



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

IA-4006(PB)/2022

IN

Company Petition No. IB- 1053 (PB)/2020

(Under Section 30 (6) and 31 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016))

IN THE MATTER OF:-

Mr. Sapan Mohan Garg
(Resolution Professional of
M/s. Leading Hotels Limited)

..... Applicant

AND IN THE MATTER OF:

M/s. Citron Strategies Private Limited

... Financial Creditor

VERSUS

M/s. Leading Hotels Limited

... Corporate Debtor

CORAM:

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)**

Order Delivered on:. 15.07.2024

Present:

For RP : Adv. Udit Singh

For the SRA : Adv. Savar Mahajan

ORDER

I.A./4006/2022 IN C.P.(IB)/1053/2020

M/s. Citron Strategies Private Limited v/s M/s. Leading Hotels Limited

Page 1 of 22



PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)

1. The present application has been filed under Section 30(6) read with Section 31(1) of the Insolvency & Bankruptcy Code, 2016 ('the Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('Regulations') on behalf of Mr. Sapan Mohan Garg, applicant herein and Resolution Professional (RP) of M/s. Leading Hotels Limited ('Corporate Debtor'), seeking approval of the Resolution Plan dated 30.07.2022 along with clarifications dated 08.08.2022 submitted by M/s. Devrat Developers Limited ('Successful Resolution Applicant') and approved by the Committee of Creditors ('CoC') in its 9th CoC Meeting held on 08.08.2022 with 88.77% voting in favor in terms of Section 30(4) of I&B Code, 2016.
2. Briefly stated, the facts as averred by the applicant in the application are as follows:
 - a. The Corporate Insolvency Resolution Process against M/s. Leading Hotels Limited ('Corporate Debtor') had been initiated by this Hon'ble Adjudicating Authority vide its order dated 25.06.2021 in C.P.(IB)No.1053(PB)/2021, an application under Section 7 of the Code, 2016 filed by M/s. Citron Strategies Private Limited ('Financial Creditor'). Mr. Sapan Mohan Garg is appointed as the Resolution Professional of the Corporate Debtor in the 5th CoC Meeting held on 23.05.2022.
 - b. The Corporate Debtor is engaged in the business of running and managing hotels, resorts, motels, restaurants and cafe. The Corporate Debtor had proposed to set up an 18-hole signature championship golf course, 209 key 5- star deluxe



villa resort along with 60 Platinum Golf Membership villas at Tiracol, in North Goa ("Project"). Currently, the Corporate Debtor is not undertaking any business activities. The Corporate Debtor had signed 'a 'Management Agreement with 'Four Seasons' for operations and management of the golf course-cum-resort Project, however the validity of the said Agreement has expired due to the delay in implementation of the Project.

- c. The Public Announcement in Form A dated 01.07.2021 was made in the newspaper wherein all the creditors were invited to submit their claim and the last date for submission of proof of claim was 13.07.2021. The Applicant had verified the claims on the basis of the documents and information as provided by the claimants in support of their claim and Committee of Creditors of the Corporate Debtor was constituted on 22.07.2021. The summary of claims of the Corporate Debtor are as follows:-

S. No.	Category	Amount Claimed (in INR)	Amount Admitted* (in INR)
1.	Secured Financial Creditor	189,92,27,764	170,82,92,992
2.	Unsecured Financial Creditors	187,24,71,203	186,62,38,417
	TOTAL FCs	377,16,98,967	357,45,31,409
	Workmen & Employees	285,66,949	185,66,949
	Statutory Dues	N/A	N/A
	Operational Creditor (other than above)	272,35,876	223,90,036
	TOTAL OCs	558,02,825	409,56,985
	TOTAL	383.31 Crores	363.92 Crores

- d. The Invitation for Expression of Interest in Form -G was published on two occasions i.e., (i) 17.02.2022 and (ii) 31.03.2022. The Form G issued on second occasion was issued



in the newspaper, entailing the last date for submission of EoI as 09.05.2022 and the last date of submission of Resolution Plan was 15.07.2022. Pursuant to the Form-G, the applicant had received Four (4) Expression of Interests from the Prospective Resolution Applicants (PRAs) along with requisite amount of Earnest Money Deposit (EMD).

