

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.302
IA 851 of 2020
in
CP(IB) 127 of 2017

Order under Section 31 r.w 30(6) IBC

IN THE MATTER OF:

Amit Jain RP of Neesa Leisure Ltd
V/s
Member of COC of Neesa Leisure Ltd & Anr

.....Applicant

.....Respondents

Order delivered on: 04/03/2024

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

Sd/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

Sd/-

CHITRA HANKARE
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-2**

IA No. 851 of 2020

in

C.P. (IB) No. 127 of 2017

In the matter of:

Mr. Amit Jain
Resolution Professional of Neesa Leisure Limited
Building No.10, Tower – B,
8th Floor, DLF Cyber City Phase – II,
Gurgaon – 122 022

.....Applicant/RP

VERSUS

1. Members of the CoC of Neesa Leisure Limited
 - 1.1 State Bank of India
Stressed Asset Management Branch
2nd Floor, “Paramsidhi Complex”,
Opp. V.S. Hospital, Ellisbridge, Ahmedabad 380006
 - 1.2 Corporation Bank
Navrangpura Branch
Near Navrangpura Post Office,
Ahmedabad – 380 009
 - 1.3 Asset Reconstruction Company (India) Limited
The Ruby, 10th Floor, 29, Senapati Bapat Marg,
Dadar (West), Mumbai – 400 028
 - 1.4 Oriental Bank of Commerce,
Corporate Office, Plot No. 5, Institutional Area,
Sector 32, Gurugram, Haryana – 122 001

- 1.5 Paisalo Digital Limited
101, CSC, Pocket 52, CR Park, Near Police Station,
New Delhi 11 019
- 1.6 IFCI Limited
61, Nehru Place, New Delhi 110 019
- 1.7 Syndicate Bank
Plot No. 22, 23 and 24
GIDC Sector 25, Gandhinagar, Gujarat
- 1.8 Small Industries Development Bank of India
(SIDBI), Recovery Cell, Ahmedabad Regional Office,
Navjivan Amrit Jayariti Bhavan, 1st Floor, Navjivan
P.O. Ahmedabad
- 1.9 Bank of India
Ahmedabad Large Corporate Branch,
2nd Floor, Bank of India Building, Bhadra,
Ahmedabad 380 001
- 1.10 Edelweiss Asset Reconstruction Company Limited
Edelweiss House, Off CST Road, Kalina,
Mumbai – 400 098
- 1.11 Asset Care & Reconstruction Enterprise Limited
(ACRE), 2nd Floor, Mahadev Building, 13, Tolstoy Marg,
New Delhi 110 001
- 1.12 Saraswat Co Operative Bank Ltd,
Zonal Office (Gujarat Zone), Unit No. 10 & 11,
Shivalik Yash, Opp. Shashtrinagar BRTS Bus Stand,
Naranpura, Ahmedabad 380 013
- 1.13 Bhupendra Singh Rajput,
A 309, ATMA House, Opp. Old RBI, Ashram Road,
Ahmedabad 380 009

1.14 M/s. HT Media Limited
18-20, Kasturba Gandhi Marg, New Delhi – 110001

2. Express Resorts and Hotels Limited
Express Hotel Building, R.C. Dutt Road,
Baroda, Vadodara, Gujarat – 390007

.....Respondents

Order pronounced on: 04.03.2024

Coram:

Mrs. Chitra Hankare, Member(Judicial)
Dr. Velamur G. Venkata Chalapathy, Member(Technical)

PRESENT:

For the CoC	:Mr. Pratik Thakkar, Adv. for Asset Care & Reconstructon Enteprise
For the Applicant	:Ms. Aditi Sharma, Adv. a.w Mr. Atul Sharma, Adv.
For the Respondent	:Mr. Pavan S Godiawala, Adv. for GIDC Mr. Aspi Kapadia, Adv. a/w Mr. Shivam Parikh, Adv. for Suspended Management
	:Mr. Priyank Dave, Adv.
	:Mr Mandeep Sigh Saluja, Adv.
For the RP	:Mr. Nandish Chudgar, Adv. Mr. Amit Jain present in person
For the SRA	:Mr. Saurabh Soparkar, Senior Adv a/w Mr. Aalay Shah, Adv. & Mr. Karan Vin, Adv.

JUDGMENT

1. This application is filed by the Resolution Professional of the Corporate Debtor namely Viz. Neesa Leisure Limited under Section 31 read with Sec 30(6) of the code, seeking approval of the resolution plan which is approved by the requisite majority (67.5%) of the members of CoC on Oct 29 2020.

2. The Corporate Debtor was admitted to CIRP under Sec 7 of the IBC 2016 on an application filed by Asset Reconstruction Company (I)Ltd on 26 April 2019 and Mr R P Chaudhry was appointed as the Interim Resolution Professional. The first meeting of CoC was held on May 29, 2019. The IRP had filed an extension and exclusion application under sec 12(3) and Sec 60(5) of IBC for seeking extension for a period of 90 days and for seeking exclusion of a period of 113 days for completion of CIRP which was granted in view of the CoC meetings of the CD was stayed by the Hon'ble High Court of Gujarat from June 19,2019 to Oct 9, 2019. The erstwhile IRP held 5 meetings of CoC before passing on the charge to applicant on June 20,2020 and the RP (on approval of COC on Dec 6, 2019, he was appointed by Tribunal on Dec17 2019) and he issued the expression of interest on Feb 9,2020.
3. It is stated in the application that the e voting as desired in the first meeting would not be conducted as members desired to seek legal opinion on accepting certain claims which had not been done due to stay on the holding of the COC. The second meeting was held on 24 Oct 2019 after lifting of the stay including the Gujarat High Court. The minimum criteria was prescribed for the

