



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
AHMADABAD SPECIAL BENCH  
(COURT – II)**

**IA No. / 851 / AHM / NCLT / 2020  
IN  
CP (IB) No./ 127/AHM/NCLT/ 2017**

(UNDER SECTION 31 READ WITH SECTION 30(6) OF THE  
INSOLVENCY AND BANKRUPTCY CODE, 2016 )

**Mr. Amit Jain  
Resolution Professional of Neesa Leisure Limited**

**...Applicant/Resolution Professional**

**Versus**

**Members of CoC of Neesa Leisure Ltd. &  
Express Hotels and Resorts Ltd.**

**.... Respondents**

**In the Matter of:**

**Asset Reconstruction Company (India) Limited**

Having its office at  
The Ruby, 10<sup>th</sup> floor  
29, Senapati Bapat Marg  
Dadar (W)  
Mumbai - 400028

**...Petitioner**

**Versus**

**Neesa Leisure Limited**

Having its office at  
Plot No. X-22, 23 & 24  
GIDC Electronic Estate  
Sector 25  
Gandhinagar- 382044

**...Corporate Debtor**



**MEMO OF PARTIES**

**IN THE MATTER OF:**

**Mr. Amit Jain**

**Resolution Professional of Neesa Leisure Limited**

Having its office at  
Building No. 10, Tower-B,  
8th Floor, DLF Cyber City Phase-II,  
Gurgaon - 122 022

**... Applicant/ Resolution Professional**

**Versus**

**1. Members of the COC of Neesa Leisure Ltd**

**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, Mohadev 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. Shastrinagar 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



3. Ex- Directors of the Suspended Board of Management  
of Neesa Leisure Limited

**...Respondents**

**In the matter of:**

**Asset Reconstruction Company (India) Limited**

Having its office at  
The Ruby, 10<sup>th</sup> floor  
29, Senapati Bapat Marg  
Dadar (W)  
Mumbai - 400028

**...Petitioner**

*Versus*

**Neesa Leisure Limited**

Having its office at  
Plot No. X-22, 23 & 24  
GIDC Electronic Estate  
Sector 25  
Gandhinagar- 382044

**...Corporate Debtor**

**Order Pronounced on:06/09/2022**

**Coram:**

**DR. DEEPTI MUKESH,  
HON'BLE MEMBER (JUDICIAL)**

**KAUSHALENDRA KUMAR SINGH,  
HON'BLE MEMBER (TECHNICAL)**

**Appearance:**

**For the RP: Adv. Mr. Nandish Y. Chudgar**

**For the Successful Resolution Applicant: Sr. Adv. Mr. Saurabh Soparkar  
a.w. Mr. Raheel Patel, Adv.**

**For the Ex- management: Adv. Mr. Aspi Kapadia a.w. Mr. Shivam Parikh**

**For the COC: Adv. Mr. Prateek Thakkar**



## ORDER

1. The present application is filed by the Resolution Professional (hereinafter referred to as **RP**) of the Corporate Debtor viz. Neesa Leisure Limited for approval of the Resolution Plan u/s 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **the Code**) of the Express Resorts and Hotels Limited (hereinafter referred to as **Successful Resolution Applicant/SRA**) which was approved by the CoC with 67.85% voting share. The present application is reserved for order with the following observation, “We reserve the order on a limited issue for deciding whether various other Proposed Resolution Applicants be allowed to submit their plans at this stage, which is also requested by CoC, before going into the merits of the resolution plan.” The strong request is made by CoC with more than 90% members who are ascending members as well as the other Financial Creditors, along with the Ex-management who has vehemently argued to not to approve this Resolution plan and sought indulgence to allow CoC to reconsider all plans which are of much higher value in order to achieve the intent of Code, of maximization of value assets of the corporate debtor.

2. The brief facts and background in this matter are as under:

2.1 The Assets Reconstruction Company (India) Limited as a Financial Creditor had filed an application u/s 7 of the Code for initiation of CIRP of the Corporate Debtor which was admitted on 26.04.2019 and Mr. R.D. Chaudhary was appointed as IRP. Thereafter, the IRP was replaced by RP Mr. Amit Jain.

