

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH AT NEW DELHI**

**C.A. No. 719 (PB)/2020 and  
C.A. No. 1247 (PB)/2019  
In IB-104 (PB)/2017**

**In the matter of:**

Bank of India

.... Financial Creditors

Vs.

Tirupati Infraprojects Pvt. Ltd.

.... Corporate Debtor

**In the matter of C.A. No. 719 (PB)/2020:**

**Under Rule 11 of the National Company Law Tribunal Rules, 2016**

**G.P. Global Energy Pvt Ltd**  
Reshma House, Farm No. 9/1,  
Amaltas Avenue, Westend  
Green Farm Society,  
Shamlaka New Delhi-110037

.... Applicant

Vs.

**1. Mr. Anil Kohli**

Resolution Professional  
For Tirupati Infraprojects Pvt. Ltd.  
409, 4<sup>th</sup> Floor, Ansal Bhawan,  
K.G. Marg, Connaught Place,  
New Delhi-110001

.... Respondent No.1 / Non-Applicant No.1

**2. Committee of Creditors**

of the Corporate Debtor  
Bank of India, Large Corporate Branch,  
10<sup>th</sup> Floor, Chander Lok Building,



Janpath, New Delhi-110001

.... Respondent No.2/Non-Applicant No.2

**3. HBN Diaries and Allied Limited**  
303, Vardhaman Chamber,  
III Floor, Sonia Complex, Vikas Puri  
New Delhi- 110018

.... Respondent No. 3/Non-Applicant No.3

**4. State of Maharashtra**  
Through competent Secretary  
CS Office Main Building,  
Mantralaya 6<sup>th</sup> Floor, Madam Cama Road,  
Mumbai-400032

.... Respondent No.4/Non-Applicant No.4

**In the matter of C.A. No. 1247 (PB)/2019:**

**G.P. Global Energy Pvt Ltd**

.... Applicant

Vs.

**1. Mr. Anil Kohli**  
Resolution Professional  
For Tirupati Infraprojects Pvt. Ltd.

.... Respondent No.1 / Non-Applicant No.1

**2. Committee of Creditors**  
of the Corporate Debtor

.... Respondent No.2 / Non-Applicant No.2

**Order delivered on 01.11.2021**

**CORAM**

**SH. BHASKARA PANTULA MOHAN**  
**HON'BLE ACTG. PRESIDENT**

**SH. HEMANT KUMAR SARANGI**  
**HON'BLE MEMBER (TECHNICAL)**



**Present:**

For Applicant: Mr. S. K Giri, Mr. Raghav Kakkar, Advocates

For Respondent in C.A. 1247 (PB)/2019: Mr. Abhishek Anand, Kunal Godhwani, Mr. Rahul Adlakha, Mr. Mohak Sharma, Mr. Pathik Choudhury Advocates

**ORDER**

**PER- BHASKARA PANTULA MOHAN, ACTG. PRESIDENT**

**C.A. No. 719 (PB)/2020:**

1. The present application is filed by Successful Resolution Applicant viz., *GP Global Energy Private Limited* ("Applicant") against the Respondents under Rule 11 of the National Company Law Tribunal Rules, 2016 (NCLT Rules). As the applicants in both the applications as stated above are common and the issues are interconnected therefore, we proceed to pass a common Order.

2. The Applicant has prayed as under:

- (i) To clarify in terms of the Order dated January 4, 2020, passed by this Hon'ble Tribunal of the Hotel of the Corporate Debtor running under the name of 'Radisson Blue Hotel' shall be of the Successful Resolution Applicant in terms of the Resolution Plan approved under Section 31 of the Code.
- (ii) To direct the Respondent No. 4 to remove the attachment on the 50% shares in the 'Radisson Blue' and to declare the shares of the Corporate Debtor stands cancelled in terms of the Order dated February 1, 2019.
- (iii) To adjudicate and allow the application CA 1247 (PB)/2019 filed by the Successful Resolution Applicant, for the reasons mentioned in CA 1247(PB)/2019



- (iv) To direct the Respondent No. 1 and No 2 to grant 30 days time period to the Successful Resolution Applicant, for implementation of the Resolution Plan upon the adjudication of the above-mentioned omissions, which were inadvertently omitted in Order dated January 4, 2020, and constitute part of the Approved Resolution Plan and
- (v) Pass any such other Order (s) as may be deemed fit and proper by this Hon'ble Tribunal in the facts and circumstances of the case.

3. The brief facts are as that the Financial Creditor viz., Bank of India ("Financial Creditor") filed an application for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor viz., Tirupati Infraprojects Pvt. Ltd. This Authority on 03.07.2017 admitted the application, initiated CIRP, declared moratorium and appointed Mr. Anil Kohli as Interim Resolution Professional.

4. The Respondent No.1 in accordance with the amended Section 25(2) (b) invited Expression of Interest ("EoI") from prospective resolution applicants to submit Resolution Plans in accordance with the conditions and process approved by the Committee of Creditors ("CoC"). The initial two EoI issued by the Respondent No.1 were cancelled in terms of the Orders dated 13.12.2017 and 06.03.2018 and this Authority directed to invite a fresh EoI which was published on 07.03.2018. The Respondent No.1 received expression of interest from five prospective resolution applicants who were provided with the updated Information Memorandum and Process Memorandum. Out of the five prospective resolution applicants only three i.e., Applicant, PAADM International Hotels Private Limited together with Mr. Chuni Gohel and Rockland Hotels deposited the earnest money of Rs 10 crores set out as a pre-condition for the submission of the Resolution



