

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1**

I.A. NO. 1343/2022

IN

CP (IB) No. 219/7/HDB/2017

IN THE MATTER OF VICEROY HOTELS LIMITED

Filed by

Dr. Govindarajula Venkata Narasimha Rao,
Resolution Professional of Viceroy Hotels Limited
Having place of office at Plot No.20, Sector-I,
Survey No.64, 4th Floor, Huda Techno Enclave,
Hyderabad, 500081
Email: raogvn@gmail.com

AND

**ON BEHALF OF
THE COMMITTEE OF CREDITORS**

**... Applicant/
Resolution Professional**

Date of order: 9th June 2023

Coram

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA
HON'BLE MEMBER (JUDICIAL)**

**SHRI CHARAN SINGH
HON'BLE MEMBER (TECHNICAL)**

Appearance:

For Applicant: Shri S. Ravi, Senior Counsel assisted by
Shri Shabbeer Ahmed and
Shri V. Aneesh and Shri Indraprateek, Advocates

PER: BENCH

ORDER

1. IA No. 1343/2022 is filed by the Resolution Professional under Section 30(6) & 31 of IBC, 2016 r/w regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 & Rule 11 of NCLT Rules, 2016, seeking approval of the resolution plan submitted by Anirudh Agro Farms Limited (**Resolution Applicant**) as duly approved by the Committee of Creditors with 95.82% votes.
2. To put concisely, the main petition filed by Financial Creditor, **M/s Asset Reconstruction Company (India) Limited** u/s 7 of IBC, 2016 was admitted by the Adjudicating Authority vide Order dated **12.03.2018** and ordered commencement of CIRP against the Corporate Debtor, **Viceroy Hotels Limited**. Shri K.K. Rao was appointed as Interim Resolution Professional (IRP), who continued as Resolution Professional (erstwhile RP).
3. On receipt of claims from the creditors pursuant to public announcement, the erstwhile Resolution Professional constituted the Committee of Creditors (COC) comprising of Financial Creditors of the Corporate Debtor as under:-

S.No	Creditor	Admitted	%
1	Asset Reconstruction Company (India) Ltd	3,47,16,18,364	48.61%
2	State Bank Of India	1,61,28,02,936	22.58%
3	Canara Bank	71,83,15,559	10.06%
4	International Asset Reconstruction Co. Pvt Ltd	60,07,17,360	8.41%
5	Edelweiss Asset Reconstruction Company Limited	27,35,32,417	3.83%
6	Mr. Ayodhya Rami Reddy Alla	18,35,65,667	2.57%
7	Union Bank of India	9,96,33,013	1.39%
8	ASF Infrastructure Pvt Ltd.,	7,14,83,000	1.00%
9	UCO Bank	4,00,75,147	0.56%
10	Oriental Bank of Commerce	2,69,48,202	0.38%
11	Sri G. Vishnu Dev	1,26,52,645	0.18%
12	Bank of Maharashtra	1,05,32,642	0.15%
13	Sri. A.V. Seshakumar Reddy	36,67,500	0.05%
14	Sri. Raj Kumar Rupani	19,00,000	0.03%
15	Sri. P. Mallinath	18,63,720	0.03%
16	Sri. G. Sriram	16,43,200	0.02%
17	Sri. Aditya Soni	15,57,161	0.02%
18	Smt. Meena Asawa	15,57,161	0.02%
19	Mr. P. Jayaprakash Reddy	13,29,821	0.02%
20	Smt. A. Vasantha	11,18,232	0.02%
21	Sri. G. Vijaya Reddy	11,09,160	0.02%

S.No	Creditor	Admitted	%
22	Sri. K. Srinivas Rao	10,43,683	0.01%
23	Sri. Santosh Asawa	7,78,581	0.01%
24	Smt. Sunita Asawa	7,78,581	0.01%
25	Smt. Premlatha Soni	7,78,581	0.01%
26	Smt. Anushree Soni	7,78,581	0.01%
27	Mr. Mario Alphonse Dyas	6,85,748	0.01%
	Total	7,14,24,66,662	100.00%

