

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH- I**

IA No. 1177 of 2021

AND

IA No. 1768 of 2021

IN

CP(IB) No. 2445 of 2019

Under Section 30 (6) of the Insolvency and Bankruptcy Code, 2016 (“code”) r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for seeking approval of the Resolution Plan under the provisions of Section 31(1) of the code.

IA No. 1177 of 2021

In the Application of

Vijay P. Lulla

...Applicant/Resolution

Professional

IA No. 1768 of 2021

In the Application of

Madhukar Shetty

...Applicant/Ex-Director of the

Corporate Debtor

In the matter of

Bank of Baroda

...Financial Creditor/Petitioner

Versus

Genesis Resorts Private Limited

...Corporate Debtor/Respondent

Order Delivered on : 20.12.2023

Coram:

Hon'ble Member (Judicial) : SH. Justice Virendrasingh G. Bisht (Retd.)
Hon'ble Member (Technical) : SH. Prabhat Kumar

Appearances:

For the Applicant/
Resolution Professional in
IA No. 1177 of 2021 : Mr. Gaurav Joshi, Sr. Advocate,

For the Applicant/
Ex-Director of Corporate
Debtor in IA No. 1768 of 2021 : Mr. Pulkit Sharma, Advocate a/w
Saurabh Nikate

For the Committee of
Creditors in IA No. 1768 of 2021 : Mr. Saurabh Bachhawat a/w Ms. Shrishti
Agnihotri and Ms. Priyanka Pandey i/b
Chandhiok & Mahajan, Advocates

ORDER

Per: Prabhat Kumar, Member (Technical)

1. The Resolution Professional, Mr. Vijay P Lulla, of M/s. Genesis Resorts Private Limited has filed an Application IA No. 1177/2021 in CP(IB)2445/2019 seeking approval of Resolution Plan in terms of Sec. 31 of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) after

the approval of Committee of Creditors of M/s. **Genesis Resorts Private Limited** (“Corporate Debtor”).

2. Before we deal with the Application for approval of the Resolution Plan, it is important to deal with **IA No. 1768 of 2021 (“Objection Application”)**, filed by the ex-director of the Corporate Debtor, Mr. Madhukar Shetty, objecting the approval of the Resolution Plan of the Successful Resolution Applicant (“**SRA**”) approved by the Committee of Creditors (“**CoC**”) and seeking its rejection.

IA No. 1768 of 2021

**Submissions made by the Ld. Counsel on behalf of the Applicant/
Ex-Director of the Corporate Debtor**

3. The Applicant submits that he was the Promoter and Director of the Corporate Debtor. The Corporate Debtor was engaged in the business of Restaurant, Bars, Canteens, etc. The Applicant has submitted that the RP has presented a Resolution Plan to the CoC submitted by one Finquest Financial Solutions Private Limited, which is a non-banking non-deposit financial institution and which do not possess expertise in hotel/hospitality industry.
4. The Applicant accordingly requested the RP to furnish a copy of said Resolution Plan. The Applicant states that the RP avoided to furnish a copy of the Resolution Plan approved by the CoC. Accordingly, the Applicant made several requests to the RP to furnish copy of Resolution Plan as well as the minutes of the meeting held by CoC to ascertain true and correct facts with regards to the viability of the Resolution Plan as well as the manner in which the said Plan was approved by the CoC. As several attempts of the Applicant failed to obtain the approved Resolution Plan from the RP, the Applicant filed an Interim Application before this Tribunal, seeking directions to the RP to furnish the following :

- i. Copy of the Resolution Plan
 - ii. Minutes of the Meeting held by the CoC from the date of its constitution to till date.
 - iii. Copy of the Interim Application filed by the RP, whereby approval of the Resolution Plan is sought from this Tribunal.
5. On perusal of the Resolution Plan and the material available with the Applicant with regards to the RP, the Applicant has raised the following grounds for disqualification of the Resolution Applicant as under :
 - a. Imposition of Fine by SEBI on the Promoter of Resolution Applicant
 - b. Ban Imposed on entities of Bharat Patel
 - c. Viability of the Resolution Plan
 - d. Permission from AAI (Airport Authority of India) for Approval of Height of the Hotel Premises
 - e. Liquidation Value of the Corporate Debtor is higher than the value mentioned in the Plan
 - f. No Provision for cost to be paid to MCGM for sanction of plans and obtaining permission
6. The Resolution professional has filed a Reply stating that the draft Resolution Plan was received on 02.02.2021, 19.02.2021 and the final Resolution Plan was received on 08.03.2021 from the SRA. The draft and final resolution plans were sent to the Applicant vide emails dated 12.02.2021, 20.02.2021 & 08.03.2021 respectively. Further, the Applicant vide letter dated 23.04.2021, 30.04.2021 has again requested copies of minutes of the COC meetings and Resolution Plan. The same was again provided to the Applicant through letter dated 18.05. 2021.

