

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

IA. No. 2830/2023

In

CP(IB)No. 532/MB/C-II/2018

Application filed under section 30(6) of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution process for Corporate Persons) Regulations, 2016 r/w Rule 11 of the National Company Law Tribunal Rules, 2016.

Filed by

Anish Niranjana Nanavaty,

Resolution Professional

of V Hotels Limited

Deloitte India Insolvency Professional LLP, 27th Floor, Tower 3, One International Centre, Elphinstone (West) Mumbai – 400013.

...Applicant

In the matter of

Asset Reconstruction Company Limited

...Financial Creditor

Versus

V Hotels Limited

...Corporate Debtor

Order Pronounced on: - 26.04.2024

Coram:

Anil Raj Chellan

Member (Technical)

Kuldip Kumar Kareer

Member (Judicial)

Appearances:

For the Resolution Professional :- Sr. Adv. Pradeep Sancheti a/w Adv. Pulkit Sharma, Adv. Abhishek Swaroop, Adv. Aditya V. Singh, Adv. Shriraj Khambete, Adv. Naman Jain, Adv. Shreya Chandhok

Resolution Professional (in person):- Mr. Anish Niranjana Nanavaty

For the Committee of Creditors :- Sr. Adv. Chetan Kapadia a/w Adv. Rahul Dwarkadas

ORDER

Per: Kuldip Kumar Kareer, Member Judicial

1. The present Interlocutory Application is filed by Mr. Anish Niranjana Nanavaty, the Resolution Professional of V Hotels Limited seeking approval of the Resolution Plan submitted by the Macrotech Developers Limited (hereinafter referred to as "MDL") under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 ('the Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulation ("the CIRP Regulations"). The Resolution Plan was duly approved by 100% of the Committee of Creditors (CoC) on 22.06.2023.

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2. The Applicant submits that Asset Reconstruction Company (India) Limited, the Financial Creditor initiated the Corporate Insolvency Resolution Process ('CIRP') against V Hotels Ltd. (hereinafter called 'the Corporate Debtor') under Section 7 of the Code. This Tribunal vide order dated 31.05.2019 initiated CIRP against the Corporate Debtor and appointed Mr. Anish Niranjana Nanavaty, the Applicant herein as the Interim Resolution Professional (IRP). Thereafter, the admission order was set aside by the Hon'ble National Company Appellate Tribunal (NCLAT) on 11.12.2019 thereby releasing the Corporate Debtor from the rigors of CIRP. However, the Hon'ble NCLAT's order was set aside by Hon'ble Supreme Court on 01.08.2022 and the management and affairs of the Corporate Debtor again came to be vested with the Applicant.
3. The Applicant filed an application for exclusion of time period from 31.05.2019 to 01.08.2022 from the CIRP period which was allowed on 07.09.2022. The Applicant on 03.10.2022 published the addendum to the public announcement dated 06.06.2019 and invited the updated claims from the Creditors of the Corporate Debtor on 01.08.2022.
4. The Applicant appointed registered valuers i.e. RBSA Valuation Advisors LLP and IVAS Partners, to ascertain the Fair Value and the Liquidation Value of the assets of the Corporate Debtor. The average Fair Value and the Liquidation Value is detailed as under :-

(In Crores)

Registered Valuer	Fair Value	Liquidation Value
RBSA	1,119.05	797.68

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IVAS	1,029.49	719.01
Average	1,074.27	758.35

5. The Applicant on 23.08.2022, made publication of Form-G, inviting Expression of Interest (EoI) and the last date for submission of EoI was 06.09.2022. Subsequently, addendums to Form-G was issued on 03.09.2022 and 10.09.2022 and the last date for submission of EoI was extended to 10.09.2022 and 12.09.2022 respectively.
6. Pursuant to the publication of Form-G, the Applicant received EoI from 36 Prospective Resolution Applicants (PRAs). The Applicant on 12.09.2022, issued a provisional list of PRAs and thereafter on 20.09.2022 released a final list of PRAs with a total of 36 EoIs having been received.
7. The Applicant released the Information Memorandum (IM) and also released the Request for Resolution Plan (RFRP) on 21.09.2022 to all the eligible PRAs for inviting submission of Resolution Plans. In terms of RFRP, the last date for submission of the Resolution Plan by the PRAs was 03.11.2022 which was subsequently extended to 20.12.2022.
8. In the 20th Committee of Creditors (CoC) meeting held on 21.12.2022, the Applicant apprised the members of CoC that he had received four Resolution Plans from the following PRAs :-
 - i. Oberoi Realty Limited (ORL)
 - ii. GHV (India) Private Limited (GHV)
 - iii. K Raheja Corp Real Estate Private Limited
 - iv. Macrotech Developers Limited (MDL)

9. In the 21st CoC meeting held on 13.01.2023, the Applicant apprised the members of the CoC about the legal proceedings of the Corporate Debtor and also updated the list of the Creditors.
10. Further, as the CIRP period was coming to end on 28.01.2023, the Applicant filed an Application seeking extension of 90 days from 28.01.2023 till 27.04.2023 and vide Order dated 24.01.2023, CIRP period was extended up to 27.04.2023.
11. In the 24th CoC meeting held on 15.05.2023, the Applicant invited the PRAs to present their Resolution Plans to the CoC. Out of four PRAs, only three Applicants made their presentations to the CoC. Subsequently, in the 25th CoC meeting held on 29.05.2023, the Applicant updated the members of the CoC on legal compliances of the proposed Resolution Plans and the deadline to submit the Resolution Plan was set as 05.06.2023.
12. Thereafter, on request of the two PRAs namely ORL and GHV, the deadline to submit the Resolution Plan was revised and extended to 07.06.2023. In the 26th CoC meeting held on 07.06.2023, only three PRAs submitted Earnest Money Deposit along with the Resolution Plan. Further, certain clarifications were sought from the three PRAs. The clarifications were received from ORL and MDL vide Affidavit dated 14.06.2023 and from GHV on 07.06.2023 by way of a letter.
13. The Applicant confirmed that the revised Resolution Plans received from three PRAs were compliant with the requirements of Section 30, 31 of the Code. In view of the above, the Resolution Plans were put to vote and the

voting lines for approval of the Resolution Plans were kept open till 22.06.2023.

14. The Resolution Plan submitted by MDL was approved by the members of the CoC unanimously by 100% voting and MDL was declared as the Successful Resolution Applicant (SRA). The Letter of Intent (LoI) came to be issued to MDL on 22.06.2023.

15. **Brief background of the Corporate Debtor:**

The Corporate Debtor is in the business of owning hotels. The Corporate Debtor had acquired Centaur Hotel Juhu Beach on 31.05.2002 from Hotel Corporation of India Limited under the Disinvestment Programme of Central Government of India. It was incorporated on 05.09.2000 and is classified as a non-govt. public limited Company and is registered with the Registrar of Companies, Mumbai.

16. **Brief background of the Resolution Applicant:**

- a. The Resolution Applicant is engaged in the business of Real Estate development since 1980s. The core business of the Resolution Applicant is residential real estate development. The Resolution Applicant has also diversified into Industrial and logistics park business since 2019 and has attained success in tying up with number of strategic and financial partners.
- b. The Resolution Applicant has given over 90 completed projects spread over 80 million square feet of developable area and is

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currently engaged in developing more than 50 ongoing and planned projects.

17. **Salient features of the approved Resolution Plan:**

Amount in Lakhs

S r . N o .	Category of Stakehold er	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount provided under the Plan	Amo unt provi ded to the Amo unt Clai med
1	Secured Financial Creditors	a) Creditors not having a right to vote under sub- section (2) of Section 21	-	-	-	0.00 %
		(b)Other than (a) above	20,85,94,33,071	20,76,81,87,788	8,88,69,78,878	42.7 9%

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		(i) who did not vote in favour of the Resolution Plan	-	-	-	0
		(ii) who voted in favour of the Resolution Plan	20,85,94,33,071	20,76,81,87,788	8,88,69,78,878	42.79%
		Total a+b	20,85,94,33,071	20,76,81,87,788	8,88,69,78,878	42.79%
2	Unsecured Financial Creditors	a) Creditors not having a right to vote under sub-section (2) of section 21	5,99,82,78,340	2,26,90,00,000	-	0.00%
		b) Other than (a) above	32,15,29,347	31,20,31,336	31,20,313	1.00%
		(i) who did not vote in favour of the Resolution Plan	-	-	-	-
		(ii) who voted in favour of the Resolution Plan	32,15,29,347	31,20,31,336	31,20,313	1.00%
		Total a+b	6,31,98,07,687	2,58,10,31,336	31,20,313	0.12%
3	Operational	(a) Related Party of	-	-	-	0.00%

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	Creditors	Corporate Debtor				
		(b) Other than (a) above	82,20,31,854	62,70,91,827	75,00,809	1.20 %
		(i) Government	53,74,88,435	37,66,06,382	37,72,469	1.00 %
		(ii) Workmen	-	-	-	-
		(iii) Employees	-	-	-	-
		(iv) Operational Creditors (other than Workmen and Employees and Government Dues)	28,45,43,419	25,04,85,445	37,28,340	1.49 %
		Total a+b	82,20,31,854	62,70,91,827	75,00,809	1.20 %
4	Other debts and dues		68,21,31,80,063	1,03,75,46,960	1,04,00,000	1.00 %
	Grand Total		96,21,44,52,675	25,01,38,57,911	8,90,80,00,000	35.6 1%

In addition to the amounts mentioned, the Resolution Applicant proposes to pay the amounts as under :-

Sr. No.	Particulars	Allocated Amount under the Resolution Plan
1.	Unpaid IRP costs (to be paid at actuals)	Rs. 4,00,00,000/-
2.	Interim Costs (to be paid at actuals)	Rs. 20,00,000/-
3.	Litigation Fund	Rs. 5,00,00,000

a. The Successful Resolution Applicant prescribes total amount of Rs. 900,00,00,000/- (Rupees Nine Hundred Crores Only) to the stakeholders of the Corporate Debtor.

b. Closing date :

The Resolution Plan prescribes the 'Closing Date' which shall be within a period of 60 days from this Tribunal approving the Resolution Plan.

c. **Sources of Funds :**

i. The Resolution Applicant will arrange funds from its internal accruals or through external funding (by way of equity/equity linked instrument/debt/debt like instruments, as may be determined by the Resolution Applicant) for the purposes of implementing the Resolution Plan in terms hereof. Infusion of any part of the funds by the Resolution Applicant or any of its nominees to the Corporate Debtor may also be made by way of equity shares, debt, convertible debt and/or preference shares and/or any other instrument issued by the Corporate Debtor.

d. **Business Plan of the Resolution Applicant :**

i. On and from the closing date, the Corporate Debtor shall be wholly owned by the Resolution Applicant, together with all the development potential in relation to all rights, title, entitlements, interest, easements and benefits arising therefrom.

- ii. The SRA seeks to acquire the Corporate Debtor on a 'clean slate' basis and utilize the property and develop the same as per the business plan.

e. **Financial Proposal of the Resolution Applicant**

I. **CIRP costs :**

- i. The CIRP costs shall be paid at actuals, in full in terms of Section 30(2)(a) of the Code and Regulation 38(1) of the CIRP Regulations.
- ii. An aggregate amount of Rs. 4,00,00,000/- (Rupees Four Crores Only) is estimated as the unpaid CIRP costs. If the actual amounts exceed the estimated amounts, excess is to be borne and paid by the Resolution Applicant as part of the Funds. Further, if the actual amounts are lower than the estimated amounts, then such balance amount shall, at the option of the Resolution Applicant, be refunded back to the Resolution Applicant or the Corporate Debtor.

II. **Payments to the Operational Creditors :**

- i. The Resolution Applicant proposes to pay an amount of Rs. 75,00,809/- to the Operational Creditors.
- ii. The payment due to the Operational Creditors whether secured or unsecured, statutory, Governmental Authorities, trade creditors, should not be less than as

prescribed under Section 30 payout to them i.e. not less than the amount payable to such Operational Creditors in the event of liquidation of the Corporate Debtor under Section 53 of the Code and the amount that would be have been paid to such Operational Creditors, if the amount to be distributed under the Resolution Plan is distributed in accordance with the order of priority in sub-section 1 of Section 53 whichever is higher. The Operational Creditors is required to be paid in priority over the payments to Financial Creditors.

- iii. In order to maintain the status of the Corporate Debtor as operational and for running the business of the Corporate Debtor as a going concern, the Resolution Applicant proposes resolution of entire operational debt of the Corporate Debtor and settlement of all Operational Creditors at an aggregate amount out of the funds firstly by making payments as per Section 30 payout to the Operational Creditors and in case of insufficiency of funds, the shortfall is to be met from the Secured Financial Creditors consideration amount. Secondly payment towards the EPFO dues, in case of insufficiency of the funds, then the shortfall shall be met by the Resolution Applicant as part of the funds.
- iv. Further, no employees or the workmen of the Corporate Debtor have submitted their claim in the CIRP of the Corporate Debtor. If there are any admitted dues towards workmen and employees of the Corporate Debtor, the

same shall be paid in the manner as provided in this clause and thirdly, the balance Operational Creditors payments, if any, shall be utilized for payment towards settlement of the admitted other Operational Creditors dues which shall be distributed amongst the Operational Creditors in a pro-rata basis on their respective portions of their admitted claims.

