IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

(IB)-23(PB)/2017

IN THE MATTER OF:

Alchemist Asset Reconstruction Co. Ltd. (AARC)	....	Applicant
Vs.		
Hotel Gaudavan Pvt. Ltd. (HGPL)	....	Respondent

Order under Section 7 of Insolvency & Bankruptcy Code, 2016

Order delivered on 13.12.2017

Coram:

CHIEF JUSTICE (Retd.) M.M.KUMAR
Hon'ble President

Ms. Deepa Krishan
Hon'ble Member (T)

For the Applicant/ Petitioner	:	Shri K. Datta, Advocate Ms. Ashu Kansal, Advocate Ms. Arunava Sikdar, Resolution Professional
For the Respondent	:	Shri Siddharth Chaudhary, Advocate for Suspended Directors (HGPL)
For the Financial Creditor:		Shri Abhirup Dasgupta & Ms. Swati Sharma, Advs.

ORDER

C.A. No. 371/2017

This is an application filed by the Resolution Professional with a prayer to approve the resolution plan as submitted by JFC Finance (India) Limited which is duly approved with modifications by the Committee of Creditors in its meeting dated 04.09.2017 and modified plan was submitted on 29.09.2017. The approval has been sought in pursuance of Section 31 IBC (Annexure-D). A further declaration has been sought that the order of moratorium dated 31.03.2017 shall cease to have effect in terms of Section 31(3)(a) of the IBC. As a consequential relief directions have been sought that the shares held by the existing shareholder of Hotel Gaudavan Private Limited shall stand transferred to JFC Finance (India) Limited, for a consideration of Rs. 1 per share and a further direction to JFC Finance (India) Limited to deposit the entire consideration of Rs. 17.38 lacs for transfer of the said shares into a separate account and make payment for the shares held by each of the shareholders from this account in respect of the shares held by such shareholder. It has been prayed that on deposit of the aforesaid amount by JFC Finance (India) Limited in a separate account for payment to the existing shareholder towards consideration for their shares, all the shares held by the said shareholders shall stand cancelled and the said shares shall be issued in favour of the JFC Finance (India) Limited. Prayer for issuance of direction has also been made that the Directors Mr. Harendra Singh Rathore, Mr. Lokendra Singh Rathore, Mr. Dependra Singh Rathore and Ms. Mohan Kanwar Rathore on the Board of Directors of Hotel Gaudavan Private Limited are removed as the Directors of the said company and that the following persons who are proposed to be appointed as Directors of Hotel Gaudavan Private Limited by the Resolution Applicant, JFC

Finance (India) Ltd in terms of the Modified Resolution Plan be appointed as Directors of the Hotel Gaudavan Private Limited namely Mr. V K Chopra (Nominee Director of JFC Finance (India) Ltd.), Mr. Vinay Khosla (Executive Director) & Ms. Meenakshi Sharma (Nominee Director of AARC). It is also prayed that the erstwhile management of Hotel Gaudavan Private Limited be directed to handover the vehicles namely two Toyota Fortuners and one Toyota Innova to JFC Finance (India) Limited in terms of the order already passed by this Tribunal on the approval of the Resolution Plan, alongwith such other assets, documents, papers etc relating to the Corporate Debtor, which may be in their possession. It is also prayed that directions be issued to Government of Rajasthan to extend the lease period of the land for Hotel Fort Rajwada as per the terms of the lease deed and to direct all the Government Bodies, Statutory Bodies, Financial Creditors, Operational Creditors or any other Shareholder to accept the payments provided as payable to them in terms of the Resolution Plan, on approval of the Resolution Plan by the Adjudicating Authority. It is further prayed that the Financial Creditor be directed to withdraw all suits/applications filed against the Hotel Gaudavan Private Limited on approval of the Resolution Plan, without prejudice to their right to recover their residual dues from the Guarantors/Collaterals (that may be available with them) as per law. A further prayer has also been made to direct the Financial Creditors to release the charge over all assets of Hotel Gaudavan Private Limited, which was provided as security against the loan and any other security on payment of the Resolution Plan and to direct that the Resolution Plan approved by us is binding on the Corporate Debtor, its employees, members/shareholders, creditors, guarantors and other stakeholders involved in the Resolution Plan.

