

**In the National Company Law Tribunal,
"Chandigarh Bench, Chandigarh"
(Exercising the powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**CA No.130/2018 & 131/2018
IN
CP (IB) No.43/Chd/Pb/2017**

**Under Section 30 (6) of the
Insolvency & Bankruptcy Code,
2016 read with Regulation 39 (4) of
the Insolvency & Bankruptcy Board
of India (Insolvency Resolution
Process for Corporate Persons)
Regulations, 2016 and under
Section 60 (5) (c) of the Insolvency
& Bankruptcy Code, 2016**

In the matter of:

Punjab National Bank.

....Financial Creditor.

Versus.

M/s Concord Hospitality Pvt.Ltd & Ors.

....Corporate Debtor.

Order delivered on: 25.07.2018

**Coram: HON'BLE MR. JUSTICE R.P.NAGRATH, MEMBER (JUDICIAL)
HON'BLE MR. PRADEEP R.SETHI, MEMBER (TECHNICAL)**

For Resolution Professional: Mr.Yogesh Goel, Advocate

For Resolution Applicant: 1) Mrs.Munisha Gandhi, Senior Advocate
2) Mr.Nitin Kaushal, Advocate
3) Mr.Vaibhav Sharma, Advocate

For State Bank of India: 1) Mr.Sanjay Bhatt, Advocate
2) Ms.Honey Satpal, Advocate
3) Mr.Balbir Jaiswal, Deputy Manager,
State Bank of India

For Punjab National Bank: 1) Mr.V.K.Mahajan, Advocate
2) Mr.D.K.Gupta, Advocate

Per: R.P.Nagrath, Member (Judicial):

ORDER

By this common order, CA No.130/2018 (termed as first application) filed by Resolution Professional seeking approval of the resolution plan and CA No.131/2018 filed by Resolution Applicant under Section 60 (5) of the Insolvency & Bankruptcy Code, 2016 (for brevity the 'Code') seeking quashing of the impugned letter dated 05.05.2018 of State Bank of India, are being disposed of being inter-linked matters.

2. Punjab National Bank a Financial Creditor filed CP (IB) No.43/Chd/Pb/2017 under Section 7 of the Insolvency & Bankruptcy Code, 2016 (for short to be referred here-in-after as the 'Code') for initiating insolvency resolution process against M/s Concord Hospitality Private Limited, the Corporate Debtor against the term and CC Limit granted to the corporate debtor. The petition was admitted by this Tribunal on 04.08.2017 and the moratorium in terms of sub-section (1) of Section 14 of the Code was declared. Mr.Navneet Gupta Chartered Accountant, a registered Resolution Professional was appointed as the Interim Resolution Professional (IRP), who was later on confirmed by the Committee of Creditors as a Resolution Professional.

3. The IRP made a public announcement and invited claims and formed Committee of Creditors (COC) comprising of three Banks i.e. State Bank of India with 68.66%, Punjab National Bank 28.11% and IDBI Bank with 3.23% voting share.

4. The first application has been filed under Section 30 (6) of the Code read with Regulation 39 (4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (for brevity the 'CIRP Regulations') with a prayer for approval of the resolution plan submitted by Mr.Harpinder Singh Gill.

5. It is stated that the resolution professional (applicant) appointed two valuers and the total value of the unit was assessed at ₹117.66 crores which was bifurcated as ₹91.40 crores for the land and building; for plant and machinery at ₹16.33 crores and value of the inventory at ₹9.93 crores. The applicant also prepared the Information Memorandum (IM) under Section 29 of the Code and invited the Expression of Interest (EOI) on 27th-28th December, 2017 for bringing the resolution plan by advertising in the newspapers, copies of which are at Annexure A-5. These newspaper advertisements are dated 27.12.2017 in Daily Economic Times and dated 28.12.2017 in Daily Ajit (Punjabi). The EOI could be furnished by 10.01.2018. In the meanwhile, an application was filed by the Resolution Professional seeking extension of 90 days' time for completion of the insolvency resolution process, which was allowed by this Tribunal on 25.01.2018.

6. It is stated that other than the promoter of the Corporate Debtor Mr.Harpinder Singh Gill, no other person furnished the expression of interest. The COC, however, made observation in view of the amendment brought in by way of ordinance dated 23.11.2017 by inserting Section 29A in the Code that Mr.Gill was ineligible to submit a resolution

plan as Corporate Debtor had been classified as NPA by PNB and more than one year has elapsed after such classification.

