IN THE NATIONAL COMPANY LAW TRIBUNAL

DIVISION BENCH, COURT NO. I, KOLKATA

I.A (IBC) NO. 1003/KB/2023

In C.P (IB) NO. 121/KB/2021

An Application under Section 30(6) of the Insolvency and Bankruptcy Code, 2016;

IN THE MATTER OF:

Tikmani Steel Trading Company

... Operational Creditor

Versus

Imperial Tubes Private Limited

... Corporate Debtor

And

IN THE MATTER OF:

Ms. Rachna Anchalia, Resolution Professional

... Applicant

Pronouncement of order dated: 10.04.2026

Coram:
Smt. Bidisha Banerjee, Member (Judicial)
Cmde Siddharth Mishra, Member (Technical)

Appearance:

Mr. Shaunak Mitra, Adv.	] For the Resolution Professional
Mr. Rahul Parasrampuria, Adv.	]
Ms. Somya Ojha, Adv.	]
Ms. Rachna Anchalia, RP	]

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ORDER

Per: Cmde Siddharth Mishra, Member (Technical)

1. The Court congregated through a hybrid mode.

2. Heard the Ld. Counsels of both the parties.

3. The instant application has been filed by **Ms. Rachna Anchalia, Resolution Professional,** hereinafter referred to as the **'Applicant/RP' of Imperial Tubes Private Limited,** the Corporate Debtor under Section 30(6) of the Insolvency and Bankruptcy Code, 2016, for brevity, 'I&B Code' for approval of the Resolution Plan to complete the CIRP under the law in a time bound manner and to grant the following reliefs:

*a. Order be passed to approve the Resolution Plan submitted by **Dorni Vinimoy Private Limited** in respect of the Corporate Debtor.*
b. Such further or other order or orders be passed and/ or directions be given as this Tribunal may deem fit and proper.

4. Facts in a nutshell

The present interlocutory application under Section 30 and 31 of the Insolvency and Bankruptcy Code 2016 read with Regulation 39 of the Insolvency of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) 2016 as amended and after approval of the resolution plan by the Committee of Creditors ("CoC"). This application was filed by **Ms. Rachna Anchalia,** Resolution Professional of the Corporate Debtorby 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 **Imperial Tubes Private Limited.**

The underlying Company Petition in C.P. (IB) No. 121/KB/2021 was filed by **Tikmani Steel Trading Company,** the Operational Creditor to initiate Corporate Insolvency Resolution Process ("CIRP"), under section 9 of the Insolvency and Bankruptcy Code 2016, which was admitted vide order dated 22.08.2022. The Applicant was only appointed as the Interim Resolution Professional who was later confirmed as the Resolution Professional.

Prologue

5. Particulars of the CD

Imperial Tubes Private Limited, [U19202WB1981PTC033712] Left Lane No. 3, Gate -1, Jalan Industrial Complex NH-6, Baniara, Domjur, Begri Howrah – 711 411, West Bengal.

6. Initiation of CIRP

That vide an Order dated 22.08.2022, this Tribunal admitted the application filed under Section 9 of the Code, 2016 by the Operational Creditor, Tikmani Steel Trading Company for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, Imperial Tubes Private Limited and a moratorium under Section 14 of the Code was declared. This Tribunal was appointed Ms. Rachna Anchalia, as the Interim Resolution Professional of the Corporate Debtor.

7. Expression of Interest

Invitation for Expression of Interest was published in Form G On 21.10.2022 in Business Standard, an English daily of Kolkata edition and in Ekdin, a Bengali newspaper of Kolkata edition. That in response to the Invitation for Expression of Interest published on 21.10.2022, the RP received EOI from four Prospective Resolution Applicants (PRA) till the last date of submission of EOI i.e., dated 10.11.2022 and on 27.12.2022, M/s. Dorni Vinimoy Pvt. Ltd. which was not a PRA had sent an e-mail showing their interest in participation in the resolution process and requested to extend the due date for filing the resolution plan. Accordingly in the 4th CoC meeting held on 30.12.2022, CoC had approved the extension of the last date of submission of resolution plan by a period of 25 days, i.e., from 28.12.2022 to 22.01.2023.