resolution applicants to meet the requirements for considering the resolution plan which included Rs 25 crores of Tangible Net worth as on 31 March 2019. It also stated that future payments of financial offer prices will be discounted, at different rates depending on the year/period of future payment, to arrive at the Net Present Value (NPV) as at the date of approval by the Adjudicating Authority. Also it mentioned that the final offer price shall mean the entire consideration, present and future, whether by Cash or Cash Equivalents. The resolution put up by IRP for initiation of EOI under Sec 36 A of CIRP Regulation, 2016 and to fix criteria under section 25(2)(h) was approved by 65.84% majority (Sec 28(1 & 3) - 66%). There were representatives of COC from SBI, Corporation Bank, ARC Limited (applicant for initiating CIRP), OBC, IFCI Limited, SIDBI, Bank of India, Edelweiss Asset Reconstruction Company Ltd, Saraswat Coop Bank, Authorised Representative for FD holders, Superintendent, CGST, Gandhinagar, Authorised Representative of Golf Unit Holders apart from the IRP.

4. The RP who was appointed by a majority of 70.57% of members in the second COC meeting held on 24.10.2019, took over the work from IRP, he received 8 expression of interest from prospective resolution applicants and held the seventh COC meeting on

March 4, 2020 and issued the Information Memorandum to the prospective Resolution applicants on March 12, 2020 with request for submission of resolution plan. A copy of the Information Memorandum was submitted to the Tribunal only on 1 Feb 2024 when asked by the Tribunal during hearing which when submitted had certain material defects and flaws by way of the date of affidavit as on 12 1 2023 (but dated 30.9.2019 and updated as on 4.1.2020 as per its printed copy provided as record). A copy of the RFRP (Request for Resolution Plan) issued has been submitted by the RP. It states that the RP in discharge of his duties is to issue RFRP, Evaluation Matrix and the Information Memorandum to the prospective e Resolution Applicants(***not enclosed in application***).

5. The RFRP identifies for site visit by the prospective applicants, the following property sites:
- a) Cambay Grand, Thaltej, Ahmedabad
 - b) Cambay Sapphire, Vejalpur, Ahmedabad
 - c) Cambay Sapphire, Gandhinagar
 - d) Cambay Grand, Kukas, Jaipur
 - e) Cambay Resort, Jamdoli, Jaipur
 - f) Cambay Resort Udaipur; and
 - g) Cambay Sapphire, Neemrana.

The last date for submission of resolution plan along with EMD is stated to be as April 17, 2020. The RFRP also specifies the percentage shareholding in the CD offered to the creditors, if any proposed in page 117 (xxvi). The mandatory contents of the Resolution Plan sought include:

- 1) Compliance with Sec 30(1) of the Code read with Reg. 38 of CIRP Regulations – clearly specifying the amount to be paid to Operational Creditors and to those creditors who are to be paid if they dissent, not vote in favour of the Resolution Plan, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of Sec 53 in the event of a liquidation of the CD.
 - 2) An evaluation matrix that would decide the ranking of the plans received was placed along with the contents of RFRP.
6. Apart from the pending litigations which included various IAs the COC had also discussed about the Camba Grand, Kukas Property and on Jamdoli Property and the impact of COVID on the functioning and visits to these properties. There were also certain litigations against and from the suspended management by way of IAs. There was also action by the ED against the suspended management. The RP had also informed of the significant difference between the two valuers and sought for appointment of

3rd valuer in terms of regulation 35(1)(B) of the CIRP regulations but could not be done due to COVID 19 restrictions. Subsequently, extensions were sought and granted by this Tribunal.

7. In the 20th meeting of COC on Sept 2, 2020, he briefed about 4 plans received. The suspended management had objected to one of the resolution plans of Alchemist ARC participating in the process due to certain RBI instructions not allowing ARC to take over assets under IBC. One another objection mentioned by Suspended Management was that two plans were opened and discussed of its value before receipt of plans of Pacifica and Express Group. During the presentation by the successful Resolution Applicant (Express Group) before COC the litigation about Jamdoli Property (lease cancelled and the possession taken over by JDA) and also RICO ad calld orders for Kukas and Neemrana properties. It was also suggested by some members of COC to increase the value of the plan offered and also better the amount to be paid to FD holders. It was also pointed out that the plan offered was conditional which cannot be approved by the COC. Similar discussion also took place with the Pacifica group representatives. Both were given opportunity to revise the plans.

8. Prior to this, one of the suspended Management and promoter Director Mr. Sanjay Gupta wrote a letter through his counsel that the defect in the properties were allowed to persist thereby the property lost its value as lease agreements did not get extended during the 16 months of resolution process. He also offered a proposal for the COC to consider a debt resolution plan or convert debt to equity taking over 75% of the equity of the CD. He also pointed out the detailed valuation done by banks and the ED had valued the property at Hotel Cambay Grand at Thaltej at Rs.144 crores. COC directed the promoter suspended management to give a firm proposal for repayment and based on merits to be considered. The COC was also informed that IBBI had sought for certain documents on an anonymous complaint stating the CIRP was fraudulently initiated by ARCIL. Further, the RP updated the claim status as on August 20, 2020 whereby out of total claims of Rs 1,889 crores he had considered Rs.1,572 crores. Claims amounting to Rs.215 crores were on dispute and RP had vide his email dated April 1, 2020 informed Golf Unit owners that their claims were inadmissible even though he had received an amount of Rs.16.69 crores of claims against which he had initially admitted Rs.13.12 crores. He had also considered an amount of Rs. 488.39 crores against the amount of Rs.494.08 crores claim submitted by operational creditors and Rs.13.75 crores against

claim of Rs.73.08 crores submitted by employees. There was also objection to the claim submitted by ARCIL which had taken over the asset from Union Bank which was considered by the COC. Finally there were 3 resolution plans of Kundan Care Products, Pacific India Projects and Consortium of Express Resorts Groups which became eligible to be considered by the COC.