7. Therefore, the COC asked Mr. Gill to clear the outstanding dues of ₹7.20 crores of PNB to make him eligible for submitting the resolution plan. The COC also observed that the proposed resolution applicant was liable to pay the dues only of PNB and not that of State Bank of India or IDBI so as to make him eligible. Mr. Gill thus deposited an amount of ₹7.20 crores with PNB on 07.03.2018 and subsequently submitted the resolution plan on 09.03.2018. This resolution plan is stated to be without any waiver of loan amount (hair cut). After making payment to the PNB, the voting share of State Bank of India increased to 78.98% and for PNB came down to 17.30% and for IDBI Bank to 3.72%.

8. The resolution plan submitted by Mr. Gill is at Annexure A-1. It is averred in the application that the plan is in compliance with the requirement of the provisions of Section 30 of the Code and Regulation 38 of the CIRP Regulations.

9. The Resolution Professional also completed the due diligence of Mr. Gill and all his connected persons and on adopting such a process found Mr. Gill, the resolution applicant to be eligible to submit the resolution plan viz-à-viz 29A of the Code. The due diligence report was shared with all the members of the COC.

10. In the meeting of the COC held on 26.03.2018, State Bank of India gave in principle its approval for resolution plan and the meeting was again convened on 11.04.2018. By that date, the final shape was not

given by the members to the resolution plan and the meeting was adjourned for one day and again convened on 12.04.2018. In the said meeting, PNB sought some modification of the plan, which were communicated to Mr. Gill. State Bank of India sought some more time as the work on the resolution plan was by then transferred to a different branch i.e. SAM-G. The third member of the COC i.e. IDBI Bank dissented from the resolution plan. The Resolution Professional also submitted transaction audit report with regard to the preferential transactions as required by Section 43 of the Code and under valued transactions as required by Section 45 and extortionate credit transactions under Section 50 and fraudulent transactions under Section 66 of the Code. Copy of the transaction audit report is at Annexure A-7 furnished by Prem Garg & Associates, Chartered Accountant and have attached the requisite certificate at page 136 of the paper book.

11. It would be appropriate to refer to the conclusions reached in this transaction audit report. The perusal of this report would show that Mr. Gill, the promoter was also a Director of the Corporate Debtor by making reference to various related party transactions. It was certified that no interest has been paid/credited on the unsecured loan in respect of the said parties and all the transactions have been done in the normal course of business not being prejudicial to the interest of the company.

12. Reference has also been made to the transactions of the sale of land to the related and unrelated parties and on considering explanation and various aspects, it is reported that these transactions do not fall under the category of preferential transactions. It has also been

certified by referring to the allotment of shares in the financial year 2016-17, though there is no bar on the issuance of the shares to a person, who is also the Director. The allotment made to allottees at a higher value than the valuation determined by the Chartered Accountants and these transactions are stated to be not adverse or detrimental to the Corporate Debtor. The repayment of the unsecured loan has been described as small transactions keeping in view the size of the company and are in the ordinary course of business. It has also been certified that the corporate debtor has also clarified that the unsecured loan at the year end as on 31.03.2017 were ₹39.27 crores as against ₹41.27 crore as on 31.03.2016. Hence, there is an overall decrease of ₹2 crore whereas promoters have brought in share capital to the tune of ₹8.62 crore in the financial year 2016-17 against the decrease in UL of ₹2 crore. Hence these transactions are not prejudicial to the interest of the company and do not fall under the category of preferential transactions.

13. It is further stated that PNB gave in principle the approval to the plan submitted by Mr.Gill vide email communication dated 24.04.2018.

14. The meeting of the Committee of Creditors was finally held on 30.04.2018 and members of the committee voted on the resolution. State Bank of India and Punjab National Bank voted with voting share of 96.28% and gave approval to the plan whereas IDBI Bank with 3.72% of the voting share and gave its dissent on the plan. Copy of the minutes of the meeting of COC are at Annexure A-8.

