IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

IA No's.433, 447 and 448/2018 and
IA Nos.32, 61, 950, 960 and 961/2019
In CP (IB) No.248/7/HDB/2017
Under section 60(5) of the IB Code, 2016.

In The Matter of:
M/s. GOLDEN JUBILEE HOTELS PVT. LTD.

IA No.32/2019
In
CP (IB) No.248/7/HDB/2017

Between:

Mr. Subodh Kumar Agrawal
RESOLUTION PROFESSIONAL
Golden Jubilee Hotels Private Limited,
(Corporate Debtor Company)
Having registered office at:
Survey No. 64, Besides Shilpakalavedika,
Shilparamam, Madhapur,
Hyderabad– 500081, Telangana
Email Id: cirp.goldenjubilee@gmail.com

.....Applicant

And

(1) **M/s. Shilparamam Art crafts and Cultural Society**
Hyderabad – 500081
(Impleaded by Virtue of Vide order dated
30.09.2019 in IA No. 660/2019)

(2) M/s EIH LIMITED
A Company incorporated under Companies Act, 1956
Having its registered office situated at 4, Mangoe Lane,
Kolkata-700001
(Impleaded by Virtue of Vide order dated
01.10.2019 in IA No. 659/2019)

.....Respondents

IA No.61/2019
In
CP (IB) No.248/7/HDB/2017

Between:

Mr. Laxmi Narayan Sharma,
Promoter of Corporate Debtor,
VillaNo.93, Hill Ridge Villas,
ISB Road, Gachibowli,

Hyderabad 500032, Telangana ...Applicant

And

1. **Mr. Subodh Kumar Agarwal**
   Resolution Professional
   M/s. Golden Jubilee Hotels Pvt.Ltd.,
   Survey No. 64, Beside Shilpakalavedika,
   Shilparamam, Madhapur Hyderabad – 500081,
   Telangana, India

   ...Respondent No.1/
   Resolution Professional

2. **Bank of Baroda,**
   Baroda House, Mandvi,
   Baroda -390006,Gujarat

   Corporate Office at
   Corporate Financial Services Branch
   1 st Floor, 8-6-262/2, Thirumala
   Estates Building, Himayatnagar,
   Hyderabad – 500029, Telanagana, India.
   Represented by its
   Deputy General Manager

3. **Dena Bank,**
   Share Bazar Branch,
   Dena Bank House, 31/33,
   Ambala Doshi Marg, Mumbai- 400 023
   Represented by its Deputy General Manager

4. **Punjab National Bank,**
   Large Corporate Branch,
   Sifi Chambers, Road No.1,
   Banjara Hills,
   Hyderabad – 500 034
   Represented by its Deputy General Manager

5. **Syndicate Bank,**
   Corporate Finance Branch,
   1 st Floor, Opposite to NIMS,
   Punjagutta, Hyderabad – 500 082,
   Represented by its Assistant General Manager

6. **Corporation Bank,**
   Large Corporate Branch,
   Plot No.8, Road No.1,
   2nd Floor, Film Nagar,
   Hyderabad – 500 033
   Represented by its Assistant General Manager

7. **Jammu and Kashmir Bank,**
   22-7-110, SYJ Shopping Mall,
   Pathergatti, Hyderabad -500 002
   Represented by its The Branch Manager

8. **Punjab and Sind Bank,**
   Abids Road, Metro Estate,
   Hyderabad – 500 001
   Represented by its The Branch Manager

9. **Bank of Maharastra,**
   Safilguda Branch, R.K Nagar,
   Malkajgiri, Hyderabad – 500 047
   Represented by its Chief Manager

...Respondent No. 2 to 9/
Financial Creditors

IA No.433/2018
In
CP (IB) No.248/7/HDB/2017

Between:

EIH Limited
Regd. Office: 4, Mangoe Lane,
Kolkata – 700001.
Rep. by its Authorized Representative
Mr. Dhiraj Mehta.

...Applicant

And

1. **Mr. Subodh Kumar Agarwal**
   Resolution Professional
   M/s Golden Jubilee Hotels Pvt. Ltd.,
   Survey No.64, Beside Shilpakalavedika,
   Shilparamam, Madhapur,
   Hyderabad – 500081.

2. **Golden Jubilee Hotels Ltd.**
   Survey No.64, Beside Shilpakalavedika,
   Shilparamam, Madhapur,
   Hyderabad – 500081.

3. **Bank of Baroda**
   Baroda House, Mandvi,
   Baroda – 390006, Gujrat
   Corporate Office at:
   Corporate Financial Service Branch,
   1st Floor, 3-6-262/2, Thirumala Estates Building,
   Himayathnagar, Hyderabad-500029, Telanagana
   Represented By its Deputy General Manager

4. **Committee of Creditors**
   Represented By
   Lead Banker: Bank of Baroda

...Respondents

IA No.447/2018
In
CP (IB) No.248/7/HDB/2017

Between:

EIH Limited
Regd. Office at 4, Mangoe Lane,
Kolkata – 700001.
Rep. by its Authorized Representative
Mr. Dhiraj Mehta.

...Applicant

And

1. **Mr. Subodh Kumar Agarwal**
   Resolution Professional
   M/s Golden Jubilee Hotels Pvt. Ltd.,
   Survey No.64, Beside Shilpakalavedika,
   Shilparamam, Madhapur,
   Hyderabad – 500081.

2. **Golden Jubilee Hotels Ltd.**
   Survey No.64, Beside Shilpakalavedika,
   Shilparamam, Madhapur,
   Hyderabad – 500081.

3. **Bank of Baroda**
   Baroda House, Mandvi,
   Baroda – 390006, Gujrat
   Corporate Office at:
   Corporate Financial Service Branch,
   1st Floor, 3-6-262/2, Thirumala Estates Building,
   Himayathnagar, Hyderabad-500029, Telanagana
   Represented By its Deputy General Manager

4. **Committee of Creditors**
   Represented By
   Lead Banker: Bank of Baroda

5. **Blackstone**, Resolution Applicants
   C/o Resolution Professional.

6. **ACRE**, Resolution Applicant
   C/.o Resolution Professional.

7. **KKR**, Resolution Applicant,
   C/o Resolution Professional

...Respondents

IA No.448/2018
In
IA No.433/2018
In
CP (IB) No.248/7/HDB/2017

Between:

EIH Limited
Regd. Office: 4, Mangoe Lane,
Kolkata – 700001.
Rep. by its Authorized Representative
Mr. Dhiraj Mehta.

...Applicant

And

1. **Mr. Subodh Kumar Agarwal**
   Resolution Professional
   M/s Golden Jubilee Hotels Pvt. Ltd.,
   Survey No.64, Beside Shilpakalavedika,
   Shilparamam, Madhapur,
   Hyderabad – 500081.

2. **Golden Jubilee Hotels Ltd.**
   Survey No.64, Beside Shilpakalavedika,
   Shilparamam, Madhapur,
   Hyderabad – 500081.

3. **Bank of Baroda**
   Baroda House, Mandvi,
   Baroda – 390006, Gujrat
   Corporate Office at:
   Corporate Financial Service Branch,
   1st Floor, 3-6-262/2, Thirumala Estates Building,
   Himayathnagar, Hyderabad-500029, Telanagana
   Represented By its Deputy General Manager

4. **Committee of Creditors**
   Represented By
   Lead Banker: Bank of Baroda

5. **Blackstone**, Resolution Applicants
   C/o Resolution Professional.

6. **JM Financials**, Resolution Applicant
   C/o Resolution Professional

7. **ACRE**, Resolution Applicant
   C/.o Resolution Professional.

8. **KKR**, Resolution Applicant,
   C/o Resolution Professional

...Respondents

IA No.960/2019
In
CP (IB) No.248/7/HDB/2017

Between:

M/s. Consolidated Engineer Company
(Through it's Managing Partner)
Having it's Head Office at
K –Block, Chaudhary Building
Connaught Circus New Delhi-110001 ...Applicant

And

Subodh Kumaar Agarwal
Resolution Professional
M/S Golden Jubilee Hotels Private Limited
IBBI/IPA-001/IP-P00087/2017-18/10183 1,
Ganesh Chandra Avenue
3RD Floor, R.N 301, Kolkata-700013.

...Respondent/
Resolution Professional

IA No.961/2019
In
CP (IB) No.248/7/HDB/2017

Between:

Infinity Interiors Private Limited
Having its Head Office at
502, Abiraj Building Munisuvrat,
8-68, Swastik Society, C.G.Road,
Ahmedabad – 380009.

...Applicant

And

Mr. Subodh Kumar Agarwal
Resolution Professional
M/s. Golden Jubilee Hotels Private Limited
IBBI/IPA-001/IP-P00087/2017-18/10183 1,
Ganesh Chandra Avenue,
3rd Floor, R.N 301, Kolkata-700013.

...Respondent/RP

IA No.950/2019
In
IA No.32/2019
In
CP (IB) No.248/7/HDB/2017

Between:

NCC Limited
Rep. by its Company Secretary & EVP Legal
Mr.M.V.Srinivasa Murthy
Having its Registered Office at:
NCC House, Madhapur,
Hyderabad, Telangana – 500 081, India.

...Applicant

And

M/s. Golden Jubilee Hotels Private Limited
Rep. by its RP, Subodh Kumar Agarwal
IBBI/IPA-001/IP-P00087/2017-18/10183
Having its Registered Office at:
Survey No.64, Beside Shilpakala Vedika
Shilparamam, Madhapur,
Hyderabad – 500081,
Telangana, India.

...Respondent/
Corporate Debtor

Committee of Creditors
Golden Jubilee Hotels Private Limited
Survey No.64, Beside Shilpakala Vedika
Shilparamam, Madhapur,
Hyderabad – 500081,
Telangana, India.

...Respondent No.2/CoC

Youth Advancement Tourism and Culture Department
Government of Telangana
D-Block, 2nd Floor, Telangana Secretariat,
Hyderabad, Telangana – 500022.

...Respondent No.3/
YATC

Shilparamam Arts, Crafts & Cultural Society,
Hi Tech City Main Road,
Hitec City, Madhapur,
Hyderabad – 500081.

...Respondent No.4/
SACCS

Date of Corrigendum: 13.02.2020.

Coram: **Shri. K. Anantha Padmanabha Swamy, Member Judicial.**
Dr. Binod Kumar Sinha, Member Technical.

Parties/Counsels present:-

For the RP/Corporate Debtor:

Mr. S. Ravi, Senior counsel along with Mr. Suryanarayana, Counsel.
Mr. Subodh Kumar Agarwal, RP.

For the CoC:

Mrs. Varalakshmi Tadepalli, along with Ms. Swagata basu, counsels.

For the EIH Ltd/Applicant in IA No. 433, 447 & 448/2018:

Mr. Niranjan Reddy, Senior counsel along with Ms. Rubaina Khatoon, counsel.

For the LN Sharma /Ex-Management/ Applicant in IA No. 61/2019:

Mr. Yogesh Kumar Jagia along with Mr. Nitish Bandary, counsels

For the NCC/Applicant in IA No. 950/2019:

Mr. Avinash Desai along with Mr. TPS Harsha, counsels

For the CEC/Applicant in IA No.960/2019:

Mr. Sanjeev Sahay, counsel.

For the Infinity Interiors Private Limited/ Applicant in IA No.961/2019:

Mr. Sanjeev Sahay, counsel

For the YATC:

Mr. Ramachandra Rao along with Mr. D.V.A.S.Ravi Prasad, counsels.

For the Shilparamam/ society:

Mr. P. Badri Premnath, counsel.

For the Resolution Applicant:

Mr. Ravi P. Kadam, Senior Counsel along with Mr. D. Pavan Kumar, Counsels.

Corrigendum Order

1. This Adjudicating Authority passed an order in IA Nos.433, 447 and 448/2018 and IA Nos.32, 61, 950, 960 and 961/2019 in CP (IB) No.248/7/HDB/2017 on 07.02.2020. It is observed that the CP No. at para 75 (12th line) of page 92 of 93 is erroneously mentioned as CP (IB) No.278/7/HDB/2018 instead of CP (IB) No.248/7/HDB/2017.
2. Therefore, the following correction is made as shown below:
   a) Page No.92 of 93 of the Order i.e., at para 75 (12th line) the CP No. shown as 'CP (IB) No.278/7/HDB/2018' may be read as 'CP (IB) No.248/7/HDB/2017' instead of 'CP (IB) No.278/7/HDB/2018'.
3. Rest of the contents of the order dated 07.02.2020 remain the same.

This Corrigendum Order to be read along with the original Order.

Dr. BINOD KUMAR SINHA
MEMBER TECHNICAL

K.ANANTHA PADMANABHA SWAMY
MEMBER JUDICIAL

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

IA No's.433, 447 and 448/2018 and
IA Nos.32, 61, 950, 960 and 961/2019
In CP (IB) No.248/7/HDB/2017
Under section 60(5) of the IB Code, 2016.

In The Matter of: GOLDEN JUBILEE HOTELS PVT. LTD.

