

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH, COURT-II  
KOLKATA**

*IA (IB) No. 1666/KB/2022  
in  
CP (IB) No. 1262/KB/2019*

***An Application under section 30(6) and section 31(1) 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:***

Ashok Kumar Jhunjhunwala

... Operational Creditor

Versus

**Jain Shoppers Private Limited**

CIN: U51909WB2010PTC154672

... Corporate Debtor

*And*

***In the matter of:***

**Sudipta Ghosh**, Resolution Professional of

Jain Shoppers Private Limited

... Applicant

**Date of pronouncement: 10 July 2023**

***Coram:***

Smt. Bidisha Banerjee, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

***Appearances (via video conference):***

For the Applicant/RP

Mr. Shaunak Mitra, Advocate

Mr. Aniket Chaudhury, Advocate

Ms. Pallavi Ray, Advocate

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COURT-II

*In Re* approval of Resolution Plan of Jain Shoppers Pvt. Ltd.  
IA (IB) No. 1666/KB/2022 in CP (IB) No. 1262/KB/2019

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Mr. Sudipta Ghosh, Advocate

**ORDER**

*Per: Bidisha Banerjee, Member (Judicial)*

1. This Court convened through video conferencing.

**Preliminary**

2. I.A. (IB) No. 1666/KB/2022 is an application under section 30(6) of the Insolvency and Bankruptcy Code, 2016, after approval of the resolution plan by the Committee of Creditors (CoC).
3. This application was filed by Mr. Sudipta Ghosh, Resolution Professional of Jain Shoppers Private Limited (CIN: U51909WB2010PTC154672), by invoking the provisions of section 30(6) of the Insolvency and Bankruptcy Code, 2016 (“**the Code**” or “**IBC**”) read with regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”) for approval of a Resolution Plan in respect of Jain Shoppers Private Limited (“**Corporate Debtor**”).
4. The underlying Company Petition in C.P. (IB) No. 1262/KB/2022 was filed by Ashok Kumar Jhunjunwala against Jain Shoppers Private Limited, the Corporate Debtor, under section 9 of the Insolvency and Bankruptcy Code 2016, which was admitted *vide* order dated 17 February 2022.
5. Initially, Mr. Kamal Prakash Singh, the Applicant having IBBI Reg. No. IBBI/IPA-001/IP/P-01722/2019-2020/12653, was appointed as the Interim Resolution Professional (**IRP**). In the 1<sup>st</sup> CoC meeting held on 15 March 2022, a resolution was passed to replace Mr. Kamal Prakash Singh and appoint Mr. Sudipto Ghosh having IBBI Reg. No. IBBI/IPA-001/IP-P00484/2017-18/10872 as the Resolution Professional and an

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order passed dated 29 April 2022 wherein Mr. Sudipto Ghosh was appointed as the Resolution Professional (**RP**) of the Corporate Debtor.

**Constitution of CoC**

6. The IRP made public announcement on 19 February 2022 in newspapers regarding initiation of Corporate Insolvency Resolution Process (**CIRP**) and called proof of claims from the financial and operational creditors, workers and employees of the corporate debtor in the specified forms. Form A was also published in the website of the IBBI.
7. The CoC was constituted with two Financial Creditors *viz.* Apex Tradexim Private Limited having 97.78% voting share and Epson Electronics Private Limited having 2.22% voting share. A report of the constitution of the CoC, was filed before the Adjudicating Authority on 09 March 2022.
8. The Applicant states that a total of eight CoC meetings have been held during CIRP period, as follows:

<b>Particulars</b>	<b>Date of CoC meeting</b>
1 <sup>st</sup> CoC Meeting	15.03.2022
2 <sup>nd</sup> CoC Meeting	09.05.2022
3 <sup>rd</sup> CoC Meeting	30.05.2022
4 <sup>th</sup> CoC Meeting	08.07.2022
5 <sup>th</sup> CoC Meeting	22.07.2022
6 <sup>th</sup> CoC Meeting	07.08.2022
7 <sup>th</sup> CoC meeting	27.09.2022
8 <sup>th</sup> CoC meeting	01.11.2022