15. It was recorded in the meeting that Mr.Kailash Chander, AGM the representative of State Bank of India informed that the committee of SBI held a detailed discussion on the plan and confirmed that they have conducted due diligence of Mr.Gill and found him eligible to furnish a resolution plan. He also informed that certain modifications were sought from Mr.Gill to which he has agreed. Accordingly, the SBI confirmed in principle its approval to the resolution plan. A letter from State Bank of India was tabled regarding approval of the plan before the members and the plan was approved with majority of 96.28% voting share. The certificate signed by Mr.Kailash Chander, AGM representing State Bank of India to the effect that the State Bank of India approved the resolution plan is at Annexure A-9 (page 140 of the paper book). The certificate from Punjab National Bank is at page 140-A of the paper book.

16. The Resolution Professional after examining the resolution plan has confirmed that the plan is in compliance with the requirements of the provisions of Section 30 of the Code and regulation 38 of the CIRP Regulations to the following effect:-

- (i) proposal for payment of the Insolvency Resolution Process Cost in priority to the repayment of any other debts of the Company;
- (ii) proposal for repayment of the Operational Creditors of the Company in a manner that the amount received by the Operational Creditors is not less than the amount which would have been otherwise received by them in the event

of liquidation of the Company, which shall in any event be made before the expiry of 30 (thirty) days after the approval of a Resolution Applicant by the Adjudicating Authority;

- (iii) proposal for payment of liquidation value due to dissenting members of the COC and provision for making such payment is made before any recoveries are made by the members of COC who voted in favour of the Resolution Applicant;
- (iv) term of the Resolution plan and its implementation schedule;
- (v) stipulate mechanism regarding management and control of the affairs of the Company post the Transfer Date;
- (vi) manner of implementation and supervision of the Proposed Transaction;
- (vii) declaration to the effect that the Resolution Plan is not in contravention of provisions of the Applicable Law.
- (viii) conforms to such other requirements as may be specified by the Board.

17. There is a certificate from the Resolution Professional as required by Section 30 of the Code read with Regulations 37, 38 and 39 of CIRP Regulations, which is at Annexure A-10.

18. Objections to this application have been filed by State Bank of India alleging that the Resolution Applicant is ineligible to submit the resolution plan under Section 29A of the Code and further that the plan

is not in compliance with the requirements of Section 30 (2) of the Code and the CIRP Regulations. The Resolution Professional is said to have acted in contravention of the provisions of Section 30 (6) of the Code read with Regulation 39 (4) of CIRP Regulations. The Resolution Applicant Mr. Gill is stated to be a promoter director of the Corporate Debtor and holds 49.39% share in it.

19. The main grievance of SBI is that the Corporate Debtor was classified as NPA by State Bank of India on 29.06.2017 and as per Statutory Auditors, it was NPA w.e.f. 30.04.2013 due to failed restructuring in accordance with the guidelines of RBI. Admittedly the account of the Corporate Debtor was classified as NPA by Punjab National Bank on 14.07.2016 and IDBI Bank Limited in May, 2017. Therefore, the period of one year had elapsed from the date of such classification by PNB and also SBI (which has classified the account as A/c on 29.06.2017 w.e.f. 30.04.2013) upto the date of commencement of the corporate insolvency resolution process. Unless overdue amount of SBI is paid by the Resolution Applicant, he cannot submit the plan. The overdue amount along with interest, which the Corporate Debtor was liable to pay in respect of the NPA account was ₹4.86 crores. This aspect was made very clear in the meeting of the COC held on 22.01.2018.

20. In the meeting of COC held on 30.04.2018, SBI communicated that they were agreeable in principle to grant approval subject to the Resolution Applicant attaining eligibility on deposit of ₹4.86 crores as per the proviso to clause (c) of Section 29A of the Code. However,

on receiving the minutes of the meeting of COC dated 30.04.2018, the Bank was shocked to notice that in the minutes, the Resolution Professional had recorded the approval of SBI to the resolution plan. SBI immediately wrote letter by email dated 03.05.2018 to the Resolution Professional and instructed him to make corrections in the minutes. Copy of the email is attached as Annexure R-1 with the reply. Later on SBI vide letter dated 05.05.2018 conveyed its approval to the resolution plan with the condition/modification contained in the letter Annexure R-2.

21. The other main objection by the SBI is that the Resolution Applicant had furnished personal guarantee in favour of both SBI and PNB to secure the debt of the Corporate Debtor and therefore, he is ineligible in terms of Section 29 (h) of the Code to submit a resolution plan.

