

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT II, MUMBAI BENCH
INTERLOCUTORY APPLICATION NO. 111 OF 2024**

**IN
COMPANY PETITION (IB) NO. 532/MB/2018**

*Application u/s 60(5) of the Insolvency and
Bankruptcy Code, 2016 read with Rule 11 of the
National Company Law Tribunal Rules, 2016.*

In the matter of:

- 1. M/s. Tulip Star Hotels Pvt Ltd.**
- 2. The Suspended Management of the Corporate
Debtor, through its Suspended Director A.S.
Anantharaman.**

...Applicant

v/s

- 1. Anish Niranjana Nanavaty,
Resolution Professional of V-Hotels Ltd**
- 2. Pegasus Asset Reconstruction Pvt Ltd.**

.... Respondents

In the matter of

Asset Reconstruction Company Ltd.

...Financial Creditor

v/s.

V Hotels Ltd.

...Corporate Debtor

Order pronounced on 26.04.2024.

Coram:

Shri. Kuldip Kumar Kareer : Member Judicial.

Shri. Anil Raj Chellan : Member Technical.

Appearances (in Hybrid mode):

For the Applicant: Counsel Mr. Raghav Anand a/w Barsha Parulekar
appeared through VC Mode.

For the Respondent: Senior Advocate Chetan Kapadia a/w Rahul Dwarkadas,
Areez Gazdar, N Kotwal and Rahul Shah appeared for
the CoC.

Counsel Mr. Pulkit Sharma a/w Aditya V Singh, Naman
Jain and Shriraj Khambete appeared for the Resolution
Professional.

Counsel Mr. Rohit Gupta appeared for the Successful
Resolution Applicant.

ORDER

Per: Coram.

1. The present Application has been filed by the Applicant No.01 'M/s. Tulip Star Hotels Pvt Ltd.' and the Applicant No.02 'The Suspended Management of the Corporate Debtor through its Suspended Director Mr. A.S. Anantharaman', u/s 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code" for the sake of brevity) read with Rule 11 of the National

Company Law Tribunal Rules, 2016 ('NCLT Rules') seeking, *inter-alia*, directions for correct determination/re-verification of the financial claim of the Respondent No.02, 'Pegasus Asset Reconstruction Pvt. Ltd.' ("PEGASUS"), who happens to be a secured financial creditor of the Corporate Debtor and to pass an order to set aside the resolution passed by the CoC in its 32nd meeting dated 13.12.2023 approving addendum dated 09.12.2023 to the resolution plan and approving the ratio of disbursement of the proposed amount for the secured financial creditors.

Case of the Applicant (in brief):

2. The Corporate Debtor 'V Hotels Ltd' entered into a term loan agreement dated 08.03.2022 with Bank of India, Punjab National Bank, Union Bank of India, Canara Bank, Vijaya Bank and Indian Bank for availing term loan facility of sum aggregating to INR 129 crores to fund the Corporate Debtor's proposed acquisition of Centaur Hotel Juhu Beach from the Hotel Corporation of India Ltd, the details of which are as follows:

<u>Sr. No.</u>	<u>Name of the Bank</u>	<u>Amount of Term Loan (in INR)</u>	<u>Rate of Interest (payable at quarterly rests)</u>
1.	Bank of India	25 crores	13.50% p.a.
2.	Union Bank of India	25 crores	14% p.a.
3.	Canara Bank	25 crores	13.75% p.a.

