NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1127 of 2024

(Arising out of Order dated 26.04.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Court-II, Mumbai Bench in IA No.111 of 2024 and IA No.5606 of 2023 in Company Petition (IB) No.532/MB/2018)

IN THE MATTER OF:

Tulip Star Hotels Ltd. & Anr. ... Appellants

Versus

Anish Niranjan Nanavaty & Anr. ... Respondent

Present:

For Appellants: **Ms. Neeha Nagpal, Mr. Malak Bhatt, Mr. Raghav Anand and Mr. Nikunj Mahajan, Advocates.**

For Respondent: **Mr. Arun Kathpalia, Sr. Advocate with Mr. Aditya Vikram Singh, Ms. Shreya Chandhok and Mr. Aditya Dhupar, Advocates for R-1/RP.**

Mr. Abhijeet Sinha, Sr. Advocate with Ms. Ruby Singh Ahuja, Ms. Aakriti Vohra, Mr. Areez Gazdar, Ms. Megha Dugar, Ms. Varsha Himmat Singka and Mr. Nutash Kotwal, Advocates for R-2.

Mr. Krishnendu Datta, Sr. Advocate with Mr. Vinayak Bhandari, Ms. Teesta Mishra, Mr. Akhil Nene and Ms. Alina Merin Mathew, Advocates for R-4.

WITH

Company Appeal (AT) (Insolvency) No. 1129 of 2024

(Arising out of Order dated 26.04.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Court-II, Mumbai Bench in IA No.2830 of 2023 in Company Petition (IB) No.532/MB/C-II/2018)

IN THE MATTER OF:

Tulip Star Hotels Ltd. & Anr. ... Appellants

Versus

Anish Niranjan Nanavaty & Anr. ... Respondent

Present:

For Appellants:	**Ms. Neeha Nagpal, Mr. Malak Bhatt, Mr. Raghav Anand and Mr. Nikunj Mahajan, Advocates.**
For Respondent:	**Mr. Arun Kathpalia, Sr. Advocate with Mr. Aditya Vikram Singh, Ms. Shreya Chandhok and Mr. Aditya Dhupar, Advocates for R-1/RP.**
	Mr. Abhijeet Sinha, Sr. Advocate with Ms. Ruby Singh Ahuja, Ms. Aakriti Vohra, Mr. Areez Gazdar, Ms. Megha Dugar, Ms. Varsha Himmat Singka and Mr. Nutash Kotwal, Advocates for R-2.
	Mr. Krishnendu Datta, Sr. Advocate with Mr. Vinayak Bhandari, Ms. Teesta Mishra, Mr. Akhil Nene and Ms. Alina Merin Mathew, Advocates for R-4.

J U D G M E N T

ASHOK BHUSHAN, J.

These two Appeal(s) have been filed by the same Appellants, i.e. Shareholder/ Promoter and Suspended Director of the Corporate Debtor, challenging orders dated 26.04.2023 passed by National Company Law Tribunal, Mumbai Bench, Court-II.

2. Company Appeal (AT) (Insolvency) No. 1127 of 2024 has been filed challenging order dated 26.04.2024 passed in IA No.111 of 2024 and part of order dated 26.04.2024 passed in IA No.5606 of 2023 (paragraph 21 and first line of paragraph 22). Company Appeal (AT) (Insolvency) No. 1129 of 2024 has been filed challenging the order dated 26.04.2024 passed by Adjudicating Authority in IA No.2830 of 2023 filed by Resolution Professional ("**RP**"), by which order the Adjudicating Authority approved the Resolution Plan in the Corporate Insolvency Resolution Process

("**CIRP**") of the Corporate Debtor. Aggrieved by the aforesaid orders, the Appellants have come up in these two Appeal(s).

3. Brief facts necessary to be noticed for deciding these Appeal(s) are:

(i) The CIRP against the Corporate Debtor – V Hotels Ltd. commenced by Adjudicating Authority on an Application filed by Asset Reconstruction Company (India) Ltd. ("**ARCIL**") – the Financial Creditor.

