IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

IA (IB) No.284/KB/2021
in
CP (IB) No.1702/KB/2018

An application under section 30(6) for approval of Resolution Plan under section 31(1)of the Insolvency and Bankruptcy Code, 2016

In the matter of

CP (IB) No.1702/KB/2018

Esspee Sarees Private Limited	…	Financial Creditor

Versus

Skipper Textiles Private Limited	…	Corporate Debtor

And

In the matter of

Nitesh Kumar More *[Resolution Professional of Skipper Textiles Private Limited(in CIRP)]*	…	Applicant

Order reserved on: 03.08.2021

Order pronounced on: 25.11.2021

Coram:

Shri Rajasekhar V.K.	:	Member (Judicial)
Shri Harish Chander Suri	:	Member (Technical)

Appearances (through video conference):

For the Applicant	:	Mr. Arun Kumar Gupta, FCA Mr.Nitesh Kumar More, RP

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This court convened via video conference today.

2. The present application has been filed by Mr. Nitesh Kumar More, the Resolution Professional *(hereinafter referred to as "RP")*, of Skipper Textiles Private

Limited, the corporate debtor under section 30(6) read with section 31(1) of the Insolvency and Bankruptcy Code, 2016 and regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for approval of a Resolution Plan in respect of the corporate debtor.

3. The underlying company petition bearing CP (IB) No.1702/KB/2018 was filed by Esspee Sarees Private Limited against Skipper Textiles Private Limited, under section 7 of the Insolvency and Bankruptcy Code 2016 *(**"the Code**" or **"IBC"**)* which was admitted into Corporate Insolvency Resolution Process (CIRP) by this Adjudicating Authority *vide* order dated 28.06.2019.

4. Initially, Mr. Pradeep Goenka was appointed as Interim Resolution Professional (IRP) by this Adjudicating Authority. He was later replaced by Mr. Nitesh Kumar More, who was appointed as the RP by this Adjudicating Authority on 20.12.2019.

5. The IRP made public announcements on 01.07.2019 regarding the initiation of CIRP and called for proof of claims from the financial and operational creditors, workers and employees of the Company in the specified forms.

6. The claims of financial and operational creditors as existing as on the date of filing the present application is as follows:

I. Claims of Creditors:

(Amount in rupees)

Sl. No.	Category of Claim as per Annexure of the Resolution Plan	Amount admitted as per Information Memorandum	Amount proposed to be paid as per Plan
1.	CIRP Costs	—	75,00,000.00
2.	Secured Financial Creditors	13,13,70,039.83	1,31,370,039.83
3.	Unsecured Financial Creditors who filed their claims	16,26,21,869.00	4,87,86,560.70

Sl. No.	Category of Claim as per Annexure of the Resolution Plan	Amount admitted as per Information Memorandum	Amount proposed to be paid as per Plan
4.	Unsecured Financial Creditors who did not file their claims	32,136,542.00	9,640,962.60
5.	Operational Creditors who filed their claims	8,066,495.64	806,649.56
6.	Operational Creditors who did not file their claims	7,17,62,374.00	71,76,237.40
7.	Employees/Workmen	22,933.00	22,933.00
Total		**40,59,80,253.47**	**20,53,03,383.09**

7. The Applicant states that a total of seven CoC meetings have been held during the CIRP period, which are as follows:

Particulars	Date of CoC Meeting
1st CoC Meeting	26.07.2019
2nd CoC Meeting	09.09.2019
3rd CoC Meeting	03.10.2019
4th CoC Meeting	20.01.2020
5th CoC Meeting	27.06.2020
6th CoC Meeting	20.10.2020
7th CoC Meeting	05.02.2021

8. The Applicant submits that in terms of the provisions of section 25(2)(h) of the Code read with regulation 36A(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, invitations in Form ‘G’ for Expressions of Interest (EoIs) from potential resolution

applicants were issued on 16.09.2019 for submission of resolution plans for the Corporate Debtor. This was published in Kolkata editions of *Financial Express* (English) and *Aajkal* (Bengali). The last date for receipt of EoIs was 01.10.2019. Form G was republished in Kolkata editions of *Financial Express* (English) and *Aajkal* (Bengali) of 24.01.2020, fixing the last date for receipt of EoI as 11.02.2020.[1]

9. The Applicant/RP submits that in response to Form G published on 24.01.2020, he received an EoI from Curtainman Online Pvt. Ltd. He announced the final list of prospective Resolution Applicants (RA) on 21.02.2020.

