

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

IA-2876(PB)/2023

IN

Company Petition No. IB- 1053 (PB)/2020

(Under Rule 11 of NCLT Rules, 2016)

IN THE MATTER OF:-

M/s. Navtech Creations Private Limited

..... Applicant

AND IN THE MATTER OF:

M/s. Citron Strategies Private Limited

... Financial Creditor

VERSUS

M/s. Leading Hotels Limited

... Corporate Debtor

CORAM:

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)**

Order Delivered on:. 15.07.2024

Present:

For Applicant : Adv. Vajjayant Paliwal, Adv. Malika Joshi,
Adv. Akash, Adv. Abhishek Sharma in
IA/2876/ND/2023
For RP : Adv. Udit Singh

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)

1. This is an application filed by Navtech Creation Private Limited ("**Applicant**") under Rule 11 of NCLT Rules, 2011. The relief sought is as extracted below:

“i. Pass an order issuing directions for inclusion of the Applicant's consent to the final resolution approved by the Committee of Creditors.

ii. Pass any such order as this Hon'ble Court deems fit and necessary in the interest of the Applicant.”

2. The Applicant, a Financial Creditor of M/s Leading Hotels Private Limited ("**Corporate Debtor**"), has filed the present application through Mr. Santosh Pathak, a Director in the Applicant Company. Mr. Pathak is duly authorized by a Board Resolution dated 17.08.2021 to represent the Applicant Company in this matter. A copy of the said Board Resolution is annexed to the application and marked as 'Annexure-2'.
3. It is submitted that vide an Email dated 08.09.2021 of the Resolution Professional, the Claim Form of the Applicant was admitted by the erstwhile IRP.
4. The Ld. Counsel for the Applicant further submits that the Applicant being a Financial Creditor was a regular participant and a voter in the initial part of the Resolution process. However, the Applicant subsequently began missing the Committee of Creditor's meeting as the invites and correspondences were sent to the Email address of the Applicant company that was not checked with regular frequency, this led to Applicant's absence in

consecutive Committee of Creditor meeting. This absence was neither deliberate nor intentional.

5. That the Applicant with a voting share of 0.16% was a Financial Creditor which ought to have been a regular member of the Committee of Creditors. The Applicant received an intimation about the 9th meeting of Committee of Creditors, for approval of Resolution Plan, via an email dated 06.08.2022. The 'Notice & Agenda' for the impending COC meeting, scheduled to be held at 'D-54, 1st floor, Defence Colony, New Delhi-110024' on 08.08.2022 at 2:00 PM, was attached to the said email. A copy of the email dated 06.08.2022 intimating the Applicant about the 9th meeting of Committee of Creditors has been annexed herewith as 'Annexure-3'.
6. It is further submitted that due to the above-described oversight, the Applicant despite being a Financial Creditor could not participate in the e-voting process wherein the revised Resolution plan was approved. The Applicant did not intend to oppose or dissent the proposed Resolution Plan.
7. Pertinently, the COC members with 88.77% voting rights had approved the resolution plan of M/s Devrat Developers Limited in the 9th COC Meeting.
8. We find that the plea of the Applicant to consider its consent towards the approval of the Resolution Plan will in no way harm or cause prejudice to any party connected to the case.
9. Allowing the present application will not make much difference in the Resolution Plan as the share of the applicant as a Financial Creditor in the COC is just 0.16%.

10. Accordingly, in the interest of justice and for the reasons mentioned above, **I.A. 2876/PB/2022** stands **allowed**.

-sd-

(DR. SANJEEV RANJAN)
MEMBER (T)

-sd-

(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

IA-255(PB)/2023

IN

Company Petition No. IB- 1053 (PB)/2020

(Under Section 60(5) of IBC, 2016 read with Rule 11 of NCLT Rules, 2016)

IN THE MATTER OF:-

M/s. BKG Corp Limited & Anr.

... Applicants

VERSUS

M/s. Leading Hotels Limited (Through RP) & Anr.

...Respondent

AND IN THE MATTER OF:

M/s. Citron Strategies Private Limited

... Financial Creditor

VERSUS

M/s. Leading Hotels Limited

... Corporate Debtor

CORAM:

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)**

Order Delivered on:. 15.07.2024

Present:

For Applicant : Adv. Vaijayant Paliwal, Adv. Malika Joshi,
Adv. Akash, Adv. Abhishek Sharma in
IA/2876/ND/2023
For RP : Adv. Udit Singh

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)

1. This is an application filed by M/s. BKG Corp Limited & Mr. Shivraj Singh who are the Creditors dissenting (“**Dissenting Creditors**”/ “**Applicants**”) the Resolution Plan of M/s. Leading Hotels Private Limited (“**Corporate Debtor**”) under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (“**The Code**”) read with Rule 11 of NCLT Rules, 2011. The relief sought is as extracted below:

- “1. Direct the Resolution Professional to consider that the resolution amount is to be appropriated amongst all the unsecured creditors in proportion including to the dissenting creditors;*
- 2. Reject the list of CoC Members which included the name of COSMIC Trade and Investments Private Limited and Gluckrich Capital Private Limited as such claims are not supported with their own audited financial statements;*
- 3. Pass any further order that this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the present case;”*

2. Ld. Counsel for the Applicants has raised the following contentions:
 - a. Mr. Shivraj Krishan Gupta vide his email dated 08.08.2022 asked the RP that he is not able to access the Resolution Plan but the Resolution Professional did not redress this grievance.
 - b. Having no access to the resolution plan, the Applicant(s) had no other option but to dissent such plan, as it was not possible to read the resolution plan and find its merits and demerits.

c. During the course of hearing on 04.01.2023 and prior in time, it was communicated by the Ld. Counsel of the Resolution Applicant that the applicants are not entitled to get anything in Resolution plan because they are dissenting Creditors in terms of provisions of section 53 of the Code when read with the liquidation value.