7. M/s. Mazars India LLP was appointed for conducting independent due diligence of the SRA under section 29A of the IBC, 2016 and in their due diligence report dated 15.03.2021, they have stated that the Promoters of the SRA have complied with orders of SEBI in respect of fine imposition and Order imposing ban has been set aside by the Hon'ble Securities Appellate Tribunal vide Order dated 08.09.2020. Mrs. Minal Patel and Mr. Ruchit Patel were debarred vide Order dated 20.10.2021, but said debarment was stayed by the Hon'ble Securities Appellate Tribunal vide Order dated 15.11.2021. Mrs. Minal Patel, Mr. Hardik Patel and Mr. Ruchit Patel were debarred vide Order dated 29.04.2022, but said debarment was stayed by Hon'ble Securities Appellate Tribunal vide Order dated 06.05.2022. The RP further submits that the Resolution Plans were received on 02.02.2021 and 19.02.2021 and Final resolution Plan was received on 08.03.2021 and was approved by CoC by e-voting on 31.03.2021.
8. The SRA has undertaken under the Final Resolution Plan that he will take necessary corrective measures to rectify the building height so as to obtain occupancy certificate from BMC to restart the hotel.
9. The valuation was carried out by the Registered Valuers in accordance with Regulation 35 of the Code. The RP further states that as per the 2019 valuation report, the realizable value and the stressed value of the assets of the Corporate Debtor is Rs. 121.11 Crores and Rs. 106.86 Crores respectively, which shows that there has been no significant difference in the valuation of assets of the Corporate Debtor.
10. The Occupancy Certificate dated 27.04.2018 had been withdrawn by the Municipal Corporation of Greater Mumbai ("MCGM") vide its letter dated 14.03.2019 wherein MCGM has categorically stated to "*have the building vacated immediately and not to cause it to be reoccupied until it is duly*

certified as completed by the Licensed Surveyor under whose supervision it has been built.”

11. The erstwhile management has itself admitted that it has procured the NOC dated 25.09.2020 from AAI for permissible top elevation which is well after the date of commencement of CIRP of the Corporate Debtor, i.e. 11.12.2019.
12. The CoC has also filed Reply to the Application which invariably is in line with the submissions of the RP.
13. Heard Learned Counsel and perused the material available on record.
14. At the outset, we find that the Resolution Professional has filed a declaration certifying the compliance of Sec. 29A and this has also been verified by an independent agency, M/s __. We further find that on the date of the submission of the Resolution Plan there was no order from SEBI banning the Patel family members. Further, the Orders passed by SEBI subsequent to the filing of the plan have either been set aside or stayed by the Securities Appellate Tribunal. It is pertinent to note that the disqualification qua the Prospective Resolution Applicant has to be examined with respect to the date of submission of the Plan. Accordingly, we do not find any substance in the contentions of Applicant.
15. We find that the Plan has been passed by the CoC by requisite majority in its commercial wisdom and this Bench has limited jurisdiction to interfere in the exercise of such discretion. The Applicant has not brought on record any deviation from the RFRP or Evaluation Matrix and has also not pointed out any malafide in the exercise of commercial wisdom by the CoC or carrying of the process by RP. It is an undisputed fact that valuation of the Corporate Debtor was carried out by IBBI registered valuers in accordance with the Code and the SRA has presented the Plan

being conscious of the Regulations relating to height and operation of Hotel. We are of considered view that we ought not to interfere in the decision making process as regards viability if the CoC has considered the financial plan submitted by SRA to be a viable proposition.

16. In view of this, IA No. 1768/2021 is dismissed.

IA No. 1177 of 2021

17. The present Application is moved by Resolution Professional **Mr. Vijay P. Lulla** (“**Applicant**”) under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for seeking approval of the Resolution Plan of **Finquest Financial Solutions Private Limited** (“**Successful Resolution Applicant/SRA**”) under the provisions of Section 31(1) of the Code, for **Genesis Resorts Private Limited** (“**Corporate Debtor**”) and for passing order/appropriate direction that this Tribunal may deem fit in the present matter.