10. On 15.10.2020, the Applicant/RP received a Resolution Plan from Curtainman Online Pvt. Ltd. He placed the said Resolution Plan for consideration of the Committee of Creditors (CoC) in its sixth meeting held on 20.10.2020.

11. After discussing the Resolution Plan, the CoC decided to put it to vote and the e-voting was, therefore, conducted on 22.10.2020. The results of e-voting were declared on 25.10.2020. As per the results, the Resolution Plan submitted by Curtainman Online Pvt. Ltd. has been approved only by 33.366%.

12. On 28.10.2020, the RP received an email from the ICICI Bank Ltd, one of the Financial Creditors having 44.68% voting shares, requesting him to convene a CoC meeting since it wanted to reconsider the Resolution Plan. The Applicant/RP submits that he received similar requests from other members of the CoC.

13. Meanwhile, the extended CIRP period had expired on 28.10.2020. Therefore, the RP filed an application bearing IA (IB) No.1184/KB/2020 seeking exclusion of a period of fourteen days that were lost in organising the sixth CoC meeting. The same was allowed by this Adjudicating Authority *vide* order dated 27.01.2021.

14. On 27.01.2021, the RP received a revised Resolution Plan from Curtainman Online Pvt. Ltd.

[1] Annexure D at Pages 66 to 72.

15. The RP convened the seventh CoC meeting on 05.02.2021 wherein the CoC deliberated on the Resolution Plan and after much deliberation, put it up for e-voting. The e-voting lines were open from 06.02.2021 till 09.02.2021, 04:00 pm. The said revised Resolution Plan submitted by Curtainman Online Pvt. Ltd. was approved by 80.47% votes. The minutes of the seventh CoC meeting and e-voting results are Annexed to the Application as Annexure F on pages 77 to 83.

16. The Applicant submits details of various compliances as envisaged within the Code and the CIRP Regulations which requires a Resolution Plan to adhere to, which is reproduced hereunder:

I. <u>Submission of Resolution Plan in terms of section 30(2) of the Code:</u>

Clause of sec. 30(2)	***Requirement***	***How dealt with in the Plan***
(a)	The plan must provide for payment of CIRP cost in priority to the repayment of other debts of CD in the manner specified by the Board.	Clause 2(a)(i) in part III-B Page 95.
(b)	(i) The plan must provide for the repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than the amount payable to them in the event of liquidation u/s 53; or	Clause 2(d) in Part III-B page 98 and 118.
	(ii) The plan must provide for the repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than the amount that would have been paid to such creditors if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section	Clause 2(d) in Part III-B page 98 and 118.

Clause of sec. 30(2)	***Requirement***	***How dealt with in the Plan***
	(1) of section 53, whichever is higher and	
	(iii) provides for payment of debts of financial creditors who do not vote in favour of the resolution plan, in such manner as may be specified by the Board.	Clause 2(c)(vii) in Part-III-B, Page 97
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Clause C in Part-IX Page 116.
(d)	Implementation and Supervision.	Clause-A in Part-IX Page 114.
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Part-X page 119.
(f)	Conforms to such other requirements as may be specified by the Board.	___

II. ***<u>Measures required for implementation of the Resolution Plan in terms of regulation 37 of CIRP Regulations:</u>***

Particulars	***Relevant page of the Revised Resolution Plan dealing with aforesaid compliance with Regulation***
A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximisation of value of its assets, including but not limited to the following:-	
(a) transfer of all or part of the assets of the corporate debtor to one or more persons.	Not Proposed by RA.