4. It is stated that the erstwhile Resolution Professional conducted a total of 19 meetings of the CoC during the CIRP. The CoC in its 18th meeting held on 11.03.2019 and 12.03.2019 evaluated the Resolution Plans submitted by the following prospective Resolution Applicants and the same was put for voting:-
- (a) ARCIL
 - (b) Unison Hotels Private Limited
 - (C) CFM Asset Reconstruction Private Limited (CFM ARC)
5. The CoC with 88% voting approved the Resolution Plan submitted by CFM ARC. The erstwhile Resolution Professional moved IA No. 281/2019 seeking approval of the Resolution Plan submitted by CFM ARC, which was rejected by this Tribunal on 01.09.2021 on the ground that an ARC would not be capable of implementing the resolution plan without prior approval of RBI. It is further stated that

the erstwhile RP was running the Corporate Debtor as a going concern.

6. While things stood thus, the CoC preferred IA No. 27 of 2022 before this Tribunal seeking directions for conducting a meeting of CoC for change of erstwhile Resolution Professional and this Tribunal passed order on 22.03.2022 directing the erstwhile RP to conduct a meeting of the CoC. Pursuant to the said direction of this Tribunal, the erstwhile Resolution Professional conducted the 19th CoC meeting on 28.03.2022 and passed a resolution to replace the erstwhile Resolution Professional Shri K.K. Rao with Dr. G.V.Narasimha Rao, Applicant herein, which was subsequently confirmed by this Tribunal vide order dated 13.04.2022.
7. On his taking over charge as Resolution Professional, the Applicant herein moved IA No. 443 of 2022 seeking permission of the Tribunal to issue a Revised Form G inviting prospective Resolution Applicants to submit their Expressions of Interest (EOI), which was allowed by this Tribunal vide order dated 14.06.2022 with a direction to the RP to complete the CIRP within a period of 90 days from the date of the order in the best interest of all the stakeholders of Corporate Debtor.
8. It is further stated by the Applicant that on his taking over charge as Resolution Professional, seven meetings of the CoC were convened by him.. Pursuant to this Tribunal order dated 14.06.2022, the Applicant got published Form-G on 18.06.2022 in Andhra Prabha and Business Standard Newspapers inviting EOI from the interested

Resolution Applicants by 04.07.2022 and the last date for submission of resolution plan was 08.08.2022.

9. The Applicant states that 27 EOIs from various entities were received and the said entities were provided with the Request for Resolution Plans (RFRP), Information Memorandum and other information and accessibility to the Virtual Data Room (VDR) to the Prospective Resolution Applicants. The following five Prospective Resolution Applicants submitted their Resolution Plans which were placed before the CoC in its 23rd Meeting held on 29.08.2022.

- a) Innopark (India) Private Limited;
- b) Anirudh Agro Farms Limited;
- c) Terminus Hotels & Resorts Pvt. Ltd.;
- d) Kailash Darshan Housing Development (Gujarat) Pvt. Ltd.;
- e) Unison Hotels Private Limited.

10. In the 23rd meeting it was also resolved to move an application before this Tribunal seeking further extension of 60 days to complete the whole process and the same was filed bearing IA No. 896/2022, which was allowed by this Tribunal vide order dated 02.09.2022 and the CIRP period stood extended till 11.11.2022.

11. It is averred that the erstwhile RP appointed the following valuers for determining the liquidation value of the Corporate Debtor as on the CIRP commencement date i.e. 12.03.2018 and the valuation report is as under:-

Sr. No	Name of valuer	Date of valuation report	Fair value (Rs. Crore)	Liquidation value (Rs. Crore)
1.	G S Mittal	12-03-2018	274.53	231.10
2.	Pro Valuer (OPC) Pvt Ltd	12-03-2018	330.08	222.43
	Average value		302.31	226.76

12. Further, in the 24th CoC meeting dated 7th September 2022, it was resolved to conduct revised valuation on roll forward basis as on 11.07.2022 (since the earlier valuation is more than 4 years old), which would further support the CoC in evaluating the plans considering current value of the assets.