Brief Facts

18. The CIRP was initiated against the Corporate debtor vide Order dated 11.12.2019. Mr. Vijay P. Lulla was appointed as the Interim Resolution Professional (“**IRP**”).
19. The IRP published a Public Announcement in Form-A on 12.12.2019 inviting claims from the creditors of the Corporate Debtor. After the receipt of claims, the CoC was constituted by the IRP on 03.01.2020.
20. The Applicant submits that till the date of filing of the present Application, a total of 10 (Ten) CoC meetings of the Corporate Debtor have been held from time to time.

21. The Committee of Creditors ("**CoC**") in its 1st meeting held on 10.01.2020 confirmed the appointment of the IRP as the Resolution Professional ("**RP**") which was further confirmed by the Hon'ble Tribunal on 17.01.2020.

22. At the 1st CoC Meeting held on 10.01.2020, the CoC approved appointment of three registered valuers viz. Kakode Associates Consulting Pvt. Ltd. For Plant & Machinery, Land & Building and Financial Assets, Mr. Parag Sheth for Plant & Machinery and Land & Building and Pinakin Shah & Company for Financial Assets ("Registered Valuers"). The registered Valuers submitted their reports on 09.07.2020, 08.09.2020 and 09.10.2020, respectively. The average liquidation value of the Corporate Debtor was determined as Rs.83.52 Crores (Rupees Eight Three Crores and Fifty Two Thousand Only). The average fair value of the Corporate Debtor was determined as Rs.118.88 Crores (Rupees One Hundred and Eighteen Crores and Eighty Eight Thousand Only).

23. Thereafter, the RP invited Expression of Interest ("**EOI**") in Form G under Regulation 36A (1) of the CIRP Regulations from the general public. The paper publication was made on 28.01.2020. The Applicant received 9 EOIs. Further, 3 more applicants had submitted EOIs after the last date of submission. In the 3rd COC meeting held on 18.02.2020, the RP suggested the COC members to extend the time period for submission of EOI so as to include the 3 applicants in the list of Prospective Resolution Applicants ("**PRA**"). Accordingly, the COC members resolved to extend the timelines for submission of EOI from 11.02.2020 up to 20.02.2020. Therefore, Form G was published on 19.02.2020.

24. Pursuant to the said Form G publication dated 19.02.2020, two more applicants had expressed their interest and submitted EOI after the last date of submission of EOI which was 20.02.2020. In the meantime, a nation-wide lockdown was announced on account of the COVID-19 pandemic and to certain extent the CIRP of the Corporate Debtor was delayed. Since, the said new PRAs submitted EOI after the last date of submission of EOI, the COC in its 4th meeting held on 20.04.2020 resolved to extend the timeline for submission of EOI till 21.04.2020 and accordingly, Form G was published by the Applicant.
25. Due to covid pandemic lockdown and with a view to augment the health infrastructure the local authority MCGM (Municipal Corporation of Greater Mumbai) on 14.04.2020 took over the hotel premises of the Corporate Debtor to set up a covid hospital and started to keep covid positive patients in the hotel premises of the Corporate Debtor and till date the hotel property is in the possession of the MCGM.
26. Owing to the continuing lockdown & the occupation of the property by MCGM for covid positive patients, the COC in its 5th meeting held on 18.07.2020 resolved to extend the date for submission of EOI until 31.07.2020. Accordingly, Form G was published on 20.07.2020. Thereafter, certain Resolution Applicants requested the RP to extend the timelines for submission of EOI on account of the ongoing lockdown. The request of the Resolution Applicants was considered by the COC in the 6th meeting and accordingly, the timeline for submission of EOI was extended until 10.11.2020. The RP pursuant thereto has published Form G on 28.10.2020.
27. The RP states that as per Form G dated 28.10.2020, the last date for submission of Resolution Plan was 15.12.2020 and until then only 2 PRAs out of 17 PRAs (who have submitted EOI) have submitted a Resolution Plan viz. Finquest Financial Solutions Private Limited and

Mr. Jiten K Ajmera. Therefore, the COC in its 7th meeting held on 08.01.2021 resolved to extend the timeline for submission of EOI from 10.11.2020 to 16.01.2021. Accordingly, another Form G was published on 09.01.2021.