Particulars	***Relevant page of the Revised Resolution Plan dealing with aforesaid compliance with Regulation***
(b) sale of all or part of the assets whether subject to any security interest or not.	Not Proposed by RA.
(c) restructuring of the corporate debtor, by way of merger, amalgamation and demerger.	Not Proposed by RA.
(d) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons.	Annexure 1 on page 45 of the Resolution Plan.
(e) cancellation or delisting of any shares of the corporate debtor, if applicable.	Annexure 1 on page 45 of the Resolution Plan.
(f) satisfaction or modification of any security interest.	Clause 2b page 7 of the Resolution Plan.
(g) curing or waiving of any breach of the terms of any debt due from the corporate debtor.	Not Proposed by RA.
(h) reduction in the amount payable to the creditors.	Annexure A at page 144 of the Application.
(i) extension of a maturity date or a change in the interest rate or other terms of a debt due from the corporate debtor.	Not Proposed by RA.
(j) amendment of the constitutional documents of the corporate debtor.	Not Proposed by RA.
(k) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose.	Not proposed by RA.

Particulars	***Relevant page of the Revised Resolution Plan dealing with aforesaid compliance with Regulation***
(l) change in portfolio of goods or services produced or rendered by the corporate debtor.	Not proposed by RA.
(m) change in technology used by the corporate debtor.	Not proposed by RA.
(n) obtaining necessary approvals from the Central and State Governments and other authorities.	Not proposed by RA.

III. <u>Mandatory contents of Resolution Plan in terms of regulation 38 of CIRP Regulations:</u>

Reference to relevant Regulation	***Requirement***	***How dealt with in the Plan***
38(1)	The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.	Clause-2(d) in Part-III-B on page 10.
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors of the corporate debtor.	Part III at page 6 of the Resolution Plan.
38(1B)	A resolution plan shall include a statement giving details of the resolution applicant or any of its related parties has failed to	Part-X at page 35 of the Resolution Plan.

Reference to relevant Regulation	***Requirement***	***How dealt with in the Plan***
	implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.	
38(2)	A resolution plan shall provide:	
	(a) the term of the plan and its implementation schedule;	Part-IX (A) at page 26 of the Resolution Plan.
	(b) the management and control of the business of the corporate debtor during its term; and	Part-IX (C) at page 28 of the Resolution Plan.
	(c) adequate means for supervising its implementation.	Part-IX (A) at page 26 of the Resolution Plan.
38(3)	A resolution plan shall demonstrate that –	
	(a) it addresses the cause of default;	Part V at page 15 of the Resolution Plan.
	(b) it is feasible and viable;	Part-X at page 35 of the Resolution Plan.
	(c) it has provisions for its effective implementation;	Part-IXat page 26 of the Resolution Plan.
	(d) it has provisions for approvals required and the timeline for the same; and	Part XII (B)at page 38 of the Resolution Plan.

Reference to relevant Regulation	***Requirement***	***How dealt with in the Plan***
	(e) the Resolution Applicant has the capability to implement the resolution plan.	Part-IV at page 13 of the Resolution Plan.

17. The Applicant submits a supplementary Affidavit affirmed on 19.06.2021 wherein he has annexed the certificate of eligibility under section 29A of the Code submitted by the successful Resolution Applicant on page 21.

18. The Applicant submits that two sets of valuers as required under Regulation 27 were appointed. A summary of the valuation determined is as below-

Class of Asset	**Valuation reports**	**Fair Value** ***(Rs. lakhs)***	**Liquidation Value** ***(Rs. lakhs)***
Land and Building	2	783.00	524.78
Plant and Machinery	2	43.22	30.26
Securities and Financial Assets including Inventory & Intangibles	6	1,728.99	1,092.31
Total Average Value		**2,555.21**	**1,647.35**

19. The Applicant has filed a Compliance Certificate in the prescribed form, *i.e.*, Form 'H' in compliance with regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which has been annexed as **Annexure 'H'** at pages 149 to 161 of the Application.