Plan. Pursuant thereto, Resolution Plans from Prospective resolution applicants i.e., Applicant and PAADM International hotels Private Limited together with Mr. Chuni Gohel and Rockland Hotels Limited were received which were open before the CoC for consideration and discussion in the 11<sup>th</sup> Meeting of the CoC held on 14.03.2018. The members of the CoC discussed and evaluated the Resolution Plans based on Evaluation Matrix and it was observed that the Resolution Plan of the Applicant proposed an upfront payment of Rs 20 crores and further payment of Rs 232 crores to be paid within 30 days of the approval of the Resolution Plan by this Authority. It was also observed that the financial offer made by the Applicant was above the liquidation value, was H1 as per the evaluation matrix approved by the CoC and contained many conditions. The Applicant was called for discussion/negotiations with the CoC in the 12<sup>th</sup> Meeting of the CoC held on 16.03.2018 and was asked to provide certain additional documents, to withdraw the conditions in the plan, incorporate some information and clarification so that the plan is in compliance with the provisions of IBC, Regulations, and the Process Memorandum. An Addendum dated 16.03.2018 was submitted on the request of Applicant made in accordance with Clause 7 and 9 of the Process Memorandum. In the Meeting of the CoC held on 23.03.2018 it was decided to seek legal opinion and the precautions to be taken while approving the Resolution Plan about the repercussions of the condition that the final payment of Rs 232 crores would be made post written approval of the Resolution Plan by this Authority approving all waiver requests under the Resolution Plan. The Respondent No.1 in the Meeting of the CoC held on 26.03.2018 presented the Resolution Plan of the Respondent under a forwarding report in accordance with the Section 30 (3) of IBC and regulation 39(2) of the CIRP Regulations alongwith the addendums dated 16.03.2018, 19.03.2018, 23.3.2018 and 26.03.2018 ("Addendums") which clearly



outlined the compliances/non-compliances of the Resolution Plan alongwith the addendums. The Respondent No.1 reiterated the same before the CoC.

5. The CoC after discussing directed the Respondent No. 1 to put the resolution Plan to vote. It also stated that Resolution Plan alongwith Addendum I dated 16.03.2018 will only be considered as the complete Resolution Plan of the Applicant and Addendums dated 13.03.2018, 23.03.2018 and 26.03.2018 will be accepted to the extent they are clarificatory in response sought. The Resolution Plan alongwith the addendums were put to e-voting on 26.03.2018 and was declared as successful Resolution Plan with 100% votes in favour of the plan in terms of the resolution proposed for the voting. The Respondent No. 1 issued a Letter of Intent dated 27.03.2018 to the Respondent interalia informing that the revised Resolution Plan was approved by the CoC and requested to convey their unconditional acceptance.

6. The Respondent No. 1 filed C.A. 275 (PB)/2018 for seeking approval of the Resolution Plan. This Authority on 08.08.2019 of the application C.A. 275/2018 directed the Respondent to file an affidavit to the effect that the Resolution Plan is not subject to any condition with respect to the fifth floor and that the site has been offered to the Respondent on As Is Where Is Basis. The Applicant in compliance to the Order dated 03.09.2019 filed an affidavit in the form of an undertaking. On 04.01.2020 this Authority approved the Resolution Plan under Section 31 of the Insolvency and Bankruptcy Code, 2016 ("IBC").



**Submissions of the Applicant:**

7. It is stated that the Information Memorandum dated 07.03.2018 reveals that there were certain disclosures about the assets of the Corporate Debtor. The disclosures made are about the update on ED attachment, application under Section 60/66 of IBC for the fifth floor of the hotel property. Further, it is stated that Applicant had categorically stipulated that the existing shares of the Corporate Debtor will be cancelled upon implementation of the Resolution Plan and the amounts offered by the Applicant i.e., Rs 252 Crores is inclusive of the CIRP cost. In the 11<sup>th</sup> Meeting of the CoC the Applicant was classified as H1 on the ground that the Applicant proposed Rs 252 crores which was significantly higher than the Liquidation value of the Corporate Debtor i.e., 208 Crores.

8. It is stated that the CoC on 16.03.2018 requested the Applicant to amend the Plan in its 12<sup>th</sup> Meeting of CoC. Thereafter, on 16.03.2018 Applicant submitted Addendum-1; on 19.03.2018 Addendum-2 and on 23.03.2018 Addendum-3. The CoC approved the Resolution Plan submitted by the Applicant on 27.03.2018 and issued the Letter of Intent. Subsequently, in compliance with the Order dated 09.07.2018 the Applicant filed an affidavit clarifying that the Addendum-2 and 3 would not constitute a condition precedent for acceptance of the Resolution Plan. Further, on 19.10.2018 the Government of Maharashtra issued a notification under Section 4, 5 and 8 of the Maharashtra Protection of Interests of Depositors (in Financial Institutions) Act, 1999, by virtue of which 50% of shares of the asset of the Corporate Debtor were attached which was provisionally set aside on 27.12.2017 by the Hon'ble Appellate Tribunal for Preventing for Money Laundering Act.



9. It is submitted that the Hon'ble Appellate Tribunal for Preventing for money Laundering Act ("PMLA") set aside the provisional attachment order and the order passed by the Adjudicating Authority of PMLA which had confirmed the provisional attachment. Subsequently, this Authority on 19.10.2018 allowed the application filed by Respondent No.1 and set aside the notification issued by the Government of Maharashtra. The Resolution Plan approved by this Authority has omitted the waiver sought as the Applicant had specifically stated for grant of certain waivers and reliefs alongwith the Addendums being the essential components for complete and successful revival of the Corporate Debtor. Further, as stated in the Addendum-3, the Resolution Amount would be paid by the Applicant once the waivers sought from this Authority are granted.