- e. Out of the said 4 PRAs, one of the PRA, Kundan Care Products Ltd. was not found to be eligible as it did not meet the eligibility criteria of having liquid funds of Rs.25 Crore. The above fact was also discussed and deliberated upon by the CoC in their 5th meeting dated 23.05.2022, who also found that the said PRA was ineligible to submit a resolution plan, for not having met the requirement of having minimum liquid funds of Rs.25 Crore. In this regard, the name of Kundan Care Products Ltd. was included in the provisional list of PRAs dated 19.05.2022 however, as it was found to be ineligible, its name did not reflect in the final list of PRAS dated 03.06.2022.
- f. In the 5th CoC meeting dated 23.05.2022, the CoC had approved the evaluation matrix and request for resolution plan ('RFRP') in the present case, after due consideration and deliberation on the said documents. It is noteworthy that in the said CoC meeting, as the 5th CoC meeting was itself deferred from 19.05.2022 to 23.05.2022, the date for issuance of RFRP, evaluation matrix and information memorandum, which was earlier fixed on 24.05.2022, was also extended to 28.05.2022.
- g. In the 7th CoC meeting dated 11.07.2022, the applicant apprised the CoC about the requests made by all the three (3) PRAs to extend the last date for submission of resolution plan at least by 1 week / a month in view of various litigation in the



present case. The CoC deliberated on the said request and the resolution to extend the timeline for submission of resolution plan up to 30.07.2022 (05:00 PM) was approved by the CoC with requisite voting. As on 30.07.2022, the applicant had received two Resolution Plans from (i) M/s. Devrat Developers Limited ('Successful Resolution Applicant) and (ii) M/s. GVPR Engineers Limited. The said resolution plans were received in soft copies and hard copies (sealed). Also, the EMD of Rs. 3 Crore each was received by the applicant as per the relevant clause of the RFRP document.

- h. The applicant in the 8th CoC Meeting dated 02.08.2022 had informed the CoC that one of the PRAS, M/s. Chalet Hotels Ltd., had requested to extend the last date for submission of resolution plan by 2 months on 27.07.2022, however, the said request was turned down by the CoC in view of the time lines involved in the present case. Pursuant thereof, on 02.08.2022, the said PRA requested the applicant/ resolution professional to refund the EMD deposited by them. On this the CoC approved the refund of EMD to the said PRA, as no resolution plan was submitted by the said PRA.
- i. Further, the CoC members were apprised that basis the valuation received from the valuers appointed for each category, the fair value and liquidation value of the corporate debtor under the respective category was determined on 31.07.2022 as per regulation 35(1) of CIRP Regulations. The fair value and liquidation value of the assets of the corporate debtor was subsequently shared with the CoC members after receiving confidentiality undertaking from them



- j. Further, the CoC was informed that based on the transaction audit report dated 01.08.2022, the applicant has determined undervalued transaction under section 45 of IBC, as undertaken in the corporate debtor amounting to Rs.383.55 Lakh, for which the applicant shall file appropriate application before this Hon'ble Tribunal. Subsequently an application for avoidance of transactions under section 45, 46 read with section 49 and Section 66 of IBC was filed before this Hon'ble Tribunal on 09.08.2022, which is pending adjudication.
- k. Further, in the 8th CoC Meeting, the said two PRAs were also invited, as the resolution plans were to be opened before the CoC members. The resolution plans were opened in the presence of the CoC members and counter signatures of representatives of CoC members were taken on the back side of the respective resolution plan on some pages for identifications. The PRAs were then requested to briefly explain the members of the CoC about their financial proposal of their resolution plans and thereafter, both the PRAs gave a brief outline of their financial proposal. After such presentation, the CoC requested the PRAs to improve the financial value of their resolution plans and submit revised plans on or before 03.08.2022 at 06:00 PM
- l. However, by the stipulated time for re-submission of the revised Resolution Plan i.e., 03.08.2022 at 06:00 PM, only one PRA, namely M/s. GVPR Engineers Limited had submitted its revised resolution plan with improved financial offer on 03.08.2022 with the applicant, while M/s. Devrat Developers Limited stated that it was sticking to the financial proposal in its original resolution plan. The said fact was duly communicated to the CoC by the applicant vide email dated 03.08.2022, whereby the



revised resolution plan of M/s. GVPR Engineers Limited was also circulated to the members of the CoC. It is noteworthy that the original resolution plans of the PRAs were already with the CoC members for their consideration on the feasibility and viability of the respective plans.