2.2 The Express Resorts and Hotels Limited (SRA) submitted a resolution plan which was approved with 67.85% voting share in the 14<sup>th</sup>



CoC meeting held on 27.10.2020. A copy of the Resolution Plan along with minutes of 14<sup>th</sup> CoC meeting are attached with the present application.

3. The Ex-directors of the Suspended Board of Management of the Corporate Debtor being added as party later has filed its objections which was allowed by this Tribunal. The issue raised therein and objections raised for approval of Resolution Plan are briefly given hereunder :

3.1 Vide order dated 07.08.2020, this Tribunal allowed the IA No. 428 of 2020 and extended the time for submission of the Resolution Plans even though the last date had expired. Thereafter, an appeal was filed by Respondent No. 3 before NCLAT u/s 61 of the Code against the order passed by NCLT on 07.08.2020 on the ground that the NCLT has failed to appreciate that the Resolution Plans which were submitted on or before 20.07.2020 came to be opened and discussed into the 11th CoC meeting before allowing the Respondent No.2 to submit the Plan and also contented in its appeal that Respondent No. 2 cannot be allowed to submit the plan after the opening of the details of already submitted plans. Thereafter, the NCLAT passed an order on 15.10.2020 giving the liberty to the ex-management to raise an objection in regard to fairness and transparency of the bidding process and non-adherence to the Statutory Provisions, Rules and Regulations before NCLT. The relevant extracts of said order are reproduced hereunder:

*“ After hearing learned counsels for the parties in both the appeals, we find that Committee of Creditors has yet to examine*



*the Resolution Plans and take a decision. Issue raised in Company Appeal (AT) (Insolvency) No. 794 of 2020 that two plans including that of the Appellant had been opened by the Committee of Creditors and discussed on 4th August, 2020, that is well before the impugned orders dated 7th August, 2020 and 20th August, 2020 came to be passed by Adjudicating Authority, have adversely impacted the Corporate Insolvency Resolution Process in the context of the bidding process being fair and transparent, can be raised before the Adjudicating Authority at the stage of consideration of the approval of Resolution Plan as approved by the Committee of Creditors. In our considered opinion and also having regard to the fact that no application under Section 60(5) of I&B Code emanating from the Appellant is pending consideration before the Adjudicating Authority, it would be appropriate to dispose of these appeals giving liberty to the Appellant to raise objection in regard to fairness and transparency of the bidding process and non-adherence to the Statutory IBC Laws/Provisions, Rules and Regulations. We order accordingly. With these observations, the appeals are disposed of.”*

3.2 A Special Civil Application No. 3446 of 2021 was filed by Suspended Board of Management before the Hon’ble High Court of Gujarat, challenging the order dated 15.10.2021 passed by NCLAT and also the order dated 07.08.2020 passed by this Tribunal and sought reliefs. Thereafter, the Prospective Resolution Applicant was joined as a party in a special civil application filed before the Hon’ble High Court of Gujarat and it was also submitted that they are willing to offer a much higher value than Respondent No.2/SRA. In view of the



consensus between all the parties, the Hon'ble Gujarat High Court vide order dated 20.07.2022 in Special Civil Application relegated the matter and permitted all parties to raise all available contentions before this Tribunal. The relevant extract of the said order is reproduced as:

*“ 5. Upon hearing learned counsel appearing for the parties to the proceedings, a specific consensus between all of them has been C/SCA/3446/2021 ORDER DATED: 20/07/2021 arrived for relegating all the parties concerned, including the petitioner, to raise all available contentions in accordance with law before NCLT since the main I.A. along with all applications are yet pending. Since there was a consensus amongst learned senior counsel and learned advocates appearing for the respective parties, even suggested order was also placed on record, and it was requested to dispose of the petition on the said line.*

*6. Accordingly, upon request of all learned advocates appearing for the respective parties, in view of their inter-se consensus, the petition is disposed of by relegating the parties to the proceedings, including the petitioner, to NCLT to put their respective contentions and submissions. The NCLT is directed to decide all concerned applications after affording appropriate opportunity of hearing to the parties in accordance with law. It is clarified that this Court has not expressed any opinion on merit nor expressed opinion on any of the contentions raised in the present proceedings. It would be open for all the parties concerned to raise all permissible contentions in accordance with law.*