8. Constitution of COC

Committee of Creditors was constituted on 14.09.2022 and the Applicant was appointed as Resolution Professional in the 1 meeting of the Committee of Creditors held on 21.09.2022.

9. Evaluation and Voting

On 06.03.2023, the RP had received modified/ revised Resolution Plans from Four Resolution Applicants, i.e., M/s Dorni Vinimoy Pvt. Ltd, M/s GS Global Projects Pvt. Ltd, M/s. Krishna Wax Pvt. Ltd. and M/s. Yaana Apparels Pvt. Ltd. The fifth resolution applicant i.e. M/s. Techno Mercantile Pvt. Ltd chosen not to modify/revise its resolution plan. All the five Resolution Plans were put for e-voting for approval under sub-section 4 of Section 30 of the IBC, 2016 which meets the requirements as prescribed in sub-section 2 of Section 30 of the Code. The e-voting of the 7th CoC meeting started on 15.03.2023 and concluded on 11.05.2023 (after extension of last date of e-voting for four times

from the initial last date 30.03.2023 at the request of Union Bank of India-CoC member), wherein the Resolution Plan submitted by M/s. Dorni Vinimoy Private Limited was approved with 99.87% voting share in its favour and declared as Successful Resolution Applicant.

10. Letter of Intent

The Applicant/ RP had informed the Successful Resolution Applicant about the decision of the CoC immediately on 11.05.2023 by e-mail and issued Letter of Intent ("LOI"). The terms of approval shall form part of the Resolution Plan. Copy of the Letter of Intent ("LOI") was duly accepted by the Resolution Applicant along with the e-mail dated 15.05.2023.

Pursuant to the LOI issued and as per the terms of the RFRP issued by the RP, the RP requested the Resolution Applicant to arrange for the Performance Security amounting to Rs. 1 crore in the form Performance Bank Guarantee in favour of Union Bank of India, Stress Assets Management Branch, Kolkata. Alternatively, it can transfer the aforesaid amount in the CIRP bank account of the Corporate Debtor. In terms of the RFRP, the Successful Resolution Applicant transferred the fund of Rs. 50 lakhs on 17.05.2023 and requested to consider the remaining Rs. 50 lakh which was transferred towards EMD at the time of submission of Resolution Plan as adjusted towards Performance Security.

11. Contents of Resolution Plan

The Resolution Applicant has proposed a total Resolution Plan amount of Rs. 1505 lakhs to discharge the liabilities of the Corporate Debtor and Rs. 45 lakhs towards CIRP cost.

12. Appointment of Registered Valuers

The Applicant appointed registered valuers in accordance with Regulation 27 of the CIRP Regulations, 2016 to determine the fair value and liquidation value of the Corporate Debtor in accordance with Regulation 35 thereof. The average Fair value and the Liquidation value of the Company obtained from the appointed Registered Valuers as on 19.07.2023 are as follows:

Fair Value: Rs. 14,27,06,924/-
Liquidation Value: Rs. 11,53,43,022/-

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

The Applicant submitted that the contents of the Resolution Plan comply with all the provisions of the I&B Code and does not contravene any of the provisions of law for the time being in force.

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:

Section of the Code Regulation No	**Requirement with respect to Resolution Plan**	**Clause of Resolution Plan**	**Compliance (Yes/No)**
25(2)(h)	The Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	Annexure – K of the Resolution Plan Application	Yes
Section 29A	The Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Clause 2.23, 2.41 and an affidavit in this regard enclosed as Annexure 5	Yes
Section 30(1)	The Resolution Applicant has submitted an affidavit stating that it is eligible?	Clause 2.41	Yes
Section 30(2)	The Resolution Plan (a) provides for	Clause 2.21 and	Yes

