

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT-II**

IA. No. 2830/2023

In

CP(IB)No. 532/MB/C-II/2018

Application filed under section 30(6) of the Insolvency and Bankruptcy Code, 2016 r/w Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution process for Corporate Persons) Regulations, 2016 r/w Rule 11 of the National Company Law Tribunal Rules, 2016.

Filed by

Anish Niranjana Nanavaty,

Resolution Professional

of V Hotels Limited

Deloitte India Insolvency Professional LLP, 27th Floor, Tower 3, One International Centre, Elphinstone (West) Mumbai – 400013.

...Applicant

In the matter of

Asset Reconstruction Company Limited

...Financial Creditor

Versus

V Hotels Limited

...Corporate Debtor

Order Pronounced on: - 26.04.2024

Coram:

Anil Raj Chellan

Member (Technical)

Kuldip Kumar Kareer

Member (Judicial)

Appearances:

For the Resolution Professional :- Sr. Adv. Pradeep Sancheti a/w Adv. Pulkit Sharma, Adv. Abhishek Swaroop, Adv. Aditya V. Singh, Adv. Shirraj Khambete, Adv. Naman Jain, Adv. Shreya Chandhok

Resolution Professional (in person):- Mr. Anish Niranjnan Nanavaty

For the Committee of Creditors :- Sr. Adv. Chetan Kapadia a/w Adv. Rahul Dwarkadas

ORDER

Per: Kuldip Kumar Kareer, Member Judicial

1. The present Interlocutory Application is filed by Mr. Anish Niranjnan Nanavaty, the Resolution Professional of V Hotels Limited seeking approval of the Resolution Plan submitted by the Macrotech Developers Limited (hereinafter referred to as “MDL”) under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (‘the Code’) read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulation (“the CIRP Regulations”). The Resolution Plan was duly approved by 100% of the Committee of Creditors (CoC) on 22.06.2023.

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2. The Applicant submits that Asset Reconstruction Company (India) Limited, the Financial Creditor initiated the Corporate Insolvency Resolution Process ('CIRP') against V Hotels Ltd. (hereinafter called 'the Corporate Debtor') under Section 7 of the Code. This Tribunal vide order dated 31.05.2019 initiated CIRP against the Corporate Debtor and appointed Mr. Anish Niranjana Nanavaty, the Applicant herein as the Interim Resolution Professional (IRP). Thereafter, the admission order was set aside by the Hon'ble National Company Appellate Tribunal (NCLAT) on 11.12.2019 thereby releasing the Corporate Debtor from the rigors of CIRP. However, the Hon'ble NCLAT's order was set aside by Hon'ble Supreme Court on 01.08.2022 and the management and affairs of the Corporate Debtor again came to be vested with the Applicant.
3. The Applicant filed an application for exclusion of time period from 31.05.2019 to 01.08.2022 from the CIRP period which was allowed on 07.09.2022. The Applicant on 03.10.2022 published the addendum to the public announcement dated 06.06.2019 and invited the updated claims from the Creditors of the Corporate Debtor on 01.08.2022.
4. The Applicant appointed registered valuers i.e. RBSA Valuation Advisors LLP and IVAS Partners, to ascertain the Fair Value and the Liquidation Value of the assets of the Corporate Debtor. The average Fair Value and the Liquidation Value is detailed as under :-

(In Crores)

Registered Valuer	Fair Value	Liquidation Value
RBSA	1,119.05	797.68

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IVAS	1,029.49	719.01
Average	1,074.27	758.35