IA No.32/2019
In
CP (IB) No.248/7/HDB/2017

Between:

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RESOLUTION PROFESSIONAL
Golden Jubilee Hotels Private Limited,
(Corporate Debtor Company)
Having registered office at:
Survey No. 64, Besides Shilpakalavedika,
Shilparamam, Madhapur,
Hyderabad– 500081, Telangana
Email Id: cirp.goldenjubilee@gmail.com

.....Applicant

And

(1) **M/s. Shilparamam Art crafts and Cultural Society**
Hyderabad – 500081
(Impleaded by Virtue of Vide order dated
30.09.2019 in IA No. 660/2019)

(2) **M/s EIH LIMITED**
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Having its registered office situated at 4, Mangoe Lane,
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(Impleaded by Virtue of Vide order dated
01.10.2019 in IA No. 659/2019)

.....Respondents

IA No.61/2019
in
CP (IB) No.248/7/HDB/2017

Between:

Mr. Laxmi Narayan Sharma,
Promoter of Corporate Debtor,
VillaNo.93, Hill Ridge Villas,
ISB Road, Gachibowli,
Hyderabad 500032, Telangana

...Applicant

And

1. **Mr. Subodh Kumar Agarwal**
   Resolution Professional
   M/s. Golden Jubilee Hotels Pvt.Ltd.,
   Survey No. 64, Beside Shilpakalavedika,
   Shilparamam, Madhapur Hyderabad – 500081,
   Telangana, India

   ...Respondent No.1/
   Resolution Professional

2. **Bank of Baroda,**
   Baroda House, Mandvi,
   Baroda -390006,Gujarat

   Corporate Office at
   Corporate Financial Services Branch
   1 st Floor, 3-6-262/2, Thirumala
   Estates Building, Himayatnagar,
   Hyderabad – 500029, Telanagana, India.
   Represented by its
   Deputy General Manager

3. **Dena Bank,**
   Share Bazar Branch,
   Dena Bank House, 31/33,
   Ambala Doshi Marg, Mumbai- 400 023
   Represented by its Deputy General Manager

4. **Punjab National Bank,**
   Large Corporate Branch,
   Sifi Chambers, Road No.1,
   Banjara Hills,
   Hyderabad – 500 034
   Represented by its Deputy General Manager

5. **Syndicate Bank,**
   Corporate Finance Branch,
   1 st Floor, Opposite to NIMS,
   Punjagutta, Hyderabad – 500 082,
   Represented by its Assistant General Manager

6. **Corporation Bank,**
   Large Corporate Branch,
   Plot No.8, Road No.1,
   2nd Floor, Film Nagar,
   Hyderabad – 500 033
   Represented by its Assistant General Manager

7. **Jammu and Kashmir Bank,**
   22-7-110, SYJ Shopping Mall,
   Pathergatti, Hyderabad -500 002
   Represented by its The Branch Manager

8. **Punjab and Sind Bank,**
   Abids Road, Metro Estate,

Hyderabad – 500 001
Represented by its The Branch Manager

9. **Bank of Maharastra,**
Safilguda Branch, R.K Nagar,
Malkajgiri, Hyderabad – 500 047
Represented by its Chief Manager

...Respondent No. 2 to 9/Financial Creditors

IA No.433/2018
In
CP (IB) No.248/7/HDB/2017

Between:

EIH Limited
Regd. Office: 4, Mangoe Lane,
Kolkata – 700001.
Rep. by its Authorized Representative
Mr. Dhiraj Mehta.

...Applicant

And

1. **Mr. Subodh Kumar Agarwal**
Resolution Professional
M/s Golden Jubilee Hotels Pvt. Ltd.,
Survey No.64, Beside Shilpakalavedika,
Shilparamam, Madhapur,
Hyderabad – 500081.

2. **Golden Jubilee Hotels Ltd.**
Survey No.64, Beside Shilpakalavedika,
Shilparamam, Madhapur,
Hyderabad – 500081.

3. **Bank of Baroda**
Baroda House, Mandvi,
Baroda – 390006, Gujrat
Corporate Office at:
Corporate Financial Service Branch,
1st Floor, 3-6-262/2, Thirumala Estates Building,
Himayathnagar, Hyderabad-500029, Telanagana
Represented By its Deputy General Manager

4. **Committee of Creditors**
Represented By
Lead Banker: Bank of Baroda

...Respondents

IA No.447/2018
In
CP (IB) No.248/7/HDB/2017

10/02/2020

Between:

EIH Limited
Regd. Office at 4, Mangoe Lane,
Kolkata – 700001.
Rep. by its Authorized Representative
Mr. Dhiraj Mehta.

...Applicant

And

1. Mr. Subodh Kumar Agarwal
   Resolution Professional
   M/s Golden Jubilee Hotels Pvt. Ltd.,
   Survey No.64, Beside Shilpakalavedika,
   Shilparamam, Madhapur,
   Hyderabad – 500081.

2. Golden Jubilee Hotels Ltd.
   Survey No.64, Beside Shilpakalavedika,
   Shilparamam, Madhapur,
   Hyderabad – 500081.

3. Bank of Baroda
   Baroda House, Mandvi,
   Baroda – 390006, Gujrat
   Corporate Office at:
   Corporate Financial Service Branch,
   1st Floor, 3-6-262/2, Thirumala Estates Building,
   Himayathnagar, Hyderabad-500029, Telanagana
   Represented By its Deputy General Manager

4. Committee of Creditors
   Represented By
   Lead Banker: Bank of Baroda

5. Blackstone, Resolution Applicants
   C/o Resolution Professional.

6. ACRE, Resolution Applicant
   C/.o Resolution Professional.

7. KKR, Resolution Applicant,
   C/o Resolution Professional

...Respondents

IA No.448/2018
In
IA No.433/2018
In
CP (IB) No.248/7/HDB/2017

Between:

EIH Limited
Regd. Office: 4, Mangoe Lane,
Kolkata – 700001.

Rep. by its Authorized Representative
Mr. Dhiraj Mehta.

...Applicant

And

1. **Mr. Subodh Kumar Agarwal**
   Resolution Professional
   M/s Golden Jubilee Hotels Pvt. Ltd.,
   Survey No.64, Beside Shilpakalavedika,
   Shilparamam, Madhapur,
   Hyderabad – 500081.

2. **Golden Jubilee Hotels Ltd.**
   Survey No.64, Beside Shilpakalavedika,
   Shilparamam, Madhapur,
   Hyderabad – 500081.

3. **Bank of Baroda**
   Baroda House, Mandvi,
   Baroda – 390006, Gujrat
   Corporate Office at:
   Corporate Financial Service Branch,
   1st Floor, 3-6-262/2, Thirumala Estates Building,
   Himayathnagar, Hyderabad-500029, Telanagana
   Represented By its Deputy General Manager

4. **Committee of Creditors**
   Represented By
   Lead Banker: Bank of Baroda

5. **Blackstone**, Resolution Applicants
   C/o Resolution Professional.

6. **JM Financials**, Resolution Applicant
   C/o Resolution Professional

7. **ACRE**, Resolution Applicant
   C/.o Resolution Professional.

8. **KKR**, Resolution Applicant,
   C/o Resolution Professional

...Respondents

IA No.960/2019
In
CP (IB) No.248/7/HDB/2017

Between:

M/s. Consolidated Engineer Company
(Through it's Managing Partner)
Having it's Head Office at
K –Block, Chaudhary Building
Connaught Circus New Delhi-110001 ...Applicant

And

Subodh Kumaar Agarwal
Resolution Professional
M/S Golden Jubilee Hotels Private Limited
IBBI/IPA-001/IP-P00087/2017-18/10183 1,
Ganesh Chandra Avenue
3RD Floor, R.N 301, Kolkata-700013.

...Respondent/
Resolution Professional

IA No.961/2019
In
CP(IB)No.248/7/HDB/2017

Between:

Infinity Interiors Private Limited
Having its Head Office at
502, Abiraj Building Munisuvrat,
8-68, Swastik Society, C.G.Road,
Ahmedabad – 380009.

...Applicant

And

Mr. Subodh Kumar Agarwal
Resolution Professional
M/s. Golden Jubilee Hotels Private Limited
IBBI/IPA-001/IP-P00087/2017-18/10183 1,
Ganesh Chandra Avenue,
3rd Floor, R.N 301, Kolkata-700013.

...Respondent/RP

IA No.950/2019
In
IA No.32/2019
In
CP (IB) No.248/7/HDB/2017

Between:

NCC Limited
Rep. by its Company Secretary & EVP Legal
Mr.M.V.Srinivasa Murthy
Having its Registered Office at:
NCC House, Madhapur,
Hyderabad, Telangana – 500 081, India.

...Applicant

AND

M/s. Golden Jubilee Hotels Private Limited
Rep. by its RP, Subodh Kumar Agarwal
IBBI/IPA-001/IP-P00087/2017-18/10183

Having its Registered Office at:
Survey No.64, Beside Shilpakala Vedika
Shilparamam, Madhapur,
Hyderabad – 500081,
Telangana, India. ...Respondent/
Corporate Debtor

Committee of Creditors
Golden Jubilee Hotels Private Limited
Survey No.64, Beside Shilpakala Vedika
Shilparamam, Madhapur,
Hyderabad – 500081,
Telangana, India. ...**Respondent No.2/CoC**

Youth Advancement Tourism and Culture Department
Government of Telangana
D-Block, 2nd Floor, Telangana Secretariat,
Hyderabad, Telangana – 500022. ...Respondent No.3/
YATC

Shilparamam Arts, Crafts & Cultural Society,
Hi Tech City Main Road,
Hitec City, Madhapur,
Hyderabad – 500081. ...Respondent No.4/
SACCS

Date of Order: 07.02.2020.

Coram: Shri. K. Anantha Padmanabha Swamy, Member Judicial.
Dr. Binod Kumar Sinha, Member Technical.

Parties/Counsels present:-

For the RP/Corporate Debtor:

Mr. S. Ravi, Senior counsel along with Mr. Suryanarayana, Counsel.
Mr. Subodh Kumar Agarwal, RP.

For the CoC:

Mrs. Varalakshmi Tadepalli, along with Ms. Swagata basu, counsels.

For the EIH Ltd/Applicant in IA No. 433,447 & 448/2018:

Mr. Niranjan Reddy, Senior counsel along with Ms. Rubaina Khatoon, counsel.

For the LN Sharma /Ex-Management/ Applicant in IA No. 61/2019:

Mr. Yogesh Kumar Jagia along with Mr. Nitish Bandary, counsels

For the NCC/Applicant in IA No. 950/2019:

Mr. Avinash Desai along with Mr. TPS Harsha, counsels

For the CEC/Applicant in IA No.960/2019:

Mr. Sanjeev Sahay, counsel.

For the Infinity Interiors Private Limited/ Applicant in IA No.961/2019:

Mr. Sanjeev Sahay, counsel

For the YATC:

Mr. Ramachandra Rao along with Mr. D.V.A.S.Ravi Prasad, counsels.

For the Shilparamam/ society:

Mr. P. Badri Premnath, counsel.

For the Resolution Applicant:

Mr. Ravi P. Kadam, Senior Counsel along with Mr. D. Pavan Kumar, Counsels.

Per: Dr. Binod Kumar Sinha, Member Technical.

COMMON ORDER

1. Application bearing IA No.32/2019 is filed seeking approval of Resolution Plan of the present Corporate Debtor i.e., GHPL against which various Applications bearing IA No.433/2018, 447/2018 & 448/2018 in IA No.433/2018, IA No.61/2019, IA No.950/2019, 960/2019 and 961/2019 are filed which have a direct bearing on the Application bearing IA No. 32/2019. Therefore, this Adjudicating Authority deems it proper to dispose the same by way of this common order.

Prayers by RP in IA No.32/2019

2. The present Application bearing IA No. 32/2019 is filed by RP under sec.30(c) and sec.31 of IB Code seeking following prayers:-

(i) To pass an order directing that in accordance with Section 31(1) of the Code, this Resolution Plan shall be binding on the Company together with its employees, members, Creditors (including any assignees and successors), guarantors and all other stakeholders affected by the Resolution Plan and that accordingly, the approval of such employees, members, Creditors, guarantors and other stakeholders (including any Governmental Authorities) shall not be separately required to be undertaken, whether before or after the Effective Date, for implementation of various actions proposed to be taken pursuant to this Resolution Plan;

(ii) To pass an order directing that in addition to the extinguishment of liabilities of the Company in accordance with the provisions of the

Resolution Plan, all inquiries, investigations or proceedings in relation to any and all claims or demands in connection with or against the Company, in relation to any period prior to the NCLT Approval Date, and all the investigations, inquiries or show-cause, whether civil or criminal, in relation to any claims or demands in connection with or against the company will abate and be written off in full and shall be, and be deemed to be, permanently extinguished as on the Effective Date and with effect from the NCLT Approval Date;

(iii) To pass an order confirming that this Resolution Plan for the Company has dealt with the interests of all the stakeholders in the Company, including the Financial Creditors (whether secured or unsecured, assenting or dissenting), Operational Creditors and all other stakeholders in accordance with the Code, and to pass an order directing termination of the Restated Shareholders agreement dated August 28,2009;

(iv) To pass an order directing that in accordance with Section 238 of the Code, any action undertaken pursuant to the Resolution Plan by the Resolution Applicant or the Company will not require compliance in relation to requirements under any other laws. For the implementation of this Resolution Plan, and except as set out in the Resolution Plan, upon the Resolution Applicant ensuring compliance with the provisions of the Code, no further compliances, actions or consents will be required under other laws or regulations for undertaking the individual actions contemplated under the Resolution Plan.

(v) To declare that the process of approval of resolution plan resolving the corporate insolvency of the corporate debtor under the I & B Code is a complete code in itself and that the order approving the Resolution plan by the Adjudicating Authority i.e. the NCLT acting under the Code shall be deemed as a single window clearance for all actions proposed to be undertaken by the Resolution Applicant pursuant to the approved resolution plan and accordingly further , the process stipulated under the Code for implementation of a resolution plan is a final and binding process on all stakeholders (including any Governmental Authorities);

(vi) To pass an order directing that the Company shall, after the date of receipt of the certified copy of the order to be made herein or within such other period as may be permitted by the NCLT, cause a certified

copy thereof to be filed electronically to the ROC, Hyderabad, for registration;

(vii) To pass an order declaring that neither the Resolution Applicant nor the Company shall be liable to pay any taxes whatsoever arising (directly or indirectly on such entity) as a result of the actions taken by the Company, the SPV or the Resolution Applicant to implement the Resolution Plan approved by the NCLT; (Not pressed vide Written Submissions).

(viii) To pass an order that all contracts of employment or consultancy with, and any benefits, fees, commissions, perquisites or profits in lieu of or in addition to any salary or wages or any policy of providing such benefits, fees, commissions, perquisites or profits extended by the Company or by the ssubsidiaries of the Company to the Existing Shareholders or their relatives shall be deemed to be terminated and extinguished on and from the NCLT Approval Date, and the Company will not have any further obligation to provide the same;

(ix) To pass an order that the following waivers or actions from the GoT shall have been granted and done or be deemed to have been granted and done: (Not pressed vide Written Submissions)

(a) waiver of requirement of receipt of a written consent of the GoT for extension of timelines for completion of the Project (under construction);

(b) GoTs shall be deemed to have waived of all non-financial defaults and liabilities of the Company in relation to the Project;

(c) GoT continuing the subsistence of the Project Agreements; and

To further, direct the GoT to:

(a) take all actions and execute all documents required to record the arrangement contemplated under the Resolution Plan between the Resolution Applicant and the GoT;

(b) provide consent for creation (by or on behalf of itself or the Company) Encumbrances in favour of the lenders (including their agents or trustees) of the Company, on all the rights of the Company on and in respect of the Project or the land on which the Project is situated (or being constructed); and

(x) To direct the GoT to extend or renew the tenure of each of the Lease Agreements until August 1, 2074 (i.e. for another term of 33 years). (Not pressed vide Written Submissions)

(xi) To pass an order terminating the following agreements with EIH, without any costs to the Resolution Applicant:

(a) Management agreement between the Company and EIH incorporating technical assistance services dated August 5, 2006 between the Company and EIH, read with the supplemental agreement of June 9, 2008.

