</b>	<b>Name of the Employees</b>	<b>Amount Claimed (In Rs.)</b>	<b>Amount admitted (In Rs.)</b>	<b>Reason by RP</b>
1.	Kailash Chand Sharma	Rs. 68,37,850/-	NIL	Claim yet to be reconciled with the books of the corporate debtor, list of queries sent on 7.12.2022 and 16.1.2023.
2.	Santosh Karar	Rs. 17,15,592/-	NIL	Claim yet to be reconciled with the books of the corporate debtor, list of queries sent on 7.12.2022 and 10.3.2023.
3.	Arun Kanti Mazumder	Rs. 4,63,459/-	NIL	Claim yet to be reconciled with the books of the corporate debtor, list of queries sent on 7.12.2022 and 10.3.2023.
Total		Rs. 90,16,901/-	0.00	

18. List of Operational Creditors (Government dues):

<b>SN</b>	<b>Department</b>	<b>Amount Claimed (In Rs.)</b>	<b>Amount Admitted (In Rs.)</b>
1.	The Commissioner of Commercial Taxes, West Bengal	Rs. 19,36,56,531/-	Rs. 19,36,56,531/-



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2.	The Commissioner, Central Goods & Service Tax and Central Excise, Howrah Commissionerate	Rs. 27,00,389/-	Rs. 27,00,389/-
3.	Debashish Datta, Employees' State Insurance Corporation	Rs. 9,20,356/-	Rs. 7,60,883/-
4.	Sandeep Dutta Majumder, Assistant Provident Fund Commissioner (Legal), RO, Howrah, Employees' Provident Fund Organisation	Rs. 1,19,238/-	Rs. 1,19,238/-
<b>Total</b>		<b>Rs. 19,73,96,514/-</b>	<b>Rs. 19,72,37,041/-</b>

19. List of Operational Creditors (Other than Workmen and Employees and Government dues):

SN	Name of Creditors	Amount Claimed (In Rs.)	Amount Admitted (In Rs.)
1.	The Wesman Engineering Company Pvt Ltd	Rs. 7,55,22,570.66/-	Rs. 45,94,309.00/-
2.	Binayak Hi-Tech Engineering Pvt Ltd	Rs. 55,66,585.76/-	Rs. 55,66,585.76/-

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3.	SBICAP Trustee Company Limited	Rs. 17,31,102.00/-	Rs. 17,31,102.00/-
4.	Cynosure Vintrade Pvt Ltd	Rs. 10,00,000/-	NIL
5.	West Bengal State Electricity Distribution Company Limited	Rs. 1,90,36,001/-	Rs. 1,90,36,001/-
<b>Total</b>		<b>Rs. 10,28,56,259.42/-</b>	<b>Rs. 3,09,27,997.76/-</b>

**F. Appointment of Registered valuers:**

20. At the 10<sup>th</sup> CoC meeting convened on 05.09.2024, upon instruction of the CoC, RP appointed registered valuers in terms of Regulation 27 of the IBBI (CIRP) Regulations, 2016, to carry out fresh valuation under Regulation 35 of the IBBI (CIRP) Regulations, 2016.

21. The Registered Valuers accordingly submitted their report with regard to the Fair Value and the Liquidation Value of the Corporate Debtor, which was placed and discussed at 12<sup>th</sup> CoC meeting convened on 13.11.2024. It is submitted that the average of the Fair Value and the Liquidation Value of the Corporate Debtor is as under:

- a. Fair Value (Average) = Rs. 12,37,88,787/-.
- b. Liquidation Value (Average) = Rs. 9,44,59,496/-.

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**G. CIRP and its Compliances:**

22. In terms of Regulation 36A (1) of the IBBI (CIRP) Regulations, 2016, a public announcement in Form G was issued on 16.01.2023. Pursuant to such publication, the RP received 20 EoIs from various Prospective Resolution Applicants (PRAs), within the stipulated time, i.e., on 05.02.2023.

23. RP issued a provision list of resolution applicants on 10.02.2023, however, out of 20 PRAs in the final list, RP received resolution plan from 4 PRAs only before the stipulated deadline of 14.04.2023.

24. During the course of argument, the RP would assert that after several communications, RP did not receive the requisite documents as enshrined under the I&B Code as well as RFRP from the resolution applicants and thus, at 8<sup>th</sup> CoC meeting convened on 09.10.2023, SBI being the only secured creditors having 99.935% decided not to approve any plan and decided to liquidate the corporate debtor. Consequently, the RP preferred an application being I.A. (IB) No. 1803/KB/2023 under Section 33 of the Code.

25. It is further asserted that RP received an offer from an interested party for submission of a resolution plan and upon discussion, the CoC instructed the RP to take immediate steps to seek leave of this Adjudicating Authority to withdraw the liquidation application and to seek exclusion of the time exhausted due to

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pendency of the liquidation application and thereafter to plan for publishing a Form G inviting EoIs from PRAs.

26. Consequently, RP preferred an application being I.A. (IB) No. 1274/KB/2024 prayed the above reliefs. On 03.09.2024, this Adjudicating Authority allowed the liquidation application to be withdrawn and allowed the exclusion as prayed for.

27. Thereafter, RP conducted the 10<sup>th</sup> CoC meeting on 05.09.2024, and as discussed in the said meeting, a public announcement in Form G was issued on 06.09.2024.

28. Pursuant to the Form G issued on 06.09.2024, RP received 8 EoIs within the stipulated time i.e., 21.09.2024. Thereafter, the provisional list of resolution applicants issued on 26.09.2024 and the last date for submission of objections to the provisional list was fixed on 01.10.2024. RP issued final list of PRAs on 06.10.2024. In terms of Regulation 36B of the IBBI (CIRP) Regulations, 2016, RP issued the Request for Resolution Plan (RFRP) including Evaluation matrix and Information Memorandum to the resolution applicants on 06.10.2024.

29. The last date for submission of resolution plans by PRAs was fixed on 05.11.2024, which was extended upon instruction of CoC up to 12.11.2024.



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**H. Evaluation and Voting:**

30. Ld. Counsel for the RP would submit that the RP received 3 resolution plans by 12.11.2024 from:

- i. Consortium of HR Commercials Pvt. Ltd. & Crown Steels.
- ii. Algoquant Financials LLP.
- iii. Industrial Asset Transaction Services Private Limited.

31. At the 12<sup>th</sup> CoC meeting convened on 13.11.2024, all 3 resolution plans were opened. The resolution applicants were requested to submit their updated and best offer by 20.11.2024, however, none did the same.

32. A further request was made to re-submit the resolution plans incorporating the I&B Code/ RFRP compliant plan documents and to improve their offers. Algoquant Financials LLP submitted its final draft resolution plan by 17.12.2024, however, rest 2 resolution applicant did not submit the same despite several follow ups.

33. Thus, in compliance of Section 30(3) of the Code, only resolution plan from Algoquant Financials LLP was received by the RP.