5. The Applicant on 23.08.2022, made publication of Form-G, inviting Expression of Interest (EoI) and the last date for submission of EoI was 06.09.2022. Subsequently, addendums to Form-G was issued on 03.09.2022 and 10.09.2022 and the last date for submission of EoI was extended to 10.09.2022 and 12.09.2022 respectively.
6. Pursuant to the publication of Form-G, the Applicant received EoI from 36 Prospective Resolution Applicants (PRAs). The Applicant on 12.09.2022, issued a provisional list of PRAs and thereafter on 20.09.2022 released a final list of PRAs with a total of 36 EoIs having been received.
7. The Applicant released the Information Memorandum (IM) and also released the Request for Resolution Plan (RFRP) on 21.09.2022 to all the eligible PRAs for inviting submission of Resolution Plans. In terms of RFRP, the last date for submission of the Resolution Plan by the PRAs was 03.11.2022 which was subsequently extended to 20.12.2022.
8. In the 20th Committee of Creditors (CoC) meeting held on 21.12.2022, the Applicant apprised the members of CoC that he had received four Resolution Plans from the following PRAs :-
 - i. Oberoi Realty Limited (ORL)
 - ii. GHV (India) Private Limited (GHV)
 - iii. K Raheja Corp Real Estate Private Limited
 - iv. Macrotech Developers Limited (MDL)

9. In the 21st CoC meeting held on 13.01.2023, the Applicant apprised the members of the CoC about the legal proceedings of the Corporate Debtor and also updated the list of the Creditors.
10. Further, as the CIRP period was coming to end on 28.01.2023, the Applicant filed an Application seeking extension of 90 days from 28.01.2023 till 27.04.2023 and vide Order dated 24.01.2023, CIRP period was extended up to 27.04.2023.
11. In the 24th CoC meeting held on 15.05.2023, the Applicant invited the PRAs to present their Resolution Plans to the CoC. Out of four PRAs, only three Applicants made their presentations to the CoC. Subsequently, in the 25th CoC meeting held on 29.05.2023, the Applicant updated the members of the CoC on legal compliances of the proposed Resolution Plans and the deadline to submit the Resolution Plan was set as 05.06.2023.
12. Thereafter, on request of the two PRAs namely ORL and GHV, the deadline to submit the Resolution Plan was revised and extended to 07.06.2023. In the 26th CoC meeting held on 07.06.2023, only three PRAs submitted Earnest Money Deposit along with the Resolution Plan. Further, certain clarifications were sought from the three PRAs. The clarifications were received from ORL and MDL vide Affidavit dated 14.06.2023 and from GHV on 07.06.2023 by way of a letter.
13. The Applicant confirmed that the revised Resolution Plans received from three PRAs were compliant with the requirements of Section 30, 31 of the Code. In view of the above, the Resolution Plans were put to vote and the

voting lines for approval of the Resolution Plans were kept open till 22.06.2023.

14. The Resolution Plan submitted by MDL was approved by the members of the CoC unanimously by 100% voting and MDL was declared as the Successful Resolution Applicant (SRA). The Letter of Intent (LoI) came to be issued to MDL on 22.06.2023.

15. **Brief background of the Corporate Debtor:**

The Corporate Debtor is in the business of owning hotels. The Corporate Debtor had acquired Centaur Hotel Juhu Beach on 31.05.2002 from Hotel Corporation of India Limited under the Disinvestment Programme of Central Government of India. It was incorporated on 05.09.2000 and is classified as a non-govt. public limited Company and is registered with the Registrar of Companies, Mumbai.

16. **Brief background of the Resolution Applicant:**

- a. The Resolution Applicant is engaged in the business of Real Estate development since 1980s. The core business of the Resolution Applicant is residential real estate development. The Resolution Applicant has also diversified into Industrial and logistics park business since 2019 and has attained success in tying up with number of strategic and financial partners.
- b. The Resolution Applicant has given over 90 completed projects spread over 80 million square feet of developable area and is

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currently engaged in developing more than 50 ongoing and planned projects.

