



SL.No.1

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

PHYSICAL HEARING

**CORAM: JUSTICE TELAPROLU RAJANI – HON’BLE MEMBER (J)
CORAM: SHRI CHARAN SINGH - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 22.05.2023 AT 02:30 PM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/735/2023 in Company Petition IB/88/2022
NAME OF THE COMPANY	Viceroy Bangalore Hotels Pvt Ltd
NAME OF THE PETITIONER(S)	Edelweiss Asset Reconstruction Company Ltd
NAME OF THE RESPONDENT(S)	Viceroy Bangalore Hotels Pvt Ltd
UNDER SECTION	7 of IBC

ORDER

Mr. Sakil Ansari instructed by AJA Legal for Respondent No.1 present.
This application is allowed vide separate orders.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II**

**I.A. No.735 OF 2023
in
CP(IB) NO. 88/7/HDB/2022**

**[U/s. 30(6) and U/s. 31(1) of the I&B Code, 2016 r/w Regulation 39(4) of
the IBBI (IRPCP) Regulations, 2016]**

In the matter of:

Mr. Kuresh Khambati
Resolution Professional of
M/s. Viceroy Bangalore Hotels Private Limited
having its Registered Office at Plot No.20, Sector-I
4th floor, HUDA Techno Enclave
Madhapur, Hyderabad- 500081.
Email: RP.Viceroy@in.gt.com

...Applicant

Vs.

1. The Committee of Creditors of
Viceroy Bangalore Hotels Private Limited
through Edelweiss Asset Reconstruction Company Ltd.
having its Registered Office at Edelweiss House
Off: C.S.T Road, Kalina, Mumbai- 400098
2. M/s. Dharampal Satyapal Limited
Registered office at 98, Okhla Industrial Estate
Phase-III, New Delhi
South Delhi-110020

...Respondents

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Coram:

**Hon'ble Justice Smt. Rajani Relaprolu, Member (Judicial)
Hon'ble Shri Charan Singh, Member (Technical)**

Parties / Counsels Present:

For the Applicant : Mr.VVSN Raju, Mr.Praveen Jain, Advocates

Heard on: 01.05.2023



[PER : BENCH]

ORDER

1. This Application is filed by the Resolution Professional of M/s. Viceroy Bangalore Hotels Private Limited, 'Corporate Debtor' (CD) under Section 30(6) and 31(1) of the Insolvency & Bankruptcy Code, 2016, r/w regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, seeking approval of the Resolution Plan submitted by M/s. Dharampal Satyapal Limited, the Resolution Applicant as duly approved by the Committee of Creditors with 100% voting share.
2. The Company Petition CP(IB) No. 88/7/HDB/2022 filed by M/s. Edelweiss Assets Reconstruction Company Limited u/s. 7 of IBC, 2016 was admitted by this Adjudicating Authority, vide Order dated 05.08.2022 and commencement of CIRP was ordered against the CD, by appointing Mr. Kuresh Hatim Khambati as the Interim Resolution Professional (IRP). Later, in the 1st COC Meeting held on 20.09.2022, the IRP was confirmed as Resolution Professional, for short 'RP'.
3. The Applicant appointed two registered valuers for valuing the Land and Buildings, Securities & Financial Assets, plant & machinery and determining the liquidation value of the C D on 26.09.2022. **A copy of the summary of the valuations**



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and the final liquidation value and fair value is filed as Exhibit 'D' of the application.

4. On receipt of claims from the Creditors pursuant to public announcement, the RP constituted the Committee of Creditors, for short 'COC' comprising of the following Financial Creditors of the Corporate Debtor as follows:

Sl. No.	Name of Creditor	Voting Share (%)	Claim Admitted	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1.	EARCL	73.68	821.51	Voted For
2.	Vistra ITCL Ltd. (FV 120 Cr. NCD)	25.28	281.90	Voted For
3.	Vistra ITCL Ltd (FV 15 Cr. NCD)	1.03	11.52	Voted For

5. It is averred that the RP conducted a total of Eleven (11) meetings of the COC during the CIRP. The Applicant issued Form-G on 04.10.2022 with cut-off date as 19.10.2022 and the date was extended with the consent of COC until 31.10.2022. In response, Expression of Interests were received from the following 41 Prospective Resolution Applicants:

Sl. No.	Names of PRAs
1.	Megha Engineering & Infrastructures Ltd.
2.	Phoenix Mills Ltd.
3.	M/s. Dharampal Satyapal Limited



