

**THE NATIONAL COMPANY LAW TRIBUNAL
COURT V, NEW DELHI**

I.A No. 2594/2023

IN

Company Petition No. (IB) – 1913/ND/2019

*Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016
read with Rule 11 of NCLT Rules, 2016.*

IN THE MATTER OF:

**INDIAN BANK
(ERSTWHILE ALLAHABAD BANK)**

....FINANCIAL CREDITOR

VERSUS

NIMITYA HOTEL & RESORTS PVT. LTD. & ANR.

....CORPORATE DEBTOR

**AND IN THE MATTER OF-
SANJEEV MAHAJAN**

Registered office at:
Farm No. 2A, Avenue Casia,
Westend Greens, Rajokari,
New Delhi-110038

....APPLICANT

VERSUS

**INDIAN BANK (ERSTWHILE ALLAHABAD BANK)
(Sole CoC Secured Financial Creditor)**

Head Office at:
254-260, Avvai Shanmugam Salai, Pudupet,
Gopalapuram, Chennai, Tamil Nadu-600014
Also at:
SAM – Large Branch at 17,
Parliament Street,
New Delhi – 110001

....RESPONDENT NO. 1

NIMITAYA HOTEL & RESORTS PVT. LTD.

Through its Resolution Professional
Main Sohna Road,
Sector-49, Gurugram, Haryana

....RESPONDENT NO. 2

Order Pronounced on: 03.07.2024

CORAM:

**SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)
DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

For the Applicant : Mr. Nakul Mohta, Mr. Zain Khan, Mr. Kumar Anurag Singh, Mr. Akshay Sharma, Mr. Anish Ahlawat, Ms. Riya Dhingra, Adv
For the RP : Mr. Manuj Nagrath, Adv.
For the Indian Bank : Adv Rajesh Kumar Gautam, Adv Anant Gautam, Adv Anani Achumi, Adv Dinesh Sharma, Adv Shivani Sagar, Adv Likini Jakhwal
For the SRA : Adv Ajay Kumar, Adv Pankaj Sethi, Adv S Vatsa, Adv Vaibhav Tiwari, Adv Vijayant Goel

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. This application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 along with Rule 11 of the National Company Law Tribunal Rules, 2016 by the Applicant, Mr. Sanjeev Mahajan, Ex-Promoter of the Corporate Debtor challenging rejection of Settlement Proposal by the Committee of Creditors consisting of a sole member namely, Indian Bank.
2. The Applicant in the present application has prayed for the following reliefs: -
 - a) *Allow the instant Application and direct the Respondent/ Competent Authority to negotiate, deliberate and take a decision on the Settlement Proposal U/s 12A dated 21.03.2023 given by the Applicant and/or;]*
 - b) *Pass an ad-interim ex-parte stay on any further proceedings in the application bearing I.A. No. 987/2023 preferred by the Resolution Professional for approval of Resolution Plan pending before the Ld. Adjudicating Authority till the pendency of the present I.A.; and/or;*
 - c) *Pass any further order(s) in the interest of justice.*

3. Briefly stated the facts of the case as mentioned in the instant application, which are just and necessary for adjudication, are as follows: -

- (a) The Applicant is the shareholder and promoter of the Corporate Debtor, Nimitaya Hotel & Resorts Pvt. Ltd. and the same is undergoing corporate insolvency Resolution process vide order dated 24.12.2021 in 'Indian Bank V. Nimitaya Hotel & Resorts Pvt. Ltd. bearing No. IB-1913(ND)/2019.
- (b) The Hon'ble NCLAT granted stay on the constitution of Committee of Creditors vide order dated 05.01.2022 passed in Company Appeal (CA) (Ins.) No. 03 of 2022. The Applicant has placed on record the OTS Policy of the Respondent Bank before the Hon'ble NCLAT and while recognising the discriminatory conduct of the Respondent Bank in order dated 04.07.2022 has passed directions to the Respondent Bank which were to be deliberated while giving decision on the Settlement Proposal of the Applicant.
- (c) In compliance of directions given by Hon'ble NCLAT, the Applicant has submitted its another Settlement Proposal in terms of Section 12A dated 17.07.2022 for INR 100 Cr.
- (d) Without following the mandate of I&B Code, 2016 and the IBBI (CIRP) Regulations, 2016, instead of holding CoC Meeting, the Resolution Professional forwarded the Settlement Proposal to the Financial Creditor by email dated 04.04.2022 which was rejected by the Respondent Bank via email dated 11.04.2022 The Applicant contended that the said rejection is against the objective of the Code as the proposal ought to have been placed before the CoC and to be negotiated further with the CoC Members.
- (e) The Respondent Bank has rejected the Settlement Proposal without any negotiation and deliberation and without assigning any reason in 8th CoC Meeting held on 02.09.2022.
- (f) The Applicant pursuant to that has filed an application for directions bearing I.A. No. 3410 of 2022 and a Contempt Petition bearing case no. 25 of 2022 before the Hon'ble National Company Law Appellate

