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

IA (IBC) (PLAN) No. 15/ (KB) /2024
In CP(IB) No. 203/(KB) /2021

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

In the Matter of:

CFM Assets Reconstruction Private Limited

...Financial Creditor

And

Jagdamba Industries Limited

....Corporate Debtor

And

In the matter of:

Aditya Kumar Tibrewal, Resolution Professional having Resignation number as IBBI/IPA-P00743/2017-2018/11249 and having his office at 7C, Kiran Shankar Roy Road, Basement, Hastings Chamber, Kolkata – 700 001 and email address as jil.cirp@gmail.com;

....Applicant / RP

Date of Pronouncement of order: 24.11.2025

Coram:

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

Counsel appeared physically / through video Conferencing

Mr. Sidhartha Sharma, Adv.] For the Resolution Professional
Mr. Rishav Dutt, Adv.]
Mr. Aman Kataruka, Adv.]
Mr. Aditya Tibrewal, RP]

Ms. Namrata Basu, Adv.] For the CoC (Respondent No.3)

Mr. Deepanjan Dutta Roy, Adv.] For Rashmi Metaliks
Ms. Sanjana Jha, Adv.]

Mr. Rishav Banerjee, Adv.] For Tech Nirman in Ivn. P. 39 of 2024

ORDER

Per Siddharth Mishra, Member (Technical):

1. The Court convened through hybrid mode.
2. Ld. Counsel for the parties were heard at length.
3. This application has been preferred by the Resolution Professional of **Jagdamba Industries Limited** to seek approval of Resolution Plan in its entirety along with all annexures, Schedule, Appendixes including the claims contained therein as submitted by **Rashmi Metaliks Limited** the Successful Resolution Applicant (SRA in short) along with reliefs and concessions sought for under the Plan.
4. The CoC has approved the Resolution Plan of **Rashmi Metaliks Limited by 80.96% by CoC Members in the Meeting held on 21.09.2024 and Rashmi Metaliks Limited was declared as Successful Resolution Applicant (SRA)** in respect of the Corporate Debtor.
5. **Brief facts of the CIRP process are as submitted by the Resolution Professional:**

a. The Corporate Debtor was admitted into CIRP vide order dated 22.08.2023 of this Adjudicating Authority and Mr. Aditya Kumar Tibrewal was appointed as IRP. Further, the Applicant namely Mr. Aditya Kumar Tibrewal was confirmed to act as the Resolution Professional ("RP") of the Corporate Debtor in the 1st CoC Meeting.

b. The Resolution Professional has published Form A under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Hereinafter referred to as the 'CIRP Regulations') on 24th August, 2023 with the last date for submissions of claims on 05th September, 2023.

c. Further, the RP has made a published Form-G under Regulation 36A(1) of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Debtor) in the newspapers on 07.11.2023 stating last date of submission of resolution plans was fixed on 19.01.2024.

d. The RP has thereafter published Revised Form-G in the newspapers on 08.12.2023 stating revised last date for submission of EOI was fixed on 24.12.2023.

e. Ld. Counsel for the RP / Applicant further states that in view of the revised Form-G issued on 08.12.2023, two additional EoIs were received by the Applicant, thereafter, the Applicant circulated the provisional list of eligible Prospective Resolution Applicants in accordance with Regulation 63(10) of the

IBBI(Insolvency Resolution Process for Corporate Persons) Regulations, 2016 on 03rd January, 2024.

f. Thereafter, the RP / Applicant has appointed the following Registered Valuers in accordance with Regulation 27 of IBBI(Insolvency Resolution Process for Corporate Persons) Regulations, 2016 to determine the fair value and liquidation value of Land and Building, Plant & Machinery and Securities or Financial Assets of the corporate debtor in accordance with Regulation 35 of IBBI(Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Sl. No.	**Appointment of Valuer**	**Categories**
1.	Dilip Kumar Sharma	Plant & Machinery
2.	Yashwant Kumar Sharma	Plant & Machinery
3.	Navaneet Krishnan	Secured Financial Assets
4.	Amandeep Kaur	Secured Financial Assets
5.	Himanshu Sharma	Land & Building
6.	Prerna Agarwal	Land & Building

g. Thereafter, the aforesaid valuers have submitted their respective reports to the Applicant and the Applicant / RP has made an

average of the aforesaid valuations conducted by the professionals is as under:

Categories	**Average Fair Value**	**Average Liquidation Value**
Plant & Machinery	9,11,73,708.00	6,79,36,151.50
Land & Building	60,63,78,124.00	47,29,69,409.00
Secured Financial Assets	0.00	0.00
TOTAL	**69,75,51,832.00**	**54,09,05,560.50**