The valuers submitted the reports valuing assets of Corporate Debtor as under:

Sr. No	Name of valuer	Date of valuation report	Fair value (Rs. Crore)	Liquidation value (Rs. Crore)
1.	G S Mittal	11-07-2022	401.66	207.79
2.	Pro Valuer (OPC) Pvt Ltd	11-07-2022	312.73	197.88
	Average value		357.19	202.83

Copy of Valuation Reports dated 11.07.2022 submitted by the aforesaid valuers is annexed hereto and marked as **Annexure – 11**.

13. It is averred that out of the five Resolution Plans submitted by the prospective Resolution Applicants, two PRAs viz., Unison Hotels Private Limited and Terminus Hotels & Resorts Private Limited withdrew from the fray and out of the remaining three, only Kailash Darshan Housing Development (Gujarat) Pvt. Ltd and Anirudh Agro Farms Limited submitted the revised resolution plans pursuant to the changes suggested by the CoC. The CoC observed that the resolution plan of Innopark (India) Private limited was a conditional plan and further the CoC observed that the revised resolution plan of Kailash

Darshan Housing Development (Gujarat) Pvt. Limited was not compliant with the RFRP conditions.

14. As such, the resolution plan submitted by Anirudh Agro Farms Limited was deliberated upon in the 26th CoC meeting held on 07.10.2022. The Members of the Committee of Creditors evaluated the said Resolution Plan strictly as per the evaluation matrix and Section 29A. After evaluating in terms of both qualitative and quantitative criteria and aggregate, the said resolution plan was put for e-voting from 11.10.2022 to 26.10.2022 and the timelines of voting were further extended from time to time and finally till 10.11.2022. The Resolution Plan submitted by **Anirudh Agro Farms Limited** (Successful Resolution Applicant :SRA”) was approved by members of CoC with **95.82%** voting share, pursuant to which Letter of Intent (LoI) was issued on 10.11.2022. The Successful Resolution Applicant has furnished a Performance Bank Guarantee of Rs. 16.85 crores to the RP as stipulated in the RFRP document and as per the terms of LoI. Thus submitting, prayed the Tribunal to approve the Resolution plan submitted by **Anirudh Agro Farms Limited**.

15. Contour of the Resolution Plan

- (A) **Anirudh Agro Farms Limited** who submitted the resolution plan is a public company incorporated on 29.12.1995. The Company is engaged in real estate development, purchase and sale of agriculture lands, having its registered office at 8-2-120/112/88 & 89, Aparna Crest, 3rd Floor, Road No.2, Banjara Hills, Hyderabad - 500034.

(B) The CoC comprised of the following Financial creditors and the distribution of voting share among them is as under:-

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1	Asset Reconstruction Company (India) Ltd	48.61%	Voted in favour
2	State Bank Of India	22.58%	Voted in favour
3	Canara Bank	10.06%	Voted in favour
4	International Asset Reconstruction Co. Pvt Ltd	8.41%	Voted in favour
5	Edelweiss Asset Reconstruction Company Limited	3.83%	Voted in favour
6	UCO Bank	0.56%	Voted in favour
7	Bank of Maharashtra	0.15%	Abstained
8	Mr. Ayodhya Rami Reddy Alla	2.57%	Abstained
9	Union Bank of India	1.39%	Voted in favour
10	ASF Infrastructure Pvt Ltd.,	1.00%	Abstained
11	Oriental Bank of Commerce	0.38%	Voted in favour
12	Sri G. Vishnu Dev	0.18%	Abstained
13	Sri.A.V. Seshakumar Reddy	0.05%	Abstained
14	Sri.RajKumarRupani	0.03%	Abstained
15	Sri.P.Mallinath	0.03%	Abstained
16	Sri.G.Sriram	0.02%	Abstained
17	Sri.AdityaSoni	0.02%	Abstained