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**Collation of claims**

9. The amounts claimed and admitted are summarised below:

(in lakh)

<b>Nature of creditor</b>	<b>Amount Claimed</b>	<b>Amount admitted</b>
Secured Financial Creditor	₹16.24Lakh	₹16.24Lakh
Unsecured Financial Creditor	----	----
Operational Creditors (other than related, government)	₹2.50Lakh	₹2.50Lakh
Government	Nil	Nil
<b>Total</b>	<b>₹18.74Lakh</b>	<b>₹18.74Lakh</b>

**CIRP and compliances**

10. 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 (**EoI**) from potential resolution applicants was issued on 12 May 2022 in *Business Standard, (English)* Kolkata edition and *Ekdin (Bengali)* Kolkata edition newspapers. The last date for receipt of EoI was 27 May 2022.
11. The notice was also published on the website of the Insolvency and Bankruptcy Board of India (**IBBI**).
12. The Applicant submits that in response to the invitation for EoI published on 12 May 2022, the RP received one EoI.

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13. The RP then shared the Information Memorandum, Evaluation Matrix and Request for Resolution Plan (**RFRP**) with the Prospective Resolution Applicants.
14. The last date for submission of Resolution Plan was 11 July 2022, which was extended till 01 August 2022.
15. *Vide* order dated 13 October 2022, extension of CIRP period was extended for a period of 90 days.

**Evaluation and voting**

16. The Resolution Plan of Infinite Sharp Private Limited (CIN:U50401WB2019PTC233292) was received on 01 August 2022. The Resolution Plan was opened before the CoC in its 6<sup>th</sup> CoC meeting held on 07 August 2022. The Resolution Plan was discussed by the CoC in its 7<sup>th</sup> CoC meeting held on 27 September 2022 and the CoC requested the Resolution Applicant for further revision in the Resolution Plan.
17. The Resolution Applicant submitted the revised Resolution Plan on 28 October 2022. The revised Resolution Plan was discussed in the 8<sup>th</sup> CoC meeting held on 01 November 2022.
18. The Resolution Plan submitted by Infinite Sharp Private Limited was approved with 100% voting share. The Resolution Professional issued the letter of Intent on 09 November 2022.
19. In accordance with regulation 36B(4A) of the CIRP Regulations, the Successful Resolution Applicant submitted Performance Bank Guarantee of Rs.2,00,000 (Rupees Two Lakh only) being 10% of the resolution amount issued by IDFC First Bank dated 02 March 2023<sup>1</sup>.

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<sup>1</sup> Annexure O of Supplementary Affidavit.

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**Compliance of the approved Resolution Plan with various provisions**

20. The Applicant has filed a Compliance Certificate in prescribed form, i.e., Form 'H' dated 31 October 2022 in compliance with regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.<sup>2</sup>
21. The Applicant has submitted details of various compliances as envisaged within the Code and the CIRP Regulations which a Resolution Plan should adhere to, which is reproduced hereunder:

**I. Submission of Resolution Plan in terms of sub-section (2) of section 30 of the Code (as amended vide Amendment dated 16 August 2019):**

<b>Clause of s.30(2)</b>	<b>Requirement</b>	<b>How dealt with in the Plan</b>
1.	Plan must provide for payment of CIRP cost in priority to repayment of other debts of CD in the manner specified by the Board.	Section 6 at Page 57 of the Resolution Plan.
2.	(i) Plan must provide for 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;  (ii) Plan must provide for repayment of debts of OCs in such	Note D in Section 5 at Page 40 of the Resolution Plan.  Note D in Section 5 at Page 40 of the Resolution Plan.

<sup>2</sup> Annexure K at Pp. 167-178 of the I.A.