Tribunal. The Hon'ble Appellate Tribunal vide order dated 21.11.2022 was directed the CoC to deliberate on the two Resolution Plans as well as Settlement Proposal under Section 12A submitted by the Applicant and thereafter take a final decision. In Compliance of order dated 21.11.2022, the Applicant has submitted his revised Settlement Proposal u/s 12 A on 25.11.2022. In 14th CoC Meeting, to show its bona-fide in Settlement Proposal, the Applicant has submitted a draft of Rs. 5 Cr. with Financial Creditor which is in addition to 1 Cr. already deposited with Respondent Bank.

- (g) The DGM of the Respondent Bank, who has been participating in all CoC Meetings, vide e-mail dated 12.12.2022 acknowledged Resolution Professional that he is not the competent authority. Hence, DGM has only participating in all CoC Meetings and the competent authority as per DGM has neither participated nor met the Applicant on a single occasion for discussing settlements proposal.
- (h) The Applicant herein had addressed various emails to the said Competent Authority on 06.12.2022, 12.12.2022, 27.12.2022, 07.01.2023, 08.01.2023 seeking an appointment to deliberate and negotiate on the Settlement Proposal. However, the Respondent Bank without any cause being reluctant to entertain any request of Applicant.
- (i) The settlement efforts made by the Applicant has also been recorded in the minutes of 15th CoC Meeting of Corporate Debtor held on 28.12.2022. It reveals that the reason for rejection of deliberation and negotiation with the competent authorities was only that if a meeting is arranged with the Applicant, then the same will be required for Resolution Applicants as well. The Applicant further contends that being an MSME, the Applicant need not to be contest with Resolution Applicants and opportunity ought to be given by the CoC to discuss, negotiate and deliberate the Settlement Proposal with competent authority.
- (j) The Applicant mentions that the Corporate Debtor is registered as an MSME dated 02.10.2021. Section 240 A of the Code specifically states

that the provisions of clauses (C) and (h) of 29A shall not apply to the resolution Applicant in respect of CIRP of any Micro, Small and Medium Enterprise. Therefore, the Applicant herein is not barred U/s 29 A of the Code.

- (k) The Resolution Professional informed that the Resolution Plan of the Nehru Place Hotels and Real Estate Pvt. Ltd. has been approved with 100% voting on 08.01.2023 in 14th CoC Meeting. He also added that opportunities were given to Promoters and both the Resolution Applicants to revise and re-negotiate with Competent Authority in compliance of Hon'ble NCLAT Order dated 21.11.2022. However, no opportunities were given to the Promoter to discuss and negotiate with Competent Authority.
- (l) The Appellant even after filing an application bearing I.A. No. 259/2022 before the Hon'ble NCLAT, addressed an email dated 23.10.2023 seeking appointment for negotiation and further deliberations on financial viability of its Settlement Proposal. The Applicant tried to connect the competent authority of the Respondent Bank through emails dated 28.01.2023 and 31.01.2023 but without any just cause & explanation denied the request of the Applicant. The Respondent Bank not granting any opportunity to negotiate and deliberate on the Settlement Proposal though a revised Settlement Proposal was sent by the Applicant to the CMD of the Bank vide email dated 02.02.2023.
- (m) The Hon'ble NCLAT vide its order dated 03.02.2023 in I.A. No. 259 of 2023 in CA(AT)(Ins.) No. 03/2022 has granted liberty to the Applicant to move the present application before this tribunal. The Hon'ble Supreme Court also in its order dated 20.03.2023 in Civil Appeal No. 1705/2023 has opined that *"Respondents shall not object to the considerations by the NCLT only on the ground of jurisdiction."*
- (n) The Applicant has sent a reminder mail to the CMD for deliberations on Settlement Proposal dated 21.03.2023 which was also shared with Unsecured Financial Creditors, Operational Creditors and other Creditors of the Corporate Debtor. However, Respondent Bank never put up to the requests made by the Applicant for settlement of debts of

the Corporate Debtor and rejected the same proposal vide email dated 05.05.2023.