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4.	EIH Limited
5.	Capri Global Holdings Pvt. Ltd.
6.	M/s. GVPR Engineers Limited
7.	Sattva Developers Pvt. Ltd.
8.	Kalyan Toll Infrastructure Limited
9.	Caspia Hotels Pvt. Ltd.
10.	K.P. Advisory Services LLP
11.	Sherisha Technologies Pvt. Ltd.
12.	KR Pulp & Pulps Limited
13.	Goyal MG Gases Pvt. Ltd.
14.	Bommidala Enterprises Pvt. Ltd.
15.	Shri. Ram Multicom Pvt. Ltd.
16.	Square Four Housing & Infrastructure Development Pvt. Ltd.
17.	Yatish Trading Co. Pvt. Ltd.
18.	Mysore Intercontinental Hotels Pvt. Ltd.
19.	Unison Hotels Pvt. Ltd.
20.	Derit Infrastructure Private Limited
21.	Gopal Sponge & Power Private Limited
22.	AKM Enterprises Pvt. Ltd.
23.	Terminus Hotels & Resorts Pvt. Ltd.
24.	Exclusive Motors Pvt. Ltd.
25.	Serveall Land Developers Pvt. Ltd.
26.	Kailash Darshan Housing Development (Gujarat) Private Limited
27.	Anirudh Agro Farms Limited
28.	Trident Infrahomes Private Limited
29.	Rhythm Hospitality Pvt. Ltd.



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30.	Royal Orchid Hotels Ltd.
31.	Bluestone Construction LLP
32.	Edelweiss Alternative Asset Advisors Limited
33.	Kotak Investment Advisors Limited
34.	India Resurgence Fund
35.	Aditya Birla ARC Limited
36.	RKG Fund I
37.	Promontoria Holding 206 B.V.
38.	Shanti Hospitality & Mrs. Kantadevi Vijay Oswal
39.	Sandeep Gupta, Shalinj Gupta & Anoop Kumar Mittal
40.	Sankalp Recreation Pvt. Ltd. & Globe Ecologisitics Pvt. Ltd.
41.	Mr. Syed Fahad (Proprietor of Standard Farms)

6. The RP requested for Resolution Plan, Evaluation Matrix and Information Memorandum from the Prospective Resolution Applicants by fixing the last date for submission of the Resolution Plan as 15.12.2022.

7. During the 4th COC Meeting held on 08.12.2022, out of the 41 EOIs, 36 PRAs became final. Out of the 36 PRAs, 4 PRAs failed to submit the non-disclosure agreements. Therefore, 32 PRAs who duly submitted their NDAs, were given access to the Virtual Data Room along with issue of Information Memorandum. At request of the PRAs, the last date for submission of Resolution Plans was extended by the COC from time to time. Since it was not possible to conclude the resolution process within the statutory period of 180 days, which was ending on February 1, 2023, the



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Applicant filed an application on 27.01.2023 seeking for extension of 90 days beyond 180 days of CIRP period, which was allowed by this Adjudicating Authority, vide Order dated 02.02.2023, thus, the CIRP period was extended till 02.05.2023.

8. As on 31.01.2023, the Applicant received Resolution Plans from the following Applicants:
 - i. Dharampal Satyapal Ltd.
 - ii. Edelweiss Alternative Asset Advisors Ltd. (“**EAAAL**”)
 - iii. GVPR Engineers Ltd.
 - iv. Kailash Darshan Housing Development (Gujarat) Pvt. Ltd.
 - v. Rhythm Hospitality Pvt. Ltd.
 - vi. Sankalp Recreation Pvt. Ltd. & Globe Ecologistics Pvt. Ltd.
 - vii. Sattva Developers Pvt. Ltd.
 - viii. Shanti Hospitality & Mrs. Kantadevi Vijay Oswal

9. One of the Applicants, Shanti Hospitality & Mrs. Kantadevi Vijay Oswal (“**Shanti Hospitality**”), failed to submit EMD along with the Resolution Plan and consequently, their Plan became non-responsive as per the terms of RFRP. The same was brought to the notice of Shanti Hospitality during the 6th CoC meeting. However, Shanti Hospitality stated that they will not deposit the EMD, until the concerns with the ownership of land over which the hotel



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premises was situated were not resolved. The said issue was deliberated upon by the Applicant and the CoC members during the 7th CoC meeting held on 07.02.2023 and it was informed to Shanti Hospitality that the ownership of the land was not transferable as the CD only had leasehold rights over the said property. In turn, Shanti Hospitality conveyed that they were not comfortable depositing the EMD if the condition of transfer of ownership of the land is not available. Accordingly, the CoC on 24.02.2023 instructed the Applicant to not present the Resolution Plan for approval. The decision of the CoC was communicated to Shanti Hospitality by the Applicant, vide email dated 26.02.2023. The same was intimated to the CoC members during the 8th CoC meeting held on 01.03.2023.