*7. The petition is disposed of upon aforesaid specific consensus arrived at between learned advocates in view of the fact that all the applications along with the main I.A. No.428 of 2020 in CP (IB) No.27 of 2017 are pending. Accordingly, without assigning any detailed reasons, as not called upon to express, the present petition, upon requests, stands DISPOSED OF. Interim relief granted earlier stands vacated.”*

3.3 In the meantime, the Prospective Resolution Applicants viz. GSEC Ltd. and Sankalp IN filed IA No. 154 of 2021 and 167 of 2021 in CP (IB) 127 of 127 respectively before this Tribunal, stating that they are willing to offer much higher value than contained in the resolution plan of SRA ( Express Resorts and Hotels Limited) and that may be permitted to submit their resolution plan. That this Hon’ble Tribunal issued a notice in both the abovementioned IAs wherein the RP and CoC had filed a reply to the effect that they are agreeable to inviting fresh resolution plans and considering the same so that the value can be maximized.

3.4 Thereafter, the Ex-directors of the Suspended Board of Management of the Corporate Debtor filed an IA No. 645 of 2021 for joining as a party in the present matter. Vide order dated 25.10.2021, this Tribunal allowed the application for joining the party and Suspended Board of Management was impleaded as a party in the abovementioned matter.



3.5 In compliance with the order dated 25.10.2021, the Ex-Directors of the Suspended Board of Management filed an affidavit in reply and raised the following contentions and submissions hereunder:

(i) That the resolution plan of the SRA was approved by the members of CoC during the Covid 19 pandemic wherein the market situation of the hotel industry was in downfall and at the worst stage. Now in present scenario, the business normalcy is regained, no. of Prospective Resolution Applicants are offering much higher value than the Successful Resolution Applicant which is almost double value, therefore, in view of the objective and spirit of the Code, this Tribunal may allow all the Prospective Resolution Applicant's to submit their resolution plans with substantially higher price.

(ii) That the CIRP of the Corporate Debtor may be extended beyond a period of 330 days in exceptional circumstances to be demonstrated before the Hon'ble Tribunal at the appropriate stage. That the 330 days period mentioned in Section 12(3) of the Code is not a mandatory one and further the word "mandatorily" appearing in the 2<sup>nd</sup> proviso to Section 12(2) of the Code was struck down by the Hon'ble Supreme Court in the decision in *CoC of Essar Steel Ltd. Vs. Satish Kumar Gupta & Ors. (2020) 8 SCC 531*. Further, submitted that the Hon'ble NCLAT in multiple cases has allowed conducting the CIRP of the CD beyond a period of 330 days, therefore, this Hon'ble Tribunal, in the interest of justice, may allow conducting the re-bidding process to achieve the maximum value of the CD.

(iii) That the RP of CD and members of CoC have also filed affidavits in reply in IA No. 154 of 2021 in CP (IB) 127 of 2017 filed by the Prospective Resolution Applicant i.e. GSEC Ltd. and Sankalp IN wherein they have categorically stated that they are agreeable to inviting



fresh resolution plans and considering the same so that the value can be maximized. The Ex-director of the Suspended Board of Management relied upon the judgement of *Bank of Maharashtra vs Videocon Industries Ltd. & Ors. [CA (AT) (Ins) No. 503 of 2021]* passed by the Hon'ble NCLAT with specific emphasis on following paras in support of their contention. The separate affidavits in reply have been filed by RP as well as Assenting members of CoC of the Corporate Debtor in IA 154 of 2021 and the same are attached with a reply of Ex-directors of the Corporate Debtor in the present application also. The following combined submissions which are stated in the above-mentioned replies are mentioned hereunder:

- (a) The assenting members of the CoC with 67.85 % voting shares approved the resolution plan submitted by the Successful Resolution Applicant.
- (b) As further submitted by RP and CoC that other creditors such as Asset Reconstruction Company India Limited as well as the Fixed Deposit holders have shown interest in seeking to send the Resolution Plan back to CoC for reconsideration, in the present application since the value realization of the assets of the Corporate Debtor is significantly higher than what has been approved by the COC.
- (c) It is submitted that due to the COVID-19 pandemic the market situation of the Hotel Industry was on downfall and the EOI was invited in the present CIRP during such period when the Hotel Industry was one of the worst affected industries and thus, only a few applicants came forward with a resolution.
- (iv) That the assenting members of CoC held a joint meeting on 22.02.2021 and during the course of the meeting, it was deliberated that:-



i. In the larger interest of all stakeholders and in present recent development looking to the upside of the Hotel Industry in current market conditions also to fetch significantly better value as per the objectives of the Insolvency and Bankruptcy Code, 2016 and further to specifically encourage maximization of the value of assets of the Corporate Debtor, which is also advantageous to all the stakeholders, a request should be made to this Adjudicating Authority to consider the following submissions:-

a. That the assenting members of CoC holding 67.85% voting share do not have any objection to considering the resolutions proposed to be submitted by the fresh proposed resolution applicants, subject to suitable directions by this Tribunal.

b. For a fair and transparent process, the Hon'ble Adjudicating Authority is requested to grant a limited extension of 60 days may be given for running a fresh CIRP process where all prospective Resolution Applicants who may be interested in participating may be allowed to participate and submit their plans including Resolution Applicant Express Resorts & Hotels Ltd. (SRA/R2), and others Kundan Care Products Ltd. and Pacifica India Projects Pvt. Ltd. may also be allowed to submit improved plans.

ii. It is further submitted that the object of the Insolvency and Bankruptcy Code, 2016 is specifically to encourage the maximization of the value of assets of the Corporate Debtor, which is also advantageous to all the stakeholders.

iii. The RP of the Corporate Debtor also submitted the same view was taken by the members of CoC and CoC wants to reconsider the Plan and allow the fresh prospective resolution applicant for submitting its plan before CoC.



4. The other Respondents, i.e., Fixed Deposit Holders ( being Financial Creditors and Members of CoC) and the Promoter of the Corporate Debtor have also filed their objections against the approval of the resolution plan submitted by SRA and with request to allow CoC to reconsider all plans for maximizing the value of assets.

5. The Successful Resolution Applicant has taken a plea that once CoC has approved a Resolution Plan, it cannot be remanded back for reconsideration by the CoC. In support of this plea, it has relied on the following Judgements:

- (a) *K. Sashidhar Vs. Indian Overseas Bank and Ors (2019) 12 SCC 150;*
- (b) *Committee of Creditors of Essar Steel India Ltd., Through authorized signatory vs Satish Kumar Gupta & Ors. [(2020) 8 SCC 53];*
- (c) *Shrawan Kumar Agarwal Consortium vs. Rituraj Steel Pvt. Ltd. 2020 Sc Online NCLAT 380;*
- (d) *IMR Metallurgical Resources AG vs. Ferro Alloys Corporation ltd. & Ors. CA (AT) insolvency No. 272 of 2020;*
- (e) *Kalinga Allied Industries India Pvt. Ltd. vs. Hindustan coils Ltd. & Ors.(2021) SCCOnline NCLAT 51;*
- (f) *Interups INC. vs. Kuldeep Kumar Bassi CA(AT) Insolvency No. 1079 of 2020; etc.*
- (g) *Ebix Singapore Pvt. Ltd. vs. CoC Educomp Solutions Limited & Anr; 2021 SCC Online SC 701 [the para no.116,123,124,131136,145,146,160,172,173,174,175, 177,178,184,186 and 187 was specially referred to]*
- (h) *Committee of Creditors of AmtekAuto Limited Through Corporation Bank vs. Dinkar T. Venkatsubramanian and Ors; 2021 SCC Online SC 1151*



- (i) *Mr. Laxminarayan Gurjar & Anr. vs. Nitin Narang RP of Afacn Impex Private Ltd.*[IA 698 of 2021 in CP(IB)No. 289 of 2020
- (j) *NR Brothers Multitrade LLP vs. Nitin Narang RP of Afcan Impex Private Ltd.*[ IA 695 of 2021 in CP(IB) No. 289 of 2020]
- (k) *Bank of Maharashtra vs Videocon Industries Ltd. & Ors.*CA (AT) (Ins) No. 503 of 2021][ the para no. 42,43,46,49 and 50 was specially referred to]

6. The Ex-management also relied upon the judgement of ***Bank of Maharashtra vs Videocon Industries Ltd. & Ors. [CA (AT) (Ins) No. 503 of 2021]*** and referred to para no. 1,6,7,8,30,45 and 50.