- (o) The Applicant offers INR 120 Cr. as settlement amount vide email dated 28.08.2023 which is more than that of Successful Resolution Applicant. The Applicant only pressed for consideration and negotiations of said Settlement Proposal with the Board/Chairman of the Respondent Bank. However, Respondent Bank rejected the said proposal without any cogent reasons vide email dated 25.09.2023. Out of bona-fide intention, the Applicant further approached Respondent Bank for negotiations with another Settlement Proposal with Demand Draft of INR 7.5 Cr. on 10.10.2023. though the same was rejected by the Respondent Bank vide email dated 10.01.2024.
- (p) The Applicant contended that the CoC has ignore the ultimate objective of ensuring maximisation of value of the stakeholders because of continuously ignoring proposal buy the Applicant under Section 12A of the Code. Though the Applicant also sent reminder email on 11.04.2023 to Respondent Bank and other creditors for consideration of its Settlement Proposal
- (q) Thus, the CoC has discriminatorily and arbitrarily approved the Resolution Plan while the Settlement Proposal of the Applicant is pending consideration. The proposal under Section 12A submitted by the Applicant only maximised the value of the Corporate Debtor but also do justice to the debts owed to Financial and Operation Creditors. The Existing Resolution Plan approved by the CoC also discriminates with Applicant Unsecured Financial Creditor and also ignores the dues of approx. INR 500 Cr. of the other Operational Creditors. Therefore, in spite of existing Resolution Plan Settlement Proposal of the Applicant should be entertained by the Committee of Creditors.

4. Contentions asserted by the Learned Counsel appearing on behalf of the Respondent No. 1, Indian Bank (Sole CoC Secured Financial Creditor) in reply to the present Application.

- (a) The Respondent bank dismissed the allegations of Applicant that no negotiations or deliberations were held by the Respondent with regard

to Settlement Proposals, however, it is clearly stated in the minutes of CoC Meetings that the Settlement Proposal of the application was considered by the Respondent.

- (b) The Applicant has submitted its proposal dated 25.11.2022 for INR 100 Cr. with the condition that upon approving the Settlement Proposal of the Applicant is discharge from the personal guarantees given by the Ex-promoter/ex-director of the Corporate Debtor.
- (c) In compliance with the order of Hon'ble NCLAT dated 21.11.2022, the Settlement Proposal of 25.11.2022 and the Resolution Plan of INR 118 Cr. were extensively deliberated in the 13th, 14th, 15th, and 16th CoC meetings. Despite multiple opportunities given to the Applicant to revise its proposal, as the Resolution plan was higher than the said proposal significantly, the Applicant refused to revise their proposal of INR 100 Cr. Respondent considered both the Resolution plan and the Settlement Proposal simultaneously, as per the Hon'ble NCLAT Order dated 21.11.2022, leading to the approval of the Resolution plan by 100% voting of the CoC/FC.
- (d) Respondent bank points out that the orders from the Hon'ble NCLAT dated 03.02.2023 and the Hon'ble Supreme Court dated 20.03.2023 pertain to a Settlement Proposal of Rs. 100 Cr. dated 25.11.2022, which they allege was not considered by them. However, the fresh Settlement Proposal of INR 118.26 Cr. under Section 12A dated 21.03.2023 was based on a complete misreading of the Order dated 21.11.2022 & 03.02.2024 of Hon'ble NCLAT, and the Order dated 20.03.2023 of Hon'ble Supreme Court.
- (e) The Respondent Bank asserted that the Applicant has been given ample opportunities to revise its offer under Section 12A, as recorded in minutes of 13th, 14th and 15th CoC meetings. However, the Applicant remains firm on his offer of INR 100 Cr. dated 25.11.2022. Therefore, the Applicant cannot be allowed to continue making Settlement Proposals under Section 12A after being given an opportunity to revise, and after the CoC has approved the Resolution Plan with 100% voting.