d. RP, UV Asset and other few creditors dissented for the resolution of forensic audit deliberately:

IA 3940 of 2022 filed by the applicants when the forensic audit was disapproved by certain selected CoC Members and UV Asset Reconstruction Co Ltd who got the loan assigned from Yes Bank. Vide this application, the applicants sought directions for Forensic audit on the ground that the suspended directors diverted the funds of more than Rs. 300 Crores without investing any amount in the project by showing such amount under the head 'Capital Work in Progress' i.e., in other words the assets of the Corporate Debtor. The details of this more than Rs. 300 Crores were not divulged by the Transaction Auditor or the Resolution Professional but were obtained by the applicants in IA 3940 of 2022 with harsh communications with the RP and others.

e. RP admitted claim of Cosmic and Glukrich on the basis of forged and fabricated documents:

The applicant has raised concerns based on the Audited Balance Sheet (**AFS**) of Cosmic Trade and Investment Private Limited (**COSMIC**) as of March 31, 2022, filed with the MCA. The applicant claims that COSMIC's claim of Rs. 78.20 crore, admitted by the Resolution Professional (RP) with a 24.43% voting share, is baseless. The AFS of COSMIC does not support this claim, showing only Rs. 35.49 crore in 'Loans and

Advances' and indicating a mere Rs. 3 Crore increase from the previous year. This discrepancy suggests the RP admitted COSMIC's claim to aid the Suspended Directors in controlling the Committee of Creditors (CoC). Additionally, the applicant questions the legitimacy of GLUKRICH's debt assignment, highlighting potential collusion to reduce YES Bank's voting power and facilitate asset reclamation by Suspended Directors through dubious asset management companies.

- f. If Cosmic and Glukrich's voting is excluded then the Resolution Plan cannot be considered as approved by CoC as they form the majority.
- g. RP failed to ascertain fraud of Rs. 300 crore and report the same to CoC and this Tribunal:
- h. The RP neither disclosed in any CoC Meeting that the 'Asset' of more than Rs. 300 Crore shown in Balance Sheet under the head 'capital work in progress' in fact relates to only expenses which are not directly related to the Corporate Debtor. Hence, all this amount is paid by the CD for the benefit of the others by the suspended directors. Such a diversion of funds by suspended directors falls within the ambit of section 66 of the Code but the RP facilitated the suspended directors by concealing such facts and not identifying such transaction under regulation 35A of the CIRP Regulations.

i.
3. In reply to the contentions raised by the applicant herein, the Ld. Counsel for the RP has put forth the following arguments:

- a. It is submitted that the present application is a malicious attempt by the Applicants to delay the Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor. It is pertinent to mention that the Applicants had already filed a misleading and frivolous application IA No. 3940 of 2022. The

Applicants in IA 3940 of 2022 have sought a prayer to terminate the CIRP along with other reliefs. It is submitted that the Applicants, on realising the fact that the Application bearing IA No. 3940 of 2022 filed by them is not maintainable, have preferred the instant Application to further delay the CIRP of the Corporate Debtor.

- b. The Applicants have stated that they were not able to access the Resolution Plan and further allege that the RP did not give any resolution to the grievance of Applicant no. 2. It is submitted that on receiving a query from the Applicant no.2, the RP vide his email dated 08.08.2022 had clarified the Virtual Data Room (VDR) system was the most secure way for sharing any documents. It was further clarified that in case the Applicant faced any other problem, the RP would have gotten the Applicant no. 2 in touch with the VDR service provider technical team. It is submitted that the Applicant no. 2 did not reply to the said email.
- c. It is submitted that the Applicants have failed to place any evidence on record to prove that the Applicants were not able to access the Resolution Plan. It is submitted that the Resolution Plans that were received from the prospective Resolution Applicants were opened and discussed in the 8th CoC meeting of the Corporate Debtor in the presence of all the CoC members. It is submitted that the Applicants, now, cannot raise an allegation that they were not able to access the Resolution Plan.
- d. It is further submitted that the Applicants being unsecured financial creditors were very well aware about the fact that in case they dissented to the Resolution Plan, they would be entitled to a NIL amount in terms of the waterfall mechanism

as mentioned under Section 53 of the IBC. It is further submitted that despite being conscious of the present fact, the Applicants still chose to dissent to the Resolution Plan.

- e. The Resolution Plan submitted by one M/s Devvrat Developers has already been approved by the members of the CoC which was put up for voting in the 9th CoC meeting held on 08.08.2022. It is submitted that the Resolution Plan was approved by a voting share of 88.77% on 10.08.2022. It is submitted that the members of the CoC in its commercial wisdom have already approved the Resolution Plan.

Allegations against admission of claim of Cosmic and Glukrich by the erstwhile RP

- f. It is submitted that Cosmic had become a member of the CoC of the Corporate Debtor by virtue of purchase of the debts of other creditors of the Corporate Debtor. It is further submitted that the details regarding the assignment deeds were duly shared by Cosmic with the erstwhile RP who had verified the same.
- g. It is submitted that the Audited Financials of the Corporate Debtor do not reflect the name of Cosmic since it had acquired the debts from the Creditors of the CD after commencement of CIRP. It is further submitted that there is no bar under the I&B Code 2016 whereby one financial creditor can acquire the debt of the other financial creditors/creditors of the CD before or after the commencement of CIRP.
- h. Further, a perusal of the Audited Financial Statements (AFS) of Cosmic dated 31.03.2022 shows that the debt acquired by Cosmic is reflected under Current Investments. It is further submitted that as per Note No. 10 (Current Investments)

provided in the AFS it is clearly mentioned that the amount appearing in AFS is on the basis of the purchase consideration paid by Cosmic, that too at a discounted price, to acquire the debt from the Creditors of the Corporate Debtor.