9. Meanwhile, based on an email from Mr. Sanjay Gupta, Promoter on Sept 17, 2020 and COC heard him on his Settlement Proposal on Sept 20, 2020. He stated that without seeking an support from the COC he will get the litigation removed on the properties and give his personal guarantee and the Corporate Guarantee of the CD and of M/s Edison Global. Further he would also take over the interests of approximately 600 employees who were part of the CD but now part of the operators if the plan is accepted. He also on query from the FD holders representative stated that the asset value of the properties will be around Rs 800- Rs900 crores. Certain members of the COC directed the suspended management to come with proposal with financial commitments and not by equity monetization. Mr Gupta clarified that the amount will be a cash payment towards the loans and further the NPV of plan at the end of third year would be made as one bullet payment. He also stated that he will provide a revised plan and also remove all

complaints and litigations from their side. The members of the COC desired that he submit a better plan than the Resolution Plans received and be done before sept 25, 2020. This plan, if any submitted under 12 A of the IBC would be possible only if the ARCIL who had moved the application withdraws the same and require 90% of voting by approval of members. Since the assets were distributed between Rajasthan and Gujarat some of the secured lenders wanted it to be distributed in the plan value basis to the claims admitted. It was decided to discuss these issues in the Joint Lenders Forum meeting (LF meeting). Based on the evaluation matrix scoring, Express Consortium got 38 score against 100 while Pacifica got 23. Pacifica had provided for a separate payment of Rs 10 crores to the FD holders. Kundan Group had raised certain issues before the NCLAT on the process of bidding and certain orders of NCLT which was disposed off.

10. Mr. Sanjay Gupta, Promoter of Suspended Management, further informed the COC through RP that the equity offered to COC members by Express Group will also be hit by same regulation which made Alchemist Plan infructuous(withdrawn) as the 25% equity distributed pro rate amongst lenders will also go to the 3 ARC in the lenders group and requested that the plan is not taken up. There were also other issues like valuation of properties and

cost of renewing the lease agreements which could further bring down the value paid to the creditors. He had also spoken against some of the complaints by other ex-directors of management in this regard, stating that he would be supporting the RP and COC and come up with a proper proposal on Sept 25. As regards one of the disputed claim of Rs 215 crores not considered by RP, it was the same person who gave a settlement proposal with Mr Sanjay Gupta, Promoter. He further gave a settlement proposal on Oct 17, 2020 which was deliberated after his presentation and discussions and the COC members felt that there has to be a commitment to deposit Rs 25 crores as down payment in an Escrow Account. Mr Gupta stated that he cannot do the same until the plan was approved. The COC on further deliberation, decided not to take up the proposal as the Resolution Applicants were rated companies and had given bank guarantees which were not provided by the Promoter. The stand of the COC was conveyed by the RP to the Suspended Management and their representatives were present in the meeting.

11. The valuation reports taken in to consideration at the time of issue of Information Memorandum by the RP were 3. This was on account of the wide valuation differences between the first valuation report and the second submitted by the then IRP. It is

submitted that it was done to comply with Regulation 35(1)(b) of the IBBI (Insolvency Resolution Process for Corporate Persons) after obtaining the necessary approvals from the 8th CoC meeting held on 7.4.2020. RD has filed an additional affidavit to substantiate the stand on account of certain allegations made by the suspended management on the wide variation in the valuation obtained by the IRP from Mr Sunil Dingra on (land and building) and that obtained by the RP. This was approved in the 8th CoC meeting. The other two valuation reports were on Plant and Machinery from M/s Dinesh Kanjani and Financial assets valuation report by Mr Dharmendra Dhelariya. The IRP also informed members of COC that M/s Crest Capital Advisors was also considered to value all the assets of the CD. The CoC very clearly rejected the settlement proposal of the Suspended Management while approving the Resolution Plan.

12. Accordingly the 3 Resolution Plans were evaluated and discussed in the 14th CoC meeting. The draft resolution plan submitted by Express was discussed and revised on Sept 7, 2020 and Sept 15, 2020 taking in to consideration the negotiations and discussions between the members of the CoC and the resolution applicant. The resolution plan was revised further on Oct 15, 23 and finally revised plan of Oct 4, 2020 was placed in the 14th CoC. It is

observed that there were various revisions in all the 3 plans submitted to take the views on plan tenure, commercial/legal clauses of the plan to ensure compliance with IBC and incorporate suggestions of the COC members. It was initially put to vote from 27.10.2020 to 29.10.2020 and against extended and ended on 5.11.2020 and the plan submitted by Express Consortium on Oct 24, 2020 was approved by 67.85% of voting share of financial creditors. The Resolution Plans of Pacifia and Kundan got 19.91% and 0.73% votes respectively. As per the form H of the Resolution Plan submitted the fair value of the assets were at Rs184.38 crores while the liquidation value was at Rs.141.84 crores and there were 14 COC meetings conducted before the Resolution Plan was approved. The members who dissented were ARC, Saraswat Cooperative Bank, Financial Creditors in a class (comprising 4.80%).