18	Smt.MeenaAsawa	0.02%	Abstained
19	Mr.P.JayaprakashReddy	0.02%	Abstained
20	Smt.A.Vasantha	0.02%	Abstained
		100%	

(C) **FINANCIAL PROPOSALS:** The amount provided to the stakeholders of the Corporate Debtor is Rs. 168.50 crores and includes buy back of equity from the assenting FCs at a guaranteed amount of Rs. 17 crores, which is tabulated below:-

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	1.06	1.06	0.01	-
		(ii) who voted in favour of the resolution plan	677.67	671.70	165.94	24.25%

		Total[(a) + (b)]	678.77	672.76		
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	30.20	30.20	-	-
		(b) Other than (a) above:	431.08	28.94	0.09	0.29%
		(i) who did not vote in favour of the resolution Plan	12.66	12.66	0.45	3.55%
		(ii) who voted in favour of the resolution plan				
		Total[(a) + (b)]	473.97	71.81	0.53	
3	Operational Creditors	(a) Related Party of Corporate Debtor	-	-	-	-
		(b) Other than (a) above:	89.13	-	-	-
		(i) Government	0.30	0.29	0.29	100%
		(ii) Workmen	0.31	0.31	0.31	100%
		(iii) Employees	35.26	22.80	-	-
		(iv) Others				
		Total[(a) + (b)]	125.01	23.40	0.6	
4	Other debts and dues	Nil	-	-	-	-
Grand Total			1277.73	767.98		

The break-up of the amount INR 168.50 crores to be invested by the Resolution Applicant for various purposes are detailed as under:

Creditors	Proposed payment under Resolution Plan
Unpaid CIRP Costs	Any deficit post adjustment from cash accruals of the Company, to be infused by RA (over and above plan value)
Workman Claims	50,00,000 (Lower of 50 L or admitted claims in full)
Employee Claims	40,00,000 (Lower of 40 L or admitted claims in full)
Operational Creditors	50,00,000
Payment towards discharge of Statutory Dues to the Statutory Dues Creditors	10,00,000 (Lower of 10 L or admitted claims in full)
Financial Creditors	167 Crores (Rs. 150 Crores in cash as per below table and 4% equity shares with buy back guarantee of 17 Crores)
Total	168.50 Crores

(D) Timeline of the plan:-

Timeline	Amount	Tranche
Trigger Date (As defined in the Resolution Plan)	Rs. 51.50 Crores (Rupees Fifty-One Crores and Fifty Lakhs only) (“ Upfront Cash ”)	Tranche 1
Within 135 days of the Trigger Date	Rs. 50.00 Crores (Rupees Fifty Crores)	Tranche 2
Within 315 days of the Trigger Date	Rs. 45.00 Crores (Rupees Forty-Five Crores)	Tranche 3
Within 495 days of the Trigger Date	Rs. 2.50 Crores (Rupees Two Crores and Fifty Lakhs)	Tranche 4
Within 675 days of the Trigger Date	Rs. 2.50 Crores (Rupees Two Crores and Fifty Lakhs)	Tranche 5
Within 25 months of Trigger Date	Buy back of equity from the FCs at a guaranteed amount of Rs. 17 crores As per Clause 5.2.9 of the Resolution Plan	
Total	Rs. 168.5 Crores	

As per Clause 1.1 of the Resolution Plan, Trigger Date has been defined as:

- i. 45th (Forty fifth) day from the date on which the copy of the NCLT Approval Order is received from the website of the NCLT by the Resolution Applicant and no stay/injunction is

granted by any court/tribunal with respect to this Resolution Plan; or

- ii. 45th (Forty fifth) day from the date on which any stay/injunction granted on the implementation of this Resolution Plan is vacated by the relevant court/tribunal.
- iii. The Resolution Plan proposes that the Financial Creditors receiving payment in the Tranches 2 to 5 shall have first Pari-passu charge on the entire fixed assets and the current assets of the Corporate Debtor.
- iv. The Resolutions passed pursuant to 26th meeting of CoC proposes that Rs. 167 Crores which is payable to the FCs shall be paid to in the following manner:

Type	Lender	Claim admitted (in crores)	%age of respective class of creditors	%age share in CoC	Distribution of Plan value allocated to FCs (in crores)
<i>Secured FC (Fixed Asset)</i>	ARCIL	347.2	60%	49%	95.8
	SBI	161.3	28%	23%	44.5
	Canara	71.8	12%	10%	19.8
		580.3	100%	82%	160.1
<i>Secured FC (Current assets)</i>	IARC	60.1	66%	8%	3.6

Type	Lender	Claim admitted (in crores)	%age of respective class of creditors	%age share in CoC	Distribution of Plan value allocated to FCs (in crores)
	Edelweiss	27.4	30%	4%	1.6
	UCO	4	4%	1%	0.2
		91.4	100%	13%	5.4
<i>Unsecured FCs</i>	OBC	2.7	6%	0%	0.1
	UBI	10	23%	1%	0.35
	Others	29.9	70%	4%	1.06
		42.5	100%	5%	1.51
Total		714.2		100%	167.00

The amount of Rs. 1,50,00,000/- (Rupees One Crores Fifty Lakhs Only) payable to the other creditors would be paid under Tranche 1 in the following manner:

- i. Payment to workmen towards discharge of workmen dues: Rs. 50,00,000/- (Rs. Fifty Lakhs) or the admitted claim, whichever is lower.
- ii. Payment to employees towards discharge of employee dues: Rs. 40,00,000/- (Rs. Forty Lakhs) or the admitted claim, whichever is lower.

- iii. Payment to other Operational Creditors towards discharge of Operational Debt: Rs. 50,00,000/- (Rs. Fifty Lakhs).
- iv. Payment towards discharge of Statutory Dues: Rs. 10,00,000/- (Rs. Ten Lakhs) or the admitted claim, whichever is lower.

(E) PROJECTED BUSINESS PLAN

- i. Capex Plan: The Corporate Debtor currently owns two properties where Marriott Group is operating a five star hotel under the name and style “Marriott” and three star hotel under the name and style “Courtyard”. The SRA projects that debt shall be infused into the company to fund the capital expenditure required to operationalize the remaining rooms at the Courtyard Hotel. Debt is expected to be raised either from external sources or by way of infusion from the SRA. A mix of internal accruals and debt infusion is expected to complete the 50 Crores INR capex exercise over a two year period. The debt infusion (if made by the SRA) is expected to carry an interest rate of 20% per annum.
- ii. Expected Financial Performance: The SRA proposes to improve the operation efficiency of the CD and add additional rooms in the hotel properties of the CD. The SRA projects that the Corporate Debtor would generate revenue of Rs. 112 Crores in Year 3 with an EBITDA of Rs. 37 Crores at an EBITDA margin of 33%.
- iii. Working with Existing Operator: The SRA expects to work closely with existing hotel operators in drafting the annual budgets and capex plan so as to balance hotel experience for the guests as well as ensure financial performance. The aim of the engagement is for optimal

capital allocation across capital expenditure and operational expenditure to deliver shareholder value.

- iv. Use of Cash Generated: The SRA proposes to use the Cash build up from operations towards acquiring other hotel assets in IBC to leverage upon the experience of managing the corporate debtor in delivering shareholder value.

Shareholding after CIRP is proposed as under

Shareholder	No. of Equity Shares	Percentage of shareholding
Resolution Applicant/Nominees/SPV	6,00,00,000	95%
Existing Public Shareholders	6,31,579	1%
Assenting Financial Creditors	25,26,316	4%
Total	6,31,57,895	100%

F. MONITORING COMMITTEE

The Monitoring Committee shall comprise of two representatives of the COC and three members nominated by the SRA. The Monitoring Committee shall supervise the implementation of the Resolution Plan and shall be required and entitled to do all such acts, deeds, matters and things as may be necessary, desirable or expedient in order to supervise implementation of the Resolution Plan and shall act under the supervision of this Hon'ble Tribunal up to the Trigger Date. On

and from the NCLT Approval Date till the Trigger Date and upon payment of the Upfront Cash, the day-to-day functioning of the Corporate Debtor shall be controlled and managed by the Monitoring Committee, in accordance with the terms of this Resolution Plan. All decisions of the Monitoring Committee shall be taken by the simple majority of the members of the Monitoring Committee and shall require the affirmative vote of the SRA at all times.