(b) Management agreement between the Company and EIH incorporating technical assistance services dated February 22, 2008 between the Company and EIH.

(xii) To pass an order granting a restraint on, and prohibit all Adverse Actions against the Company until the implementation of this Resolution Plan in full;

(xiii) To pass an order granting a period of 18 (eighteen) months to the Company to cure any contractual and any breaches related to Clearances and; to pass an order that no Adverse Actions be taken against the Company during these 18 (eighteen) months;

(xiv) To pass orders in respect of such incidental, consequential and supplemental matters as are necessary to ensure that the Resolution Plan is fully and effectively carried out, including:

(a) that liberty be reserved to the Company, Resolution Applicant and to all other persons interested in the Resolution Plan to apply to the NCLT for any direction(s) that may be necessary for the purpose of carrying out the Resolution Plan, from time to time;

(b) That as time is the essence of the Code, and to preserve the value of the assets of the Company, speedy implementation of the Resolution Plan is of utmost importance, and therefore, all Governmental Authorities be required to take all necessary actions (if required) for the implementation of the Resolution Plan approved by the NCLT, without delay;

(c) sanctioning the Resolution Plan submitted by the Resolution Applicant, including sanction of the Merger with effect from the Effective Date, as defined in the Resolution Plan and making the

Resolution Plan binding on the Company, all shareholders, Creditors, guarantors and all other stakeholders and persons, and ordering implementation of the Resolution Plan, without the requirement for any further act, deed, document or costs, without order of winding up of the Company; and

(d) for such further or other order/s be made and/or directions be given as the NCLT may deem fit and proper in the facts and circumstances of the case and in the interests of justice.

3. <u>Prayers made in Applications bearing IA No. 433/2018, IA No. 448/2018 in IA No. 433 of 2018 and IA No. 447/2018 IAs by EIH, Hotel Operator:</u>

4. The Application bearing IA No. 433/2018, 447/2018 & 448/2018 are filed by EIH Limited holding 16% of the Equity shares of the Corporate Debtor and Hotel Operator of the Corporate Debtor, U/s. 60(5) of the IB Code. The three Applications are filed seeking following prayers respectively:

I. <u>Prayer in IA 433/2018:</u> To declare and direct that the Respondents are not entitled/permitted in law to insist on exclusion of the provision for continuing the Applicant (EIH) as the hotel operator in the resolution plans submitted/proposed to be submitted by the Resolution Applicants and resultantly direct the Respondents to take up for approval and consider only the original resolution plans in terms of the Hotel Operator preference indicated by the Resolution Applicants.

II. <u>Prayer in IA 447/2018:</u> To declare and direct that the independent rights of the Applicant (EIH) herein as a Hotel operator based on an independent arm's length Management Agreement and License Agreement remain unaffected by the Corporate Insolvency Process in relation to the Corporate Debtor and the said rights cannot be interfered with, in any manner by and through a Resolution Plan and resultantly direct the Respondent No. 4 (COC) to not to approve any Resolution Plans that provide for any Hotel Operator other than the Applicant and pass such further order or orders as this Hon'ble Authority may deem fit and proper in the circumstances of the case.

III. <u>Prayer in IA 448/2018:</u> To declare and direct that the independent rights of the Applicant herein as a hotel operator based on the independent arm's length Management Agreement and License Agreement remain unaffected by the CIRP in relation to the Corporate Debtor and the said rights cannot be interfered with, in manner by and through a Resolution

Plan and resultantly direct the Respondent No. 4 to not to approve any Resolution Plans that provide any Hotel Operator other than the Applicant.

Prayers in IA 61/2019 by Mr. L.N.Sharma, Ex-Director

5. The present Application bearing IA No. 61/2019 is filed U/s.60(5) of IB Code, by Mr. Lakshminaryana Sharma(LN Sharma), Shareholder, Promoter cum Director of the Corporate Debtor holding 84% of the equity shares making the following prayers:-

   a. Reject the resolution plan placed before CoC in the 20th CoC meetings held on 18.12.2018 which was approved by 68.26 % of total voting share of Financial Creditors through E-voting held on 20.12.2018 and 21.12.2018
   b. Pass necessary directions to consider the OTS proposal submitted by Applicant along with revised proposal, if any submitted by Blackstone by outbidding process laying down base / floor price of Rs.415 cr. as decided in CoC meeting held on 28/09/2018.
   c. Pass necessary directions to members of CoC to assign reasons for their approval / rejection of any proposal including OTS of applicant.
   d. Pass an order directing the COC not to consider the vote of Bank of Baroda from voting in all the COC meetings held hereinafter due to conflict of interest.
   e. Pass other necessary order/s as it may deem fit and proper in the present circumstances of the Case.

Prayer in IA 960/2019 by CEC, Operational Creditor

6. The present Application bearing IA No. 960/2019 is filed pursuant to the order of Hon'ble NCLAT dated 23.10.2019, by Consolidated Engineering Company U/s.60(5) seeking following prayers:-

   (a) The impugned resolution plan, in its present form and as approved by the Committee of Creditors, is declared to be contrary to the law, including the I&B Code, CIRP Regulations and MSMED Act and hence rejected in the present form;
   (b) Appropriate modifications are made in the Resolution plan are made to ensure that the resolution plan ensure payment in full of the

entire claim of the Applicant with no deductions whatsoever in light of the provisions of the MSMED Act;

(c) On a strict demurrer, without prejudice, and in alternate to prayer mentioned in point (b), the Applicant should not be discriminated qua other creditors. Additionally, provision must be made in the plan for Applicant to get its monies if there are additional cash flows into the company, including due to the various pending arbitration proceedings;

(d) Under the plan, Applicant must be given an opportunity to complete Tower II on the terms and conditions mentioned in the contract executed between the Applicant and the company, subject to reasonable price escalation.

(e) The Applicant's admitted claim of at least INR 15.92 cr be considered as admitted debt

(f) Any further orders may be passed in the interest of justice.

<u>Prayers in IA 961/2019 by IIPL, Operational Creditor</u>

7. The present Application bearing IA No. 961/2019 is filed pursuant to the order of Hon'ble NCLAT dated 23.10.2019, by Infinity Interiors Pvt. Ltd U/s.60(5) seeking not to approve the Resolution Plan in the present form and ensure that the Applicant is paid in proportion to the Financial Creditors, and thereby balance the interests of all the Stakeholders and not to discriminate between the Operational Creditors and Financial Creditors and between similarly situated Operational Creditors and pass such order or orders as this Adjudicating Authority may deem fit and proper in the circumstances of the case.

<u>Prayer in IA 950/2019 by NCC Ltd, Operational Creditor</u>

8. The present Application bearing IA No. 950/2019 is filed U/s.60(5) by NCC Limited praying not to approve the Resolution Plan in the present form and ensure that the Applicant is paid in proportion to the Financial Creditors, and thereby balance the interests of all the Stakeholders and not to discriminate between the Operational Creditors and Financial Creditors and between similarly situated Operational Creditors and pass such order or orders as this Adjudicating Authority may deem fit and proper in the circumstances of the case.

Submissions of RP for approval of Resolution Plan are as under:

9. Brief submissions made by RP in relation to the Resolution Plan vide IA No.32/2019 are as under:-

   a. That the present Corporate Debtor was admitted for CIRP on 27.02.2018 and Mr. Subodh Kumar Agarwal was appointed as the Interim Resolution Professional ('IRP'). The Interim Resolution Professional was confirmed as the Resolution Professional by the CoC with 86.82 % voting share of the financial creditors and this Adjudicating Authority confirmed as RP vide its order dated 04.04.2018.

   b. That pursuant to the public announcement the committee of Creditors ('CoC') was constituted as per Section 18(1)(c) and 21(1) of the Code read with Regulation 17(1) of the CIRP. The following are the CoC members:

      (i) Bank of Baroda
      (ii) Punjab National Bank,
      (iii) Dena Bank,
      (iv) Punjab and Sind Bank
      (v) Corporation Bank,
      (vi) Syndicate Bank,
      (vii) Jammu and Kashmir Bank Ltd., and
      (viii) Bank of Maharashtra

   c. That the RP on 30.04.2018 invited Expression of Interest from prospective Resolution Applicants to submit a Resolution Plan for the Insolvency Resolution of the Corporate Debtor. The last date for submission of EOI was 18.05.2018. The Request for Resolution Plan (RFRP) was revised on 25.06.2018 along with evaluation matrix. Pursuant to the EOI, a total of four Resolution Applicants have submitted their bids. On 24.09.2018, the CoC declared H1(BREP Asia II Indian Holding Co. II (NQ) Pte Ltd. (Blackstone)) and H2 (Asset Care and Reconstruction Enterprise Limited (ACRE)). The H1 and H2 were declared by complying with the mechanism agreed and both the shortlisted applicants participated in the outbidding process. As there

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was no favourable outcome, the bidding was closed and none of the applicants was declared as a successful Resolution Applicant.

d. That a fresh advertisement was issued on 6.10.2018, to call for EOI. In pursuance of the fresh advertisement, two Resolution Applicants had submitted their EOI. Accordingly, information Memorandum and Evaluation Matrix were provided to the Two (2) Potential Resolution Applicants. The Resolution Applicants who submitted their Resolution Plans were:

(i). Sattva Developers Private Limited
(ii). BREP Asia II Indian Holding Co II (NQ) PTE LTD

e. That during 18th meeting of the CoC held on 24.10.2018, which was adjourned to 31.10.2018 and concluded on 13.11.2018 the RP facilitated the opening of the sealed bids submitted by the two (2) Potential Resolution Applicants, in the presence of all the members of the CoC. The Resolution Plans were placed before the members of the CoC for consideration and evaluation.

f. That it was resolved during the meeting of the CoC held on 18.12.2018 through e-voting which concluded on 21.12.2018, that the Resolution Plan submitted by Resolution Applicant i.e., M/s. BREP Asia II Indian Holding Co II (NQ) PTE LTD is the most feasible plan considering the interest of the Corporate Debtor and all its stakeholders. The Resolution Plan dated 17.12.2018 submitted by the Resolution Applicant was approved by the CoC vide e-voting dated 21.12.2018. The total votes cast in favour of the Resolution Plan submitted by the Resolution Applicant is 68.26% while 22.47% voted against the Resolution Plan and 9.27% of the Financial Creditors abstained from voting.

g. That the Resolution Applicant is M/s. BREP Asia II Indian Holding Co II (NQ) PTE LTD which is fully owned by BREP Asia II Indian Super Holding I (NQ) Pte. Ltd. (a private company incorporated in Singapore), which in turn is fully owned by BREP Asia II Holding I (NQ) L.P. (an exempted limited partnership incorporated in the Cayman Islands). The flagship company of the Resolution Applicant is Blackstone Group L.P. The holding company of the Resolution Applicant is one of the largest hospitality sector investors across the world.

h. Brief contents of the Resolution Plan are as under:

A. FINANCIAL PROPOSAL:

i. The Resolution Applicant proposes to infuse the Financial Commitment (detailed in the Table A below) into the Corporate Debtor, directly or indirectly, through equity or through equity and / or debt. The break-up of the amount INR 584 Crores to be invested by the Resolution Applicant for various purposes are detailed as follows:

Table A

Particulars	Amounts (INR crores)
1. Workmen Liquidation Dues, if any. 2. Employee Liquidation Dues, if any. 3. Liquidation Value of Operational Creditors and Other Creditors, if any. 4. Any other Liquidation Value required to be paid under the Code in priority to the amounts owed to the Financial Creditors, if any. (Amounts mentioned in serial numbers 1, 2, 3 and 4 above collectively referred to as "**Mandatory Payment Amounts**"). 5. Actual Special Operational Creditor Amount. 6. Upfront FC Amount.	384 "Upfront Financial Commitment"
a. Payment of excess CIRP Costs to the extent not met out of the Company's operating cash flows; b. Capex and Working Capital Requirements, on a need to do basis; and c. Transaction related expenses	180 "Capex Financial Commitment "
Identified Bank Guarantees	20.02
Financial Commitment	584.02

ii. Upfront Financial Commitment: That the Resolution Applicant proposes that INR384 Crores will be Upfront Financial Commitment which will include liquidation value payable to the Workmen, Employee, Financial Creditors, Operational Creditors (Mandatory Payment Amounts). This amount will also include the amounts payable to the Department of Youth Advancement, Tourism and

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Culture (YATC) and of Shilparamam Arts, Crafts and Cultural Society (Society).

B. CONDITION PRECEDENT:-

i. That the obligation of the Resolution Applicant to implement the Resolution Plan shall commence from the date the Resolution Plan is approved by the Adjudicating Authority, subject to completion, or waiver by the Resolution Applicant, of the following conditions i.e., receipt of the written consent of the Department of Youth Advancement, Tourism and Culture of the Government of Andhra Pradesh ("YATC") and of Shilparamam Arts, Crafts and Cultural Society ("Society", and together with YATC, "GoT") for change of control and restructuring of the Company ("Condition Precedent"). The Resolution Applicant shall make all efforts as may be commercially reasonable to procure the satisfaction of the Condition Precedent as soon as practicable following the issuance of the LOI, and in any case within 1 (one) year of the NCLT Approval Date. In the event on satisfaction / or waiver of the Condition Precedent then the Resolution Applicant will within 10 days thereof notify the Resolution Professional and the COC in writing ("CP Satisfaction Notice") and also set out the date(s) on which it proposes to complete the steps set out in Schedule 2 (*Resolution Plan Steps*). If due to no fault of the Resolution Applicant, the Condition Precedent is not completed, the Performance Bank Guarantee will be returned to the Resolution Applicant and the Resolution Applicant would cease to have any obligations or liability arising out of the Resolution Plan.