34. At the 16<sup>th</sup> CoC meeting convened on 17.02.2024, after discussions and deliberations, the final resolution plan submitted by Algoquant Financials LLP was put for e-voting which commenced on 20.02.2025 at 9:00 AM and concluded on 21.02.2025 at 3:50 PM.



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The resolution plan submitted by Algoquant Financials LLP after conclusion of the e-voting was approved by the CoC with 100% voting share.

**Details of financials creditors in the CoC with Voting share –**

<b>SN.</b>	<b>Name of Creditor</b>	<b>Voting Share (%)</b>	<b>Voting for Resolution Plan (Voted for / Dissented / Abstained)</b>
<b>1</b>	State Bank of India	99.935 %	Voted For
<b>2</b>	Sivam Singh	0.014%	Voted For
<b>3</b>	Adhunik Dealtrade Pvt. Ltd	0.051%	Voted For

35. The Letter of Intent, annexed at pages 628 – 629 to the application, was issued on 26.02.2025 by the RP upon instruction by the CoC and the same was unconditionally accepted by Algoquant Financials LLP on 27.02.2025.

36. Algoquant Financials LLP deposited a Performance Security of an amount of Rs. 96,70,836/- that is equal to 10% of the total plan value proposed by the SRA, in terms of Clause 4.4.8 of the Request for Resolution Plan (RFRP). Subsequently, Algoquant Financials LLP has been declared as Successful Resolution Applicant (SRA).

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**I. Compliances of the Resolution Plan submitted by the SRA with various provisions under the I&B Code and CIRP Regulations:**

37. The RP 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".

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

39. Further, it is submitted that the Successful Resolution Applicant is eligible to submit a resolution plan in terms of Section 29A of the I&B Code and accordingly, an affidavit has also been furnished by the SRA.

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

41. It is further submitted that in terms of Section 30(2) of the I&B Code, 2016, (as amended vide Amendment dated August 16,



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2019) the Resolution Plan, submitted by SRA provides the details of various compliances as under:

<b>Section of the Code / Regulation No.</b>	<b>Requirement with respect to Resolution Plan</b>	<b>Clause of Resolution Plan</b>
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?	Affidavit dated 13.12.2024, annexed at page 450-454 to the application.  Point 5.4 at page 13 and Point 21.2 at page 50 of the Resolution Plan dated 13.12.2024 submitted by SRA.
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Affidavit dated 13.12.2024, annexed at page 450-454 to the application.
Section 30(2)	Whether the Resolution Plan-  (a) provides for the payment of insolvency resolution process costs?  (b) provides for the payment to the	(a) Clauses 3 and 9.1 of the resolution plan.  (b) Clauses 3 and 9.3 of the resolution plan.





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	<p>operational creditors?</p> <p>(c) provides for the payment to the financial creditors who 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>(c) Clause 3 and 9.3 of the resolution plan.</p> <p>(d) Clauses 21.1(b) at page 49 and Schedule 5 and 6.</p> <p>(e) Clause 19.2 at page 45 and Clause 23 at page 55 of the resolution plan.</p> <p>(f) Clause 5.4 at page 13 of the resolution plan.</p>
Section 30(4)	<p>Whether the Resolution Plan</p> <p>(a) is feasible and viable, according to the CoC?</p> <p>(b) has been approved by the CoC with 66% voting share?</p>	<p>(a) Part C at pages 15-33 of the resolution plan.</p> <p>(b) Voting result dated 21.02.2024 and minutes of the 16<sup>th</sup> CoC meeting convened on 17.02.2024.</p>

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Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Clause 19.2 at page 45 and Clause 23 at page 55 of the resolution plan.
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 9.3 at page 24 of the resolution plan.
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Clause 9.8 at page 32 and Clause 14 at page 35 of the resolution plan.
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.	(i) At Page 66 of the resolution plan.  SRA declares that this is their first resolution plan, and for the sake of clarity and compliance of law, the SRA states that the resolution applicant or any of its related parties has neither failed to implement nor contributed to the failure of implementation of any



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	<p>(ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?]</p>	<p>other resolution plan approved by this Adjudicating Authority at any time in the past.</p> <p>N.A.</p>
<p>Regulation 38(2)</p>	<p>Whether the Resolution Plan provides:</p> <p>(a) the term of the plan and its implementation schedule?</p> <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>(a) Clauses 23 and 24 at pages 55 and 56 of the resolution plan.</p> <p>(b) Clause 19 at page 45 of the resolution plan.</p> <p>(c) Clause 19.2 (a) at page 45 of the resolution plan. The Resolution Plan also provides for appointment of “Monetary Agency”.</p>

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38(3)	<p>Whether the resolution plan demonstrates that –</p> <p>(a) it addresses the cause of default?</p> <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>(a) Clause 2.6 at page 8 of the resolution plan.</p> <p>(b) Part C at pages 15-33 of the resolution plan.</p> <p>(c) Pages 45-47 of the resolution plan.</p> <p>(d) Page 68 of the resolution plan.</p> <p>(e) At pages 14, 34 and Clause 21 at page 49 of the resolution plan.</p>
39(2)	<p>Whether the RP has filed applications in respect of transactions observed, found or determined by him?</p>	<p>RP states that as per the transactional audit report no PUFEE transactions have been detected and thus, RP has not filed any application in this regard.</p>
Regulation 39(4)	<p>Provide details of performance security received, as referred to in sub-</p>	<p>SRA has paid an amount of Rs. 96,70,836/-. The bank statement is annexed at pages 630-631 to the</p>

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	regulation (4A) of regulation 36B.]	application.
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**J. Financial proposal proposed by the SRA:**

42. The Successful Resolution Applicant has proposed to pay of an amount of **Rs. 9,67,08,353/-** as **Total Plan Amount** against the total admitted claim of Rs. 3,13,60,10,637.16/- and the total amount claimed of Rs. 3,21,71,15,273.58/-. CIRP cost has proposed to be paid in full as per actual. The hair cut in respect of amount admitted by the RP is **97%**.

43. Gist of the Financial Proposal as proposed by the SRA is as under:

<b>Particulars</b>	<b>Amount</b>
CIRP Cost	<b>The CIRP cost to be paid in full as per actual</b> and as approved by the CoC. It will be paid upfront within 30 days from the date of order of the Adjudicating Authority approving resolution plan under section 31 of the Insolvency and Bankruptcy Code, 2016.
Payment to Operational Creditors (Government Dues)	<b>Rs. 4,92,795/-</b> (Rupees Four Lakhs Ninety-Two Thousand Seven Hundred Ninety-Five only) being <b>0.25 %</b> of the claim of Rs. 19,71,17,803.00 (excluding Provident Fund claim amount) admitted by the Resolution Professional is proposed to be paid under the Resolution Plan to ensure minimum