The proposed resolution plan reads as under:-

"5. **PROPOSED RESOLUTION PLAN**

With the objective of expanding its business, the Company proposes to take-over the Corporate Debtor company by acquiring the entire shareholding of the existing shareholders and settling the dues outstanding towards the Financial/Operational Creditors and statutory dues. JFC will induct funds either by way of additional equity capital and/or by way of debt to implement the Resolution Plan. Some of the highlights of our offer, which have been described in detail the section 6 below, are summarized as under:

- The outstanding Insolvency Resolution Process Cost would be paid in priority to all other debts of the Corporate Debtor;
- All payment to the Financial Creditors would be paid as per the terms of our detailed proposal;
- Though the liquidation value of the Corporate Debtor is insufficient even to settle the dues pertaining to the Corporate Debtor, the company proposed to settle the outstanding dues of the Operational Creditors of the Corporate Debtor in the normal course of business without any write off/sacrifice;
- The Company further proposes to pay the dues outstanding towards the Statutory Authorities in full in the normal course of business;
- The Resolution Plan provides for renovation and continued operations of Hotel Fort Rajwada and continued employment of all the workmen of the Corporate Debtor in the normal course of business."

The whole resolution plan is added as Annexure-I with this order and be read as part of this Order.

On behalf of the Resolution Professional Mr. Dutta learned counsel has submitted that all steps leading to the resolution plan in accordance with the provisions of the IBC have been taken. In that regard Mr. Dutta has invited our attention to the notice concerning expression of interest issued on 07.08.2017 inviting any resolution applicant interested in filing a resolution plan with respect to the Hotel Gaudavan Private Limited in accordance with the procedure provided by Section 25(2) of the IBC. The last date for submitting the resolution plan was 23.08.2017. The notices were published in the Times of India (English) as well as Dainik Bhasker (Hindi). In response to expression of interest four applicants came forward namely (a) Sood & Sood Builders Private Limited; (b) Shiva Corporation India Limited; (c) Destination India Projects Limited and (d) JFC Finance (India) Limited. However, the Committee of Creditors in its meeting held on 04.09.2017, with modifications approved the resolution plan submitted by JFC Finance (India) Limited. The modified plan as approved was submitted on 29.09.2017 which has been placed on record. It is also appropriate to mention that no resolution plan was received from the erstwhile management/promoters nor anyone of them appeared in the meeting of Committee of Creditors to contest the resolution plan proposed by JFC Finance (India) Limited. It is also appropriate to mention that notice of the meeting of Creditors were issued to the promoters/erstwhile management of the Hotel which is evident from the reading of notice of second Committee of Creditors meeting dated 26.08.2017. A perusal of aforesaid notices show that the notices were sent by email to Mr. Harendra Singh Rathore, Mr. Lokendra Singh Rathore, Mr. Dependra Singh Rathore and Ms. Mohan Kanwar Rathore. However, none had attended the meeting although objections on behalf of Hotel Gaudavan Private Limited through Directors have been now raised.

The second meeting of Committee of Creditors on 04.09.2017 was attended by all concerned including the financial creditors and the authorized representative of the resolution applicants who have filed their resolution plans. The voting commenced as per the provisions of Section 25 (4) of IBC after completing all formal procedure. The proposed resolution plans made and submitted by the four applicants were put to votes and a statement was made that the resolution plan submitted by JFC Finance (India) Limited conforms with the requirements of Section 30 (2) of IBC. There was no representation from Sood & Sood

Builders Private Limited. Eventually in the meeting the resolution plan proposed by JFC Finance (India) Limited was accepted with three modifications which are as under:-

> "After due discussions amongst the members of the CoC and chairperson all the members of the committee of creditors decided and passed the resolution plan submitted by JFC Finance (India) Limited with three modifications namely:
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> (a) Substitution of Clause 6(A) (2) of the Resolution Plan with the following clause:
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> • "Para 6(A)
>
> 2. That on approval of the Resolution plan, the existing share capital of the Corporate Debtor will be transferred to the Resolution Applicant at Rs. 1/- per share. The Resolution Applicant will deposit the entire consideration for purchase of shares into a separate account from where the payment will be made to the existing shareholders of HGPL in consideration for transfer of their shares to the Resolution Applicant.