C. CAPEX FINANCIAL COMMITMENT:

i. That in addition to the Upfront Financial Commitment, the Resolution Applicant will make available an amount of INR 180 Crores as Capex Financial Commitment to meet the working capital requirements of the affairs of the Project, including the construction of Tower II, and to maintain them as a going concern.

D. CIRP COST:

i. That the CIRP Cost that is unpaid shall be paid through existing operational cash flows of the Company and to the extent this is not sufficient, the incremental amount will be paid out of the Capex Financial Commitment. The CIRP Cost will be paid within 30 days of the NCLT Approval Date.

E. TREATMENT OF OPERATIONAL CREDITORS AND OTHER CREDITORS:

i. That if the Resolution Applicant is directed to pay any additional amounts to the Operational Creditors, those payments will be adjusted from the Upfront FC Amount as mutually agreed between the CoC and Resolution Applicant. Further, once the Actual Special Operational Creditor Amount is ascertained, the Resolution Applicant and CoC agree that, subject to no additional amounts to be paid to the Operational Creditors, if the Actual Special Operational Creditor Amount is: (A)equal to or less than the Society Claim, the Resolution Applicant shall (in addition to the Upfront Payment Amount) pay the Financial Creditors an amount of INR 17,00,00,000 (Rupees Seventeen Crores only); or (B) more than the Society Claim, the Resolution Applicant shall (in addition to the Upfront Payment Amounts, if any) pay the Financial Creditors an amount equal to the difference between: (a) INR 17,00,00,000 (Rupees Seventeen Crores only); and (b) 50% (fifty percent) of the incremental amounts to be paid over and above the Society Claim to the GoT.

F. EMPLOYEES/ WORKMEN:

i. That the Liquidation Value ascribed to such part of the Employees and Workmen Dues, if any, as are payable to workmen for a period of 24 (twenty four) months immediately preceding the Insolvency Commencement Date and are outstanding as on the Insolvency Commencement Date ("Workmen Liquidation Dues") will be paid out on or before the expiry of 30 (thirty) days from the NCLT Approval Date as required under the Code. The Resolution Applicant shall also pay the Liquidation Value to any employees other than workmen for the period of 12 months preceding the Insolvency Commencement Date ("Employee Liquidation Dues"). Both Workmen Liquidation Dues and Employee Liquidation Dues shall be paid out of the operating cash-flows of the Company, if the cash – flows are inadequate, the incremental amounts will be met from the Upfront Financial Commitment.

G. OUTSTANDING GOVERNMENT DUES, TAXES, ETC:

i. That there are no dues (other than the Actual Special Operational Creditor Amount) payable to Governmental Authorities ("Governmental Authority Dues"). The Liquidation Value of the Company will be insufficient to satisfy the claims of even the Financial Creditors in full and therefore will likely be insufficient for payment of dues payable to

the Governmental Authorities in accordance with the provisions of the Code and therefore NIL amount is payable to Government Authorities. Any dues payable to the Governmental Authority will be deemed to be permanently extinguished as on the NCLT Approval Date.

H. TREATMENT OF FINANCIAL CREDITORS:

i. That the liquidation value of the unsecured Financial Creditors is NIL. The amounts due to unsecured Financial Creditors of the Company will be treated as Unsustainable Converted Debt and will be deemed to be permanently extinguished as on the NCLT Approval Date. The Financial Creditor upon payment of Admitted Debt no later than 3 (three) days of payment of the Upfront Payment Amount, shall issue a no dues certificate (No Dues and Charge Release Certificate) and release of encumbrances, interest and charges created on the assets of the Company. After the receipt of the no dues certificate from Financial Creditors, all rights of any actual or potential Financial Creditors will be deemed to be extinguished as on the NCLT Approval Date.

I. BANK GUARANTEES:

i. That until the Resolution Applicant acquires the control over the Company, the Resolution Professional is required to take steps to ensure validity of the Bank Guarantees is maintained until Effective Date. After the Effective Date, the Resolution Applicant shall, if required, replace the Identified Bank guarantees with the counter bank guarantees.

J. PROPOSAL FOR EXISTING SHAREHOLDERS:

i. That Liability of the Existing Shareholders under guarantee and the security provided by it will continue to exist and the right of the CoC against the Existing Shareholders will subsist.

K. TERM OF THE RESOLUTION PLAN AND IMPLEMENTATION SCHEDULE:

i. That the Resolution Applicant proposes to use commercial reasonable efforts to satisfy the Condition Precedent within a period of 1 (one) year from the NCLT Approval Date. The Resolution Applicant will make all payments as contemplated in the Resolution Plan no later than 30(Thirty) days from the issuance of CP Satisfaction Notice.

L. TREATMENT OF ONGOING LITIGATION AND VIOLATION:

i. That the Award passed by the Arbitral Adjudicating Authority in the ongoing arbitration proceedings between EIH and the Company, prior to

the Effective Date, such amounts shall be utilized towards payment of the Sustainable Debt. In the event, the Award is passed after the Effective Date, the Company shall distribute the Award Amount to the Financial Creditors upon such terms agreed between the Resolution Applicant and Financial Creditors. In the event the Adjudicating Authority passes any Award adverse to the Company's interest, liability arising out of such Award shall be deemed to be extinguished.

M. STAGES INVOLVED IN IMPLEMENTATION OF THE RESOLUTION PLAN:-

STEPS	DETAILS
Appointment of Steering Committee **Independent O&M Contractor**	From the date of approval of Resolution Plan of RA by NCLT up to the effective date: A Steering Committee will be appointed to oversee the functioning of the Company. An independent O&M contractor (nominated by the Resolution Applicant, and appointed by the Resolution Professional which shall be an entity other than EIH) ("**O&M Contractor**") as set out in the Resolution Plan.
Details of use of Upfront Financial Commitment	Upon satisfaction of the Condition Precedent: (a) The CIRP Costs, to the extent unpaid, shall be paid through the existing operational cash flows the Company. To the extent this is not sufficient, the incremental amounts will be paid by the Resolution Applicant from the Capex Financial Commitment; (b) The Unsustainable Converted Debt shall be converted into share capital of the Company, and thereafter through the process of Capital Reduction, all the shares of the Existing Shareholders and the shares allotted pursuant to the conversion of the Unsustainable Debt shall stand cancelled. To the extent Government Authority Dues cannot be converted into Equity Shares, the Unsustainable Debt in relation to the

STEPS	DETAILS
	Government Authority Dues will stand extinguished. (c) The Resolution Applicant shall infuse sufficient amounts into the Company through Capital Instruments, to meet and pay in the following order of priority: (i) first, the Mandatory Payment Amounts, (ii) second, the Actual Special Operational Creditor Amount and payment to the Operational Creditors, if any, and (iii) third, the Upfront FC Amount.
SPV funding	If the Resolution Applicant funds, the Financial Commitment through an SPV: (a) all the assets (which shall include the Capital Instruments), and liabilities of the SPV shall be transferred to the Company consequent to a Merger of the SPV with the Company; and (b) the Company shall issue shares to the shareholders of the SPV in consideration for the Merger.

N. MODE AND MANNER OF PAYMENT:

(i). The Resolution Applicant proposes to make all payments as contemplated under the Resolution Plan, no later than 30 (thirty) days from the date of completion of the Condition Precedent. The Resolution Applicant will use all commercially reasonable efforts to complete the Condition Precedent within 1 (one) year from the NCLT Approval Date.

(1) The Special Operational Creditor shall be paid the Actual Special Operational Creditor Amount;

(2) The Financial Creditors shall be paid the Upfront Payment Amount on a pro rata basis in the ratio of their Financial Debt to the Admitted Financial Debt;

(3) The Operational Creditors (other than the Special Operational Creditor), employees and Workmen and Other Creditors shall be paid NIL.

O. That the Resolution Applicant to enable implementation of the Resolution Plan, may incorporate a SPV in India. The SPV shall be funded by the Resolution Applicant. The SPV shall utilize the funds to subscribe to Capital Instruments of the Company and to settle the Upfront Financial Commitment and any amounts as specified.

P. That the date on which the Resolution Applicant acquires the complete shareholding and control of the Company will be the Effective Date.

Q. That the Resolution plan further contemplates the following terms upon being approved by the Adjudicating Authority :

(a) The share transfer shall be deemed to be completed;

(b) The preference share capital shall be extinguished, and the equity share capital shall be deemed to be reduced without any approval of the Shareholders or any court or Adjudicating Authority ;

(c) The amendments, if any required to the Memorandum of Association and Articles of Association of the Corporate Debtor shall be deemed to have been approved without any further approval of the shareholders;

(d) The Resolution Plan once approved by the Hon'ble Adjudicating Authority, shall be binding on the Corporate Debtor, director, employees, members, creditors, guarantors and all stake holders involved with the Corporate Debtor. The Resolution Plan upon approval shall be irreversible and unconditional on Resolution Applicant and all other stake holders involved with the Corporate Debtor.

R. <u>INTEREST OF STAKEHOLDERS:</u>

i. That in compliance with Regulation 38 (1A) of the CIRP Regulations, it has been set out in the Resolution Plan submitted by Resolution Applicant that the plan operates in best interest of all stakeholders as the financial creditors are being paid the best optimum value attributable to them and further, as a going concern, huge employment opportunities will be generated on full-fledged operation of the Tower II of the Corporate Debtor.

S. The Resolution Plan also provides that the Resolution Applicant will engage any global hotelier like Hilton or Marriott to re-brand and manage the hotel, in lieu of EIH. A renowned brand with a better management team can help in uplifting the performance of the hotel.

10. That certain disputes have arisen between the corporate debtor and hotel operator with respect to the Management Agreement (incorporating

Technical Assistance Services) between Corporate Debtor and EIH Ltd dated 5thAugust 2006. On account of issuance of termination notice by the corporate debtor, EIH Ltd initiated and invoked the arbitration clause. Pursuant to said initiation of the arbitration proceedings, an arbitral panel comprising of Hon'ble Jus. S. Raveendran, Hon. Jus. Sri Passat, Hon'ble Jus. Jaggannatha Rao has been formed under the provisions of Arbitration & Reconciliation Act 1996.

11. That pursuant to the MOU entered into by and between My Home Group, VBC Group and EIH Limited the lead consortium My Home Group has submitted a bid for the development of the Project to the Govt. Of Andhra Prasdesh (now GOT) the Corporate Debtor (by way of a SPV) has entered into various lease agreements and DMA entered with the erstwhile Govt.of Andhra Pradesh (now GOT) was under the BOT model which forms part of the overall tourism policy of the Govt which envisaged the all-round sustainable economic growth and projecting the brand of Hyderabad. It is further stated that in view of the various problems being faced by the corporate debtor and in the advent of the corporate insolvency resolution process, it is pertinent to mention that a notice/direction may be given to the Govt. of Telangana who is a crucial stake holder in the project more so when the Govt. is the owner/lessor of the land on which the Hotel project is built and being operated.

12. RP further stated that a direction may be given to the Govt. of Telangana to consider the waiver or concessions as sought under the approved resolution plan by COC and to take all actions and execute all documents required to record the arrangement which has been reached with the resolution applicant which is very vital for the speedy turnaround of the corporate debtor from the financial and operational insolvency.

13. That in response to the preliminary notice for termination issued by the YATC (GOT), the corporate debtor has submitted various representations and sought the co-operation of former for extending the waiver of project related overdue payments which are to be paid to the GOT, and has taken all the necessary steps in submitting the necessary returns/ information/ documents to the GOT at various stages of project period. However, there was no timely and appropriate action which was initiated by the GOT which was also one of the crucial factors that has led the corporate debtor into insolvency.

14. That due to various actions initiated by the GOT Viz, issuance of notices indicating the termination of the lease agreements, invoking the financial guarantees which have been submitted in compliance with the DMA, and other measures pertaining to financial and project related liabilities and defaults, the corporate debtor has approached various judicial fora to stall any adverse action from the former. It is pertinent to mention that as the project related lease agreements and DMA stipulated "Arbitration Clause" and the corporate debtor has initiated measures to invoke the same and a sole arbitral panel under the Chairmanship of Hon'ble Jus. Sri V.V. Subbarao was formed on 12/03/2018 to consider various issues /disputes between the parties and adjudicate the same.

15. That the approved resolution plan submitted by the COC runs the risk of failure if an appropriate direction(s) is/are not issued to the GOT (Govt. of Telangana) and the new management which was proposed under this approved resolution plan by the COC, would like to avoid the legal hassles in the form of litigation with the main stake holder which in this case is the GOT.

16. That the term of the lease agreements between the YATC and the Corporate Debtor will expire on August 1st 2041 (ie,.33 years, (Thirty three years) from August 1st 2008) . The lease rentals are being paid from May 10, 2007. It is further submitted that the NCLT may direct GOT to extend or renew the tenure of each of the lease agreements until 1st August 2074, for another term of 33 years as it is very vital and essential, as a great amount of time has already elapsed due to delay in construction and the commissioning certificate was only provided in the month of May 2014. Further it is submitted that the construction of the two towers of the building and ancillary buildings have not yet been completed.

17. That the contents of the Resolution Plan submitted by Resolution Applicant meets all the requirements of the Insolvency and Bankruptcy Code, 2016 and the CIRP Regulations and does not contravene any of the provisions of law for the time being in force as confirmed by Resolution Applicant in its covering letter and the undertaking appended to the Resolution Plan. The Resolution Plan also caters to the interest of all the stakeholders. The Resolution Plan contemplates infusion of capital either through equity or debt which would enable the Corporate Debtor to recover from its financial stress. The Resolution Plan has also been approved by the majority of CoC members.

18. That the Resolution Plan has been drawn up in due compliance with the requirements as contained under Section 30(2) of the Code and the CIRP Regulations.

19. That the grant of all prayers, concessions, reliefs, and dispensations as set out herein in this application is vital for the speedy turnaround of the corporate debtor as going concern and in line with the objectives of the IBC 2016. Therefore, in the interest of company and all its stakeholders it is submitted that the Adjudicating Authority may consider the granting of all the prayers, concessions, reliefs, and dispensations as set out herein in this application.