10. It is stated that the Applicant has clarified its stand in the Addendum- I that it is ready to take assets of the Corporate Debtor on AS IS WHERE IS BASIS AND IS WHAT IS basis however, the fifth floor of the Hotel will be part and parcel of the asset of the Corporate Debtor whose ownership on implementation of the Resolution Plan to be transferred to the Applicant and in the event this Authority does not allow the avoidance application C.A. 01 (PB)/2018, the title rights pertaining to the fifth floor shall vest with the Applicant. The only logical assumption derived from the condition stipulated in the Addendum-I is that while the adjudication of the avoidance application, this Authority may or may not ask illegal occupants to vacate the fifth floor of the hotel but in any case, on approval of the Resolution Plan application and/ or avoidance application the title rights shall be declared in favor of the Applicant since the offer amount of Rs 252 crore includes the value of fifth floor. The description of the property stated in Information Memorandum was 27,729 Square meters which is inclusive of fifth floor and as per the prevalent practice in New Delhi the land is valued as per



Square Meter meaning thereby, the Applicant during the proposal of the Resolution Amount which is significantly higher than the liquidation value envisage that the complete title rights pertaining to the assets of the Corporate Debtor would be transferred to the Applicant.

11. It is further stated that and application C.A. 1247 (PB)/2019 is filed by the Applicant claiming the amount accrued during CIRP which was reserved alongwith the application for approval of the Resolution Plan however, only approval Order was pronounced which too requires further indulgence of this Authority.

**C.A. No. 1247 (PB)/2019:**

1. The Applicant has sought for the following reliefs:

i) To direct the Respondents for appropriation of the Bank Balance/ accruals during Corporate Insolvency Resolution process by the Corporate Debtor to the benefit of the Successful Resolution Applicant/ the Monitoring Committee keeping in view facts and circumstances as mentioned in paragraph no. 4 of the present application.

ii) To direct the Respondents to pay all the Current Liabilities till the final approval of the Resolution Plan and place before the Hon'ble Tribunal the itemized assets & liability statement reflecting change in each item commencing from the date of modified Information Memorandum till June 30,2019.



iii) Pass any such other Order (s) as may be deem fit and proper by this Hon'ble Tribunal in the facts and circumstances of the case.

**Submissions of the Applicant:**

2. It is stated that the provisional Balance Sheet as on 31.03.2019 of the Corporate Debtor provides the amount of bank balance of Rs 24,72,57,991.6 and from the accrued amount, the CoC in the meeting held on 30.05.2019 has decided (i) to maintain a corpus fund of Rs 1,00,00,000 for the presumptive litigation which may arise till the approval of the Resolution Plan dated 13.03.2018 by this Authority (ii) to pay the Resolution Professional a fee of Rs 1,09,00,000 after payments to the Financial Creditors as per the Resolution Plan. (iii) to meet the Working Capital requirements of Rs 5 crores or amount available in the accounts of the Corporate Debtor with Bank of India as on the cut-off date whichever is lower during the post handing over of the Corporate Debtor to the Resolution Applicant. It is further stated that the remaining amount be further divided into inter-alia under the heads as follows:

(a) Litigation Fund after the approval of the Resolution Plan: to maintain a corpus fund of Rs 2,00,00,000 for the litigation which may arise after the approval of the Resolution Plan dated 13.03.2018 as certain litigations which have been initiated during the CIRP are likely to go post approval of the Resolution Plan which are as under:

(i) The decision of the Appellate Tribunal for Prevention of Money laundering Act dated 31.10.2018 is likely to be challenged by the



Enforcement Directorate, whereby, the provisional attachment of the Corporate Debtor was released.

(ii) The Government of Maharashtra is likely to challenge the Order dated 1.02.2019 of this Authority in the application CA 1312 (PB) of 2018 whereby the notification dated 19.10.2018 was set aside to the extent of the Bank Accounts of the Corporate Debtor and 50% of the shares were attached.

(iii) The affected parties are likely to challenge the Order in the application CA 01(PB)/2018.

b) The difference in the value of the Fixed Assets from Rs 496.98 crores to Rs 476.85 crores as on 31.3.2019. This difference has arisen on account of depreciation charged to the assets in accordance with rate (s) determined based on economic useful life of each fixed assets estimated by the management at the time of commissioning of each asset. The decrease in the value of the Fixed Assets has resulted into loss to the Resolution Applicant to the tune of Rs 20 crores and the Applicant had submitted the Resolution Plan keeping in view the value of the Fixed Assets as Rs 496.98 and liquidation value being Rs 208 crores.

c) The liabilities arising after the commencement of Insolvency Resolution Process till the cutoff date are required to be settled out of the surplus accrued from the operations of the Corporate Debtor including the liabilities.

d) Compensation for an amount determined by applying applicable tax rate to reduction in unabsorbed loss or unabsorbed depreciation.



e) An amount of Rs 3,00,00,000 to be provided to the Monitoring Committee for the cost to be incurred for the successful implementation of the Resolution Plan or in alternative Rs 1.09 crore to be prescribed for the Resolution professional including fee and expenses payable to the Presiding Officer of the Monitoring Committee.

3. It is further stated that the entire amount of Rs 24 crore should be appropriated keeping in view the working capital to the benefit of the Applicant and in no circumstances CoC can avail the benefits of accruals during CIRP after they have approved the Resolution Plan as they are only entitled to Rs 252 crores.

**Submissions of the Respondent:**

4. The Respondent No.1 has filed reply to the application and stated that the reliefs sought by the Applicant are primarily against the CoC and the Respondent No.1 being the Resolution Professional and now the Monitoring Professional has filed reply to bring on record the factual aspects in its correct prospective. The application has become infructuous as the Resolution Plan stands approved vide Order dated 04.01.2020 and the Applicant has failed to make the payment in terms of the Resolution Plan which was to be paid by 03.02.2020 i.e., 30 days from the approval by this Authority.