(ii) In the CIRP, the RP appointed two registered Valuers. The Average Fair Value of the Corporate Debtor was assessed as 1074.27 Crores and Average Liquidation Value as Rs.758.35 Crores. The Promoters of the Corporate Debtor raised various challenges at different stages of the proceedings. In the CIRP, the RP published Form-G and invited claims. The two secured Financial Creditors and unsecured as well as the Operational Creditor submitted their claims. There are two secured Financial Creditor namely – Asset Reconstruction Company (India) Ltd. and Pegasus Asset Reconstruction Company Pvt. Ltd. ("**Pegasus**"). Both the Financial Creditors submitted their claim. The RP admitted the claim of ARCIL as to Rs.1546.1 Crores and those of Pegasus as Rs.521.80 crores. Other claims of unsecured Financial Creditor and Operational Creditor were also admitted.

(iii) The Information Memorandum as well as Addendum was published on 01.08.2022, in pursuance of which large number of Applicants submitted Expression of Interest ("**EoI**"). Ultimately four Resolution Plans were submitted including that of Macrotech Developers Ltd. ("**MDL**"). The Resolution Plans submitted by Resolution Applicants were discussed and deliberated and the Committee of Creditors ("**CoC**") in its meeting held on 26.06.2023 approved the Resolution Plan of MDL with 100% vote share.

(iv) Prior to the aforesaid, the Promoter and Shareholder of the Corporate Debtor has filed Application before the Adjudicating Authority, questioning the amount of claim admitted of the secured Financial Creditors. The Promoters objected to the computation of interest @ 22% by the Financial Creditor. With regard to the claim of ARCIL, the Adjudicating Authority passed an order on 21.07.2023 accepting the interpretation by the RP of the interest @ 22%. Company Appeal (AT) (Insolvency) Nos.1114-1115 of 2023 were filed by the Shareholder of the Corporate Debtor, challenging the determination made by the Adjudicating Authority, which Appeal came to be allowed by order dated 21.11.2023, passed by this Tribunal, holding that ARCIL was entitled to claim interest only @ 14.85%. This Tribunal directed the RP to redetermine the claim of ARCIL.

(v) After the order of this Tribunal dated 21.11.2023, on 27.11.2023, another secured Financial Creditor Pegasus also wrote to the RP that claim of Pegasus is also in the same line as of ARCIL and its claim also be redetermined accordingly. The RP filed an IA No.5606 of 2023 praying that Adjudicating Authority may permit the RP to redetermine the claim of the Pegasus in the same line.

(vi) In pursuance of the order of this Tribunal dated 21.11.2023, the Successful Resolution Applicant ("**SRA**") submitted an Addendum to the CoC, as directed by this Tribunal, stating that after redetermination of the claim of ARCIL, there is no change in the financial proposal and the terms of Resolution Plan does not require any change. It was further stated in the Addendum that *inter se* dispute between SRA and secured Financial Creditor, can be decided by the CoC, which shall be honoured by the SRA. The Addendum dated 09.12.2023 came for consideration before the CoC in 32nd Meeting dated 13.12.2023, which Addendum as approved by the CoC was placed before the Adjudicating Authority for consideration.

(vii) The Appellant filed IA No.111 of 2024 challenging the Addendum dated 09.12.2023 as well as Minutes of the CoC held on 13.12.2023, approving the Addendum. The Appellant prayed to set aside the Minutes of the Meeting of the CoC as well as Addendum. The Adjudicating Authority by the order dated 26.04.2024 dismissed IA No.111 of 2024 filed by the Appellant and allowed IA No.5606 of 2023 filed by the RP for redetermination of the claim of Pegasus. By the order of the same date, i.e. 26.04.2024, IA No.2830 of 2023 filed by the RP for approval of Resolution Plan was also allowed.

(viii) Aggrieved by the aforesaid two orders, these Appeal(s) have been filed.

4. We have heard learned Counsel for the Appellant and learned Counsel appearing for RP as well as learned Counsel for the SRA.