OBJECTIONS TO THE RESOLUTION PLAN BY SUSPENDED DIRECTOR:

20. Against the said Resolution Plan, an Application bearing IA No. 61/2019 was filed by the Suspended director, Mr. Laxmi Narayan Sharma, in short "LN Sharma", *inter-alia,* praying as under:

a. Reject the resolution plan placed before CoC in the 20th CoC meetings held on 18.12.2018 which was approved by 68.26 % of total voting share of Financial Creditors through E-voting held on 20.12.2018 and 21.12.2018

b. Pass necessary directions to consider the OTS proposal submitted by Applicant along with revised proposal, if any submitted by Blackstone by outbidding process laying down base / floor price of Rs.415 cr. as decided in CoC meeting held on 28/09/2018.

c. Pass necessary directions to members of CoC to assign reasons for their approval / rejection of any proposal including OTS of applicant.

d. Pass an order directing the COC not to consider the vote of Bank of Baroda from voting in all the COC meetings held hereinafter due to conflict of interest.

e. Pass other necessary order/s as it may deem fit and proper in the present circumstances of the Case.

A. The submissions made by LN Sharma/Applicant in brief are as under:

a. That Pursuant to declaration of account of corporate debtor as NPA on 31/12/2015 under the then provisions, number of meetings were held by joint lenders forum wherein proposal for restructuring of the loan as well as alternate of acceptance of OTS of Rs. 500 Crores which was subsequently enhanced at the request of JLF to Rs. 505 Crores were under consideration. While restructuring / OTS proposal was under

active consideration IBC was notified with effect from 28/05/2016 and on 16/10/2017 Bank of Baroda without consent of fellow lenders forming part of JLF, filed present Company petition under section 7 of Code and by following adamant approach insisted for scrapping of restructuring / OTS so to seek resolution through IBC.

b. That Mr. LN Sharma challenged the action of Bank of Baroda of filing present Company petition under section 7 in the writ jurisdiction before Hon'ble High Court by relying upon the various circulars issued by Reserve Bank of India permitting the restructuring of the loan. Bank of Baroda before the Hon'ble High Court stated that "*the OTS can be placed before the IRP under the code for consideration and decision"15.* Hon'ble High Court dismissed the writ petition and permitted LNS to place OTS before the lenders.

c. That on 27/02/2018 company petition under section 7 IBC was admitted by this Adjudicating Authority and in para 8 this Hon'ble Adjudicating Authority observed and directed that *" there cannot be any prejudice likely to cause to the respondent by initiating the instant CIRP and whatever grievances/contentions of the respondent can very well be placed before the interim resolution professional and all the financial creditors will be formed committee of creditors to decide the CIRP. The other lenders of respondent can also place their stated acceptance of OTS etc. before the COC*".

d. <u>COC RESPONSE TO SETTLEMENT</u>:

i. That the meeting held on 18/04/2018, in this meeting BOB stated *"if OTS is accepted, it defeats the whole process of NCLT and hence may not be feasible*". Whereas PNB was willing to consider if recovery is more than recovery in CIRP and other banks sought discussion with their higher authorities.

ii. That the meeting held on 24/04/2018, BOB stated *"that CIRP process is to be continued and the discussion on OTS will not be feasible*".

iii. That on 31.07.2018 lenders meeting was held wherein J&K Bank informed that bids received are not on expected line and OTS can be looked into.

iv. That on 25.03.2019 21st COC, a legal opinion was taken by RP for consideration of settlement under section 12A. Legal opinion was given in favour of consideration of settlement but COC took no action thereon.

v. That the Objective of IBC is the maximization of value of assets of corporate debtor and Hon'ble NCLAT in Company Appeal (AT) (Insolvency) 139/2018 considering comparison of offer of settlement and plan approved and by order dated 17/10/2019 directed to file comparative chart. Hon'ble NCLAT in Standard Chartered Bank Vs Satish Kumar Gupta also looked into all the aspect of the resolution plan including the distribution to the various claimants before approving the plan. Therefore this Adjudicating Authority u/s 31 of Code is obligated to verify whether plan filed for approval satisfy objects of code and is in accordance with provisions of code and regulations issued thereunder so to scuttle collusive and fraudulent acts of giving away corporate debtor at throw away price.

e. DISCRIMINATION AMONG OPERATIONAL CREDITOR:

i. That as per para 8 of resolution plan, operational creditors have been divided into two, special operational creditor and others. Special operational creditors have been defined as YATC and/or society. As per plan zero amount is offered to operational creditors other than special creditors whereas special creditors have been offered to pay 42 Crores (the claim accepted by COC). This discrimination is contrary to section 30(2) read with CIRP regulation 38(1) and 1A stipulating amount due to the operational creditors shall be given priority in payment over financial creditors.

f. NO PROVISION FOR PAYMENT TO OPERATIONAL CREDITORS: That clause 1.11 of RFRP stipulates mandatory contents of resolution plan and clause 1.11.1(ii) inter alia reads "*liquidation value due to operational creditors and provide for such payment in priority to any financial creditor which shall in any event be made before the expiry of thirty days after the approval of a resolution plan by the Adjudicating authority.*"

g. TERMS OF RESOLUTION PLAN:

i. That para 1.2.3 of Resolution plan provides for 'NIL payment' to operational creditors and other creditors including employees without even mentioning about liquidation value.

ii. That payment to operational creditors provides NIL amount.

iii. That as per plan submitted on 19/10/2018, which was considered in CoC meeting held on 4th December 2018, Rs. 5 crores was reserved for operational creditors which is reduced to NIL in plan approved.

iv. That as per the minutes of last meeting of COC held on 18.12.2018, claim admissible of Shilparamam is Rs. 41.99 Crores which is subject to Arbitration whereas nothing is stated about claim of YATC.

v. That no payment has been proposed to employees and operational creditors other than special operational creditors because it is expected that liquidation dues to be NIL. Entire plan is silent about liquidation value therefore basis of denying any payment are vague and ambiguous, in support of the same, reliance is placed on Hon'ble NCLAT in para 23 of Binani Industries Vs Bank of Baroda.

h. Resolution Plan being contingent contravenes IBC Code and CIRP Regulations:

i. That the Resolution Plan submitted does not satisfy conditions mandated in view of the fact that: -

- As per para 2.1.5 of RFRP resolution plan shall be considered non responsive if "*the resolution plan submitted by the resolution applicant is conditional in nature*"

- As per clause 1.9.4 of RFRP performance guarantee furnished by resolution applicant can be returned only in two situations :-

'*Within 7 days of receipt of certified true copy of the order of the Adjudicating authority, if the resolution plan of the successful resolution applicant is rejected by the Adjudicating authority ;or*

When the Successful resolution applicant, as per the definitive agreements and the resolution plan,'

i. The plan is contingent on fulfilment of condition precedent as stated in para 6.1 of the plan:

- As per clause 6.1(b) of plan if condition precedent is not completed to the satisfaction of the Resolution Applicant within one year of the NCLT approval date, notwithstanding anything contained in the Code, EOI or RFP the COC shall return the performance bank guarantee.

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- As per clause 6.2.1 the resolution applicant agreed to complete the steps for implementation of resolution plan only upon completion of condition precedent and issuance of condition precedent satisfaction notice by resolution applicant.

j. That the Resolution Applicant in the plan provided prayers to be approved by NCLT which includes extension of lease by another 33 years, extinguishment of all outstanding taxes payable to State or Central Govt., continuation of moratorium until implementation of resolution plan, closure of all investigations or proceedings and as per clause 7.5 of plan all condition precedent have been converted to prayer.

k. That in clause 3 schedule II Resolution applicant reserved its discretion to implement the resolution plan by incorporating SPV in India and under clause 6 of Schedule II proposed merger of SPV without taking any steps provided under law governing merger without providing the details of the entities to be merged which is one of the condition precedent to satisfy the entitlement under section 29A of Code, so much so RP in prayer (xiv)(c) prayed for passing an order to sanction merger without any detail of entities to be merged.

l. That the Resolution Applicant in clause 4.1.1 and 4.1.4 of resolution plan demanded to continue the CIRP process post approval of the Resolution plan by the NCLT till implementation of the same which is contrary to the provisions of the code. In support reliance is placed on judgment of Hon'ble SC in C.B. Gautam Vs. UOI and para 71 of judgment of Hon'ble Supreme Court in K. Sashidhar Vs Indian Overseas Bank.

m. <u>THE PLAN IS NOT FEASIBLE AND VIABLE:</u>

i. Regulation 38(3)(b) mandate that resolution plan shall demonstrate that it is feasible and viable whereas resolution plan in consideration is neither feasible nor viable and COC grossly failed in considering feasibility and viability of the plan and considered the plan as mode of recovery of its debt which is contrary to the object of IBC.

n. <u>THE PLAN DOES NOT ADDRESS CAUSE OF DEFAULT</u>:

i. That the Regulation 38(3)(a) mandatorily require that resolution plan shall address the cause of default whereas plan under consideration

sought concessions, waiver and immunity without even looking into cause of default but also from future and possible defaults.

ii. That COC in their 14th meeting held on 28/09/2018 decided to have two base/floor base Rs. 415 or Rs. 400 Crores and decided to cancel the existing bids being less than floor price. Having cancelled the bids, COC decided to go for rebidding but in the rebidding completely given go bye to the base/floor price and accepted plan with 384 Crores with upfront payment out of which Rs. 16 Crores to be paid back out of accruals and Rs. 42 Crores paid to Special Operational Creditors thereby leaving behind Rs. 326 Crores payable to financial creditors against the settlement offer of Rs. 430 Crores.

iii. That in fact, resolution applicant has offered peanut in view of the fact that: -

(i) No effect has been taken of recovery of Rs. 3.43 Crores paid in excess to EIH Ltd. contrary to interim order passed with consent of EIH Ltd. by Hon'ble Arbitral Adjudicating Authority for which IA 537/2018 filed by RP is pending adjudication before this Hon'ble Adjudicating Authority . The amount claimed of Rs. 3.43 Crores has reached to Rs. 30 Crores.

(ii) No effect has been taken of the arbitration claim filed by corporate debtor against EIH Ltd, YATC, American Express amounting to Rs. 350 Crores.

(iii) No effect has been taken of the claim against United Bank of India pending before High Court for Rs. 80 Crores.

(iv) No effect has been taken for suit of recovery of Rs. 130 Crores against IDBI Bank.

o. <u>NO DETAIL OF DISTRIBUTION OF FUNDS PROVIDED IN PLAN</u>:

i. That the plan is silent about distribution of funds among even financial creditors and special operational creditors. Contingent payments are proposed without any clarity. It is settled proposition of law that clear and unambiguous distribution of funds is one of the mandatory condition of Resolution Plan. It is also settled proposition of law that authority conferred by statute cannot be exercised by other authority. Since as per CIRP Regulations 39(3) CoC is empowered to evaluate resolution plan without any power to amend the plan unilaterally. In support reliance is placed on judgment of Hon'ble Delhi High court in SPL's Sidhartha.

p. CONDUCT OF BANK OF BARODA:

i. That BOB to evade consequences of gross misconduct in permitting EIH Ltd. to divert and siphon off funds of corporate debtor to the tune of Rs. 80 Crores which was to be routed through TRA account, by permitting opening of bank account by EIH Ltd. in the name of "Hotel Operation Account – Trident Hyderabad A/c Golden Jubliee" with United Bank of India, Kukatpally Branch, Hyderabad, even without board resolution and consent of corporate debtor preferred filing CIRP and then ensured to handover management of corporate debtor to third party, other than promoters even at throw away price by compromising and ignoring apparent violations of law by forcing and coercing fellow bankers to reach at threshold voting of 66%.

ii. That approval of plan herein is a device to subside all the actions taken by corporate debtor for recovery of excess funds paid to EIH Ltd.

iii. Bank of Baroda appointed BOB Capital Market Ltd., wholly owned subsidiary of BOB as process advisor so to have complete control and information about CIRP to facilitate manipulation in the process of CIRP.

iv. On commencement of CIRP, BOB stopped claiming 32.5% of the gross receipt from EIH ltd. which it was receiving prior to commencement of CIRP under mandate issued by EIH Ltd under interim order passed with consent of EIH by Hon'ble Arbitral Tribunal.

q. Fraud committed by the Resolution Applicants Acting in Concert with each other and in connivance with the resolution professional:

i. Resolution professional despite of having complete knowledge that both the resolution applicants, Black stone and Sattva are common parties having common interest and acting in concert permitted them to participate to vitiate entire process of CIRP. Knowledge of common interest is apparent even on perusal of resolution plan submitted by them so much so that each and every averment made in both the plans are common and even mistake committed in one plan is common in other plan.

ii. Giving up of outbidding process and acceptance of amount lesser than minimum prescribed without any reason or justification is another species of fraud committed.

iii. Non consideration of OTS of promoter of corporate debtor but acceptance of amount less than OTS prima facie evident collateral purpose of carrying out exercise of alleged acceptance of resolution plan.

r. <u>COLLUSIVE ACT OF EIH LTD. AND ITS ATTEMPT TO CONTINUE AS OPERATOR CONTRARY TO SECTION 29A OF CODE.</u>

i. That as explained hereinabove, and as admitted by EIH Ltd., EIH Ltd is promoter and hence is person not eligible under section 29A of Code, to be resolution applicant or part of resolution applicant in any manner.

ii. That the Hon'ble Supreme Court in ArcelorMittal India Pvt. Ltd. Vs Satish Kumar Gupta in para 29 to 63 in detail dealt with the see-through provision including the definition of promoter, control and management. By applying the parameters laid down by Hon'ble Supreme Court it is beyond doubt that EIH Ltd. being promoter cannot be permitted, as condition precedent for consideration of resolution plan, to continue as operator of the Hotel on the precedence of independent person because of execution of separate management agreement. Declaration sought by EIH Ltd. in IA 433/2018, 448/2018 and 447/2018 to declare EIH Ltd. as independent person under section 60(5) of Code, to facilitate EIH Ltd. to continue as operator being contrary to section 29A of Code, and objects of IBC of maximization of value of assets of corporate debtor is not permissible in law.

21. Applicant in Application bearing IA No. 61/2019 filed additional written submissions placing reliance on the Judgment of Hon'ble NCLAT in the Company Appeal (AT) (Insolvency) 139/2018.