10. As discussed in the 8th COC meeting held on 01.03.2023, the Applicant invited the RAs for participation in the challenge mechanism process in the 9th meeting held on 13.03.2023 for the purpose of value maximization and irrespective of the result of the challenge mechanism, all the Plans which were compliant with the laws, would be presented to the CoC for their approval. The Applicant then apprised the members of the COC that one of the Resolution Applicants, i.e., EAAAL had intimated vide email on March 12, 2023, about their non-participation in the challenge mechanism process. The Ras, pursuant to confirming that they had the authority and unconditionally



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accepting to the Framework of Challenge Mechanism, participated in the challenge mechanism held on March 13, 2023 in Bangalore. The bids were evaluated by BDO India LLP (Bid Evaluation Advisor to the CoC), as made during the challenge mechanism process. Pursuant to conducting of three rounds of the challenge mechanism as envisaged in the Framework of Challenge Mechanism, the Bid Evaluation Advisor emailed to the Applicant, the highest NPV among all the improved financial proposal forms submitted. Dharampal Satyapal Limited was declared the winner of the challenge mechanism at the end of the three rounds.

11. In the 11th CoC meeting held on 06.04.2023, the following six Plans which were compliant in terms of IBC, were placed before the CoC for their approval:
 - i. Dharampal Satyapal Limited
 - ii. Kailash Darshan Housing Development (Gujarat) Pvt. Ltd.
 - iii. Rhythm Hospitality Pvt. Ltd.
 - iv. Sankalp Recreation Pvt. Ltd. & Globe Ecologistics Pvt. Ltd.
 - v. Sattva Developers Pvt. Ltd.
 - vi. GVPR Engineers Ltd.



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12. EAAAL intimated the Applicant, vide email dated 31.03.2023 to consider the Plan submitted by them on 31.01.2023, for evaluation and examination.
13. The CoC evaluated the Resolution Plans submitted by the Prospective Resolution Applicants as per the Evaluation Matrix and Section 29A of the Code. The Applicant has given a Declaration that the Resolution Applicant has submitted an affidavit dated 15.10.2022 pursuant to Section 30(1) of the Code, confirming its eligibility under Section 29A of the Code to submit the Resolution Plan. The contents of the said affidavit are in order. After evaluating in terms of both qualitative and quantitative criteria and aggregate of the revised resolution plans submitted by the Resolution Applicants, the Resolution Plan dated 30.01.2023, as amended on March 30, 2023 submitted by M/s.Dharmapal Satyapal Limited was considered and approved by the CoC with 100% voting share in favour of it under Section 30(4) of IBC and was declared as Successful Resolution Applicant. Accordingly, Letter of Intent (“**LoI**”) was issued to the Respondent No. 2 on 12.04.2023 and the same was received by the Resolution Professional with an endorsement to that effect, on 17.04.2023. The Successful resolution Applicant has submitted an unconditional and irrevocable performance bank guarantee, for short **PBG**, for an amount of Rs.30,00,00,000/- (Rupees Thirty Crores only) issued by Axis Bank, in favour of the Designated Lender, EARCL (in



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its capacity as an agent of the CoC) Debtor dated 17.04.2023.