22. In CA No.131/2018, the Resolution Applicant has averred that after approval of the resolution plan on 30.04.2018, State Bank of India has attempted to impose additional conditions on the Resolution Applicant despite the COC having already deliberated upon the resolution plan. Along with this application, various minutes of the meetings of the Committee of Creditors held from time to time have been annexed from Annexure A to D and Annexure J to N.

23. It is further alleged that as per the valuation report, the assets of the Company were valued approximately at ₹120 crores. It was also noted that the Company had made a fixed deposit of ₹2.20 crores from savings of the operations of the company after commencement date of the insolvency resolution process. In the meeting of the COC held on

27.02.2018, in which the representative of SBI was also present, the question with regard to eligibility of Mr.H.S.Gill was considered. In the said meeting reference was made to the judgment of Kolkata Bench of National Company Law Tribunal in the matter of **RBL Bank Limited Vs. MBL Infrastructures Limited, C.A. (I.B.) No.543/KB/2017** arising out of **C.P (IB)/170/KB/2017** decided on 18.12.2017, wherein it was held that the guarantors in respect of whom creditor has not invoked the guarantee or made a demand under guarantee, the guarantor cannot be covered under clause (h) of Section 29A. It was resolved that Mr.Gill, the Resolution Applicant being a guarantor was not ineligible to submit the resolution plan unless the guarantee furnished by him was invoked.

24. It is pertinent to note that the admitted proposition of fact is that the Banks in question have not so far invoked the bank guarantee. Before the amendment in Section 29A of the Code effected by Ordinance No.6 of 2018 w.e.f. 06.06.2018 clause (h) of Section 29A of the Code was to the effect that a person who has executed an **enforceable guarantee** in favour of creditor in respect of the Corporate Debtor against which the application for initiating insolvency resolution process is made by such a creditor has been admitted, is not eligible. The term enforceable guarantee has been interpreted by the Kolkata Bench of NCLT as a case in which the bank guarantee has been invoked. Copy of the minutes of the meeting are at Annexure "D".

25. It was further decided in the meeting of COC held on 27.02.2018 that clause (h) of Section 29A of the Code was applicable only in

case of invocation of the guarantee which admittedly have not been invoked. Thus, Mr.Gill would be eligible to submit a plan. It was further resolved that Mr.Gill was to clear the overdue payment of Punjab National Bank only to the tune of about ₹7,19,85,849/- . The Resolution Applicant agreed to deposit the overdue amount in respect of NPA account of PNB and to furnish the confirmation on or before 07.03.2018. In the said meeting, Mr.Gill had handed over a cheque of ₹ 1 crores towards part payment of the overdue amount of PNB, which was handed over to State Bank of India for depositing in a no lien account.

26. It is further stated that the entire overdue amount of approximately ₹7.20 crores towards PNB was duly deposited before 07.03.2018 by Mr.Gill and confirmation to that effect was sent by PNB by email dated 07.03.2018. Copy of the email is at Annexure E.

27. Thereafter the resolution plan was submitted by Mr.Gill on 09.03.2018. The salient features of the resolution plan have been stated as to how the resolution plan provides for the payment of the amount to the creditors and to run the Corporate Debtor as a going concern. One of the clauses in the said plan is that an amount of ₹4.60 crores generated from internal accruals w.e.f. 04.08.2017 i.e. from the insolvency resolution commencement date, shall be utilised to make the unit viable. The other important factor is that there was zero hair cut involved for any of the Banks/Lenders. However, the total outstanding debt at the launch of CIRP process was being cut down by close to 25% through the induction of funds under the resolution plan. Sixty guest rooms are proposed to be added to

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the existing 123 operational rooms of the hotel through funds being brought in under the resolution plan thereby increasing a total capacity by close to 50%. Details of the sources of the funds and utilisation has also been given apart from other conditions.

28. By email dated 21.03.2018, Resolution Professional requested the Banks to complete their due diligence on the resolution plan. The representative of State Bank of India informed that having discussed the plan with the higher authorities, the Bank confirmed in principle with the plan of consortium finance wherein State Bank of India will lead as a Leading Banker.