- m. The legal counsel of the Corporate Debtor had conducted the due diligence of the respective resolution plan and submitted its report on 08.08.2022, basis which certain clarifications on the resolution plans were sought from the respective PRAs by the applicant/ resolution professional. The PRAS responded to the clarifications sought by the applicant on 08.08.2022, thereby clarifying on all the queries raised by the applicant.
- n. In the 9th CoC meeting dated 08.08.2022, the CoC was apprised of the due diligence report submitted by the legal counsel of applicant, also, the clarifications sought from the respective resolution applicants and response thereof was placed before the CoC members for their consideration. The applicant apprised the CoC members that both the plans were legally compliant and none of the resolution applicant was barred to submit a resolution plan.
- o. The CoC then considered the feasibility and viability of each resolution plan, the financial proposals of each resolution plan along with the tenure of repayments was discussed in detail by the CoC members. The resolution plans were then evaluated in terms of the evaluation matrix and were then put to vote simultaneously before the CoC member through e-voting from 08.08.2022 at 08:00 PM to 10.08.2022 at 08:00 PM. The e-voting on the resolution plans was concluded on 10.08.2022 at 08:00 PM. whereby, the CoC had approved the resolution plan



of M/s. Devrat Developers Limited (successful resolution applicant) with 88.77% voting share, while the resolution plan of M/s. GVPR Engineers Limited had only received 0.34% votes in assent.

- p. In pursuance of approval of resolution plan of M/s. Devrat Developers Limited the applicant issued a letter of intent dated 11.08.2022 (LOI) to the successful resolution applicant, thereby reiterating the obligations on part of the successful resolution applicant and seeking deposit of performance security equivalent to 10% of the value of resolution plan i.e. Rs. 21.91 Crore on or before 16.08.2022, as per regulation 36B(4A) of CIRP regulations.
- q. In response to the said LOI, the Successful Resolution Applicant on 12.08.2022 submitted a performance bank guarantee dated 12.08.2022, issued by ICICI bank for a sum of Rs.16.91 Crore, with a request to adjust the EMD of Rs.5 Crores, already deposited, towards the balance amount of performance security.
3. We have heard the submissions made by the Ld. Counsel for the Applicant and have meticulously gone through the documents produced on record. The copy of the Resolution Plan dated 30.07.2022 along with the clarifications dated 08.08.2022 submitted by M/s. Devrat Developers Limited ('Successful Resolution Applicant') and approved by the CoC is annexed as Annexure A 1 (Colly.) (pg no. 41-101) to the present application. The salient features of the Resolution Plan dated 30.07.2022 as submitted by **M/s. Devrat Developers Limited ('Successful Resolution Applicant'**) and approved by the CoC in its 09th CoC



Meeting held on 08.08.2022 with 88.77% voting in favor are reproduced herein below:

I. **BACKGROUND OF THE SUCCESSFUL RESOLUTION APPLICANT:**

The SRA is a private limited company incorporated on 25 May 1995 under the Companies Act, 1956. The SRA has vast experience in developing real estate projects. Further the Promoters/Directors of the SRA have more than 30 years' experience in investing into real estate properties, real estate projects such as redevelopment and managing the projects of complex nature. Further, the SRA and its promoters have in depth knowledge of the approval process and have the financial capabilities to develop and operate hospitality projects of this nature. The SRA is currently developing multiple projects across cities with the total sale-able area of approximately 500,000 sq. ft. The following are the real estate projects which are being developed by the SRA:

S. No.	Name of the Project	Location	Project Area (sq. ft.)	No. of units	Type of Units
1.	Dev Darshan Residential	Indore	2,30,000	95	1 bhk to 4 bhk
2.	Napansea Road Residential	Napansea Road Mumbai	1,00,000	40	4 bhk
3.	Rekha Ansh Residential	Khar West-Mumbai	12,000	9	2 bhk to 4 bhk
4.	Shivdham Residential	Santacruz West-Mumbai	57,000	46	2 bhk to 4 bhk

II. **KEY TERMS OF THE RESOLUTION PLAN**

The SRA proposes to pay a sum of INR 219 .15 Crores in full and final settlement of the Total Admitted Claims of INR 363.92 Crores in the manner provided below:

I.A./4006/2022 IN C.P.(IB)/1053/2020

M/s. Citron Strategies Private Limited v/s M/s. Leading Hotels Limited

Page 9 of 22



(Amounts in INR Crores)						
Stakeholder	Amount Claimed	Admitted Claim	Total Pay-out	Timing of Payments	% age (w.r.t amount claimed)	% age (w.r.t amount admitted)
CIRP Costs	1.80	1.80	At actuals – (INR 1.80 Crores is due and payable)	Transfer Date	100%	100%
Secured Financial Creditor	189.92	170.83	162 Crore Interest on discounting rate as per evaluation matrix	5 years from the Transfer Date	85.30%	94.83%
Unsecured Financial Creditors	187.81	187.19	54	Within 60 days from the Effective Date	28.75%	28.8%
Employees and Workmen	2.86	1.86	0.85	Within 60 days from the Effective Date	29.75%	45.7%
Operational Creditors (other than Employees and Workmen)	2.72	2.24	0.50	Within 60 days from the Effective Date	18.36%	22.3%
Existing shareholders		N/A	NIL	Within 60 days from the Effective Date	NA	NA
TOTAL	383.31	363.92	219.15		56.7%	60%

III. **TREATMENT OF CREDITORS OF CORPORATE DEBTOR**

a. Secured FCs:

Secured FCs will be issued 16,20,000 Non-Convertible Debentures ("NCDs") of the Corporate Debtor having face value of INR 1,000 each. The NCDs will be redeemable within 5 years from the Transfer Date provided that the NCDs will be compulsory redeemable at the end of 5 years from the Transfer Date.

b. Unsecured FCs:



Unsecured FCs will be paid an amount of INR 54 crores within 60 days from the Effective Date.

c. Dissenting FCs:

Dissenting FCs will be paid the minimum amount payable to such Dissenting FCs in terms of Section 53 of the Code ("Minimum Dissenting FC Payment") in accordance with Section 30(2)(b) of the Code. Such Minimum Dissenting FC Payment shall be made from the overall amount proposed for relevant category of creditor (Secured FCs or Unsecured FCs as applicable). The balance amounts shall be distributed pro-rata to the assenting FCs. Further, in case the Minimum Dissenting FC payment is less than the pro-rata amount that was otherwise payable to the relevant Dissenting FC, the difference would be paid to the benefit of the assenting FC without decreasing the total Secured FC Payment or Unsecured FC Payment (as relevant), in such case the balance amounts shall be distributed pro-rata to the assenting FCs.

The SRA understands that the only Dissenting FCs in the present case are certain Unsecured FCs and hence, the amount payable to the Dissenting FC (unsecured) is Nil in terms of Section 53 (1) of the Code. Therefore, the amount allocated for Unsecured FCs are to be distributed pro-rata to the assenting Unsecured Financial Creditors.

d. Workmen and employees:

They will be paid an amount of INR 0.85 crores within 60 days from the Effective Date.

e. Other OCs



They will be paid an amount of INR 0.50 crores within 60 days from the Effective Date

IV. **SOURCES OF FUNDS**

The Initial Infusion Amount and Unsecured FC Payment shall be made by the Resolution Applicant from its own funds. The Resolution Applicant has sufficient cash and cash equivalents in its balance sheet, which can be quickly monetised for purposes of funding the Resolution Plan. Resolution Applicant has access to finance from multiple banks/financial institutions including Private Equity for the development of the Resort, however these will be explored once legal cases pending against the Corporate Debtor are resolved.