<u>Details of Resolution Plan/Payment Schedule</u>

20. The Applicant submits the relevant information about the amount claimed, amount admitted, and the amount proposed to be paid by the Successful Resolution Applicant under the said Resolution Plan is tabulated as under:

(Amount in Rupees)

Sl. No.	Category of Claim and Reference to Clause of the Resolution Plan	Amount admitted as per Information Memorandum	% of Claim	Amount proposed to be paid as per Plan
1.	CIRP Costs	—	100%	75,00,000.00
2.	Secured Financial Creditors	13,13,70,039.83	100%	13,13,70,039.83
3.	Unsecured Financial Creditors who filed their claims	16,26,21,869.00	30%	4,87,86,560.70
4.	Unsecured Financial Creditors who did not file their claims	3,21,36,542.00	30%	96,40,962.60
5.	Operational Creditors who filed their claims	80,66,495.64	10%	8,06,649.56
6.	Operational Creditors who did not file their claims	7,17,62,374.00	10%	71,76,237.40
7.	Employees/Workmen	22,933.00	100%	22,933.00
Total		**40,59,80,253.47**		**20,53,03,383.09**

21. Summary of the financial proposal/payment under the Resolution Plan dated 15.10.2020 of Curtainman Online (P) Ltd. as provided under Annexure A to the Resolution plan is tabulated hereunder for the sake of clarity.

Particulars	Amount
CIRP Cost	The RA proposes to pay 100% of the CIRP Cost, at present estimated at ₹75 lakhs, within 30 days of approval of the Plan by this Adjudicating Authority.
Employees/Workmen	The RA proposes to pay 100% of the amount due to Workmen and Employees of ₹22,933/- within 30 days of the approval of the Plan by this Adjudicating Authority.

Particulars	Amount
Operational Creditors	The Operational Creditors shall be paid 10% of the admitted claims – ₹8,06,649.56 for claims admitted by RP and ₹71,76,237.40 for claims not admitted by the RP. The amount shall be paid within 30 days of approval of the Plan by the AA
Financial Creditors	• Secured Financial Creditors have been proposed no haircut - the RA shall continue to maintain the facilities, claim of secured financial creditors is ₹13.13 crores as detailed in the information memorandum. • The Unsecured Financial Creditors (claims admitted by RP) are proposed to be paid 30% of the admitted claims within 36 months of approval of the Plan in (12 instalments) by the RA. This shall amount to a payment of ₹4,87,86,560.70. • The Unsecured Financial Creditors (unadmitted claims) are also proposed to be paid 30% of the stated claims within 36 months in 12 equal instalments. The amount shall be ₹96,40,962.60.

22. The Resolution Plan defines *"Effective Date"* as the date on which Resolution Plan is approved by the Adjudicating Authority.

23. The Applicant submits that the RP had filed an application for avoidance of transaction and other reliefs as per sections 43, 45, 50 and 66, being IA No.304/KB/2021. The Applicant further submits that ICICI Bank had been charging interest and other charges through the bank account of the corporate debtor. The RP had filed an application bearing IA No.84/KB/2021 before this Adjudicating Authority praying for a reversal of these charges recovered during the CIRP period. Both these applications – IA No.84/KB/2021 and IA No.304/KB/2021 – have been dealt with *vide* separate orders.

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

24. The Resolution Plan also provides for –

    a. Appointment of Monitoring Agency in Part IX;

    b. Management of Company after Resolution in Part IX; and

    c. Term and implementation of the resolution plan in Part IX.

Reliefs and Concessions

25. The Reliefs and Concessions sought by the Resolution Applicant in Annexure 3 of the Resolution Plan, from the Adjudicating Authority are set out below for the successful implementation of the Resolution Plan. The orders thereon are indicated against each.

Sl. No.	Relief and/or Concessions Sought	Orders thereon
1.	*The Central Board of Direct Taxes (CBDT) or any other relevant Governmental Authority to exempt the RA and the CD from the applicability of and payment of all taxes under the Income Tax Act, 1961 (including Section 115JB), including any liability under the Minimum Alternate Tax which may arise on account of the transactions envisaged under this RPlan either on the RA, or the CD or any other Person who is likely to be impacted due to implementation of the RPlan, and the Adjudicating Authority shall pass an order to that effect.*	This is for the relevant tax authorities to consider, and not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority.
2.	*The CBDT and or any other Governmental Authority to allow the CD to enjoy and avail in future any tax benefits, deductions, exemptions as per the relevant provisions of the applicable law which the CD was entitled to as on the*	This is for the relevant tax authorities to consider, and not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority.