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Clause of s.30(2)	Requirement	How dealt with in the Plan
	<p>manner as may be specified by the Board which shall not be less than 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 (1) of section 53, whichever is higher;</p> <p>(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.</p>	<p>Clause 4.1 of Section 4 at Page 36 in the Resolution Plan.</p>
(c)	<p>Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.</p>	<p>Section 9 at Pages 69-72 of the Resolution Plan.</p>
(d)	<p>Implementation and Supervision</p>	<p>Section 10 at Pages 73-74 of the Resolution Plan.</p>
(e)	<p>Plan does not contravene any of the provisions of the law for the time being in force.</p>	<p>Section 10 at Pages 73-74 of the Resolution Plan.</p>

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Clause of s.30(2)	Requirement	How dealt with in the Plan
(f)	Conforms to such other requirements as may be specified by the Board.	No such requirement specified by the Board.

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

Particulars	Relevant Page of the Revised Resolution Plan dealing 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 in the Resolution Plan.
(b) sale of all or part of the assets whether subject to any security interest or not;	Not proposed in the Resolution Plan.



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<b>Particulars</b>	<b>Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation</b>
(c) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	Not proposed in the Resolution Plan.
(d) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	Section 5 at Pages 37-38 of the Resolution Plan.
(e) cancellation or delisting of any shares of the corporate debtor, if applicable;	Section 5 at Pages 37-38 of the Resolution Plan.
(f) satisfaction or modification of any security interest;	Not proposed in the Resolution Plan.
(g) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Not proposed in the Resolution Plan.
(h) reduction in the amount payable to the creditors;	Section 5 at Page 39 of the Resolution Plan.

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<b>Particulars</b>	<b>Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation</b>
(i) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	Section 8 at Page 68 in the Resolution Plan.
(j) amendment of the constitutional documents of the corporate debtor;	Clause 11.1.a of Section 11 at Page 75 of the Resolution Plan.
(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 in the Resolution Plan.
(l) change in portfolio of goods or services produced or rendered by the corporate debtor;	Not proposed in the Resolution Plan.
(m) change in technology used by the corporate debtor; and	Not proposed in the Resolution Plan.
(n) obtaining necessary approvals from the Central and State Governments and other authorities.	Section 5 at Page 38 of the Resolution Plan.

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**III. Mandatory contents of Resolution Plan in terms of regulation 38**

**of CIRP Regulations:**

<b>Ref to relevant Reg.</b>	<b>Requirement</b>	<b>How dealt with in the Plan</b>
38(1)	The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.	Section 8 at Page 67 of the Resolution Plan.
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.	Section 6 at Pages 57-58 of the Resolution Plan.

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<b>Ref to relevant Reg.</b>	<b>Requirement</b>	<b>How dealt with in the Plan</b>
38(1B)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.	Section 14 of the Resolution Plan.
38(2)	A resolution plan shall provide:	
	(a) the term of the plan and its implementation schedule;	Section 6 at Page 62 and Section 8 at Pages 66-68 of the Resolution Plan.
	(b) the management and control of the business of the corporate debtor during its term; and	Section 9 at Pages 69-70 of the Resolution Plan.
	(c) adequate means for supervising its implementation.	Section 10 at Pages 73-74 of the Resolution Plan.

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<b>Ref to relevant Reg.</b>	<b>Requirement</b>	<b>How dealt with in the Plan</b>
38(3)	A resolution plan shall demonstrate that –	
	(a) it addresses the cause of default;	Clause 1.2 and Clause 1.4 of Section I at Page 13 and Page 15 respectively of the Resolution Plan.
	(b) it is feasible and viable;	Clause 10.3 of Section 10 at Page 73-74 of the Resolution Plan.
	(c) it has provisions for its effective implementation;	Clause 10.2 of Section 10 at Page 73 of the Resolution Plan.
	(d) it has provisions for approvals required and the timeline for the same; and	Clause 10.3 of Section 10 at Page 73-74 of the Resolution Plan.
	(e) the Resolution Applicant has the capability to implement the resolution plan.	Clauses 3.5 of Section 3 at Pages 32-33 of the Resolution Plan.

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22. The Resolution Applicant has submitted affidavit of eligibility under section 29A of the Code, affirmed on 17 May 2022<sup>3</sup>.