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

Sl. No.	**Particulars**	**Description**
1.	Name of CD	Jagdamba Industries Limited
2.	Date of initiation of CIRP	22nd August, 2023
3.	Date of appointment of IRP	22nd August, 2023
4.	Date of publication of Public Announcement	24th August, 2023
5.	Date of Constitution of COC	12TH September, 2023
6.	Date of First Meeting of CoC	21st September, 2023
7.	Date of Appointment of RP	21st September, 2023

8.	Date of Appointment of Registered Valuers	16th October, 2023
9.	Date of Issue of Invitation for EoI	7th November, 2023 and 8th December, 2023
10.	Date of Final List of Eligible Prospective Resolution Applicants	18th January, 2024
11.	Date of Invitation of Resolution Plan	24th December, 2023
12.	Last date of Submission of Resolution Plan	17th February, 2024
13.	Date of Approval of Resolution Plan by CoC	21st September, 2024
14.	Date if filing of Resolution Plan with Adjudicating Authority	3rd October, 2024
15.	Date of Expiry of 180 days of CIRP	18th February, 2024
16.	Date of Order extending the period of CIRP	22nd February, 2024
17.	Date of Expiry of the Extended period of CIRP	15TH October, 2024
18.	**Fair Value**	**69,75,51,832.00**

19.	**Liquidation Value**	**54,09,05,560.50**
20.	Number of Meetings of CoC held	14

a. The Applicant / RP has filed an application seeking exclusion of 30 days' time for completion of the CIRP and the same was granted vide order dated 26.08.2024.

b. Further, it is stated that in the 14th CoC meeting held on 12.09.2024, the CoC Members have discussed and approved for further extension of 30 days time of CIRP period and the same was granted vide an order in IA(IBC)No. 1950/KB/2024 on 19.09.2024.

c. The Ld. Counsel for the RP/ Applicant further states that the Resolution Plan of one Rashmi Metaliks Limited was approved by the majority of the CoC with 80.96% voting in favour of the resolution plan and the voting sheet is annexed with the Petition and marked as Letter-'O'.

d. The Ld. Counsel for the RP/ Applicant further states that the Rashmi Metaliks Limited deposited the EMD to the tune of INR 25,00,000/- (Rupees Twenty Five Lakh only) on 24.11.2023 and the same is attached with the application as Letter-Q. It is further stated that Successful Resolution Applicant (SRA) has also furnished a Bank Guarantee for an amount of INR

1,00,00,000.00 upon submission of Resolution Plan; the copy of the Bank Guarantee is attached with the Petition as Letter-'R'.

e. It is further stated that the Applicant / RP had issued Letter of Intent to the Successful Resolution Applicant on 21.09.2024. The copy of the Letter of Intent is attached with the Petition as Letter-'S'.

f. The Resolution Plan submitted by **Rashmi Metaliks Limited was approved by the CoC by 80.96% majority** and a copy of the same is attached with the plan approval application as **Letter-'P'**.

6. **However, the Successful Resolution Applicant (SRA) namely Rashmi Metaliks Limited** under the Resolution Plan has provided for a total plan value for the Corporate Debtor of **Rs.75,00,00,000/- out of which INR 38,00,00,000/- (Rs. Thirty-eight Crores only) is proposed to be paid to Stakeholders ("Total Stakeholder Resolution Amount") and remaining Plan value of Rs. 37,00,00,000/- (Rs. Thirty-seven Crores only) shall be used for revival of plant and recommencement of operation ("Capex") and working capital as approved by the CoC and the said amount will be paid in terms of Sections 30(2)(a) of the Code and Regulation 38(1) of the CIRP Regulations.** The amounts claimed, amount admitted and the amount provided under the Resolution Plan are as under:

Amount in Crore (INR)

Sl. No.	**Category of Creditor**	**Amount of Claim**	**Claim Admitted**	**Amount provided in the Plan**
1.	**CIRP Cost**			**1.50**
2.	**Secured Financial Creditor**	**353.16**	**352.42**	**35.65**
3.	**Unsecured Financial Creditor**	**0.50**	**0.50**	**0.10**
4.	**Operational Creditors (Other than workmen & employees & Government /statutory dues)**	**2.37**	**2.24**	**0.10**
	Operational Creditor	33.60	1.16	**0.65**