29. In the light of the aforesaid facts, the letter dated 05.05.2018 sent by the State Bank of India subsequent to the approval of the resolution plan has been challenged. It is alleged in the said letter Annexure 'A' by State Bank of India that approval of the plan was accorded by the Bank in the COC meeting dated 30.04.2018 subject to the resolution applicant becoming eligible under Section 29A of the Code and subject to Mr.Gill depositing ₹4.86 crores with SBI to pay all overdue amounts with interest and other charges relating to non-performing account with the Bank and grant of no-due certificate by SBI before the plan can be approved by COC. SBI has imposed the following conditions and modifications in the resolution plan:-

1. Resolution Applicant shall unconditionally deposit ₹4.86 crore with SBI before the end of the banking hours on 7 May 2018.
2. The Resolution Plan shall stand amended (page [unnumbered] Heading: The details of sources of funds) to provide that – “The fixed deposit of ₹4,75,56,353.00 crore and ₹1,10,07,457.98 in current account as on 30.04.2018 with PNB resulting from cash accruals in control of Resolution Professional shall be passed through to the Secured Creditors for recovery of their dues as on the date of the approval of the resolution plan by the Adjudicating Authority.
3. The Resolution Applicant has to bring some upfront amount as part of resolution plan.
4. The Resolution Applicant has proposed for expansion of the project as per the TEV report, which envisaged additional Capex of ₹4.75 crore. Hence this amount (₹4.75 crore) is to be brought by the Resolution Applicant over and above the upfront amount.
5. Resolution plan will also be subject to viability and cash flow of the project.

30. State Bank of India has also filed a detailed reply to the application, which is almost similar to the plea taken in reply to CA No.131

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of 2018. It was stated that on receipt of the minutes of COC meeting dated 30.04.2018, the SBI was shocked to notice that SBI's in-principle approval to the plan was recorded therein and sent an email dated 03.05.2018 to make correction in the minutes. It was also alleged that the resolution professional did not conduct any voting by members of COC, which was required as PNB was not present in person, but only by skype. This allegation is simply noted to be rejected outrightly as PNB has not challenged the plan and participation through skype and in any case this procedure cannot be an irregularity much less illegality.

31. We have heard the learned counsel for the parties and perused the records quite carefully.

32. The first issue is with regard to the eligibility of the Resolution Applicant on account of his being a guarantor for the loan of Corporate Debtor. This aspect was duly deliberated upon by the COC in the 5th meeting held on 27.02.2018 that since the guarantee was not invoked by any of these banks, Mr.Gill would not be ineligible person by relying upon judgment of the Kolkata Bench of NCLT in **RBL Bank Limited case (supra)**.

33. Moreover this aspect has been clarified by latest amendment in sub-section (h) of Section 29A of the Code, by the Insolvency and Bankruptcy Code (Amendment) Ordinance No.6 of 2018 published in official Gazette dated 06.06.2018. Before the amendment, Section 29A (h) debarred a person to submit a resolution plan, if such

person had executed an **enforceable guarantee** in favour of a creditor in respect of a corporate debtor against which an order of admission has been made by the Adjudicating Authority. In the Amended Section 29A (h), the person ineligible is one who has executed a guarantee in favour of a creditor in respect of a corporate debtor against which an application by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or in part. Therefore, simply because the Resolution Applicant furnished the guarantee in respect of the corporate debtor would not make him ineligible as the corporate guarantee had not been invoked.

34. Coming to the second question of bar created by Section 29A (c), the resolution plan in this case was submitted after the overdue amount of PNB was paid in view of the account having been declared NPA for more than one year before the commencement date of the insolvency resolution process and the plan was submitted thereafter. Punjab National Bank has admitted this proposition of fact.

35. With regard to the declaration of account of Corporate Debtor as NPA by State Bank of India, this account was declared NPA on 29.06.2017 though as per Statutory Auditors, it was NPA w.e.f. October, 2013 due to failed restructuring of loan and therefore, it was contended that the account of the corporate debtor of which the resolution professional was the promoter director became NPA for more than one year and unless the condition laid down in Section 29A (c) was satisfied, the resolution applicant would be ineligible.

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36. Section 29A (c) of the Code says, a person shall not be eligible to submit a resolution plan, who has an account or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949) and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor. **Provided** that the person shall be eligible to submit a resolution plan, if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan.