**Details of Resolution Plan/Payment Schedule**

23. The Applicant submits that the Resolution Applicant had filed a Resolution Plan on August 2022 which was further amended on October 2022.
24. The relevant information with regard to the amount claimed, amount admitted and the amount proposed to be paid by the Resolution Applicant, *i.e.*, Infinite Sharp Private Limited under the said Resolution Plan is tabulated as under:

(in lakh)

<b>Nature of creditor</b>	<b>Amount Admitted</b>	<b>Amount Proposed</b>	<b>% Proposed</b>
CIRP	---	₹5,00,000/-	100%
Financial Creditor	₹16.24Lakh	₹12,20,000/-	72.87%
Operational Creditors (other than related, government)	₹2.50Lakh	₹10,000/-	2.06%
Preliminary Expenses	----	₹2,70,000/-	---
<b>Total</b>	<b>₹18.74Lakh</b>	<b>₹20,00,000/-</b>	<b>---</b>

25. The proposed treatment is given hereunder:

<b>Nature of Cost</b>	<b>Proposed Treatment</b>
<b>CIRP Cost</b>	Payment of approximately Rs.5,00,000/- (Rupees Five Lakh)

<sup>3</sup> Annexure L at Pp. 179-180 of the I.A.

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<b>Nature of Cost</b>	<b>Proposed Treatment</b>
	only) within 30 days from the Effective Date.
<b>Financial Creditors</b>	Rs. 12,20,000/- (Rupees Twelve Lakh Twenty Thousand only), part payment will be made within 30 days from the Effective Date and final payment will be made within 180 days from the Effective Date.
<b>Operational Creditors</b>	Payment of Rs. 10,000/- (Rupees Ten Thousand only) within 30 days from the Effective Date.
<b>Additional amount proposed to be infused/ arranged by the Resolution Applicant</b>	Rs. 2,70,000/- (Rupees Two Lakh and Seventy Thousand only).
<b>Total</b>	Rs. 20,00,000/- (Rupees Twenty Lakh only)

26. The Resolution Plan defines “*Effective Date*” as date of Order of the Adjudicating Authority of approval of Resolution Plan.

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

27. The Resolution Plan also provides for –
- Management of company after resolution in Section 9 of Resolution Plan.
  - Term of the resolution plan in Section 8 of Resolution Plan.
  - Implementation and Supervision of the resolution plan in Section 10 of the Resolution Plan.

**Relinquishment/Waiver of liabilities and Approvals**

28. The Reliefs, Exemptions and Waivers sought by the Resolution Applicant from the Adjudicating Authority are set out below for the

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successful implementation of the Resolution Plan. The orders thereon are indicated against each.

Sl. No.	Relief, concessions and approvals sought
a.	Waiver of the Statutory Liabilities/ Contingent Liabilities incurred and accrued to statutory authorities viz. authorities viz. VAT, Sales Tax, Income Tax, Excise, Customs, ESI, CEST, CGST, SGST etc.:
1.	The Resolution Applicant would like to revive the company with complete peace and certainty; therefore, all the statutory dues, taxes, penalties, penal interest, demands, etc. incurred for the period till the commencement of CIRP date, to be/shall be waived and may be assured to the Resolution Applicant that no such claim from any person or authority shall disturb the process of revival.
2.	The CoC is requested to approve and the Adjudicating Authority is requested to direct reversal or withdrawal of all the disallowances made in the Income tax assessment proceedings
3.	Carried forward and brought forward losses for all the preceding 8 years shall be allowed for a fresh period of 8years
4.	Income tax returns for the just concluded financial years whatever not yet filed as on the date, Adjudicating Authority is requested to permit the Resolution Applicant to file the returns on approval of Resolution Plan and direct income tax department to waive the penalty and interest for late filing of the said returns. Further, it is also requested to allow the loss of the said years for a fresh period of 8years.