Sl. No.	Relief and/or Concessions Sought	Orders thereon
	Plan Effective Date for the balance period as per the relevant provisions of the Applicable Law.	
3.	*All licenses and Government Approvals held by the CD, which expire prior to the Plan Effective Date or within a period of six (6) months thereafter, shall be renewed / extended by the relevant Governmental Authorities, and the CD shall be permitted to continue to operate its business and assets in the manner operated prior to submission of this RPlan until renewal / extension of such licenses and approvals. The relevant Governmental Authorities will provide a reasonable period of time after the Plan Effective Date in order for the RA to assess the status of the licenses and Governmental Approvals required by the CD and to procure that the CD applies for the same.*	The Resolution Applicant shall make necessary applications to the concerned authorities for renewal of such business permits in terms of s.31(4) of the IBC, and such authorities shall also consider the same keeping in mind the objectives of the Code
4.	*The Collector of Stamps, Revenue Department, of any State Government and the Ministry of Corporate Affairs to exempt the RA and the CD, from the levy of stamp duty and fees applicable in relation to this RPlan and its implementation, including any stamp duty applicable on the issue of shares or NCDs by the CD.*	Not granted
5.	*All Governmental Authorities to waive all past Non-Compliances of the CD under Applicable Laws, and the CD, RA shall not be liable for any Non-Compliances under Applicable Laws for the period prior to the Plan Effective Date.*	Granted in terms of s.32A of the Code.
6.	*The rights of any Person (whether exercisable now or in the future and whether contingent or not) to call for the*	A *carte blanche* of this nature cannot be granted

Sl. No.	Relief and/or Concessions Sought	Orders thereon
	allotment, issue, sale or transfer of shares or loan capital of the CD or the RA, whether on a change of control, or otherwise, shall stand unconditionally and irrevocably extinguished.	in favour of the corporate debtor.
7.	*Consents and approvals, authorisations etc.*	
	i) 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 consents, approvals, concessions, authorisations, permits or the like that has been granted to the Company or for which the Company has made an application for renewal or grant.	These are not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority.
	ii) In accordance with the General Circular No.IBC/01/2017 bearing F.No.30/14/2017-Insolvency issued by the Ministry of Corporate Affairs, Government of India, approval of the shareholders/ members of the corporate debtor/ company, which would have been required under Companies Act, 2013 or any other law if the resolution plan was being considered outside the scope of the Code shall not be required for cancellation and issuance of shares and any other action under the Resolution Plan for its implementation.	All internal approvals such as that of shareholders, creditors etc. required under the Companies Act, 2013 are in any case already covered by the circular referred to. However, filing of relevant forms along with applicable filing fee with the jurisdictional authorities shall not be exempt and the same shall be complied with.
8.	*Continuation of Moratorium:* *The Resolution Applicant will acquire control over the Company pursuant to the*	While the Resolution Applicant is free to take its own time to discover all the non-compliances that

Sl. No.	Relief and/or Concessions Sought	Orders thereon
	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 Company from its existing promoters. The Resolution Applicant may take some time to discover all the non-compliances that may exist in relation to the Company on the date of acquisition of control by the Resolution Applicant over the Company. As such the Resolution Applicant may take some time to identify such non-compliances and to address them. In light of this, the Resolution Applicant prays to the NCLT to grant it immunity from any actions and penalties (of any nature) under any laws for any non-compliance of laws in relation to the Company or by the Company. which was existing as on the date of acquisition of control by the Resolution Applicant over the Company and which continues for a period of upto 12 (twelve) months after the acquisition of control by the Resolution Applicant over the Company. The Resolution Applicant undertakes to cause the Company 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.	may exist in relation to the Company, a *carte blanche* of this nature cannot be granted in favour of the corporate debtor. However s.32A will apply.
9.	*Inquiries, investigations etc.:* *All inquiries, investigations, 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*	Granted in terms of s.32A of the Code.