Gluckrich's Claim

- i. Initially, the claim of Gluckrich was kept as a contingent claim since the erstwhile Resolution Professional wanted some clarifications from Gluckrich with regards to its claim.
- j. Subsequently, Gluckrich filed an Application before this Tribunal seeking a stay of the CoC meeting that was scheduled to take place on 29.07.2021 in view of the fact that Gluckrich had been denied a place in the CoC. It is further submitted that this Adjudicating Authority vide its order dated 29.07.2021 was pleased to grant a stay on the conducting of CoC meeting and directed the erstwhile RP to finalise the claim of Gluckrich. A copy of the order dated 29.07.2021 passed by this Tribunal is annexed with the reply and marked as 'Annexure R-3'.
- k. Thereafter, this Adjudicating Authority, vide its order dated 16.08.2021 directed the that since the claim of Gluckrich had been admitted, the erstwhile RP was to file an affidavit to this effect. It is submitted that the same was done by the erstwhile RP. A copy of the affidavit filed by the erstwhile RP is annexed with the reply and marked as 'Annexure R-4'.
- l. Accordingly, after the above-mentioned facts, the erstwhile RP (Ms. Preeti Jaiswal) had filed an application for vacation of the stay order dated 29.07.2021 in view of the fact that the claim of Gluckrich had been admitted. This Adjudicating Authority vide its order dated 20.12.2021 allowed the Application filed by the erstwhile RP and vacated the stay. A copy of the order dated

20.12.2021 is annexed with the Reply and marked as Annexure R-5.

Frivolous allegations regarding the fact that the Resolution Professional failed to ascertain the alleged fraud of Rs. 300 crores and report the same to the CoC:

- m. The Applicants have also raised frivolous allegations against the erstwhile Resolution Professional stating that they failed to take notice of the alleged fraud of Rs. 300 crores. This allegation has only been reiterated by the Applicants as the same finds mention in the first IA that has been filed by the Respondents in IA 3940 of 2022.
- n. The Applicants also state that they were not made aware about the voting results of the Resolution Plan. It is submitted that all the members of the CoC were made aware about the voting results and as a matter of fact, the voting results are also a part of the records of IA 4006 of 2022 which has been filed by the Resolution Professional for the approval of the Resolution Plan of the Corporate Debtor.
- o. The Applicants had been regularly participating in the CoC meetings of the Corporate Debtor which is reflected in the minutes of the said meetings.

Findings & Analysis:

- 4. We have heard the Ld. Counsels and perused the documents on record. A perusal of the instant Application puts forth that the Applicants have sought directions from this Adjudicating Authority to direct the Resolution Professional to consider that the resolution amount under the Resolution Plan be distributed amongst all the unsecured creditors in proportion including the dissenting creditors along with other consequential reliefs.

5. Considering the factual matrix of the case, the CIRP of the CD was initiated on 25.06.2021 and the claims of various financial creditors were accepted during a certain time frame. Further, the Resolution Plan has already been approved by the members of the CoC on 10.08.2022 by a voting share of 88.77%, and the same is pending approval of this Adjudicating Authority vide IA no. 4006/2022.
6. Considering the prayer of the Applicant regarding the re-distribution of the resolution plan amount amongst all the creditors, in our considered view, would amount to tinkering with the Resolution Plan that has been duly approved by CoC with a majority of 88.77%. This Adjudicating Authority, on its own cannot alter any terms of the Resolution Plan as the same has been approved by the CoC and the commercial wisdom of the CoC is paramount.
7. At this juncture, we rely upon the Judgement passed by Hon'ble Supreme Court in the matter of "**Vallal RCK versus M/s Siva Industries and Holdings Limited and Others, Civil Appeal Nos. 1811-1812 of 2022**" whereby the Hon'ble Apex Court has answered the question as to whether 'the adjudicating authority (NCLT) or the appellate authority (NCLAT) can sit in an appeal over the commercial wisdom of the Committee of Creditors (hereinafter referred to as the "CoC") or not'. We rely upon the following paragraphs:
"21. This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors are fully informed

about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. A reference in this respect could be made to the judgments of this Court in the cases of “**K. Sashidhar v. Indian Overseas Bank and Others, Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Others, Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others, Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another, and Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and Others.**”

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

“95.However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicatory authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience.

Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC.....”

8. The Resolution Plan of ‘M/s Devrat Developers Limited, the Successful Resolution Applicant for the Corporate Debtor has been upvoted by CoC with 88.77% majority and this Adjudicating Authority cannot interfere in the same.
9. Another relief that the applicant seeks from this Adjudicating Authority is to reject the list of CoC Members which included the name of Cosmic Trade and Investments Private Limited and Gluckrich Capital Private Limited as such claims are not supported with their own audited financial statements.
10. With regards to Cosmic Trade and Investments Private Limited, we find that Cosmic is a part of the CoC as a financial creditor by the virtue of assignment of debt. The Financial Creditors had assigned their debt to Cosmic during the CIRP period. As this assignment was done during the CIRP period, the Annual Financial Statement of the Corporate Debtor have no mention of Cosmic as a Financial Creditor because the Financial Statement of the Corporate Debtor pertains to the pre CIRP period. Further, this transaction is reflected in the AFS of Cosmic for the year 31.03.2022 under the heading ‘Current Investments’ read with Note 10 of the AFS.
11. Further with regards to the claim of Gluckrich Capital Private Limited, it is seen that Gluckrich's claim was contingent pending clarification. Gluckrich then sought a stay on the CoC meeting scheduled for 29.07.2021, which this Adjudicating Authority

granted, directing the Resolution Professional to finalize Gluckrich's claim. On 16.08.2021, this Adjudicating Authority ordered the Resolution Professional to file an affidavit confirming the claim's admission, which was done. Subsequently, the stay was vacated by this Adjudicating Authority on 20.12.2021 after the claim was admitted.