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<b>Sl. No.</b>	<b>Relief, concessions and approvals sought</b>
5.	Further, all litigations, appeals, arbitrations, before all/any authorities across India shall stand abated. Further, any penalties, Interest, fine, charges, damages, compounding fees etc. shall be withdrawn and stands abated. Adjudicating Authority is requested to direct all the departments and statutes to release the property including bank accounts attached if any.
6.	Immunity from all present and future Notices, Summons, Appearances, Clarifications, demands, Claims and any other types of compliances related to present, past or future proceedings, which may arise or required by any Statutory Authority including Income Tax, Customs, GST, etc. against the CD and /or its erstwhile Promoters for any of their acts and performances prior to the start of CIRP.
7.	Any Income tax demands and TDS liabilities to be waived off along with any penalties and interest thereon;
8.	All the demands raised in any form including any charges, levy, duty, interest, penalties, etc. by various Income Tax Authorities, Tribunals, Courts, Sales tax/Goods and Service Tax authorities, Excise and Custom department, Electricity Department, Water Department, Pollution Control Board and any other authority in any or all the courts of India as on date shall be waived off in totality.
9.	Immunity from all present and future Notices, Summons, Appearances, Clarifications, demands, Claims and any other types of compliances related to present, past or future proceedings, which may arise or required by any Statutory Authority including Income Tax, Customs, GST, etc. against the CD and /or its erstwhile

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Sl. No.	Relief, concessions and approvals sought
	<p>Promoters for any of their acts and performances prior to the start of CIRP.</p> <p>The Resolution Applicant as well as the CD (post Resolution) as may be approved by the Appropriate Authority (AA), should not be subjected to any such Notices / Summons / Clarifications, etc by any Statutory Authority for the acts and performances of the CD and its Promoters, in order to carry on full-fledged un-interrupted /un-hindered operations of the CD, post-resolution.</p>
<b>b.</b>	<b>Waivers of MAT liability arising on account of write off of loans:</b>
1.	<p>Adjudicating Authority is requested to direct the Income Tax Authorities to consider that any income arising due to waiver of all liabilities should not be treated as income and no tax or book profit tax i.e. MAT shall be levied on the same.</p>
2.	<p>The Resolution Plan envisages the write off of interest and loans after paying the consideration for the corporate debtor. The write-back of this liability is expected to represent a notional profit/income in the profitability statement of Corporate Debtor. Such notional profit may also attract the provisions pertaining to Minimum Alternate Tax (MAT) under section 115JB of the Income Tax Act, 1961. Such a MAT would also bring a substantial amount of liability on the Corporate Debtor and impact the liquidity position.</p>
3.	<p>Thereby, it is proposed that the Hon'ble NCLT may waive any potential MAT liability occurring on account of write-back of the loans, in terms of this Resolution Plan. The proposed balance sheet as presented hereinafter to be accepted by all the authorities including Ministry of Corporate affairs as the balance sheet as on date of approval of Resolution Plan without any income tax liability, as its a fresh investment from the perspective of Resolution Applicant.</p>

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Sl. No.	Relief, concessions and approvals sought
<b>c.</b>	<b>Waiver of the dues of the Operational Creditors and other current liabilities and any other operational liability accrued and incurred before Insolvency (CIRP) commencement date (except provided in this Plan):</b>
1.	The Resolution Plan seek total waiver of any amount due to the Operational Creditors, the other sundry creditors, and other current liabilities including advances from customers, distributors, etc. recorded/unrecorded in the books of account, claimed or not claimed for the period till the commencement of CIRP date except the amount proposed to be paid towards full settlement.
2.	Litigation matters including but not limited to civil, criminal, investigations, etc. if any pending between/ against corporate debtor before any courts/authorities all over India shall stand withdrawn.
<b>d.</b>	<b>Waiver of any/all liability incurred and accrued before Insolvency (CIRP) commencement date because of services of Workmen and Employees rendered:</b>
1.	There might be future claims from the workers and employees for period prior to the commencement of the CIRP. Therefore, the plan seeks complete waiver from any other claim that may come in future by the Worker and Employees for the period prior to the commencement of CIRP.
<b>e.</b>	<b>Waiver of any liability incurred and accrued before Insolvency (CIRP) commencement date on account of Financial Debt owed to Secured/Unsecured Creditors:</b>
1.	The liquidation value for Secured Financial Creditors has been disclosed above. The Resolution Plan seeks waiver of entire liability for Secured /Unsecured Financial Creditors except that provided in this Plan. Further, any liability incurred on account of financial debt owed to Secured/Unsecured creditors, which is not claimed or