III. Secured Financial Creditors :

- i. The Resolution Applicant proposes to pay total amount of Rs. 8,88,69,78,878/- to the Secured Financial Creditors.
- ii. Out of the total amount, on the closing date, the Secured Financial Creditors shall be paid Rs. 78,69,78,878/- upfront SFC consideration towards the full and final settlement of the upfront SFC debt. The upfront SFC consideration shall be distributed among the Secured Financial Creditors in a pro-rated manner.
- iii. Further, an amount of Rs. 405,00,00,000/- (Deferred Consideration Amount 1”) will be paid on or before 210 days from the Closing date and Rs. 405,00,00,000/- will be paid on or before 270 days from the closing date. On the respective Deferred payment dates, the respective Deferred Debts shall be settled or assigned against the payment of the Deferred consideration amount to the Secured Financial Creditors.

- iv. For each Secured Financial Creditor, its respective portion of the SFC consideration amount shall be allocated first towards repayment of all outstanding interest, default interest and other penal charges as applicable and second towards the outstanding principal.

IV. Unsecured Financial Creditors :

- i. There are a total 12 Unsecured Financial Creditors. A claim amount from two unsecured Financial Creditors namely Tulip Star Hotels and Tulip Hotels Private Limited has been verified by the RP as the admitted claims.
- ii. Further, some of the claims of the Unsecured Financial Creditors are related party claims which have been made by entities belonging to the promoters or other related parties and some of the claims are under verification for want of documents, and the Resolution Applicant has dealt with those claims in the Resolution Plan.
- iii. The treatment given to the Unsecured Financial Creditors is based on the status of admission of their claim as well as their relation with the Corporate Debtor. On the closing date, utilizing a portion of the Funds, the Unsecured Financial Creditors shall be paid an aggregate amount of Rs. 31,20,313/- towards their full and final settlement against the Corporate Debtor in the following manner:

Category	Unsecured Financial Creditor payout
a. Admitted claim – Non-Related Parties	31,20,313/-
b. Admitted claim – Related Parties	NIL
c. Pending admission/rejected claim – Related parties	NIL

- iv. The Unsecured FC payout shall be distributed amongst the Unsecured Financial Creditors in a pro-rated basis or in any other manner as determined by the CoC in its discretion. For each Unsecured Financial Creditors the payout shall be allocated firstly towards its repayment of all outstanding interest, default interest and other penal charges and secondly towards the outstanding principal.

V. Treatment of amounts claimed by Other Creditors including the ongoing litigations:

- i. As per the IM, the total claim made under this category aggregates to Rs. 6821.31 Crore. Out of the said amount, the RP has admitted claims aggregating to Rs. 1,03,00,000/-. The two substantive claims have been made by Nirmal Lifestyle Limited (hereinafter referred to as “NLL”) and Siddhivinayak Realities Private Limited (hereinafter referred to as “SRPL”).
- ii. Further, the RP has divided the claims of “other creditors” into two parts i.e. Admitted part of the claims and the other

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based on damages and compensation which has been treated as contingent claims. On the closing date, utilizing a portion of the funds, the other Creditors shall be paid an aggregate amount of Rs. 1,04,00,000/- being the “Other Creditors Payout” towards their full and final settlement against the Corporate Debtor in the following manner:-

Category	Other Creditors Payout
Admitted claims	1,03,00,000/-
Claims pending admission/contingent claims	1,00,0000/-

VI. Litigation Fund :

The Corporate Debtor on the closing date, set up a separate corpus of Rs. 5,00,00,000/- (Rupees Five Crores Only) to be used for meeting the legal expenses and process costs towards (i) legal advisory or legal representation of the erstwhile Resolution Professional, (ii) legal representation of the erstwhile RP before CoC or any courts/tribunals arising out of or in connection with the CIRP of the Corporate Debtor also continuing after the approval of the Plan from the Tribunal The said corpus shall be placed in a designated or escrow account to be opened on the joint instructions of the RA and the RP.

VII. Other Stakeholders :

- i. Any claims or demand made by or liabilities or obligations owed or payable to any actual or potential creditors of the Corporate Debtor whether admitted or not, either domestic or foreign, disputed or undisputed or pending adjudication, any person who raises claim or a demand in respect of agreements/arrangements/purchase orders/ work orders between the Corporate Debtor and such person with respect to any event or a cause of action whether or not known to the counterparty or not raised by the counterparty but other than the creditors covered in other clauses relating to a period prior to the closing date shall be settled at an amount as it would have been payable to such creditors in the event of Liquidation and if such amount not provided for hereinabove, then shall be paid out of the SFC consideration amount.
- ii. On and from the closing date, the Company shall have no liabilities towards the persons currently classified as Promoter or Promoter group, persons acting in concert with promoters, holding companies, subsidiary companies, step-down subsidiary companies, associate companies, group companies or any related party of the aforesaid will be settled at NIL and stand extinguished. However, all claims of the Company against such related parties and all liabilities of such related parties towards Company shall remain outstanding, due and payable in accordance with their terms.

VIII. Cash Balance :

The cash and bank balance available in the books of the Corporate Debtor or any receivables and any deposits lying with the courts/tribunal or government authority as on the Plan approval date will accrue only to the Secured Financial Creditors on the closing date in addition to the amounts offered to the relevant Secured Financial Creditors in the Resolution Plan.

IX. Interim Costs :

An aggregate amount of Rs. 20,00,000 is estimated as the Interim costs. The actual Interim cost may increase and any additional amount as incurred and remaining unpaid shall be borne and paid by the Resolution Applicant as part of the funds.

f. Allotment of New Equity Shares to the Resolution Applicant

On approval of the Resolution Plan on the closing date, fresh and unencumbered equity shares (face value of Rs. 10/- per equity shares) will be issued and allotted by the Corporate Debtor in favour of the Resolution Applicant for an amount equal to Rs. 10,00,000/- as equity contribution (Fresh Equity) in compliance with the applicable laws.

g. Capital Reduction :

- i. On the closing date and simultaneously with the subscription of the New Equity Shares by the Resolution Applicant, as an integral part of the Resolution Plan (a) any and all rights to

subscribe, allocate such share capital of the Corporate Debtor, including any employee stock options, pre-emptive subscription rights or convertible instruments, (b) the entire share capital of the Corporate Debtor whether preference share capital or equity share capital except New Equity shares allotted to the Resolution Applicant, shall stand fully extinguished as a part of the Resolution Plan on the closing date (Standalone Capital Reduction).

- ii. There shall not be any Capital Reduction of New Equity Shares allotted to the Resolution Applicant and upon completion of allotment of New Equity Shares to the Resolution Applicant and Standalone Capital Reduction, the Resolution Applicant shall hold 100% of the total equity share capital of the Corporate Debtor such that the Corporate Debtor becomes 100% subsidiary of the Resolution Applicant.

h. **Management Control of Business:**

The Resolution Applicant proposes to form a Steering Committee to manage the affairs of the Corporate Debtor comprising of (a) one representatives of the Secured Financial Creditors (SFC Nominee), (b) two representatives of the Resolution Applicant and (c) the Managing Agency (as defined under the Resolution Plan) within one day from the Tribunal approving the Resolution Plan. Further, the SFC Nominee and the Resolution Applicant Nominees shall be voting members of the Steering Committee with one vote each and the Managing Agency shall be a non-voting member.

i. **Implementation of the Resolution Plan:**

The Resolution Applicant proposes to implement the Resolution Plan within a period of 60 days from the Plan approval date by this Tribunal or such other extended date as may be agreed in writing between the Secured Financial Creditors and the Resolution Applicant (Closing Date).

j. **Recoveries from Preferential/Fraudulent Transaction:**

The proceedings initiated by the Resolution Professional under Section 43,45,47, 49, 50 and 66 of the Code, which have not attained finality, shall be pursued by the Resolution Applicant. Any proceeds received from the transactions in terms of Sections 43,45,47,49,50 or 66 of the Code, the same shall be paid to the Secured Financial Creditors in a pro-rata manner based on their portion of the admitted Secured Financial Debt (and in case decided by the CoC in any other manner, then in such other proportion as determined by the CoC in its discretion).

k. **Performance Security:**

In accordance with regulation 36B (4A) of the CIRP Regulations and as required by item 1.9 of the RFRP, the Resolution Applicant has provided performance security by way of bank guarantee dated 23.06.2023 issued by Kotak Mahindra Bank Ltd. for a sum of Rs. 50,00,00,000/-.

1. **Eligibility under section 29A of the Code:**

The Resolution Applicant is eligible to submit the Resolution Plan under Section 29A and the same is confirmed by the Resolution Applicant in its clause 11(ii) of part V of the Resolution Plan. The Applicant further submits that the Resolution Plan submitted is in compliance with Section 30(2) of the Code and Regulation 38(A) of the CIRP Regulations. The Applicant has confirmed the compliance of various provisions as contained in Form H dated 26.06.2023 as mandated under the code for seeking approval of the Resolution Plan from this Tribunal.

Observations of the Adjudicating Authority:

18. We have heard the Applicant and perused the Resolution Plan and related documents submitted along with the Application.
19. The Bench has taken on record an Addendum to the Resolution Plan dated 09.12.2023 filed by the RP in terms of the Order passed by the Hon'ble National Company Law Appellate Tribunal (NCLAT) in Company Appeal No. 1114-1115 of 2023. The Appeal was filed by the promoters of the Corporate Debtor i.e. Tulip Star Hotels Limited (TSHL) and Tulip Hotels Private Limited (THPL), challenging the applicable rate of interest being 22% p.a. ascertained by this Tribunal vide order dated 21.07.2023 (impugned order) pertaining to loan transactions between the Corporate Debtor and one of its Secured Financial Creditors i.e. Asset Reconstruction Company (India) Limited (ARCIL).

20. The Hon'ble NCLAT vide its Order dated 21.11.2023 set aside the Order passed by this Tribunal and held the applicable Rate of Interest for the determination of claim amount @ 14.85% p.a. In view of the above the reverification of the claims of ARCIL was undertaken at 14.85% and hence the updated/reverified claims were submitted before the members of the CoC. The updated claims were submitted to the Resolution Applicant seeking addendum to the Resolution Plan.
21. The Resolution Applicant submitted its addendum to the Resolution Plan dated 09.12.2023 and the same was approved by the members of the CoC in its 32nd CoC meeting held on 13.12.2023.
22. The claims of the Secured Financial Creditors had been recalculated and the admitted outstanding claim amount is Rs. 1,143,56,33,920/- (Rupees One Thousand One Hundred Forty-Three Crore Fifty-Six Lakh Thirty-Three Thousand Nine Hundred Twenty Only). The total amount payable to the Secured Financial Creditors is Rs. 888,69,78,878/- (Rupees Eight Hundred Eighty-Eight Crores Sixty-Nine Lakhs Seventy-Eight Lakhs Eight Hundred and Seventy-Eight Only) and the Resolution Applicant has proposed no change to the said amount in the Resolution Plan.
23. As referred to the above summary of the Resolution Plan, we are satisfied that all the requirements of Section 30(2) are fulfilled and no provision of law for the time being in force appears to have been contravened.
24. Section 30(4) of the Code reads as follows:

“(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty six percent of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in subsection (1) of Section 53, including the priority and value of the security interest of a secured creditor and such other requirement or may be specified by the Board.’

Regulation 39 (3B) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides that where two or more Resolution Plans are put to vote simultaneously, the Resolution Plan, which receives the highest votes but not less than requisite votes, shall be considered as approved. In this case three Resolution Plans had been put to vote and the Resolution Plan submitted by “Macrotech Developers Limited” received highest votes (100%) and hence this Resolution Plan is considered as approved by the CoC.

25. Section 30(6) of the Code enjoins the Resolution Professional to submit the Resolution Plan as approved by the CoC to the Adjudicating Authority. section 31 of the Code deals with the approval of the Resolution Plan by the Authority if it is satisfied that the Resolution Plan as approved by the CoC under section 30(4) meets the requirements provided under section 30(2) of the Code. Thus, it is the duty of the Adjudicating Authority to satisfy itself that the Resolution Plan as approved by the CoC meets the above requirements.
26. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:
 - a. Payment of CIRP cost as specified under Section 30(2)(a) of the Code;

- b. Payment of debts of Operational Creditors as specified under Section 30(2)(b) of the Code;
- c. For the management of the affairs of the Corporate Debtor after approval of the Resolution Plan; and
- d. The implementation and supervision of the Resolution Plan by the RP and the CoC as specified under Section 30(2)(d) of the Code.

27. In *K Sashidhar vs. Indian Overseas Bank and Ors. (Civil Appeal No. 10673/2018 decided on 05.02.2019) (2019)* the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by the requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority. On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan, as approved by the CoC, meets the requirements specified in Section 30(2). The Hon'ble Apex Court further observed that the role of the NCLT is 'no more and no less'. The Hon'ble Apex further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is 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. The legislature, consciously, has not provided any other ground to challenge the commercial wisdom of the individual financial creditors or their collective decision before the Adjudicating Authority.

28. In CoC of *Essar Steel India Limited vs. Satish Kumar Gupta and Ors (2020) 8 SCC 531* the Hon'ble Apex Court clearly held that the Adjudicating Authority

would not have the power to modify the Resolution Plan which the CoC in their commercial wisdom has approved. In para 42, the Hon'ble Court observed as under:

'Thus, it is clear that the limited judicial review available which can in no circumstances trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, in so far as the Adjudicating Authority is concerned and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar (supra).'

29. In view of the discussions and the law thus settled, we are of the considered view that the instant Resolution Plan meets the requirements of Section 30(2) of the Code and the Regulations 37, 38, 38(1A) and 39(4) of the CIRP Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. We, therefore, allow the Application in the following terms:

ORDER

30. The Application **IA No. 2830 of 2023 in CP(IB) 532 of 2018 is allowed** and the Resolution Plan submitted by "Macrotech Developers Limited" is hereby approved. It shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, its employees, members, creditors including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.