G. Compliance of mandatory contents of Resolution Plan under the Code and CIRP Regulations:-

The Applicant has conducted a thorough compliance check of the Resolution Plan in terms of the Code as well as Regulations 38 & 39 of the Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process) Regulations, 2016 (herein after referred to as Regulation) and has submitted his Form-H under Regulation 39 (4). It is submitted that Resolution Applicant has filed an Affidavit declaring that they are eligible to submit the plan under Section 29A of the Code and that the contents of the said affidavit are in order. The fair value and Liquidation value as submitted in Form-H is Rs. 357.19 Crores and Rs. 202.83 respectively.

- 16.** In the above backdrop we heard Shri Shabeer Ahmed, Learned Counsel for the Resolution Professional. He submits that the Resolution Plan meets the requirement of Section 30 (2) of the Code, as under:-

- (a) Provides for payment towards CIRP Cost on priority in terms of Section 30 (2) (a) of IBC. The outstanding CIRP costs shall be paid as set out in Annexure-1 of the Plan. In the event the cash flow/cash balance of the Corporate Debtor is insufficient to discharge the outstanding CIRP costs, the remaining amounts of the outstanding CIRP costs shall be brought in by the Resolution Applicant over and above the upfront cash.
- (b) The Plan provides for payment of amount provided under the Resolution Plan of the operational creditors on priority in terms of Section 30 (2)(b).

Payment to workmen towards discharge of workmen dues	Rs. 50,00,000/- (Rs. Fifty Lakhs) or the admitted claim, whichever is lower	In case the liquidation amount which is payable to these creditors as per Section 53 of the IBC is higher than the amounts mentioned herein, then such liquidation amount shall be paid to such creditor(s).
Payment to employees towards discharge of employee dues	Rs. 40,00,000/- (Rs. Forty Lakhs) or the admitted claim, whichever is lower	
Payment to other Operational Creditors towards discharge of Operational Debt	Rs. 50,00,000/- (Rs. Fifty Lakhs)	

Payment towards discharge of Statutory Dues (Rs. 10,00,000/- (Rs. Ten Lakhs) or the admitted claim, whichever is lower	
---	---	--

(c) The Resolution Plan provides for payment to the dissenting financial creditors proportionately from the upfront cash and/or the total Resolution Plan Amount on priority to the payment to the Assenting Financial creditors, in each tranche and shall not be less than the amount that would be payable to such Financial Creditors in accordance with Section 53 (1) of the IBC, in the event of liquidation of the Company {Clause 3.7 of the Resolution Plan}.

17. The Resolution Plan is in compliance of Regulation 38 of the Regulations in the following manner:

- (a) The Plan provides for payment of 0.9% to the admitted claims of the operational creditor on priority.
- (b) Declaration by the Resolution Applicant that the Resolution Plan has considered the interest of all the stakeholders of the Corporate Debtor, keeping in view the objectives of the Code (Regulation 38 (1A)). {Clause 9.1}
- (c) Declaration by the Resolution Applicant that neither the Resolution Applicant nor any of his related party has either failed or contributed to the failure of the implementation of any

other approved Resolution Plan. (Regulation 38 (1B)){clause 9.5.2}

18. ***In K. Sashidhar v. Indian Overseas Bank & Others (in Civil Appeal No. 10673/2018) the Hon’ble Apex Court*** held that, “if the CoC had approved the Resolution Plan by 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 proposal, the Adjudicating Authority (NCLT) is required to satisfy itself that the resolution plan as approved by CoC meets the requirements specified in Section 30(2). No more and no less”.
19. The Hon’ble Supreme Court has further held at para 35 of the above judgement that ***the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan “as approved” by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements.***
20. The Hon’ble Supreme Court in **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors**, held that ***“the limited judicial review available to AA has to be within the four corners of section 30(2) of the Code. Such review can in no circumstance trespass upon a business decision of the majority of***

the CoC. As such the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved”.