V. **INITIAL INFUSION**

The SRA shall infuse an initial infusion amount of INR 4.5 crores ("Initial Infusion Amount") into the Corporate Debtor towards upfront payment of CIRP costs and payment to Operational Creditors. Further, the Unsecured FCs will be paid INR 54 Crores upfront. The Initial Infusion Amount and the Unsecured FC Payment will be made by the SRA from its own funds. The SRA has sufficient cash and cash equivalents in its balance sheet, which can be quickly monetised for purposes of funding the plan

VI. **AVOIDANCE TREATMENT**

In case the Resolution Professional and/or the CoC decides to file and/or have already filed any avoidance application against any person and in case of any positive outcome/refund of the said avoidance application, the same shall accrue solely for the benefit of the Corporate Debtor and the RA and shall not be shared with the CoC or any other stakeholders of the CoC. Post the Effective Date, the RA will be the sole in-charge of these avoidance applications. Further, the cost, including the legal cost, for representing such avoidance application till the Effective Date is factored in as the CIRP Costs. The



cost, if any, during the Interim Management Period shall be included in the Interim Management Costs. After the Transfer Date, all costs, including the counsel's fee, shall be borne by the RA.

VII. **CHANGE IN SHAREHOLDING**

The paid-up share capital of the Corporate Debtor is INR 20,87,69,290 divided into 2,08,76,929 equity shares of Rs. 10 each. On or prior to the Transfer Date, the Initial Infusion Amount of INR 4.5 Crores shall be brought into the Corporate Debtor by the SRA in the form of share application money. On the Transfer Date:

- the entire existing share capital of the Corporate Debtor shall stand cancelled and/or extinguished and/or reduced without payment of any consideration to the existing shareholders;
- the Corporate Debtor shall issue and allot 45,00,000 Equity Shares having a face value of INR 10 each against the Initial Infusion Amount to the Resolution Applicant and/ or its nominees such that the Resolution Applicant and/ or its nominees shall be the holder of 100% of the equity share capital of the Corporate Debtor.

VIII. **IMPLEMENTATION OF THE RESOLUTION PLAN**

Steps	Activity	Indicative Timeline
1.	COC Approval Date	X
2.	Effective Date	Y
3.	Formation of Monitoring Committee	Y
4.	Appointment of the Monitoring Professional	Y
5.	Deposit of Initial Infusion Amount	Z (Y + 60 days)
6.	Transfer Date	Z
7.	Payment of outstanding CIRP Costs	Z
8.	Payment of outstanding Interim Management Costs	Z
9.	Payment to Operational Creditors	Z
10.	Payment to Unsecured Financial Creditors and Dissenting Financial Creditors	Z
11.	Assignment of Claims by the Financial Creditors	Z



12.	Capital Restructuring (a) Issuance of new Equity Shares to the Resolution Applicant/ nominees; (b) Extinguishment of existing shareholding of the Corporate Debtor.	Z
13.	Board Reconstitution (a) Automatic vacation of office by the existing directors; (b) Appointment of directors nominated by the Resolution Applicant	Z
14.	Payment to Secured Financial Creditors	Z + 5 years

4. In view of Section 31 of the Code, the Adjudicating Authority, before approving the Resolution Plan, is required to examine that a Resolution Plan which is approved by the CoC under Section 30 (4) of the Code meets the requirements as referred under Section 30 (2) of the Code.

Section 30 (2) is quoted below: -

“(2) The resolution professional shall examine each Resolution Plan received by him to confirm that each Resolution Plan –

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;

(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the Resolution Plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the Resolution Plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.



Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

- (i) where a Resolution Plan has not been approved or rejected by the Adjudicating Authority;*
- (ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or*
- (iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a Resolution Plan;]*
- (c) provides for the management of the affairs of the Corporate debtor after approval of the Resolution Plan;*
- (d) The implementation and supervision of the Resolution Plan;*
- (e) does not contravene any of the provisions of the law for the time being in force*
- (f) conforms to such other requirements as may be specified by the Board.*

Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 (18 of 2013) or any other law for the time being in force for the implementation of actions under the Resolution Plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]”

5. In respect of compliance of Section 30(2)(a) of the Code, it is seen that there is a provision in clause 6.1 and 6.2 of Chapter VI at pg no.24 of the Resolution Plan provides that any unpaid CIRP Costs outstanding as on the NCLT Approval Date shall be paid on actuals in priority to any payments to any creditor on the Transfer Date.