17. **Salient features of the approved Resolution Plan:**

Amount in Lakhs

S r . N o .	Category of Stakehold er	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount provided under the Plan	Amo unt provi ded to the Amo unt Clai med
1	Secured Financial Creditors	a) Creditors not having a right to vote under sub- section (2) of Section 21	-	-	-	0.00 %
		(b)Other than (a) above	20,85,94,33,071	20,76,81,87,788	8,88,69,78,878	42.7 9%

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		(i) who did not vote in favour of the Resolution Plan	-	-	-	0
		(ii) who voted in favour of the Resolution Plan	20,85,94,33,071	20,76,81,87,788	8,88,69,78,878	42.79%
		Total a+b	20,85,94,33,071	20,76,81,87,788	8,88,69,78,878	42.79%
2	Unsecured Financial Creditors	a) Creditors not having a right to vote under sub-section (2) of section 21	5,99,82,78,340	2,26,90,00,000	-	0.00%
		b) Other than (a) above	32,15,29,347	31,20,31,336	31,20,313	1.00%
		(i) who did not vote in favour of the Resolution Plan	-	-	-	-
		(ii) who voted in favour of the Resolution Plan	32,15,29,347	31,20,31,336	31,20,313	1.00%
		Total a+b	6,31,98,07,687	2,58,10,31,336	31,20,313	0.12%
3	Operational	(a) Related Party of	-	-	-	0.00%

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	Creditors	Corporate Debtor				
		(b) Other than (a) above	82,20,31,854	62,70,91,827	75,00,809	1.20 %
		(i) Government	53,74,88,435	37,66,06,382	37,72,469	1.00 %
		(ii) Workmen	-	-	-	-
		(iii) Employees	-	-	-	-
		(iv) Operational Creditors (other than Workmen and Employees and Government Dues)	28,45,43,419	25,04,85,445	37,28,340	1.49 %
		Total a+b	82,20,31,854	62,70,91,827	75,00,809	1.20 %
4	Other debts and dues		68,21,31,80,063	1,03,75,46,960	1,04,00,000	1.00 %
	Grand Total		96,21,44,52,675	25,01,38,57,911	8,90,80,00,000	35.6 1%

In addition to the amounts mentioned, the Resolution Applicant proposes to pay the amounts as under :-

Sr. No.	Particulars	Allocated Amount under the Resolution Plan
1.	Unpaid IRP costs (to be paid at actuals)	Rs. 4,00,00,000/-
2.	Interim Costs (to be paid at actuals)	Rs. 20,00,000/-
3.	Litigation Fund	Rs. 5,00,00,000

a. The Successful Resolution Applicant prescribes total amount of Rs. 900,00,00,000/- (Rupees Nine Hundred Crores Only) to the stakeholders of the Corporate Debtor.

b. Closing date :

The Resolution Plan prescribes the 'Closing Date' which shall be within a period of 60 days from this Tribunal approving the Resolution Plan.

c. **Sources of Funds :**

i. The Resolution Applicant will arrange funds from its internal accruals or through external funding (by way of equity/equity linked instrument/debt/debt like instruments, as may be determined by the Resolution Applicant) for the purposes of implementing the Resolution Plan in terms hereof. Infusion of any part of the funds by the Resolution Applicant or any of its nominees to the Corporate Debtor may also be made by way of equity shares, debt, convertible debt and/or preference shares and/or any other instrument issued by the Corporate Debtor.

d. **Business Plan of the Resolution Applicant :**

i. On and from the closing date, the Corporate Debtor shall be wholly owned by the Resolution Applicant, together with all the development potential in relation to all rights, title, entitlements, interest, easements and benefits arising therefrom.

- ii. The SRA seeks to acquire the Corporate Debtor on a 'clean slate' basis and utilize the property and develop the same as per the business plan.

e. **Financial Proposal of the Resolution Applicant**

I. **CIRP costs :**

- i. The CIRP costs shall be paid at actuals, in full in terms of Section 30(2)(a) of the Code and Regulation 38(1) of the CIRP Regulations.
- ii. An aggregate amount of Rs. 4,00,00,000/- (Rupees Four Crores Only) is estimated as the unpaid CIRP costs. If the actual amounts exceed the estimated amounts, excess is to be borne and paid by the Resolution Applicant as part of the Funds. Further, if the actual amounts are lower than the estimated amounts, then such balance amount shall, at the option of the Resolution Applicant, be refunded back to the Resolution Applicant or the Corporate Debtor.