12. We find that above-mentioned facts make it clear that the status of the claim of Gluckrich had been brought to the notice of this Adjudicating Authority by the erstwhile Resolution Professionals and accordingly had been admitted. The same also finds mention in the 1st CoC minutes of the CD dated 03.01.2022. A copy of the minutes of 1st CoC meeting dated 03.01.2022 is annexed with the Reply and marked as '*Annexure R-6*'.
13. The provisions of the IBC and the CIRP regulations recognise the assignment of debts during CIRP, unless there is any illegality in the assignments that have taken place.
14. Another contention raised by the Applicant is that the Resolution Professional failed to consider the siphoning of an amount of Rs. 300 crores and the issue of dissent to the Forensic Audit has been dealt with by this Adjudicating Authority in its order dated 30.05.2024, in IA 3940/2022.
15. It is pertinent to mention that the Applicants herein had filed an IA 3940/2022 which was dismissed by this Adjudicating Authority vide its order dated 30.05.2024. It appears that the present application has been filed only to derail and delay the process of CIRP of the Corporate Debtor.

16. Accordingly, in the light of the judgment of Hon'ble Supreme Court and the facts of the present case, it appears that the application filed by the Applicants lacks substantial basis.
17. In view of the aforesaid discussion, **Interlocutory Application No. 255/ND/2022** in Company Petition No. (IB)- 1053/ND/2020 stands **dismissed**. No orders to cost.

-sd-

(DR. SANJEEV RANJAN)
MEMBER (T)

-sd-

(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

IA-4006(PB)/2022

IN

Company Petition No. IB- 1053 (PB)/2020

(Under Section 30 (6) and 31 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016))

IN THE MATTER OF:-

Mr. Sapan Mohan Garg
(Resolution Professional of
M/s. Leading Hotels Limited)

..... Applicant

AND IN THE MATTER OF:

M/s. Citron Strategies Private Limited

... Financial Creditor

VERSUS

M/s. Leading Hotels Limited

... Corporate Debtor

CORAM:

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)**

Order Delivered on:. 15.07.2024

Present:

For RP : Adv. Udita Singh

For the SRA : Adv. Savar Mahajan

ORDER

I.A./4006/2022 IN C.P.(IB)/1053/2020

M/s. Citron Strategies Private Limited v/s M/s. Leading Hotels Limited

Page 1 of 22

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)

1. The present application has been filed under Section 30(6) read with Section 31(1) of the Insolvency & Bankruptcy Code, 2016 (‘the Code’) read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (‘Regulations’) on behalf of Mr. Sapan Mohan Garg, applicant herein and Resolution Professional (RP) of M/s. Leading Hotels Limited (‘Corporate Debtor’), seeking approval of the Resolution Plan dated 30.07.2022 along with clarifications dated 08.08.2022 submitted by M/s. Devrat Developers Limited (‘Successful Resolution Applicant’) and approved by the Committee of Creditors (‘CoC’) in its 9th CoC Meeting held on 08.08.2022 with 88.77% voting in favor in terms of Section 30(4) of I&B Code, 2016.
2. Briefly stated, the facts as averred by the applicant in the application are as follows:
 - a. The Corporate Insolvency Resolution Process against M/s. Leading Hotels Limited (‘Corporate Debtor’) had been initiated by this Hon’ble Adjudicating Authority vide its order dated 25.06.2021 in C.P.(IB)No.1053(PB)/2021, an application under Section 7 of the Code, 2016 filed by M/s. Citron Strategies Private Limited (‘Financial Creditor’). Mr. Sapan Mohan Garg is appointed as the Resolution Professional of the Corporate Debtor in the 5th CoC Meeting held on 23.05.2022.
 - b. The Corporate Debtor is engaged in the business of running and managing hotels, resorts, motels, restaurants and cafe. The Corporate Debtor had proposed to set up an 18-hole signature championship golf course, 209 key 5- star deluxe

villa resort along with 60 Platinum Golf Membership villas at Tiracol, in North Goa ("Project"). Currently, the Corporate Debtor is not undertaking any business activities. The Corporate Debtor had signed 'a 'Management Agreement with 'Four Seasons' for operations and management of the golf course-cum-resort Project, however the validity of the said Agreement has expired due to the delay in implementation of the Project.

- c. The Public Announcement in Form A dated 01.07.2021 was made in the newspaper wherein all the creditors were invited to submit their claim and the last date for submission of proof of claim was 13.07.2021. The Applicant had verified the claims on the basis of the documents and information as provided by the claimants in support of their claim and Committee of Creditors of the Corporate Debtor was constituted on 22.07.2021. The summary of claims of the Corporate Debtor are as follows:-

S. No.	Category	Amount Claimed (in INR)	Amount Admitted* (in INR)
1.	Secured Financial Creditor	189,92,27,764	170,82,92,992
2.	Unsecured Financial Creditors	187,24,71,203	186,62,38,417
	TOTAL FCs	377,16,98,967	357,45,31,409
	Workmen & Employees	285,66,949	185,66,949
	Statutory Dues	N/A	N/A
	Operational Creditor (other than above)	272,35,876	223,90,036
	TOTAL OCs	558,02,825	409,56,985
	TOTAL	383.31 Crores	363.92 Crores

- d. The Invitation for Expression of Interest in Form –G was published on two occasions i.e., (i) 17.02.2022 and (ii) 31.03.2022. The Form G issued on second occasion was issued

in the newspaper, entailing the last date for submission of EoI as 09.05.2022 and the last date of submission of Resolution Plan was 15.07.2022. Pursuant to the Form-G, the applicant had received Four (4) Expression of Interests from the Prospective Resolution Applicants (PRAs) along with requisite amount of Earnest Money Deposit (EMD).