Sl. No.	Relief and/or Concessions Sought	Orders thereon
	Company or affairs of the Company, 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 enforcement agency), in relation to any period prior to the Completion Date or arising on account of the acquisition of control by the Resolution Applicants over the Company pursuant to this Resolution Applicants over the Company pursuant to this Resolution Plan shall be deemed to be withdrawn or dismissed and all liabilities or obligations in relation thereto, whether or not set out in the balance sheets of the Company or the profit and loss account statements of the Company. will be deemed to have been written off in full and permanently extinguished by virtue of the order of the NCLT approving this Resolution Plan and the Company or the Resolution Applicants shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto. By virtue of the order of the NCLT approving this Resolution Plan 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 Company in relation to any period prior to the acquisition of control by the Resolution Applicants over the Company or on account of the acquisition of control by the Resolution Applicants over the	

Sl. No.	Relief and/or Concessions Sought	Orders thereon
	Company pursuant to this Resolution Plan.	
10.	*Anti-corruption provisions and immunity:*	
	i) As the Resolution Applicants will acquire control over the Company 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 Company from its existing promoters, the Resolution applicants may take some time to discover all the non-compliances that may exist in relation to the Company on the date of acquisition of control by the Resolution Applicant over the Company.	The Resolution Applicant is free to take its own time to discover all the non-compliances that may exist in relation to the Company, a *carte blanche* of this nature cannot be granted in favour of the corporate debtor. However s.32A will apply.
	ii) Further. the Resolution Applicant will acquire control over the Company 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 Company from its Existing Promoters. The Resolution Applicant may take some time to discover all the non-compliances that may exist in relation to the Company on the date of acquisition of control by the Resolution Applicant over the Company. As such the Resolution Applicant may take some time to identify such non-compliances and to address them. In light of this, the	The Resolution Applicant is free to take its own time to discover all the non-compliances that may exist in relation to the Company, a *carte blanche* of this nature cannot be granted in favour of the corporate debtor. However s.32A will apply.

Sl. No.	Relief and/or Concessions Sought	Orders thereon
	Resolution Applicant prays to the NCLT to grant it immunity from any actions and penalties (of any nature) under any laws for any non-compliance of laws in relation to the Company or by the Company. which was existing as on the date of acquisition of control by the Resolution Applicant over the Company and which continues for a period of upto 12 (twelve) months after the acquisition of control by the Resolution Applicant over the Company. The Resolution Applicant undertakes to cause the Company 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.	
	iii) The relevant Governmental Authority to exempt the RA and the CD from the applicability of and payment of all Taxes under the Central Goods & Services Tax Act, 2017 which may arise on account of the transactions envisaged under this RPlan either on the RA, or the CD or any other Person who is likely to be impacted due to implementation of the RPlan, and the Adjudicating Authority shall pass an order to that effect.	This is for the relevant tax authorities to consider, and not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority.
11.	*Other Reliefs from Financial Creditors and Banks:*	
	i) All the lenders / creditors / interested parties shall undertake all such steps to ensure that the account of the Company is classified as "standard"	These are not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority.

Sl. No.	Relief and/or Concessions Sought	Orders thereon
	subject to the requisite RBI Guidelines and any other adverse action taken by them under the regulatory regime against the Company and/or any other officer / employee of the Company in relation to the facilities given to the Company (whether or not the same is outstanding as on the date of this Resolution Plan), including but not limited to initiation of proceedings under Section 138, willful defaulter proceedings, any other complaint to any regulator, administrative body, judicial body, etc. irrespective of whether there is a notice of the same to the Company or its officials, would stand discharged subject to the requisite RBI Guidelines.	
	ii) As per the IM shared with the RA, there is a contingent liability of ₹16.75 Crores on account of Corporate Guarantee. In case guarantee issued by Corporate Debtor (excluding the guarantee issued on behalf of Skipper Furnishing (P) Ltd to ICICI Bank), gets invoked after approval of Resolution Plan by Adjudicating Authority, no claims whatsoever, of any nature shall subsist against the company or the Resolution Applicant. Any charge created in this regard should accordingly be modified and/or satisfied by the creditors including principal terms and conditions, extent and operation of charge, amount secured by the charge. The corporate guarantee	Granted.