37. The plain reading of Section 29A (c) would clearly show that a person is debarred in case the account of a corporate debtor was “classified” one year before the date of admission of the petition. The petition under Section 7 of the Code was admitted on 04.08.2017 and SBI ‘classified’ the account of corporate debtor as NPA on 29.06.2017 only a little over one month before the admission of the petition. It is, however, stated that the Statutory Auditors have classified the account as NPA w.e.f. 30.04.2013 due to failed restructuring. Such an internal record will not change the meaning of words ‘classified’ as such by the Bank as per requirement of Section 29A (c) of the Code. The purpose behind the provision is to allow the person concerned a reasonable period to make good the default for being eligible to submit the plan and not such a short

period as contended on behalf of SBI. It rather does not lie in the mouth of SBI to raise this issue having resolved in the meeting of COC held on 27.02.2018 that Mr.Gill was liable to pay the overdue amount only of PNB to make him eligible to file the resolution plan. Mr.Ashish Sohi, Chief Manager represented SBI in that meeting, even though it was discussed in the meeting dated 02.12.2017 Annexure 'B' about declaration of account of corporate debtor as NPA by SBI on 29.06.2017 effective from October, 2013.

38. This objection has even been rendered insignificant. Learned Senior Counsel for the Resolution Applicant submitted that the applicant is prepared to deposit ₹4.86 crores to State Bank of India as per the additional condition imposed by the Bank, subsequent to the acceptance of the plan. The aforesaid undertaking was also reiterated on 12.06.2018 that the amount of ₹4.86 crores would be deposited immediately on approval of the plan and that the amount of ₹4.75 crores lying in the FDR with Punjab National Bank shall be utilised to pay for the dissenting financial creditor IDBI Bank, the cost of insolvency resolution process and the balance amount would be utilised for payment to Punjab National Bank and State Bank of India on pro rata basis.

39. The next question is that SBI has even challenged the conduct of proceedings by the Resolution Professional. It would be seen that the representative of SBI had been participating in each and every meeting of the COC. In the last meeting of the Committee of Creditors, the resolution plan was put for approval. The minutes of the meeting dated

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30.04.2018 are at Annexure A-8 in CA No.130 of 2018. SBI voted in favour of the plan, which was approved with voting share of 96.28%. Therefore, it does not lie in the mouth of State Bank of India to challenge the authenticity of the certificate Annexure A-9 furnished by the AGM representing the Bank in the meeting that the viability of the resolution plan was sent and plan was approved.

40. We are of the considered view that if a resolution plan is permitted to be assailed on the basis of the subsequent communication by the Bank, that would impinge upon authenticity of the resolution process. Despite that the Resolution Applicant has acted quite fairly in agreeing to pay the overdue amount of ₹4.86 crores immediately on the approval of the resolution plan and that alongwith the other conditions as undertaken can be imposed as conditions while approving the resolution plan. So this contention on behalf of State Bank of India is also not sustained.

41. Now we proceed to consider if the resolution plan complies with the requirement of the Code and Regulations framed thereunder. The Resolution Professional has furnished the due diligence report regarding eligibility of the Resolution Applicant Mr.Gill, which was filed vide diary No.2182, dated 14.06.2018. It is reported that the proposed management of the Corporate Debtor post implementation of the resolution plan would comprise of Harpinder Singh Gill and Mr.Jasbir Singh. The Resolution Professional has also stated that there are two directors of the Corporate Debtor namely Abhay Chautala and Karan Singh Chautala, who were the directors of the corporate debtor at the commencement of insolvency

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resolution process have furnished their affidavits to the effect that they would disassociate themselves as shareholder/promoter of the Corporate Debtor on approval of the resolution plan. This aspect is also certified by the Resolution Professional in his due diligence report.

42. While approving the resolution plan, the Tribunal is to look into the provisions of Section 31 of the Code and the Regulations framed thereunder. The basic requirement of sub-section (1) of Section 31 of the Code is that the resolution plan should meet with the requirement of sub-section (2) of Section 30 of the Code. Sub-section (2) of Section 30 of the Code reads as under:-

“ (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 repayment of other debts of the corporate debtor;*
- (b) provides for the repayment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under Section 53;*
- (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.”*

43. The Resolution Professional has furnished the certificate in order to comply with the aforesaid requirement and the certificate is attached at Annexure A-10 with CA No.130 of 2018. It is also noted by the Resolution Professional at page 144 of the paper book that the amount of debt towards operational creditors on the date of commencement of the corporate insolvency resolution process was ₹39,06,459/-. These operational creditors were in respect of the running business expenses and have been paid while maintaining the status of the Corporate Debtor as a going concern. There were certain unsecured loan holders, who had filed their claims as financial creditors. But no interest on these transactions was involved and there was no consideration for time value of money, so they were not considered as financial creditors. Even those unsecured creditors have furnished the undertaking not to recover the money from the Corporate Debtor till the implementation of the resolution plan. With regard to IDBI Bank being dissenting creditor, undertaking has been given by the Resolution Applicant in the resolution plan that the liquidation value of the same shall be paid to IDBI Bank before the recoveries are made by the financial creditors approving the plan.