Sl. No.	Category of Creditor	Amount of Claim	Claim Admitted	Amount provided in the Plan
	(Government Dues)			
	Workmen and Employee Dues	0.00	0.00	0.00
5.	Other Creditors	**0.00**	**0.00**	**0.00**
6.	Working Capital and capital infusion	--	--	**37.00**
	TOTAL	**389.14**	**356.32**	**75.00**

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

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	Schedule 5	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Part II, Clause 9	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Part II, Clause 9	Yes
Section 30 (2)	Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process costs?	Part II, Clause 2 read with Part III, Clause 3	Yes
	(b) provides for the	Part II, Clause 3 read with Part	Yes

	payment to the operational creditors?	II, Clause 4 read with Schedule 2	
	(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Part II, Clause 4 read with Part III, Clause 6 read with Schedule 2	Yes
	(d) provides for the management of the affairs of the corporate debtor?	Part II, Clause 5 & 6 read with Part II, Clause 10	Yes
	(e) provides for the implementation and supervision of the resolution plan?	Part II, Clause 7 & 10 read with Part II, Clause 12.3 & 6 read with Part III, Clause 10	Yes
	(f) contravenes any of the provisions of the law for the time being in force?	Part II, Clause 8	Yes
Section 30 (4)	Whether the Resolution Plan		
	(a) is feasible and viable, according to the CoC?	Part II, Clause 12.2 read with Part III and	Yes

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	(b) has been approved by the CoC with 66% voting share?	Schedule 2. E-voting results	Yes
Section 31 (1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Part II, Clause 10 & 12.3	Yes
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Part III, Clause 4	Yes
Regulation 38 (1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Part II, Clause 7	Yes
Regulation 38 (1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant	Part II, Clause 11	Yes

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	has submitted the statement giving details of such non-implementation?]		
Regulation 38 (2)	Whether the Resolution Plan provides:		
	(a) the term of the plan and its implementation schedule?	Part II, Clause 5	Yes
	(b) for the management and control of the business of the corporate debtor during its term?	Part II, Clause 6 read with Part II, Clause 10	Yes
	(c) adequate means for supervising its implementation?	Part II, Clause 12.3 & Clause 10	Yes
Regulation 38 (3)	Whether the resolution plan demonstrates that –		
	(a) it addresses the cause of default?	Part II, Clause 12.1	Yes
	(b) it is feasible and viable?	Part II, Clause 12.2 read with Part III and Schedule 2	Yes
	(c) it has provisions for	Part II, Clause 10 & 12.3	Yes

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	its effective implementation?		
	(d) it has provisions for approvals required and the timeline for the same?	Part II, Clause 12.5 & Clause 12.4	Yes
	(e) the resolution applicant has the capability to implement the resolution plan?	Part II, Clause 12.7 read with Schedule 5	Yes
Regulation 39 (2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	N.A.	Yes
Regulation 39 (4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	Annexed	Yes

3. 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.

4. A bare perusal of the extracts / excerpts from the Plan establishes that the **Resolution Plan has been approved with 80.96% voting share**. As per the CoC, the plan meets the requirement of being viable and feasible for revival of the Corporate Debtor. By and large, all the compliances have been done by the RP and the Resolution Applicant for making the plan effective after its approval.
5. On perusal of the documents on record, supported by an affidavit of the Resolution Professional, we accord our satisfaction that the Resolution Plan as approved by the CoC, is in accordance with sections 30 and 31 of the IBC and also comply with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, as enumerated supra.
6. We have perused the reliefs, waivers and concessions as sought for in the application. It is evident that some of the reliefs, waivers and concessions sought by the Resolution Applicant come within the ambit of the I&B Code and the Companies Act 2013, while many others fall under the power and jurisdiction of different government authorities/departments. This Adjudicating Authority has the power to grant reliefs, waivers and concessions only concerning the reliefs, waivers and concessions that are directly with the I&B Code and the Companies Act (within the powers of the NCLT). The reliefs, waivers and concessions that pertain to other governmental

authorities/departments may be dealt with by the respective competent authorities/forums/offices, Government or Semi-Government of the State or Central Government concerning the respective reliefs, waivers and concession, whenever sought for. The competent authorities including the Appellate authorities may consider granting such reliefs, waivers and concessions keeping in view the spirit of the I&B Code, 2016 and the Companies Act, 2013.

7. 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.