2A. That thereafter the Resolution Applicant will take steps as per law for reduction of capital from Rs. 100/- to Rs. 1/- and post reduction the consolidation of 10 shares of Rs. 1/- each to 1/- share of Rs. 10/- each.

(b) and also to modify the terms of payment to SBI in the following way:

- Payment to State Bank of India upon the finality of the resolution plan after the disposal of appeal, if any against the order for approval of the resolution plan by NCLT or after 90 days from the day Resolution Plan is approved by NCLT, (whichever is earlier)."

Mr. Dutta, learned counsel for the Resolution Professional states that the provisions of Section 30 (2) and all Regulations stand fulfilled and complied with. The certificate issued under Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulation, 2016 by the Resolution Professional has also been placed on record which is dated 10.10.2017 (Annexure-G). A further affidavit has also been filed showing compliance with the notifications dated 05.10.2017 and 07.11.2017 and the ordinance dated 23.11.2017. According to the affidavit of the applicant, JFC Finance (India) Limited has stated that the requirements of the notification dated 05.10.2017 have been complied with. The IBBI issued a notification dated 07.11.2017 adding to regulation 38 (2) and inserted sub regulation (3) requiring that a resolution plan must contain details of the resolution applicant and other connected persons to enable the committee of creditors to assess the credibility of such applicant and other connected persons to take a prudent decision while considering the resolution plan for its approval. The Resolution Professional sent a communication to the resolution applicant on 08.11.2017 calling upon them to comply with the aforesaid requirements. On 08.11.2017 the resolution applicant namely JFC Finance (India) Limited sent a communication to the Resolution Professional and made all the disclosures as per the requirement of the amended regulation.

The Resolution Professional also gave a report in terms of amendment carried in Regulation 39 (2) dated 07.11.2017 (Annexure-A). The report has been duly filed by the Resolution Professional as Annexure-B in the affidavit filed on 24.11.2017 (Diary No. 2877). It clearly states that the Resolution Professional has reported compliance of the notification No. IBBI/2017-18/GN/REG019 dated 07.11.2017. The report of the Resolution Professional and the disclosure made by the applicant JFC Finance (India) Limited were put to the Committee of Creditors in its meeting held on 10.11.2017 and the minutes of the meeting have been placed on record along with the affidavit dated 13.11.2017 (Diary No. 2676) (Annexure-D). The Committee of Creditors has duly approved the report as well as the disclosures made by the applicant JFC Finance (India) Limited.

It is also pertinent to mention that the Ministry of Law and Justice issued an ordinance on 23.11.2017 (Annexure-C) which is filed with affidavit dated 24.11.2017 (Diary No. 2877). By the aforesaid ordinance Section 29 of the IBC has been amended by inserting Section 29A. According to the newly added section the list of ineligible persons to submit a resolution plan has been expanded to include any such person who is a promoter or in the management or control of such person. All such like persons are now disqualified to submit a resolution plan if he suffers any of the disabilities like undischarged insolvent, identified as a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949, whose account is otherwise classified as NPA and who has been convicted of an offence punishable with imprisonment of two years or more or who has been disqualified to act as a Director under the Companies Act, 2013 etc. In compliance of the aforesaid ordinance the applicant JFC Finance (India) Limited has filed declaration on 24.11.2017 which is available in the affidavit dated 24.11.2017 (Diary No. 2877). A declaration has been made by the applicant JFC Finance (India) Limited that it does not suffer from any of the disqualification contemplated by the ordinance dated 23.11.2017.

Mr. Dutta, learned counsel for the Resolution Professional has made a categorical statement that all the requirements of the Insolvency and Bankruptcy Code, IBBI Regulations and other provisions of statute or subordinate legislations have been fulfilled and the resolution plan submitted by the applicant JFC Finance (India) Limited deserves to be approved.