- e. Out of the said 4 PRAs, one of the PRA, Kundan Care Products Ltd. was not found to be eligible as it did not meet the eligibility criteria of having liquid funds of Rs.25 Crore. The above fact was also discussed and deliberated upon by the CoC in their 5th meeting dated 23.05.2022, who also found that the said PRA was ineligible to submit a resolution plan, for not having met the requirement of having minimum liquid funds of Rs.25 Crore. In this regard, the name of Kundan Care Products Ltd. was included in the provisional list of PRAs dated 19.05.2022 however, as it was found to be ineligible, its name did not reflect in the final list of PRAS dated 03.06.2022.
- f. In the 5th CoC meeting dated 23.05.2022, the CoC had approved the evaluation matrix and request for resolution plan ('RFRP') in the present case, after due consideration and deliberation on the said documents. It is noteworthy that in the said CoC meeting, as the 5th CoC meeting was itself deferred from 19.05.2022 to 23.05.2022, the date for issuance of RFRP, evaluation matrix and information memorandum, which was earlier fixed on 24.05.2022, was also extended to 28.05.2022.
- g. In the 7th CoC meeting dated 11.07.2022, the applicant apprised the CoC about the requests made by all the three (3) PRAs to extend the last date for submission of resolution plan at least by 1 week / a month in view of various litigation in the

present case. The CoC deliberated on the said request and the resolution to extend the timeline for submission of resolution plan up to 30.07.2022 (05:00 PM) was approved by the CoC with requisite voting. As on 30.07.2022, the applicant had received two Resolution Plans from (i) M/s. Devrat Developers Limited ('Successful Resolution Applicant) and (ii) M/s. GVPR Engineers Limited. The said resolution plans were received in soft copies and hard copies (sealed). Also, the EMD of Rs. 3 Crore each was received by the applicant as per the relevant clause of the RFRP document.

- h. The applicant in the 8th CoC Meeting dated 02.08.2022 had informed the CoC that one of the PRAS, M/s. Chalet Hotels Ltd., had requested to extend the last date for submission of resolution plan by 2 months on 27.07.2022, however, the said request was turned down by the CoC in view of the time lines involved in the present case. Pursuant thereof, on 02.08.2022, the said PRA requested the applicant/ resolution professional to refund the EMD deposited by them. On this the CoC approved the refund of EMD to the said PRA, as no resolution plan was submitted by the said PRA.
- i. Further, the CoC members were apprised that basis the valuation received from the valuers appointed for each category, the fair value and liquidation value of the corporate debtor under the respective category was determined on 31.07.2022 as per regulation 35(1) of CIRP Regulations. The fair value and liquidation value of the assets of the corporate debtor was subsequently shared with the CoC members after receiving confidentiality undertaking from them

- j. Further, the CoC was informed that based on the transaction audit report dated 01.08.2022, the applicant has determined undervalued transaction under section 45 of IBC, as undertaken in the corporate debtor amounting to Rs.383.55 Lakh, for which the applicant shall file appropriate application before this Hon'ble Tribunal. Subsequently an application for avoidance of transactions under section 45, 46 read with section 49 and Section 66 of IBC was filed before this Hon'ble Tribunal on 09.08.2022, which is pending adjudication.
- k. Further, in the 8th CoC Meeting, the said two PRAs were also invited, as the resolution plans were to be opened before the CoC members. The resolution plans were opened in the presence of the CoC members and counter signatures of representatives of CoC members were taken on the back side of the respective resolution plan on some pages for identifications. The PRAs were then requested to briefly explain the members of the CoC about their financial proposal of their resolution plans and thereafter, both the PRAs gave a brief outline of their financial proposal. After such presentation, the CoC requested the PRAs to improve the financial value of their resolution plans and submit revised plans on or before 03.08.2022 at 06:00 PM
- l. However, by the stipulated time for re-submission of the revised Resolution Plan i.e., 03.08.2022 at 06:00 PM, only one PRA, namely M/s. GVPR Engineers Limited had submitted its revised resolution plan with improved financial offer on 03.08.2022 with the applicant, while M/s. Devrat Developers Limited stated that it was sticking to the financial proposal in its original resolution plan. The said fact was duly communicated to the CoC by the applicant vide email dated 03.08.2022, whereby the

revised resolution plan of M/s. GVPR Engineers Limited was also circulated to the members of the CoC. It is noteworthy that the original resolution plans of the PRAs were already with the CoC members for their consideration on the feasibility and viability of the respective plans.

- m. The legal counsel of the Corporate Debtor had conducted the due diligence of the respective resolution plan and submitted its report on 08.08.2022, basis which certain clarifications on the resolution plans were sought from the respective PRAs by the applicant/ resolution professional. The PRAS responded to the clarifications sought by the applicant on 08.08.2022, thereby clarifying on all the queries raised by the applicant.
- n. In the 9th CoC meeting dated 08.08.2022, the CoC was apprised of the due diligence report submitted by the legal counsel of applicant, also, the clarifications sought from the respective resolution applicants and response thereof was placed before the CoC members for their consideration. The applicant apprised the CoC members that both the plans were legally compliant and none of the resolution applicant was barred to submit a resolution plan.
- o. The CoC then considered the feasibility and viability of each resolution plan, the financial proposals of each resolution plan along with the tenure of repayments was discussed in detail by the CoC members. The resolution plans were then evaluated in terms of the evaluation matrix and were then put to vote simultaneously before the CoC member through e-voting from 08.08.2022 at 08:00 PM to 10.08.2022 at 08:00 PM. The e-voting on the resolution plans was concluded on 10.08.2022 at 08:00 PM. whereby, the CoC had approved the resolution plan

of M/s. Devrat Developers Limited (successful resolution applicant) with 88.77% voting share, while the resolution plan of M/s. GVPR Engineers Limited had only received 0.34% votes in assent.