II. **Payments to the Operational Creditors :**

- i. The Resolution Applicant proposes to pay an amount of Rs. 75,00,809/- to the Operational Creditors.
- ii. The payment due to the Operational Creditors whether secured or unsecured, statutory, Governmental Authorities, trade creditors, should not be less than as

prescribed under Section 30 payout to them i.e. not less than the amount payable to such Operational Creditors in the event of liquidation of the Corporate Debtor under Section 53 of the Code and the amount that would be have been paid to such Operational Creditors, if the amount to be distributed under the Resolution Plan is distributed in accordance with the order of priority in sub-section 1 of Section 53 whichever is higher. The Operational Creditors is required to be paid in priority over the payments to Financial Creditors.

- iii. In order to maintain the status of the Corporate Debtor as operational and for running the business of the Corporate Debtor as a going concern, the Resolution Applicant proposes resolution of entire operational debt of the Corporate Debtor and settlement of all Operational Creditors at an aggregate amount out of the funds firstly by making payments as per Section 30 payout to the Operational Creditors and in case of insufficiency of funds, the shortfall is to be met from the Secured Financial Creditors consideration amount. Secondly payment towards the EPFO dues, in case of insufficiency of the funds, then the shortfall shall be met by the Resolution Applicant as part of the funds.
- iv. Further, no employees or the workmen of the Corporate Debtor have submitted their claim in the CIRP of the Corporate Debtor. If there are any admitted dues towards workmen and employees of the Corporate Debtor, the

same shall be paid in the manner as provided in this clause and thirdly, the balance Operational Creditors payments, if any, shall be utilized for payment towards settlement of the admitted other Operational Creditors dues which shall be distributed amongst the Operational Creditors in a pro-rata basis on their respective portions of their admitted claims.

III. Secured Financial Creditors :

- i. The Resolution Applicant proposes to pay total amount of Rs. 8,88,69,78,878/- to the Secured Financial Creditors.
- ii. Out of the total amount, on the closing date, the Secured Financial Creditors shall be paid Rs. 78,69,78,878/- upfront SFC consideration towards the full and final settlement of the upfront SFC debt. The upfront SFC consideration shall be distributed among the Secured Financial Creditors in a pro-rated manner.
- iii. Further, an amount of Rs. 405,00,00,000/- (Deferred Consideration Amount 1”) will be paid on or before 210 days from the Closing date and Rs. 405,00,00,000/- will be paid on or before 270 days from the closing date. On the respective Deferred payment dates, the respective Deferred Debts shall be settled or assigned against the payment of the Deferred consideration amount to the Secured Financial Creditors.

- iv. For each Secured Financial Creditor, its respective portion of the SFC consideration amount shall be allocated first towards repayment of all outstanding interest, default interest and other penal charges as applicable and second towards the outstanding principal.

IV. Unsecured Financial Creditors :

- i. There are a total 12 Unsecured Financial Creditors. A claim amount from two unsecured Financial Creditors namely Tulip Star Hotels and Tulip Hotels Private Limited has been verified by the RP as the admitted claims.
- ii. Further, some of the claims of the Unsecured Financial Creditors are related party claims which have been made by entities belonging to the promoters or other related parties and some of the claims are under verification for want of documents, and the Resolution Applicant has dealt with those claims in the Resolution Plan.
- iii. The treatment given to the Unsecured Financial Creditors is based on the status of admission of their claim as well as their relation with the Corporate Debtor. On the closing date, utilizing a portion of the Funds, the Unsecured Financial Creditors shall be paid an aggregate amount of Rs. 31,20,313/- towards their full and final settlement against the Corporate Debtor in the following manner:

Category	Unsecured Financial Creditor payout
a. Admitted claim – Non-Related Parties	31,20,313/-
b. Admitted claim – Related Parties	NIL
c. Pending admission/rejected claim – Related parties	NIL

- iv. The Unsecured FC payout shall be distributed amongst the Unsecured Financial Creditors in a pro-rated basis or in any other manner as determined by the CoC in its discretion. For each Unsecured Financial Creditors the payout shall be allocated firstly towards its repayment of all outstanding interest, default interest and other penal charges and secondly towards the outstanding principal.