22. The Applicant also filed further written submissions inter-alia stating as under:

a. The appellant on 09.11.2019 filed written synopsis in IA 61/2019 and subsequently filed supplementary submission on 14.11.2019. However, on 15.11.2019 Hon'ble Supreme Court pronounced two judgments in Civil Appeal No. 8766-8767/2019 in the matter of ***Committee of Creditors of Essar Steel India Limited Vs Satish Kumar Gupta & Ors*** And ***Municipal Corporation of Greater Mumbai Vs Abhilash Lal & Ors*** and in Civil Appeal no. 6350/2019 in the CIRP of Seven Hills Hospital Pvt. Ltd. Both the judgments pronounced have direct bearing on the pending

application filed by applicant herein therefore, applicant is seeking to place on record second supplementary submissions highlighting the issues decided by Hon'ble Supreme Court and their relevancy in the facts of CIRP of Golden Jubilee Hotels Private Limited.

b. In para 20 to 27 of the judgment, Apex court dealt with the role of Resolution Professional and in para 26, it is held inter alia:

26. " The resolution professional, once he receives a proposed resolution plan, must then conduct due diligence based on the material on record, in order that the prospective resolution applicant complies with Section 25(2)(h) of the Code (which, inter alia, requires prospective resolution applicants to fulfil such criteria as may be laid down, having regard to the complexity and scale of operations of the business of the corporate debtor".

c. In para 27, it is held that Resolution Professional is a professional to collect, collate and finally admit claims of all creditors, which must then be examined for payment, in full or in part or not at all, by the resolution applicant and be finally negotiated and decided by the Committee of Creditors. The Applicant submits that Resolution Professional in the instant case has not carried out any due diligence which is evident from the fact that Resolution Professional placed contingent plan, without any provision of payment to employees or operational creditors, with provisions to return bank guarantee if resolution applicant decides not to go ahead with plan etc. before the CoC and furnished false affidavit under section 30(2) of the Code.

d. Non maintainable prayers made by Resolution Professional in IA 32/2019 filed under section 30(6) of Code make it amply clear that resolution professional failed in discharge of his duties mandated under code and have been acting as agent of resolution applicant by converting conditions precedent of plan as prayer of his application.

e. Hon'ble Supreme Court held that CoC by majority decision has to decide "feasibility and viability" of a resolution plan, which obviously takes into account all aspects of the plan, including the manner of distribution of funds among the various classes of creditors. In the present case, the resolution plan is silent about exact distribution of funds even among the financial creditors and is completely vague and ambiguous qua payment

to so called "Special Operational Creditors". Plan is silent about feasibility and viability so much so that CoC in their meetings remained silent about any discussion on the feasibility and viability. Notwithstanding, perusal of plan suggest that plan is neither feasible nor viable and on the contrary, plan is contingent upon allowing multiple non-maintainable conditions which admittedly have been converted to prayer by Resolution Professional. CoC grossly failed to verify satisfaction of conditions laid down in Regulation 38 of CIRP Regulations, 2016 and sub regulation of Regulation 38.

f. Hon'ble Supreme Court in para 54, held that "there is no doubt that a key objective of the Code is to ensure that the corporate debtor keeps operating as a going concern during the insolvency resolution process and must therefore make past and present payments to various operational creditors without which such operation as a going concern would become impossible".

g. Further in para 46 it is held that *"if nothing is to be paid to operational creditors, the minimum, being liquidation value, which is most cases would amount to nil after secured creditors have been paid – would certainly not balance the interest of all stakeholders or maximize the value of assets of a corporate debtor if it becomes impossible to continue running its business as a going concern. Thus, it is clear that when the Committee of Creditors exercises its commercial wisdom to arrive at a business decision to revive the corporate debtor, it must necessarily take into account these key features of the Code before it arrives at a commercial decision to pay off the dues of financial and operational creditors.* In the present case, as stated in the written synopsis, NIL payment is proposed to employees and operational creditors though in the first plan submitted, provisions was made for payment of Rs. 5 Crore but same was withdrawn in revised plan for the reasons best known.

h. Hon'ble Supreme Court held that *the adjudicating authority may cause an inquiry into the approved resolution plan on limited grounds referred to in section 30(2) read with section 31(1) of Code. In para 46 it is further held that "judicial review of the adjudicating authority that the resolution plan as approved by the COC has met the requirements referred to in section 30(2) would include judicial review i.e. mentioned in section 30(2)€, as the provisions of the Code are also provisions of law*

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for the time being in force". It means that plan must satisfy and confirm to all the provisions of the Code.

i. Section 30(2) mandate, besides other payment of debt of operational creditors, which as per Hon'ble Supreme Court cannot be NIL, management of the affair of corporate debtor after approval of the plan, implementation and supervision of the plan does not contravene any of the provisions of law and confirm to such other requirements as may be specified by the board which have been specified under regulation 38 of CIRP Regulations.

j. Plan approved by COC failed to satisfy conditions of section 30(2) read with regulation 38 of CIRP Regulations and also failed to maximize value of corporate debtor which is evident from acceptance of Rs. 326 Crores upfront in the plan against the offer of applicant of Rs. 430 Crores. At this stage it is relevant to refer clause (iii) of Annexure – 4 of resolution plan which is apparently contrary to section 30(2) of Code, which inter alia reads:

"to pass an order directly that in accordance with section 238 of the Code, any action undertaken pursuant to the resolution plan by the resolution applicant or the company will not require compliance with requirements under any other laws". It further states "the code is a complete code in itself and the NCLT is acting under the code functions as a single window clearance for all actions proposed to be undertaken pursuant to a resolution plan approved by the NCLT".

k. It is apparent that lease cannot be extended unilaterally, lease hold right cannot be mortgaged without the consent of the government. Resolution applicant in clause 7.5 of the resolution plan read with Annexure -4 clause (vii) prayed for waivers from the government of Telangana which is contrary to AIDEA and the terms of lease which reiterated the provisions of AIDEA. Resolution applicant in Annexure – 4 clause (vii)(a)(b) sought directions to create encumbrance on the land in favour of the lenders of corporate debtor which being contrary to AIDEA cannot be permitted as held by Hon'ble Supreme Court in the matter of Municipal Corporation of Greater Mumbai Vs Abhilash Lal & Ors. in civil appeal no. 6350/2019 decided on 15.11.2019 in the CIRP of Seven Hills Hospital Pvt. Ltd. Hon'ble Supreme Court in para 47 of judgment held which inter alia reads:-

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47. In the opinion of this Court, Section 238 cannot be read as overriding the MCGM's right – indeed its public duty to control and regulate how its properties are to be dealt with. That exists in Sections 92 and 92A of the MMC Act. This court is of opinion that Section 238 could be of importance when the properties and assets are of a debtor and not when a third party like the MCGM is involved. Therefore, in the absence of approval in terms of Section 92 and 92A of the MMC Act, the adjudicating authority could not have overridden MCGM's objections and enabled the creation of a fresh interest in respect of its properties and lands. No doubt, the resolution plans talks of seeking MCGM's approval; they also acknowledge the liabilities of the corporate debtor; equally, however, there are proposals which envision the creation of charge or securities in respect of MCGM's properties. Nevertheless, the authorities under the Code could not have precluded the control that MCGM undoubtedly has, under law, to deal with its properties and the land in question which undeniably are public properties. The resolution plan therefore, would be a serious impediment to MCGM's independent plans to ensure that public health amenities are developed in the manner it chooses, and for which fresh approval under the MMC Act may be forthcoming for a separate scheme formulated by that corporation (MCGM).

Reiterating above, counsel for the Ex-Management/Applicant prayed to allow the Application bearing IA No.61/2019 as prayed for.

<u>Objections by EIH Ltd. to the Resolution Plan</u>

23. Three Applications bearing IA No. 433/2018, IA No. 447/2018 and IA No. 448/2018 in IA No. 433/2018 are filed by EIH Limited who is a 16% Shareholder, Promoter and Hotel Operator of the Corporate Debtor. That EIH Limited has preferred the instant Application, aggrieved by the Resolution of the Committee of Creditors that no resolution plan proposing the continuance of EIH as an operator would be considered and all such resolution plans would be treated to be disqualified under Section 29A of IBC. At such meeting pursuant to NCLAT order made on 20.09.2018, the nominee of the Applicant was permitted to be present and despite such nominee's protests regarding such unlawful proposal, the resolution was passed by CoC. Further the Counsel for the EIH Ltd submitted as under:

A. DUAL CAPACITY OF EIH : EIH is associated with Golden Jubilee (hereinafter referred as 'Corporate Debtor') in two capacities:-

i. As a technical partner with 16% shareholding on insistence of Government of Telangana in bidding process.

ii. As an independent Hotel Operator pursuant to Golden Jubilee obtaining consent of Government of Telangana for running the Hotel through separate Management Agreement, instead of itself operating the Hotel.

I. Principal difference is that Golden Jubilee would have itself operated the Hotel under the lease if it so chose – in which case there would be no separate Management Agreement.

II. Such concept of dual capacity is well settled and well recognised in law. Reliance is placed on the following Judgements:

- *Ram Pershad v. CIT [(1972) 2 SCC 696 @Para 7]*
- *Indian Aluminium v. CIT [(1972) 2 SCC 150 @Para 12]*

B. EIH AS OPERATOR:

i. That in its capacity as operator EIH has specific and limited rights only in relation to running the Hotel.

ii. That as such operator it doesn't have any role inside Golden Jubilee (Corporate Debtor). In other words, as an operator it is neither the promoter of Golden Jubilee nor it is in control or management of the business of Golden Jubilee.

iii. The business of Golden Jubilee as a hotel owner was always under control of Core Group having 84% of shareholding.

iv. Supreme Court specifically held in *Arcelormittal India Pvt. Ltd. v. Satish Kumar Gupta [(2019) 2 SCC 1 @Para 53]* that control and management means proactive control and de facto control. Even 26% shareholding was not accepted as being in control.

C. Golden Jubilee has specifically taken a stand in the Management Agreement that EIH has no rights and is only an agent as an operator recognising such separate capacity.

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D. Continuance or otherwise of EIH as the Operator of the Hotel and the Hotel Management Agreement is subject to the outcome of the Pending Arbitration Proceedings.

E. IBC does not affect Third Party Rights:

i. EIH is a distinct third party as Hotel Operator. Resolution Plan under IBC cannot wipe away such third-party rights.

ii. Insolvency estate can neither be enlarged nor diminished because of IBC. Indian law (IBC) doesn't provide for it.

iii. In contrast, US Insolvency Act provides for certain contracts being overridden. IBC does not do so.

iv. Even conceptually worldwide Insolvency/Bankruptcy laws have been not expanded to effect third party rights. Reliance is placed on the following judgements:

- US Supreme Court: *Mission Holdings v. Tempnology* [Dated: 20.05.19]
- Canadian Law: *Bank of Montreal v. Bumper Dev. Corpn.* [*2016 ABQB 363*]
- UK Law: *In Re. Newdigate Colliery Co. [[1912] 1 Ch. 468*
- UK Law: *Principles of corporate insolvency law*, (2011) Sweet & Maxwell by Roy GOODE

F. CoC & RP's Insistence on exclusion of EIH Ltd is illegal as Section 29A does not apply to EIH being an Hotel Operator in future:

i. Section 29A amendment introduced with specific object of barring specific categories of persons from bidding.

ii. EIH is not alleged to be bidding "jointly or in concert with" Blackstone.

iii. That the Blackstone must be shown to be disqualified under Section 29A(j) for discarding its application as ineligible. It is not alleged that EIH would be a promoter or can be in management of Golden Jubilee as a hotel Operator.

iv. That EIH is wrongly contended to assume "in control" of Golden Jubilee's business because it is going to operate a hotel run by Golden Jubilee. This is manifestly wrong for the following reasons:-

- Business of Golden Jubilee as a corporate entity is different from business of one unit belonging to a corporate entity.

- Supreme Court in *Arcelormittal India Pvt. Ltd. v. Satish Kumar [(2019) 2 SCC 1]* dealt with the expression "in control of" and held that it is proactive control and de facto control. Supreme Court referred to the provisions of Companies Act and restricted the IBC meaning of the word control as opposed to Section 2(27).
- The Resolution Plan foresees an office complex being set up which is unrelated to EIH.
- EIH will have no connection with the bank account and surpluses of Golden Jubilee. EIH is not even going to be on the Board of Golden Jubilee which alone is competent to be in management and control.
- A limited right of running the hotel that too with very limited rights of using the hotel funds only for the specified "Gross Operating Expenses" and thereafter taking management fee and leaving all other surpluses with Golden Jubilee will not mean that EIH would be in control of Golden Jubilee's business under Blackstone.

G. That after CIRP started, it is the RP who is controlling the business of Golden Jubilee even while EIH is operating the Hotel dissuades any argument against disqualification being attracted under Section 29A by EIH being shown as future operator.

H. That the insistence on EIH's exclusion is not logical as RP can hand over to Blackstone the business of Golden Jubilee in an "as is where is" condition. If the RP could not throw out EIH during CIRP Process, it is impermissible to do so by approval of Resolution Plan.

I. I.A. No. 32 Prayer – XI Contrary to Resolution Plan

i. Prayer XI in the Resolution Plan is sought seeking termination of the Contract of the Corporate Debtor with EIH.

ii. That there is no power to terminate third party contracts under IBC.

iii. RP and CoC sought to pervert this process by insisting on deliberate exclusion of EIH and seeking interim management through another hotel operator which would be prejudicial to the hotel as there would 3 operators within a span of 13 months if the Resolution Plan is accepted in the present form: - (i)Trident at present; (ii) Intervening operator for 12 months & (iii) Final operator as per Resolution Applicant's choice

J. That on 22.11.2019, the counsel for Applicant/ L.N.Sharma in IA No.61/2019 filed supplementary written submissions to which the EIH Ltd has filed its written submissions inter-alia stating as under:-

K. The Resolution Plan provides for termination of agreements with EIH only if the Adjudicating Authority holds that continuation of EIH as an Operator would be violative of section 29A of IBC. The Resolution Plan is in fact premised on continuation of the arrangement of EIH as an Operator unless such an arrangement is found to be prohibited under section 29A of IBC. The necessity for such a contingent provision, as is evident from the above prayer, has been necessitated by the confusion created by the insistences of the Resolution Professional and the CoC, which insistences are unfounded and unsupported in law.