5. The learned Counsel for the Appellant challenging the impugned order submits that when the claim of ARCIL came to be reduced from 1546.10 crores to Rs.621.70 crores, the claim of Pegasus was also liable to be reduced substantially and without redetermining the claim of Pegasus, the CoC proceeded to approve the Resolution Plan. IA No.111 of 2024 filed by the Appellant has been rejected by the Adjudicating Authority, without considering the submissions that reduction of the claim of Pegasus shall materially effect the terms of the Resolution Plan. It is submitted that without redetermination of the claim of Pegasus, the Adjudicating Authority and CoC ought not to have approved the Addendum and Adjudicating Authority ought not to have approved the Resolution Plan. It is further submitted that the reduction of the claim of Pegasus shall have material effect and may also caused effect on the entitlement of other creditors. It is submitted that approval of Resolution Plan is also fallacious and deserve to be set aside.

6. Shri Arun Kathpalia, learned Senior Counsel appearing for the Respondent, refuting the submissions of learned Counsel for the Appellant submits that Pegasus of its own has already made a request for

redetermination of its claim @ 14.85% and RP for the said purpose has already filed an Application, seeking permission before the Adjudicating Authority. It is submitted that on the request of Pegasus, the claim was redetermined and in the Meeting of CoC held on 13.12.2023, the redetermined claim of the Pegasus was also placed. It is submitted that on redetermination of claim of both ARCIL and Pegasus, there is no effect on Resolution Plan submitted by SRA. Any effect at best could have been *inter se* between the secured Financial Creditors and in no manner the Appellants rights are affected. It is submitted that Appellants cannot have any complaint with regard to approval of Resolution Plan and approval of Addendum, since they are not going to be affected in any manner. The learned Senior Counsel has referred to the order of Hon'ble Supreme Court dated 10.05.2024, which was passed in the Appeal filed by the Appellant against the order of this Tribunal dated 21.11.2023, where the Hon'ble Supreme Court has clearly held that redetermination of claim shall effect only creditors of the same class. The order of Hon'ble Supreme Court finally settled the issues, which cannot be reopened in this Appeal.

7. We have considered the submissions of learned Counsel for the parties and have perused the records.

8. The issue, which has been sought to be raised in these Appeal(s) is regarding redetermination of claim of Pegasus. We have already noticed above that with regard to the redetermination of the claim of ARCIL, another Financial Creditor, the matter has travelled to this Tribunal in Company Appeal (AT) (Insolvency) Nos.1114-1115 of 2023, which Appeal(s) were filed against the order dated 21.07.2023 passed by Adjudicating

Authority, upholding the determination of claim by the ARCIL @ 22% interest. This Tribunal allowed the Appeal vide its order dated 21.11.2023 and set aside the order of Adjudicating Authority and held that rate of interest to which ARCIL is entitled is only @ 14.85% and direction was issued to RP to redetermine the claim and this Tribunal further directed that Addendum be placed before the CoC, after redetermination. In paragraph 33, following directions were issued:

> "**33.** In the facts of the present case, we are of the view that the Resolution Professional may re-verify the claim of the ARCIL as per the rate of interest of 14.85% within two weeks and submit it before the CoC as well as to the Successful Resolution Applicant who shall prepare an Addendum to be placed before the CoC within a period of two weeks thereafter. The Resolution Professional should compute the claim of the ARCIL on the basis of rate of interest as indicated above. The Addendum after approval, if any, be placed before the Adjudicating Authority to be considered along with the application for approval of the Resolution Plan. The Resolution Plan which has been submitted before the Adjudicating Authority for approval shall be considered along with the Addendum as directed above. The Resolution Professional as well as CoC to complete the process, as indicated above, within a period of 60 days from today. Extension in CIRP process is granted for further 60 days from today to complete the process as directed above."