31. In terms of the judgment of Hon'ble Supreme Court in the matter of *Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited (Civil Appeal No. 8129 of 2019 decided on 13.04.2021) (2021) SC 212*, on the date of the approval of the Resolution Plan by the Adjudicating Authority, all such claims which 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 are not a part of the Resolution Plan. Accordingly, no person including the Central Government, any State Government or any local authority, guarantors and other stakeholders, will be entitled to initiate or continue any proceedings in respect to a claim prior to CIRP which is not a part of the Resolution Plan.
32. Further, the Relief/concession stated in clause 5 (5.6) of the Resolution Plan with regards to the termination of the 11 tenancy agreements executed by the Corporate Debtor with the employees of the associate companies of the Corporate Debtor, the same shall not be treated to have been terminated automatically with the approval of the Resolution Plan. However, the Resolution Applicant shall be at liberty to take appropriate legal steps before any competent forum/court etc. in the light of the terms and conditions of the contracts of employment with such employees occupying properties of the Corporate Debtor.
33. Any exemption as sought for in relation to the payment of Income Tax Returns, waivers from applicability of any section under the Income Tax Act, 1961, the Central Goods and Services Tax Act, 2017 and other indirect taxes arising out of the implementation of the Resolution Plan is not granted. However, the Resolution Applicant is at liberty to approach competent Authorities for the exemptions if permitted under the law.

34. With respect to the grant of license/Government approval, if the license or approval is terminated, suspended or revoked, the Resolution Applicant may approach the concerned Authorities for such approvals, renewals.
35. All the equity shares and preference shares of the Corporate Debtor would stand extinguished by way of reduction in capital of the Company without any payment to the shareholders holding such shares without the requirement of writing the words 'and reduced'. Such reduction of share capital shall not require any further approval, act or action as required under the Companies Act, 2013 including Section 66 of the Companies Act, 2013 and such cancellation shall not require the consent of any of the creditors or shareholders of the Corporate Debtor.
36. As regards the rights of the entities i.e. NLL and SRPL are concerned, it is worthwhile to mention that NLL has also filed a separate Application i.e. IA No. 3088 of 2023 claiming exclusion of certain properties of the Corporate Debtor on the basis of Agreement dated 21.06.2023. The NLL further claimed title in the said properties on the basis of the said Agreement and the said Application has been declined vide a detailed order of even date.
37. Further, with regards to the proceedings (legal or arbitration or any other proceedings) litigations, enquiries, whether pending or disposed of, filed or initiated with respect to the Agreements executed between the Corporate Debtor, NLL, Master Asset Purchase Agreement or with any other entity, no automatic waiver/abatement of the legal proceedings would be deemed to have been granted. However, the Resolution Applicant shall have the liberty to approach the respective courts/Arbitrators/forums for the abatement of such pending litigations or other appropriate orders in the light of the Resolution Plan approval order and the provisions of the Code.

38. The Steering Committee as proposed in Part II, clause 6 of the Resolution Plan shall be constituted to supervise and implement the Resolution Plan.
39. In accordance with Section 32A of the Code, the liability of the Corporate Debtor for any offences committed prior to the commencement of the Corporate Insolvency Resolution Process shall cease, and the Corporate Debtor shall not be prosecuted for such an offence committed prior to the commencement of Corporate Insolvency Resolution Process from the date of this order.
40. The approval of the Resolution Plan shall not be construed as waiver of any future statutory obligations and shall be dealt with by the appropriate Authorities in accordance with law. The Corporate Debtor may obtain necessary approval required under any law for the time being in force from the appropriate Authority within a period of one year from the date of approval of the Resolution Plan.
41. The guarantors and third-party security providers (not being the Corporate Debtor or the Resolution Applicant) shall continue to be liable to the Financial Creditors for the unpaid debt under their guarantees. However, such guarantors shall not be entitled to exercise any right of subrogation in respect of such amounts against the Corporate Debtor and/or the Resolution Applicant.
42. Other reliefs and concessions not covered in the aforesaid paragraphs including exemption from levy of stamp duty, fees and registration charges that may be applicable in relation to this Resolution Plan and its implementation are not granted.

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT II

I.A. NO. 2830/MB/C-II/2023

In

C.P. (IB) No. 532/MB/C-II/2018

43. The moratorium declared under Section 14 of the Code shall cease to have effect from this date.
44. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with the copy of this order for information.
45. The Applicant shall forthwith send a certified copy of this order to the CoC and the Resolution Applicant respectively for necessary compliance.

Sd/-

**ANIL RAJ CHELLAN
MEMBER (TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT II, MUMBAI BENCH
INTERLOCUTORY APPLICATION NO. 111 OF 2024**

**IN
COMPANY PETITION (IB) NO. 532/MB/2018**

*Application u/s 60(5) of the Insolvency and
Bankruptcy Code, 2016 read with Rule 11 of the
National Company Law Tribunal Rules, 2016.*

In the matter of:

- 1. M/s. Tulip Star Hotels Pvt Ltd.**
- 2. The Suspended Management of the Corporate
Debtor, through its Suspended Director A.S.
Anantharaman.**

...Applicant

v/s

- 1. Anish Niranjana Nanavaty,
Resolution Professional of V-Hotels Ltd**
- 2. Pegasus Asset Reconstruction Pvt Ltd.**

.... Respondents

In the matter of

Asset Reconstruction Company Ltd.

...Financial Creditor

v/s.

V Hotels Ltd.

...Corporate Debtor

Order pronounced on 26.04.2024.

Coram:

Shri. Kuldip Kumar Kareer : Member Judicial.

Shri. Anil Raj Chellan : Member Technical.

Appearances (in Hybrid mode):

For the Applicant: Counsel Mr. Raghav Anand a/w Barsha Parulekar
appeared through VC Mode.

For the Respondent: Senior Advocate Chetan Kapadia a/w Rahul Dwarkadas,
Areez Gazdar, N Kotwal and Rahul Shah appeared for
the CoC.

Counsel Mr. Pulkit Sharma a/w Aditya V Singh, Naman
Jain and Shriraj Khambete appeared for the Resolution
Professional.

Counsel Mr. Rohit Gupta appeared for the Successful
Resolution Applicant.

ORDER

Per: Coram.

1. The present Application has been filed by the Applicant No.01 'M/s. Tulip Star Hotels Pvt Ltd.' and the Applicant No.02 'The Suspended Management of the Corporate Debtor through its Suspended Director Mr. A.S. Anantharaman', u/s 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code" for the sake of brevity) read with Rule 11 of the National

Company Law Tribunal Rules, 2016 ('NCLT Rules') seeking, *inter-alia*, directions for correct determination/re-verification of the financial claim of the Respondent No.02, 'Pegasus Asset Reconstruction Pvt. Ltd.' ("PEGASUS"), who happens to be a secured financial creditor of the Corporate Debtor and to pass an order to set aside the resolution passed by the CoC in its 32nd meeting dated 13.12.2023 approving addendum dated 09.12.2023 to the resolution plan and approving the ratio of disbursement of the proposed amount for the secured financial creditors.

Case of the Applicant (in brief):

2. The Corporate Debtor 'V Hotels Ltd' entered into a term loan agreement dated 08.03.2022 with Bank of India, Punjab National Bank, Union Bank of India, Canara Bank, Vijaya Bank and Indian Bank for availing term loan facility of sum aggregating to INR 129 crores to fund the Corporate Debtor's proposed acquisition of Centaur Hotel Juhu Beach from the Hotel Corporation of India Ltd, the details of which are as follows:

<u>Sr. No.</u>	<u>Name of the Bank</u>	<u>Amount of Term Loan (in INR)</u>	<u>Rate of Interest (payable at quarterly rests)</u>
1.	Bank of India	25 crores	13.50% p.a.
2.	Union Bank of India	25 crores	14% p.a.
3.	Canara Bank	25 crores	13.75% p.a.

4.	Punjab National Bank	24 crores	13.50% p.a.
5.	Vijaya Bank	20 crores	13.50% p.a.
6.	Indian Bank	10 crores	13.50% p.a.
	TOTAL	129 crores	

3. The bank consortium led by Bank of India finally decided on a uniform interest @ 13.50% p.a. payable at quarterly rest and the same was charged accordingly by said banks. The above interest rates were revised pursuant to the conversion from quarterly rests to monthly rests in the Prime Term Lending Rates ('PTLR') from 01.04.2003 and the applicable interest rate became 12.85% at monthly rests. That out of the six banks, four banks named below had assigned their debts to ARCIL (i.e. the Financial Creditor herein) on the following different dates: (i) Bank of India on 31.12.2008; (ii) Punjab National Bank on 26.03.2009; (iii) Union Bank of India on 09.07.2009; and (iv) Vijaya Bank on 29.01.2010. Further, on 31.03.2010, the other two banks viz. Canara Bank and Indian Bank assigned their debts in favour of PEGASUS.

4. The Applicants state that both ARCIL and PEGASUS are entities with multinational and private shareholding and are only a façade of IndiaRF, which is a joint venture between Bain Capital and Piramal Group, who own all the security receipts bought by them from Standard Chartered Bank for a sum of Rs. 25 crores. The Applicants have reliably learnt that the said security receipts

have been further sold to an entity introduced by Macrotech Developers Ltd., the purported Successful Resolution Applicant ('SRA') whose bid was illegally accepted by the CoC. Thus, in effect, entire benefit of CIRP proceeds will benefit the purported SRA because of their control over the ownership of the security receipts.

5. On 13.05.2005, Indian Bank filed an Original Application No. 228/2005 before the Hon'ble DRT for recovery of its debts from the Corporate Debtor at a contractual rate of interest thereon @ 13.5% p.a. payable at quarterly rests. PEGASUS filed an IA No. 176/2015 in OA No. 228/2005 seeking orders to be passed on the basis of purported admissions made by the Corporate Debtor for interest @ 17.5% p.a. at quarterly rests during the course of settlement and negotiations. Thereafter, PEGASUS filed another application vide I.A. No. 752/2015 in OA No. 228/2005 seeking an amendment in the rate of interest from 13.50% p.a. to 15.50% p.a. with monthly rests for a particular period and thereafter @ 17.50% p.a. with monthly rests from 31.03.2010 till 31.01.2015. The said amendment for enhancement of rate of interest was sought on the basis of purported letters executed between PEGASUS and the Corporate Debtor during the course of settlement. The Hon'ble DRT, Mumbai dismissed the said amendment application vide Order dated 18.01.2016 seeking enhancement of the rate of interest on the ground that any averment regarding the rate of interest

during negotiations in settlement talks or correspondence thereto shall be relevant only for the purpose of settlement and not otherwise.

6. The Applicants submit that the Order dated 18.01.2016 passed by the Hon'ble DRT in IA No. 752/2015 in OA No. 228/2005, has not been interfered with in appeal and therefore, the said Order has attained finality and is binding between the parties inter se. However, despite the same, the Resolution Professional has verified and admitted the claim of PEGASUS at the enhanced rate of interest. It is also pertinent to note that initially, the claim filed by PEGASUS was for a sum of Rs. 289.24 crores, out of which the Resolution Professional had verified and admitted the claim to the tune of Rs. 288.89 crores. Thereafter, pursuant to the Order dated 30.09.2022 passed by this Hon'ble Tribunal in the subject insolvency proceedings allowing re-submission of claims after inclusion of interest calculated till 01.08.2022, PEGASUS modified and submitted its claim of Rs.521.80 crores and the entire sum of Rs. 521.80 crores had been admitted by the Resolution Professional.

7. A.S. Anantharaman, the suspended director of Corporate Debtor has on multiple occasions called upon the Resolution Professional to re-verify and correctly determine the claims of secured creditors ARCIL and PEGASUS. The Applicants submit that as regards the claim of the other secured creditor named ARCIL, the Hon'ble NCLAT has come to a finding vide Judgment dated

21.11.2023, that the Resolution Professional has verified and admitted an incorrect claim of ARCIL and had accordingly directed re-verification and determination of claim of ARCIL. Pursuant thereto, the RP had re-verified the claim of ARCIL and the admitted claim of ARCIL has come down substantially from Rs.1546.10 crores to Rs. 621.70 crores. Further, the RP has realized that PEGASUS stands on the same footing as ARCIL whose claim has been directed to be calculated @ 14.85% p.a. The RP has also filed an application vide IA No. 5066/2023, seeking directions to re-verify/redetermine the claim of PEGASUS.

8. On 09.12.2023, the SRA named Macrotech Developers Ltd submitted with the RP an addendum to the CoC approved resolution plan pursuant to the re-verification of the claim of ARCIL on directions of the Hon'ble NCLAT vide Judgment dated 21.11.2023. During the pendency of IA No. 5606/2023 filed by the RP seeking directions to re-verify and correctly determine the claim of PEGASUS, the RP has convened 32nd meeting of CoC on 13.12.2023 wherein the addendum dated 09.12.2023 submitted by Macrotech Developers Ltd was approved and the amounts proposed for secured financial creditors under the successful resolution plan amongst the secured financial creditors in the ratio of 65.91:34.09.

9. In view of the above facts, the Applicants respectfully submit that it is abundantly clear that the Resolution Professional acting in connivance with PEGASUS has verified and admitted its incorrect, illegal and highly inflated claim. The Resolution Professional has not considered the orders of DRT pertaining to the applicable rate of interest, while admitted the incorrect and inflated claim of PEGASUS. Further, the Resolution Professional has also failed to take into account the payments already made by the Corporate Debtor and adjustment of the same towards the principal outstanding of PEGASUS. Hence this application.