44. We have also perused the resolution plan Annexure A-1 in order to see whether it is in conformity with the requirement of law. The salient features of the plan have already been referred. The plan provides for the details of source of funds and utilisation thereof and detail of the amount to be restructured in respect of the financial creditors. The major assumption of the restructuring plan has been given as under:

- “1. The balance outstanding of SBI amounting to ₹3146.20 lacs to be restructured and repaid in 12 years. Repayment of the term loan to start from April, 2018 till March, 2030.*
- 2. Funded interest of ₹266.18 lacs of SBI to be repaid in 3 years starting from April, 2018 till March, 2021. Interest on above amount will be paid as and when due from April, 2018.*
- 3. The balance term loan principal amount of ₹348.61 lacs of PNB to be restructured for 12 years. Repayment of the term loan to start from April, 2018 till March, 2030. Interest on above amount will be paid as and when due from April, 2018.*
- 4. Funded principal of ₹188.16 lacs of PNB to be repaid in 5 years starting from April, 2018 till March 2023. Interest on above amount will be paid as and when due from April, 2018.*
- 5. Funded interest of ₹54.40 lacs of PNB to be repaid in 3 years starting from April, 2018 till March, 2021. Interest on above amount will be paid as and when due from April, 2018.*
- 6. The balance cash credit limit of ₹250 lacs of PNB will be converted into OD (TCS) and will continue as it.*

7. *The balance amount of ₹39.50 lacs of IDBI to be paid as per original repayment schedule i.e. till 30.09.2018 and overdue interest and principal of ₹46.42 lacs from 04.08.2017 to 31.03.2018 will be repaid in 6 monthly instalments from 01.04.2018 to 30.09.2018.*
8. *The Resolution Applicant has already brought in amount for completion of interiors of the remaining rooms of the Hotel from April, 2018 to March, 2019 so that revenue of additional rooms will be more than sufficient to pay the funded term loan of banks.*
9. *The remaining rooms will be operational by April, 2019.”*

45. Over and above what has been stipulated in the plan, the further conditions which are beneficial to the Banks especially State Bank of India would be imposed in the event of approval of the plan.

46. In view of the aforesaid discussion, we allow CA No.130/2018 and accord approval to the Resolution Plan Annexure A-1 attached with CA No.130 of 2018 with the modification as per undertaking of the Resolution Applicant with the direction that the Resolution Applicant shall deposit an additional amount of ₹4.86 crores with State Bank of India within a period of 15 days from the date of receipt of the copy of this order and that the amount of ₹4.75 crores lying in FDR with Punjab National Bank shall be utilised to pay for the dissenting financial creditor IDBI Bank, insolvency resolution process cost and the balance out of this amount to be utilised for payment to Punjab National Bank and State Bank of India on pro rata basis. It is further directed that the timelines provided in

the resolution plan would stand extended for the period during which the instant application remained pending i.e. from 01.05.2018 upto the date of decision of this application.

47. In view of the above discussion, the prayer made by the Resolution applicant in CA No.131/2018 challenging the additional conditions imposed in the letter of SBI, dated 05.05.2018 also stands disposed of and we hold that rest of the conditions imposed in the letter dated 05.05.2018 to be insignificant and not binding.

48. It is further directed that with the approval of the Resolution Plan, the moratorium order passed by this Tribunal under Section 14 of the Code shall cease to have effect and that the Resolution Professional shall forward all the records relating to the conduct of the insolvency resolution process and the resolution plan to the Insolvency & Bankruptcy Board of India to be recorded on its database.

Copy of this order be communicated to all the parties, who are represented before this Tribunal.

Sd/-	Pronounced in open Court.	Sd/-
(Pradeep R.Sethi) Member (Technical)		(Justice R.P.Nagrath) Member (Judicial)

July 25, 2018.
Ashwani