- (f) The fresh Settlement Proposal of INR 118.26 Cr. with similar terms and conditions dated 21.03.2023 was rejected by the bank being too low as compared to the outstanding amount of INR 238.86 Cr.
- (g) The Respondent Bank argued that the request for the release of Bank Guarantees by the Ex-Promoter/Ex-Director of the Corporate Debtor (CD) was clearly recorded in 14th CoC Meeting, contrary to the claim that it was not raised earlier. Additionally, the Respondent has accepted the Proposal of SRA with same amount as offered by the Applicant because, in that case, the Respondent would retain its legal right to enforce the Personal Guarantees given by the Ex-Promoter/Ex-Director of the CD to recover its remaining outstanding dues."
- (h) The Applicant even if consider itself as MSME though registered itself on 02.10.2021 i.e. after filing of 2nd Section 7 Petition, has never submitted any Resolution Plan at the relevant time in the CIRP Process when the Resolution Plans were invited from the prospective Resolution Applicants.
- (i) The Respondent bank has rejected all Settlement Proposal submitted by the Applicant based on same terms and conditions after being rejected on 06.05.2023. Thus, rejection of subsequent proposals submitted on 28.08.2023 and 10.10.2023 implies final decision of the CoC. Further the conduct of Ex-Promoter of CD i.e. the Applicant with regards to default in payments and non-compliance of various directions passed by the Hon'ble High court has also been observed and recorded in the Order dated 29.02.2024 passed by the Hon'ble High court, New Delhi in the matter of "***Axis Trustee Services Limited & Ors. vs Sanjeev Mahajan with Axis Trustee Services Limited & Ors. vs Nimitaya Infotech Pvt. Ltd.***" which is also a matter of concern on Settlement Proposal of the Applicant.

5. Contentions asserted by the Learned Counsel appearing on behalf of the Respondent No. 2, Resolution Professional in reply to the present Application.

- (a) The Resolution Professional/Respondent No. 2 contended that the Applicant was provided with multiple opportunities to negotiate its

Settlement Proposal in CoC meetings. Firstly, in the 2nd CoC meeting convened on 14.05.2022, the Applicant negotiated with Respondent No. 1/CoC Member regarding the Settlement Proposal, which was subsequently rejected.

- (b) In compliance with the order dated 04.07.2022 passed by the Hon'ble NCLAT, Respondent No. 2 convened the 5th CoC meeting. During this meeting, the Resolution Professional presented the entire Settlement Proposal and urged the CoC to consider it. Subsequent discussions on the Applicant's Settlement Proposal occurred in the 6th and 7th CoC Meetings. However, the proposal was rejected in the 8th CoC meeting, with the CoC requesting the Applicant to increase the settlement amount.
- (c) The Resolution Professional asserted that in the 13th CoC meeting, the revised Settlement Proposal and the addendum to the Resolution plan were discussed. In the 14th CoC meeting, the Applicant was again asked by the CoC to increase their offer, but they did not comply. As a result, the Resolution Plan of the SRA was approved by the CoC. The Applicant's proposal was rejected following due process of law, and there was no illegality committed by the Financial Creditor and the Resolution Professional in rejecting the Settlement Proposal.
- (d) Respondent No. 2 asserts that granting liberty to the Applicant after the CoC has approved the Resolution Plan with 100% voting would lead to an unending process, contrary to the time-bound nature of CIRP under the I&B Code, 2016. Once the CoC rejects a Settlement Proposal and approves a Resolution Plan with 100% voting, it is not legitimate to question the CoC further on the same Settlement Proposal.
- (e) The Resolution Professional contended that the Settlement Proposal pressed by the Applicant is even not in conformity with Regulation 30A of the CIRP Regulations, 2016. Further, the present application is absolutely misconceived, frivolous and abuse of process of law and has been filed with mala-fide objective and to delay the approval of Resolution Plan.

6. Contentions asserted by the Learned Counsel appearing on behalf of the Successful Resolution Applicant in reply to the present Application.

- (a) The Resolution Applicant submitted its Resolution Plan on 20.08.2022, which was approved by the CoC with a 100% majority under the I & B Code, 2016. The plan is pending for consideration by the Adjudicating Authority via I.A. 987 of 2023.
- (b) issued by the Hon'ble NCLAT, the Applicant submitted a fresh settlement offer, which the CoC rejected. Consequently, the CoC proceeded to consider Resolution Plans. The Resolution Professional then put the Settlement Proposal and the received resolution plans to a vote, in accordance with the Hon'ble NCLAT order dated 21.11.2022.
- (c) The Resolution plan of the SRA has been approved by the CoC Members with 100% Voting and to show his bona-fide letter of intent dated 10.01.2023 issued by the Resolution Professional was also accepted by the SRA along with Performance Bank Guarantee of INR 12.001 Cr.
- (d) The SRA asserted that the Hon'ble NCLAT, in its order dated 03.02.2023, opined that the order dated 21.11.2022 had been complied with and that the Settlement Proposal of the Applicant was discussed in its letter and spirit, as recorded in the 14th and 15th CoC Meetings.
- (e) The Successful Resolution Applicant while Relying on *Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited & Anr*, (2022) 2 SCC 401, *Indian Bank Overseas vs. M/s. Rathi TMT Saria Pvt. Ltd.*, Comp App (AT) (Ins) No. 1134/2023 and *Hem Singh Bharana vs. M/s Pawan Doot Estates Private Limited*, Comp App (AT) (Ins) No. 1481/2022 contended that once a Resolution Plan is approved by the CoC, no further plan or settlement can be considered by the CoC, as it becomes a binding contract between the CoC and the SRA. The Hon'ble NCLAT, in its order dated 08.01.2024 in Comp. App. 1715-16/2023, ruled that after the approval of the SRA's Resolution Plan, a Settlement Proposal by the Promoter cannot be accepted. The Applicant also appealed to the Hon'ble Supreme Court challenging the