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	<p>amount to be paid to such creditors in terms of clause (b) of Section 30(2). This amount will be paid, in priority as per Regulation 38, upfront within 30 days from the date of order of the Adjudicating Authority approving resolution plan under section 31 of the Insolvency and Bankruptcy Code, 2016.</p> <p>It is hereinafter clarified that the payments required to be made to secured statutory creditors shall be dealt with as per applicable law and the judgment of the Hon'ble Supreme Court in <i>State Tax Officer v. Rainbow Papers Limited</i>, or applicable law at the time of making such payments.</p> <p>Any additional amounts, over and above Rs. 4,92,795.00, required to be paid to such statutory creditors in accordance with applicable laws shall be funded extra by the resolution applicant.</p> <p><b>Admitted claim of Rs.1,19,238/- by the Provident Fund department will be paid and settled in full by the resolution applicant.</b></p>
Payment to Operational Creditors (Other than workmen and employees and Government Dues)	<p><b>Rs. 77,320/-</b> (Rupees: Seventy-seven Thousand Three Hundred Twenty only) being 0.25% of the claim of Rs. 3,09,27,997.76 admitted by the Resolution Professional is proposed to be paid under the Resolution Plan to ensure minimum amount to be paid to</p>



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	<p>such creditors in terms of clause (b) of Section 30(2). This amount will be paid, in priority as per Regulation 38, upfront within 30 days from the date of order of the Adjudicating Authority approving resolution plan under section 31 of the Insolvency and Bankruptcy Code, 2016.</p> <p>It is hereinafter clarified that the amounts payable to the operational creditors under the Code and the CIRP Regulations exceeds Rs. 77,320.00, the additional amounts payable to such creditors in accordance with applicable laws shall be funded extra by the Resolution Applicant.</p>
Payment to Operational Creditors (Workmen and Employees)	<b>N.A.</b> – There are no admissible debts under this category.
Payment to Unsecured Financial Creditors	<b>Rs. 19,000/-</b> (Rupees Nineteen thousand only) being 1.00 % of the admitted claim of Rs. 19,00,000.00 by the Resolution Professional. This amount will be paid upfront within 30 days of the order from the Adjudicating Authority approving resolution plan under section 31 of the Insolvency and Bankruptcy Code, 2016.
Payment to Secured Financial Creditors	Full payment will be done within 12 months of the order from the Adjudicating Authority approving resolution plan under section 31 of the Insolvency and Bankruptcy Code, 2016



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	<p>Upfront – Rs.2,00,00,000</p> <p>61 days-90 days -</p> <p>&gt;90 days up to 180 days – Rs.4,00,00,000</p> <p>&gt;180 days up to 1 year – Rs.3,60,00,000</p> <p><b>Total Value = Rs. 9,60,00,000/-</b></p>
Full Payment within 12 months to all creditors	Full payment will be done within 12 months of the order from the Adjudicating Authority approving resolution plan under section 31 of the Insolvency and Bankruptcy Code, 2016.

44. As per Form H, the amounts provided for the stakeholders under the Resolution Plan is as under:

(Amount in Rs. Lakh)

SN	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:				





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		(i) who did not vote in favour of the resolution Plan	NA	NA	NA	NA
		(ii) who voted in favour of the resolution plan	290,59,45,599.16	290,59,45,599.16	9,60,00,000	3.303%
		Total[(a) + (b)]	290,59,45,599.16	290,59,45,599.16	9,60,00,000	3.303%
2	Unsecured 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:				
		(i) who did not vote in favour of the resolution Plan	NA	NA	NA	NA
		(ii) who voted in favour of the resolution plan	19,00,000.00	19,00,000.00	19,000.00	1.00%
		Total[(a) + (b)]	19,00,000.00	19,00,000.00	19,000.00	1.00%



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3	Operational Creditors	(a) Related Party of Corporate Debtor	NA	NA	NA	NA
		(b) Other than (a) above:				
		(i) Government	(i) 19,73,96,514.00	(i) 19,72,37,041.00	(i) 6,12,033.00 <i>(Admitted claim of Rs.1,19,238/- by the Provident Fund department will be paid and settled in full by the resolution applicant included in above)</i>	(i) 0.31%
	(ii) Workmen	(ii) _	(ii) _	(ii) _	(ii) _	
	(iii) Employees	(iii) 90,16,901.00	(iii) _	(iii) _	(iii) _	

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		(iv) Operational Creditors (Other than workmen and employees and Government Dues)	(iv) 10,28,56,25 9.42	(iv) 3,09,27,9 97.76	(iv) 77,320. 00	(iv) 0.075%
		Total[(a) + (b)]	30,92,69,67 4.42	22,81,65, 038.76	6,89,35 3.00	0.223%
4	Other debts and dues	NA	NA	NA	NA	
Grand Total			3,21,71,15, 273.58	3,13,60,1 0,637.16	9,67,08, 353.00	3.00%

**K. PUFЕ Transactions:**

45. It is submitted that the RP appointed Neha B Agarwal & Co. CA for carrying out the transaction audit of the corporate debtor under Section 43, 45, 50, 66 of the Code for the period of 21.11.2020 to 21.11.2022. the Transactional Auditor has submitted a report on 10.03.2023 and the same has been circulated to the member of the CoC. As per the Transactional Auditor's report, there is no avoidance transactions in the corporate debtor company.

46. Further, it is submitted that as per Regulation 35A of the IBBI (CIRP) Regulations, 2016, RP is required to make a determination regarding avoidable transactions under Section 43, 45, 50, and 66 of the Code within 115<sup>th</sup> day of the commencement of CIRP. The RP has informed the CoC by way of an email dated



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13.03.2023, annexed at pages 337-338 to the application that he has unable to determine any avoidance transactions with 115<sup>th</sup> day i.e., 16.03.2023 due to following reasons:

- i. Sole factory is closed since the year 2015.
- ii. Last available accounts as per MCA portal is for period ended 31.03.2019, but Balance Sheet numbers are largely unchanged since 31.03.2015 accounts.
- iii. The directors and auditor are not cooperating the RP and thus, an application under Section 19(2) of the Code has been preferred before this Adjudicating Authority.
- iv. RP does not have access to the books of account or records of the corporate debtor.
- v. The main promoter and the auditor have both passed.

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47. This application under Section 19(2) of the I&B Code has been preferred by the RP against the member of suspended board of directors, namely Basant Saha, Shila Saha, and Sakti Adhikari, praying for a direction upon the suspended board to provide singed copies of the audited accounts, tally accounting data base, bank account details, staff/ employee details, operational creditor list, list of fixed assets, public announcement and list of creditors to be uploaded on the website of the company as well as to

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provide all the documents related to IOCL pipeline at the factory premises with the RP, as well as to provide all the documents relating to the suit instituted against Wesman Engineering in TS 19 of 2021.

48. RP submits that after several intimation to the directors of the company, no cooperation has been made on behalf of them and due to non-cooperation from the suspended directors, RP cannot proceed with the CIRP properly.

49. During the course of hearing, the Ld. Counsel for the RP would assert that during ongoing CIRP, RP came to know that Mr. Basant Saha, one of the directors of the company passed away on 17.01.2023. Soon after, the RP visited Mr. Basant Saha's residence on 22.02.2023 and met his spouse and paid his condolences. RP would further assert that prior demise, Mr. Basant Saha once informed the RP that there is no employee or worker presently and he does not have any access of any records directly as the company is closed since the year 2015 and the last accounts were audited for the year ended 31.03.2019.