5. It is stated that during the pendency of the application for Resolution Plan under section 31 of IBC this Authority vide order dated 24.05.2019 observed as under:



*"Arguments in the main application have been heard including the Objector H-2. However it has emerged that during the CIR process period while running the Hotel concerning the Corporate Debtor more than sum of Rs 20 crores cash surplus has accrued but nothing has been placed on record as to how the aforesaid amount is to be appropriated. There is not even an information on record that such an amount has accrued during the Corporate Insolvency Resolution Process."*

In compliance of the Order, the Committee of Creditors filed an affidavit, wherein it prayed that the accrued amounts to be appropriated by the lenders towards their claim as more than Rs 658 crore were lent by them and under the Resolution Plan lenders are only receiving approximately 38.27% thereby ensuring maximum recovery for all the creditors being the intent and objective of IBC.

6. It is further submitted that this Authority on 03.09.2019 held as under:

*We have been assured by learned counsel for the SRA that after we have approved the resolution plan within 30 days thereof the payment would be made which is Rs. 232 crores. Let an affidavit*



*to that effect be filed by the successful resolution applicant. The necessity of adopting such a course has arisen because in a connected matter namely IB-46 (PB)/2018 (OBC v M/s. Allied Strips Ltd & Ors) the same successful resolution applicant has sought extension and there was rescheduling of the payment at the instance of which has been approved by the Implementing Committee.*

Pursuant to the above the Applicant filed an affidavit dated 18.09.2019 in the form of an Undertaking and undertook in para 5 to abide by the Resolution Plan and make payment of the remaining amount of Rs 232 Crores within 30 days after the order of approval of the Resolution Plan alongwith the addendum dated 16.03.2018 by this Authority.

7. It is stated that Respondent No. 1 vide email dated 04.02.2020 requested the Applicant to confirm payment of Rs 232 crore outstanding as the last date per the Resolution Plan was 03.02.2020. The Applicant replied to the Respondent No.1 vide email dated 04.02.2020 and stated that it has not defaulted in making the payment on the ground of pendency of C.A. 371 (PB)/2020.

8. It is stated that the Applicant was required to pay Rs 232 crores within 30 days of approval of the Resolution Plan i.e., by 03.02.2020 however, the Applicant has failed to make the said payment in the terms of the approved Resolution Plan. Thus, this application is liable to be dismissed as the Applicant has defaulted to



make payment of Rs 232 crores and has also failed to adhere to the terms of the Resolution Plan.

9. Heard the parties and perused the documents.

10. As seen from the Records, this Authority vide Order dated 05.07.2021 framed certain issues as under:

- (i) "Whether this Application is maintainable or not in view of the approval of the Resolution Plan without any conditions and
- (ii) Whether this Bench is vested with the power wither to modify or alter preview the Order passed by this Bench approving the Resolution Plan."

11. The first issue is regarding the maintainability of this application post approval of the Resolution Plan without any conditions which is filed under Rule 11 of NCLT Rules. In this context it is reiterated that the Resolution Plan was approved on 04.01.2020 which provides that a Resolution Plan should be unconditional thus, the Applicant cannot raise an objection or try to modify at this stage post approval by filing this application. The plea taken by the Applicant cannot be accepted that during the pendency of the applications filed by the applicant in relation to the waivers and extension of time for making payment. The Applicant cannot be exempted for non-payment as per the payment schedule provided in the Resolution Plan and after undertaking to pay.

12. At this stage, we can refer to the judgment of Hon'ble NCLAT in the matter of *R.G.G. Vyapaar Pvt Ltd Vs Arun Kumar Gupta & Anr.* Company Appeal (AT)



(Insolvency) No. 509 of 2018 decided on 31.08.2018 held that Adjudicating Authority has no jurisdiction to reopen resolution under Section 31 of IBC.

13. Regarding the second issue, this Authority cannot maintain any application for modification or implementation of any condition post approval of a Resolution Plan. It would be appropriate to refer judgment passed by the Hon'ble Apex Court in the matter of *Rahul Jain Vs Rage Scans Pvt Ltd and Ors.*, Civil Appeal No. 7940 of 2019 decided on 08.11.2019 wherein it is held that once the resolution plan attained finality, it cannot be modified by the Order of Tribunal. Thus, both the issues are decided against the Applicant as it cannot blow hot and cold at the same time and not make payment as per the terms of the Resolution Plan.

14. It is pertinent to mention that an Order dated 01.02.2019 passed in C.A. No. 1312 (PB)/2018, the notification dated 19.10.2018 issued by the Government of Maharashtra under Section 4, 5 & 8 of Maharashtra Protection of Interests of Depositors (in Financial Institutions), Act 1999 was set aside from the date of the Order, to the extent of attached Bank Accounts of the Corporate Debtor and 50% of the shares in Radisson Blue Hotel therefore, at this stage the prayer (ii) for removal of attachment cannot be granted. With respect to the cancellation of the shares of the Corporate Debtor no view can be taken at this stage.

15. The Applicant at this stage cannot seek any directions from this Authority i.e., post approval of the Resolution Plan. The Applicant first must comply with the terms of the Resolution Plan to show it's bona fide. Further, the Resolution Plan was approved without any condition and by contravening the terms it become liable for contravention as per the provisions of IBC. Once the Resolution Plan is approved, permission for modification or withdrawal cannot be granted as it would



create another tier of negotiations unless in the event the information supplied by the resolution applicant is found to be misleading, incorrect etc. The parties are obligated to honor the terms of the Resolution Plan as undertaken by them respectively.

16. Before participating in the EoI, the applicant had thoroughly gone into the details and had visited the properties. Only after a proper due diligence was done the Resolution Applicant filed its proposal and emerged as a Successful Resolution Applicant without any conditions. In this scenario the prayers as sought by the applicant need not be even taken into account because the law cannot accept a person to approbate and reprobate. The Applicant cannot come before this Authority with an intention to get extension of time for the payment schedule or on any other pretext or even put any condition post approval for the implementation of the Resolution Plan.