13. The Plan schedule for payment was as follows:

Year	Amount in Crores
Upfront within 30 days	25
Year 1	20
Year 2	20
Year 3	20
Year 4	65
Total	150

Year	Amount (INR in cr)	Paid to
Upfront	0.17	Payment against Employee & workmen claims in Form D
Upfront	18.73#	Payment to FC including FD holders
Year 1	20	-do-
Year 2	20	-do-
Year 3	20	-do-
Year 4	65	-do-
Sub	143.83	
Total	144	

The Resolution Plan approved in favour of Express Consortium binds all the stakeholders, employees, members, creditors and guarantors of the CD who are all involved in the Approval Plan. This effectively also binds the litigants and leases who have filed IAs or have filed court cases. The Financial Creditors who would be paid would also include the stated secured creditors who have financed against the leased properties which are under dispute and the lease agreement under litigation. The RP has observed to have in the Information Memorandum mentioned these as assets of the borrower(lease) by including a small caveat that there are

certain litigations. Thereby the Resolution Professional acquires the entire property placed in the Resolution Plan including the two properties whose valuation has been termed as NIL by the valuers. It is also observed that the Plan has pays NIL value to all the Operational Creditors.

14. As regards the 3rd plan discussed with the COC, the Kundan Plan allotted 40% to Rajasthan consortium and 60% to Gujarat Consortium. Further inter-se distribution among consortium members was not discussed. The Express Group did not provide detailed mechanism on distribution of proceeds but left to the decision of the COC. It specified that equity of 24% shall be given only to secured creditors. Pacifica provided separate payment of INR Rs 10 crores to the FD holders and the proceeds for COC (Except FD holders) shall be distributed in the claim outstanding share. Kundan Group raised certain objections including by appeal before NCLAT which disposed off the appeals while granting liberty to the applicant to discuss regarding fairness and transparency of the bidding process in accordance with the provisions of the code and regulations framed therein.
15. It is also observed that the NCLT had directed COC member to consider the plans submitted by Express Hotels and Pacifica India

vide orders dated August 7, 2020 and August 18 2020. There was an IA 34/2019 filed by the Assistant Commissioner, CGST V Asset Reconstruction Company India in the main application which was disposed off. There is also a difference between the claims admitted of the work men and the amount settled. The RP has been observed to have been in discussion with the Resolution applicants from July 18, 2020 till August 20, 2020 and with the suspended management on their proposals and objections from Sept 23, 2020 till date of approval of e voting. The estimated CIRP cost of RP was around Rs.5.32 crores with an additional interim finance requirement of Rs 1.83 crores was proposed. Further new litigation also arose on the Cambay Grand, Kukas Property as there was cancellation order dated May 15, 2020 passed by RIICO which went in to appeal by the RP before the MD of RICO. It is also observed that sizeable claimants from the FD holders had not filed their claim before RP (only 800 out of 6000).

16. The amount of claims updated a on Sept 23, 2020 are as follows:

Sl No	Particulars	No	Amount claimed Cr	Amount Admitted	Under dispute
1	FC	24	1024.39	66.30	215.11

2	FC(FD holders)	2441	53.17	51.49	
3	FC Golf Unit Holders	84	24.26	NIL	
4	OC and other creditors	28	494.08	488.74	
5	Employee workmen	12	0.73	0.17	
6	Claims from Golf Unit holders	108	16.69	13.12	

17. The Resolution Plan submitted by the Applicant M/s Express Resorts & Hotels Ltd (SRA) which is well established in hotel industry (45 years of experience) with group of 3 companies and wide experience than other applicants, mentions that based on the Information Memorandum and RPs assessment each of the properties requires heavy maintenance and up gradation and CAPEX required. The properties mentioned are:

- a) Cambay Grand, Thaltej – Ahmedabad
- b) Cambay Sapphire, Vejalpur – Ahmedabad
- c) Cambay Grand, Gandhinagar
- d) Cambay, Udaipur
- e) Cambay, Kukas
- f) Cambay Neemrana (mentions litigants in 6th floor who were sold the property and eviction would be difficult).
- g) Cambay Jamdoli

It does not mention about the legal disputes or status of lease agreements, its valuation of the properties or value of Current & other Assets of the company.

18. In the report it provides the details of financial claims admitted and the amount provided in Resolution Plan as given below.

(Rs cr)

Sr No.	Particulars	Amount admitted by RP	Amount provided under Resolution Plan
1	IRP Cost	-	Rs.3.36 crores*
2 & 3	Financial Creditors (Form C) Secured & F C	888.96	118.47

	Unsecured also with secured debt	107.65	
4 & 5	Financial Creditors - Unsecured(Form C) F C (FD Holders)	27.73 51.49	Rs.3.00
6	FC (Golf Unit Holders	-	NIL
7	Operational Creditors & Others	488.74	NIL
8	Employee/Workmen	0.18	0.18
9	Golf Unit Rent claim	13.12	NIL
	Total	1577.93	125.00

19. Financial Package Offered in Resolution Plan

Parameter	Rs. In crores
Cash Upfront Payment	25
Cash Deferred Payment	100
Equity Shares in the CD to the extent of 24% of the share capital of the CD allotted for the benefit of the FC to be held in escrow account	25
Fresh Funds for Capex (Equity/Quasi Equity/Debt)	250
Total Plan value	400