28. The RP received 17 EOIs, and accordingly, issued the final list of PRAs dated 24.01.2021.
29. The RP states that the CIRP period of 180 days was expiring on 08.06.2020. However, on account of the nation-wide lockdown, the RP was unable to complete the CIRP process within the stipulated timelines. Also, as stated above the RP had received several EOIs during the lockdown period which were under consideration by the CoC. Hence, in 6th meeting of the CoC, the members of COC have resolved to file an application for extension of 90 days and exclusion of 252 days of lockdown period from CIRP timelines. The RP has filed IA No. 27 of 2020 for extension of 90 days and exclusion of 252 days of lockdown period which was allowed vide order dated 04.02.2021, passed by this Hon'ble Tribunal and the CIRP was extended till 05.05. 2021.
30. The RP issued information memorandum, evaluation matrix and Request For Resolution Plan (“**RFRP**”) to the PRAs to enable them to submit a viable Resolution Plan for the Corporate Debtor.
31. Pursuant to the Request for Resolution Plan, Finquest Financial Solutions Private Ltd. and Jaldhara Properties and Trading Private Limited gave their Resolution Plans. However, since the CoC decided to extend the time for giving EOI & Resolution Plan, both the parties withdrew their Resolution Plans and agreed to give revised Resolution Plans. On 02.02.2021 the RP received 2 Resolution Plans viz. Finquest

Financial Solutions Private Limited and Mr. Jiten K Ajmera. Both the Applicants were found to be eligible.

32. In the meantime, the RP had appointed the agencies as under to carry out the activities of valuation, audit, etc:

Name of Vendor	Nature of Services	Appointment under COC meeting	Dates of Submission of Reports
Kakode Associates Consulting Pvt. Ltd.	Valuation: Plant & Machinery Land & Building Financial Assets	1 st CoC meeting	09.07.2020
Parag Sheth	Valuation: Plant & Machinery Land & Building	1 st CoC meeting	08.09.2020
Pinakin Shah & Company	Valuation: Financial Assets	1 st CoC meeting	09.10.2020
C. P. Bhatia & Associates	Transaction Auditor	1 st CoC meeting	04.03.2021
RSVA & Co.	Statutory Auditor	7 th CoC meeting	27.11.2021
Jain Jagawat and Co.	Statutory Auditor	6 th CoC meeting	30.03.2021
M/s Mazhars India LLP	Sec 29A Due Diligence	9 th COC meeting	15.03.2021
Ms. Savita Nangare, Advocate	RP Counsel for filing various applications	9 th COC meeting	

33. The RP states that Finquest Financial Solutions Private Ltd and Mr. Jiten K Ajmera submitted Resolution Plan along with Section 29A Affidavits, Undertakings and other necessary documents as per RFRP on 02.02.2021. Both the Resolution Plans were opened in the 8th CoC meeting held on 04.02.2021. The said Resolution Plans were discussed by the CoC members in the 8th and 9th CoC meetings held on 04.02.2021 and 15.02.2021 respectively. Based on the discussions, the said PRAs were requested to revise their Resolution Plans and submit the same by 19.02.2021. Although, the PRAs submitted revised Resolution Plans by 19.02.2021, based on the discussions with the RP and CoC members, the same were revised again and final Resolution Plans were received on 08.03.2021 by the Applicant. The Applicant placed the said final Resolution Plans submitted by Finquest Financial Solutions Private Ltd and Mr. Jiten K Ajmera before the CoC members in its 10th CoC meeting held on 10.03.2021 for discussion, wherein, the CoC members, requested the RP to put both the Resolution Plans for e-voting.
34. The agenda for approval of both the above Resolution Plans was put for e-voting, which was kept open from 15.03.2021 till 31.03.2021. Bank of Baroda holding 100.00% voting share voted in favour of Resolution Plan submitted by Finquest Financial Solutions Private Ltd. and also approved filing of the Resolution Plan of Finquest Financial Solutions Private Ltd, Successful Resolution Applicant (“SRA”), before this Hon’ble Tribunal for approval u/s 30(6) of the Code on 31st March, 2021.
35. Pursuant to the approval of the Resolution Plan by the CoC, the Successful Resolution Applicant has accepted the Letter of Intent dated 01.04.2021 in accordance with the RFRP and the Successful Resolution Applicant has issued a Performance Bank Guarantee dated 03.04.2021 from ICICI Bank in favor of Genesis Resorts Private Limited represented by its Resolution Professional for a sum of Rs. 8.72 Crores (Rupees Eight Crores and Seventy Two Lakhs Only) in accordance with the RFRP.