50. Mr. Sakti Adhikary (R3) would *per contra* submit that he has no access to such the documents sought for by the RP and he was in no way connected with the loan facility procured by the corporate debtor from the financial creditor herein. Though he was a director of the company, but he was working in the capacity of an employee providing technical knowledge and pursuing the instruction of Late Basant Saha.

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51. In counter, RP would submit that in terms of Section 166 of the Companies Act, 2013, R3 is liable to know all the details of the corporate debtor as he was appointed as a member of the board of directors of the corporate debtor.

**Analysis and Findings:**

**On the Conduct of CoC**

52. Upon hearing, the submission made by the Learned Counsel appearing on behalf of the Resolution Professional of Corporate Debtor herein and perusing the record and/or documents placed before this Adjudicating Authority, we would find that **the Resolution Plan dated 13.12.2024** submitted by **Algoquant Financials LLP**, annexed at pages 366-449 to the application has been approved by the CoC of the Corporate Debtor with **100%** voting share at the 16<sup>th</sup> CoC meeting convened on 17.02.2025, e-voting concluded on 21.02.2025 and **Algoquant Financials LLP**, is declared as the **“Successful Resolution Applicant”**.

53. 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.

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54. We have already noted that the Fair value (Average) of the Corporate Debtor is arrived at Rs. 12,37,88,787/- and the Liquidation Value (Average) is Rs. 9,44,59,496/-.

55. The Successful Resolution Applicant has proposed to pay of an amount of **Rs. 9,67,08,353/-** as **Total Plan Amount** against the total admitted claim of Rs. 3,13,60,10,637.16 /- and the total amount claimed of Rs. 3,21,71,15,273.58/-. CIRP cost has proposed to be paid in full as per actual. The hair cut in respect of amount admitted by the RP is **97%**.

56. 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.

57. Upon perusal of the documents on record and/or documents, we are satisfied that the **Resolution Plan dated 13.12.2024** submitted by **Algoquant Financials LLP**, annexed at pages 366-449 to the application, 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.



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**On the Statutory Obligations for Seeking Approvals from the  
Authorities:**

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

**On the Reliefs, Waivers and Concessions:**

59. We have perused the reliefs, waivers and concessions as sought 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.

60. This Adjudicating Authority has the power to grant only such reliefs, waivers and concessions that are directly in tune 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



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consider granting such reliefs, waivers and concessions keeping in view the spirit of the I&B Code, 2016 and the Companies Act, 2013.

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

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

*“39. If NCLT has been conferred with jurisdiction to decide all types of claims to property, of the corporate debtor, Section 18(f)(vi) would not have made the task of the interim resolution professional in taking control and custody of an asset over which the corporate debtor has ownership rights, subject to the determination of ownership by a court or other authority. In fact an asset owned by a third party, but which is in the possession of the corporate debtor under contractual arrangements, is specifically kept out of the definition of the term "assets" under the Explanation to Section 18. This assumes significance in view of the language used in Sections 18 and 25 in contrast to the language employed in Section*



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*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).**

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

**(Emphasis Added)**

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

**On the Extinguishment of Claims:**

64. Concerning the waivers with regard to the extinguishment of claims which arose prior to the initiation of the CIR Process and which have not been claimed are granted in terms of the law laid down by the Hon'ble Apex Court in ***Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited*** reported in **MANU/SC/0273/2021: (2021)9SCC657: [2021]13SCR737** that **“once a resolution plan is duly approved by the Adjudicating Authority Under Sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the**

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date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.” (Emphasis Added)

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

“61. All these details are required to be contained in the information memorandum so that the resolution applicant is aware, as to what are the liabilities, that he may have to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure, that the Corporate Debtor is revived and made a running establishment. The legislative intent of making the resolution plan binding on all the stakeholders 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).’



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*“107. For the same reason, the impugned NCLAT judgment [Standard Chartered Bank v. Satish Kumar Gupta] in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count.”*

**(Emphasis Added)**

66. In this regard, we would also rely upon 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



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**6204/2020** reported in **(2023) ibclaw.in 42 HC**, wherein it has been inter-alia held that:

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

**(Emphasis Added)**

67. Thus, on the date of approval of the resolution plan by the Adjudicating Authority, all such claims, that are not a part of the resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon’ble Supreme Court of India further laid down that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period before the date on which the Adjudicating Authority grants its approval under Section 31 of the I&B Code could be continued.

**On Guarantors:**

68. Concerning the waivers sought in relation to guarantors, the Hon’ble Apex Court held in ***Lalit Kumar Jain v. Union of India*** reported in **MANU/SC/0352/2021: (2021) 9 SCC 321: (2021) ibclaw.in 61 SC** that *the sanction of a resolution plan and finality imparted to it by Section 31 does not per se operate as a*



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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.

69. Further, in ***Maitreya Doshi vs. Anand Rathi Global Finance Ltd.*** reported in **MANU/SC/1216/2022**, the Hon'ble Apex Court laid down that:

*“36. The proposition of law which emerges from the judgment is that a pledgor per se may not be a Financial Debtor. However, in this case, as observed above, the Appellate Authority arrived at a factual finding that Disha Holdings was a borrower. In *Lalit Kumar Jain v. Union of India* MANU/SC/0352/2021 : (2021) 9 SCC 321, this Court held that the approval of a resolution plan in relation to a Corporate Debtor does not discharge the guarantor of the Corporate Debtor. On a parity of reasoning, the approval of a resolution in respect of one borrower cannot certainly discharge a co-borrower.”*

**(Emphasis Added)**

70. 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)**

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71. Hence, we would infer that all the guarantees whether personal or corporate in nature, will not be redeemed by the virtue of the approval of this resolution plan. Thus, if there are any guarantors of the corporate debtor, the creditor(s) will invoke those guarantees and an appropriate action against them, as per law, be taken.

**On Inquiries, Litigations, Investigations, and Proceedings:**

72. 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.

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





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**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)**

74. Further, 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**, (hereinafter referred to as '***Vasan Healthcare Pvt. Ltd. F***) has held that:

*"9. In the above judgement, the Apex Court after dealing with the provision in detail, came to a categoric conclusion that*

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*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

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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)**

75. Further, the Hon'ble Madras High Court in **M/s. Vasan Healthcare Pvt Ltd v. M/s. India Infoline Finance Ltd, CrI O.P.**

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No. 1772 of 2024, reported in (2024) ibclaw.in 700 HC, (hereinafter referred to as '**Vasan Healthcare Pvt. Ltd. IP**') 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)**

76. Very recently, the Hon'ble Delhi High Court in **Bhushan Power & Steel Limited v. Union of India** in W.P. (CRL) 1261/2024, judgment dated 30.01.2025, has laid down that:

*“6.1 A plain reading of the above provision would reveal that there is no dispute over the legal position that once a resolution plan has been approved by the adjudicating authority under Section 31 of IBC and the conditions specified in Section 32A of the IBC are fulfilled, the Corporate Debtor shall not be prosecuted for an offence committed prior to the commencement of the CIRP.*

*6.2 However, **Section 32A of IBC also clarifies** that **any erstwhile officer of the Corporate Debtor who 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 or who was directly or indirectly involved in the commission of such offence prior to the commencement of CIRP as per***

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the complaint filed by the investigating authority, shall continue to be prosecuted and punished for such an offence committed by the Corporate Debtor, notwithstanding that the Corporate Debtor's liability has ceased.

xxx

xxx

xxx

7.1 Further, in view of the mandate under sub-section (1) of Section 32A of the IBC, the Petitioner Company, having undergone a successful resolution process under Section 31 of the IBC, shall not be prosecuted for the offences committed prior to the commencement of the CIRP.”