The financial package will be binding on all creditors including secured and unsecured (including FD holders), dissenting financial creditors and operational creditors. The Resolution Plan confirms that the payment to operational creditors shall be paid in priority over other financial creditors and the amount payable to those who had not voted in favor of the resolution plan in terms of Reg. 38(1) of IBBI 2016. However, the same does not include in the statement as to how it has dealt with the interests of all stakeholders (particularly operational creditors). Asset Reconstruction Company has been assigned as the designated lender in favor of whom the BG of Rs 10 crores has been proposed. The plan also in its schedule page 57(Para 12) states that “Upon approval of the Resolution Plan by NCLT, all the government departments to continue all the registration such as various approvals by AUDA, GIDC, etc..... and Nothing in the aforementioned clause shall apply to the disputes concerning re-possession of leasehold lands concerning Cambay Neemrana and Cambay Jamdoli, which shall be independently negotiated by the Resolution Applicant with the respective authorities”.

20. The RP had set aside and disagreed the disputed claim of Rs 215 crores by Mr. Tariq Durani stated to be associated with the

promoter and also rejected the claims of Golf Unit lease holders found inadmissible under operational debt category. Corporate Debtor who originally availed various loans from ICICI bank defaulted its loans and in turn assigned its debt by way of assignment agreement dated 30.3.2015 in favour of Asset Reconstruction Company (I) Ltd who filed the application under Sec 7 was considered and orders passed for CIRP inspite of various objections by the Suspended Management. There was a proposal also under discussion if ARCIL could withdraw the application of CIRP u/s 12 A as suspended management was coming up with a proposal (before the plan was approved) for re-schedulement of loans, but COC did not further approve.

21. From the valuation reports submitted to the RP by Mr Dingra and other it is observed that the defects in the documents were not properly discussed and many other important documents were not provided. Additionally, the valuers had difficulties in visiting the site for assessment due to Covid 19 situations.
 - a) The value of the property assessed by Mr Sunil Dhingra (Submitted as Annex to the application) was Rs.76.91 crores (Fair Market Value). He further states in the assessment that the property is leased by Rajasthan State Industrial Development & Investment Corporation to M/s Neesa Leisure

Ltd for 99 years, executed on 21 June 2008. He also assumes that the financial creditors would have got the title deeds legally vetted.

- b) As regards Cambay Grand, (Taltej), F P No. 8, TP No.1 Opp Auda Garden, Thaltej, Ahmedabad, the property's fair value is assessed as on 20.3.2020 at Rs 34.05 crores while the realizable value is assessed at Rs.28.94 crores. The valuation of the property in the summary p10(page 27/160) signed on 16 9 2010, mentioned to be having finalized as on 16.9.2019 is valued at FV Rs. 240.21 crores and realizable Value of Rs.180.16 crores. There seems to be error in the dating but the report is stated to have been done after a visit to the site. The report also stated about the immense potential and development in the area near SG Road, Ahmedabad and that the property is on 99 years lease period from the date of 17th Jan 2007 given by AUDA(Ahmedabad Urban Development Authority and Lessee Neesa Leisure Limited. (One of the CoC members had pointed out in one of the meetings of the wide valuations in these properties).
- c) The Cambay Spa & Resort, Udaipur (situated at Plot No.F-349 to F 442 at I/A, Bhamashah Kaladwas, Udaipur, Rajasthan is valued at FV Rs 17.62 crore(on lease basis) and realizable value is Rs 14.98 crore. This has been given as addendum on

20.3.2020 even though the visit was done on 21.8.2019. However, in the valuation summary dated 23.8.2019 (visit on 22.8.2019) the same is valued at FV Rs70.15 cr and Realisable value of Rs.52.61 crores. There has been wide difference in valuing twice (issuing addendum) within 1 year of both the properties. The report examined the documents of allotment of lease for 99 years from 17th Nov 2006 by RIICO but also states that layout and building plans were not provided. The report also mentions certain notices issued by financial creditors of sale of this property notice under SARFESI Act (IOB) on 6.1.2018, copies produced are not clear and the report does not detail any taint/further saleability of this property.

- d) There is an addendum issued to the property at Cambay Sapphire, Vejalpur on 20.3.2020 after visit on 20.8.2019 with a Fair value as on date at Rs.14.73 crores and Realisable value at Rs.12.52 crores. The same properties were valued at Rs.33.80 crores and Rs 25.35 crores respectively on 16.9.2019 by the same valuer. The stated property was also leased from 5th August 2006 for 99 years by AUDA. It is further mentioned that the lessee shall not mortgage transfer the property or part thereof without permission of lessor i.e. AUDA.