14. The details of the approved Resolution Plan submitted by the Successful Resolution Applicant are as follows:

S.No	Particulars	Amount
1	Resolution Plan Amount	300 crores
2	Payment to Various Stakeholders	
	a) CIRP expenses	To be paid in full and in priority
	b) Operational creditors	9,00,00,000
	c) Other creditors	Nil



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	c) Financial Creditors	<p>Dissenting Financial Creditors:</p> <p>The Dissenting Financial Creditors (if any) shall be paid the amount due to them in terms of Sections 30(2), 53 of the Code r/w Regulation 38 of the CIRP Regulations (i.e. DFC Payout) from the Total Resolution Amount.</p> <p>Assenting Financial Creditors:</p> <ul style="list-style-type: none">a) Available Cash;b) Any amount that is received in terms of the applications filed under Sections 43, 45, 47, 49, 50 or 66 of the IBC;c) AFC Payout; andd) Any amount, if received from Kotak Mahindra Bank in favour of the Corporate Debtor towards fixed deposits held as security by Kotak Mahindra Bank as detailed in letter dated 10.01.2023 issued by the Resolution Professional.
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In addition to amounts set out above, the Resolution Applicant may arrange working capital for continuity of operations through such means as may be necessary, including debt. The Resolution Applicant may also arrange funds for necessary capital expenditure through such means as may be necessary, including debt.



15. **Contour of the Resolution Plan:**

The Resolution Plan is submitted by **M/s.Dharmapal Satyapal Limited, for short 'Resolution Applicant'**. The Resolution Applicant is a Public Limited Company, founded in the year 1929, having its Registered Office at 98, Okhla Industrial Estate, Phase-III, New Delhi, South Delhi, 110 020. The DS Group (Dharmapal Satyapal Group) is a multi-business Corporation and one of the leading FMCG conglomerate with strong Indian and International presence. The DS Group, through its subsidiary/associate companies owns and manages the following hotels internally and sufficient manpower. The Group has 'Raddison Blu' in Guwahati, 'Crown Plaza' in Jaipur 'Namah' at Jim Corbett National Park, 'Holiday Inn Express' at Kolkata Airport and 'The Manu Maharani' in Nainital. All hotels are profitable with zero debt.

The Resolution Applicant has adequate financial resources to continue in operation for the foreseeable future. The Resolution Applicant is in a sound financial position and has access to sufficient facilities to meet its foreseeable cash requirements.

The Resolution Applicant has annual profit to the extent of Rs.600 crores and net worth is around Rs.423,700.44 lakhs. Further, the Resolution Applicant has sufficient liquid cash flow to implement the Resolution Plan.



The summary of financials of the Company based on Audited Balance Sheet is as follows:

(Rs. In crores)

Year	Net Worth	Profit After Tax
2019-2020	3236	379.18
2020-2021	3649	523.46
2021-2022	4237	601.01

iii. The Resolution Plan for an amount of Rs.300 crores provided for the stakeholders is tabulated below.

(Amount in Rs.)

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	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21.	NIL	NIL	NIL	NIL
		(b) Other than (a) above:				
		(i) who did not vote in favour of the Resolution Plan	NIL	NIL	NIL	NIL
		(ii) who voted in favour of the Resolution Plan.	11,14,93,05,716	11,14,93,05,716	291,00,00,000	26%
		Total[(a) + (b)]	11,14,93,05,716	11,14,93,05,716	290,00,00,000	26%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of Section 21.	33,26,03,273	29,60,10,792	NIL	NIL
		(b) Other than (a) above:				
		(i) who did not vote in favour of	-	-	-	-



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		the Resolution Plan (ii) who voted in favour of the Resolution Plan.	-	-	-	-
		Total[(a) + (b)]	33,26,03,273	29,60,10,792	NIL	NIL
3	Operational Creditors	(a) Related Party of Corporate Debtor	-	-	-	-
		(b) Other than (a) above: *				
		(i) Government	3,11,28,115	29,349,353	69,13,988	22.21%
		(ii) Workmen	-	-	-	-
		(iii) Employees	1,00,127	73,024	32,248	32.21%
		(iv) Others	36,47,18,818	16,37,31,767	8,30,53,764	22.77%
		Total[(a) + (b)]	39,59,47,060	16,67,54,144	9,00,00,000	26%
4	Other Debts and Dues	-	-	-	-	-
	Grand Total		11,87,65,51,089	11,63,71,65,692	300,00,00,000	26%

Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.

*(Schedule II Clause 2.2.2 The operational creditors government/statutory Claim/operational creditors other than Employees and Workmen will be settled by paying INR 8,99,67,752)

16. The Applicant confirmed that the Successful Resolution Plan is in compliance with the provisions of Section 30 (2). **A copy of the Resolution Plan along with its annexures is filed as Exhibit-A at page nos. 54 to 642 of the application.**

17. **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)



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Regulations, 2016, for short 'Regulation and has submitted Form-H under Regulation 39 (4). A copy of Form-H is filed at page nos.868 to 879 of the application. It is submitted that Resolution Applicant has filed Certificate of compliance under Section 29A and 30 of the Code confirming that they are eligible to submit the plan under Section 29A of the Code and that the contents of the said Certificate are in order. The fair value and Liquidation value as submitted in Form-H is Rs.459 crores and Rs.330 crores respectively.