17. The Applicant even after lapse of time from the date of approval of the Resolution Plan has failed to honor and adhere to the terms of the Resolution Plan and thereby defaulting in making the payment.

18. In terms of the above the prayers are **rejected**. The applications C.A. No. 719 (PB)/2020 and C.A. No.1247 (PB)/2019 are **dismissed**.

— Sd —  
BHASKARA PANTULA MOHAN  
ACTG. PRESIDENT  
— Sd —  
HEMANT KUMAR SARANGI  
MEMBER (TECHNICAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH AT NEW DELHI**

**C.A. No. 1090 (PB)/2020  
In IB-104 (PB)/2017**

**In the matter of C.A. No 1090 (PB)/2020**

**Under Section 74 (3) r/w Section 60 (5) and 235 A of the Insolvency and  
Bankruptcy Code, 2016 r/w Rule 11 of the National Company Law  
Tribunal Rules, 2016**

**Anil Kohli**

Monitoring Professional  
(Resolution Professional  
as appointed for Tirupati Infraprojects Pvt. Ltd.)  
409, 4<sup>th</sup> Floor, Ansal Bhawan,  
K.G. Marg, Connaught Place,  
New Delhi-110037

.... Applicant

Vs.

**G.P. Global Energy Pvt Ltd**  
Reshma House, Farm No. 9/1,  
Amaltas Avenue, Westend  
Green Farm Society, Shamlaka  
New Delhi-110037

.... Respondent

**In the matter of:**

**Bank of India**

.... Financial Creditor

Vs.

**Tirupati Infraprojects Pvt. Ltd.**

.... Corporate Debtor

**Order delivered on 01.11.2021**



**CORAM**

**SH. BHASKARA PANTULA MOHAN  
HON'BLE ACTG. PRESIDENT**

**SH. HEMANT KUMAR SARANGI  
HON'BLE MEMBER (TECHNICAL)**

**PRESENT**

For Applicant: Mr. Abhishek Anand, Mr. Mohak Sharma, Advocates  
For Respondent: Mr. S. K Giri, Mr. Raghav Kakkar, Advocates

**ORDER**

**PER- BHASKARA PANTULA MOHAN, ACTG. PRESIDENT**

1. This is an Application filed by the Monitoring Professional viz., Mr. Anil Kohli ("Applicant") for the Corporate Debtor viz., Tirupati Infraprojects Private Limited ("Corporate Debtor") under Section 74(3) r/w Section 60(5) and 235A of Insolvency and Bankruptcy Code ("IBC") and r/w Rule 11 of NCLT Rules against the Respondent viz., M/s GP Global Energy Private Limited ("Respondent"). The prayers made are as under:

(a) Allow the present application and

(b) Issue appropriate directions against the Respondent G.P Global Energy Pvt. Ltd. For knowingly and willfully contravening the terms of the resolution plan for the Corporate Debtor as approved by this Hon'ble Adjudicating Authority vide Order dated 04.10.2020 and appropriate



order be passed under Section 74(3) read with Section 235(a) of the Code against the Respondent and

(c) Extend the period of the Corporate Insolvency Resolution Process by 60 days in terms of second proviso to Section 12(3) so that efforts could be made either for seeking resolution of the Corporate Debtor instead of putting the Corporate Debtor to liquidation and Committee of Creditors be reinstated to make another attempt for a fresh process for Resolution Plan for the Corporate Debtor.

(d) Pass such other or further order/Order (s) as may be deemed fit and proper in the facts and circumstances of the instant case.

2. It is stated by the Applicant that this Authority vide Order dated 03.07.2017 admitted the application filed by the Financial Creditor viz., Bank of India ("Financial Creditor") declared moratorium, and appointed Monitoring Professional as Interim Resolution Professional for the Corporate Insolvency Resolution Process ("CIRP"). Subsequently, on 02.08.2017 in the 1<sup>st</sup> Meeting of the Committee of Creditors ("CoC"), the Applicant was confirmed as Resolution Professional. The Applicant in accordance with the amended Section 25(2) (b) invited Expression of Interest ("EoIs") from prospective resolution applicants to submit Resolution Plans in accordance with the conditions and process approved by the CoC. The initial two EoIs issued by the Applicant were cancelled in terms of the Orders dated 13.12.2017 and 06.03.2018 and this Authority directed to invite a fresh EoI which was published on 07.03.2018. The Applicant received expression of interest from five prospective resolution applicants who were provided with the updated Information Memorandum and Process Memorandum. Out of the five prospective resolution applicants only three i.e., Respondent, PAADM International Hotels Private Limited together



with Mr. Chuni Gohel and Rockland Hotels deposited the earnest money of Rs 10 crores set out as a pre-condition for the submission of the Resolution Plan. Pursuant thereto, Resolution Plans from Prospective resolution applicants i.e., Respondent and PAADM International hotels Private Limited together with Mr. Chuni Gohel and Rockland Hotels Limited were received which were open before the CoC for consideration and discussion in the 11<sup>th</sup> Meeting of the CoC held on 14.03.2018. The members of the CoC discussed and evaluated the Resolution Plans based on Evaluation Matrix and it was observed that the Resolution Plan of Respondent proposed an upfront payment of Rs 20 crores and further payment of Rs 232 crores to be paid within 30 days of the approval of the Resolution Plan by this Authority. It was also observed that the financial offer made by Respondent was above the liquidation value, was H1 as per the evaluation matrix approved by the CoC and contained many conditions. The Respondent was called for discussion/negotiations with the CoC in the 12<sup>th</sup> Meeting of the CoC held on 16.03.2018 and was asked to provide certain additional documents, to withdraw the conditions in the plan, incorporate some information and clarification so that the plan is in compliance with the provisions of IBC, Regulations, and the Process Memorandum. An Addendum dated 16.03.2018 was submitted on the request of Applicant made in accordance with Clause 7 and 9 of the Process Memorandum. In the Meeting of the CoC held on 23.03.2018 it was decided to seek legal opinion and the precautions to be taken while approving the Resolution Plan about the repercussions of the condition that the final payment of Rs 232 crores would be made post written approval of the Resolution Plan by this Authority approving all waiver requests under the Resolution Plan. The Applicant in the Meeting of the CoC held on 26.03.2018 presented the Resolution Plan of the Respondent under a forwarding report in accordance with the Section 30 (3) of IBC and regulation 39(2) of the CIRP Regulations alongwith the addendums dated