9. In pursuance of the order of this Tribunal, the RP redetermined the claim of ARCIL as Rs.621.70 crores and Addendum was placed before the CoC by the SRA dated 09.12.2023, stating that the total amount payable to secured Financial Creditors is Rs.888,69,78,878/- and no change is proposed to the said amount. It was further stated that amount proposed to the secured Financial Creditors may be distributed in any manner

finalized by the CoC. The copy of the Addendum is filed at Annexure A/26 to the Company Appeal (AT) (Insolvency) No.1127 of 2024, which is as follows:

"**Macrotech Developer Ltd.**

412, Vardhman Chambers, Cawasji Patel Street, Fort, Mumbai-400 001.

BY EMAIL.

09.12.23

To,

Mr. Ashish Niranjan Nanavaty
The Resolution Professional of V Hotels Limited
Deloitte India Insolvency Professional LLP
27th Floor, Tower 3, One International Centre,
Elphinstone (West), Mumbai-400 013.
Email: invhlip@deloittee.com

Dear Sir,

Subject: Addendum to the Resolution Plan dated 20th December 2022, as revised on 5th June 2023, approved by the Committee of Creditors of the Corporate Debtor ("COC") on 22nd June 2023 (the "Resolution Plan") and pending approval of Hon'ble National Company Law Tribunal, Mumbai Bench ("NCLT") in I. A. No. 2830 of 2023.

This is in furtherance to the liberty granted by the Hon'ble National Company Law Appellate Tribunal in its order dated 21st November 2023 passed in Company Appeal No. 1114- 1115 of 2023 and your email dated 4th December 2023 in furtherance thereto.

We note that the claims of the Secured Financial Creditors have 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).

In terms of the Resolution Plan, the total amount payable to the Secured Financia Creditors is Rs. 888,69,78,878/- (Rupees Eight Hundred Eighty-Eight Crore Sixty Nine Lakhs Seventy Eight Lakhs Eight Hundred and Seventy Eight only) and no change is proposed to this amount, In view thereof, no changes are proposed by us, the Successful Resolution Application, to the Resolution Plan.

We further confirm that we have no objection to the amounts provided for the Secured Financial Creditors in the Resolution plan to be distributed/allocated between the Secured Financial Creditors in any manner which may be finalized by the CoC.

We request to place this limited Addendum at the earliest before the COC and seek necessary approval, if required. We also request you to complete this process before 14th by the Hon'ble NCLT.

Yours sincerely

For **Macrotech Developers Limited**
Successful Resolution Applicant
Abhishek Lodha
Managing Director"

10. The Addendum came for consideration before the CoC in its 32nd Meeting held on 13.12.2023. The CoC also took note of the List of Creditors as prepared by the RP and under Agenda Item No.5 approval of Addendum was considered. The CoC in the Minutes, noted the revised claim of Pegasus as Rs.321.51 Crores in place of earlier accepted claim of Rs.521.80 Crores. In the Resolution, Addendum was resolved to be voted. The CoC also decided to distribute the amount at pro rata basis between secured Financial Creditors and approved the same. The discussion at Agenda Item No.5 of the Minutes of the Meeting is as under:

"**Agenda 5: To discuss, consider and approve the addendum submitted by Successful Resolution Applicant in terms of the Hon'ble NCLAT order dated 21st November 2023.**

The RP informed the CoC that pursuant to the order of Order of Hon'ble NCLAT dated November 21, 2023 ("**Order**"), the RP, vide email dated December 04, 2023, had intimated Macrotech Developers Limited ("SRA") to provide an addendum to the resolution plan submitted by it and approved by the CoC, in terms of the said Order. Accordingly, the SRA had submitted an addendum to the resolution plan on December 09, 2023. The same was shared by the RP with the CoC members on December 10, 2023. The RP then presented the addendum to the members and proposed to the CoC, to discuss consider and approve the addendum received from the SRA and authorize the RP to submit the same with the Hon'ble NCLT in terms of the Order. RP also informed the CoC that since one of the CoC member Full Moon Creative Services Pvt. Ltd. is not present in the CoC meeting, the agenda item for approval of the addendum would be put to e-voting in accordance with the provisions of the Code and the CIRP regulations.