Reply of the Respondents:

10. The Respondents have not filed their reply. However, the Respondents No. 01 and 02 have filed their written submissions.

FINDINGS

11. We have heard the Counsel for the Applicant and the Respondent at some length. We have perused the records.

12. Counsel for the Applicants submit that since the amount of claim of PEGASUS has admitted on incorrect and inflated basis, the information memorandum prepared on the basis of such improper claims and the resolution plan prepared and approved by the CoC on such wrong information

memorandum are all illegal and deserve to be set aside and consequently, directions need to be given to Respondent No.01/RP to redetermine and reverify the claims of Respondent No.02. Counsel for the Applicants submit that the subject resolution plan is nothing but an abuse of the process of law and the financial creditors are not interested in the insolvency resolution of the Corporate Debtor, rather they are interested in hostile takeover of the valuable 'Centaur Hotel, Juhu' by way of resolution plan at a throw away and grossly undervalued price. Therefore, Ld. Counsel for the Applicants pray that the resolution plan approved by the CoC is liable to be rejected. Counsel for the Applicants further prays that once the claims of the secured financial creditors are correctly determined, then the suspended board and the promoters be granted the opportunity to redeem the correctly determined debt of the secured creditors and/or settle with the secured creditors in terms of Section 12A of the Code.

13. On the other hand, Counsel for the Respondents submit that inter-se distribution of earmarked funds for the secured financial creditors is the sole domain of CoC based on its commercial wisdom. Counsel for the Respondents, to buttress their aforesaid submission, have placed reliance upon the judgment of the Hon'ble Supreme Court in India Resurgence ARC Pvt Ltd v/s. Amit Metaliks & Anr reported in 2021 SCC OnLine SC 409, wherein it was held at Para 17 of the judgment as follows:

"17. Thus, what amount is to be paid to different classes or sub-classes of creditors in accordance with provisions of the Code and the related Regulations, is essentially the commercial wisdom of the Committee of Creditors; and a dissenting secured creditor like the appellant cannot suggest a higher amount to be paid to it with reference to the value of the security interest. "

14. Counsel for the Respondents has further submitted that instead of helping the creditors to complete the CIRP process and realisation of their dues in a timely manner, the Promoters have used a stream of litigation to delay the CIRP process and to preclude the secured financial creditors from realizing their dues. Counsel for the Respondents has further argued that the Applicants have no locus in the matter since they have failed to show as to how the rate of interest applied to the claims of Pegasus would adversely affect them in any manner whatsoever. Counsel for the Respondents further submit that determination of Pegasus' claims is of no consequence to the Applicants, who are the erstwhile shareholders/ promoters of the Corporate Debtor.
15. We have carefully weighed, examined and considered the submissions advanced by the learned counsel for the parties.
16. The relief sought by the Applicants herein viz. to revise the claim of Pegasus has already been sought by the Resolution Professional of the Corporate Debtor (i.e. Respondent No.01 herein) in IA No. 5606/2023. The Equity Shareholders of the Corporate Debtor are Tulip Star Hotels Ltd (50%) and Tulip Hotels Pvt.

Ltd. (50%). The Applicant Nos. 01 and 02 are the shareholder and director respectively of the Corporate Debtor. The Applicants herein are not the part of CoC of the Corporate Debtor and thus, they have no voting rights. The Applicants have miserably failed to establish as to how their rights are affected or prejudiced if directions for revision of claim of Pegasus are not given. Therefore, whether the Resolution Professional of the Corporate Debtor revises the claim of Pegasus or not, the Applicants' have no locus in the matter as their rights are not affected or prejudiced in any manner whatsoever. Therefore, we are of the considered view that the present application of the Applicants deserves to be dismissed for want of locus.

17. In the above-captioned Company Petition, the CIRP has reached an advanced/matured stage where the resolution plan has been approved by the CoC and the same is pending for the approval of Adjudicating Authority u/s 31 of the Code vide IA No. 2830/2023. After the Order of the Hon'ble NCLAT dated 21.11.2023 whereby it has been held that the applicable rate of interest for determination of claim filed by ARCIL would be 14.85% p.a., the Successful Resolution Applicant has submitted an Addendum dated 09.12.2023 which clarifies and confirms that no change is proposed to the resolution plan in any manner and the said Addendum reiterated that the amount available for secured financial creditors for distribution will continue to be the same i.e. Rs. 888,69,78,878/- as provided for in the resolution plan. Further, the Addendum

also states that the Successful Resolution Applicant has no objection to the manner in which the proceeds available for secured financial creditors will be distributed amongst them inter se. It is also noteworthy that subsequent to the revision of claims of the two secured financial creditors viz. ARCIL and PEGASUS, only the inter-se ratio of distribution will change and the same would have no bearing or impact on any other stakeholder or on the Applicants herein. Therefore, there is no reason to set-aside the resolution passed by the CoC approving the aforementioned Addendum to the Resolution Plan. The contentions raised by the Applicants in this regard are simply specious.

18. Counsel for the Applicants have sought to establish the locus of the Applicants by contending that if the claim amounts of the secured creditors are correctly determined by the Respondent No.01, then, the Applicants will have a fair opportunity to settle the outstanding dues of the secured creditors so that the process of CIRP may be withdrawn in accordance with Section 12-A of the Code. Even this contention is specious. The moment the Corporate Debtor is admitted into CIRP and the IRP is appointed, the powers of the Board of Directors of the Corporate Debtor are suspended and the management of the affairs of the Corporate Debtor shall vest in the IRP, as per the provisions of Section 17 of the Code. Further, proceedings under the Code are not for recovery of debt and the Adjudicating Authority is not a settlement forum to give opportunity to the Applicants to settle the dues of the secured creditors so

that the CIRP may be withdrawn. Withdrawal of CIRP u/s 12-A of the Code is also not a matter of right of the Applicants, but it is rather at the discretion of the Committee of Creditors and then by the Adjudicating Authority. Hence, the argument of fair opportunity to settle the dues of secured creditors upon correct determination of their claims is also devoid of any merit and too far-fetched to be even considered at this belated stage.

19. In view of the above findings, analysis and discussions, we are not inclined to grant the reliefs as prayed for by the Applicants and hence, **we hereby dismiss I.A. No. 111 of 2024** in CP(IB) No. 532/MB/2018 with no order as to costs.

Sd/-

ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT II, MUMBAI BENCH
INTERLOCUTORY APPLICATION NO. 3088 OF 2023
IN
COMPANY PETITION (IB) NO. 532/MB/MAH/2018

*Application u/s 60(5) of the Insolvency and
Bankruptcy Code, 2016 read with Rule 11 of the
National Company Law Tribunal Rules, 2016.*

In the matter of:

Nirmal Lifestyle Limited ...Applicant

v/s

1. **Anish Niranjan Nanavaty,**

Resolution Professional of V-Hotels Ltd

2. **Macrotech Developers**

.... Respondents

In the matter of

Asset Reconstruction Company (India) Ltd.

...Financial Creditor

v/s.

V Hotels Limited

...Corporate Debtor

Order pronounced on 26.04.2024.

Coram:

Shri. Kuldip Kumar Kareer : **Member Judicial.**

Shri. Anil Raj Chellan : **Member Technical.**

Appearances (in Hybrid mode):

For the Applicant: Senior Advocate Prateek Seksaria a/w Rohit Agarwal, Adv. Nishant Chothani, Adv. Ashok Paranjpe and Adv. Nidhi Desai appeared for the Applicant through VC.

For the Resolution Professional: Sr. Adv. Pradeep Sancheti a/w Adv. Pulkit Sharma, Adv. Aditya V. Singh, Adv. Shriraj Khambete, Adv. Naman Jain, Adv. Shreya Chandhok.

For the Respondent No.02: Sr. Adv. Janak Dwarkadas a/w Mr. Rohit Gupta, Ms. Gauri Joshi appeared for the Respondent No. 2.

ORDER

Per: Kuldip Kumar Kareer, Member (Judicial)

1. The present Application has been filed by the Applicant, 'Nirmal Lifestyle Ltd.', u/s 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code" for the sake of brevity) read with Rule 11 of the National Company Law Tribunal Rules, 2016 ('NCLT Rules') seeking directions for making specific disclosures in the information memorandum as described in the application in order to protect the Applicant's right, title and interest in the hotel named Tulip Star ('the said Hotel') and directions to the CoC to either consider revised resolution plan from the Respondent No.02 or resolution plans only from those prospective resolution applicants, which provide for adequate protection being

granted in favour of the Applicant's right, title and interest with respect to the said Hotel.

Case of the Applicant (in brief):

2. The Applicant states that it has a valid, binding and subsisting claim in respect of 2,50,000 sq. ft. of the hotel property which belongs to the Corporate Debtor in the name of Tulip Star Hotel (being hereinafter referred to as "the said Hotel" for the sake of brevity) situated at Juhu Tara Road, Vile Parle (West), Mumbai-400049. The Applicant states that the Applicant has an independent right absolutely in respect of 1,25,000 sq. ft. built-up area in the basement, ground and first floor of the hotel property for which the Applicant has paid a valuable consideration of Rs. 30.60 crores to the Corporate Debtor which is to the knowledge of the Financial Creditor referred to in the above-captioned petition i.e. ARCIL.
3. Corporate Insolvency Resolution Process ('CIRP') of the Corporate Debtor commenced vide Order dated 31st May, 2019 ('Admission Order') passed by NCLT, Mumbai Bench u/s 7 of the Code.
4. The Corporate Debtor 'V Hotels Ltd' acquired the erstwhile Centaur Hotel at Juhu Beach from the Hotel Corporation of India Ltd under the disinvestment programme of the Government of India having 24,706 sq. mtrs. of land along with a structure comprising of basement, ground and six floors, situate at Juhu Tara

Road, Vile Parle (West), Mumbai-400049. The Corporate Debtor has now renamed the hotel as 'The Tulip Star', Mumbai.

5. The basement, ground and the first floor are independent sections of the said Hotel, capable of segregation. This is precisely the reason why the Corporate Debtor, being in severe financial difficulty, had approached the Applicant to develop a super market and shopping mall in the basement, ground and first floor of the said Hotel. The Applicant entered into various heads of agreements on different dates which culminated into an Agreement dated 21st June, 2003 and a Supplementary Agreement dated 17th October, 2003. As per the terms of the said Agreements, the Applicant was to pay a sum of Rs. 30 crores to the Corporate Debtor; however, the Applicant paid a sum of Rs. 30.60 crores at the request of the Corporate Debtor in the period between March, 2003 to September, 2004. The Applicant submits that there is no outstanding monetary consideration to be paid by the Applicant to the Corporate Debtor in terms of the said Agreements.
6. Despite entering into the said Agreements with the Applicant, the Corporate Debtor sought to create third-party rights in respect of the said Hotel property. Therefore, the Applicant was constrained to file Arbitration Petition No. 100 of 2005 u/s 9 of the Arbitration and Conciliation Act, 1996 wherein the Hon'ble Bombay High Court was pleased to grant an injunction restraining the Corporate Debtor from creating third-party rights in respect of the said Hotel property and the disputes were referred to arbitration. In the interregnum, on or about 21st

November, 2006, the name of Corporate Debtor was changed to its present name viz. V Hotels Ltd. Vide Award dated 08th February, 2013, the Arbitrator refused to grant the relief of specific performance, but instead directed the Corporate Debtor to pay to the Applicants an amount of Rs. 19.60 crores, together with interest thereon. The said Award was subsequently challenged by the Applicant u/s 34 of the Arbitration and Conciliation Act, 1996 before the Hon'ble Bombay High Court vide Arbitration Petition No. 891/2013. The Hon'ble High Court was pleased to set aside the impugned Award vide its Order dated 27th November, 2013 and also continued ad-interim injunction. Being aggrieved by the Order dated 27.11.2013, the Corporate Debtor then preferred an appeal u/s 37 of the 1996 Act which is pending for adjudication with the Hon'ble High Court of Bombay.

7. On or about 08th December, 2013, the Applicant for the first time became aware of a public notice dated 07th December, 2013 published in Times of India newspaper inviting offers for sale of the said Hotel property. The Applicant thereafter came across a copy of bid document for the sale of the said Hotel property.
8. On the basis of the Award, which was set aside by the Bombay High Court, the Applicant had filed its claim before the Respondent No.01 on 06.12.2022 and the claim of the Applicant came to be allowed to the extent of Rs. 30.60 crores. The Applicant has learnt that a resolution plan submitted by Respondent No.02 has been approved by the Committee of Creditors ('CoC') of the Corporate Debtor and, therefore, the Applicant apprehends that the same may resultantly prejudice

the right, title and interest of the Applicant in the said hotel. The Applicant submits that it is imperative that any resolution plan submitted in the CIRP of the Corporate Debtor ought to provide for adequate protection of the right, title and interest created in favour of the Applicant. Hence this application.

Reply of the Respondent No.01:

9. The Respondent has resisted the application of the Applicant on the ground that it is not maintainable, the Applicant has no locus and that the application is presumptive in nature. The Respondent submits that no cause of action is shown to have arisen for filing this Application.
10. The Respondent opposes the maintainability of the present application on the ground that the Adjudicating Authority under the Code has no jurisdiction on any issue concerning ownership rights of property. The Corporate Debtor states that the Applicant has no vested right in the hotel property and being aggrieved by an order passed by the Hon'ble High Court u/s 34 of the Arbitration and Conciliation Act, 1996, the Corporate Debtor had preferred an appeal u/s 37 of the Code and the same is an undisputed fact.
11. The Respondent submits that the Information Memorandum contained the details of all material litigation, including all the litigation and disputes of the Corporate Debtor including the Order dated 09.10.2013 (pronounced on 27.11.2013) passed by the Hon'ble Bombay High Court in the Applicant's petition u/s 34 of the Act.