Sl. No.	Relief and/or Concessions Sought	Orders thereon
	issued on behalf of Skipper Furnishing (P) Ltd to ICICI Bank shall continue in the current form.	
	iii) All the corporate guarantee issued by corporate debtor to various financial creditors/ other entities shall be relinquished/ discharged and no claims whatsoever shall subsist against the company on fulfilment of the terms of the Resolution Plan.	Granted.
	iv) All the Corporate Guarantee issued by the Company to various banks for lending to subsidiary and associate companies for their projects will be treated as withdrawn and no claim whatsoever will arise against the Corporate Debtor post approval of the Resolution Plan.	Granted.
12.	*The Central Board of Excise & Customs/ respective value-added tax/ entry tax authorities/ Director General of Foreign Trade to consider providing relief to the CD from all litigations pending at different levels and provide waiver from tax dues including interest and penalty on such litigations.*	So far as the previous proceedings and past dues are concerned, the relief is granted in terms of the Code.
13.	*All Governmental Authorities to waive the Non-Compliances of the CD prior to the Plan Effective Date, including but not limited to Companies Act 2013, the Industrial Disputes Act, 1947, and the relevant Shops & Establishment Acts and rules, circulars and regulations of each of the above legislations.*	Granted in terms of s.32A of the Code.

Sl. No.	Relief and/or Concessions Sought	Orders thereon
14.	*The Reserve Bank of India to confirm that, on and from the Plan Effective Date, all accounts of the CD shall stand regularised and their asset classification shall be "standard" for the purposes of all Applicable Laws.*	These are not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority. The Resolution Applicant shall make necessary applications to the concerned authorities.
15.	*All Governmental Authorities to grant any relief, concession or dispensation as may be required for implementation of the transactions contemplated under the RPlan in accordance with its terms and conditions.*	The Resolution Applicant shall make necessary applications to the concerned authorities and such authorities shall also consider the same keeping in mind the objectives of the Code.

Findings:

26. This application was first heard and reserved for orders on 05.04.2021. However, upon perusal of the documents this Adjudicating Authority observed various incongruities in the file. It was accordingly listed back on board for clarifications. The said clarifications and documents sought from the RP are recorded in the order dated 28.05.2021. The application was thereafter listed for further consideration on 21.06.2021.

27. On 21.06.2021, the Supplementary Affidavit filed by the RP along with the clarifications and documents annexed was taken on record. Since another application bearing **IA (IB) No.304/KB/2021**, filed under sections 43, 45, 50 and 66 of the Code was pending and the same had not been pressed for hearing, this Adjudicating Authority enquired if the RP wished to withdraw the same. However, the RP submitted that he would not like to withdraw the application for the reason recorded in the order dated 26.06.2021.

28. Since the said application would have abated in case the Resolution Plan was approved, it was felt that the said application bearing IA (IB) No.304/KB/2021 filed under sections 43, 45, 50 and 66 be heard and disposed of first. Therefore, **IA (IB) No.304/KB/2021** along with other pending applications were listed for hearing on 14.07.2021 and were finally reserved for orders on 03.08.2021.

29. In so far as the submissions made in the Supplementary Affidavit are concerned, we are satisfied with the clarifications submitted and further documents filed by the RP, except for the Affidavit under section 29A affirmed on 15.10.2020. The clarification sought in this regard was that the Corporate Debtor in the present matter is Skipper Textile Pvt. Ltd., however, the Affidavit filed under section 29A is with respect to Skipper Homes Pvt. Ltd.

30. In response to this, it was submitted that the said Affidavit under section 29A inadvertently records the name of Skipper Homes Pvt. Ltd. instead of Skipper Textile Pvt. Ltd., and that the same is a typographical error. It was further submitted that the Resolution Applicant had also indicated that it had submitted a similar Affidavit dated 21.03.2020 under section 29A of the Code in connection with the Corporate Debtor, a copy whereof is annexed to the said Supplementary Affidavit.

31. We refuse to believe that the mismatch of names of the Corporate Debtor in the Affidavit under section 29A is not a typographical error. It is in fact the wrong Affidavit that has been filed. This is evident from two aspects.