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Sl. No.	Relief, concessions and approvals sought
	incurred for the period till the commencement of CIRP date to be waived off.
<b>f.</b>	<b>Waiver of all the Contingent Liability arising out of any acts or actions of the company done before the Insolvency (CIRP) commencement date:</b>
1.	As per the information memorandum and other information supplied to us by the resolution professional, no claim has been filed against any contingent liability or disputed liability. Whatever claims have been filed and debts shown in the Balance Sheet, are dealt with in the Resolution Plan. The Corporate Debtor will not be liable to pay any other claim which may be filed in future or which may occur or fructify contingent to any event.
2.	Any contingent liability disputed or otherwise, reflected in the balance sheet or not, submitted by the Resolution Professional or not, shall be extinguished/waived and there shall be no liability arising out of such contingent liabilities at any time in the future.
3.	All pending proceedings and suits with any authorities, arbitrator, tribunals and courts all over India shall be withdrawn or shall abate on approval of the Resolution Plan by the Adjudicating Authority.
<b>g.</b>	<b>Waiver from all Corporate Guarantees given by the company of Corporate Debtor before the Insolvency (CIRP) commencement date.</b>
1.	As per the information received, Corporate Debtor has not executed any Corporate Guarantees till the commencement of CIRP. However, Hon'ble NCLT to waive, the Corporate Debtor from any claim that may be filed in future or which may occur or fructify against any corporate guarantee extended or given by the Corporate Debtor.

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Sl. No.	Relief, concessions and approvals sought
<b>h.</b>	<b>No recourse on Corporate Debtor against any amount recovered from personal guarantors or corporate guarantor.</b>
1.	The Resolution Applicant seeks entire waiver of corporate guarantee, if any given to lenders.
2.	As per the Contract Act, the guarantor falls in the shoe of lender in case any amount is recovered from the guarantor by the lenders. This situation will create complete uncertainty about the total consideration for the Resolution Applicant and about the revival of the unit. We seek protection against any such claim in future. The personal guarantors or the corporate guarantors would not have any recourse against the corporate debtor against any amount recovered by the lenders from them against their guarantees. The deed of guarantee therefore stands modified on approval of Resolution Plan and the recourse available with the guarantor if any, as per the deed of guarantee would stand modified and the guarantors will have no recourse against the corporate debtor against any amount recovered from them by lenders.
<b>i.</b>	<b>Provision for amount to be paid to dissenting creditors and creditors who abstain from voting:</b>
1.	In terms of Provisions of Regulation 38(1A) of The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the dissenting creditors or the creditors who abstain from voting will be eligible for their share of liquidation value of the Corporate Debtor only.
2.	Balance amount of debt due to dissenting financial creditors after payment of liquidation value shall be written off.
3.	The amount payable to the dissenting creditors (if any), would be paid out of total amount offered by Resolution Applicant and the Resolution Applicant would not be under obligation to contribute any additional funds.
<b>j.</b>	<b>Waivers for any/all liabilities arising with SEBI</b>