7. The assenting members of CoC who had approved plan but are now opposing the approval of the Resolution Plan and relied upon the judgments of ***Bank of Maharashtra vs Videocon Industries Ltd. & Ors. [Supra]*** wherein the Hon'ble NCLAT held that Adjudicating Authority is competent to send back a resolution plan to the CoC for re-consideration. The relevant para on which emphasis was placed is reproduced here:

*“45. All these reflect that power to reconsider any decision is within the domain of CoC and even Hon'ble Apex Court in Catena of judgment held that the commercial wisdom of the CoCs is non-justifiable and hence, it is in the domain of CoC, particularly, if at a later stage, it finds in the public interest and the amount of loss which the public exchequer is to bear with a such unprecedented haircut in such large fund employment, it is in the fitness of thing that the proposal can be remanded back to the CoC, particularly, in view of their own affidavit to review their decision. The CoC is not functus - officio on the approval of the Resolution plan and accordingly, the judicial precedents clearly established that the Adjudicating Authority and this Tribunal is competent to send back the Resolution plan to the CoC for reconsideration.”*



8. We have considered the submissions made by the applicant, the CoC, the Successful Resolution Applicant and the Suspended Board of Management. The issue is whether a resolution plan which is already approved by the CoC with the required threshold and pending for approval of AA can be remanded back for reconsideration by the CoC to encourage the maximization of the value of assets of the Corporate Debtor. Whether other Prospective Resolution Applicants be allowed to submit their plans at this stage and whether the Adjudicating Authority is empowered to send back the resolution plan, on such requests from to the CoC with almost 90% voting share along with some interested resolution applicants and Ex-management.

9. It is noticed that the present application filed by RP, for approval of the Resolution Plan was approved by the COC with 67.85%. It is also noticed that during the pendency of approval of the Resolution plan before Adjudicating Authority, the assenting members of CoC filed an affidavit for remanding the resolution plan for reconsidering it on the ground that the present plan was approved during the COVID-19 pandemic while the market situation of the Hotel Industry was at downfall, when the EOI was invited. Also that at the time of approval of the resolution plan the Hotel Industry was one of the worst affected Industries. It is further submitted that only a few applicants came forward with a resolution plan but now in view of much-improved situation and great pick up in business sphere many interested applicants already offered much higher value and therefore requested that for maximizing the value of assets of the Corporate Debtor, which is also advantageous to all the stakeholders/creditors, the Plan may be sent back for reconsideration. Affidavit in reply has been filed by the assenting members of CoC/lenders, with 67.85% voting in its favour, for remanding back the resolution plan for reconsideration



of the CoC. In our view, the resolution plan can be sent back for reconsideration to the CoC, considering the changed circumstances and the commercial wisdom of the CoC with 67.85% along with other financial creditors, almost comprising total 90% of voting share to seek permission for reconsideration of the resolution plan, need to be considered for better prospects of Resolution with maximization of value of assets of CD. The CoC in its commercial wisdom if decides to reconsider the approved Resolution Plan, then the final decision of the CoC needs to be upheld and not to be interfered. We are supported by the order of the Hon'ble NCLAT in the case of ***Bank of Maharashtra vs Videocon Industries Ltd. & Ors. [CA (AT) (Ins) No. 503 of 2021]*** wherein the Hon'ble NCLAT held that Adjudicating Authority is competent to send back a resolution plan to the CoC for re-consideration. For sake of ready reference, the relevant para of the said order is reproduced hereunder:

*“All these reflect that power to reconsider any decision is within the domain of CoC and even Hon'ble Apex Court in Catena of judgment held that the commercial wisdom of the CoCs is non-justifiable and hence, it is in the domain of CoC, particularly, if at a later stage, it finds in the public interest and the amount of loss which the public exchequer is to bear with a such unprecedented haircut in such large fund employment, it is in the fitness of thing that the proposal can be remanded back to the CoC, particularly, in view of their own affidavit to review their decision. The CoC is not functus -officio on the approval of the Resolution plan and accordingly, the judicial precedents clearly established that the Adjudicating Authority and this Tribunal is competent to send back the Resolution plan to the CoC for reconsideration.”*