**(Emphasis Added)**

77. Further, in **SREI Infrastructure Finance Limited vs. State of Tripura** reported in MANU/TR/0474/2024, the Hon'ble High Court of Tripura has laid down that:

“38. The object of revival of a sick company on approval of the resolution plan by the NCLT is intended to provide a clean slate for the company to ensure that the new management makes a clean break from the past. The resolution plan of the successful resolution applicant has been approved under Section 31 of the I&B Code by the learned NCLT vide its order dated 11th August, 2023 which is Annexure-2 to the writ petition. It records that on the date of approval of the 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. It has referred to the decision of the Apex Court in Ghanashyam Mishra & Sons Pvt. Ltd (supra) wherein it has been held that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as



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*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. The Apex Court also held that all dues including the statutory dues owed to the Central Govt. any State gov. 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.*

*39. However, waiver sought in relation to guarantors would not be allowed to operate in view of the judgment of the Apex Court in Lalit Kumar Jain Vs. Union on India & Ors., MANU/SC/0352/2021 : 2021:INSC:297 as 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. With respect to the relief of waivers sought for all inquiries, litigations, investigations and proceedings the same shall be granted strictly as per the section 32A of the code and the provisions of the law as may be applicable.***

**(Emphasis Added)**

78. For the sake of convenience, the reliefs, concessions, and approvals sought in the Resolution Plan annexed at pages 433-440 to the application are catered to as below and the orders thereon are indicated against each as under:

SN	Ref to clause of Resolution Plan	Relief and / or concessions Sought	Our Inference	Order thereon
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(1)	16 (a)	<p><i>Consents and approvals, authorizations etc.</i></p> <p><i>Upon approval of this Resolution Plan by the NCLT, all actions stated in this Resolution Plan shall be deemed to be approved. Accordingly, any action or implementation of this Resolution Plan shall not be a ground for termination of any consents, approvals, concessions, authorizations, permits or the like that has been granted to the Corporate Debtor or for which the Corporate Debtor has made an application for renewal or grant.</i></p>	<p>This is not the proper authority to consider the relief. The SRA may approach the appropriate authority(ies) in accordance with law.</p>	<b>Not Allowed.</b>
(2)	16 (b)	<p><i>License/ Approvals/ contractual Right and benefits</i></p> <p><i>The Resolution Applicant has assumed that upon approval of this Resolution Plan by the NCLT and since the Resolution Applicant will acquire the Corporate Debtor, which, at present, is not a going concern, all subsisting consents, licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, including consent to operate from the State Pollution Control Board granted in favor of the Corporate Debtor or to which the Corporate Debtor is entitled or accustomed to shall, notwithstanding any</i></p>	<p>This is not the proper authority to consider the relief. The SRA may approach the appropriate authority(ies) in accordance with law.</p> <p>However, the immunity provided in <b>Ghanashyam Mishra (Supra)</b>, shall apply.</p>	<b>Not Allowed.</b>



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	<p><i>provision to the contrary in their terms, be deemed to continue without disruption for the benefit of the Corporate Debtor.</i></p> <p><i>It is hereby clarified that all consents, licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, including consent to operate from the State Pollution Control Board granted in favor of the Corporate Debtor or to which the Corporate Debtor is entitled or accustomed to, which have expired as of the Effective Date, shall be deemed to continue without disruption for the benefit of the Corporate Debtor for a period of 12 months or until renewed by the relevant authorities, whichever is later. Without any liability for the non-compliance during the time specified above, the Resolution Applicant undertakes to cause the Corporate Debtor to expeditiously identify such expired consents, licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favor of the Corporate Debtor or to which the Corporate Debtor is entitled or accustomed to, evaluate the steps required to address the same and take</i></p>		
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	<p><i>steps to remedy the same to the extent practically possible.</i></p> <p><b>State Electricity Board or any such other authority / authorities having jurisdiction to provide power connection to the Factory Premises shall restore the power connection immediately upon approval of this Resolution Plan by the NCLT.</b></p> <p><i>Upon approval of this Resolution Plan by the NCLT, any claims by any person (whether admitted or not, due or contingent, asserted or unasserted, crystallized or uncrystallized, known or unknown, secured or unsecured, disputed or undisputed, present or future) against the Corporate Debtor accruing due to the commencement or pendency of insolvency proceedings against the Corporate Debtor, whether arising under the terms of subsisting consents, licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favor of the Corporate Debtor or any contractual arrangements entered into by the Corporate Debtor, shall, notwithstanding any provision to the contrary</i></p>		
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		<p><i>in their terms, stand extinguished without any recourse in conformity with Hon'ble Supreme Court judgment in the matter of <b>Ghanashyam Mishra and Sons Pvt. Ltd. Through Authorized Signatory Vs. Edelweiss Asset Reconstruction Company Ltd.</b> Civil Appeal No. 8129 of 2019 and other appeals.</i></p>		
(3)	16 (c)	<p><i>During the Interim Period, neither the Resolution Professional nor any creditor (including any Financial Creditor and Government agency) or any stakeholder involved in this Resolution Plan or otherwise connected with this Resolution Plan, the CoC nor the Corporate Debtor shall:</i></p> <p><i>(i) take any of the actions specified in Section 28 of the Code without the approval of Monitoring Agency.</i></p> <p><i>(ii) take any action or omission that could reasonably be expected to have a material adverse impact, directly or indirectly, on the Resolution Plan or its successful implementation; or</i></p> <p><i>(iii) Institute or continue any proceedings against the Corporate Debtor or transfer,</i></p>	<p>Granted in accordance with the plan approved by the CoC.</p>	<p><b>Allowed</b> in accordance with law.</p>



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		<p style="text-align: center;"><i>encumber, alienate or dispose any of the assets or interests of the Corporate Debtor or enforce any encumbrance or security interest created by the Corporate Debtor or on the securities of the Corporate Debtor.</i></p>		
(4)	16 (d)	<p><i>Liability for past actions or omissions</i></p> <p><i>(i) The Resolution Applicant will acquire control over the Corporate Debtor pursuant to the order of the NCLT by the Effective Date and not pursuant to the usual acquisition process which would ordinarily include a detailed due diligence and representation, warranties and indemnities in relation to the affairs of the Corporate Debtor from its existing promoters. Therefore, the Resolution Applicant may take some time to discover any non-compliances that may exist in relation to the Corporate Debtor on the date of acquisition of control by the Resolution Applicant over the Corporate Debtor. As such the Resolution Applicant may take some time to identify such non-compliances and to address them.</i></p> <p><i>(ii) In light of this, the Resolution Applicant and the Corporate Debtor shall have</i></p>	<p>Whatever the immunity provided in <b>Ghanashyam Mishra (Supra)</b>, shall apply.</p>	<p><b>Allowed</b> in accordance with law.</p>