16.03.2018,19.03.2018, 23.3.2018 and 26.03.2018 (“Addendums”) which clearly outlined the compliances/non-compliances of the Resolution Plan alongwith the addendums. The Applicant reiterated the same before the CoC which is noted in the minutes of the Meeting of the CoC. The extract is reproduced as under:

*It was further briefed by RP that the opinion of Mr. Sumant Batra legal counsel representing the RP, was also obtained by him on the plan and the addenda thereto. He clearly opined that in order to make the plan compliant of the Code and its regulations, certain clauses required modification and additional clauses were required. Based on his opinion,*



^  
(PTO)



*RA was advised to provide an additional addendum the language of which was drafted by legal advisor. The additional addendum was received after the meeting started which was taken on record by the RP. It was found that the contents and language of Additional Addendum were not as per the language approved by the legal advisor. Mr. Batra had requested that the CoC be apprised that in the absence of the contents and language of additional addendum requested from the RA, the resolution plan of the RA would be in the nature of a conditional plan which the RA would be free to withdraw at any stage before its approval by the Adjudicating Authority and not be legally bound to implement it if reliefs prayed from Adjudicating Authority by the RA are not granted. He advised the RP to inform the CoC accordingly in his forwarding report under section 30(3) of the Code.*

*Based on the advice, the RP filed the forwarding report to the CoC under section 30(3) of the Code.*

3. The CoC after discussing directed the Applicant to put the resolution to vote. The extract of which is as under:



*The Resolution Plan submitted by RA along with 4 addendums submitted by RA were presented by the Resolution Professional for approval of the committee of creditors. After deliberating the resolution plan and addendums the committee of creditors decided that:*

*i. Resolution Plan along with Addendum 1 dated 16 March 2018 will only be considered as the complete resolution plan of RA (GP Global Energy Pvt Ltd) and addendums dated 19 March 2018, 23 March 2018 and 26 March, 2018, will be accepted to the extent they are clarificatory in response to the additional information/clarification sought for in terms of clause 7 & 9 of Process Memorandum.*

*ii. The Resolution Professional is directed to put the resolution plan dated 13 March 2018 along with addendum dated 16 March 2018 for e-voting and on approval in accordance with section 30(4) of the Code, issue the letter of intent to RA (GP Global Energy Pvt Ltd) and present it to the Adjudicating Authority in accordance with the Code and relevant regulations.*

4. The Resolution Plan alongwith the addendums were put to e-voting on 26.03.2018 and was declared as successful Resolution Plan with 100% votes in favour of the plan in terms of the resolution proposed for the voting. The extract of the summary of the Resolution Plan as stated by the Applicant is as under:



Financial Proposal	<p>Rs.252 crores (Rupees Two Hundred Fifty Two Crores) for financial creditors and CIRP cost, payable as under:</p> <table border="1" data-bbox="695 376 1353 645"> <tr> <td data-bbox="695 376 1082 454">Upfront payment to financial creditors</td> <td data-bbox="1090 376 1353 454">Rs.20 crores</td> </tr> <tr> <td data-bbox="695 454 1082 645">Payment within 30 days of approval of Resolution Plan with waivers sought for by NCLT</td> <td data-bbox="1090 454 1353 645">Rs.232 crores</td> </tr> </table>	Upfront payment to financial creditors	Rs.20 crores	Payment within 30 days of approval of Resolution Plan with waivers sought for by NCLT	Rs.232 crores
Upfront payment to financial creditors	Rs.20 crores				
Payment within 30 days of approval of Resolution Plan with waivers sought for by NCLT	Rs.232 crores				
Sources of Funds	<p>Equity – 20% (Promoters &amp; Private Equity funds) Debt – 80% (From banks)</p> <p>Undertaking from the parent company of the Resolution Applicant i.e. Gulf Petrochem FZC, submitted to the effect to make available the funds in case bank funding is not arranged in time.</p>				
Appropriation of resolution proceeds	<p>CIRP costs shall be paid in priority to other payments.</p> <p>Rs.252 Crs, the total resolution plan value, to be provided to all the financial creditors including the liquidation value due to dissenting financial creditors who will be paid in priority in terms of regulation 38(1)(c) if CIRP regulations.</p> <p>No payment for operational including statutory creditors is proposed</p>				



	No payment for unsecured loan taken by Corporate Debtor from related or unrelated party.
Definitive agreement	The order of Adjudicating Authority approving the Resolution Plan will constitute the definitive agreement
Equity Structure	All equity shares and rights to convert unsecured loan into equity due to conversion but not converted into equity as on date shall be cancelled.
Organisational structure	GP Global shall appoint the Board of Directors to strengthen the financial and operations of the Company.
Supervision of implementation of plan	Anil Kohli (Insolvency Professional), to supervise the transfer process and day to day working of the said property.
Management of affairs	Management of affairs of CD to be looked after by Anil Kohli (Insolvency Professional), after the approval of plan by Hon'ble NCLT till complete payment of Rs.252 Crs is made by RA, on a monthly remuneration as being paid presently.