V. Treatment of amounts claimed by Other Creditors including the ongoing litigations:

- i. As per the IM, the total claim made under this category aggregates to Rs. 6821.31 Crore. Out of the said amount, the RP has admitted claims aggregating to Rs. 1,03,00,000/-. The two substantive claims have been made by Nirmal Lifestyle Limited (hereinafter referred to as “NLL”) and Siddhivinayak Realities Private Limited (hereinafter referred to as “SRPL”).
- ii. Further, the RP has divided the claims of “other creditors” into two parts i.e. Admitted part of the claims and the other

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based on damages and compensation which has been treated as contingent claims. On the closing date, utilizing a portion of the funds, the other Creditors shall be paid an aggregate amount of Rs. 1,04,00,000/- being the “Other Creditors Payout” towards their full and final settlement against the Corporate Debtor in the following manner:-

Category	Other Creditors Payout
Admitted claims	1,03,00,000/-
Claims pending admission/contingent claims	1,00,0000/-

VI. Litigation Fund :

The Corporate Debtor on the closing date, set up a separate corpus of Rs. 5,00,00,000/- (Rupees Five Crores Only) to be used for meeting the legal expenses and process costs towards (i) legal advisory or legal representation of the erstwhile Resolution Professional, (ii) legal representation of the erstwhile RP before CoC or any courts/tribunals arising out of or in connection with the CIRP of the Corporate Debtor also continuing after the approval of the Plan from the Tribunal The said corpus shall be placed in a designated or escrow account to be opened on the joint instructions of the RA and the RP.

VII. Other Stakeholders :

- i. Any claims or demand made by or liabilities or obligations owed or payable to any actual or potential creditors of the Corporate Debtor whether admitted or not, either domestic or foreign, disputed or undisputed or pending adjudication, any person who raises claim or a demand in respect of agreements/arrangements/purchase orders/ work orders between the Corporate Debtor and such person with respect to any event or a cause of action whether or not known to the counterparty or not raised by the counterparty but other than the creditors covered in other clauses relating to a period prior to the closing date shall be settled at an amount as it would have been payable to such creditors in the event of Liquidation and if such amount not provided for hereinabove, then shall be paid out of the SFC consideration amount.
- ii. On and from the closing date, the Company shall have no liabilities towards the persons currently classified as Promoter or Promoter group, persons acting in concert with promoters, holding companies, subsidiary companies, step-down subsidiary companies, associate companies, group companies or any related party of the aforesaid will be settled at NIL and stand extinguished. However, all claims of the Company against such related parties and all liabilities of such related parties towards Company shall remain outstanding, due and payable in accordance with their terms.

VIII. Cash Balance :

The cash and bank balance available in the books of the Corporate Debtor or any receivables and any deposits lying with the courts/tribunal or government authority as on the Plan approval date will accrue only to the Secured Financial Creditors on the closing date in addition to the amounts offered to the relevant Secured Financial Creditors in the Resolution Plan.

IX. Interim Costs :

An aggregate amount of Rs. 20,00,000 is estimated as the Interim costs. The actual Interim cost may increase and any additional amount as incurred and remaining unpaid shall be borne and paid by the Resolution Applicant as part of the funds.

f. Allotment of New Equity Shares to the Resolution Applicant

On approval of the Resolution Plan on the closing date, fresh and unencumbered equity shares (face value of Rs. 10/- per equity shares) will be issued and allotted by the Corporate Debtor in favour of the Resolution Applicant for an amount equal to Rs. 10,00,000/- as equity contribution (Fresh Equity) in compliance with the applicable laws.

g. Capital Reduction :

- i. On the closing date and simultaneously with the subscription of the New Equity Shares by the Resolution Applicant, as an integral part of the Resolution Plan (a) any and all rights to

subscribe, allocate such share capital of the Corporate Debtor, including any employee stock options, pre-emptive subscription rights or convertible instruments, (b) the entire share capital of the Corporate Debtor whether preference share capital or equity share capital except New Equity shares allotted to the Resolution Applicant, shall stand fully extinguished as a part of the Resolution Plan on the closing date (Standalone Capital Reduction).