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	<b>Regulations/Companies Act, 2013/ Companies Act, 1956/FEMA Regulations/ Labour Laws:</b>
1.	NCLT to waive any liability arising with SEBI Regulations/Companies Act, 2013/Companies Act, 1956/FEMA Regulations for the period till the commencement of CIRP date.
2.	Adjudicating Authority is requested to direct SEBI to waive of all the penalties, charges, fees, etc. arising out of non-compliance of the requirements, if any of its Regulations, Rules, Circulars, Notifications etc.
3.	Adjudicating Authority is requested to direct ROC to waive of all the penalties, charges, fees, etc. arising out of non-compliance of the requirements, if any of its Acts, Regulations, Rules, Circulars, Notifications etc.
4.	Adjudicating Authority is requested to waive off all the penalties, charges, fees etc. arising out of non-compliance of the requirements if any of FEMA Regulations, Rules, Circulars, Notifications etc.
5.	Adjudicating Authority is requested to waive off all the penalties, charges, fees etc. in any form arising out of non-compliance of the requirements/non-payment of amount due of the Labour Laws like Employee State Insurance Act, 1948, Provident Fund Act, Payment of Bonus Act, Contract Labour Act, 1973, Minimum Wages Act, Equal Remuneration Act, 1976, Factories Act, 1948, Gratuity Act, 1972, etc. and to withdraw all/any pending litigation in case of above Labour Laws.
6.	Adjudicating Authority is requested to waive the pending filing of the financial and other documents as per the Companies Act 1956 and the Companies Act 2013 with Registrar of Companies.
<b>k.</b>	<b>For unknown liabilities/off balance sheet transactions:</b>
1.	The Resolution Applicant/Corporate Debtor shall not be liable to pay any hidden/unknown liabilities/off balance sheet transactions surfacing at any future date after approval of Resolution Plan by

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	CoC.
<b>1.</b>	<b>Payments to Creditors submitting claims after approval of the Proposed Plan</b>
1.	The Code and the CIRP Regulations entitle all creditors of a corporate debtor to submit their claims to the IRP/RP on or prior to the date on which the Resolution Plan gets approved by the CoC. As a result, in the event any Creditor of the Company does not submit its claims to the IRP/RP prior to the date of approval of CoC, then in such case, the said Creditor will not be entitled to receive any payments under the Proposed Plan. No legal action can be lodged against the said claim.
<b>m.</b>	<b>Adjudicating Authority is requested:</b>
1.	To issue suitable directions for all the recovery proceedings against the company under DRT, SARFESI and any other law to be withdrawn as on the date of approval of Resolution Plan.
2.	To issue suitable directions so that all the civil/ criminal/ penal action / investigations pending or disposed in any court of India, or with any investigating agencies, should be waived and not be applicable to New Management post approval of the Resolution Plan. All the demand/liabilities to be waived off completely.
3.	To extinguish/close any investigations initiated by any agency on the company for ensuring smooth and revival of the company.
4.	To protect Corporate Debtor post approval of Hon'ble NCLT, from providing past information to an investigating agency in relation to criminal or civil matters.
5.	Our offer is inclusive of payment if any that may be required against pending litigations.
6.	To grant waiver of society dues / property tax/ Corporation Tax/ BMC Charges, etc. in any form for the corporate office in respect pre CIRP date
7.	To waive off any charges, penalties, punishment, etc., if any levied by Directorate of Enforcement, Department of Revenue, RBI,

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	Economic Office Wing, Director General of Foreign Trade, Ministry of Commerce, etc. on the Corporate Debtor.
8.	Official Liquidator/Resolution Professional/Existing Promoters/Existing Board of Directors to handover the possession of all the records and books of accounts of corporate debtor to the New Promoters and Management.
<b>n.</b>	<b>Waiver of Stamp Duty and Capital gain on First Sale by Resolution Applicant/Corporate Debtor:</b>
1.	On first sale of any property (not essential for purpose of and carrying on post acquisition operation) by the Resolution Applicant/ Corporate Debtor to any willing buyer, the stamp duty arising out of this sale should be waived off. Also, any capital gain arising on account of first sale of assets by the Resolution Applicant / Corporate Debtor under section 45 of Income Tax Act should be waived off.

**Orders**

29. On hearing the submissions made by the Resolution Professional, and perusing the record, we find that the Resolution Plan filed by Infinite Sharp private Limited has been approved with 100% voting share. As per the CoC, the plan meets the requirement of being viable and feasible for revival of the Corporate Debtor. By and large, all the compliances have been done by the Resolution Professional and the Resolution Applicant for making the plan effective after approval by this Bench.
30. 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.