Further, a separate repository of documents was created in the form of a virtual data room containing necessary information which was made accessible to the prospective resolution applicants. Since the information memorandum and the access to virtual data room are confidential in nature, the said documents are not being enclosed with the reply.

12. The Applicant filed its updated claim with the Respondent No.01 on 13.10.2022 and a revised claim on 06.12.2022. The claims submitted by the Applicant were verified and the Applicant was classified as “other creditors” in the List of Creditors. Out of the total claim of INR 2,488,05,85,063/-, an amount of Rs. 30.60 crores were consistently shown as ‘admitted’ and an amount of Rs. 2359,21,99,310/- was verified at notional value of Re.1/-, subject to the dispute pending before the High Court. The verification of claim has not been challenged by the Applicant and therefore, the same has attained finality. Therefore, the present application is liable to be dismissed with exemplary costs.

Reply of the Respondent No.02:

13. The Applicant has already submitted a monetary claim of INR 2,488 crores before the Resolution Professional, of which an amount of Rs. 30.60 crores has been admitted by the Resolution Professional. The balance amount of approx. Rs. 2,457 crores have been claimed as damages. This entire claim made by the Applicant has been dealt with in the resolution plan.

14. The Order passed u/s 34 of the Arbitration and Conciliation Act, 1996 dated 27.11.2013, does not in any manner or form restrict the CIRP of the Corporate Debtor. In the present case, it is not the erstwhile promoters of the Corporate Debtor who are creating third party rights in the said Hotel, but the secured financial creditors of the Corporate Debtor and the first charge holders of the Corporate Debtor are seeking resolution of the insolvency of the Corporate Debtor through the CIRP as contemplated under the IBC. Therefore, in this regard, the Applicant's insistence that Section 34 Order altogether restricts the CoC from creating third party rights in the said Hotel, ergo approving the resolution plan in the CIRP of the Corporate Debtor is wholly inconsistent with the fundamental purpose and objects of the Code.
15. The appropriate forum for adjudication of disputes pertaining to the right, title and interest of the Applicant in the said Hotel is under the Arbitration and Conciliation Act, 1996 and not before the Adjudicating Authority under the IBC, 2016 especially at this belated stage where the resolution plan as submitted by the Respondent has been unanimously approved by the CoC and the CIRP of the Corporate Debtor is almost complete. As a consequence of the setting aside of the impugned Arbitral Award u/s 34 of the 1996 Act, it was incumbent upon the Applicant to initiate de novo arbitration proceedings before the Learned Arbitrator. However, it is a matter of record that since 2013, i.e. for a period over 10 years, the Applicant has not initiated any de novo arbitration proceedings.

16. The Applicant has already submitted its claim during the CIRP of the Corporate Debtor before the Resolution Professional and cannot now claim an interest in the assets of the Corporate Debtor.
17. The Resolution Plan submitted by this Respondent adequately accounts for the claim made by the Applicant. In the Resolution Plan, the Respondent has proposed a payment of Rs. 1.03 crores against admitted claims of the other creditors and with respect to the contingent claims, this Respondent proposes to pay a sum of Rs. 1,00,000/- (rupees one lakh only). Therefore, now at such a belated stage, the Applicant cannot be allowed to arm-twist the respondent thereby vitiating the process of CIRP of the Corporate Debtor. Hence the Respondent prays for dismissal of the present application.

Rejoinder of the Applicant

18. In the rejoinder, the Applicant has submitted that it is absurd on the part of the Respondent No.02 to say that the High Court had restrained only the erstwhile promoters of the Corporate Debtor from creating any third-party rights in the said Hotel Property. The Applicant submits that the Hon'ble High Court vide its Order u/s 34 had recognized in clear and unequivocal terms that the right and interest of the Applicant in the said Hotel is required to be protected. Therefore, the Applicant submits that the resolution applicant while stepping into the shoes of the erstwhile management of the Corporate Debtor and taking over its assets, would also be

precluded and prevented from doing acts which the Corporate Debtor was specifically barred or prevented from doing.

19. A right that is vested in the Applicant cannot be extinguished merely by virtue of the Code or the Resolution Plan and that too at the hands of a Resolution Applicant in the CIRP of a separate entity. The Respondent No.02 was well aware of the valid, binding and subsisting claim of the Applicant in the said Hotel and despite that, the Respondent No.02 has failed to provide necessary safeguards with respect to the existing right of the Applicant in the said Hotel property. The Respondent No.02 has attempted to bypass the subsisting right, title and interest of the Applicant in the said Hotel Property by way of the Resolution Plan only with a dishonest view to oust the Applicant and usurp the said Hotel property.
20. The CoC should have considered and voted upon only such resolution plan which provided for adequate protection being granted in favour of the Applicant's right, title and interest w.r.t the said Hotel property. If this Tribunal is not inclined to direct the Respondent No.02 or the CoC to modify or amend the resolution plan to provide for necessary safeguards with respect to the right, title and interest of the Applicant in the said Hotel property, then this Tribunal is well within its power to exercise its jurisdiction to reject the resolution plan since the same is in flagrant violation of law and of the directions contained in Section 34 Order.
21. The Resolution Plan provides for a meagre amount of Rs. 1.04 crores towards the claim of other creditors is an inadequate and inappropriate safeguard to say the

least. The right, title and interest of the Applicant in the said Hotel property cannot be monetized under the category “Other Creditors”.

FINDINGS

22. We have heard the Counsel for the Applicant and the Respondent at length. We have perused the records.
23. During the course of arguments, the Ld. counsel for the applicant has argued that the Agreement dated 21st June 2003 (1st Agreement) and the Agreement dated 17th October 2003 (2nd Agreement) (collectively referred to as the said Agreements), create an interest in areas in the Tulip Star Hotel in favour of the Applicant necessitating exclusion of such area from the Resolution Plan of Respondent No. 2.
 - a. The said Agreements were entered into in order to construct and/or develop a shopping mall and supermarket respectively in the Hotel.
 - b. Under the 1st Agreement, an undivided interest was created for an area of 1,00,000 sq. ft. in the shopping mall area and under the 2nd Agreement, an undivided interest was created for an area of 25,000 sq. ft. in the supermarket area contemplated therein in favour of the Applicant. The creation of interest under the said Agreements is evident from the following:

- i. Clause 1 of the 1st Agreement records that the Applicant has an undivided interest to the extent of 1,00,000 sq. ft. in the shopping mall area contemplated therein.
- ii. Under Clause 3 of the 1st Agreement, the Applicant is required to spend monies for carrying out construction and alterations for additional construction and refurbishment in the shopping mall area.
- iii. Under Clause 7(iii) of the 1st Agreement, the Applicant along with the Corporate Debtor is required to draw up plans for additional construction for submitting it to MCGM.
- iv. Under Clause 8(i) of the 1st Agreement, the Applicant is entitled to lease all or any part of the area in the shopping mall in favour of third parties and mortgage/ charge the shopping mall area for obtaining loans from banks or private parties, immediately on execution of the 1st Agreement.
- v. Under Clause 10 of the 1st Agreement, the Applicant is entitled to construct/ redevelop or renovate the ground and first floor of the Hotel building of the Corporate Debtor and take all other steps for the said purpose.
- vi. Under Clause 13 of the 1st Agreement, the parties were required to allocate among themselves, specific portions of the shopping mall to

enable them to deal with such portions independently upon expiry of a certain period.

vii. Clause 14 of the 1st Agreement once again notes that the Applicant has an undivided interest to the extent of 1,00,000 sq. ft. in the shopping mall area.

Similarly, under the 2nd Agreement, which is identical in its terms, creates an undivided interest for an area of 25,000 sq. ft. in the supermarket area contemplated therein in favour of the Applicant.

24. According to the 1d counsel for the applicant, between March 2003 to September 2004, the Applicant paid the entire consideration of Rs. 30.60 Crores to the Corporate Debtor, though it was not required to so pay in terms of the order of performance under the said Agreements. The said money was accepted by the Corporate Debtor without demur. There were arbitration proceedings between the Applicant and the Corporate Debtor under the said Agreements, whereunder the Applicant *inter alia* claimed specific performance of the said Agreements. These proceedings culminated into an award rejecting the claim of the Applicant. For the specific performance on the ground of an alleged supervening impossibility. Subsequently, when the award in the arbitration proceedings between the Applicant and the Corporate Debtor arising under the said Agreements was set aside by the Hon'ble Bombay High Court *vide* its order dated 27th November 2013, an injunction was granted against creation of third party rights of any nature in the

disputed premises by negotiation, transfer, encumbrances or otherwise or by inducting anyone in the disputed premises being the basement, ground and 1st floor of the Hotel admeasuring 2,50,000 sq. ft. or changing the façade of the Hotel. The ld counsel for the applicant has further contended that though an appeal was preferred under Section 37 of the Arbitration Act, no stay has been granted by the Hon'ble Bombay High Court against the order dated 27th November 2013 and as such, the order dated 27th November 2013 survives. Therefore, admittedly, the said Agreements are valid, subsisting and binding, and as such, have never been terminated by the Corporate Debtor and/or any other person. According to the ld counsel for the applicant, the said Agreements are enforceable in law and, therefore, any contention that the said Agreements are not concluded contracts is contrary to law and cannot be countenanced. Under said Agreements, the Applicant is entitled to lease all or any part of the area in the shopping mall and supermarket in favour of third parties and mortgage/ charge thereon for obtaining loans from banks or private parties, immediately on execution of the said Agreements:

25. Ld counsel for the applicant has further contended that once the lender, which holds a prior alleged charge on the subject property, has filed its claim and participated in the Corporate Insolvency Resolution Process of the Corporate Debtor by ceding the same to the common pool, the requirement to obtain their NOC cannot and does not survive and *ipso facto* and *ipso jure*, the Applicant is

entitled to specific performance of the said Agreements which create a right and interest in immovable property. Thus, the said Agreements create an undivided right and interest in the areas mentioned therein in favour of the Applicant, which are recognised under subsisting orders passed by the Hon'ble Bombay High Court, which are much prior to the insolvency commencement date.

26. The ld counsel for the applicant has further argued that the reliance placed on the order dated 17th March 2023 passed by the Ld. Debt Recovery Law Appellate Tribunal is wholly misconceived, untenable in law and is of no avail to the Respondents since the said order was passed after initiation of corporate insolvency resolution process (in a proceeding in which the Corporate Debtor is a party) and is, thus, a nullity in the eyes of law in the light of the law laid down in [*Sundaresh Bhatt Vs. Central Board of Indirect Taxes and Customs- (2023) 1 SCC 472*]
27. The ld counsel for the applicant has further contended that Respondent No. 2 is required to carve out such area to be allotted to the Applicant in its Resolution Plan, which area cannot be considered as an asset of the Corporate Debtor and such area of 1,25,000 sq. ft. in the Hotel is required to be transferred in favour of the Applicant and the same cannot enure to the benefit of any other creditor of the Corporate Debtor
28. It has further been submitted by the ld counsel for the applicant that the Applicant is entitled in law to a copy of Respondent No. 2's Resolution Plan since, on Respondent No. 2's own admission in the Affidavit in Reply dated 31st July 2013

relying on its Resolution Plan, whereby it has sought to allege that the Applicant's claims are considered in the Resolution Plan. Respondent No. 2 is duty bound in law to produce its Resolution Plan and provide a copy thereof to the Applicant, more particularly when it seeks to affect Applicant's right and interest in immovable property as recognised in orders passed by the Hon'ble Bombay High Court. Even otherwise, rules of natural justice, which are a cornerstone of a fair trial, necessitate that any adjudication before this Hon'ble Tribunal is fair and in accordance with law.

29. The ld counsel for the applicant has further argued that the Resolution Plan of Respondent No. 2 is in contravention of law and as such, cannot pass muster under Section 31 of the Insolvency & Bankruptcy Code, 2016("IBC"). He has argued that one of the concessions or waivers in the Resolution Plan purports to terminate the said Agreements. It is settled law that valid agreements cannot be terminated without following due process of law. There is no unilateral right of termination, modification and change save and except in accordance with law. A resolution applicant, in its resolution plan cannot terminate agreements which have created legal rights in third parties and any such termination is in violation of Section 30(2)(e) of the IBC. In support of his arguments , the ld counsel for the applicant has relied upon *Standard Chartered Bank Vs. Ruchi Soya Industries Ltd- Order dated 24th July 2019 in MA No. 1721 of 2019 passed by this Hon'ble Tribunal- as well as IMICL Dighi Maritime Ltd. Vs. DBM Geotechnics and Constructions Pvt. Ltd.- Order dated 8th*

May 2019 in MA No. 529 of 2019. In the light of the law laid down in the afore cited cases, it has been urged by the counsel for the applicant that any attempt to defeat such rights and approve a Resolution Plan, which is *ex facie* in teeth of the orders passed by the Hon'ble Bombay High Court, is illegal, contrary to law, more particularly Section 30(2)(e) of the IBC and as such, cannot pass muster under Section 31 of the IBC.