10. The said issue of whether the NCLT can send back the resolution plan for reconsideration is settled by the Hon'ble Supreme Court in the case of *Committee of Creditors of Essar Steel India Ltd., Through authorized signatory vs Satish Kumar Gupta & Ors. [(2020) 8 SCC 53]*, (decided on 15.11.2019) ("*Essar Steel Judgement*") where it was held that, while considering the resolution plan, in case the AA feels that there is some reason to alter the resolution plan or in case the relevant parameters are not addressed, they have a right to send the resolution plan back to the CoC. For the sake of ready reference, the relevant para of the said order is reproduced:

*"This being the case, judicial review of the Adjudicating Authority that the resolution plan as approved by the Committee of Creditors has met the requirements referred to in Section 30(2) would include a judicial review that is mentioned in Section 30(2)(e), as the provisions of the Code are also provisions of law for the time being in force. Thus, while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors, the limited judicial review available is to see that the Committee of Creditors has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors have been taken care of. If the Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the Committee of Creditors to re-submit such plan after satisfying the aforesaid parameters."*



11. It is settled law that the CoC only has the right to decide on the terms of the Resolution Plan and that exercise of commercial wisdom by the CoC is also non-justiciable. We are supported by the judgement of the Hon'ble Supreme Court that has laid out this principle in the case of ***K. Sashidhar Vs. Indian Overseas Bank and Ors (2019) 12 SCC 150 (decided on 05.02.2019) ("Sashidhar Judgement")***. For sake of ready reference, the relevant para of the said order is reproduced:

*“Besides, the commercial wisdom of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and the feasibility of the proposed resolution plan. They act on the basis of a thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject matter expressed by them after due deliberations in the CoC meetings through voting, as per voting shares, is a collective business decision. The legislature, consciously, has not provided any ground to challenge the “commercial wisdom” of the individual financial creditors or their collective decision before the adjudicating authority. That is made non-justiciable.”*

12. In the present case, the CoC in its commercial wisdom with more than 90% of voting share has come up with a strong request which was the application filed in IA 154/2021 and heard while considering this application, for sending back the approved resolution plan to enable CoC to reconsider it along with the offers made by other interested/prospective resolution applicants



with a view to maximise the value of the assets of the Corporate Debtor for taking care of the interests of all the stakeholders. Therefore keeping in view the ratio of decisions as cited above and also the unprecedented impact on the Hotel Industry during the pandemic, when EOIs were invited and the plan was approved during the said pandemic period, we send back the present resolution plan, which is placed before us for our approval, to the CoC for its reconsideration as requested by CoC and allow it to consider resolution plans of those applicants too who have approached this Adjudicating Authority by filing various IAs in this matter, and/or have submitted their EOIs or shown willingness to submit plan for higher value as per their pending application before us, including unsuccessful resolution applicants, if any. All such interested applicants, who still wish to file their resolution plans should deposit prescribed EMD by 22.09.2022 and submit resolution plans thereof on or before 10.10.2022. The RP should place these plans before the CoC for its reconsideration as per the procedure prescribed under the Code. The CoC by using its commercial wisdom for maximising the value of assets of the corporate debtor for benefitting all stakeholders shall consider all plans. The entire exercise of reconsideration/voting/approval should be completed by 10.11.2022. The CIRP period is extended accordingly till 15.11.2022.

In view of a Resolution Plan being sent back to CoC for reconsideration along with other interested Resolution Applicants including those who have also sought permission to submit their plans by filing various applications, which are pending consideration, we have not heard the present resolution plan on merits and for compliances. The application is disposed of without considering the prayers made therein with the aforesaid directions to be complied or adhered to,



for better possibility/prospects of a resolution of Corporate Debtor and maximization of value of assets of Corporate Debtor.

13. The application is disposed of in terms of the above order.

S/d-

**KAUSHALENDRA KUMAR SINGH**  
**MEMBER (TECHNICAL)**

S/d-

**DR. DEEPTI MUKESH**  
**MEMBER (JUDICIAL)**

**Rahul / LRA**