	the payment of insolvency resolution process costs?	Annexure III	
	(b) provides for the payment of the debts of operational creditors?	Clause 2.21 and Annexure III	Yes
	(c) provides for payment to the financial creditors who did not vote in favour of the resolution plan.	Clause 1.3 and Annexure IV	Yes
	(d) provides for the management of the affairs of the Corporate debtor?	Clause 2.26 Annexure-IV	Yes
	(e) provides for the implementation and supervision of the resolution plan?	Clause 2.23	Yes
	(f) does not contravenes any of the provisions	Clause 2.27	Yes

	of the law for the time being in force?		
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?	Ref. 7th CoC Meeting, Item No. 4, page 95-96 of the application. **The Resolution Plan submitted by** M/s. Dorni Vinimoy Private Limited **has been approved by CoC with** with 99.87% voting shares in its favour	Yes Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Annexure IV	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?	Clause 2.21 and Annexure III	Yes

Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Clause 2.22 and Annexure III	Yes
Regulation 38 (1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contribute to the failure of implementation of any resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	Clause 2.25	No N.A.
Regulation 38(2)	Whether the Resolution Plan provides (a) the term of the plan and its implementation schedule? (b) for the	Annexure I and Annexure IV Para 1.3 of	Yes Yes

	management and control of the business of the corporate debtor during its term?	Annexure IV	
	(c) adequate means for supervising its implementation?	Clause 2.21, 2.24, 2.26 and Annexure IV	Yes
	(d) Provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed.	Clause 2.33	Yes
38(3)	Whether the resolution plan		

	demonstrates that		
	(a) it addresses the cause of default?	Clause 2.28	Yes
	(b) it is feasible and viable?	Clause 2.11 and 2.27	Yes Yes
	(c) it has provisions for its effective implementation?	Clause 2.24 and Annexure IV	Yes
	(d) it has provisions for approvals required and the timeline for the same?	Clause 2.34	Yes
	(e) the resolution applicant has the capability to implement the resolution plan?	Annexure III and IV	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Application has been filed under Section 66(1)	Yes
Regulation 39(4)	Provide details of	Performance	No

	performance security received, as referred to in sub-regulation (4A) of regulation 368	security worth Rs. 1 crore provided by way transfer of the amount to the CIRP account of the CD. Corresponding pages of the CIRP bank account statement are enclosed as Annexure 4.	

14. **Details of the Resolution Plan and/ or Payment Schedule**

The Learned Counsel for the Applicant herein has submitted that the total plan outlay/ value is of Rs. 18 Crores out of which Rs. 15.50 Crores to discharge the liabilities of the Corporate Debtor and Rs. 2.50 Crores is towards capex and working capital infusion.

Particulars	**Claim Admitted**	**Claim Settled**
Secured Financial Creditors (other than financial creditors belonging to any class of creditors)	1,67,74,86,249	14,75,64,457
Unsecured Financial Creditors (other than	21,53,753	21,538

financial creditors belonging to any class of creditors)		
Operational Creditors (Govt. Statutory dues)	14,38,44,469	14,38,445
Operational Creditors (other than Workmen, Employees and Govt Statutory Dues)	14,75,55,987	14,75,560
CIRP Cost (Approx)	45,00,000	45,00,000
Total	**1,97,55,40,458**	**15,50,00,000**

15. In so far as the approval of the Resolution plan dated 22nd January, 2023 modified on 6th March, 2023 submitted by **Dorni Vinimoy Private Limited, Resolution Applicant** is concerned, this Adjudicating Authority is bound by the judgement of the Hon'ble Supreme Court of India in ***K. Sashidhar vs. Indian Overseas Bank and Ors.*** reported in **(2019) 12 SCC 150: MANU/SC/0189/2019,** wherein it is held that:

> **"***35. […] Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides:* ***(i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the***

provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. [...]. *To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan Under Section 30(4) of the I & B Code****."***

(Emphasis Added)

16. 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)

17. 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)**

Our Inference

On the Conduct of CoC:

18. Upon hearing, the submission made by the Learned Counsel appearing on behalf of the Resolution Professional of Corporate Debtor herein and perusing the record and/or documents placed before this Adjudicating Authority, we would find that the Resolution plan submitted by **Dorni Vinimoy Private Limited**-, the Successful Resolution Applicant has been approved by the CoC of the Corporate Debtor by **99.87% voting share** is declared as the "Successful Resolution Applicant". As per the CoC, the plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. Preponderantly, all the compliances have been done by the Resolution Applicant for making the plan effective after approval by this Adjudicating Authority.