Hon'ble NCLAT's order dated 08.01.2024, which was subsequently disposed of, thus giving finality to the order dated 08.01.2024. Therefore, the present I.A. 2594 of 2023 has limited scope and cannot be decided in favour of the Applicant, as proposals made after the approval of the resolution plan by the CoC are not permitted under the law.

- (f) The Applicant after the approval of Resolution Plan further attempted to submits its Settlement Proposal for consideration of CoC which in light of law, judicial precedents and the Hon'ble NCLAT order dated 08.01.2024, not permitted to consider any such settlement offer submitted post 08.01.2023 i.e. approval of Resolution plan by CoC.
- (g) The SRA further pressed that after the approval of Resolution plan by the CoC and expiry of CIRP period, the CoC becomes functus officio and thus cannot convene any meeting or take decision as regards the settlement offer, it is only the case if the Resolution Plan of the SRA is found violative under Section 30(6) r/w Section 31, there can be consideration of any subsequent plan/modification/offer.
- (h) Thus, the present application is liable to be dismissed being unreasonable, illegal and there being no premise or cause of action for filing of the same.

Analysis and Findings

7. We have heard the Ld. Senior Counsel for the Applicant, Ld. Senior Counsel for the Resolution Professional & CoC and the Ld. Counsel for the Successful Resolution Applicant and further perused the averments made in the Application, Reply filed by the CoC, Resolution Professional & the SRA, Rejoinder filed by the Applicant and written submissions presented by the Parties. The Applicant has filed this application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 for issuance of directions to Respondents to negotiate, deliberate and take decision on the Settlement Proposal under Section 12A dated 21.03.2023 given by the Applicant and also to pass ad-interim ex-parte stay order in I.A. 987/2023 which is filed by the Resolution Professional/Respondent No. 2 for approval of Resolution Plan.

8. The Applicant prayed for consideration of its Settlement Proposal dated 21.03.2023 in terms of Section 12A of the I & B Code, 2016. On perusal of the records & documents placed before us, it is noted that the Applicant had submitted numerous Settlement Proposal on different occasions i.e. 05.01.2022, 04.04.2022, 17.07.2022, 25.11.2022, 21.03.2023, 28.08.2023 & 10.10.2023. However, none of these proposals were accepted by the Committee of Creditors, which comprises of Respondent No. 1 as only sole Financial Creditor.
9. The Hon'ble NCLAT in CA(AT)(Ins.) No. 03/2022 vide order dated 04.07.2022 has issued directions to the CoC to re-consider the Settlement Proposal of the Applicant under Section 12A of the Code. Relevant extract of the order dated 04.07.2022 is reproduced below:

“14. The CoC under the IBC has been given full freedom to grant an approval of 90% voting share to a proposal under Section 12A only thereafter. Application can be filed before the Adjudicating Authority. The freedom of decision of the CoC is unfettered. However, in the facts of the present case, we are of the view that CoC while taking a decision for accepting or rejecting of proposal under Section 12A may also take following factors into consideration: -

(i) The Bank had issued a proposal for sale of NPA of the Corporate Debtor to the Asset Reconstruction Companies (ARC's)/ Non-Banking Financial Companies (NBFC's)/ Financial Institution (FI's) for an amount of Rs.81 Crores.

(ii) Whether the Financial Creditor looking to the assets of the Corporate Debtor shall be able to realise an amount more than offered by the Applicant either in the insolvency resolution process by Resolution Plan or a liquidation process.

(iii) The maximisation of the assets of the Corporate Debtor is one of the objectives, equally important is the recovery of the financial dues of the Bank and we have no doubt that CoC while taking a decision shall take decision under which it shall be able to realise its dues to the maximum

(iv) The CoC having been constituted after our order dated 15.03.2022 may also proceed to issue Form-G and receive the Resolution Plans. However, till the decision on proposal under Section 12A is not taken, CoC shall not proceed to take a vote on any of the Resolution Plans.