30. Ld counsel for the applicant has further contended that the Hotel is a commercial establishment. The Corporate Debtor contemplated a real estate project to convert this commercial establishment into another nature of commercial establishment, being a mall which is covered under the *definitions of 'apartment' under Section 2(e) and 'real estate project' under Section 2(zn) of the Real Estate (Regulation and Development Act, 2016]*. He has further submitted that the Corporate Debtor entered into the said Agreements whereunder the Applicant was required to pay and invest a sum of Rs. 30.60 Crore, plus Rs. 5 Crore, plus Rs. 15 Crore for the purposes of improvement and development of the existing commercial establishment into a commercial mall. In return, the Corporate Debtor allotted the Applicant an area of 1,25,000 sq. ft. for the consideration stated in the said Agreements. The Corporate Debtor agreed that the Applicant would be entitled to deal with its allotted area in such manner as it deemed fit. The Applicant is also solely entitled to the income generated from such allotted area. Therefore, the Applicant is an allottee of a real estate project and the amount paid by the Applicant to the Corporate Debtor under

the said Agreements, as *advance* is squarely covered within the meaning of financial debt under Section 5(8)(f) of the IBC. The Applicant is thus a financial creditor and the rejection of Applicant's claim dated 14th November 2019 as a financial creditor *vide* the email dated 2nd November, 2022 addressed by the Respondent No. 1 is patently illegal and contrary to law. Notably, this rejection has been challenged by the Applicant by way of an I. A. bearing filing no. 2709138000132024 dated 1st January 2024, which is pending adjudication before this Hon'ble Tribunal. The Applicant is, therefore, entitled to be classified as a financial creditor to the tune of the value of the area allotted and is entitled to be recognized to the extent of value of such allotted immovable property. The ld counsel for the applicant has urged that in the light of the above contentions, the application must be allowed in toto.

31. On the other hand, the ld counsel for the SRA (Respondent no. 2) has argued that the Secured Financial Creditors had granted a loan of Rs. 129 Crores to the Corporate Debtor and as security, a mortgage was created in their favour over the assets of the Corporate Debtor. The HOA, SHOA and the NLL Agreement (collectively, the "said Agreements") were entered into for development of 2,00,000 sq. ft. as shopping mall on the Ground and First floors of the said Hotel (the "Shopping Mall") and development of 50,000 sq ft. as a supermarket in the Basement of the said Hotel (the "Supermarket"). By virtue of the said Agreements, the Applicant merely acquired right to develop the Basement, Ground and First floors of the said Hotel - that too subject to certain conditions - and has not acquired

any ownership rights nor any title in the said Hotel or its property. The said Agreements specifically record that the Applicant's rights therein are subject to fulfilling certain obligations on the part of the Corporate Debtor, especially obtaining a No-Objection Certificate ("NOC") from the Consortium. Moreover, the Applicant consciously entered into the said Agreements knowing fully well that the said Hotel was mortgaged to the Consortium even before entering into the said Agreements. According to the Id counsel for SRA, the Applicant was conscious of the fact that the NOC will not be issued by the Consortium unless their dues are fully discharged by the Corporate Debtor. The Applicant has admitted and acknowledged that the Corporate Debtor never obtained the NOC from the Consortium, which was a pre-requisite under the terms of the said Agreements for exercise of any rights by the Applicant under the said Agreements. It is submitted that the claims raised by the Applicant are, at best actionable claims, and therefore, the Applicant does not have any right, title or interest in the said Hotel.

32. The Id counsel for the SRA has further argued that it is the Applicant's case that by an order dated 27th November 2013, the Hon'ble Bombay High Court restrained the Corporate Debtor from creating any third-party rights in the said Hotel. He has submitted that the High Court Order was only an interim order, based *prima facie* findings in a Section 9 petition under the Arbitration and Conciliation Act, 1996 ("Arbitration Act"). Pursuant thereto, the Applicant has failed and/ or neglected to institute *de novo* arbitration proceedings and/ or any legal proceedings for a

period of 10 years in relation to its alleged ownership, right, title and interest in the said Hotel. Therefore, the applicant cannot take any advantage on the basis of the said order to claim any ownership right in the property of the corporate debtor.

33. The ld counsel for the SRA has further argued that the Applicant has deliberately concealed from this Tribunal, information regarding its Securitization Application (*being S. A. No. 1 of 2014*) (“Securitization Application”) under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“SARFAESI Act”) filed before the DRT. The Securitization Application, *inter alia*, challenged the measures initiated by ARCIL against the Corporate Debtor before the DRT, for enforcement of ARCIL’s security interest in the said Hotel. In the Securitization Application, the Applicant asserted that it possessed a valid right, title, ownership and interest in the said Hotel in view of the said Agreements. The Applicant accordingly opposed the enforcement of ARCIL’s security over the said Hotel. The DRT *vide* its reasoned Order dated 28th January 2016 (“DRT Order”) dismissed the Securitization Application *inter alia* holding that the Applicant does not have any ownership, right, title or interest in the said Hotel. The ld counsel for the SRA has further pointed out that aggrieved by the reasoned order of the DRT, the Applicant contested the DRT Order by filing Appeal No. 128 of 2016 (“DRAT Appeal”) before the Hon’ble Debts Recovery Appellate Tribunal at Mumbai (“DRAT”). The Hon’ble DRAT dismissed the appeal vide order dated 17th March 2023

("DRAT Order"), holding that there were no infirmities in the DRT Order. The Hon'ble DRAT, reiterating the DRT Order's findings, emphasized that ARCIL, the Secured Financial Creditor of the Corporate Debtor, was not a party to the said Agreements and thus not bound by them. Moreover, the Corporate Debtor, as per the said Agreement, failed to secure the NOC from the Consortium and further that the said Agreements, characterized as development agreements, do not confer any proprietary rights on the Applicant over the said Hotel. It has been submitted that the instant IA is nothing but a second bite at the cherry by seeking to obtain reliefs from this Hon'ble Tribunal, which the Hon'ble DRT and DRAT previously refused to grant.

34. The 1d counsel for the SRA has further argued that the Applicant cannot seek specific performance of the agreements as it has chosen to make a monetary claim in relation to its claims in the arbitration proceedings against the Corporate Debtor. The Applicant filed a claim form as a Financial Creditor on 13th October 2022. Vide email dated 2nd November 2022, the Resolution Professional stated that the Applicant's claim was not a 'financial debt' under the Code and it was asked to file its claim in the appropriate form. The Applicant did not object or contest/challenge the rejection of its claim as a Financial Creditor and/or the constitution of the COC till January 2024. Thereafter, the Applicant *vide* Claim Form-F dated 6th December 2022, *suo motu* filed its claim under the category of 'Other Creditor'. In its Claim Form-F, NLL also claimed damages in lieu of specific performance to

the tune of Rs. 2,359,21,99,310/-. The Applicant's Claim Form F subsequently came to be admitted only partially by the Resolution Professional to the extent of Rs. 30,60,00,000/-. The claim for damages in lieu of specific performance was allowed for a notional and contingent amount of Re. 1 which was not challenged by the Applicant at all.

35. It has been further argued by the ld counsel for the SRA that the contention raised on behalf of the Applicant that the resolution plan cannot seek to terminate agreements that have created legal rights in third parties without adhering to due process of law is also fallacious. In this regard, it has been submitted that it is an admitted fact that the Corporate Debtor never obtained the NOC from the Consortium, which was a mandatory condition precedent to the said Agreements. Further, no steps were taken by the Applicant for over 10 years to claim any rights under the said Agreements by initiating *de novo* arbitration. Besides, the Applicant has consciously elected to pursue a monetary claim, encompassing damages as an alternative to specific performance of the said Agreements, in the CIRP of the Corporate Debtor.
36. Ld Counsel for the CoC has argued that the Applicant *does not have any right, title or interest in the said Hotel and has wrongly sought directions against the COC* It appears that the Applicant's IA is limited to certain reliefs primarily seeking directions against the COC to not accept any resolution plan which does not adequately protect NLL's purported rights, title, and interest in the said Hotel. However, NLL

has chosen to not make COC a party to the NLL IA. Therefore, such a request is unfounded and goes against established legal principles in India. Even otherwise the approval of a resolution plan for the revival of the Corporate Debtor is the sole and exclusive prerogative and domain of the COC and cannot be interfered with by the exercise of any powers by this Tribunal. The Adjudicating Authority's responsibility is limited to ensuring that the resolution plan aligns with the provisions of Section 30 of the IBC.

37. We have considered the aforesaid contentions raised by the Counsel for the parties and have also carefully gone through the records.
38. Primarily by way of this Application, the Applicant is seeking to issue directions against the Respondents to the effect that the Applicant has a subsisting right, title and interest in the Hotel property of the Corporate Debtor to the extent of 2,50,000 sq. feet and in this regard, the Hon'ble High Court of Bombay has also granted an injunction order dated 27.11.2013 against creation of any third party rights in the said property. The Applicant further seeks directions against the Respondent no. 2 (SRA) to suitably amend/revise its Resolution Plan acknowledging the Applicants right, title and interest in the said Hotel. The Applicant has further claimed that in case the title of the Applicant is not acknowledged by the SRA, in that event the Resolution Plan of the SRA is liable to be rejected on this ground alone. The Applicant has further sought a direction against the RP to supply him a copy of the Resolution Plan.

39. The claim of the Applicant is that vide Heads of agreement dated 29.03.2003, supplementary Heads of agreement dated 31.03.2003 and a Memorandum of Understanding dated 11.06.2003, which culminated into agreement dated 21.06.2003 and a supplementary agreement dated 17.10.2003, it was agreed between the parties that a development of 200000 sq. feet Municipal built up area as a shopping mall would be carried out on the ground and first floor of the Hotel and development of 50,000 sq. feet of built up area as super market would be carried out in the basement of the hotel. As per the terms of the agreement, the Applicant was to pay sum of Rs. 30 crores to the Corporate Debtor and out of 2,50,000 sq. feet the Applicant would be entitled to 1,25,000 sq. feet of the built-up area in the shopping mall and the super market. It is also not disputed that the Applicant paid Rs. 30.60 crores between March 2003 and September 2004. As per the terms and condition of the agreement, the Corporate Debtor was to obtain an NoC from the banks who had extended loans to the Corporate Debtor. The Corporate Debtor was further required to obtain approval of the building plans from the Municipal Corporation.
40. However, the Corporate Debtor failed to obtain the NoC from the banks and also the approvals from the Municipal Corporation. As a result, the Applicant filed an Arbitration Petition no. 100 of 2005 u/s 9 with the Hon'ble High Court of Bombay whereby an injunction order was passed restraining the Corporate Debtor from creating any third-party rights in the Hotel property and vide order dated

27.09.2005 the dispute was referred to Arbitration whereby the Applicant, inter alia, had sought the specific performance of the Agreements. Subsequently, the Arbitrator passed the award dated 08.02.2013 whereby the relief of specific performance of the agreement was declined and instead, the Corporate Debtor was directed to pay a sum of Rs. 19.60 crores to the Applicant together with interest.

41. The award was challenged by the Applicant by filing Arbitration Petition no. 891 of 2013 u/s 34 of the Arbitration and Reconciliation Act, 1996 and the Hon'ble Single Judge of the Hon'ble High Court of Bombay was pleased to set aside the award dated 08.02.2013 vide order dated 27.11.2013 whereby the interim injunction was also continued.
42. Against the backdrop of above referred facts, it has to be seen as to whether the reliefs sought by the Applicant in the IA can be granted or not.
43. It is pertinent to mention that after the passing of the order dated 08.02.2013 by the Hon'ble High Court of Bombay, whereby the award was set aside, the Applicant has not initiated any fresh Arbitration proceedings even after a lapse of more than ten years. A perusal of the order dated 08.02.2013 of the Hon'ble High Court of Bombay reveals that the award was set aside in toto. Initially, the Arbitrator had declined the reliefs of specific performance of the agreement and had granted the relief of refund of the amount of 19.60 crores with interest. In proceedings u/s 34 of the Arbitration and Reconciliation Act, 1996, though the Hon'ble High Court of Bombay set aside the findings with regard to non-grant of

relief of specific performance but at the same time, the said relief was also not specifically granted. The Award with regard to repayment of money was also set aside. Therefore, the necessary implication of the order dated 27.11.2013 was that a fresh Arbitration was to be initiated and in the meanwhile, no third-party interest was to be created in the property in question. However, surprisingly, the Applicant did not take any steps to re-initiate the Arbitration proceedings to get the dispute adjudicated afresh through arbitration and kept sitting on the injunction order passed by the Hon'ble High Court of Bombay. The said injunction order was meant and intended to protect the rights of the Applicant, if any, in the property in question only till such time the rights of the parties were decided finally. The Applicant itself has not filed any appeal against the order dated 27.11.2013 though an appeal has been preferred by the Corporate Debtor, which is stated to be pending for adjudication. No stay order is shown to have been issued by the Hon'ble High Court of Bombay in the appeal filed u/s 37 of the Arbitration and Reconciliation Act, 1996 filed by the Corporate Debtor. Therefore, it was always open to the Applicant to have re-initiated the Arbitration proceedings without waiting for the outcome of the Appeal u/s 37 of the Arbitration and Reconciliation Act, 1996. That being so, in our considered view, an adverse inference has to be drawn against the Applicant for not taking steps to get the matter adjudicated afresh from the Arbitrator and against this backdrop the injunction order issued by the Hon'ble High Court of Bombay against creation of third party interest in the

property in question cannot be treated as a perennial order to remain in vogue for all times to come.