- p. In pursuance of approval of resolution plan of M/s. Devrat Developers Limited the applicant issued a letter of intent dated 11.08.2022 (LOI) to the successful resolution applicant, thereby reiterating the obligations on part of the successful resolution applicant and seeking deposit of performance security equivalent to 10% of the value of resolution plan i.e. Rs. 21.91 Crore on or before 16.08.2022, as per regulation 36B(4A) of CIRP regulations.
- q. In response to the said LOI, the Successful Resolution Applicant on 12.08.2022 submitted a performance bank guarantee dated 12.08.2022, issued by ICICI bank for a sum of Rs.16.91 Crore, with a request to adjust the EMD of Rs.5 Crores, already deposited, towards the balance amount of performance security.
3. We have heard the submissions made by the Ld. Counsel for the Applicant and have meticulously gone through the documents produced on record. The copy of the Resolution Plan dated 30.07.2022 along with the clarifications dated 08.08.2022 submitted by M/s. Devrat Developers Limited ('Successful Resolution Applicant') and approved by the CoC is annexed as Annexure A 1 (Colly.) (pg no. 41-101) to the present application. The salient features of the Resolution Plan dated 30.07.2022 as submitted by **M/s. Devrat Developers Limited ('Successful Resolution Applicant'**) and approved by the CoC in its 09th CoC

Meeting held on 08.08.2022 with 88.77% voting in favor are reproduced herein below:

I. **BACKGROUND OF THE SUCCESSFUL RESOLUTION APPLICANT:**

The SRA is a private limited company incorporated on 25 May 1995 under the Companies Act, 1956. The SRA has vast experience in developing real estate projects. Further the Promoters/Directors of the SRA have more than 30 years' experience in investing into real estate properties, real estate projects such as redevelopment and managing the projects of complex nature. Further, the SRA and its promoters have in depth knowledge of the approval process and have the financial capabilities to develop and operate hospitality projects of this nature. The SRA is currently developing multiple projects across cities with the total sale-able area of approximately 500,000 sq. ft. The following are the real estate projects which are being developed by the SRA:

S. No.	Name of the Project	Location	Project Area (sq. ft.)	No. of units	Type of Units
1.	Dev Darshan Residential	Indore	2,30,000	95	1 bhk to 4 bhk
2.	Napansea Road Residential	Napansea Road Mumbai	1,00,000	40	4 bhk
3.	Rekha Ansh Residential	Khar West-Mumbai	12,000	9	2 bhk to 4 bhk
4.	Shivdham Residential	Santacruz West-Mumbai	57,000	46	2 bhk to 4 bhk

II. **KEY TERMS OF THE RESOLUTION PLAN**

The SRA proposes to pay a sum of INR 219 .15 Crores in full and final settlement of the Total Admitted Claims of INR 363.92 Crores in the manner provided below:

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(Amounts in INR Crores)						
Stakeholder	Amount Claimed	Admitted Claim	Total Pay-out	Timing of Payments	% age (w.r.t amount claimed)	% age (w.r.t amount admitted)
CIRP Costs	1.80	1.80	At actuals – (INR 1.80 Crores is due and payable)	Transfer Date	100%	100%
Secured Financial Creditor	189.92	170.83	162 Crore Interest on discounting rate as per evaluation matrix	5 years from the Transfer Date	85.30%	94.83%
Unsecured Financial Creditors	187.81	187.19	54	Within 60 days from the Effective Date	28.75%	28.8%
Employees and Workmen	2.86	1.86	0.85	Within 60 days from the Effective Date	29.75%	45.7%
Operational Creditors (other than Employees and Workmen)	2.72	2.24	0.50	Within 60 days from the Effective Date	18.36%	22.3%
Existing shareholders		N/A	NIL	Within 60 days from the Effective Date	NA	NA
TOTAL	383.31	363.92	219.15		56.7%	60%

III. **TREATMENT OF CREDITORS OF CORPORATE DEBTOR**

a. Secured FCs:

Secured FCs will be issued 16,20,000 Non-Convertible Debentures ("NCDs") of the Corporate Debtor having face value of INR 1,000 each. The NCDs will be redeemable within 5 years from the Transfer Date provided that the NCDs will be compulsory redeemable at the end of 5 years from the Transfer Date.

b. Unsecured FCs:

Unsecured FCs will be paid an amount of INR 54 crores within 60 days from the Effective Date.

c. Dissenting FCs:

Dissenting FCs will be paid the minimum amount payable to such Dissenting FCs in terms of Section 53 of the Code ("Minimum Dissenting FC Payment") in accordance with Section 30(2)(b) of the Code. Such Minimum Dissenting FC Payment shall be made from the overall amount proposed for relevant category of creditor (Secured FCs or Unsecured FCs as applicable). The balance amounts shall be distributed pro-rata to the assenting FCs. Further, in case the Minimum Dissenting FC payment is less than the pro-rata amount that was otherwise payable to the relevant Dissenting FC, the difference would be paid to the benefit of the assenting FC without decreasing the total Secured FC Payment or Unsecured FC Payment (as relevant), in such case the balance amounts shall be distributed pro-rata to the assenting FCs.

The SRA understands that the only Dissenting FCs in the present case are certain Unsecured FCs and hence, the amount payable to the Dissenting FC (unsecured) is Nil in terms of Section 53 (1) of the Code. Therefore, the amount allocated for Unsecured FCs are to be distributed pro-rata to the assenting Unsecured Financial Creditors.

d. Workmen and employees:

They will be paid an amount of INR 0.85 crores within 60 days from the Effective Date.

e. Other OCs

They will be paid an amount of INR 0.50 crores within 60 days from the Effective Date

IV. **SOURCES OF FUNDS**

The Initial Infusion Amount and Unsecured FC Payment shall be made by the Resolution Applicant from its own funds. The Resolution Applicant has sufficient cash and cash equivalents in its balance sheet, which can be quickly monetised for purposes of funding the Resolution Plan. Resolution Applicant has access to finance from multiple banks/financial institutions including Private Equity for the development of the Resort, however these will be explored once legal cases pending against the Corporate Debtor are resolved.