18. We heard Mr. VVSN Raju, Learned Counsel for RP. He submits that the Resolution Plan meets the requirement of Section 30 (2) of the Code and Regulations 38 of the CIRP Regulations, 2016 as under:-

Section 30(2)(a) - The CIRP costs shall be paid in full and in priority to creditors of the Corporate Debtor.

Section 30(2)(b) and Regulation 38(1)(a) of the CIRP Regulations -

Payment to Operational Creditors and other Creditors:

The Resolution Applicant shall pay Rs.9 crores from the total Resolution Amount to the Operations Creditors, which is distributed as follows:



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- i. Employees and Workmen Claim, if any, will be settled in their entirety by paying Rs.32,248/- on the payment date from the OC Settlement Amount.
- ii. The Operational Creditors Government/Statutory claim/Operational Creditors other than Employees and Workmen will be settled by paying Rs.8,99,67,752/- on the Payment Date from the OC Settlement Amount in proportion to their admitted claims.

If the OC Settlement Amount exceeds Rs.9.00 crores, on account of the liquidation value payable to Operational Creditors (including Workmen and Employees) in terms of Section 30(2), Section 53 of the Code being higher than the OC Settlement Amount then such amount beyond Rs.9.00 crores, if any, shall be paid on the payment date. Any such additional payment shall be proportionately deducted from the payments to be made to the Assenting Financial Creditors such that the total obligation or liability of the Resolution Applicant does not exceed the Total Resolution Amount.

Nil payment is proposed to the other creditors.

Section 30(2)(b), Regulation 38(1)(b) and Regulation 38(2)(d) of the CIRP Regulations –

- i. In the event the Dissenting Financial Creditors are entitled to some amount in the nature of liquidation value in terms



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of Sections 30 and section 53 of the Code r/w Regulation 38 of the CIRP Regulations (“DFC Payout”), then the Dissenting Financial Creditors would be provided the DFC Payout on the Payment Date from the Total Resolution Amount. Notwithstanding anything to the contrary contained in this Resolution Plan, the Dissenting Financial Creditors shall neither be entitled to, nor shall they receive any amounts other than the amounts due to them in the nature of liquidation value i.e. the DFC Payout. Such treatment of Dissenting Financial Creditors is fair and equitable, and in compliance with Section 30(2), 53 of the Code and Regulation 38(1) of the CIRP Regulations.

Payment to Assenting Financial Creditors: The Assenting Financial Creditors shall be paid an amount aggregating to the Total Resolution Amount less (-) the IRP Cost less (-) the OC Settlement Amount less (-) the DFC Payout on the Payment Date (“AFC Payout”). Additionally, the Available Cash shall be transferred to the secured financial creditors who vote in favour of this Resolution Plan (“Assenting Financial Creditors”) on the Closing Date. In the event any transaction is avoided/ set aside by the NCLT in terms of Sections 43, 45, 47, 49, 50 or 66 of the IBC and any amount is received by the Corporate Debtor in furtherance thereof, such sums shall be for the benefit of the Assenting Financial Creditors. The Assenting Financial Creditors shall be provided such amount as a pass through. The Assenting



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Financial Creditors shall pursue these applications and bear the costs towards the same. Any amount, if received from Kotak Mahindra Bank in favour of the Corporate Debtor in relation to fixed deposits held as security by Kotak Mahindra Bank shall be transferred to the Assenting Financial Creditors as a pass through. The Assenting Financial Creditors shall pursue and bear the cost of litigation, if any in this regard.

- ii. As per the Successful Resolution Plan, the distribution of amounts among the Assenting Financial Creditors was required to be discussed and agreed to among the Assenting Financial Creditors and the same was done by the CoC during the eleventh CoC meeting held on April 06, 2023 and the agreed distribution formulae was put up to vote by the Applicant, which was unanimously approved by the CoC members. The distribution to the Assenting Financial Creditors was approved by the members in the eleventh meeting of the CoC.
- iii. Unsecured Creditors: Nil payment is proposed for any unsecured Financial Creditor because in the Resolution Applicant's reasonable estimate, they shall not be entitled to any liquidation value in terms of Section 30 (2) and Section 53 of the Code.