44. Admittedly, the Applicant has already filed a claim with the RP which has since been admitted to the tune of Rs. 30.60 crores after the Corporate Debtor went into CIRP. As rightly pointed out by the Counsel for the RP, the Applicant lodged a monetary claim of INR 24,88,05,85,063/- out of which the RP verified and admitted an amount of INR 30.60 crores and the remaining amount of INR 23,59,21,99,310/- claimed as damages, has been admitted at a notional value of Rs. 1, being a contingent claim as currently the dispute is pending before the Hon'ble High Court. It has also been pointed out that the Applicant did not challenge the verification of the claim till the approval of the Resolution Plan by the CoC. Therefore, it has been rightly pointed out by the Counsel for the Respondent nos. 1 and 2, once the claim for payment of outstanding dues of 30.60 crores and for damages was filed by the Applicant with the RP, which has been admitted also, the Applicant cannot be heard harping that the property of the Corporate Debtor cannot be dealt with in any manner in the Resolution Plan or that no third party rights can be created in the said property in the light of the so called agreements in favour of the Applicant. Here one cannot be oblivious of the fact that the CIRP was initiated by the Financial Creditor to resolve its outstanding financial debts under the IBC. Since the Financial Creditor was not a party to the Agreements between the Applicant and the Corporate Debtor, it cannot be said to

be bound by the terms of the Agreement or by the outcome of the litigation which took place between the applicant and the Corporate Debtor.

45. The Applicant is alleging title over an area of 1,25,000 sq. feet on the basis of the agreements executed with the Corporate Debtor. However, it is not disputed that in the agreements itself, there was a specific condition that the Applicant's rights would be subject to certain obligations on the part of the Corporate Debtor which was required to obtain a NoC from the Consortium of its lenders. The Applicant was conscious and cognizant while entering into the agreements with the Corporate Debtor that the Hotel stood mortgaged to the Consortium and further that the consortium would not issue any NoC unless and until its dues were discharged by the Corporate Debtor. As the NoC was not issued by the Consortium of lenders, the agreements never fructified. Therefore, the Applicant having been fully conscious of the charge of the Consortium over the properties of the Hotel cannot now claim a clear title over the property in question in utter disregard of the rights of the Consortium of Lenders nor the rights of the secured Financial Creditors to resolve the debt can in any way be curtailed by the pending litigation between the Applicant and the Corporate Debtor.
46. It has also been argued on behalf of the Applicant that the Resolution Plan of Respondent no. 2 would not pass muster u/s 31 of the IB Code, 2016 if it will have the effect of terminating/obliterating the agreements in favour of the Applicant. According to the Counsel for the Applicant, valid agreements executed between

the parties cannot be terminated by way of the Resolution Plan by creating third party rights in the property. In support of this contention, the Ld. Counsel for the Applicant has relied upon *Standard Charter Bank vs. Ruchi Soya Industry Limited (Supra)* whereby it has been held that the Resolution Applicant cannot have any right of unilaterally modifying/changing or terminating any contract and further that the Resolution Applicant may do so only as per the process of law. The Counsel for the Applicant has further relied upon *IMICL Dighi Maritime Limited vs. DBM Geotechnics and Constructions Private Limited* whereby also it was held that approval of plan cannot have the effect of extinguishing or curtailing the rights of third parties.

47. Having thoughtfully considered the aforesaid contentions, we are of the considered view that by way of the proposed Resolution Plan, the agreements in favour of the Applicant are neither being modified nor extinguished. In this context, it is worthwhile mention that on the basis of the agreements in question, legally speaking, no title stands created in favour of the Applicant. The relief of specific performance, which was claimed by the Applicant in the arbitration proceedings stands declined and only relief of recovery of money was granted by way of the award which has since been set aside by the Hon'ble High Court of Bombay. The Applicant has not preferred any appeal nor has initiated any fresh arbitral proceedings till date even after a period of ten years when the claim for specific performance was rejected. In addition to this, the Applicant voluntarily filed a

claim with the RP vide claim Form-F dated 06.12.2022 in the capacity of other creditor as the claim earlier filed by the applicant in the capacity of a Financial Creditor was not allowed by the RP and the said decision of the RP was not contested or challenged by the Applicant at all. As stated above, the claim of the Applicant has been admitted partially to the extent of Rs. 30.60 Crores while the remaining part of the claim has also been admitted notionally for a tentative amount of Rs. 1/- being a contingent claim in respect of the damages claimed by the Applicant. Against the backdrop these facts, it emerges that having filed a claim for the refund of the advance amount and also for damages and compensation in respect of the alleged non-performance of the contract by the Corporate Debtor, the Applicant cannot be envisaged to have been left with any claim of seeking specific performance of the agreements in question which by themselves do not confer any title in favour of the Applicant in the Hotel property which was already subject to a charge and mortgage created in favour of the Financial Creditors of the Corporate Debtor who admittedly never issued the NoC to the Corporate Debtor to go ahead and implement the terms and conditions of the agreement in favour of the Applicant. Since the claims lodged by the Applicant on the basis of the agreement with the RP are being dealt with appropriately in the Resolution Plan, in the given situation, it cannot be said by any stretch of imagination that the agreements in favour of the Applicant are being terminated or extinguished by way of the Resolution Plan in violation of the provisions of Section 31 of the IB Code,

2016. In the light of the peculiar facts and circumstances of this case, the afore cited case law relied upon the Ld. Counsel for the Applicant can also not be applied to the facts and circumstances of the case.

48. The Counsel for the Applicant has further argued that the Applicant is a Financial Creditor having advanced an amount of Rs. 30.60 crores to the Corporate Debtor which was to be utilized for repayment of dues to the Consortium of lenders of the Corporate Debtor. It has also been argued that the Corporate Debtor is a commercial establishment and by virtue of the agreements in favour of the Applicant, the Corporate Debtor intended to convert the commercial establishment into a Real Estate project and a shopping mall and, therefore, the Applicant is liable to be treated as an allottee u/s 2(d) of the Real Estate (Regulation and Development) Act, 2016. The Counsel for the Applicant has further contended that being an allottee, the Applicant is also squarely covered under the definition of the Financial Creditor as per 5(8)(f) of the IBC, 2016.
49. We have considered the aforesaid contentions raised by the Counsel for the Applicant but find it arduous to concur with the same. Section 2(d) of RERA defines an allottee to be a person to whom a plot, apartment or building has been allotted/sold or otherwise transferred by the promoter and also includes the person who subsequently acquires the said allotment through sale, transfer or otherwise. In our considered view, no part of the properties of the Hotel was ever transferred, sold or allotted to the Applicant. Therefore, on the basis of the agreements in

question the Applicant cannot either be treated as an allottee or a homebuyer nor a Financial Creditor. Here one cannot be oblivious of the fact that the agreements in favour of the Applicant were subject to and issuance of an NoC by the lenders of the Corporate Debtor which admittedly was never issued. Besides, it is clearly recorded in the agreement itself that the rights of the Applicant shall be in the nature of a lease, or such other form as may be acceptable to the Applicant subject to the approval of Consortium to the bank which was never granted. Therefore, the Applicant cannot be considered to be an allottee in terms of Section 2(d) of RERA nor can it be treated as a Financial Creditor in terms of Section 5(8)(f) of the IB Code, 2016.

50. It has also been vehemently argued by the Counsel for the Applicant that the Applicant is entitled to be supplied with a copy of the Resolution Plan. More so when in the affidavit in reply dated 31.07.2013 filed by Respondent no. 2 (SRA), it is specifically stated that the copy of the Resolution Plan is annexed whereas in the copy of the reply supplied to the Applicant, no copy of the Resolution Plan was found attached. The Counsel for the Applicant has further argued that even otherwise the Applicant is required to be supplied with all the documents on the basis of principles of natural justice and fair play. The Counsel for the Applicant has relied upon *Reliance Industries vs. SEBI (2022) 10 SCC 181* whereby it has been held that for a fair trial, there should not be any opaqueness and all parties should be kept abreast of all information.

51. Even the aforesaid contentions raised by the Counsel for the Applicant does not appear to be tenable. In *State Bank of India vs. Jet Airways Limited 2021 SCC Online NCLT 50* it has been held that the statutory mandate requires that Resolution Plan can be presented to the CoC for their approval and further that the Code or the Regulations thereunder do not contemplate presentation or supply of the Resolution Plan or a copy thereof to any other body or entity. Therefore, the Applicant cannot be held entitled to a copy of the Resolution Plan when he is neither a Financial Creditor nor a Member of the CoC.
52. It has been rightly pointed by the Counsel for the Respondent that during the course of proceedings u/s 17 of the SARFAESI Act, 2002 initiated by the Applicant before DRT challenging the measures initiated by ARCIL against the Corporate Debtor, it was asserted by the Applicant that it possessed right, title and interest in the Hotel on the basis of the agreement in question and on that ground the Applicant opposed the enforcement of ARCIL's security interest over the property of the Corporate Debtor. However, the DRT vide its order dated 28.01.2016 dismissed the Application filed by the Applicant holding that it does not have any ownership rights in the said Hotel on the premise that the agreements were subject to fulfilment of mandatory obligation on the part of the Corporate Debtor in obtaining NoC from the Consortium which was never given and further that the Applicant entered into the agreements knowing fully well that the properties were mortgaged to several banks and financial institutions and further

that any findings recorded in the arbitration proceedings were not binding upon the ARCIL nor on that ground the security interest of ARCIL can be diluted at the instance of the Applicant. It has also been pointed out that the Applicant challenged the order of DRT by filing an appeal with DRAT Mumbai which was also dismissed vide order dated 17.03.2023. Even the Hon'ble DRAT held that no charge was ever created over the Hotel properties of the Corporate Debtor in favour of the Applicant under the agreements in question and, therefore, the Applicant cannot stand in the way of the Secured Financial Creditors in recovering the outstanding dues from the Corporate Debtor. It is worth mentioning that while filing the Application under consideration, the Applicant has not disclosed anything about the orders of DRT and DRAT deliberately and on this ground also, an adverse inference ought to be drawn against the Applicant.

53. No other points have been urged on behalf of the Applicant.
54. In the light of the above discussion we are of the considered view that no directions can be issued to the CoC to consider only those plans which provide for protection of right, title and interest of the Applicant in the property of the Corporate Debtor on the basis of the agreements in question. Therefore, the **IA 3088 of 2023** is **dismissed** being devoid of any merit.

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT II, MUMBAI BENCH
INTERLOCUTORY APPLICATION NO. 5606 OF 2023
IN
COMPANY PETITION (IB) NO. 532/MAH/MB/2018**

Application u/s 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 14 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and Rule 11 of the National Company Law Tribunal Rules, 2016.

In the matter of:

Anish Niranjan Nanavaty,
Resolution Professional for V-Hotels Ltd,
Having his office at: Deloitte India Insolvency Professionals LLP, 32nd Floor, Tower 3,
One International Centre, Senapati Bapat Marg,
Elphinstone Road (West), Mumbai-400013.

...Applicant

v/s

Pegasus Asset Reconstruction Pvt Ltd.
Having its registered office at: 55-56,
5th Floor, Free Press House, Free Press Journal
Road, Nariman Point, Mumbai-400021.

.... Respondent

In the matter of

Asset Reconstruction Company Ltd.

...Financial Creditor

v/s.

V Hotels Ltd.

...Corporate Debtor

Order pronounced on 26.04.2024.

Coram:

Shri. Kuldip Kumar Kareer : Member Judicial.

Shri. Anil Raj Chellan : Member Technical.

Appearances (in Hybrid mode):

For the Applicant: Adv. Pulkit Sharma a/w Adv. Shiraj Khambete & Adv. Naman Jain appeared for the Resolution Professional.

For the Respondent: Counsel Mr. Dinkar Singh and Mr. Rohit Singh appeared through V-C Mode.

ORDER

Per: Coram.

1. This is an application filed by the Resolution Professional u/s 60(5) read with Section 25 of the Insolvency and Bankruptcy Code, 2016 (“the Code”) read with Regulation 14 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and Rule 11 of the National Company Law Tribunal Rules, 2016 (‘NCLT Rules’) seeking permission of this Hon’ble Tribunal to revise and update the claims of Pegasus Asset Reconstruction Pvt Ltd, the Respondent herein, who is one of the secured financial creditors of the

Corporate Debtor, in view of Pegasus' email received by the Applicant on 27.11.2023.

Case of the Applicant (in brief):

2. The Respondent-Pegasus Asset Reconstruction Pvt Ltd ('Pegasus'), is an Asset Reconstruction Company licensed by Reserve Bank of India under the provisions of the SARFAESI Act, 2002. The loan exposure of the Corporate Debtor qua Indian Bank and Canara Bank (as per the loan agreement i.e., Term Loan dated 08.03.2002) were assigned to Pegasus vide Assignment Agreements dated 31.03.2010 and 25.03.2010. Subsequent to the said assignment, a settlement was entered between the Corporate Debtor and Pegasus.
3. In the meantime, the Corporate Debtor was admitted into Corporate Insolvency Resolution Process ("CIRP") by this Tribunal vide Order dated 31.05.2019 ("Admission Order"), thereby initiating the CIRP proceedings. The Applicant herein was appointed as the Interim Resolution Professional ("IRP"), and later as the Resolution Professional ('RP') vide the 01st meeting of the Committee of Creditors ("COC") held on 03.07.2019.
4. Subsequent to passing of the Admission Order, the promoters of the Corporate Debtor i.e., Tulip Star Hotels Limited ("TSHL") and Tulip Hotels Private Limited ("THPL"), filed an appeal bearing CA(AT)(Ins.) No. 627/2019, challenging the Admission Order before the Hon'ble NCLAT. The said Appeal came to be allowed by the Hon'ble NCLAT on 11.12.2019 and the impugned

Admission Order was set aside. Subsequently, the NCLAT Order dated 11.12.2019 was assailed before the Hon'ble Supreme Court of India.