5. The Applicant issued a Letter of Intent dated 27.03.2018 to the Respondent interalia informing that the revised Resolution Plan was approved by the CoC and requested to convey their unconditional acceptance. The Respondent submitted their acceptance with certain riders as written in hand as follows:




Accepted Conditionally

Name:  
Designation:  
[Name of RA]

Conditions:-

1 to 5 - Clear

6: Re-iterate that we will pay to 232cr only after getting all our clauses marked 1 to 12 to NCLT duly approved from NCLT else we have the liberty to hold or withdraw revocation of our EMD I & EMD II as defined in our Addendum 3, Prayer to NCLT and Additional Addendum.

7 - Clear

8 (i) & (ii) - Clear

(iii) - Accepted conditionally

(iv) - Not approved of waivers by  
(v) - Not accepted as stated in

(vi) - Para 6 do 3  
(vii) - do

27/3/2018  
CP 19000/18  
Kant

6. The Applicant filed C.A. 275 (PB)/2018 for seeking approval of the Resolution Plan of the Respondent and on 29.05.2018 this Authority directed the Applicant to file a Compliance Certificate as judicially devised and available in the proceedings of CP (IB) 156(PB)2017. This Authority on 09.07.2018 in C.A. 275 (PB)/2018 directed the Respondent to file an appropriate affidavit clarifying that the Addendums dated 19.03.2018 and 23.03.2018 would not constitute a condition precedent for the acceptance of the Resolution Plan and in compliance on 27.07.2018 the Respondent filed an affidavit. Subsequently, one of the unsuccessful resolution applicants filed and intervention application seeking interalia relief to be added a necessary party in the main CP (IB) 104 (PB)/2017.

7. The unsuccessful resolution Applicant viz., Rockland Hotels filed an application seeking consideration and direction for negation with the Applicant regarding the Resolution Plan submitted by it and an application seeking withdrawal of objection to the Resolution Plan submitted by the Respondent. The withdrawal was approved by this Authority vide Order dated 10.7.2019.

8. During the hearing on 08.08.2019 of the application C.A. 275/2018 directed the Respondent to file an affidavit to the effect that the Resolution Plan is not subject to any condition with respect to the fifth floor and that the site has been offered to the Respondent on as is where is basis. This Authority while considering the Resolution Plan on 03.09.2019 held as under:

*"We have been assured by learned counsel for the SRA that after we have approved the resolution plan within 30 days thereof the payment would be made which is Rs 323 crores. Let an affidavit to that effect be filed by the successful resolution applicant. The necessity of adopting such a course has arisen because in a connected matter namely IB-46 (PB)/2018 (OBC v M/s. Allied Strips Ltd & Ors) the same successful resolution applicant has sought extension and there was rescheduling of the payment at the instance of which has been approved by the Implementing Committee."*

9. The Respondent in compliance to the Order dated 03.09.2019 filed an affidavit in the form of an undertaking, and the relevant para 5 reads as under:

*"5. I hereby further undertake to abide by the Resolution Plan of making payment of remaining amount of Rs 232 crores within 30 days after the order approving the Resolution Plan along with the addendum dated march 16, 2018*



*submitted by the Successful resolution Applicant is approved by the Hon'ble Adjudicating Authority/ the Hon'ble Appellate Tribunal"*

10. This Authority vide Order dated 04.01.2020 approved the Resolution Plan submitted by the Respondent and directed that it shall be effective from the same date i.e., 04.01.2020. The Respondent being the Successful Resolution Applicant filed an application C.A. 371(PB)/2020 seeking along with other prayers, the clarification the terms of the Order approving the Resolution Plan by declaring the ownership pertaining to the fifth floor of the Hotel of the Corporate Debtor running under the name of 'Radission Blue Hotel' to be of the Respondent, to remove the attachment on 50% shares in the 'Radission Blue Hotel', declare the shares of the Corporate Debtor cancelled in terms of the Order dated 01.02.2019 and to grant 30 days period to the Respondent for implementation of the Resolution Plan upon the adjudication of the above stated omissions in the Order dated 04.01.2020 and constitute part of the approved Resolution Plan. The application C.A. 371(PB)/2020 was listed on four occasions, however, was not heard and no extension of time was granted to the Respondent.

**Submissions of the Applicant:**

11. It is submitted that in terms of the approved Resolution Plan and the undertaking given, the Respondent paid Rs 20 crore and further was required to make payment of Rs 232 crore within 30 days i.e., by 03.02.2020. Further, it is stated that the Applicant vide email dated 04.02.2020 requested the Respondent to confirm payment of Rs 232 crore outstanding as the last date per the Resolution Plan was 03.02.2020. The Respondent replied to the Applicant vide



email dated 04.02.2020 and stated that it has not defaulted in making the payment on the ground of pendency of C.A. 371 (PB)/2020.

12. It is stated that this Authority prior to the approval of the Resolution Plan in the Order dated 03.09.2019 had considered the fact that the Respondent had already sought extension of time to make the payment in the matter of *Oriental Bank of Commerce Vs. Allied Strips Ltd & Ors.*, therefore, specifically directed the Respondent to file an undertaking regarding the payment of Rs 232 crores within 30 days of the approval of the Resolution Plan. Further, it is submitted that the Respondent has knowingly, willfully contravened the terms of the Resolution Plan which is binding under Section 31 of IBC and hence, the Respondent is liable under the section 74(3) of IBC.