- e) M/s Dharmendra Takhatmal Dhelariya, CA had valued the Current and Non Current Assets of the CD on 4 April 2020 wherein he mentions the Book Value at Rs.177.30 crores against which he has given a Fair Value and Liquidation Value at Rs.61.42 lakhs. He has treated the Deferred Tax Assets with a book value of Rs.60.64 crores, Other Non Current Assets at Rs.9.86 crores and the Trade Receivables with Book value at Rs.9.86 crores to be NIL. Also there is a steep deep discounting of the values of these assets while arriving at these estimates in his report.
22. The Resolution Plan approved by the COC was opposed mainly by the Suspended Management, by failing various IAs which are still pending and some of the points have already been enumerated. Further, in their written submissions by affidavit dated 30.1.2024, in counter to the affidavit filed by the RP on valuations done, they have pointed out the original valuation prepared by Mr Sunil Dingra on 26.08.2019 was just and proper and not the one revised on 20.3.2020. It is stated that the valuer had all information based on which he originally submitted the valuation, while the second valuation was done at the request of the RP as it had changed the methodology to “only income approach” (based on average room rent per day assuming an occupancy per year of

30%, assuming yield of 10% and taking 10 years for capital cost recovery. They further state that the valuation of property at Cambay Spa & Resorts, Gandhinagar is calculated at Rs 68.84 crores as fair value and Rs.58.51 crores as realizable value as on 20.3.2020, while in contrast the original valuation of the same property on 26.8.2019, the fair market value was at Rs.282.14 crores and realizable value was at Rs.211.6 crores. They further have stated that the fair market value of all the properties of the CD were originally arrived at Rs.1245.81 crores which was brought down to Rs.187.27 crores and the realiable value was reduced from Rs.934.35 cores to Rs.159.07 crores. Similarly the Jamdoli Property in Jaipur was valued at Rs.443.24 crores (MV) and realizable value as Rs.332.43 crores while in the second valuation it was reduced to zero. They have also categorically stated that valuation reports were not submitted before this Tribunal.

23. In this regard by another affidavit the various valuations obtained have been summarized by table by the respondent No.2.

(Rs in crores)

Valuation 1 (Individual)		Valuation 2 (CREST)		Valuation 3 (Adroit)	
FMV	LV	FMV	LV	FMV	LV

187.88	159.68	246.80	196.28	180.87	124.00
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It is pointed out the 2 valuation being higher was discarded and the average of 1 and 3 were arrived to invite the resolution plan. It is also pointed out that the difference between the first and third in the liquidation value is less than 25% and by violating the Regulation 35 of the IBC 2016 (only if more than 25%) the RP obtained a third valuation report. They have also stated that the Jamboli Property in Rajasthan value is much higher as it is very well developed out of the CDs funds (CAPEX 100 Crores) and 210 rooms in form of villas, health club, Golf Course etc. The Jaipur Development Authority has cancelled the lease in the year 2017 and taken symbolic possession which has been challenged before the Hon'ble High Court of Rajasthan which is still pending. The valuer has assigned NIL value for the said property. As per pursis filed by one of the Advocates of respondent, the Rajasthan High Court has ordered status quo on one of the assets of the CD (Jamboli). The RP has not provided for the dues of Sales Tax and Rainbow Judgment applies. They have also stated that only Rs 125 crores is offered by the Resolution Applicant and to be paid over a period of 4 years while it is secured only by a BG of Rs. 50 crores. Further an offer for OTS was placed before COC for an amount of Rs 205 crores on 13.1.2024 which was fully provided

by BG and are waiting for COC response. Further they state that the RP had ignored the first valuation report which had much higher valuation obtained from Mr Sunil Dingra which was placed in the 5th COC meeting. The suspended management had also offered a proposal earlier on 6.3.2023 for consideration of COC. This was rejected which was also upheld by Hon'ble NCLAT. One of the advocates of the COC filed a pursis with various judgments in this regard on acceptability of any plan under Sec 12 A when the Resolution Plan is approved provided it has 90% approval of COC under Sec 31(1) or till liquidation.

24. One of the members of the COC, M/s Assets Care & Reconstruction Enterprise Limited (ACRE) in consultation with the members of COC had filed an affidavit on 10.5.2023 that the RP by way of an affidavit dated 10.5.2023 had brought to the notice of AA of this Tribunal that an amount of Rs.238.8 crores is admitted of the Government Agencies in compliance with the judgment of State Tax Officer V Rainbow Papers Limited as Secured Creditor. The said admission would adversely affect the members of the COC by causing a significant reduction in payout to them under the Resolution Plan. It also pointed out that the RP had not considered at the time of approval and will have a considerable impact on the payout to the members of COC.

25. Further, Mr Pratik Thakar, Advocate representing the COC members has vide his affidavit on 29.1.2024 stated that the ascending members of COC being SIDBI, ACRE, IFCI, PNB, BOI & Union Bank of India had filed an affidavit dated 9.3.2021 in IA 154/2021 requesting this Tribunal to remand the Resolution back to the COC for reconsideration on ground that the Resolution Plan was approved during COVID period when the hotel industry was one of the worst affected. During the year 2022, while hearing this petition, more than 90% of the COC members had acceded to the request for reconsideration of the Resolution Plan and the same is recorded in para 9 of the order dated 6.9.2022 in IA 851/2020. It has been observed that this Tribunal issued a detailed order on all the prayers made by the members of COC (Applicants with 90% majority), Suspended Management and Fixed Deposit holders, where in the RP had also conveyed the interest of COC to revert back the plan, but did not revert back the Resolution Plan for the reason that the merits of the plan was not examined and disposed off the application, Further the RP in his affidavit dated 10.5.2023 (Page 73) has stated the applicability of the judgment of Rainbow Papers Ltd on government dues of this CD. It is observed from the Table provided that various authorities including Income Tax, Municipal Corporation, RVAT,

Employees State Insurance Act, GVAT have filed various claims amounting to over Rs.240 crores of 11 claimants. The affidavit has also brought to the attention of the Tribunal the litigations in Neemrana and Jamdoli and the actions initiated under SARFESI Act and its symbolic possession and the appeals including that Hon'ble NCLAT had ruled that the Neemrana property to be excluded from the assets of the CD vide its order dated 7.12.2022 which is confirmed by Hon'ble Supreme court in civil appeal No1256/2023/(lease deed was terminated on 1.12.2015). Further it is pointed out that the Jamdoli property was valued at Rs.467.77 crores by Axis Bank and the valuation done by IRP through Mr Sunil Dhingra showed a FV valuation of Rs.443.24 crores and Liquidation Value of Rs.332.43 crores (valued inspite of under symbolic possession lock and key of JDA) but RP in his affidavit treated this as NIL value.