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Section 30(2)(c), 30(2)(d), Regulation 38(2)(b) and 38(2)(c) of the Code -

This Plan has provisions for its effective implementation. The Resolution Applicant, Corporate Debtor, Monitoring Committee, Monitoring Agent (acting on the instructions of the Monitoring Committee), Committee of Creditors and all other relevant stakeholders of the Corporate Debtor shall take all relevant actions as may be required for implementing the steps and effecting the payments to relevant stakeholders to the Corporate Debtor.

Regulation 38(1)(A) of the CIRP Regulations:

The Resolution Applicant has taken into account the interests of the stakeholders of the Corporate Debtor, including the Financial Creditors and Operational Creditors (including Workmen and Employees) to the best extent possible. The insolvency Resolution of the Corporate Debtor, as envisaged under this Plan, shall contribute significantly to the Society and Government by contributing significant direct and indirect employment and income generation and continuance opportunities.

Regulation 38(2)(a) –

The Term of the Plan is from the Effective Date till the Closing Date.



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Regulation 38(3)(a) to 38(3)(e) –

The Plan addresses the cause of default by the CD. The Resolution Applicant understands that CD is under stress owing to several reasons including:

- (a) Cancellation/non-booking of rooms in view of the lockdown imposed due to COVID-19
- (b) Cancellation/non-booking of banquet hall books in view of the lockdown imposed due to COVID-19
- (c) Even after ease of lockdown restrictions in view of COVID-19, people were only travelling for essential reasons. This impacted the bookings.
- (d) The cost of running and maintaining the hotel was incurring despite the fall in bookings due to the aforesaid reasons.
- (e) Time and cost overrun in the business project due to delay approvals from authorities.
- (f) Asset liability mismatch
- (g) Unsustainable debt.

This Plan is feasible and viable. This Plan has provisions for its effective implementation. This Plan has provisions for approvals required and timeline for the same and the Resolution Applicant shall obtain all necessary approvals within the time prescribed under Applicable Law.

The Resolution Applicant shall obtain the approval of the Competition Commission of India, if required within the timelines prescribed under the Applicable Law.



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The Resolution Applicant has the capability to implement the Plan.

Regulation 38(1B) –

The Resolution Applicant confirmed that neither it nor any of its related parties have failed to implement or contributed to the failure of implementation of any other Resolution Plan approved by the NCLT at any time in the past.

ix. **Avoidance Transactions** Regulation 39(2) of the CIRP Regulations –

In the case of the CD, pursuant to the transaction audit conducted in order to ascertain transactions under Section 43, 45, 47, 49, 50, 66 and 67 of the Code, the final report dated December 10, 2022 was submitted by GT Restructuring Services LLP that there are no ascertainable transactions falling under the aforesaid sections of the Code in respect of the CD. Accordingly, no application has been filed with respect to the same before this Adjudicating Authority. Accordingly, the Successful Resolution Plan, provides no treatment in respect of avoidance transactions. However, the Successful Resolution Plan also provides that in a scenario there are any proceedings pending under Sections 43 – 51 and Section 66 of the Code which have been informed to the Successful Resolution Applicant until the Plan Approval Date, such



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avoidance proceedings shall be pursued by the Assenting Financial Creditors, at its own cost, and any proceeds, if any, from such proceedings shall be for the benefit of the Assenting Financial Creditors.

19. Monitoring Committee -

To ensure that the CD continues as a going concern and operates in its ordinary course of business prior to the Closing Date, the management of the CD between the Effective Date and the Closing Date ("**Interim Term**") shall be carried out based on the mechanism as set out hereinafter. On the Effective Date, a monitoring committee shall be constituted ("**Monitoring Committee**") which, shall comprise of 1 (one) Representative of the Financial Creditors who have voted in favour of the Resolution Plan, 1 (one) Representative of the Resolution Applicant, each having one (1) vote. The Monitoring Committee shall supervise the implementation of the Resolution Plan by the Successful Resolution Applicant and supervise and monitor the management and operations of the Corporate Debtor in the ordinary course and on a going concern basis, being undertaken by the Monitoring Agent, and as and when deemed fit, provide instructions to the Monitoring Agent in this regard which shall be implemented by the Monitoring Agent. The Monitoring Agent shall be a person who shall be qualified to act a resolution professional in terms of the Applicable Law. The Monitoring Agent shall be the *ex officio* chairperson of the Monitoring Committee and subject to the supervision of the Monitoring Committee and instructions, if



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any, given by the Monitoring Committee. On and after the Closing Date, the CD shall be managed by the Resolution Applicant and the CD shall stand merged into the Resolution Applicant as provided under this Resolution Plan.

