

**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)