- ii. There shall not be any Capital Reduction of New Equity Shares allotted to the Resolution Applicant and upon completion of allotment of New Equity Shares to the Resolution Applicant and Standalone Capital Reduction, the Resolution Applicant shall hold 100% of the total equity share capital of the Corporate Debtor such that the Corporate Debtor becomes 100% subsidiary of the Resolution Applicant.

h. **Management Control of Business:**

The Resolution Applicant proposes to form a Steering Committee to manage the affairs of the Corporate Debtor comprising of (a) one representatives of the Secured Financial Creditors (SFC Nominee), (b) two representatives of the Resolution Applicant and (c) the Managing Agency (as defined under the Resolution Plan) within one day from the Tribunal approving the Resolution Plan. Further, the SFC Nominee and the Resolution Applicant Nominees shall be voting members of the Steering Committee with one vote each and the Managing Agency shall be a non-voting member.

i. **Implementation of the Resolution Plan:**

The Resolution Applicant proposes to implement the Resolution Plan within a period of 60 days from the Plan approval date by this Tribunal or such other extended date as may be agreed in writing between the Secured Financial Creditors and the Resolution Applicant (Closing Date).

j. **Recoveries from Preferential/Fraudulent Transaction:**

The proceedings initiated by the Resolution Professional under Section 43,45,47, 49, 50 and 66 of the Code, which have not attained finality, shall be pursued by the Resolution Applicant. Any proceeds received from the transactions in terms of Sections 43,45,47,49,50 or 66 of the Code, the same shall be paid to the Secured Financial Creditors in a pro-rata manner based on their portion of the admitted Secured Financial Debt (and in case decided by the CoC in any other manner, then in such other proportion as determined by the CoC in its discretion).

k. **Performance Security:**

In accordance with regulation 36B (4A) of the CIRP Regulations and as required by item 1.9 of the RFRP, the Resolution Applicant has provided performance security by way of bank guarantee dated 23.06.2023 issued by Kotak Mahindra Bank Ltd. for a sum of Rs. 50,00,00,000/-.

1. **Eligibility under section 29A of the Code:**

The Resolution Applicant is eligible to submit the Resolution Plan under Section 29A and the same is confirmed by the Resolution Applicant in its clause 11(ii) of part V of the Resolution Plan. The Applicant further submits that the Resolution Plan submitted is in compliance with Section 30(2) of the Code and Regulation 38(A) of the CIRP Regulations. The Applicant has confirmed the compliance of various provisions as contained in Form H dated 26.06.2023 as mandated under the code for seeking approval of the Resolution Plan from this Tribunal.

Observations of the Adjudicating Authority:

18. We have heard the Applicant and perused the Resolution Plan and related documents submitted along with the Application.
19. The Bench has taken on record an Addendum to the Resolution Plan dated 09.12.2023 filed by the RP in terms of the Order passed by the Hon'ble National Company Law Appellate Tribunal (NCLAT) in Company Appeal No. 1114-1115 of 2023. The Appeal was filed by the promoters of the Corporate Debtor i.e. Tulip Star Hotels Limited (TSHL) and Tulip Hotels Private Limited (THPL), challenging the applicable rate of interest being 22% p.a. ascertained by this Tribunal vide order dated 21.07.2023 (impugned order) pertaining to loan transactions between the Corporate Debtor and one of its Secured Financial Creditors i.e. Asset Reconstruction Company (India) Limited (ARCIL).