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

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

"*39. If NCLT has been conferred with jurisdiction to decide all types of claims to property, of the corporate debtor, Section 18(f)(vi) would not have made the task of the interim resolution professional in taking control and custody of an asset over which the corporate debtor has ownership rights, subject to the determination of ownership by a court or other authority. In fact an asset owned by a third party, but which is in the possession of the corporate debtor under contractual arrangements, is specifically kept out of the definition of the term "assets" under the Explanation to Section 18. This assumes significance in view of the language used in Sections 18 and 25 in contrast to the language employed in Section 20. Section 18 speaks about the duties of the interim resolution professional and Section 25 speaks about the duties of resolution professional. These two provisions use the word "assets", while Section 20(1) uses the word "property" together with the word "value". Sections 18 and 25 do not use the expression "property". Another important aspect is that Under Section 25(2)(b) of IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in*

judicial, quasi-judicial and arbitration proceedings. Section 25(1) and 25(2)(b) reads as follows:

25. Duties of resolution professional -

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of Sub-section (1), the resolution professional shall undertake the following actions:

(a).....

(b) represent and act on behalf of the corporate debtor with third parties, ***exercise rights for the benefit of the corporate debtor in judicial, quasi judicial and arbitration proceedings****.*

This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).

40. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the

resolution professional, take a bypass and go before NCLT for the enforcement of such a right."

(Emphasis Added)

10. 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.

11. Concerning the waivers with regard to the extinguishment of claims which arose prior to the initiation of the CIR Process and which have not been claimed are granted in terms of the law laid down by the Hon'ble Apex Court in **Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited reported in MANU/SC/0273/2021: (2021)9SCC657: [2021]13SCR737**, wherein the Hon'ble Apex Court has held that

"*once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt., any State Govt. or any local authority, guarantors and other stakeholders.*"

(Emphasis Added)

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

"61. All these details are required to be contained in the information memorandum so that the resolution applicant is aware, as to what are the liabilities, that he may have to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure, that the Corporate Debtor is revived and made a running establishment. The legislative intent of making the resolution plan binding on all the stake-holders after it gets the seal of approval from the Adjudicating Authority upon its satisfaction, that the resolution plan approved by CoC meets the requirement as referred to in Sub-section (2) of Section 30 is, that after the approval of the resolution plan, no surprise claims should be flung on the successful resolution applicant. The dominant purpose is, that he should start with fresh slate on the basis of the resolution plan approved.'

"62. This aspect has been aptly explained by this Court in the case of Committee of Creditors of Essar Steel India Limited through Authorised Signatory (supra).'

"107. *For the same reason, the impugned NCLAT judgment [Standard Chartered Bank v. Satish Kumar Gupta] in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an*

*appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count.***"**

13. In this regard, we would also rely on the judgement of Hon'ble High Court of Rajasthan in the matter of **EMC v. State of Rajasthan, Civil Writ Petition No. 6048/2020 with 6204/2020 reported in (2023) ibclaw.in 42 HC** wherein it has been inter-alia held that

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

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

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

16. 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)

17. With respect to the reliefs and waivers sought for all inquiries, litigations, investigations and proceedings shall be granted strictly as per the section 32A of the Code and the provisions of the law as may be applicable.

18. In this context, we would note that upon the approval of the Resolution Plan, the Corporate Debtor avails the limbs of new management to revive its business. Thus, all the past liabilities of the Corporate Debtor including criminal liability prior to the initiation of the CIR Process shall stand effaced and the new management will step into the shoes of the company with a fresh or clean slate. Hence, the old management shall be liable to face all the offences committed prior to the commencement of the CIR Process. At this juncture, we would rely upon the judgment rendered by the Hon'ble Apex Court in **Ajay Kumar Radheyshyam Goenka vs. Tourism Finance Corporation of India Ltd. reported in MANU/SC/0244/2023: (2023) 10 SCC 545** that:

"67. Thus, Section 32A broadly leads to:

a. ***Extinguishment of the criminal liability of the corporate debtor, if the control of the corporate debtor goes in the hands of the new management which is different from the original old management****.*

b. The prosecution in relation to "every person who was a "designated partner" as defined in Clause (j) of Section 2 of the Limited Liability Partnership Act 2008 (6 of 2009), or an "officer who is in default", as defined in Clause (60) of Section 2 of the Companies Act. 2013 (18 of 2013), or was in any manner in charge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence" shall be proceeded and the law will take it's own course. Only the corporate debtor (with new management) as held in Para 42 of P. Mohanraj will be safeguarded.