15. In view of the foregoing discussions, we dispose of this Appeal with following directions: -

(i) Appellant shall submit a fresh Application under Section 12A to the IRP / RP for placing it before the CoC which contains an offer of more than Rs.81 Crores.

(ii) The said Application shall be filed within two weeks from this date.

(iii) The CoC shall consider the Application under Section 12A after obtaining approval of the Competent Authority of the Bank keeping into consideration the factors as have been mentioned in paragraph 14, as above.

(iv) The CoC shall complete the process of taking decision on Section 12A Application within a period of two months from this date. For a period till CoC takes a decision on a proposal under Section 12A, CoC may not put any Resolution Plans, if any, to vote.

The Hon'ble NCLAT directed the Respondent Bank to consider the Settlement Proposal of the Applicant within 2 weeks after obtaining approval of the competent authority of the Respondent Bank. In furtherance of Hon'ble NCLAT order dated 04.07.2022, the Applicant has submitted its Settlement Proposal vide email dated 17.07.2022 for consideration of the Respondent Bank.

10. To decide upon the issue, we first need to determine whether the Committee of Creditors, in its CoC meetings, has considered the Settlement Proposal of the Applicant in light of the factors enumerated by the Hon'ble NCLAT in its orders dated 04.07.2022 and 21.11.2022, or not.

11. The Applicant contended that in complete derogation of Hon'ble NCLAT order dated 04.07.2022, the Respondent No. 1 had rejected the Settlement Proposal dated 17.07.2022 without any negotiation, deliberation and discussion with the Applicant. On the other side, it is the contention of the Resolution Professional and the CoC that CoC has deliberated the proposal of the Applicant and has taken an informed decision.

12. However, the Hon'ble NCLAT in its order dated 21.11.2022 while clarifying its order dated 04.07.2022 directed the CoC to deliberate on Settlement Proposal under Section 12A submitted by the Applicant as well as the two Resolution Plans received in the CIRP and thereafter take a final decision. Relevant extract of Hon'ble NCLAT order dated 21.11.2022 is reproduced below:

“15. The 06th, 07th and 08th CoC Meetings which have been brought on record in the Contempt Application clearly indicate the substantial part

of discussions in the minutes of the CoC where with regard to the interpretation of the Order of this Tribunal dated 04.07-.2022, there was divergence in the views of the Resolution Professional and the CoC with regard to the interpretation of the Order dated 04.07.2022. The Appellant has filed this Application with the prayers as noted above. The Order dated 04th July, 2022 contemplated that CoC while considering the Application under Section 12A was to keep in mind the factors as has been mentioned in paragraph 14 of the Judgment dated 04.07.2022. It has already been noticed in the Judgement that maximisation of the assets of the Corporate Debtor is one of the objectives and equally important is recovery of the financial dues of the Bank. The proposal of Applicant under section 12A for Settlement has naturally to be weighed against the Resolution Plans received in the process unless the Resolution Plans are opened and deliberated side by side with the proposal of settlement submitted by the Appellant, the objective as contemplated in paragraph 14(iii) cannot be achieved. We thus are of the view that the Order dated 04.07.2022 clearly entitled that the CoC to weigh the Resolution Plans as well as Settlement Proposal together.

16. It goes without saying that ultimate decision is of the CoC. We thus are of the view that carrying out purpose and intendment of the judgment dated 04.07.2022, the CoC is to deliberate on the two Resolution Plans received in the CIRP as well as Settlement Proposal under Section 12A submitted by the Applicant/ Appellant and thereafter to take a final decision. The CoC is also fully entitled to negotiate with the Resolution Applicant as well as the Appellant to optimise the maximum value."

13. In pursuance of Hon'ble NCLAT's order dated 21.11.2022, the Applicant has submitted its revised Settlement Proposal on 25.11.2022 to the Respondents which was widely discussed and deliberated between the Applicant and the Respondent No. 1 in the 13th, 14th, 15th and 16th CoC meeting held on 26.11.2022, 07.12.2022, 28.12.2022 and 09.01.2023 respectively. The relevant extract of minutes of the CoC meetings are reproduced below:

13th CoC meeting dated 26.11.2022

Item No. A4- To take note of order of the Hon'ble NCLAT, New Delhi dated 21.11.2022 and consider the extension of 15 days or any other period as decided by CoC

" ... The CoC member, Indian Bank deliberated that apparently from the revised offer of the resolution Applicant, it can be ascertained that the financial creditor will receive Rs. 118 Crore approx. .. as per the plan

which is quite higher than the proposal submitted by Mr. Sanjeev Mahajan (100 Cr.) Indian Bank also added that the order of the NCLAT, New Delhi dated 21.11.2022 has given an opportunity to the promoter and both the resolution Applicants to revisit their offer and renegotiate with the CoC and thereafter the CoC to take a decision and looking upon the revised values received, it is said that the revised proposal of the resolution Applicant-Nehru Place Hotels has increased their offer value by approximately of Rs. 5. 00 Crore in total.