Salient Features of the Resolution Plan

36. The key features and summary of the final Resolution Plan submitted by the Resolution Applicant and as approved by the COC are as under:

(A) The Resolution Applicant shall make payment of **Rs. 115.85 crore** as under:

I. Upfront cash payment of **Rs. 85.85 crores (Equity infusion of Rs. 25 crore and Loan of Rs. 60.85 crore)** within 60 days of approval of the resolution plan by the adjudicating authority to be utilized as under:

- **Rs. 2.00 crore** towards 100.0% of estimated CIRP costs
- **Rs. 0.30 crore** towards 99.25% of admitted workmen and employees' dues
- **Rs. 0.55 crore** towards 9.90% admitted dues of operational creditor
- **Rs. 83.00 crore** towards 30.92% admitted dues of secured financial creditors
- In addition, the RA will compensate the secured financial creditors in case the Bank Guarantees of Rs. 1.58 crores issued by the secured financial creditors devolves.

II. **Rs. 30.00 crore** will be infused as loan within 9 months from the date of initial infusion of funds. The said funds would be utilized towards rectification / completion of pending works in the hotel building, obtaining the occupancy certificate from BMC & operating licenses and working capital requirements

(B) The Resolution Applicant has provided for mandatory contents in the Resolution Plan in the following manner:

- (i) **CIRP Cost:** From the initial equity infusion of Rs. 25 crore, estimated CIRP cost of Rs. 2.0 crore will be paid in priority to any other debts of the Corporate Debtor. Further, if the actual CIRP costs are higher than the estimated costs, such additional amounts shall be paid by the Resolution Applicant through fresh equity infusion.
- (ii) **Workmen Dues:** The total admitted workmen dues and employee claims is Rs. 30,22,712/-. The Resolution Applicant has proposed to make payment of 99.25% of the admitted claims viz. 30,00,000/- would be paid for clearing the dues of the workmen and employees.
- (iii) **Claims of the Operational Creditors:** Dues of the Operational Creditors as admitted are Rs. 5.56 crore. As per the estimation of Resolution Applicant, the liquidation value of the Corporate Debtor is inadequate to cover the dues of the Secured Financial Creditors and hence, the Resolution Applicants have provided payment of Rs. 0.55 crore mentioned on page 17 under Clause 4.6.2 to the Operational Creditors which is 9.90% of the admitted claim. Payment to the Operational Creditors will be made through initial infusion of equity capital and in priority to the Financial Creditors
- (iv) **Claims of Secured Financial Creditors:**
- a. The admitted claim of secured financial creditors is Rs. 268.41 crore. The Resolution Applicant proposes to make upfront Payment of Rs. 83 crores from the balance initial equity of Rs. 25 crore and loan of Rs. 60.85 crore after payments as above.

b. The secured creditor has agreed to renew the outstanding undeveloped bank guarantees with aggregate outstanding of Rs. 1.58 crore upon application by the Resolution Applicant. In the event the said bank guarantees get devolved in the interim, the Resolution Applicant will make good the devolved amount within 15 days of such devolvement

(v) Claims of Unsecured Financial Creditors (Related

Parties): The admitted claims of related parties are Rs. 100.42 crore stood as outstanding as on 31st March, 2018, however, as per the estimation of Resolution Applicant, the liquidation value of the Corporate Debtor is inadequate to cover the dues of the Secured Financial Creditors and hence, the Resolution Applicant has proposed no payment to the unsecured financial creditors (related parties)

(vi) Equity Shareholders: As per Information Memorandum as on 22nd February, 2020 outstanding equity share capital is Rs. 10.00 Crore. The Resolution Applicant has proposed to cancel and extinguish the existing equity share capital. The Corporate Debtor will issue 2.50 crore fresh equity shares of face value of Rs. 10 each at par which will be subscribed by the Resolution Applicant.