6. In respect of compliance of Section 30(2)(b) of the Code, it is seen that there is a provision in clause 6.4 and Clause 6.5 of Chapter Vi at Page No.28 of the Resolution Plan provides that the admitted claim of Operational Creditors (Workmen and Employees) is INR 1,85,66,949 (Rupees One Crore Eighty Five Lakhs Sixty Six Thousand Nine Hundred Forty Nine). The Resolution Applicant proposes to pay an amount of INR 0.85 Crores ("W/E OC Payment") to the Operational Creditors (Workmen and Employees) under this Resolution Plan against all Claims of Operational Creditors (Workmen and Employees). The W/E OC Payment shall be paid from the Initial Infusion Amount, on the Transfer Date, in priority to the payment proposed to the Financial Creditors and within 60 days from the Effective Date.
7. In respect of compliance of Section 30(2)(c), it is seen that there is a provision in clause 6.3.10 of Chapter Vi at pg. no.26 of the Resolution Plan, which provides for the payment to the Financial Creditors who did not vote in favour of the Resolution Plan.
8. In respect of compliance of Section 30(2)(d) and 30(2)(e) of the Code, it is seen that the manner of the management of the affairs and control of the business of the Corporate Debtor has been provided in detail in clause 9 at Chapter IX at pg. no. 40 of the Resolution Plan. Further Chapter X at pg. no. 43 of the Resolution Plan, provides for the Term and Implementation of the Resolution Plan. Also, Clause 9.2 of the Resolution Plan provides for the constitution of a monitoring committee comprising of (a) one representative of the Secured Financial Creditor, (b) one representative of the Unsecured Financial Creditors who shall the Unsecured Financial Creditor holding maximum share of



admitted debt; (c) one representative of the Resolution Applicant. The committee shall supervise and monitor the implementation of the Resolution Plan after approval of the same by the Hon'ble NCLT ("Monitoring Committee").

9. In respect of compliance of Section 30(2)(f) of the Code, it is seen that the information provided in the Resolution Plan and the supporting documents provided by the Successful Resolution Applicant is in compliance with the applicable laws. Further, the Successful Resolution Applicant had submitted an affidavit dated 29.07.2022 read with revised affidavit dated 06.08.2022 stating that he is eligible under Section 29A of the Code, 2016.
10. In respect of compliance regarding Regulation 38 (1A) of the CIRP Regulations, it is seen that Clause 6.13 of Chapter VI at Pg. no. 64 of the Resolution Plan provides how it will deal with the interest of all the stakeholders including secured and unsecured financial creditors, operational creditors of the corporate debtor, statutory dues and interests of the employees and workmen, as per the requirement of Regulation 38(1A) of the CIRP Regulations.
11. In respect of compliance regarding Regulation 39(4) of the CIRP Regulations, the applicant has filed compliance certificate in Form-H certifying that the Resolution Plan submitted by the Successful Resolution Applicant meets the requirements as laid down in various sections of the Code and the CIRP Regulations and there are sufficient provisions in the Plan for its effective implementation as required under the Code.
12. On perusal of Form-H annexed as Annexure A-27 at page no.442 - 451 of the present application, we observe that the Average Fair Market Value of the Corporate Debtor as provided in Form- H is



Rs.195.40 crores and the Average Liquidation Value of the Corporate Debtor is Rs. 156.38 crores.

13. In so far as the approval of the resolution plan is concerned, this authority is not sitting on an appeal against the decision of the Committee of Creditors and this Adjudicating Authority is duty bound to follow the judgement of the **Hon'ble Supreme Court in the matter of K.Sashidhar v. Indian Overseas Bank (2019) 12 CC 150**, wherein the scope and interference of the Adjudicating Authority in the process of the approval of the Resolution Plan is elaborated as follow:-

35. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 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. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides : (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan



and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.