21. The Hon’ble Supreme Court of India, in the recent ruling in re **Vallal RCK vs M/s Siva Industries and Holdings Limited & Ors**, has held as under:-

*“21. This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. A reference in this respect could be made to the judgments of this Court in the cases of **K. Sashidhar v. Indian Overseas Bank and Others, Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Others, Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others, Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another, and Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and Others.***

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

“95.However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicatory authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As

we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC.....”

- 22.** The Ld. Senior Counsel further stated that as per the Information Memorandum, the dues of the Corporate Debtor towards statutory claims are NIL and the Ld. Senior Counsel stated that the judgement of State Tax Officer vs. Rainbow Paper Limited 2022 SCC On Line SC 1162 would not come in the way of approval of the Resolution Plan. The Ld. Senior Counsel would further contend that this Tribunal had earlier dismissed IA No. 189 of 2019 and IA 696/2019 which were filed by the Department of Central Tax and Customs seeking inclusion of its claims of Rs.61,98,105/- and Rs. 26,58,79,824/- respectively towards Service Tax arrears, with an observation that the claims of the Department were premature as the tax liability of the Corporate Debtor was not crystallised by the Department since there are appeals pending before the Appellate Authority and Hon’ble High Court. Further while disposing of the IAs, the Tribunal granted liberty to the Department to proceed against the Corporate Debtor after completion of the CIRP. As such, there is no liability as on this date against the Corporate Debtor.

23. Our finding.

We are fully conscious of the need to keep judicial intervention or innovation from NCLT at its bare minimum and should not disturb the foundational principles of the IBC, as the law laid down in catena of rulings of Hon'ble Supreme Court of India, including in the rulings referred above, However at the same time we cannot overlook or brush aside glaring breach of compliance of a statutory mandatory provision by the successful resolution applicant when noticed.

24. Reliance in this regard can be placed on the ruling of Hon'ble Supreme Court of India, in M.K. Rajagopalan vs Dr. Pariasamy Palani Gounder & Another, 2023 Live Law (SC) 403, on the aspect of commercial wisdom of CoC in approval of resolution plan, the Bench observed that:

“The principles underlying the decisions of this Court respecting the commercial wisdom of CoC cannot be over-expanded to brush aside a significant shortcoming in the decision making of CoC when it had not duly taken note of the operation of any provision of law for the time being in force.” (Emphasis is ours).

25. We therefore, proceed to see whether there is any significant shortcoming in complying any of the mandatory provision of law for the time being in force.

26. In this context we refer to the notification dated 24.01.2019, whereunder a provision relating to submission of Performance Bank

Guarantee was added in IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Here it is useful to reiterate the said provision, which is as follows:

36B 4(A) of CIRP Regulations.

“36B. Request for resolution plans.

*(4A) The request for resolution plans shall require the resolution applicant, in case its resolution plan is approved under sub-section (4) of section 30, to provide a performance security within the time specified therein and such performance security shall stand forfeited if the resolution applicant of such plan, after its approval by the Adjudicating Authority, fails to implement or contributes to the failure of implementation of that plan **in accordance with the terms of the plan and its implementation schedule.**” [Emphasis supplied]*

27. A perusal of Compliance Certificate (Form-H) filed by the Resolution Professional discloses that in compliance of Request for Resolution Plan (RFRP), Bank Guarantee for Rs.16.85 crores, has been submitted by the Resolution Applicant. A copy of the Bank Guarantee bearing No.46051 GF 22027605 dated 10.11.2022 also has been filed along with this application, which is at page 203 of the petition. The said Bank Guarantee has been issued by Kotak Mahindra Bank Limited in favour of the ARC and the applicant therein is the Successful Resolution Applicant, for a period of six months commencing from 10.11.2022.