20. The Hon'ble NCLAT vide its Order dated 21.11.2023 set aside the Order passed by this Tribunal and held the applicable Rate of Interest for the determination of claim amount @ 14.85% p.a. In view of the above the reverification of the claims of ARCIL was undertaken at 14.85% and hence the updated/reverified claims were submitted before the members of the CoC. The updated claims were submitted to the Resolution Applicant seeking addendum to the Resolution Plan.
21. The Resolution Applicant submitted its addendum to the Resolution Plan dated 09.12.2023 and the same was approved by the members of the CoC in its 32nd CoC meeting held on 13.12.2023.
22. The claims of the Secured Financial Creditors had been recalculated and the admitted outstanding claim amount is Rs. 1,143,56,33,920/- (Rupees One Thousand One Hundred Forty-Three Crore Fifty-Six Lakh Thirty-Three Thousand Nine Hundred Twenty Only). The total amount payable to the Secured Financial Creditors is Rs. 888,69,78,878/- (Rupees Eight Hundred Eighty-Eight Crores Sixty-Nine Lakhs Seventy-Eight Lakhs Eight Hundred and Seventy-Eight Only) and the Resolution Applicant has proposed no change to the said amount in the Resolution Plan.
23. As referred to the above summary of the Resolution Plan, we are satisfied that all the requirements of Section 30(2) are fulfilled and no provision of law for the time being in force appears to have been contravened.
24. Section 30(4) of the Code reads as follows:

“(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty six percent of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in subsection (1) of Section 53, including the priority and value of the security interest of a secured creditor and such other requirement or may be specified by the Board.’

Regulation 39 (3B) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides that where two or more Resolution Plans are put to vote simultaneously, the Resolution Plan, which receives the highest votes but not less than requisite votes, shall be considered as approved. In this case three Resolution Plans had been put to vote and the Resolution Plan submitted by “Macrotech Developers Limited” received highest votes (100%) and hence this Resolution Plan is considered as approved by the CoC.

25. Section 30(6) of the Code enjoins the Resolution Professional to submit the Resolution Plan as approved by the CoC to the Adjudicating Authority. section 31 of the Code deals with the approval of the Resolution Plan by the Authority if it is satisfied that the Resolution Plan as approved by the CoC under section 30(4) meets the requirements provided under section 30(2) of the Code. Thus, it is the duty of the Adjudicating Authority to satisfy itself that the Resolution Plan as approved by the CoC meets the above requirements.
26. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:
 - a. Payment of CIRP cost as specified under Section 30(2)(a) of the Code;

- b. Payment of debts of Operational Creditors as specified under Section 30(2)(b) of the Code;
- c. For the management of the affairs of the Corporate Debtor after approval of the Resolution Plan; and
- d. The implementation and supervision of the Resolution Plan by the RP and the CoC as specified under Section 30(2)(d) of the Code.

27. In *K Sashidhar vs. Indian Overseas Bank and Ors. (Civil Appeal No. 10673/2018 decided on 05.02.2019) (2019)* the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by the requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority. On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan, as approved by the 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 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. The legislature, consciously, has not provided any other ground to challenge the commercial wisdom of the individual financial creditors or their collective decision before the Adjudicating Authority.

28. In CoC of *Essar Steel India Limited vs. Satish Kumar Gupta and Ors (2020) 8 SCC 531* the Hon'ble Apex Court clearly held that the Adjudicating Authority

would not have the power to modify the Resolution Plan which the CoC in their commercial wisdom has approved. In para 42, the Hon'ble Court observed as under:

'Thus, it is clear that the limited judicial review available which can in no circumstances trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, in so far as the Adjudicating Authority is concerned and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar (supra).'

29. In view of the discussions and the law thus settled, we are of the considered view that the instant Resolution Plan meets the requirements of Section 30(2) of the Code and the Regulations 37, 38, 38(1A) and 39(4) of the CIRP 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. We, therefore, allow the Application in the following terms:

ORDER

30. The Application **IA No. 2830 of 2023 in CP(IB) 532 of 2018 is allowed** and the Resolution Plan submitted by "Macrotech Developers Limited" is hereby approved. It shall become effective from this date and shall form part of this order. 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.