20. **Source of Funds:**

The Resolution Applicant's total plan value for the CD shall be arranged by the Resolution Applicant from its internal sources and break-up among various stakeholders of the CD. In addition to the amounts set out above, the Resolution Applicant may arrange working capital for continuity of operations through such means as may be necessary including debt. The Resolution Applicant may also arrange funds for necessary capital expenditure through such means as may be necessary including debt.

21. **Accounting Treatment:**

The Board of Directors of the Resolution Applicant, in consultation with the statutory auditors of the respective companies, are authorised to give effect to the Plan, as may be deemed fit, in accordance with the applicable Accounting Standards applicable to Resolution Applicant and Corporate Debtor.

22. ***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***



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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”.

23. 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.***

24. 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”.*



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25. The Applicant/Resolution Professional has submitted that the Resolution Applicant has sought certain waivers and reliefs in the Resolution Plan. We are, however, not inclined to grant such concessions or waivers. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/ liabilities of the Corporate Debtor and shall be dealt with by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned. As regards to the reliefs sought, the CD has to approach the authorities concerned for such reliefs and we trust the authorities concerned will do the needful. The same view has been taken by the Hon'ble Supreme Court in the matter of **Ghanashyam Mishra And Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited**

26. 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



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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.....”

27. Therefore, the Resolution Plan, when tested on the touch stone of the aforesaid facts and the rulings, satisfies the requirements of Section 30 (2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations. We also find that the Resolution Applicant is eligible to



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submit the Resolution Plan under Section 29A of the Code.

28. We find that the Resolution Plan provides for an amount which is less than the Liquidation Value by about Rs.30.00 crores. However, the Resolution Plan complies with Section 30(2)(b) of the Insolvency & Bankruptcy Code, 2016.
29. In the above circumstances, relying on the **Judgement of the Hon'ble Supreme Court of India in the matter of Maharashtra Seamless Limited vs. Padmanabhan Venkatesh & Others** which upheld the primacy of commercial wisdom of the COC and held that the approved Resolution Plan can provide for payment of amounts lower than the Liquidation Value of the Corporate Debtor, if it complies with Section 30(2)(b) of the IB Code, 2016, we hereby approve the Revised Resolution Plan dated 30.03.2023 submitted by M/s.Dharmapal Satyapal Limited, along with annexure, schedules forming part of the Resolution Applicant annexed to the Application and order as under:
 - i. The Resolution Plan along with annexures and schedules forming part of the plan shall be binding on the CD, its employees, members, creditors, including



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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.

- ii. All crystallized liabilities and unclaimed liabilities of the CD as on the date of this order shall stand extinguished on the approval of this Resolution Plan.
- iii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/liabilities of the CD and shall be dealt with by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned as held by Hon'ble Supreme Court in the matter of ***Ghanashyam Mishra And Sons Private Limited Versus Edelweiss Asset Reconstruction Company Limited*** in CIVIL APPEAL NO.8129 OF 2019 dated 13.04.2021.
- iv. It is hereby ordered that the Performance Bank Guarantee furnished by the Resolution Applicant shall remain as performance Bank Guarantee till the amount proposed to be paid to the creditors under this plan is fully paid off and the plan is fully implemented.



- v. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC) Hyderabad for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- vi. Henceforth, no creditors of the erstwhile CD can claim anything other than the liabilities referred to supra.
- vii. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- viii. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this order for information.
- ix. The Applicant shall forthwith send a copy of this order to the CoC and the Resolution Applicant.
- x. The Registry is directed to furnish free copy to the parties as per Rule 50 of the NCLT Rules, 2016.
- xi. The Registry is directed to communicate this order to the Registrar of Companies, Hyderabad for updating the master data and also forward a copy to IBBI.



30. Accordingly, **IA 735/2023** in **CP(IB) No.88/7/HDB/2022** stands disposed of.

Sd/-

**CHARAN SINGH
MEMBER (TECHNICAL)**

Sd/-

**JUSTICE RAJANI TELAPROLU
MEMBER (JUDICIAL)**

Syamala