V. **INITIAL INFUSION**

The SRA shall infuse an initial infusion amount of INR 4.5 crores ("Initial Infusion Amount") into the Corporate Debtor towards upfront payment of CIRP costs and payment to Operational Creditors. Further, the Unsecured FCs will be paid INR 54 Crores upfront. The Initial Infusion Amount and the Unsecured FC Payment will be made by the SRA from its own funds. The SRA has sufficient cash and cash equivalents in its balance sheet, which can be quickly monetised for purposes of funding the plan

VI. **AVOIDANCE TREATMENT**

In case the Resolution Professional and/or the CoC decides to file and/or have already filed any avoidance application against any person and in case of any positive outcome/refund of the said avoidance application, the same shall accrue solely for the benefit of the Corporate Debtor and the RA and shall not be shared with the CoC or any other stakeholders of the CoC. Post the Effective Date, the RA will be the sole in-charge of these avoidance applications. Further, the cost, including the legal cost, for representing such avoidance application till the Effective Date is factored in as the CIRP Costs. The

cost, if any, during the Interim Management Period shall be included in the Interim Management Costs. After the Transfer Date, all costs, including the counsel's fee, shall be borne by the RA.

VII. **CHANGE IN SHAREHOLDING**

The paid-up share capital of the Corporate Debtor is INR 20,87,69,290 divided into 2,08,76,929 equity shares of Rs. 10 each. On or prior to the Transfer Date, the Initial Infusion Amount of INR 4.5 Crores shall be brought into the Corporate Debtor by the SRA in the form of share application money. On the Transfer Date:

- the entire existing share capital of the Corporate Debtor shall stand cancelled and/or extinguished and/or reduced without payment of any consideration to the existing shareholders;
- the Corporate Debtor shall issue and allot 45,00,000 Equity Shares having a face value of INR 10 each against the Initial Infusion Amount to the Resolution Applicant and/ or its nominees such that the Resolution Applicant and/ or its nominees shall be the holder of 100% of the equity share capital of the Corporate Debtor.

VIII. **IMPLEMENTATION OF THE RESOLUTION PLAN**

Steps	Activity	Indicative Timeline
1.	COC Approval Date	X
2.	Effective Date	Y
3.	Formation of Monitoring Committee	Y
4.	Appointment of the Monitoring Professional	Y
5.	Deposit of Initial Infusion Amount	Z (Y + 60 days)
6.	Transfer Date	Z
7.	Payment of outstanding CIRP Costs	Z
8.	Payment of outstanding Interim Management Costs	Z
9.	Payment to Operational Creditors	Z
10.	Payment to Unsecured Financial Creditors and Dissenting Financial Creditors	Z
11.	Assignment of Claims by the Financial Creditors	Z

12.	Capital Restructuring (a) Issuance of new Equity Shares to the Resolution Applicant/ nominees; (b) Extinguishment of existing shareholding of the Corporate Debtor.	Z
13.	Board Reconstitution (a) Automatic vacation of office by the existing directors; (b) Appointment of directors nominated by the Resolution Applicant	Z
14.	Payment to Secured Financial Creditors	Z + 5 years

4. In view of Section 31 of the Code, the Adjudicating Authority, before approving the Resolution Plan, is required to examine that a Resolution Plan which is approved by the CoC under Section 30 (4) of the Code meets the requirements as referred under Section 30 (2) of the Code.

Section 30 (2) is quoted below: -

“(2) The resolution professional shall examine each Resolution Plan received by him to confirm that each Resolution Plan –

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;

(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the Resolution Plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher, and provides for the 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, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

(i) where a Resolution Plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a Resolution Plan;]

(c) provides for the management of the affairs of the Corporate debtor after approval of the Resolution Plan;

(d) The implementation and supervision of the Resolution Plan;

(e) does not contravene any of the provisions of the law for the time being in force

(f) conforms to such other requirements as may be specified by the Board.

Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 (18 of 2013) or any other law for the time being in force for the implementation of actions under the Resolution Plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]”

5. In respect of compliance of Section 30(2)(a) of the Code, it is seen that there is a provision in clause 6.1 and 6.2 of Chapter VI at pg no.24 of the Resolution Plan provides that any unpaid CIRP Costs outstanding as on the NCLT Approval Date shall be paid on actuals in priority to any payments to any creditor on the Transfer Date.

6. In respect of compliance of Section 30(2)(b) of the Code, it is seen that there is a provision in clause 6.4 and Clause 6.5 of Chapter Vi at Page No.28 of the Resolution Plan provides that the admitted claim of Operational Creditors (Workmen and Employees) is INR 1,85,66,949 (Rupees One Crore Eighty Five Lakhs Sixty Six Thousand Nine Hundred Forty Nine). The Resolution Applicant proposes to pay an amount of INR 0.85 Crores ("W/E OC Payment") to the Operational Creditors (Workmen and Employees) under this Resolution Plan against all Claims of Operational Creditors (Workmen and Employees). The W/E OC Payment shall be paid from the Initial Infusion Amount, on the Transfer Date, in priority to the payment proposed to the Financial Creditors and within 60 days from the Effective Date.
7. In respect of compliance of Section 30(2)(c), it is seen that there is a provision in clause 6.3.10 of Chapter Vi at pg. no.26 of the Resolution Plan, which provides for the payment to the Financial Creditors who did not vote in favour of the Resolution Plan.
8. In respect of compliance of Section 30(2)(d) and 30(2)(e) of the Code, it is seen that the manner of the management of the affairs and control of the business of the Corporate Debtor has been provided in detail in clause 9 at Chapter IX at pg. no. 40 of the Resolution Plan. Further Chapter X at pg. no. 43 of the Resolution Plan, provides for the Term and Implementation of the Resolution Plan. Also, Clause 9.2 of the Resolution Plan provides for the constitution of a monitoring committee comprising of (a) one representative of the Secured Financial Creditor, (b) one representative of the Unsecured Financial Creditors who shall the Unsecured Financial Creditor holding maximum share of

admitted debt; (c) one representative of the Resolution Applicant. The committee shall supervise and monitor the implementation of the Resolution Plan after approval of the same by the Hon'ble NCLT ("Monitoring Committee").