31. In terms of the judgment of Hon'ble Supreme Court in the matter of *Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited (Civil Appeal No. 8129 of 2019 decided on 13.04.2021) (2021) SC 212*, on the date of the approval of the 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 are not a part of the Resolution Plan. Accordingly, no person including the Central Government, any State Government or any local authority, guarantors and other stakeholders, will be entitled to initiate or continue any proceedings in respect to a claim prior to CIRP which is not a part of the Resolution Plan.
32. Further, the Relief/concession stated in clause 5 (5.6) of the Resolution Plan with regards to the termination of the 11 tenancy agreements executed by the Corporate Debtor with the employees of the associate companies of the Corporate Debtor, the same shall not be treated to have been terminated automatically with the approval of the Resolution Plan. However, the Resolution Applicant shall be at liberty to take appropriate legal steps before any competent forum/court etc. in the light of the terms and conditions of the contracts of employment with such employees occupying properties of the Corporate Debtor.
33. Any exemption as sought for in relation to the payment of Income Tax Returns, waivers from applicability of any section under the Income Tax Act, 1961, the Central Goods and Services Tax Act, 2017 and other indirect taxes arising out of the implementation of the Resolution Plan is not granted. However, the Resolution Applicant is at liberty to approach competent Authorities for the exemptions if permitted under the law.

34. With respect to the grant of license/Government approval, if the license or approval is terminated, suspended or revoked, the Resolution Applicant may approach the concerned Authorities for such approvals, renewals.
35. All the equity shares and preference shares of the Corporate Debtor would stand extinguished by way of reduction in capital of the Company without any payment to the shareholders holding such shares without the requirement of writing the words 'and reduced'. Such reduction of share capital shall not require any further approval, act or action as required under the Companies Act, 2013 including Section 66 of the Companies Act, 2013 and such cancellation shall not require the consent of any of the creditors or shareholders of the Corporate Debtor.
36. As regards the rights of the entities i.e. NLL and SRPL are concerned, it is worthwhile to mention that NLL has also filed a separate Application i.e. IA No. 3088 of 2023 claiming exclusion of certain properties of the Corporate Debtor on the basis of Agreement dated 21.06.2023. The NLL further claimed title in the said properties on the basis of the said Agreement and the said Application has been declined vide a detailed order of even date.
37. Further, with regards to the proceedings (legal or arbitration or any other proceedings) litigations, enquiries, whether pending or disposed of, filed or initiated with respect to the Agreements executed between the Corporate Debtor, NLL, Master Asset Purchase Agreement or with any other entity, no automatic waiver/abatement of the legal proceedings would be deemed to have been granted. However, the Resolution Applicant shall have the liberty to approach the respective courts/Arbitrators/forums for the abatement of such pending litigations or other appropriate orders in the light of the Resolution Plan approval order and the provisions of the Code.

38. The Steering Committee as proposed in Part II, clause 6 of the Resolution Plan shall be constituted to supervise and implement the Resolution Plan.
39. In accordance with Section 32A of the Code, the liability of the Corporate Debtor for any offences committed prior to the commencement of the Corporate Insolvency Resolution Process shall cease, and the Corporate Debtor shall not be prosecuted for such an offence committed prior to the commencement of Corporate Insolvency Resolution Process from the date of this order.
40. The approval of the Resolution Plan shall not be construed as waiver of any future statutory obligations and shall be dealt with by the appropriate Authorities in accordance with law. The Corporate Debtor may obtain necessary approval required under any law for the time being in force from the appropriate Authority within a period of one year from the date of approval of the Resolution Plan.
41. The guarantors and third-party security providers (not being the Corporate Debtor or the Resolution Applicant) shall continue to be liable to the Financial Creditors for the unpaid debt under their guarantees. However, such guarantors shall not be entitled to exercise any right of subrogation in respect of such amounts against the Corporate Debtor and/or the Resolution Applicant.
42. Other reliefs and concessions not covered in the aforesaid paragraphs including exemption from levy of stamp duty, fees and registration charges that may be applicable in relation to this Resolution Plan and its implementation are not granted.

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT II

I.A. NO. 2830/MB/C-II/2023

In

C.P. (IB) No. 532/MB/C-II/2018

43. The moratorium declared under Section 14 of the Code shall cease to have effect from this date.
44. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with the copy of this order for information.
45. The Applicant shall forthwith send a certified copy of this order to the CoC and the Resolution Applicant respectively for necessary compliance.

Sd/-

**ANIL RAJ CHELLAN
MEMBER (TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER
MEMBER (JUDICIAL)**