L. The CoC and the Resolution Applicant in their commercial wisdom have therefore provided contingencies within the Plan which are subject to the order of the Adjudicating Authority in relation to applicability of bar under section 29A of IBC. The provisions of the Resolution Plan providing for Operations of the Hotel by the Steering Committee during the implementation period and subsequently by any Operator engaged by the Resolution Plan are all contingent upon the adjudication of applicability of bar under section 29A to EIH as an Operator.

M. That if the Adjudicating Authority was to hold that the bar under section 29A would not apply to EIH as an operator and thereby protect the independent right of EIH to continue as the Operator of the Hotel, it would not amount to modification of the Resolution Plan, but would merely provide for a certainty in relation to the contingency expressly created under the plan which contingency will only arise if the question of section 29A is held against EIH.

N. That on 22.11.2019, the counsel for Applicant/ L.N.Sharma in IA No.61/2019 filed supplementary written submissions to which the EIH Ltd has filed its written submissions inter-alia stating as under:-

i. The Resolution Plan provides for termination of agreements with EIH only if the Adjudicating Authority holds that continuation of EIH as an Operator would be violative of section 29A of IBC. The Resolution Plan is in fact premised on continuation of the arrangement of EIH as an Operator unless such an arrangement is found to be prohibited under section 29A of IBC. The necessity for such a contingent provision, has been necessitated by the confusion created by the insistence of the Resolution Professional and the CoC, which is unfounded and unsupported in law.

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ii. The CoC and the Resolution Applicant in their commercial wisdom have therefore provided contingencies within the Plan which are subject to the order of the Adjudicating Authority in relation to applicability of bar under section 29A of IBC. The provisions of the Resolution Plan providing for Operations of the Hotel by the Steering Committee during the implementation period and subsequently by any Operator engaged by the Resolution Plan are all contingent upon the adjudication of applicability of bar under section 29A to EIH as an Operator.

iii. If the Adjudicating Authority was to hold that the bar under section 29A would not apply to EIH as an operator and thereby protect the independent right of EIH to continue as the Operator of the Hotel, it would not amount to modification of the Resolution Plan, but would merely provide for a certainty in relation to the contingency expressly created under the plan which contingency will only arise if the question of section 29A is held against EIH.

O. Reiterating above, the counsel for the EIH prayed that the Resolution Plan is to be approved without affecting EIH's independent rights as operator and leaving the contractual rights of parties (including Arbitration results) open to the parties (Golden Jubilee under Blackstone & EIH) to workout independently.

<u>Objections to the Resolution Plan by NCC Ltd.</u>

24. Brief Submissions on behalf of the Applicant bearing IA No. 950/2019 i.e., NCC are as under:

A. That the present Applicant is an Operational Creditor of the Corporate Debtor and has filed its Form-B dated 14.03.2018 detailing all its claims with the RP. It is submitted that the amount due from the Corporate Debtor to the Applicant is Rs. 51,75,95,253/- till 14.03.2018 ("**Claim**"). It is submitted that the Corporate Debtor arbitrarily disregarded the Claim of the Applicant and collated only Rs. 30,20,32,469/- as the claim of the Applicant without any basis. It is submitted that the Applicant herein filed C.A. No. 241 of 2018 against the arbitrary actions of the Resolution Professional in not considering the claim of the Applicant completely and the Hon'ble Tribunal vide its order dated 03.04.2019 directed the Resolution Professional to accept the claim in total.

B. That the Hon'ble NCLAT vide its order dated 12.12.2018 in Company Appeal (AT) (Insolvency) No. 501 of 2018 allowed a representative from the Applicant to observe the proceedings of the CoC.

C. That it came to the knowledge of the Applicant through the minutes of the meetings of the CoC, more specifically the 18th meeting dated 24.10.2018, 31.10.2018, and 13.11.2018 and 19th meeting dated 04.12.2018 that the Resolution Plan approved by the CoC meted out discriminatory treatment to all the Operational Creditors except one Operational Creditor vis-à-vis the Financial Creditors in gross violation of the provisions of the Code.

D. That the Resolution Plan as approved by the CoC by disregarding the amount to be paid for the claims of Operational Creditors is unfair, unjust, discriminatory and falls foul of the decision of the Hon'ble NCLAT in *Binani Industries Limited v. Bank of Baroda*, Company Appeal (AT) (Insolvency) No. 82 of 2018 ("**Binani**"), and affirmed on merits by the Hon'ble Supreme Court in *Rajputana Properties Private Limited v. Ultratech Cement Limited*, Civil Appeal No. 10998 of 2018 dated on 19.11.2018.

E. The relevant portion of the Binani judgment is extracted here,

> "48. If the 'Operational Creditors' are ignored and provided with 'liquidation value' on the basis of misplaced notion and misreading of section 30(2)(b) of the 'I&B Code', then in such case no creditor will supply the goods or render services on credit to any 'Corporate Debtor'. All those who will supply goods and provide services, will ask for advance payment for such supply of goods or to render services which will be against the principle of 'I&B Code' and will also affect the Indian economy. *Therefore, it is necessary to balance the 'Financial Creditors' and the 'Operational Creditors' while emphasising on maximisation of the assets of the 'Corporate Debtor'. Any 'Resolution Plan' is shown to be discriminatory against one or other 'Financial Creditor' or the 'Operational Creditor', such plan can be held to be against the provisions of the 'I&B Code'*"

F. That in the case of *Mecamidi HPP India Private Limited v. Rishi Ganga Power Corporation Limited*, Company Appeal (AT) (Insolvency) No. 773 of 2018, the Hon'ble NCLAT, relying on the judgment in the

Binani case and the judgment of the Hon'ble Supreme Court in the case of *Swiss Ribbon Pvt. Ltd. & Anr. v. Union of India & Ors.* 2019 SCC online SC 73, ("**Swiss Ribbons**") has held that the 'Operational Creditors' have to be given roughly the same treatment as the 'Financial Creditors'.

G. That in the case of *Standard Chartered Bank and Ors. v. Satish Kumar Gupta and Ors*, Company Appeal (AT) (Ins.) No. 242 of 2019 ("**Essar Case**") the Hon'ble NCLAT, while holding that the Operational Creditors have to be given roughly same treatment the Hon'ble NCLAT has also held that:

"Sub-clause (b) of sub-section (2) of Section 30 of the 'I&B Code' mandates that the 'Resolution Plan' must provides for the payment of the debts of 'Operational Creditors' in such manner as may be prescribed 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. That means, the 'Operational Creditors' should not be paid less than the amount they could have received in the event of a liquidation out of the asset of the 'Corporate Debtor'. *It does not mean that they should not be provided the amount more than the amount they could have received in the event of a liquidation which otherwise amount to discrimination.*"

H. Discriminatory treatment among the Operational Creditors:

(i) That the negotiations and discussions between the RP, CoC and RA also discriminate similarly situated Operational Creditors. It is submitted that YATC, an Operational Creditor alone is being paid over Rs. 118.12 crores, while all the remaining 29 Operational Creditors together have been completely ignored in the Resolution Plan. It is pertinent to submit that YATC did not even file a claim before the IRP/RP as required under the Code.

(ii) That the actions of CoC to pay YATC Rs. 118.12 crores as part of the Resolution Plan as against the remaining Operational Creditors clearly shows that the approved Resolution Plan is discriminating similarly situated Operational Creditors.

I. That the Hon'ble NCLAT in Binani case has categorically stated that no resolution plan can discriminate among the similarly situated Operational Creditors. It is therefore submitted that the approval of the Resolution Plan is discriminatory and in violation of the provisions of IBC.

J. Reiterating above, counsel for the Applicant prayed not to approve the Resolution Plan in the present form and ensure that the Applicant is paid in proportion to the Financial Creditors.

<u>Objections to the Plan by CEC and Infinity Interiors Private Limited</u>

25. Brief submissions made by the Applicants in IA No. 960/2019 & 961/2019 i.e., Consolidated Engineering Company and Infinity Interiors Private Limited inter-alia are as under:

A. That as per Applicant, the maxim "roughly the same treatment" has to be interpreted as OC gets more than FC in financial distribution and that also in priority; while FC gets a right over the decision-making with regard to business, operations, etc.

B. That Section 5(20) defines Operational Creditor and 5(21) define Operational debt. Section 30(2)(b) provides for payment of Debt of Operational Creditor. Section 30(2)(b) Explanation - 1 provides, "*distribution in accordance with this Clause shall be fair and equitable to such creditors*".

C. That Regulation 38(1) provides that *amounts due to the Operational Creditor shall be given priority in payment over Financial Creditor.* Regulation 2(1) (hb) defines "Fair Value".

D. That in the case of Swiss Ribbons, it was held that under the Code, OC's should get fair and equitable dealing with priority on payment over FC's.

E. That in the case of Standard Chartered Bank NCLAT relying upon Swiss Ribbon upheld the concept of fair and equitable distribution.

F. That the report of the Insolvency Law Committee relied upon in 2 cases; *Synergies-Dooray* and *Hotel Gaudavan* to illustrate that OC's have been paid their entire dues and in priority over FCs. There is no empirical evidence to show that OC did not receive fair share in CIRP.

G. That in the matter of Binani Industries Limited NCLAT held FC can take haircuts and can be paid in future, while OC's need to be paid immediately.

H. That in 20th meeting of the COC, it records that the total admitted dues of the OC is Rs 105,57,98,553/-.Against the said claim of the OC, RP provided only Rs 5 crores.

I. That the said amount of Rs 5 crores was abysmally low. Clearly OC was not treated fairly or equitably. That the 19th CoC meeting records, *"..... Hence if NCLT directs to pay Operational Creditors in excess of Rs. 5 cr this amount shall be paid from the Financial Creditors amount".*

J. That the Resolution Applicant even withdrew the payment of Rs 5 crores and made it NIL /Zero payment.

K. That the 20th MOM of the COC records that *"in the current plan the payment to Operational Creditors are not there and they have mentioned that if due to regulatory reasons, if RA is directed to make the payment, the incremental amount shall be adjusted with the upfront FC amount in a manner mutually agreed between COC and RA".*

L. That Allocation of NIL /Zero money towards OC is illegal, discriminatory, and inequitable. It is against the law laid down by the Apex Court and against the provision of the Code.

M. That 19th & 20th MOM make it clear that the RP & RA have left the final adjudication of the amount to be paid to the OC on the the Adjudicating Authority.

N. That the Applicant being MSME is entitled for entire dues. It has to be appreciated that the annual turnover of the Applicant is aroundRs.23 crores. It's verified claim towards the Corporate debtor is Rs 20,02,07,112/-. Hence the allocation of Zero money will wipe away almost the entire business of the Applicant.

O. That the Financial haircut would have negligible impact on the FC's. However, non-payment of atleast the admitted amount would have debilitating effect on the Applicant and its business.

P. That in the case of Binani Industries Limited, Hon'ble NCLAT held that:

i. IB Code aims at promoting availability of credit. Hence OC has to be treated well and not discriminated.

ii. IBC does not permit differential treatment between the similarly situated OC's.

Q. YATC is having a dispute with the Corporate Debtor and there is an Arbitration proceeding between them. The IBC proceedings are a settlement Process and not a recovery medium. Hence, Shilparamam /YATC

cannot use arm-twisting methods to get the entire amount claimed by them, which is yet to be adjudicated and finalized.

R. RP acted against the interest of stressed asset by making the disputed claim of Rs. 41.99 Cr as an admitted liability.

S. RP has further harmed the interest of the Corporate Debtor by recording/ admitting that YATC is entitled for Rs 76.13 crores.

T. Resolution Applicant cannot be permitted to create Sub Category of Creditors, Viz. (i) Lessor / Landlord and / or 'Technically' Operational Creditor and / or 'Special' Operational Creditor, and (iii) Operational Creditor.

U. Applicant in IA No. 960/2019 i.e., CEC is a registered MSME. In view of Sec. 7, 15, 16, 17, 18 & 23 of MSMED Act. MSME is specially placed with regard to the other OC (Gujarat State Petronet Limited vsMSEFC (Para 9-11).

V. MSME Operational Creditor like the Applicant is specially / preferentially situated qua other OC's in view of Sec. 240A of the Code.

W. MSME Act, 2006 is a beneficial statute. It has to be interpreted in favour of SME and to get their payment of <u>both principal and interest</u>. MSMED Act has a <u>non-obstante clause</u>. It essentially means that the rights, which have accrued in favour of SME cannot be abrogated.

X. 13th MOM of the COC to the 21st COC, YATC has been treated as "OC" .In the Reply to IA No. 58 of 2018, RP deliberately and as an afterthought refers to YATC as "technically an Operational Creditor". RP cannot be allowed to resile from his own admission.

Y. LIC vs Asia Udyog Pvt Ltd FB of Delhi High Court held that Landlord is a unsecured creditor who normally have to be *parri passu* with any other unsecured creditor, Land lord cannot claim any equity even if the Landlord is a Government body.

Z. That the NCLT has held that if the leasing and renting is done as a business, then the landlord has to be treated as an Operational Creditor. Hence instead of treating Shilparamam / YATC as a 'Special' Operational Creditors, instead the RP should have treated the MSMEs as Special Operational Creditors by providing full payment to their dues as mandated by the MSME Act as been upheld at various times not to be violative of Article 14 of the Constitution.

AA. That the Applicants herein are at the very least similarly situated to Shilparamam / YATC and thus providing 100% of the dues for Shilparamam

/ YATC should also necessitate for provision of 100% of the dues of the Applicant.

BB. Section 24(3) (c) provides that if the aggregate dues of the OC's is more than 10% of the debt, then OC has a right to participation in COC'S meeting. The aggregate dues of all OC's including YATC is more than 10%, hence they had a right to participate in COC proceedings.

CC. In the counter affidavit to IA No. 58/2019 RP misrepresented and falsely represented that YATC is *"technically an Operational Creditor"*, hence the dues of YATC cannot be considered as aggregate debt as per Section 24(3) of the Code.

DD. As per 21st COC MoM, on 21.03.2019 the Corporate Debtor had Rs 29,33,60,111/- plus Rs 4,99,46,912 in the TRA / Current accounts. This means that at least Rs 2.64 Cr. is being added every month to the said accounts. Therefore the said amount must have increased by another Rs.20.80 Cr. totalling to nearly Rs. 55.13 Crores by now. This amount would increase every month in the future as well by approx. Rs 2.64 crores every month. This amount is also generating interest income.