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	<p><i>immunity from any actions and penalties (of any nature) under any laws for any non-compliance of laws in relation to the Corporate Debtor or by the Corporate Debtor, as well as with the terms of any agreement or arrangement entered into by the Corporate Debtor, which was existing as on the Effective Date and which continues for a period of up to 12 months after the acquisition of control by the Resolution Applicant over the Corporate Debtor. Without any liability for the non-compliance during the time specified above, the Resolution Applicant undertakes to cause the Corporate Debtor to expeditiously identify such non-compliances, evaluate the steps required to address such non-compliances and take steps to remedy such non-compliances to the extent practically possible. The Resolution Applicant and the Corporate Debtor shall be entitled to apply to and approach the NCLT for the relief for continued implementation of the approved Resolution Plan before or after any coercive action is taken against the Corporate Debtor or the Resolution Applicant especially in view of the limited due diligence offered to the Resolution Applicant.</i></p>		
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		<i>(iii) This Resolution Plan will be implemented pursuant to an order of the NCLT, and all actions stated in this Resolution Plan shall be deemed to be approved by the NCLT. Accordingly, any action or implementation of this Resolution Plan shall not be a ground for termination of any contracts entered into by the Corporate Debtor.</i>		
(5)	16 (e)	<i>Inquiries, investigations etc. Upon approval of this Resolution Plan by the NCLT, all inquiries, investigations and proceedings, whether civil or criminal, notices, causes of action, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings against, or in relation to, or in connection with the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future, (including without limitation, any investigation, action, proceeding, prosecution, whether civil or criminal, by the Central Bureau of Investigation, the Enforcement Directorate or any other regulatory or enforcement agency), in relation to any period prior to the Effective Date or arising on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan shall</i>	Whatever immunity can be granted strictly under Section 32A of the I&B Code and the law laid down in <b>Ajay Kumar Radheyshyam Goenka (Supra), Tantia Constructions Limited (Supra), Vasan Healthcare Pvt. Ltd. I (Supra), Vasan Healthcare Pvt. Ltd. II (Supra)</b> and in <b>Bhushan Power (Supra)</b> , shall apply; nothing more and nothing less.	<b>Allowed,</b> in accordance with law and Section 32A read with the judgment cited herein.



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		<p><i>stand withdrawn or dismissed and all liabilities or obligations in relation thereto, whether or not set out in the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor, will be deemed to have been written off in full and permanently extinguished and the Corporate Debtor or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto notwithstanding any adverse order that may be passed in respect of the same by any authority prior to or after the Effective Date. Upon approval of this Resolution Plan by the NCLT, all new inquiries, investigations, whether civil or criminal, notices, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings will be deemed to be barred and will not be initiated or admitted against the Corporate Debtor in relation to any period prior to the acquisition of control by the Resolution Applicant over the Corporate Debtor or on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan.</i></p>		
(6)	16 (f)	<p><i>Tax exemptions</i> <i>(i) With the approval of this Resolution Plan by</i></p>	<p>Whatever immunity provided in</p>	<p><b>Allowed</b> in accordan</p>



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		<p><i>the NCLT, it is assumed that an exemption shall be deemed to have been granted to the Corporate Debtor from the obligation to pay taxes in accordance with the exemptions granted under the Finance Act 2018.</i></p> <p><i>(ii) The Corporate Debtor shall be entitled to carry forward the unabsorbed depreciation and accumulated losses under Income tax and minimum alternate tax and to utilize such amounts to set off future tax obligations as applicable under Income Tax Act.</i></p>	<p><b>Ghanashyam Mishra (Supra)</b>, shall apply. For remaining, the SRA may approach the appropriate authority in accordance with law.</p>	<p>ce with law.</p>
(7)	16 (g)	<p><i>Anti-corruption provisions and immunity</i></p> <p><i>As the Resolution Applicant will acquire control over the Corporate Debtor pursuant to the order of the NCLT and not pursuant to the usual acquisition process which would ordinarily include a detailed due diligence and representation , warranties and indemnities in relation to the affairs of the Corporate Debtor from its existing promoters, the Resolution Applicant may take some time to discover all the non-compliances that may exist in relation to the Corporate Debtor on the date of</i></p>	<p>This is not the proper authority to consider the relief. The SRA may approach the appropriate authority(ies) in accordance with law.</p>	<p><b>Not Allowed.</b></p>



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		<i>acquisition of control by the Resolution Applicant over the Corporate Debtor.</i>		
(8)	16 (h)	<p><i>Contracts</i></p> <p><i>(i) For a period of 6 months from the Effective Date, all subsisting contracts and arrangements entered into by the Corporate Debtor shall continue to be in subsistence, including but not limited to the following:</i></p> <p><i>(ii) For a period of 6 months from the Effective Date, the Corporate Debtor shall have a right to review and terminate any contract that was entered into prior to the Effective Date.</i></p> <p><i>(iii) If during such review, the Corporate Debtor terminates any contracts then the Corporate Debtor shall not be liable towards any claims with respect to termination of such contracts, including but not limited to any claims, penalty, damages (liquidated or otherwise), arbitration claims or claims for specific performance.</i></p> <p><i>(iv) All contracts between the Corporate Debtor and related parties as defined in Section 5(24) of the Code shall stand terminated with effect</i></p>	<p>We cannot pass any blanket order in absence of the contracts/ agreement and parties.</p>	<p><b>Not Allowed.</b></p>





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		<p><i>from the Effective Date unless otherwise notified by the Resolution Applicant by the Effective Date, and the Corporate Debtor shall not be liable towards any claims with respect to termination of such contracts, including but not limited to, any claims, penalty, damages (liquidated or otherwise), arbitration claims, claims for specific performance or claims for interim relief.</i></p> <p><i>(v) All financial obligations under any contract to which the Corporate Debtor is a party, relating to a period prior to the Effective Date, if not provided for under this Resolution Plan, shall stand extinguished.</i></p>		
(9)	16 (i)	<p><i>The State Government of West Bengal shall grant it suitable tax and financial incentives as per the prevailing policy of the State Government or any other policy for revival of distressed companies, considering the revival of the Corporate Debtor in order to achieve financial viability of the Corporate Debtor.</i></p>	<p>This is not the proper authority to consider the relief. The SRA may approach the appropriate authority(ies) in accordance with law.</p>	<p><b>Not Allowed.</b></p>
(10)	16 (j)	<p><i>On the basis of information provided by the Resolution Professional, this Resolution Plan assumes that, on the Effective Date the Corporate</i></p>	<p>As provided in the resolution plan and IM shall be applied.</p>	<p><b>Allowed</b> in accordance with law.</p>