5. On 01.08.2022, the Hon'ble Supreme Court reinstated the Admission Order in the statutory appeal filed by ARCIL, the petitioning Financial Creditor, being Civil Appeal bearing C.A. No. 84-85/2020. The aforesaid rounds of litigation before the Hon'ble NCLAT and the Hon'ble Supreme Court created an interregnum of 956 days from the date of Hon'ble NCLAT setting aside the Admission Order. In order to proceed further in conducting the CIR process, Applicant filed applications in relation to exclusion of time upto reinstatement of CIRP (being IA No. 2446/2023) and for, inter alia, fresh valuation of Corporate Debtor and updating claims of various creditors of the Corporate Debtor (being IA No. 2403/2023). The said applications were allowed by this Tribunal vide Orders dated 07.09.2023 and 30.09.2023, respectively.
6. Accordingly, the Applicant proceeded to collate and verify the updated claims received and a revised list of creditors ("LOC") of the Corporate Debtor was prepared and released by the RP on 22.11.2022. In accordance with the verified list of claims received, RP reconstituted the CoC. Accordingly, the RP filed I.A. No. 3727 of 2022 on 22.11.2022 to take on record the updated list of creditors as on 22.11.2022, and the change in the composition of the CoC. This Tribunal was pleased to allow I.A. No. 3727 of 2022, vide order dated 08.12.2022, taking

on record the updated list of creditors, as on 22.11.2022, and the change in the composition of the CoC.

7. In the meantime, the order of this Tribunal dated 08.12.2022 in IA No. 3727/2022 for updating of LOC came to be challenged by TSHL and TSPL in Company Appeal (AT) (Ins) No. 1546/2022 on 22.12.2022. The Hon'ble NCLAT disposed of the Appeal on 02.02.2023, holding that the order dated 08.12.2022 of this Hon'ble Tribunal required no interference. However, this Tribunal was directed to determine the applicable rate or interest qua ARCIL as per the Admission Order, which was pending in M.A. No. 2886/2019 filed by the Applicant before this Tribunal in terms of the Admission Order.
8. As per the voting percentage of COC members in the final LOC, the proposed resolution plans for resolution of debts of the Corporate Debtor were put to vote on 19.06.2023, and voting concluded on 22.06.2023. The said process resulted in COC according approval on one of the resolution plans which was declared as the successful resolution applicant. The application for approval of the said plan is currently pending before this Hon'ble Tribunal in I.A. No. 2830/2023.
9. Pursuant to the abovementioned order of the Hon'ble NCLAT, M.A. No. 2886/2019 filed by the Applicant came to be heard finally on 14.03.2023 and this Tribunal reserved the said applications for judgment. Subsequently, on 21.07.2023, this Hon'ble Tribunal in M.A. No. 2886/2019 pronounced its judgement, affirming the claim verification at 22% p.a., compounded with

monthly rest, as verified by the Applicant to be the correct rate applicable for debt owed by the Corporate Debtor to ARCIL. Aggrieved by the order of this Hon'ble Tribunal, TSHL and THPL by way of an appeal, i.e. Company Appeal (AT)(Ins.) No. 1114-1115 of 2023, assailed the matter before Hon'ble NCLAT on 20.08.2023. The Hon'ble NCLAT vide its Order dated 21.11.2023 ('NCLAT Order') set-aside the judgment of this Tribunal dated 21.07.2023 and held that that the applicable ROI for determination of claim amount shall be 14.85% p.a., and not 22% p.a. The NCLAT Order at paragraph 33 of the Order directed the Resolution Professional as follows: "*In the facts of the present case, we are of the view that the Resolution Professional may re-verify the claim of the ARCIL as per the rate of interest of 14.85% within two weeks and submit it before the CoC as well as to the Successful Resolution Applicant who shall prepare an Addendum to be placed before the CoC within a period of two weeks thereafter. The Resolution Professional should compute the claim of the ARCIL on the basis of rate of interest as indicated above ...*" (Emphasis Supplied)

10. While the reverification of ARCIL's claim was being carried out by the Applicant in terms of NCLAT's directions (as mentioned above), Pegasus sent an email on 27.11.2023, asking for reverification of its claims. Through the said email, Pegasus informed the Applicant regarding, inter alia, the following relevant factors for reverification of its claims:

- a. the Hon'ble National Company Law Appellate Tribunal ("NCLAT") while deciding the appeal bearing Company Appeal (AT)(Insol.) No. 1114-1115/2023 (wherein NCLAT was seized of the question of applicable rate of interest for the loan dues of the Corporate Debtor towards Asset Reconstruction Company (India) Limited, another financial creditor of the Corporate Debtor) vide order dated 21.11.2023 ("NCLAT Order") held that 14.85%p.a., at monthly rest, will be the applicable rate of interest for ARCIL 's loan, and rejected applicability of 22% p.a., at monthly rest;
 - b. Pegasus stands on the same footing as ARCIL;
 - c. Pegasus gives its consent to the Applicant for redetermination of its claim of dues with contractual rate of interest as agreed by the Borrower.
11. In response to the said email, the Applicant vide email dated 28.11.2023 sought detailed calculation along with supporting documents from Pegasus. Pegasus replied to the Applicant's email on 29.11.2023, seeking some time to provide response.
12. While the Applicant, as per Regulation 14(2) of CIRP Regulations, has sought clarifications from Pegasus (as mentioned above, however since the request has been received on 27.11.2023 i.e., much after the resolution plan was even taken up for voting, was approved and now the same is pending approval before this Hon'ble Tribunal, the Applicant is filing the present Application

seeking appropriate directions and / or permission regarding revision of the admitted claim in view of the additional information/ request received at this stage. The extant legal position propounded by this Hon'ble Tribunal as well as the Hon'ble NCLAT is that for any fresh claim or revision of claims subsequent to timeline stipulated in Public Announcement, and more so subsequent to issuance of request for resolution plan, cannot be done without justification/reasons for delay and/or without directions/permission of Hon'ble Adjudicating Authority. The email dated 27.11.2023 of Pegasus provides such additional information i.e., in view of the NCLAT Order, Pegasus claims to stand on the same footing as that of ARCIL. This warrants revision of the claims of Pegasus. Hence this application.

Reply of the Respondent:

13. The Respondent has neither filed its reply nor indicated its intention to contest the case of the Applicant. However, the CoC of Corporate Debtor have filed their written submissions.

FINDINGS

14. We have heard the Counsel for the Applicant and the Respondent at length. We have perused the records.

15. Counsel for the Applicant states that the Corporate Debtor was admitted into CIRP on 31.05.2019 and a period of over 42 months has now elapsed since the insolvency commencement date. Counsel for the Applicant submits that the NCLAT Order dated 21st November, 2023 is based on the premise that the original consortium of lenders had agreed to a uniform rate of interest @ 12.85% monthly compounded. Accordingly, the Hon'ble NCLAT directed a uniform rate of interest at the rate of 14.85% p.a. after including penal interest @ 2% p.a. to be applied to the claims of ARCIL. Ld. Counsel for the Applicant apprised the Tribunal of the fact that Pegasus had addressed an email dated 27th November, 2023 to the Resolution Professional inter alia stating that the claim of Pegasus stands on the same footing as ARCIL and accordingly, Pegasus requested the Applicant/RP to redetermine its claim as per the contractual rate of interest in the original loan document.
16. Counsel for the Applicant further submits that in compliance with the NCLAT Order dated 21st November 2023, the Successful Resolution Applicant had submitted an Addendum dated 09th December, 2023 with the Resolution Professional. The Addendum merely clarifies and confirms that no change is proposed to the resolution plan in any manner and reiterated that the amount available for secured financial creditor for distribution will continue to be Rs. 888,69,78,878/- as provided for in the resolution plan. Counsel for the Applicant has submitted that the Successful Resolution Applicant has placed its

no-objection vide Addendum dated 09.12.2023 to the manner in which the amount available for secured financial creditors for distribution, may be allocated/distributed among the secured financial creditors. Therefore, the Learned Counsel for the Applicant contends that even if there is any change in the calculation of admitted claims of the secured financial creditors, only the inter-se distribution amongst the secured financial creditors would change and the same would have no impact on any other stakeholder(s) concerned. Counsel for the Applicant submits that the inter-se distribution between the secured financial creditors is the sole prerogative of the CoC and it's a part of the CoC's commercial wisdom. Counsel for the Applicant relied upon the Order of this Tribunal in Halliburton Offshore Services Inc v/s . Mercator Petroleum Ltd (I.A. No. 3541/2022 in CP(IB) No. 3434/2019), wherein it was *inter-alia* held that once the financial creditors have inter se agreed to share the proceeds given by the resolution application in a certain ratio, any increase or decrease in the amount of the claim is of no consequence.

17. We have carefully weighed, examined and considered the submissions advanced by the Ld. Counsel for the Applicant.
18. This is a case where the Respondent i.e. Pegasus has addressed an email dated 27.11.2023 to the Applicant referring to the Order of the Hon'ble NCLAT dated 21.11.2023 passed in Company Appeal (AT)(Ins.) No. 1114-1115 of 2023. The extracts of the email dated 27.11.2023 are reproduced hereinbelow:

“This is in reference to the order of Hon'ble NCLAT dated 21.11.2023 passed in Company Appeal (AT) (Insolvency) No.1114-1115 of 2023 (M/s Tulip Star Hotels Ltd. & Another Vs Mr. Anish Niranjana Nanavaty & others) whereby the Hon'ble NCLAT has held that the rate of interest which can be charged by ARCIL is only 14.85%. Further, it is observed by Hon'ble NCLAT in the said order that redetermination of claim of ARCIL as directed by the said order shall also lead to determination of the correct amount of debt which was owed by the Corporate Debtor.

Thus, the claim of Pegasus stands on the same footing as of Arcil. Therefore, Pegasus hereby grants its consent to you to do redetermination of its claim of dues with contractual rate of interest as agreed by the Borrower in the original loan document...

I (as assignee of Indian Bank)) ("Pegasus") is required to file a revised claim in view of the above-mentioned order of Hon'ble NCLAT dated 21.11.2023.”

19. Based on the above e-mail, the Applicant in his capacity as a Resolution Professional of the Corporate Debtor, and in exercise of his powers under Regulation 14 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is seeking to revise the amounts of claims admitted, as soon as may be practicable, when he comes across any additional information. The reason as to why the Applicant is seeking directions from the Adjudicating Authority in this regard is that as per the law, for any fresh claim or revision of claims subsequent to the timeline stipulated in public

announcement and more particularly so, subsequent to the issuance of request for resolution plan, cannot be done without directions/permission from the Adjudicating Authority.

20. We shall first advert to Regulation 14(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 the text of which is reproduced as follows: *“(2) The interim resolution professional or the resolution professional, as the case may be, shall revise the amounts of claims admitted, including the estimates of claims made under sub-regulation (1), as soon as may be practicable, when he comes across additional information warranting such revision.”*

Thus, as per the above-quoted Regulation, the Applicant is clearly entitled to revise the claim of the Respondent based on the additional information he came across warranting such revision and normally, no permission or direction from the Adjudicating Authority is required to be sought.

21. However, in the above-captioned Company Petition, the CIRP has reached an advanced/matured stage where the resolution plan has been approved by the CoC and the same is pending for the approval of Adjudicating Authority u/s 31 of the Code vide IA No. 2830/2023. We find that in the present case, after the Order of the Hon'ble NCLAT dated 21.11.2023 determining the applicable rate of interest for determination of claim filed by ARCIL is 14.85% p.a., the Successful Resolution Applicant has in compliance with the aforesaid NCLAT Order, submitted an Addendum dated 09.12.2023 which clarifies and

confirms that no change is proposed to the resolution plan in any manner and the said Addendum reiterated that the amount available for secured financial creditors for distribution will continue to be Rs. 888,69,78,878/- as provided for in the resolution plan. Further, we find that the Addendum also states that the Successful Resolution Applicant has no objection to the manner in which the proceeds available for secured financial creditors will be distributed *inter se*. Further, we also find that subsequent to the revision of claims of the two secured financial creditors viz. ARCIL and PEGASUS, only the ratio of distribution *inter se* will change and the same would have no bearing or impact on any other stakeholder. On perusal of the Written Submissions placed on record, we find that in the 32nd CoC meeting held on 13th December, 2023, the secured financial creditors agreed to distribute the proceeds of resolution plan, as indicated above, *inter se* in the ratio of 65.91:34.09 and the same was approved by 97.34% of the CoC through e-voting which was concluded on 19.12.2023.

22. As the amount available for secured financial creditors for distribution will continue to be same as before at Rs. 888,69,78,878/- and its *inter se* distribution among the secured financial creditors does not impact any other stakeholder, we conclude that there is no harm in revising the claim. Even otherwise, it is the duty of the Applicant under Regulation 14(2) of CIRP Regulations, 2016 to revise the claim whenever the Applicant as IRP/RP comes across any additional information warranting such revision. In the present case, there is

enough material and additional information with the RP warranting the revision of claim of Pegasus Asset Reconstruction Pvt Ltd (i.e. the Respondent).

23. In view of the above findings and foregoing discussions, we are inclined to allow this application, and thus, we allow the instant application permitting the Applicant to revise and re-verify the claim of the Respondent in view of the Hon'ble NCLAT Order dated 21.11.2023 in Company Appeal (AT)(Ins.) No. 1114-1115/2023 and email of the Respondent dated 27.11.2023. Accordingly, **I.A. No. 5606 of 2023** in the above-captioned company petition **stands allowed** and disposed of.

Sd/-

ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)