(vii) Contingent Liabilities: As per Information Memorandum as on 22nd February, 2020, the Corporate Debtor has recognized contingent liabilities of Rs. 1.35 crore in respect of material litigation and on-going investigation or proceeding initiated by Government and Statutory Authorities. Each such contingent liability is a

“claim” and “debt”, each as defined under the Code and would consequently qualify as “operational debt” and therefore, the full amount of such contingent liabilities shall be deemed to be owed and due as of the insolvency commencement date, the liquidation value of which appears to be Nil and therefore, no amount is payable

- (viii) Remaining Debts & Dues:** Any remaining claims or debts or other dues from the Corporate Debtor to any person for the period prior to the insolvency commencement date, that is not expressly provided for in this Resolution Plan, including in relation to any Corporate guarantees issued by the Corporate Debtor, or any claims from third parties relating to any contract entered into by the Corporate Debtor including damages on account of termination of such contracts pursuant to this Resolution Plan, claims, of any nature whatsoever, from employees and workmen or claims which are in the nature of recovery, disgorgement, penalty, fees or recoupment of loss, for which payments are not contemplated in this Resolution Plan shall be deemed to have been extinguished upon approval of this Resolution Plan, without any liability whatsoever on the Corporate Debtor.
- (ix)** As per the audited financial statement for FY 2018-19 of the Corporate Debtor, there is outstanding statutory dues (duties and taxes) of Rs. 3,47,28,019/- and trade payables of Rs. 5,07,46,868/- (capex creditors) and Rs. 1,82,98,010/- (expenses creditors). If the claim is not lodged or admitted by the Applicant, no payment is envisaged as the estimated liquidation value is inadequate to satisfy the claims of secured financial creditor

- (x) The Resolution Plan contains summary statement showing treatment of all stakeholders which is reproduced as under:

Sr. No.	Stakeholders	Claims Admitted (Rs. crore)	Treatment
1.	CIRP cost	2.00	The estimated CIRP cost is Rs. 2.0 crore. The Resolution Plan provides for 100% payment in accordance with the Code. It is clarified that if the actual CIRP cost is more than Rs. 2.0 crore, the Resolution Applicant will infuse additional funds to meet 100% of CIRP.
2.	Workmen and Employees	0.30	About 99.25% of the admitted claims
3.	Secured Financial Creditor(s)	268.41	<ul style="list-style-type: none"> • Rs. 83 crore i.e. about 30.92% of the admitted claim to be paid as upfront cash • Bank guarantees issued by SFCs at the request of CD of Rs. 1.58 crores if devolved would be made good by the RA. • No payment is envisaged to the unsecured financial creditors (related parties)
4.	Operational Creditor(s)	5.56	As the liquidation value estimated by the Resolution Applicant is inadequate to even meet the claim of the secured

			financial creditor and as per the Code, the amount payable to the operational creditors is Nil. However, the resolution plan envisages ex-gratia payment of Rs. 0.55 crore i.e. about 9.90% of the admitted claim to the operational creditors (other than workmen and employees)
5.	Existing Equity shareholders	-	Nil 100% of the existing paid up equity capital shall be extinguished as per the applicable laws
Total		276.27	

(C) The Resolution Plan provides for implementation schedule which is reproduced as under:

Sr. No.	Event	Estimated Timeline
1	Upfront infusion of Rs. 85.85 crore by the Resolution Applicant as envisaged in the Resolution Plan	Within 60 days from the date of final approval of the resolution plant
2	1. Cancellation of Existing Equity Shares 2. Conversion of Share Capital subscription amounts by Resolution Applicant into equity capital	by the adjudicating authority

(D) The Resolution Plan envisages reconstitution of Board of Directors and Management of the Corporate Debtor, Cause of Default and Key Elements of the Turnaround Plan to be Implemented, Supervision of Plan Implementation and Acquisition of Management Control. The Key Elements of the

Turnaround Plan to be Implemented includes a) Commence the hotel operations within the shortest possible time; b) Business and Marketing Strategies; c) Financial Controls. The Supervision of Plan Implementation & acquisition of Management Control includes activities prior to the Closing Date, on the Closing Date and on and after the Closing Date.