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		<i>Debtor will not have any realizable gross current assets (inventory, receivables and cash).</i>		
(11)	16 (k)	<i>The Resolution Applicant has assumed that since this is a NCLT approved plan under a statutory process and is binding on all stakeholders under Sections 31(1) and 238 of Code, all concerned regulators, including RBI, shall give expeditious approvals to facilitate the Resolution Plan of the Corporate Debtor and its implementation.</i>	As per Section 37(l) of the CIRP Regulations, a resolution plan may provide for <u>the <b>measures</b> required for implementing the same by obtaining necessary approval from the Central and State Governments and other authorities.</u>  Thus, the SRA may approach the concerned authority(ies) in accordance with law.	<b>Not Allowed.</b>
(12)	16(l)	<i>This Resolution Plan assumes that no sale deeds / agreement of sale etc. has been entered upon and/or registered by the Corporate Debtor without knowledge of the charge holder being State Bank of India. In the event of such deeds are detected, the same will be construed to be void ab initio.</i>	As provided in the resolution plan shall be applied.	<b>Allowed</b> in accordance with law.
(13)	16(m)	<b>Liabilities accrued/may accrue under Various Acts &amp;-Laws</b> - Approval of the Resolution Plan will be treated	Whatever immunity that <b>Ghanashyam Mishra (Supra)</b>	<b>Allowed</b> in accordance



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		<p><i>as waiver approval from past liabilities, payments of fees and all dues including any penalties as well as any form of payment by way of Interest, Late Fees, Damages etc, related to all Government Authorities with regard to non-compliances of various Statutes to be adhered related to Consent, Fees, Certification etc. by the Corporate Debtor prior to the Effective Date which is inclusive but not exhaustive of:</i></p> <ul style="list-style-type: none"><li>• <i>Factories Act, 1948</i></li><li>• <i>Industrial Disputes Act, 1947</i></li><li>• <i>Payment of Wages Act, 1936</i></li><li>• <i>The Minimum Wages Act, 1948</i></li><li>• <i>The Employees State Insurance Act, 1948</i></li><li>• <i>The Bonus Act, 1965</i></li><li>• <i>Legal Metrology Act, 2009</i></li><li>• <i>Negotiable Instruments Act, 1881</i></li><li>• <i>Environment (Protection) Act, 1986</i></li></ul>	provides, shall apply.	ce with law.
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		<ul style="list-style-type: none"><li>• <i>Water (Prevention and Control of Pollution) Act, 1981</i></li><li>• <i>Air (Prevention and Control of Pollution) Act, 1974</i></li><li>• <i>Hazardous Waste (Management and handling) Rules, 1989</i></li><li>• <i>State Fire Safety Act</i></li><li>• <i>Electricity Act, 2003</i></li><li>• <i>Trademarks Act, 1999</i></li></ul> <p><i>The waiver also includes any dues relating to Interest, Penal Interest, Penalty, Interest on Penalty, any kind of late fee as well as Damages.</i></p>		
(14)	17.1	<i>The Resolution Applicant has assumed that the Code is a complete code and the NCLT acting under the Code is empowered to grant a single window clearance for all actions as provided in a resolution plan approved by the NCLT.</i>	No blanket order can be passed.	<b>Not Allowed.</b>
(15)	17.2	<i>Accordingly, the process stipulated under the Code for implementation of a resolution plan is a final and binding process and therefore, any action undertaken pursuant to a resolution plan approved by</i>	The SRA may approach the concerned authority(ies) in accordance with law.	<b>Not allowed.</b>



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	<p><i>the NCLT under the Code does not require compliance with procedural requirements under other laws, to the extent permissible under the Code, including the requirements with respect to the following, that shall stand complied and approved upon approval of this Resolution Plan by the NCLT:</i></p> <p style="padding-left: 40px;"><i>(a) The vacation of office by the directors who comprised the suspended board of directors, or the appointment of new directors on the board of the Corporate Debtor (for the interim Period and/or by the Effective Date, as the case may be) shall not require any corporate action by the Corporate Debtor or any other approvals and the Corporate Debtor may file the order of the NCLT to inform the Registrar of Companies regarding such vacation and appointment.</i></p> <p style="padding-left: 40px;"><i>(b) The increase in authorized share capital of the Corporate Debtor, as contemplated in Clause 14, shall not require</i></p>	<p>However, the provision of Section 31(4) of the I&amp;B Code and Regulation 37 of the CIRP Regulations will be applicable.</p>	
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		<p><i>any corporate action by the Corporate Debtor or any other approvals, and the increased authorized share capital and the revised Memorandum of Association, as set-out in this plan shall take effect pursuant to approval of this Resolution Plan by the NCLT, and the Corporate Debtor may file the order of the NCLT to inform the Registrar of Companies regarding such increase in authorized share capital and amendment to the Memorandum of Association.</i></p> <p><i>(c) The cancellation of existing equity share capital and preference share capital <b>*and cancellation of old share certificates issued by the Corporate Debtor</b> as contemplated in Clause 9.5 shall not require any corporate action by the Corporate Debtor or any other approvals and the Corporate Debtor may file the order of the NCLT to inform the Registrar of</i></p>		
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		<p><i>Companies regarding such cancellation.</i></p> <p><i>(d) The issuance and allotment of equity shares to the Resolution Applicants, as contemplated in Clause 14 shall not require any corporate action by the Corporate Debtor or any other approvals, and the Corporate Debtor may file the order of the NCLT to inform the Registrar of Companies regarding such issuance and allotment.</i></p> <p><i>(e) The issuance and allotment of equity shares to Resolution applicant, as contemplated in Clause 14 shall not require any corporate action by the Corporate Debtor or any other approvals, and the Corporate Debtor may file the order of the NCLT to inform the Registrar of Companies regarding such issuance and allotment.</i></p> <p><i>(f) Removal of the existing auditors and substitution by another</i></p>		
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		<i>duly qualified auditor for the Corporate Debtor.</i>		
(16)	18.1	<i>The Resolution Applicant and the Corporate Debtor shall be entitled to share a certified copy of this Resolution Plan and the order of the NCLT approving this Resolution Plan with third parties, including Governmental authorities.</i>	It is upon the resolution applicant as per the requirement.	<b>Allowed.</b>
(17)	18.2	<i>The order of the NCLT approving this Resolution Plan shall take effect pursuant to Section 238 of the Code, to the extent applicable, that states that, "the provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.</i>	Provisions of Section 238 shall apply.	<b>Allowed</b> in accordance with law.

**Conclusion:**

79. 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.



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80. 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.

81. In so far as the approval of **the Resolution Plan dated 13.12.2024** by **Algoquant Financials LLP (Successful Resolution Applicant)** is concerned, this Adjudicating Authority is bound by the judgement of the Hon'ble Supreme Court of India in **K. Sashidhar vs. Indian Overseas Bank and Ors.** reported in **(2019) 12 SCC 150: MANU/SC/0189/2019**, wherein it is held that:

*“35. [...] Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides: **(i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board.** [...]. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to*

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vote on the resolution plan Under Section 30(4) of the I & B Code.”