Mr. Sanjeev Mahajan deliberated upon his proposal and showed his bonafide intent, and his proposal is, "as in where is basis" The CoC member, Indian Bank replied that in the present meeting itself he has been given an opportunity to revise the offer or deliberate upon same in case the promoter is willing to revise the offer, CoC will be happy to consider the same.

Indian Bank reverted that we are present in the meeting and discussing and negotiating on the proposal submitted by Mr. Mahajan, so the arrangement of funds should be provided to decided upon something as it is a very crucial aspect to any financial proposal .. "

The RP deliberated that the deliberation upon the proposal have been held, and Mr. Mahajan can provide for the amount requested in the no lien account and provide a letter which confirms the arrangement of funds for payment of the financial value proposed. "

14th COC meeting dated 07.12.2022

Item No. A4- To discuss and evaluate the resolution plans submitted by the resolution Applicants along with the Settlement Proposal submitted by the promoter in accordance with the order of the Hon'ble NCLAT dated 21.11.2022

"Mr. N C Nehra representing Indian Bank (sole CoC member) requested the promoter Mr. Sanjeev Mahajan to deliberate on his Settlement Proposal submitted, whereby the chairperson added that the promoter may present his proposal and both the parties are present here for any negotiation, modification or clarification, as may be required and assistance needed from his side, same is always available.

... Further, he (Applicant) informed that he has visited the head office of the Indian Bank in Chennai on Monday and met the General Manger- Recover Mr. Ahluwalia for consideration of his proposal and deliberated upon his pros and cons of his proposal.

The Indian Bank again inquired the promoter, if he wishes to improve/revise his offer as he has been a party to all the CoC meetings and is aware of the amount offered by the other two resolution Applicants to the financial Creditor, to which the promoter replied that he has

submitted his best offer which is unconditional and the same is on as is where is ...

Indian Bank put forth that in case the Bank accepts the Settlement Proposal it will be releasing the guarantees held with the bank to the promoter which shall not be there in case of the resolution plan, therefore, upon comparison of the Resolution Plan and the Settlement Proposal, the Settlement Proposal given by the promoter is not in compete with the resolution plan received.

After detailed deliberation and discussion upon the feasibility and viability of the resolution plans as received from the resolution Applicants and the proposal of promoter u/s 12, CoC asked the RP to put all 3 proposals to vote."

15th CoC meeting dated 28.12.2022

Item No. A3: To take note of the minutes of the 14th CoC meeting held on 07.12.2022 which were circulated on 09.12.2022

" .. That Mr. Sanjeev Mahajan has made representation before the MD/MD Secretariat in view of which the CoC has asked the RP to call for a special meeting to take his inputs and listen to his view in respect of any negotiations for any improved offer of his settlement as stipulated under order of the Hon'ble NCLAT dated 21.11.2022.

At this juncture, the Chairman gave the opportunity to Mr. Mahajan to deliberate upon the Settlement Proposal as he has been requesting the bank to have a personal meet with competent authority and this CoC has been specially conveyed to give effect to the directions received by Mr. N C Nehra from his central office.

... The Coc further inquired whether Mr. Mahajan wishes to increase the upfront amount payable to the bank in lieu of the settlement or any further change in the payment timelines,

To this Mr. Mahajan replied that whatever they have submitted, they stand by their offer .. "

16th CoC meeting dated 09.01.2023

Item No. A5: To discuss the further course of action.

"The chairperson informed the members of the CoC that, the e-voting on the agenda items as mentioned in 14th Coc meeting were concluded on 08.01.2023 and resolution Plan of Nehru Place & Hotels and Real Estates Private Limited was approved with 100% voting casted in favour of the resolution approving the resolution Plan.