9. In respect of compliance of Section 30(2)(f) of the Code, it is seen that the information provided in the Resolution Plan and the supporting documents provided by the Successful Resolution Applicant is in compliance with the applicable laws. Further, the Successful Resolution Applicant had submitted an affidavit dated 29.07.2022 read with revised affidavit dated 06.08.2022 stating that he is eligible under Section 29A of the Code, 2016.
10. In respect of compliance regarding Regulation 38 (1A) of the CIRP Regulations, it is seen that Clause 6.13 of Chapter VI at Pg. no. 64 of the Resolution Plan provides how it will deal with the interest of all the stakeholders including secured and unsecured financial creditors, operational creditors of the corporate debtor, statutory dues and interests of the employees and workmen, as per the requirement of Regulation 38(1A) of the CIRP Regulations.
11. In respect of compliance regarding Regulation 39(4) of the CIRP Regulations, the applicant has filed compliance certificate in Form-H certifying that the Resolution Plan submitted by the Successful Resolution Applicant meets the requirements as laid down in various sections of the Code and the CIRP Regulations and there are sufficient provisions in the Plan for its effective implementation as required under the Code.
12. On perusal of Form-H annexed as Annexure A-27 at page no.442 - 451 of the present application, we observe that the Average Fair Market Value of the Corporate Debtor as provided in Form- H is

Rs.195.40 crores and the Average Liquidation Value of the Corporate Debtor is Rs. 156.38 crores.

13. In so far as the approval of the resolution plan is concerned, this authority is not sitting on an appeal against the decision of the Committee of Creditors and this Adjudicating Authority is duty bound to follow the judgement of the **Hon'ble Supreme Court in the matter of K.Sashidhar v. Indian Overseas Bank (2019) 12 CC 150**, wherein the scope and interference of the Adjudicating Authority in the process of the approval of the Resolution Plan is elaborated as follow:-

35. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. 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. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. 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.

14. Also the Hon'ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors., Civil Appeal No. 8766-67 of 2019, vid its judgement dated 15.11.2019** has observed as follows:

“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.”

15. Thus, from the judgements cited supra, it is amply clear that only limited judicial review is available to the Adjudicating Authority under Section 30(2) read with Section 31 of the Code, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the committee of the creditors.
16. As to the relief and concessions sought in the Resolution Plan more specifically set out in Chapter XI (Relief sought under the Resolution Plan) at pg no. 46 of the Resolution Plan, taking into consideration the decision of the Hon'ble Supreme Court in the matter of **Embassy Property Development Private Limited v. State of Karnataka & Ors. in Civil Appeal No. 9170 of 2019**, this Adjudicating Authority is not inclined to give any reliefs and concessions and direct the Successful Resolution Applicant to file necessary application before the necessary forum/ authority in

order to avail the necessary relief and concessions, in accordance with respective laws. The relevant part of the judgement is reproduced herein below:-

39. 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.”

17. Accordingly, subject to the aforesaid observations, we hereby **approve the Resolution Plan Resolution Plan dated 30.07.2022 along with Clarifications dated 08.08.2022 submitted by M/s. Devrat Developers Limited (Successful Resolution Applicant’)**, which shall be binding on the Corporate Debtor and its employees, shareholders of corporate debtor, creditors including the Central Government, any State

Government or any Local Authority to whom statutory dues are owed, guarantors, Successful Resolution Applicant and other stakeholders involved. Resultantly, ***I.A.4006/PB/2022 stand allowed.***

18. It is declared that the moratorium order passed by this Adjudicating Authority under Section 14 of the Code shall cease to have effect from the date of pronouncement of this order.
19. We further reiterate that the Approved Resolution Plan shall not construe any waiver to any statutory obligations/liabilities arising out of the approved resolution plan and the same shall be dealt in accordance with the appropriate authorities concerned as per relevant laws. We are of the considered view that if any waiver is sought in the Approved Resolution Plan, the same shall be subject to approval by the concerned authorities. The same view has been held by the Hon'ble Supreme Court in **Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited and Embassy Property Development case (supra).**
20. Accordingly, MoA and AoA of the Corporate Debtor shall be amended and filed with the RoC for information and record as prescribed. While approving the Approved Resolution Plan as mentioned above, it is clarified that the Successful Resolution Applicant shall pursuant to the Resolution Plan approved under section 31(1) of the Code, 2016, obtain all the necessary approvals as may be required under any law for the time being in force within the period as provided for such in law.
21. The Resolution Professional shall forward all records relating to the Corporate Insolvency Resolution Process of the Corporate Debtor

and the Approved Resolution Plan to IBBI to be recorded at its database in terms of Section 31(3)(b) of the Code. The Resolution Professional is further directed to handover all the records, premises, properties of the corporate debtor to the Successful Resolution Applicant to ensure a smooth implementation of the resolution plan.

22. The approved 'Resolution Plan' shall become effective from the date of passing of this order. The Approved Resolution Plan shall be part of this order, subject to our observations regarding concessions, reliefs and waivers sought therein.
23. The Supervisory Committee/Monitoring Committee is directed to file the monthly status report with regard to the implementation of the approved plan before this Adjudicating Authority.
24. In view of the above, the **I.A./4006/PB/2022 in C.P.(IB)/1053(PB)/2020 stands allowed in terms of aforesaid discussion.**

Let the copy of the order be served to the parties

-sd-

**(DR. SANJEEV RANJAN)
MEMBER (T)**

-sd-

**(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (J)**