- (E) The Resolution Applicant confirms to hold and maintain 51% or more of the equity shares and voting rights of the Corporate Debtor, with a minimum lock in period of 2 years or the maximum term of the Resolution Plan whichever is higher, and control the management and affairs of the Corporate Debtor.
- (F) The Resolution Applicant has also sought certain reliefs and waivers under the said Resolution Plan more particularly described therein.
- (G) The Resolution Applicant has submitted declarations that the Resolution Plan is not in contravention with any of the provisions of law in Format – VA of Resolution Plan clause (a)(vii).
- (H) The Resolution Applicant has provided affidavit/ declarations stating that they are not convicted for any offence during the preceding five years, there are no criminal proceedings pending against them, they are not disqualified to act as director under the provisions of Companies Act, 2013, they are not identified as willful defaulters by any bank of financial institution, they are not debarred from accessing and trading in securities market, etc.
- (I) The Resolution Applicant has submitted affidavit u/s 29A and 30(1) of the IBC, 2016 and Regulation 39 of said regulations stating that they are eligible to submit the Resolution Plan.

- (J) The Resolution Plan provides for amendment of the constitutional documents of the Corporate Debtor upon approval of the Resolution Plan by NCLT.

Statutory Compliance

37. In compliance of Section 30(2) of IBC, 2016, the Resolution Professional has examined the Resolution plan of the Successful Resolution Applicant and confirms that this Resolution Plan:

- a) Provides for payment of Insolvency Resolution Process cost in a manner specified by the Board in the priority to the payment of other debts of the corporate debtor;
- b) Provides for payment of debts of operational creditor in such manner as may be specified by the board which shall not be less than
 - (i) the amount to be paid to such creditors in the event of liquidation of the corporate debtor under Section 53; or
 - (ii) the amount that would have been paid to such creditors, if the amount to be distributed under the Resolution Plan had been distribute in accordance with sub-section (1) of Section 53 in the event of liquidation of the corporate debtor.
- c) Provides for management of the affairs of the Corporate Debtor after approval of Resolution Plan;
- d) The implementation and supervision of Resolution Plan;
- e) Does not prima facie contravene any of the provisions of the law for time being in force,
- f) Confirms to such other requirements as may be specified by the Board.
- g) As per the Affidavit, the Resolution Applicant is not covered under 29A.

38. In compliance of Regulation 38 of CIRP Regulations, the Resolution Professional confirms that the Resolution plan provides that:
- a) The amount due to the Operational Creditors under resolution plan shall be given priority in payment over Financial Creditors.
 - b) It has dealt with the interest of all Stakeholders including Financial Creditors and Operational Creditors of the CD.
 - c) A statement that neither the Resolution Applicants nor any related parties have failed to implement nor have contributed to the failure of implementation of any other Resolution Plan approved by the AA in the past.
 - d) The terms of the plan and its implementation schedule.
 - e) The management and control of the business of the CD during its term.
 - f) Adequate means of Supervising its implementation.
 - g) The Resolution Plan Demonstrate that it addresses
 - i. The cause of the Default
 - ii. It is feasible and viable
 - iii. Provision for effective implementation
 - iv. Provisions for approvals required and the time lines for the same.
 - v. Capability to Implement the Resolution Plan
39. The Resolution Professional has annexed Form H under Regulation 39(4) of the CIRP Regulations to certify that the Resolution Plan as approved by the CoC meets all the requirements of the Code and its Regulations. The relevant extracts, as otherwise stated elsewhere in the order, are as follows -

FORM H
COMPLIANCE CERTIFICATE

(Under Regulation 39(4) of the Insolvency and Bankruptcy Board of India
(Insolvency Resolution Process for Corporate Persons) Regulations, 2016

1. The details of the CIRP are as under:

Sr. No.	Particulars	Description
1	Name of the CD	Genesis Resorts Private Limited
2	Date of Initiation of CIRP	11th December, 2019
3	Date of Appointment of IRP	11th December, 2019
4	Date of Publication of Public Announcement	12th December, 2019
5	Date of Constitution of CoC	3rd January, 2020
6	Date of First Meeting of CoC	10th January, 2020
7	Date of Appointment of RP	17th January, 2020
8	Date of Appointment of Registered Valuers	18th January, 2020
9	Date of Issue of Invitation for EoI	28th January, 2020
10	Date of Final List of Eligible Prospective Resolution Applicants	24th January, 2021
11	Date of Invitation of Resolution Plan	22nd February, 2020
12	Last Date of Submission of Resolution Plan	2nd February, 2021
13	Date of Approval of Resolution Plan by CoC	31st March, 2021
14	Date of Filing of Resolution Plan with Adjudicating Authority	To be filed
15	Date of Expiry of 180 days of CIRP	8th June, 2020
16	Date of Order extending the period of CIRP	Application for extension of CIRP by a period of 90 days and exclusion of CIRP period lost due to COVID-19 lockdown was filed and was allowed by Hon'ble NCLT vide order dated 4th February, 2021.