There are objections filed by the erstwhile management by filing objection dated 23.11.2017 (Diary No. 2886/2017). The main objection raised by learned counsel for the objectors is that when the financial creditor Alchemist Asset Reconstruction Company Limited (AARC) purchased the financial assets from

State Bank of India it has obtained loan Rs. 25 crores from the JFC Finance (India) Limited on 20.03.2014. According to the learned counsel the aforesaid fact has not been disclosed at any stage by the JFC Finance (India) Limited nor by the financial creditor- Alchemist Asset Reconstruction Company Limited. It has been maintained that the objection should be sustained and the resolution plan submitted by the JFC Finance (India) Limited should be rejected. A further submission has been made that leave to the erstwhile management be granted for tendering the resolution plan as per the application being C.A. No. 437(PB)/2017 dated 12.12.2017 (Diary No. 3173/2017).

The aforesaid objection raised on behalf of the erstwhile management has been opposed by Mr. Dutta as well as by the financial creditor. It has been contended by both the learned counsels that application is not maintainable on behalf of company Hotel Gaudavan Private Limited as the Resolution Professional alone is qualified to file such an application on its behalf. The objection has been replied by the financial creditor by filing counter on 01.12.2017 (Diary No. 2996/2017). It has been pointed out on behalf of Alchemist Asset Reconstruction Company Limited that in the balance sheet filed by the JFC Finance (India)

Ltd. the above fact has been disclosed. The aforesaid facts were verified by the Resolution Professional who is present in the Court by stating that the balance sheet was on the record and was shared with the Committee of Creditors. The Resolution Professional has shown us the balance sheet of the JFC Finance (India) Limited which clearly shows the entries concerning investments in security receipts issued by the Financial Creditor. The name of the Financial Creditor is reflected in the aforesaid balance sheet.

We have considered the objection and find that it would not be sustainable for a variety of reasons. On facts it is incorrect to say that information by Financial Creditor was suppressed. It is patent from a perusal of the balance sheet of JFC Finance (India) Limited. Even otherwise there is no legal bar for the JFC Finance (India) Limited who is the investor of the financial creditor to come up with a resolution plan nor any such provision has been shown to us. In any case, the application on behalf of the company itself would not be maintainable in view of the law laid down by Hon'ble the Supreme Court in paragraph 11 of the judgment rendered in the case of ***M/s Innoventive Industries Limited v. ICICI Bank & Anr.***, Civil Appeal No. 8337-8338 of 2017 decided on 31.08.2017.

The last submission made on behalf of the erstwhile management is that they should be permitted to move a resolution plan. Firstly, when the expression of interest was floated no response was entered by the objectors and no meeting of the Committee of Creditors was attended by them despite due notices. In any case, by virtue of ordinance dated 23.11.2017 they stand disqualified now to move any resolution plan because their accounts were declared as NPA as early as 28.06.2010. Therefore, we do not find any substance in the aforesaid submissions made by the learned counsel for the objectors and their application is hereby dismissed.

Consequently, the directions sought by the Resolution Professional as noted in the prayer clause of C.A. No. 371/2017 are granted and the resolution plan of JFC Finance (India) Ltd. is approved. The directions be complied with within two weeks. If the erstwhile management who has already violated various orders of this Tribunal fails to cooperate by surrendering the assets as per the directions than the Director General of Police, State of Rajasthan shall ensure that police help is granted by deputing the appropriate officer to ensure compliance with the directions issued in this order. The cost imposed in the order dated 16.08.2017 (Rs. 2/- lacs) and dated 29.08.2017 (Rs. 10/- lacs) shall also be paid as per the directions issued in those orders within two weeks.

All other applications stand disposed of except C.A. No. 183(PB)/2017 & C.A. No. 409(PB)/2017.

Sd/-

(CHIEF JUSTICE M.M. KUMAR)
PRESIDENT

Sd/-

(DEEPA KRISHAN)
MEMBER(TECHNICAL)

13.12.2017
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