19. In the course of the hearing, the Ld. Counsel for the applicant 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.

20. Upon perusal of the documents on record and/or documents, we are satisfied that the Resolution plan submitted by **Dorni Vinimoy Private Limited,** the Successful Resolution Applicant, is in accordance with sections 30 and 31 of the I&B Code, 2016 and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

On the Statutory Obligations or Seeking Approvals from the Authorities:

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

On the Reliefs, Waivers and Concessions:

22. We have perused the reliefs, waivers and concessions as sought and as provided in the Resolution Plan. It is evident that some of the reliefs, waivers and concessions sought by the Resolution Applicant come within the ambit of the I&B Code and the Companies Act 2013, while many others fall under the power and jurisdiction of different government authorities/departments. This Adjudicating Authority has the power to grant reliefs, waivers and concessions only concerning the reliefs, waivers and concessions that are directly with the I&B Code and the Companies Act (within the powers of the NCLT). The reliefs, waivers and concessions that pertain to other governmental

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

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

24. In this context, we would rely upon the judgment in ***Embassy Property Developments Pvt. Ltd. vs. State of Karnataka*** *reported in* ***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)

On the Extinguishment of Claims:

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

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

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

(Emphasis Added)

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

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

(Emphasis Added)

27. Authority, all such claims, that are not a part of the resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the

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

On Inquiries, Litigations, Investigations, and Proceedings:

28. For the reliefs and waivers sought for all inquiries, litigations, investigations, and proceedings shall be granted strictly as per section 32A of the I&B Code, 2016 and the provisions of the law as may be applicable.

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

> **"67. Thus, Section 32A broadly leads to:**
>
> *a.* ***Extinguishment of the criminal liability of the corporate debtor, if the control of the corporate debtor goes in the hands of the new management which is different from the original old management.***

b. The prosecution in relation to "every person who was a "designated partner" as defined in Clause (j) of Section 2 of the Limited Liability Partnership Act 2008 (6 of 2009), or an "officer who is in default", as defined in Clause (60) of Section 2 of the Companies Act. 2013 (18 of 2013), or was in any manner in charge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or 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)

30. Further, in a very recent judgment rendered by the **Hon'ble High Court of Madras** in ***Vasan Healthcare Pvt. Ltd. vs. The Deputy Director of Income Tax (Investigation), Unit 3(2)*** reported in **MANU/TN/0243/2024: (2024) ibclaw.in 80 HC** that:

"*9. In the above judgement, the Apex Court after dealing with the provision in detail, came to a categoric conclusion that insofar as the criminal prosecution is concerned, the criminal liability of the corporate debtor viz., company gets completely wiped off and the new management is allowed to take over the company on a clean slate.*

However, the Apex Court also made it clear that the persons who are involved in the day today affairs of the company and were in charge 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)

31. In the light of the enumerations and observations made in this Order supra, we hereby **APPROVE the Resolution Plan** submitted by **M/s. Dorni Vinimoy Private Limited** (Successful Resolution Applicant) with a Plan value of Rs. **15,50,00,000**/- (Rupees Fifteen Crores Fifty Lakh only).

32. 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.

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

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

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

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

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

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

39. The **Registry of this Adjudicating Authority** is directed to send e-mail copies of the order forthwith to all the parties and their Learned Counsels for information and for taking necessary steps.

40. In terms of the view above, the interlocutory application being **I.A. (IBC) No. 1003/KB/2023 stands disposed of accordingly.**

41. Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

Cmde Siddharth Mishra
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 10th April, 2026

Oindrila, K. (LRA)/ M. Jana(PS)