13. It is also stated that the amount of Rs 20 crore deposited by the Respondent stands forfeited in terms of the process memorandum. Further, in the event where a Resolution Plan approved by the Adjudicating Authority is contravened by the concerned Resolution Applicant, then an application may be made to the Adjudicating Authority for the Liquidation Order in terms of Section 33(3) of IBC. In case the Adjudicating Authority on receipt of an application determines that the resolution Applicant has contravened the provisions of the Resolution Plan, then it shall pass a liquidation Order. It is submitted that the liquidation is the last resort when there is no other option left as the objective of IBC is to revive the companies in distress by exploring all possibilities and not rush into liquidation. been The Applicant has relied on following judgments:

- (i) In the matter of *Swiss Ribbons Pvt Ltd & Anr Vs. Union of India & Ors.*, WP (c) No. 99 of 2018, among others, the provisions of IBC were interpreted.

(ii) In the matter of *Committee of Creditors of Essar Steel India Limited through Authorized Signatory Vs. Satish Kumar Gupta & Ors.* Civil Appeal No. 8766-67 of 2019, the word “mandatory” was struck down.

(iii) In the matter of *Quinn Logistics India Pvt Ltd Vs Mack Soft Tech Pvt Ltd*, Comp App. (AT) (INS) No. 185 of 2018, the Hon’ble NCLAT considered the issue of exclusion of ‘certain period’ which has been lost in litigation before the Adjudicating Authority.

(iv) In the matter of *ArcelorMittal India Pvt Ltd Vs. Satish Kumar Gupta* Civil Appeal Nos. 9402-9405 of 2018, the issue where the Adjudicating Authority and Hon’ble NCLAT decided a matter arising out of Section 31 of IBC beyond the time limit of 180 days or the extended time limit of 270 days was dealt with.

#### **Submissions of the Respondent:**

14. The Respondent has filed reply to the application dated 07.09.2021 and submitted that the application is devoid of any substance, merit and is made with mala fide intention to mislead, misguide, and misrepresent this Authority. It is stated that the Order dated 04.01.2020 accidentally omitted the following:

- (i) Pronouncing Order in C.A.01/ (PB)/2018, wherein the order was reserved on 12.12.2018 and
- (ii) No reference to the title of the fifth floor as was specifically sought by the Successful Resolution Applicant in Addendum No-I to the Resolution Plan.

15. It is further stated that C.A. 719 (PB)/2020 out to be decided first and in absence of adjudication in the said application this application is premature and

ought to be rejected. It is also stated that this Authority lacks jurisdiction under Section 74 (3) of IBC as it is not empowered to try offences which are under the jurisdiction of the Special Court once a complaint has been made by the Insolvency and Bankruptcy Board of India ("IBBI") or the Central Government also the Section 236 of IBC specifically bars this Authority to take cognizance of the offence under the IBC. The Applicant has failed to declare the contravention of the Resolution Plan and has jumped ship and ought to have filed an application under Section 33 (3) of IBC which provides for the remedy in case of contravention.

16. It is submitted that there is specific procedure laid down by the IBBI in the event any complaint is received under Section 236 of IBC. The Successful Resolution Applicant has referred to the judgment of Hon'ble Supreme Court in the matter of *State of Orissa & Ors Vs. Md. Illiyas* (2006) 1 SCC 275, the term wilful default has been defined as an act done with a bad purpose, with an evil motive.

17. It is further stated that the Respondent has taken consistent stand on the ownership of fifth floor of the hotel and since the liquidation value and the Information Memorandum includes the area of Fifth floor the offer includes the value of fifth floor. It is stated that the Resolution Plan of the Respondent was approved along with Addendum-I and in compliance with the Order dated 09.07.2018 an affidavit was filed clarifying the stand regarding the removal of the conditions pertaining to the fifth floor and ED attachment which will cause grave prejudice which was never objected.

18. Heard the parties and perused the documents.



19. The submissions made by the Respondent cannot be accepted as post approval of the Resolution Plan, this Authority does not have any jurisdiction under provisions of IBC to modify or to revisit the plan even when an application is filed. In addition to this, the Resolution Plan is approved only when it is unconditional and in the present case an undertaking has been given by the Respondent which specifies its intentions. The Respondent cannot subsequently deny and raise certain conditions which cannot be part of a Resolution Plan or and may even amount to modification of the approved Resolution Plan and violate the process as stipulated in IBC.

20. It is pertinent to mention here that during the course of hearing the Ld. Counsel for the Applicant submitted that the parent Company of the Respondent situated in UAE has become bankrupt. Even in the case of *OrientalBank of Commerce Vs. Allied Strips Ltd & Ors* bearing number IB 46 (PB)/2018, the very same Resolution Applicant is the Successful Resolution Applicant. The Ld. Counsel who appeared for this Company is the same person in that matter also and had raised one plea or the other to evade the payment of the monies.

21. As it can be understood from the conduct of the Company i.e., the Successful Resolution Applicant in both the cases, the only conclusion that can be deduced is that the party is not interested in implementing the plan nor it is capable of implementing the Resolution Plan for the reason that the Company has poor financial condition. The contentions with regard to the litigation of the fifth floor etc. are only aimed at gaining time, it is not worthy of being considered favourably.

22. Considering the application, documents filed, and the submissions made by the Ld. Counsels, we propose to issue the following directions:



## ORDER

- I. We hereby cancel the approval given to the Successful Resolution Applicant for the approval of the Resolution Plan vide Order dated 04.01.2020 and we hereby direct the CoC to be reconstituted and the matter be considered a fresh in its own wisdom.
- II. The amount of Rs 20 crore deposited by the Respondent stands forfeited.
- III. This matter is hereby referred to the IBBI for taking appropriate action in accordance with Section 74 (3) of IBC.
23. Accordingly, in terms of the above the C.A. No 1090 (PB)/2020 is **allowed.**
24. Hence this Order.

  
- sd -

**BHASKARA PANTULA MOHAN)  
ACTG. PRESIDENT**

  
- sd -

**(HEMANT KUMAR SARANGI)  
MEMBER (TECHNICAL)**