Upon non-acceptance of the Settlement Proposal of the promoter, Mr. Sanjeev Mahajan, the CoC member, Indian Bank deliberated that the promoter did not increase the plan value and only reduced the time period of its payment Plan. Further the CoC member submitted that

several rounds of discussions were held with Mr. Mahajan and he requested the physical meeting with the CMD of the bank, the Indian Bank in 15th CoC meeting, had asked the promoter to improve his offer value, however, the promoter submitted that it is his final offer and do not wish to revise any terms and financial amount offered.

Further, the representative of the CoC added that the value offered by the promoter is less than the average liquidation value of the corporate debtor as determined by the valuers, also the value is much less than the plan value offered by the resolution Applicant ..."

After considering the aforesaid minutes of CoC meetings and considering the submissions of Learned Senior Counsel for the RP and Learned Counsel for the CoC, it emerges that the CoC in its meetings has considered the Settlement Proposal of the Applicant along with the Resolution Plans received from the Resolution Applicants after taking into the account all the factors which has been opined by the Hon'ble NCLAT in its order dated 04.07.2022 & 21.11.2022 and thereon in their commercial wisdom rejected the same after due deliberations.

14. Further, it is noteworthy that subsequent to the approval of the Resolution Plan by the CoC, the Applicant submitted another Settlement Proposal dated 21.03.2023, which was alleged to be higher than the approved Resolution Plan. This proposal was subsequently rejected by the Competent Authority of Respondent No. 1. Since the CoC comprises a sole financial creditor, i.e., Indian Bank, the decision taken by the Competent Authority of the said bank can be considered as the decision of the CoC.
15. It is the contention of the Applicant that the CoC/Indian Bank have rejected their proposal despite it being of a higher amount. We may, however, state that in view of the settled law, the CoC, in its commercial wisdom, after considering its pros & cons, can take appropriate decisions regarding the financial aspects of any proposal. As an adjudicating authority, it is not appropriate for us to examine the merits of the commercial decision of the CoC. Further, the minutes of the CoC meeting reflect that the commercial aspects of the proposal submitted by the Applicant were duly deliberated and considered. The pros and cons of any

financial proposal are not supposed to be weighed by the Adjudicating Authority.

16. Further, with regards to the decision taken by the CoC, the Hon'ble Supreme Court of India in the matter of **Vallal RCK v. Siva Industries & Holdings Ltd., (2022) 9 SCC 803** has held that:

"21. This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. A reference in this respect could be made to the judgments of this Court in K. Sashidhar v. Indian Overseas Bank [K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150 : (2019) 4 SCC (Civ) 222] , Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta [Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta, (2020) 8 SCC 531 : (2021) 2 SCC (Civ) 443] , Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh [Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh, (2020) 11 SCC 467 : (2021) 1 SCC (Civ) 799] , Kalpraj Dharamshi v. Kotak Investment Advisors Ltd. [Kalpraj Dharamshi v. Kotak Investment Advisors Ltd., (2021) 10 SCC 401 : (2022) 1 SCC (Civ) 233] and Jaypee Kensington Boulevard Apartments Welfare Assn. v. NBCC (India) Ltd. [Jaypee Kensington Boulevard Apartments Welfare Assn. v. NBCC (India) Ltd., (2022) 1 SCC 401 : (2022) 2 SCC (Civ) 165]

26. It is thus clear that the decision of the CoC was taken after the members of the CoC, had due deliberation to consider the pros and cons of the settlement plan and took a decision exercising their commercial wisdom. We are therefore of the considered view that neither the learned NCLT nor the learned Nclat were justified in not giving due weightage to the commercial wisdom of CoC. "

Thus, it is not for us to examine the merits of details of financials of Settlement Proposal given by the Applicant. It is for the CoC to take into account all the factors and take appropriate commercial decision.

17. In the present case, the Applicant alleges that the value of their Settlement Proposal exceeds that of the Resolution Plan unanimously approved by the Committee of Creditors (CoC). As stated, we are not inclined to evaluate the merits of the Settlement Proposal. The acceptance or rejection of such a

proposal falls within the commercial wisdom of the CoC. Hence, our role is limited in determining whether the CoC has considered the Applicant's Settlement Proposal in light of Hon'ble NCLAT's order dated 04.07.2022 and 21.11.2022.

18.In light of the above, the issues raised by the Applicant seeking reconsideration of its Settlement Proposal do not warrant any further directions to the Committee of Creditors (CoC). Consequently, the relief sought by the Applicant lacks merit and is therefore dismissed. Accordingly, **IA No. 2594 of 2023 in CP(IB) No. 1913/ND/2019** is hereby **dismissed and disposed of.**

Let a copy of this order be served to parties.

Sd/-
(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)



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