32. Firstly, from the Affidavit itself, for not only the name of the Corporate Debtor is wrong but also the date on which the CIRP against the present Corporate Debtor had been initiated has been mentioned as 21.10.2019, which is wrong in the present facts because the date of initiation of CIRP against the present Corporate Debtor is 28.06.2019. The date that is mentioned in the Affidavit under section 29A is the date of initiation of CIRP of Skipper Homes Pvt. Ltd., the Resolution Plan in which matter has been approved by this Adjudicating Authority on 11.02.2021.

33. Second, from the pleadings in paragraph 24 of the application under consideration wherein it has been specifically pleaded that *"the resolution applicant submitted an affidavit dated 15.10.2020 under section 29A confirming its eligibility to submit a resolution plan. Thereafter the resolution applicant, vide an email on 31.01.2021 confirmed that the same affidavit was valid and there was no change in its circumstances."* It is amply clear from this pleading that the Affidavit under section 29A filed in the matter of Skipper Homes Pvt. Ltd. is being referred to and the same was submitted in the present case as well. Therefore, it is wrong to submit that it is a typographical error.

34. It is further submitted that the Resolution Applicant has also indicated that it had submitted a similar Affidavit dated 21.03.2020 under section 29A, a copy of which has been annexed to the Supplementary Affidavit. This Affidavit dated 21.03.2020 is before this Adjudicating Authority's eyes for the first time through the Supplementary Affidavit. Apart from the Supplementary Affidavit affirmed on 19.06.2021, the said Affidavit dated 21.03.2020 is not on record on the portal.

35. An Affidavit filed under section 29A in some other case should not have been filed in the present case. Even though the Resolution Applicants in both the cases are one and the same, both the cases are against different corporate debtors and eligibility with respect to the different corporate debtors is to be filed afresh in each case. The RP is, therefore, cautioned to be more careful in future while

36. Be that as it may, two Affidavits in the proper form are annexed with the Supplementary Affidavit. We are satisfied with the same.

37. On hearing the submissions made by the learned Authorised Representative for the Resolution Professional, and perusing the record, we find that the Resolution Plan has been approved with 80.47% majority by the CoC, as against the minimum threshold of approval by 66% majority of the CoC. As per the CoC, the Resolution Plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. By and large, all the compliances have been done by the RP and the Resolution Applicant for making the plan effective after approval by this Bench. There is no opposition from any quarter as regards the Resolution Plan.

38. According to the Resolution Professional, the Resolution Applicant and the Corporate Debtor fall under the same management. However, since the Corporate Debtor is an MSME enterprise, it is not ineligible for participating in the Resolution Process.

39. On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. No circumstances exist that militate against grant of approval for the Resolution Plan.

40. As far as the question of granting time to comply with the statutory obligations or seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.

41. Any relief sought in the Resolution Plan, where any contract, agreement, understanding, proceeding, action, notice etc. not specifically identified or is for a future contingency, is, at this point of time, rejected.

42. Therefore, subject to the observations made in this Order, we hereby accord our approval to the Resolution Plan. **The Resolution Plan shall form part of this Order.**

43. The Resolution Plan as approved is binding on the Corporate Debtor and other stakeholders involved so that the revival of the Corporate Debtor can come into force with immediate effect.

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

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

46. The RP shall stand discharged from his duties with effect from the date of this Order. He shall, however, perform his duties in terms of the approved Resolution Plan.

47. The Resolution Applicant shall have access to all the Corporate Debtor's records, documents, assets and premises with effect from the date of this Order, to finalise the further line of action required for starting the business operations of the Corporate Debtor.

48. Liberty is hereby granted for moving applications, if required, in connection with the implementation of this Resolution Plan.

49. The Resolution Applicant shall file a copy of this Order with the Registrar of Companies, West Bengal, *inter alia* for updating the status of the Corporate Debtor.

50. The Application being **IA (IB) No. 284/KB/2021** along with the **CP (IB) No.1702/KB/2018** are disposed of accordingly.

51. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

52. Additionally, the Registry shall send a copy of this order to the Registrar of Companies, West Bengal.

53. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)
25.11.2021

SR (LRA)