In addition to above, legal advisors to the Arcil and Pegasus stated that for the distribution of resolution plan value in terms of approved resolution plan read with the above addendum and other related documents, it is suggested that for the purposes of computation of the distribution ratio for amounts proposed to secured financial creditors, the outstanding amounts of the secured financial creditors to be calculated with 14.85% as the interest rate, compounded with monthly rests and the *inter se* proportion should be accordingly determined. The Secured financial creditors discussed and were in consensus to determine the distribution ratio in terms of the debt due in terms of the calculations at 14.85% as the interest rate, compounded with monthly rests for Arcil and Pegasus.

The Legal Advisor to the RP confirmed that in terms of the NCLAT Order 21st November 2023, the addendum submitted by the SRA allows the CoC to determine the manner of distribution and the distribution mechanism to the secured financial creditors discussed and consented by the financial creditors present in the meeting is to be approved by the CoC through e-voting. Arcil representatives mentioned that the amount determined by RP in compliance with the Order should be considered for the purpose of calculations of distribution ratio. Pegasus also confirmed their consent to the formula adopted for determination of distribution ratio *inter se* secured financial creditors and informed the RP that they will be sharing details of their outstanding amounts at the interest rate of 14.85% p.a. compounded with monthly rests, as has been discussed and agreed in the meeting, with the RP after the CoC meeting. In addition, RP observed that distribution / payouts to other class of creditors, it will remain same as provided in the resolution plan.

Resolution for E-Voting:

Basis the discussions between the members and the details / confirmation provided to the RP by the Arcil and Pegasus in relation to the inter se distribution mechanism for amounts proposed for secured financial creditors under the resolution plan dated June 05, 2023 (along with clarifications and undertakings) read with the addendum dated December 09, 2023, the amounts proposed for secured financial creditors shall be pro rata distributed between the secured financial creditors in the following proportion:

Arcil : 65.91% arrived at basis the outstanding amounts being INR 621.74 crores calculated after application of 14.85% p.a. interest rate, compounded with monthly rests, on the principal amounts.

Pegasus : 34.09% arrived at basis the outstanding amounts being INR 321.51 crores calculated after application of 14.85% p.a. interest rate, compounded with monthly rests, on the principal amounts.

Following resolution has been put to vote for the CoC approval through e-voting.

"RESOLVED THAT the addendum dated December 09, 2023 to the resolution plan dated June 05, 2023 (along with clarifications and undertakings) submitted by Macrotech

Developers Limited, is hereby approved as evaluated by CoC, and consent is hereby accorded to authorise the resolution professional to submit the addendum to the resolution plan dated June 05, 2023 (along with clarifications and undertakings) with the Adjudicating Authority to be considered along with the application for approval of the resolution plan.

RESOLVED FURTHER THAT in terms of the resolution plan dated June 05, 2023 (along with clarifications and undertakings) submitted by Macrotech Developers Limited read with addendum dated December 09, 2023 and pursuant to section 30(4) of the Insolvency and Bankruptcy Code, 2016, the committee of creditors of the Corporate Debtor hereby resolves to distribute the amounts proposed for secured financial creditors under the successful resolution plan amongst the secured financial creditors (Arcil and Pegasus respectively) in the proportion of 65.91:34.09."

11. The Resolution was put to e-voting and was approved by 97.34% votes. We do not find any error in the Addendum or the Resolution of the CoC, approving the same. The claim of Pegasus was also redetermined as per agreed rate of interest @ 14.85%. In fact, after the order of this Tribunal dated 21.11.2023 in the Appeal filed challenging the determination of rate of interest of ARCIL, the Pegasus, itself sent an email dated 27.11.2023 to the RP praying that the claim of Pegasus is same as of ARCIL and may be determined accordingly. The Adjudicating Authority in its order dated 26.04.2024 passed in IA No.5606 of 2023 has noticed the said email in paragraph 10 of the judgment. Paragraph 10 and 18, which are relevant are as follows:

"10. While the reverification of ARCIL's claim was being carried out by the Applicant in terms of NCLAT's directions (as mentioned above), Pegasus sent an email on 27.11.2023, asking for reverification of its claims. Through the said email, Pegasus informed the Applicant regarding, inter alia, the following relevant factors for reverification of its claims:

a. the Hon'ble National Company Law Appellate Tribunal ("NCLAT") while deciding the appeal bearing Company Appeal (AT)(Insol.) No. 1114-1115/2023 (wherein NCLAT was seized of the question of applicable rate of interest for the loan dues of the Corporate Debtor towards Asset Reconstruction Company (India) Limited, another financial creditor of the Corporate Debtor) vide order dated 21.11.2023 ("NCLAT Order") held that 14.85%p.a., at monthly rest, will be the applicable rate of interest for ARCIL 's loan, and rejected applicability of 22% p.a., at monthly rest;

b. Pegasus stands on the same footing as ARCIL;

c. Pegasus gives its consent to the Applicant for redetermination of its claim of dues with contractual rate of interest as agreed by the Borrower."

18. This is a case where the Respondent i.e. Pegasus has addressed an email dated 27.11.2023 to the Applicant referring to the Order of the Hon'ble NCLAT dated 21.11.2023 passed in Company Appeal (AT)(Ins.) No. 1114-1115 of 2023. The extracts of the email dated 27.11.2023 are reproduced hereinbelow:

"This is in reference to the order of Hon'ble NCLAT dated 21.11.2023 passed in Company Appeal (AT) (Insolvency) No.1114-1115 of 2023 (M/s Tulip Star Hotels Ltd. & Another Vs Mr. Anish Niranjan Nanavaty & others) whereby the Hon'ble NCLAT has held that the rate of interest which can be charged by ARCIL is only 14.85%. Further, it is observed by Hon'ble NCLAT in the said order that redetermination of claim of ARCIL as directed by the said order shall also lead to determination of the correct amount of debt which was owed by the Corporate Debtor.

Thus, the claim of Pegasus stands on the same footing as of Arcil. Therefore, Pegasus hereby grants its consent to you to do redetermination of its claim of dues with contractual rate of interest as agreed by the Borrower in the original loan document…

I (as assignee of Indian Bank)) ("Pegasus") is required to file a revised claim in view of the above-mentioned order of Hon'ble NCLAT dated 21.11.2023.'"

12. The Adjudicating Authority vide its order dated 26.04.2024 passed in IA No.5606 of 2023 has, in fact, approved and accepted the prayer of RP for reverification of the claim of the Pegasus. As noted above, in the Meeting of the CoC held on 13.12.2023, reverified claim of Pegasus was placed before the CoC, thus, on the request of Pegasus, the RP has also reverified the claim and placed the same before the CoC. The CoC was, thus, well aware that after reverification of the claim of Pegasus, now it is only Rs.321.51 crores. The CoC took the view that there is no difference in payment proposed to the Financial Creditors, hence, the financials of the Resolution Plan are not to be changed in any manner.

13. We may also notice the order of the Hon'ble Supreme Court dated 10.05.2024 passed in Civil Appeal Nos.1705-1707 of 2024, which was filed by the Appellant, challenging the order dated 21.11.2023 passed by this Tribunal in Appeal. The said Appeal(s) have been disposed of by the Hon'ble Supreme Court. The Hon'ble Supreme Court has clarified that re-working/ verification in terms of the order dated 22.11.2023 may not have any impact on the Resolution Plan or its implementation. It was observed that it may have the effect of re-determination of the amount payable *inter-*

se the similar class of creditors. It is useful to extract the order dated 10.05.2024 of the Hon'ble Supreme Court, which is as follows:

"**Civil Appeal Nos. 1705-1707 of 2024**

I.A. no. 111767/2024 seeking intervention is allowed.

We have heard learned counsel for the parties. We do not find any good ground and reason to interfere with the impugned judgment dated 21.11.2023 passed by the National Company Law Appellate Tribunal, fixing the rate of interest at 14.85% per annum. This determination has been made after considering several facts and taking a holistic picture.