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4.	Punjab National Bank	24 crores	13.50% p.a.
5.	Vijaya Bank	20 crores	13.50% p.a.
6.	Indian Bank	10 crores	13.50% p.a.
	TOTAL	129 crores	

3. The bank consortium led by Bank of India finally decided on a uniform interest @ 13.50% p.a. payable at quarterly rest and the same was charged accordingly by said banks. The above interest rates were revised pursuant to the conversion from quarterly rests to monthly rests in the Prime Term Lending Rates ('PTLR') from 01.04.2003 and the applicable interest rate became 12.85% at monthly rests. That out of the six banks, four banks named below had assigned their debts to ARCIL (i.e. the Financial Creditor herein) on the following different dates: (i) Bank of India on 31.12.2008; (ii) Punjab National Bank on 26.03.2009; (iii) Union Bank of India on 09.07.2009; and (iv) Vijaya Bank on 29.01.2010. Further, on 31.03.2010, the other two banks viz. Canara Bank and Indian Bank assigned their debts in favour of PEGASUS.

4. The Applicants state that both ARCIL and PEGASUS are entities with multinational and private shareholding and are only a façade of IndiaRF, which is a joint venture between Bain Capital and Piramal Group, who own all the security receipts bought by them from Standard Chartered Bank for a sum of Rs. 25 crores. The Applicants have reliably learnt that the said security receipts

have been further sold to an entity introduced by Macrotech Developers Ltd., the purported Successful Resolution Applicant ('SRA') whose bid was illegally accepted by the CoC. Thus, in effect, entire benefit of CIRP proceeds will benefit the purported SRA because of their control over the ownership of the security receipts.

5. On 13.05.2005, Indian Bank filed an Original Application No. 228/2005 before the Hon'ble DRT for recovery of its debts from the Corporate Debtor at a contractual rate of interest thereon @ 13.5% p.a. payable at quarterly rests. PEGASUS filed an IA No. 176/2015 in OA No. 228/2005 seeking orders to be passed on the basis of purported admissions made by the Corporate Debtor for interest @ 17.5% p.a. at quarterly rests during the course of settlement and negotiations. Thereafter, PEGASUS filed another application vide I.A. No. 752/2015 in OA No. 228/2005 seeking an amendment in the rate of interest from 13.50% p.a. to 15.50% p.a. with monthly rests for a particular period and thereafter @ 17.50% p.a. with monthly rests from 31.03.2010 till 31.01.2015. The said amendment for enhancement of rate of interest was sought on the basis of purported letters executed between PEGASUS and the Corporate Debtor during the course of settlement. The Hon'ble DRT, Mumbai dismissed the said amendment application vide Order dated 18.01.2016 seeking enhancement of the rate of interest on the ground that any averment regarding the rate of interest

during negotiations in settlement talks or correspondence thereto shall be relevant only for the purpose of settlement and not otherwise.

6. The Applicants submit that the Order dated 18.01.2016 passed by the Hon'ble DRT in IA No. 752/2015 in OA No. 228/2005, has not been interfered with in appeal and therefore, the said Order has attained finality and is binding between the parties inter se. However, despite the same, the Resolution Professional has verified and admitted the claim of PEGASUS at the enhanced rate of interest. It is also pertinent to note that initially, the claim filed by PEGASUS was for a sum of Rs. 289.24 crores, out of which the Resolution Professional had verified and admitted the claim to the tune of Rs. 288.89 crores. Thereafter, pursuant to the Order dated 30.09.2022 passed by this Hon'ble Tribunal in the subject insolvency proceedings allowing re-submission of claims after inclusion of interest calculated till 01.08.2022, PEGASUS modified and submitted its claim of Rs.521.80 crores and the entire sum of Rs. 521.80 crores had been admitted by the Resolution Professional.

7. A.S. Anantharaman, the suspended director of Corporate Debtor has on multiple occasions called upon the Resolution Professional to re-verify and correctly determine the claims of secured creditors ARCIL and PEGASUS. The Applicants submit that as regards the claim of the other secured creditor named ARCIL, the Hon'ble NCLAT has come to a finding vide Judgment dated

21.11.2023, that the Resolution Professional has verified and admitted an incorrect claim of ARCIL and had accordingly directed re-verification and determination of claim of ARCIL. Pursuant thereto, the RP had re-verified the claim of ARCIL and the admitted claim of ARCIL has come down substantially from Rs.1546.10 crores to Rs. 621.70 crores. Further, the RP has realized that PEGASUS stands on the same footing as ARCIL whose claim has been directed to be calculated @ 14.85% p.a. The RP has also filed an application vide IA No. 5066/2023, seeking directions to re-verify/redetermine the claim of PEGASUS.