28. As per the Resolution Plan submitted by the Committee of Creditors (CoC) timeline for payment of Total Resolution Plan Amount of Rs.168.50 crores in five tranches is as follows:

- i. **Tranche 1-** Amount Crores (Upfront Cash) shall be paid by the Successful Resolution Applicant on the 45th day of the NCLA approval order (Trigger Date).
- ii. **Tranche 2** – Within 135 days of the Trigger Date, Rs. 50 Crores shall be paid by the RA.
- iii. **Tranche 3** – Within 315 days of the Trigger Date, Rs. 45 Crores shall be paid by RA.
- iv. **Tranche 4** – Within 495 days of the Trigger Date, Rs. 2.50 Crores shall be paid by the RA.
- v. **Tranche 5** – Within 675 days of the Trigger Date, Rs. 2.50 Crores shall be paid by the RA.
- vi. The Resolution Plan also provides for buy back of equity from the assenting FCs at a guaranteed amount of Rs. 17 Crores as per Clause 52.9 of the Resolution Plan.

29. Thus, the above sum is payable, in all, within 675 days. Needless to say that in terms of Regulation 36B (4A) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Performance Bank Guarantee shall cover the Plan Implementation Schedule.

30. In the above backdrop, having found that the Performance Bank Guarantee furnished by the Successful Resolution Applicant since does not cover the Plan Implementation Schedule, during the hearing on 09.12.2022, we have asked the Resolution Professional to explain how he had ensured compliance of Regulation 36B (4A) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Pursuant thereto, the Successful

Resolution Applicant has filed a Clarificatory Undertaking (annexed at page 38 of the memo dated 15.12.2022) stating that:

“SRA has proposed payment to all creditors in five tranches as per the approved resolution plan and the payments made under any prior tranches are liable to the forfeited if the SRA fails to make payments under the subsequent tranches as per the agreed terms and timelines given in the Resolution Plan”.

31. Having perused the above undertaking, we are of the considered view that the above ‘clarification undertaking’ of the Successful Resolution Applicant as filed cannot be accepted or even construed as compliance of the above mandatory Regulation, for the simple reason that unilateral clarificatory undertaking cannot result in extending Bank Guarantee beyond six months from 10.11.2022.

32. Therefore, it is not in doubt that the Performance Bank Guarantee furnished on 10.11.2022 by the Successful Resolution Applicant had expired by efflux of time specified therein, especially in the absence of any record placed before this Tribunal evidencing extension of Performance Bank Guarantee beyond the initial six months period. Therefore, ‘Performance Bank Guarantee’ from the Successful Resolution Applicant being *non-est*, in the eye of law as on date, non-compliance of the mandatory Regulation 36B (4A) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is apparent. In that view of the matter and following the ruling of the Hon’ble Supreme Court of India, in **M.K. Rajagopalan vs Dr. Pariasamy Plalani Gounder & Another** (supra), we

have no alternative but to reject the Resolution Plan on the ground of non-compliance of the statutory provision. However, this order of ours does not preclude the Successful Resolution Applicant from pursuing remedies, if any, available to him under law in this regard.

33. Therefore, under these circumstances, following the ruling in re, M.K. Rajagopalan, *supra*, we hereby hold that the resolution plan of the successful resolution applicant as submitted before us, being in breach of the statutory provision, is liable to be rejected. We accordingly reject the same.

34. In the light of rejection of Resolution Plan, as per sub-clause (1)(b) of section 33 of the I&B Code, 2016, this Tribunal shall pass an order requiring the Corporate Debtor to be liquidated in the manner as laid down in Chapter-III. However, considering the facts and circumstances of the case, besides liquidation of the Corporate Debtor being the last resort, we hereby direct continuation of the Corporate Insolvency Resolution Process of the Corporate Debtor by directing the Resolution Professional to issue fresh Form-G and complete the resolution process as expeditiously as possible, but not later than sixty days from the date of this order.

35. This petition is therefore dismissed accordingly. No costs.

CHARAN SINGH
MEMBER (TECHNICAL)

DR.VENKATA RAMAKRISHNA BADARINATH NANDULA
MEMBER (JUDICIAL)

Binnu/ karim