17	Date of Expiry of Extended Period of CIRP	5th May, 2021
18	Fair Value	Average value of 2 valuers: Rs. 118.88 Crores
19	Liquidation value	Average value of 2 valuers: Rs. 83.52 Crores
20	Number of Meetings of CoC held	10 CoC Meetings

2. I have examined the Resolution Plan received from **Finquest Financial Solutions Private Limited** (“hereinafter collectively referred to as **“Resolution Applicant”**”) and it has been approved by Committee of Creditors (CoC) of **Genesis Resorts Private Limited**.

3. I hereby certify that-

(i) the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.

(ii) the Resolution Applicants have submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.

(iii) the said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by **100 %** of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

(iv) I sought vote of members of the CoC by electronic voting system which was kept open at least for 24 hours as per the regulation 26.

4. The amounts provided for the stakeholders under the Resolution Plan is as under:

(Amount in Rs. lakh)

Sr. 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	-	-	-	-
		(ii) who voted in favour of the resolution plan	2,68,40,85,069	2,68,40,85,069	83,00,00,000	31.51%
	In case of devolvement of Bank Guarantee			1,58,90,247		
	Total[(a) + (b)]		2,68,40,85,069	2,68,40,85,069	84,58,90,247	31.51%

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2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under subsection (2) of section 21	-	-	-	-
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	-	-	-	-
		(ii) who voted in favour of the resolution plan	-	-	-	-
		Total[(a) + (b)]	-	-	-	-
3	Operational Creditors	(a) Related Party of Corporate Debtor	-	-	-	-
		(b) Other than (a) above:				
		(i) Employees and Workmen	34,81,732	30,22,712	30,00,000	86.16%
		(iii) Government	4,68,26,029	4,68,26,029	55,00,000	9.56%
		(iv) Others	1,07,20,257	87,48,722		
	Total[(a) + (b)]	6,10,28,018	5,85,97,463	85,00,000	14%	
4	Other debts and dues					
Grand Total			2,74,51,13,087	2,74,26,82,532	85,43,90,247	30.57%

*If there are sub-categories in a category, please add rows for each sub-category.

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

8. The interests of existing shareholders have been altered by the Resolution plan as under:

Sr. No	Category of Share Holder	No. of Shares held before CIRP	No. of Shares held after the CIRP	Voting Share (%) held before CIRP	Voting Share (%) held after CIRP
1	Equity	1,00,00,000	NIL	100%	NIL
2	Preference	-	-	-	-

14. The Resolution Plan is being filed **more than 15 days** before the expiry of the period of CIRP provided in section 12 of the Code.

40. On perusal of the Resolution Plan, we find that the Resolution Plan provides for the following:

- a) Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.
- b) Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.
- c) For management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified U/s 30(2)(c) of the Code.
- d) The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.

41. The RP has complied with the requirement of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of the Regulations.

42. The RP has filed Compliance Certificate in Form-H along with the Plan. On perusal the same is found to be in order. The Resolution Plan has been approved by the CoC by majority of 100%.
43. In *K Sashidhar v. Indian Overseas Bank & Others* (in Civil Appeal No.10673/2018 decided on 05.02.2019) 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 (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Apex Court further observed that the role of the NCLT is 'no more and no less'. The Hon'ble Apex Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.
44. In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The same needs to be approved. Hence ordered.
45. The Resolution Plan along with the Addendum thereto annexed to the Application is hereby **approved**. It shall become effective from this date and shall form part of this order with the following directions:

- i. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.

- ii. 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 by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned in light of the Judgment of Supreme Court in *Ghanshyam Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company Limited*, the relevant para's of which are extracted herein below:
 - “95. (i) Once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;

 - (ii) 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be

effective from the date on which the Code has come into effect;

(iii) consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.”

- iii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Mumbai, Maharashtra 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.
- iv. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- v. The Applicant shall supervise the implementation of the Resolution Plan and file status of its implementation before this Authority from time to time, preferably every quarter.
- vi. 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.

- vii. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

Sd/-
Prabhat Kumar
Member (Technical)

Sd/-
Justice V.G. Bisht
Member (Judicial)

/SP/