8. On 09.12.2023, the SRA named Macrotech Developers Ltd submitted with the RP an addendum to the CoC approved resolution plan pursuant to the re-verification of the claim of ARCIL on directions of the Hon'ble NCLAT vide Judgment dated 21.11.2023. During the pendency of IA No. 5606/2023 filed by the RP seeking directions to re-verify and correctly determine the claim of PEGASUS, the RP has convened 32nd meeting of CoC on 13.12.2023 wherein the addendum dated 09.12.2023 submitted by Macrotech Developers Ltd was approved and the amounts proposed for secured financial creditors under the successful resolution plan amongst the secured financial creditors in the ratio of 65.91:34.09.

9. In view of the above facts, the Applicants respectfully submit that it is abundantly clear that the Resolution Professional acting in connivance with PEGASUS has verified and admitted its incorrect, illegal and highly inflated claim. The Resolution Professional has not considered the orders of DRT pertaining to the applicable rate of interest, while admitted the incorrect and inflated claim of PEGASUS. Further, the Resolution Professional has also failed to take into account the payments already made by the Corporate Debtor and adjustment of the same towards the principal outstanding of PEGASUS. Hence this application.

Reply of the Respondents:

10. The Respondents have not filed their reply. However, the Respondents No. 01 and 02 have filed their written submissions.

FINDINGS

11. We have heard the Counsel for the Applicant and the Respondent at some length. We have perused the records.

12. Counsel for the Applicants submit that since the amount of claim of PEGASUS has admitted on incorrect and inflated basis, the information memorandum prepared on the basis of such improper claims and the resolution plan prepared and approved by the CoC on such wrong information

memorandum are all illegal and deserve to be set aside and consequently, directions need to be given to Respondent No.01/RP to redetermine and reverify the claims of Respondent No.02. Counsel for the Applicants submit that the subject resolution plan is nothing but an abuse of the process of law and the financial creditors are not interested in the insolvency resolution of the Corporate Debtor, rather they are interested in hostile takeover of the valuable 'Centaur Hotel, Juhu' by way of resolution plan at a throw away and grossly undervalued price. Therefore, Ld. Counsel for the Applicants pray that the resolution plan approved by the CoC is liable to be rejected. Counsel for the Applicants further prays that once the claims of the secured financial creditors are correctly determined, then the suspended board and the promoters be granted the opportunity to redeem the correctly determined debt of the secured creditors and/or settle with the secured creditors in terms of Section 12A of the Code.

13. On the other hand, Counsel for the Respondents submit that inter-se distribution of earmarked funds for the secured financial creditors is the sole domain of CoC based on its commercial wisdom. Counsel for the Respondents, to buttress their aforesaid submission, have placed reliance upon the judgment of the Hon'ble Supreme Court in India Resurgence ARC Pvt Ltd v/s. Amit Metaliks & Anr reported in 2021 SCC OnLine SC 409, wherein it was held at Para 17 of the judgment as follows:

"17. Thus, what amount is to be paid to different classes or sub-classes of creditors in accordance with provisions of the Code and the related Regulations, is essentially the commercial wisdom of the Committee of Creditors; and a dissenting secured creditor like the appellant cannot suggest a higher amount to be paid to it with reference to the value of the security interest. "