*c. If the old management takes over the corporate debtor (for MSME Section 29A does not apply (see 240A), hence for MSME old management can takeover) the corporate debtor itself is also not safeguarded from prosecution Under Section 138 or any other offences***."**

(Emphasis added)

19. Further, would also rely on the judgment of **Hon'ble High Court of Madras** in the matter of ***Vasan Healthcare Pvt. Ltd. vs. The Deputy***

Director of Income Tax (Investigation), Unit 3(2) reported in **MANU/TN/0243/2024: (2024) ibclaw.in 80 HC,** wherein it was held that:

> "*9. In the above judgement, the Apex Court after dealing with the provision in detail, came to a categoric conclusion that insofar as the criminal prosecution is concerned, the criminal liability of the corporate debtor viz., company gets completely wiped off and the new management is allowed to take over the company on a clean slate. However, the Apex Court also made it clear that the persons who are involved in the day today affairs of the company and were incharge and responsible for running of the company, will be liable to face all the* ***offence committed prior to the commencement of the Corporate Insolvency Resolution Process. There is no escape for those persons from criminal liability even though the corporate debtor is given a clean slate and is handed over to the new Management****.*
>
> *10. Useful reference can also be made to the judgement of* ***the Calcutta High Court*** *in* ***[Tantia Constructions Limited Vs. Krishna Hi-Tech Infrastructure P Ltd] in CRP No. 172 of 2022****. The relevant portions in the order are extracted hereunder :-*

4. For the ***application of Section 32A of IBC, 2016*** *and in light of the present matter, it is pertinent to determine the following two issues, i.e.,*

i. ***Whether the offence as complained in the impugned criminal proceedings has been alleged to be committed before the initiation of corporate insolvency resolution process or during such process?***

ii. ***Whether the resolution plan has resulted in change in the management or corporate debtor in consonance with the provisions of Section 32A(1) of IBC, 2016?***

5. With respect to Issue No. 1, it is pertinent to note that the corporate insolvency resolution process as against the Petitioner/Corporate Debtor was initiated on 13.03.2019 when the application was accepted and the Order of Moratorium under Section 14 of the IBC, 2016 was imposed by NCLT, Kolkata in the aforementioned case. The complaint that commenced the impugned criminal proceedings was filed on 22.07.2019 before the concerned court by the opposite party. Whereby, said alleged offence so complained, took place before or during the corporate insolvency resolution process and is covered under the ambit of Section 32A of IBC, 2016.

6. With respect to Issue No. 2, it is observed that the petitioner has not made specific submission in this regard.

However, it is the submission of the opposite party that the ***impugned complaint case does not concern itself with the new directors that were appointed after takeover by the Resolution Applicant in line with the Resolution Plan so approved by NCLT dated 24.02.2022. It is their submission that they are primarily aggrieved by the actions of petitioner when it was in control of erstwhile Directors.***

11. The above judgement clearly lays down the law on the subject. The moment the Corporate Insolvency Resolution Process is initiated against the corporate debtor and the application is accepted by the NCLT, the moratorium comes into operation. ***Once the resolution plan is accepted by the NCLT and orders are passed and the Corporate debtor gets into hands of the new management, all the past liabilities including the criminal liability of the Corporate debtor gets wiped off and the new Management takes over the company with clean slate****."*

(Emphasis Added)

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

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

(Emphasis Added)

21. 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)**

22. Further, in *Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta* reported at (2020) 8 SCC 531: MANU/SC/1577/2019, the Hon'ble Apex Court has propounded that:

> "*38. This Regulation fleshes out Section 30(4) of the Code,* ***making it clear that ultimately it is the commercial wisdom of the Committee of Creditors*** *which operates to approve what is deemed by a majority of such creditors to be the best resolution plan, which is finally accepted after negotiation of its terms by such Committee with prospective resolution applicants.*"
>
> **(Emphasis Added)**

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

24. As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities

is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.

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

26. In the light of the enumerations and observations made in this Order supra, we hereby **APPROVE the Resolution Plan submitted on by RASHMI METALIKS LIMITED (Successful Resolution Applicant) with a Plan value of Rs. 75 Crores.**

27. 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.

28. The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect.

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

30. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters.

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

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

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

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

35. The Resolution Professional may stand discharged from his duties with effect from the date of this Order, however, he is required to comply with our direction mentioned in Para 30 of the order subject to comply the direction, which the creditors should bear in mind.

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

37. The Resolution Professional is further directed to handover all records, premises/factories/documents to the Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records/premises/factories/documents through the Resolution Professional to finalise the further line of action required for starting of the operation.

38. 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.

39. The Interlocutory Application being **IA (IB)/(PLAN)/15(KB)2025 along with main Company Petition vide CP(IB) No. 203(KB) /2021 shall stand disposed of** accordingly.

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

(Siddharth Mishra)
Member (Technical)

(Bidisha Banerjee)
Member (Judicial)

Signed on this, the 24th day of November, 2025

M. Jana (P.S.)