26. Written submissions of the Successful Resolution Applicant was submitted on 30.1.2014 along with various judgments in support of the stand on approval of COC. The Learned Counsel for the Resolution Applicant objected to certain decisions for reverting to the COC after the Plan was approved. They stated that as per Form H the amount of payout will be divided in to Rs 25 crores and buy back of 24% equity at either book value or INR25 crore

whichever is higher thereby an outlay of Rs 150 crores. The terms of payment was explained as per the Plan meeting the IBC guidelines, while it stated that in the light of judgment in Pashimanchal Vidyut Nigam Ltd V Raman Ispat P Ltd, the matter is not applicable to this corporate debtor. Further the statutory authorities have not filed their claim as secured creditors nor have come before this Authority. They further contend that the Adjudicating Authority need not compare the Liquidation Value with the Resolution Plan value as this proposition has been approved by Hon'ble Supreme Court in case of Maharashtra Seamless Ltd V Padmanabhan Venkatesh. Further it is stated that they have valued the two disputed properties at Jamdoli and Neemrana according to Information Memorandum and consideration of the cancellation of allotment of land by Jaipur Development Authority they have submitted the plan. They also objected to the exclusion of property at Jamdoli from pool of assets as sought b ACRE(Respondent) and the Ex Management as they have given the Plan valuation based on pool assets and would be taking the same on as is where basis. Also they have objected to the COC Member ACRE objecting to the resolution plan after according their approval when the COC had considered the plan. It is observed that at every stage when including COC members and other points were raised on the issue of reverting

back to the COC or re-examining the plan submitted, the SRA has strongly objected to any such proposals. The Resolution Applicant thereby with all the litigations and the offer made seeks to retain all the properties wherein sizable investment has been made by the CD on Building and P &M, leisure resorts etc., treated as NIL value valuation and in the Information Memorandum and the Plan has considered this aspect while arriving at its offer for approval of the plan before the COC. The Plan also does not detail the properties but treats the entire pool of assets and has offered a value for consideration with Rs 25 crore upfront payment with staggered further stage of payment up to Rs 125 crores.

27. The Resolution Professional has vide his affidavit dated 31 1 2024. He has in his affidavit disagreed with the allegations by other respondents that there were variations in the report. Even though the NPV was stated to be the basis for selection, the same was not convincingly brought on record by the RP and approved by COC as to whether this payment structure was better than other plans submitted. One of the respondents Rajasthan Industrial Corporation has filed an IA 186/2024 stating that the demised premises ceased to be the property of the CD much prior to the initiation of CIRP, it cannot be covered under Sec 14 of the

code, which was also upheld while dismissing the appeal of RP before Hon'ble NCLAT in the order dated 7th December 2022 and also the Hon'ble Supreme Court dismissed the appeal against the order observed that it is not saleable property and the resolution plan which includes the property has to be rejected. Similar applications/arguments have been made by GIDC. Also the depositors of the Golf Unit Holders, Rajasthan appeared and objected to the plan stating that their claim was rejected. Judgments cited both the applicant and respondents along with written submissions and arguments have been taken on record and perused.

Judgments referred in the matter taken in to consideration:

- 1) *Hon'ble NCLAT set aside Resolution Plan approval order of NCLT in Bank of Maharashtra v Videocon Industries – COC asked to reconsider its approval (Company Appeal No.503 of 2021).*
- 2) *Hon'ble Supreme Court has highlighted that courts and tribunals are duty bound to record reasons while passing an order. It stressed that reason is the heartbeat of every conclusion, without the same it becomes baseless. Justices Vikram Nath and Ahsanuddin Amanullah held that “It is worthwhile to note that the adjudicating authority has jurisdiction only under sec 31(2) of the code which gives powers not to approve only when the resolution*

plan does not meet the requirement laid down under the sec 31(1) of the code, for which a reasoned order is required to be passed. we may state that the NCLTs jurisdiction and powers as the Adjudicating Authority under the code, flow only from the code and the regulations thereunder.”

Thus, it appears that:

- a) The Resolution Plan approved by COC has not been done with a process that can be approved by this Adjudicating Authority as it lacked due and transparent process of examining each application on its merits. Individual COC members were observed to be involved in various discussions, delaying approval of the plan in order to improve the plan value.
- b) The terms of RFRP were not complied with by way of an analysis of the NPV of the payment schedule as the Financial Creditors or the other eligible creditors had got 24% of the debt payable by equity which was also objected by the suspended management stating that the ARCs (3) were not eligible to get such equity contribution.
- c) The Information Memorandum had included the disputed properties at Nemrana and Jamdoli where the lessor had taken back the possession and many litigations on property in Rajasthan and Hon'ble NCLAT & Supreme court clearly stated

that these were not assets of CD. There is also a stay on further proceedings in the matter before the Hon'ble High Court.