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31. 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 Code.
  
32. We have perused the reliefs, waivers and concessions as sought and as given in Clauses 5.3 of Section 5 at Pages 45 to 56 of the Resolution Plan. While some of the reliefs, waivers and concessions sought by the Resolution Applicant come within the purview of the Code while many others fall under the power and jurisdiction of different government authorities/departments This Adjudicating Authority has power to grant reliefs, waivers and concessions only in relation to the Code and the Companies Act 2013 (within the powers of the NCLT) for achieving the objective of the Code. No reliefs, waivers and concessions that fall within the domain of other government department/authorities are granted. The reliefs, waivers and concessions that pertain to other governmental authorities/departments shall be dealt with the respective competent authorities/forums/offices, Government or Semi Government of the State or Central Government with regard to the respective reliefs, waivers and concessions. The competent authorities including the Appellate authorities may consider grant such reliefs, waivers and concessions keeping in view the spirit of the Code.
  
33. The Resolution Plan has to be consistent with 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.

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

With respect to the waivers with regard to extinguishment of claims which arose Pre-CIRP and which have not been claimed are granted in terms of **Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd**,<sup>4</sup> wherein the Hon'ble Supreme 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. We place reliance on the recent judgement of Hon'ble High Court of Rajasthan in the matter of **EMC v. State of Rajasthan** 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.”*

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. 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

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<sup>4</sup> 2021 SCC OnLine SC 313 decided on 13.04.2021.

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which the Adjudicating Authority grants its approval under section 31 could be continued.

35. With respect to the waivers sought in relation to guarantors, the judgment of *Lalit Kumar Jain v Union of India & ors*,<sup>5</sup> 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.
36. 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.
37. In case of non-compliance of this order or withdrawal of Resolution Plan, the payments already made by the Resolution Applicant shall be liable for forfeiture.
38. Subject to the observations made in this Order, the Resolution Plan prepared on August 2022 and revised on October 2022, is hereby **APPROVED** by this Bench. **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 other stakeholders involved in terms of section 31 of the Code, so that revival of the Debtor Company shall come into force with immediate effect.
39. The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
40. The Resolution Professional shall submit copies of the records collected during the commencement of the proceedings to the Insolvency &

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<sup>5</sup> 2021 SCC OnLine SC 396 decided on 21.05.2021.

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Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters.

41. Liberty is hereby granted for moving any application if required in connection with implementation of this Resolution Plan.
42. A copy of this Order is to be submitted to the Registrar of Companies, West Bengal.
43. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except the duties envisaged in the Resolution Plan.
44. 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 and premises of the corporate debtor through the Resolution Professional to finalise the further line of action required for starting of the operation. Section 9 of the Resolution Plan envisages that a committee comprising of one representative of Resolution Applicant and Mr. Sudipta Ghosh, Insolvency Professional are proposed to be appointed as members of the Monitoring Committee as per provisions of IBC,2016. The monitoring agency shall monitor the day-to-day operations of the Company and provide regular updates to the Financial Creditors till all the approvals necessary for implementation of the plan are in place and a professionally managed Board is appointed by the Resolution Applicant. The Monitoring Agency would also supervise the implementation of the Resolution Plan. Further Section 10 envisages that the Resolution Applicant shall appoint Mr. Sudipta Ghosh, Insolvency Professional to ensure disbursement of dues to Financial and Operational Creditors as per the approved Plan.

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45. In view of the above the **I.A. (IB) No. 1666/KB/2022 along with the main Company Petition, i.e., C.P. (IB) No. 1262/KB/2019 shall stand disposed of accordingly.**
46. The Registry is directed to send e-mail copies of the order forthwith to all the parties for information and for taking necessary steps.
47. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**Balraj Joshi**  
Member (Technical)

**Bidisha Banerjee**  
Member (Judicial)

Order signed on the 10<sup>th</sup> day of July 2023.

GGRB[LRA]