14. Also the Hon'ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors., Civil Appeal No. 8766-67 of 2019, vid its judgement dated 15.11.2019** has observed as follows:

"38. This Regulation fleshes out Section 30(4) of the Code, making it clear that ultimately it is the commercial wisdom of the Committee of Creditors which operates to approve what is deemed by a majority of such creditors to be the best resolution plan, which is finally accepted after negotiation of its terms by such Committee with prospective resolution applicants."

15. Thus, from the judgements cited supra, it is amply clear that only limited judicial review is available to the Adjudicating Authority under Section 30(2) read with Section 31 of the Code, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the committee of the creditors.
16. As to the relief and concessions sought in the Resolution Plan more specifically set out in Chapter XI (Relief sought under the Resolution Plan) at pg no. 46 of the Resolution Plan, taking into consideration the decision of the Hon'ble Supreme Court in the matter of **Embassy Property Development Private Limited v. State of Karnataka & Ors. in Civil Appeal No. 9170 of 2019**, this Adjudicating Authority is not inclined to give any reliefs and concessions and direct the Successful Resolution Applicant to file necessary application before the necessary forum/ authority in



order to avail the necessary relief and concessions, in accordance with respective laws. The relevant part of the judgement is reproduced herein below:-

39. Another important aspect is that under Section 25 (2) (b) of IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings. Section 25(1) and 25(2)(b) reads as follows:

“25. Duties of resolution professional –

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions:-

(a).....

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi judicial and arbitration proceedings.”

This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).

40. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.”

17. Accordingly, subject to the aforesaid observations, we hereby **approve the Resolution Plan Resolution Plan dated 30.07.2022 along with Clarifications dated 08.08.2022 submitted by M/s. Devrat Developers Limited (Successful Resolution Applicant’)**, which shall be binding on the Corporate Debtor and its employees, shareholders of corporate debtor, creditors including the Central Government, any State



Government or any Local Authority to whom statutory dues are owed, guarantors, Successful Resolution Applicant and other stakeholders involved. Resultantly, ***I.A.4006/PB/2022 stand allowed.***

18. It is declared that the moratorium order passed by this Adjudicating Authority under Section 14 of the Code shall cease to have effect from the date of pronouncement of this order.
19. We further reiterate that the Approved Resolution Plan shall not construe any waiver to any statutory obligations/liabilities arising out of the approved resolution plan and the same shall be dealt in accordance with the appropriate authorities concerned as per relevant laws. We are of the considered view that if any waiver is sought in the Approved Resolution Plan, the same shall be subject to approval by the concerned authorities. The same view has been held by the Hon'ble Supreme Court in **Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited and Embassy Property Development case (supra).**
20. Accordingly, MoA and AoA of the Corporate Debtor shall be amended and filed with the RoC for information and record as prescribed. While approving the Approved Resolution Plan as mentioned above, it is clarified that the Successful Resolution Applicant shall pursuant to the Resolution Plan approved under section 31(1) of the Code, 2016, obtain all the necessary approvals as may be required under any law for the time being in force within the period as provided for such in law.
21. The Resolution Professional shall forward all records relating to the Corporate Insolvency Resolution Process of the Corporate Debtor



and the Approved Resolution Plan to IBBI to be recorded at its database in terms of Section 31(3)(b) of the Code. The Resolution Professional is further directed to handover all the records, premises, properties of the corporate debtor to the Successful Resolution Applicant to ensure a smooth implementation of the resolution plan.

22. The approved 'Resolution Plan' shall become effective from the date of passing of this order. The Approved Resolution Plan shall be part of this order, subject to our observations regarding concessions, reliefs and waivers sought therein.
23. The Supervisory Committee/Monitoring Committee is directed to file the monthly status report with regard to the implementation of the approved plan before this Adjudicating Authority.
24. In view of the above, the **I.A./4006/PB/2022 in C.P.(IB)/1053(PB)/2020 stands allowed in terms of aforesaid discussion.**

Let the copy of the order be served to the parties

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**(DR. SANJEEV RANJAN)
MEMBER (T)**

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**(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (J)**