- d) The valuations obtained stated to have been 3 have been examined. They have been observed to have done for valuing separately land and building, machinery and current and other assets. They cannot be called as separate valuations for the entire assets of the CD. There is a wide variation between the 2 valuations of Shri S Dingra within an year and why and how the methodology were changed is not convincing. If the RP had obtained another valuation due to variation, it can be convincing to this tribunal to accept only if it is comparable with a similar valuation of the entire property. RP and COC have also arbitrarily allowed and accepted the valuation and the Information Memorandum prepared and issued has included the properties which are not to have been. The RP in the Information Memorandum and RFRP has not clearly specified the nature of defects/saleability of these assets which can only be passed on as assets of the CD to the Resolution applicant. The SRA who got the Plan approved taking in to account the NIL value in second valuation of Mr Dingra has sought to retain the property and sought concessions, if granted the SRA would on that ground try to retain the property for his use and development, inspite of litigations.

- e) Even though the Operational Creditors representing the Sales Tax Authorities have submitted a claim were part of COC, in the plan there is NIL distribution to government. There is also an acceptance affidavit that the various authorities of government will benefit from the Rainbow judgment, while the SRA has been repeatedly raising objections to any of the points raised by the COC members (one or more) on this impact, but only stated that since nothing is left residual after paying secured creditors he has considered as NIL payment to operational creditors. Similarly the payments made on claims stated to have been admitted to the workers and employees are not fully covered even though there is declaration. The dissenting creditors have also raised objections to the contention in the plan on the payment methodology through equity distribution which has a cap and a rider that only the dissenting creditors would get the benefit.
- f) The COC members after submitting the plan, with 90% approval had sought the orders of the Tribunal to send the plan back to COC for reconsideration, which was also consented by the RP. The objection of the SRA was that it should not be done after the approval. This Tribunal did not agree with the same as it stated that they had not examined the merits of the case. The Tribunal could have remitted back the plan to the COC as there were valid

reasons which sought on account of covid situation, litigations and the valuation issues.

- g) It is further observed that the Resolution Plan was approved by a wafer thin majority of 67.5. Constitution of COC members with their voting rights have been done after rejecting the claims of the Rajasthan Golf Unit holders even though they had a right to claim and had also appeared and raised objections before this tribunal is not valid. Many FD holders have not submitted the claim and we are not sure whether a transparent process to invite their claims was done. Some of their claims are also rejected including a large claim of one of the claimants stating that he had submitted a plan along with suspended management.
- h) The promoter of the plan had been repeatedly offering a process of settlement and rejection of plan but was not considered even though heard before the plan was approved. It was stated that the Joint Lenders Forum would examine the matter but not done. The main litigants who have delayed and objected the plan with various appeals are the Successful Resolution Applicant and the suspended management who objected to any thing and every thing to consider only the plan or reject the plan. The stand of the SRA that plan is to be approved not on merits (with defects in the title of the property) but as COC has approved whereby he

could acquire the property on as in where basis inspite of litigations is unwarranted and not accepted.

- i) Concessions sought by the applicant on properties not held on the books of the Corporate Debtor or under valid litigation or disputes is not correct and impact on such an order will have far more repercussions if considered.
- j) The plan has treated the secured creditors to be paid and not considered the claims of unsecured creditors when the majority of the assets are under dispute which are mainly leased properties against which these secured creditors have created exposure. From the submissions unless a fresh legal opinion is obtained (which was not done by the Resolution Professional), most of these secured creditors would be deemed unsecured as the liabilities (in 3 cases) were acquired later after sanction of loan or when the assets turned NPA or under restructuring by Asset reconstruction companies who have submitted claim stating secured status.
- k) The CIRP cost has not been fully covered and the plan schedule of payment is not considerable due to the points mentioned including the NPV arrived at and that the Hotel Business when on its down fall during COVID period has been valued of all the hotel assets only at 30% value. There is also certain borrowing sought by the Resolution Professional as interim finance. There are

disputes even in Ahmedabad property as GIDC have raised objections which have leased the lands and the property leased by AUDA has certain objections including on valuations as there is wide variations in the property valued of hotels in Ahmedabad.

- l) It is not clear from RFRP whether the Information Memorandum in the form submitted before the Tribunal only when called for before reserving the orders in January was the same which was issued with RFRP, which on examination does not have this as attachment. The auction process then is not transparent and many discussions and negotiations have taken place independently than in the meeting with the applicants. No explanation given as to why the Information Memorandum was not filed along with the application.
- m) Even though the suspended management has been repeatedly putting up proposals which are higher than the plan, which are better in content, there are many litigations and also IAs filed under Sec 19 and Sec 43 including enforcement department cases which needs review. It is to be assessed by COC on to whether such applications can be considered and if so only it is with approval of joint lenders forum and consideration of all other stake holders including operational creditors as per the provisions of IBC.

- n) The Resolution Professional did not make the operational creditors whose claims were considered to be NIL to be paid in the plan as party to this application.
- o) The Resolution Plan does not comply with the requirements under Sec 31(1) and is rejected under Sec 31(2).
- p) The bench has considered the submissions of applicant and respondents in other IAs filed (IA 188/2020, IA 1089 of 2023, IA 589 of 2023) which have opposed the Resolution Plan. In view of the orders passed in this application for approval of Resolution Plan they are considered as infructuous and to be disposed off.
28. We heard the submissions of applicant and all respondents in this matter and pass the following order:-

ORDER

Application is rejected.

Sd/-

DR. VELAMUR G VENKATA CHALAPATHY
MEMBER (TECHNICAL)

Sd/-

CHITRA HANKARE
MEMBER (JUDICIAL)