14. Counsel for the Respondents has further submitted that instead of helping the creditors to complete the CIRP process and realisation of their dues in a timely manner, the Promoters have used a stream of litigation to delay the CIRP process and to preclude the secured financial creditors from realizing their dues. Counsel for the Respondents has further argued that the Applicants have no locus in the matter since they have failed to show as to how the rate of interest applied to the claims of Pegasus would adversely affect them in any manner whatsoever. Counsel for the Respondents further submit that determination of Pegasus' claims is of no consequence to the Applicants, who are the erstwhile shareholders/ promoters of the Corporate Debtor.
15. We have carefully weighed, examined and considered the submissions advanced by the learned counsel for the parties.
16. The relief sought by the Applicants herein viz. to revise the claim of Pegasus has already been sought by the Resolution Professional of the Corporate Debtor (i.e. Respondent No.01 herein) in IA No. 5606/2023. The Equity Shareholders of the Corporate Debtor are Tulip Star Hotels Ltd (50%) and Tulip Hotels Pvt.

Ltd. (50%). The Applicant Nos. 01 and 02 are the shareholder and director respectively of the Corporate Debtor. The Applicants herein are not the part of CoC of the Corporate Debtor and thus, they have no voting rights. The Applicants have miserably failed to establish as to how their rights are affected or prejudiced if directions for revision of claim of Pegasus are not given. Therefore, whether the Resolution Professional of the Corporate Debtor revises the claim of Pegasus or not, the Applicants' have no locus in the matter as their rights are not affected or prejudiced in any manner whatsoever. Therefore, we are of the considered view that the present application of the Applicants deserves to be dismissed for want of locus.

17. In the above-captioned Company Petition, the CIRP has reached an advanced/matured stage where the resolution plan has been approved by the CoC and the same is pending for the approval of Adjudicating Authority u/s 31 of the Code vide IA No. 2830/2023. After the Order of the Hon'ble NCLAT dated 21.11.2023 whereby it has been held that the applicable rate of interest for determination of claim filed by ARCIL would be 14.85% p.a., the Successful Resolution Applicant has submitted an Addendum dated 09.12.2023 which clarifies and confirms that no change is proposed to the resolution plan in any manner and the said Addendum reiterated that the amount available for secured financial creditors for distribution will continue to be the same i.e. Rs. 888,69,78,878/- as provided for in the resolution plan. Further, the Addendum

also states that the Successful Resolution Applicant has no objection to the manner in which the proceeds available for secured financial creditors will be distributed amongst them inter se. It is also noteworthy that subsequent to the revision of claims of the two secured financial creditors viz. ARCIL and PEGASUS, only the inter-se ratio of distribution will change and the same would have no bearing or impact on any other stakeholder or on the Applicants herein. Therefore, there is no reason to set-aside the resolution passed by the CoC approving the aforementioned Addendum to the Resolution Plan. The contentions raised by the Applicants in this regard are simply specious.

18. Counsel for the Applicants have sought to establish the locus of the Applicants by contending that if the claim amounts of the secured creditors are correctly determined by the Respondent No.01, then, the Applicants will have a fair opportunity to settle the outstanding dues of the secured creditors so that the process of CIRP may be withdrawn in accordance with Section 12-A of the Code. Even this contention is specious. The moment the Corporate Debtor is admitted into CIRP and the IRP is appointed, the powers of the Board of Directors of the Corporate Debtor are suspended and the management of the affairs of the Corporate Debtor shall vest in the IRP, as per the provisions of Section 17 of the Code. Further, proceedings under the Code are not for recovery of debt and the Adjudicating Authority is not a settlement forum to give opportunity to the Applicants to settle the dues of the secured creditors so

that the CIRP may be withdrawn. Withdrawal of CIRP u/s 12-A of the Code is also not a matter of right of the Applicants, but it is rather at the discretion of the Committee of Creditors and then by the Adjudicating Authority. Hence, the argument of fair opportunity to settle the dues of secured creditors upon correct determination of their claims is also devoid of any merit and too far-fetched to be even considered at this belated stage.

19. In view of the above findings, analysis and discussions, we are not inclined to grant the reliefs as prayed for by the Applicants and hence, **we hereby dismiss I.A. No. 111 of 2024** in CP(IB) No. 532/MB/2018 with no order as to costs.

Sd/-

ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)