On the issue of the quantification of the principal amount, relevant paragraphs of the impugned judgment read as under:-

> "30. One more submissions which was advanced by Shree Ganda was that under the order of the Adjudicating Authority dated 31st May 2019, the debt owed to the Corporate Debtor was also to be determined but the Adjudicating Authority in the Impugned Order has not determined the debt. The debt which was owed to the Corporate Debtor is to be reflected in the aggregate of claims which has been admitted by Resolution Professional in accordance with the Code and the CIRP, Regulations, 2016. The Correct amount of claim of ARCIL was dependent on determination of the rate of interest. The Resolution Professional has admitted the claim on the basis of rate of interest @ 22%.(…)
>
> xxx xxx xxx
>
> 32. (…) We are, thus, of the view that redetermination of claim of ARCIL as directed by this order shall also lead to determination of the correct amount of debt which was owed by the Corporate Debtor.(…)
>
> 33. In the facts of the present case, we are of the view that the Resolution Professional may re-verify the claim of the ARCIL as per the rate of interest of 14.85% within two weeks and submit it before the CoC as well as the Successful Resolution Applicant who shall prepare an Addendum to be placed before the CoC within a period of two weeks thereafter. The Resolution Professional should compute the claim of the ARCIL on the basis of rate of interest as indicated above.(…)"

Thus, it is clear that the Resolution Professional has to undertake the exercise to verify and compute the principal amount payable by the Corporate Debtor to the respondent no. 2 – Asset Reconstruction Company (India) Limited.

We are informed that the Resolution Plan has already been approved by the Committee of Creditors.

We clarify that the re-working/verification in terms of the impugned judgment may not have any impact on the Resolution Plan or its implementation. It may have the effect of re-determination of the amount payable inter-se the similar class of creditors. However, it will be open to the appellants to challenge the approval of the Resolution Plan and raise all other issues before the appropriate authority in accordance with the law.

The appeals are disposed of in the above terms.

Pending application(s), if any, shall stand disposed of. ..."

14. The Hon'ble Supreme Court has also held that re-working/ verification in terms of order dated 23.11.2023 has no effect on the Resolution Plan. The said observation are equally applicable to the reverification by the Pegasus, which was also done and placed before the CoC in its 32nd Meeting. The Appellant, who is shareholder and promoter of the Corporate Debtor and related party, has not been proposed any amount in the Resolution Plan. The submission of the Appellant that redetermination of Pegasus ought to have been complied by RP before proceeding further, needs no further consideration, since Pegasus itself on 27.11.2023 after the order of this Tribunal on 21.11.2023, has requested the RP to redetermine its claim @ 14.85%. The RP was fully entitled to redetermine any claim on account of any subsequent facts or materials, hence, the RP did not commit any error in redetermining the claim of Pegasus, which was made on its own request and ultimately, the Adjudicating Authority vide its order dated 26.04.2024 passed in IA

No.5606 of 2023 has approved the said reverification. We, thus, do not find any error in the orders passed by Adjudicating Authority dated 26.04.2024 dismissing IA No.111 of 2024 as well as IA No.5606 of 2023.

15. The Adjudicating Authority also while passing the order dated 26.04.2024 in IA No.2830 of 2023 has examined all aspect of Resolution Plan and has returned a finding that Resolution Plan is compliant with the provisions of the Code. The Adjudicating Authority has also noticed the judgment of the Hon'ble Supreme Court lying down the extent of judicial review of the approval of the Resolution Plan. It is useful to extract paragraphs 26, 27, 28 and 29 of the order passed by Adjudicating Authority in IA No.2830 of 2023, which are as follows:

> 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:

xxx"

16. The Adjudicating Authority having found the Resolution Plan in accordance with the statutory scheme of the Code, has not committed any error in approving the Resolution Plan. We do not find any error in orders passed by Adjudicating Authority dated 26.04.2024. There is no merit in either of the Appeal(s). Both the Appeal(s) are dismissed.

There shall be no order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

9th July, 2024

Ashwani