**(Emphasis Added)**

82. 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)**

83. 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.”**



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**(Emphasis Added)**

84. Reinforcing the above, the Hon'ble Apex Court in ***Vallal RCK vs. Siva Industries and Holdings Limited*** reported in **MANU/SC/0753/2022**, has held that:

“21. This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts.”

xxx

xxx

xxx

“27. This Court has, time and again, emphasized the need for minimal judicial interference by the NCLAT and NCLT in the framework of IBC. We may refer to the recent observation of this Court made in the case of Arun Kumar Jagatramka v. Jindal Steel and Power Limited and Anr. (2021) 7 SCC 474:

95. ....However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicatory authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India.

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*As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC.....”*

**(Emphasis Added)**

85. In the case at hand, we would note that **the Resolution Plan dated 13.12.2024** submitted by **Algoquant Financials LLP (Successful Resolution Applicant)**, has been approved by the Committee of Creditors of the Corporate Debtor by 100% voting share.

86. We have further noted that the Letter of Intent was issued on 26.02.2023, which has been unconditionally accepted by the SRA. Accordingly, **Algoquant Financials LLP** is 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.

87. In the light of the enumerations and observations made in this Order supra, we hereby **APPROVE** and **FINALLY SANCTION**

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**the Resolution Plan dated 13.12.2024** submitted by **Algoquant Financials LLP (Successful Resolution Applicant)**.

88. 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.

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

90. 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.

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

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

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93. We have noted that the Fair value (Average) of the Corporate Debtor is arrived at Rs. 12,37,88,787/- and the Liquidation Value (Average) is Rs. 9,44,59,496/-.

94. The Successful Resolution Applicant has proposed to pay of an amount of **Rs. 9,67,08,353/-** as **Total Plan Amount** against the total admitted claim of Rs. 3,13,60,10,637.16/- and the total amount claimed of Rs. 3,21,71,15,273.58/-. CIRP cost has proposed to be paid in full as per actual. Thus, the “hair cut” in respect of amount admitted by the RP is **97%**.

95. We have noted that the RP appointed a Transactional Auditor to carry out the transaction audit of the corporate debtor under Section 43, 45, 50, 66 of the Code for the period of 21.11.2020 to 21.11.2022. The Transactional Auditor has submitted report on 10.03.2023 observing that there are no avoidance transactions in the corporate debtor company. However, the look back period for avoidance transactions under Sections 43, 45 and 50 is two years, but there is no limit on look back period for fraudulent transactions under Section 66 of the I&B Code.

96. Under similar circumstances, in the matter of ***Rachna Jhunjhunwala, Resolution Professional of Power Max (India) Pvt. Ltd.*** in I.A. (IB) (Plan) No. 2/KB/2024 in Company Petition No. 104/KB/2022, decided on 17.05.2024, reported in MANU/NC/2452/2024, we held that:

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*“73. The Insolvency and Bankruptcy Code, 2016 casts huge responsibilities on the Resolution professional to deal with avoidance transactions under Sections 43, 45, 50 and 66 during the corporate insolvency resolution process of a corporate debtor. In fact, the Code contemplates that it is the Resolution Professional alone who would form an opinion and determine avoidance transactions and take it up with the Adjudicating Authority by way of application for appropriate orders.*

*74. The members of the committee of creditors who participate in the CIR Process neither can devote their time on a full-time basis nor equipped to form an opinion and determine the avoidance transactions in a corporate debtor undergoing CIRP/ liquidation.*

*75. If the Resolution Professional misses to determine the avoidance transactions and fail to file applications before the Adjudicating Authority, then no way diverted or syphoned of funds if any can be got back and made available for distribution and insolvency resolution of the corporate debtor.*

*76. In the present case, we find that total admitted claims is of Rs. 48.36 Crore, the liquidation value is Rs. 4.08 Crore and the value of the Resolution Plan is of Rs. 4.01 Crore, leading to a "haircut" of about 92%.*

*77. It is the duty of the Resolution Professional to bring it to the notice of the CoC, as to where the borrowed funds have gone, particularly in case where the "haircut" is as high as 92% like in the present case.*

*78. We have noted that during the CIR Process, the RP has appointed a transactional auditor who has examined only two financials' years i.e., 2020-2021 and 2021-2022, and unaudited Trial Balance of 2022-2023, and came to conclusion that there are no avoidance transactions. **While the look back period for fraudulent transactions***

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under Sections 43, 45 and 50 is two years and there is no limit on look back period for fraudulent transactions under Section 66 of the I&B Code.

79. Unless the audit period covers a period beyond two years, at least from the period when the corporate debtor starting making losses / default in payment of debts, we are of the view that no fraudulent transactions can meaningfully be found or unearthed. Further, the transactional audit report merely reports changes in various accounts when compared to the previous year.

80. Hence, we direct the Resolution Professional to examine the last 6 years Financial Statements, IT Returns, GST Returns, cash flow and fund flow statements in detail and place it before the CoC of the Corporate Debtor with appropriate justification and the basis for forming opinion that there were no avoidance transactions, in the form of a report. A copy of the said report also be filed with this Adjudicating Authority.

81. The RP shall comply with the direction within a period of four weeks from the date of pronouncement of the order. This direction shall not affect the approval of the Resolution Plan.”

**(Emphasis Added)**

97. Thus, we direct the RP to examine the last 10 years Financial Statements, IT Returns, GST Returns, cash flow and fund flow statements in detail and place it before the CoC of the Corporate Debtor with appropriate justification and basis for forming an opinion that there were no avoidance transactions, in the form of a report. If required, forensic auditor can also be appointed by the RP. The fees for RP for this assignment and the appointment of forensic



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auditor shall be borne by financial creditors. A copy of the said report also be filed with this Adjudicating Authority.

98. Further, we direct the R2 and R3 to the I.A. (IB) No. 72/KB/2023, to cooperate with the RP by providing the all the documents sought for by the RP and the documents mentioned above within a weeks' time. Persistent non-cooperation albeit this order shall be visited with penalty. In view of this direction, **I.A. (IB) No. 72/KB/2023** is **disposed of**.

99. We are not discharging the Resolution Professional as he will comply with the direction as above to determine PUFÉ transactions of the corporate debtor.

100. 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.

101. 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.

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102. In terms of the view above, the interlocutory application being I.A. (IB) (Plan) No. 7/KB/2025 shall stand **disposed of** accordingly.

**TO SUMMARIZE:**

103. I.A. (IB) No. 72/KB/2023 is **allowed and disposed of**. Direction is given to the Respondents to cooperate the RP by providing all the documents as asked for within a week's time and the RP shall examine the same and determine PUFÉ transactions and furnish a report time to time before this Adjudicating Authority.

104. I.A. (IB) (Plan) No. 7/KB/2025 is **allowed and disposed of**.

105. Main company petition be listed on 22/04/2025, for progress report.

106. Certified copy of the orders, if applied for with the Registry, be supplied to the parties upon compliance with all requisite formalities.

**Cmde. Siddharth Mishra**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

**This Order is signed on 24th Day of March 2025.**

Bose, R. K. [LRA]