EE. RP has illegally allocated the Rs 16 crores from the TRA Account to the Resolution Applicant and balance amount to the FC's. At the least, the said amount could have been utilized to pay the MSMEs like the Applicant, instead of giving bounty to the RA and FC.

FF. RP has acted against the spirit of the Code and in a partisan manner. OC & MSME has been discriminated. RP has caused further stress to the already stressed assets. Strong arm tactics displayed by YATC is against the spirit of the Code. Comment to Section14 of the Code should have been exercised to drive home with YATC. RP has failed to maximize the asset of the Corporate Debtor. On these amongst other grounds the Adjudicating Authority needs to interfere with the Resolution Plan.

GG. Blackstone admits that OCs are getting NIL – Blackstone argued that getting NIL is considered fair and equitable as per the latest amendment in the Code in Section 30(2)(b) when read with Section 53 waterfall. This is a misplaced reading of the Code and it is totally against the principles laid down in Swiss Ribbons case of the Supreme Court along with the Binani case. Giving 100% to one operational creditor and substantial dues to FC's and giving NIL to all other OCs including MSMEs companies cannot be considered fair and equitable

HH. Reiterating above, Applicants in IA No. 960/2019 & 961/ 2019 prayed to allow the Applications as prayed for.

<u>Submissions by Shilparamam, Government of Telangana</u>

26. Brief submissions on behalf of the Shilparamam are as under:-

A. Society submit that the Respondent No. 1 Society has entered into an Agreement of Lease on 11.06.2009 with the Corporate Debtor for a additional land admeasuring an extent of 3,466.47 Sq.Yards (2,913 Sq.Mts) adjoining the original lease of land taken from the then Government of Andhra Pradesh to an extent of 4.337 Acres (17,551.748 Sq.Mts) under a Lease Agreement dated 09.05.2007 which has been referred to as the Principal Agreement in the Lease Deed executed by the Respondent No.1 Society in favour of the Corporate Debtor. The Lease period has commenced from 11.06.2009 and continues to be the same under the registered Lease Deed dated 26.04.2012.

B. That this Respondent No.1 Society has filed the Claim in Form B on 24.08.2018 wherein under Clause IV the amount due to M/s Shilparamam Arts, Crafts and Cultural Society is shown as Rs.6,22,31,019/- separately referring to the Agreement date 11.06.2009. The said amount is an undisputed claim which ought to have been allowed by the Resolution Professional and instead of stating that the matter is pending before the Arbitrator which is totally illegal and contrary.

C. That as per the Resolution Plan submitted by BREP ASIA II INDIAN HOLDING CO II (NQ) PTE LTD., SINGAPORE, the condition precedent (clause 6.1) in volume No.3 at page No.37 requiring receipt of the written consent of the Department of Youth, Advancement, Tourism and Culture of the Government of Andhra Pradesh (YATC) and of this Respodent No.1 Society. The Resolution Professional as well as Resolution Applicant have participated in the meeting with the CoC and agreed to obtain the consent.

D. That till date either the Resolution Professional or the Resolution Applicant have approached the Government of Telangana to accord permission to change of control and restricting the company of M/s Golden Jubilee Hotels Private Limited.

E. That being the owner of the land and to protect the interest M/s Shilparamam Arts, Crafts and Cultural Society submits that consent of

the Government of Telangana as well as that Respondent No.1 Society is required before the Resolution Plan is taken for consideration.

F. That in the Resolution Application filed by the Resolution Professional in I.A.No.32/2019 only Government of Telangana has been referred but not the Respondent No. 1 Society herein while seeking relief in the Resolution Application. Therefore the terms which refers to the relief against Government of Telangana are confined only to the extent of Government of Telangana but not in respect of this Respondent No. 1 Society.

G. The Resolution Applicant has to obtain the consent before the Resolution Application is considered for acceptance.

H. The Form-B submitted on behalf of Government of Telangana as well as Respondent No.1 Society, wherein clearly the different amounts owed to Government of Telangana and Respondent No.1 society are shown.

I. That in volume No.3 at page 366 under the head treatment of claims/status of claims an amount of Rs.41,99,92,797/- has been shown as Society claim which includes of Rs.6,22,31,019/- as shown in Form-B. The amount of Rs.6,22,31,019/- which is included in the total claim of Rs.41,99,92,797/- has to be treated separately towards arrears of lease rent owed to Respondent No.1 Society, M/s Shilparamam Arts, Crafts and Cultural Society and Government of Telangana has no claim on the said amount. The Resolution Professional without proper verification has shown the total amount of Rs.41,99,92,797/- as subject to Arbitration. The status of claim showing Rs.41,99,92,797/- pending Arbitration is totally incorrect since the amount of claim made by M/s Shilparamam Arts, Crafts and Cultural Society has to be segregated from out of the total amount of Rs.41,99,92,797/- and shown as admitted claim. The Resolution plan to the extent of the above segregation is incorrect and requires to be amended. The amount of Rs.6,22,31,019/- which is claimed by the Respondent No.1 Society herein namely M/s Shilparamam Arts, Crafts and Cultural Society has to paid upfront by the Resolution Applicant.

J. That in volume No.3 at page 383 the entire amount of Rs.41,99,92,797/- is shown as Respondent No.1 Society Claim under the caption Special Operational Creditor and it has been referred in 8.2.1 and 8.2.5. The calculations made by the Resolution Professional/Resolution Applicant in so far as the Respondent No.1 Society is concerned have not been

addressed since the claim made by Respondent No.1 Society is not subject matter of arbitration before Justice V.V.S.Rao. In response to the notice issued by Government of Telangana dated 01.09.2017, reply letter dated 14.02.2018 was addressed by the Corporate Debtor to the Government of Telangana in respect to the claims clearly shows that the Corporate Debtor has not made any claim against the Respondent No.1 Society seeking arbitration. The Resolution Professional without making M/s Shilparamam Arts, Crafts and Cultural Society a party before the Arbitrator has made a claim under Claim No.5 against the Respondent in the Claim Petition which is Government of Telangana but not the Respondent No.1 society.

K. The extension of the lease for a further period of 33 years cannot be accepted since the Government of Telangana has already expressed their disinclination and consent for granting further extension of 33 years with respect to the Lease Agreement as well as Development and Management Agreement dated 09.05.2007 respectively.

L. The schedule of the properties in the Lease Agreement dated 09.05.2007 both the Corporate Debtor and Government of Telangana is to the extent of 4.337 Acres as per the schedule on the property annexed to the Lease Agreement dated 09.05.2007 whereas the Addl. Land Lease Agreement dated 11.06.2009 between Respondent No.1 society and the Corporate Debtor is to the extent of 3,466.47 Sq.Yards and the boundaries and from the land given under lease to the Corporate Debtor by the Respondent No. 1 Society as per the schedule on the property annexed to the Lease Agreement dated 11.06.2009. The Resolution Application/Resolution Plan does not refer to the Lease Agreement nor the Schedule of the land belonging to the Respondent No.1 Society in the reliefs sought. The Resolution Plan has to confirm that it does not contravene any positions of law for the time being under Sections 30 (2) (C) of the Code.

M. The Respondent No.1 society vide letter dated 09.04.2019 has brought to the notice of the Resolution Professional that Respondent No.1 Society is not a party to the Arbitration proceedings before Justice V.V.S.Rao, Sole Arbitrator and as such the outstanding lease rents amount of Rs.6,22,31,019/- as claimed in Form-B before Resolution Professional.

N. It is therefore prayed that this Adjudicating Authority may reject the Resolution Plan since the same was submitted without the written consent of the Government of Telangana and M/s Shilparamam Arts,

Crafts and Cultural Society and in not acknowledging the claim made by Respondent No. 1 Society to the extent of Rs.6,22,31,019/- as per the claim petition in Form-B and subsequent lease rent arrears of Rs.2,34,35,512/- as on 30.11.2019 in all amounting to Rs.8,56,66,531/- consequently direct the Resolution Professional to clear pending dues from the income generated from the Corporate Debtor forthwith.

Submissions of YATC

27. Brief Submissions on behalf of Youth Advancement, Culture & Tourism (T) Department:

A. That Youth Advancement, Tourism & Culture Department was the owner of the land and proposed to set up a Five Star Hotel project to an extent of Ac. 4.33 guntas situated in the premises of the Shilparamam at Madhapur, Hyderabad on Build, Operate and Transfer basis under Public Private Partnership basis.

B. That as per the approved Resolution Plan submitted by BREP ASIA II INDIA HOLDING CO II(NQ) PTE LTD, SINGAPORE, it is submitted that the condition precedent (clause 6.1)requiring receipt of the written consent of the Department of Youth Advancement, Tourism and Culture of the Government of Andhra Pradesh ("YATC") and of Shilparamam Arts, Crafts and Cultural Society ("Society", and together with YATC, "GoT").

C. That till date either the Resolution Professional or the Resolution Applicant have not approached the Government to accord permission to change of control and restricting the company of M/s Golden Jubilee Hotels Private Limited.

D. That being the owner of the land and to protect the interest, YAT&C submit that the Consent of the Government is necessary as per the terms of Lease of agreement.

E. That payment of all previous outstanding dues of Lease Rentals and Additional Development Premium along with regular payment of the Society/GoT and also demurrage charges of Rs.60,00,000/- as per the Article 7.2(c) of the Development and Management Agreement to be cleared upfront.

F. That total dues of the Society/Government of Telangana should be paid in the priority to all other debts/dues.

G. That all claims payable by the Corporate Debtor to Society/Government of Telangana including amounts under dispute before various authorities should be paid before obtaining written consent for change of Control.

H. That on 4.8.2018 Resolution Professional had a meeting with the Principal Secretary Department of Youth Advancement Training and Culture at Secretariat Telangana State in which Resolution Professional along with the lenders of GJHPL were present. In this meeting certain terms and conditions were laid down which have been drafted in the minutes of the meeting. The Government of Telangana has made it very clear in the said meeting on the subject which reads as under:

"He also pointed out that the Lease Agreement and Development and Management Agreement restricts the change in shareholding. Hence RP has requested the Principal Secretary to guide on way forward and he assured that from his side as the officer of the Court for the purpose of Resolution of GJHPL appointed by Hon'ble NCLT Hyderabad and also lenders are ready to sit and discuss the issue and take it forward."

"Once all these issues are addressed then only things can move from the side of Govt of Telangana."

"Principal Secretary told that only once a comfort letter to YAT&C is shared after due discussion which will be legally vetted then only permission from Government will be sought for further processing"

That after completion, the above 3 conditions the State can take a decision to protect its interest.

"RP has informed that due to publishing of Expression of Interest, the company has got good response and the bidders will be chosen only based on eligibility criteria prescribed which included net worth, financial background, experience in turnaround of the companies, experience in the hotel business etc. And the feasibility and viability of the project and plan shall also be seen while finalizing the bids. It will also be ensured that the interest of all the stakeholders is taken care of as per the Insolvency and Bankruptcy Code, 2016."

I. That the Government of Telangana is the owner of the subject property which was given to the Corporate Debtor on built, operate and transfer

basis; the relation between the parties under that agreement is of the lessee and the lessor. Therefore merely because the lessee suffers any orders of the court, the Government of Telangana cannot be subjected to any other conditions that were agreed upon under the agreement with the Corporate Debtor. Further seeking consent from the Government of Telangana to have the resolution plan approved by the Committee of Creditors which is the condition precedent, firstly the Resolution Professional shall approach the Government of Telangana and obtain the consent which is a condition precedent then only he can proceed further with the Resolution plan. Therefore, the contention of the Resolution Applicant that as long as Resolution Plan complies with section 30(2) of the Code he is entitled to go ahead with placing the said plan before the Committee of Creditors is without any substance.

J. That apart from the present proceedings which are pending before this Adjudicating Authority which are initiated under Insolvency and Bankruptcy Code, there are other proceedings which are initiated under the Arbitration and Conciliation Act, 1996 and are pending before the Arbitral Tribunal headed by Justice V.V.S Rao. Therefore some of the issues and claims raised herein are subject matter of the Arbitration proceedings. Therefore the issues which are matter of Arbitration proceedings may not be taken up for adjudication / settlement in the present proceedings.

K. That the State of Telangana entered into a contract with M/s. Golden Jubilee Hotels, on "build operate and transfer basis" and as such the entire property is owned and possessed by the State of Telangana. Therefore without prior approval of the State of Telangana the resolution plan submitted by the R.P cannot be approved.

L. The Resolution Professional has agreed in a meeting with members of the COC for certain issues in the minutes of the meeting on 04.08.2019. Therefore the resolution applicant cannot rely on Section 31(4) of the Code having regard to the fact that with eyes wide open the Resolution Professional have agreed to certain terms and conditions de-hors Section 31(4) of the Code.

M. It is further submitted that the condition precedent as enshrined under clause 6.1 of the Resolution Plan cannot be waived. Further, the prayer at (IX) as sought cannot be accepted on the face of it as the State of Telangana has agreed under the Contract with the M/s. Golden Jubilee Hotels that BOT Contract is up to 2034, only.

N. Reiterating above, the counsel for the YATC prayed to reject the Resolution Plan since the same was submitted without the written consent of the Government and consequently direct the Resolution Professional to clear pending dues from the income generated from the Corporate Debtor.

Submissions by the CoC

28. Brief Submissions of CoC in relation to the Application bearing IA No. 32/2019 are as under:

A. Resolution Applicant is qualified to submit the Resolution Application: The Resolution Applicant has submitted his plan indicating its eligibility prescribed under the provisions contained under Section 30 (1) of the IBC Code read with the Regulation 39 (1) of the IBC Regulations.

B. COC's recording of the Reasons for approving the Resolution Plan: The subject Resolution Plan was the only plan which qualified the prescriptions of the IBC Code and the IBC Regulations after the RP calling for the Expression of Interest for the second time. COC while considering the Resolution Plan during its 18th and 19th meeting examined the viability and feasibility of the Resolution Plan, as prescribed under Regulation 39 (3) of the IBC Regulations, which has been thus recaptured in the Minutes of the Meeting dated 18.12.2018.

C. Resolution Plan provides the mandatory contents prescribed under Regulation 38 of the IBC Regulations: The Resolution Plan has provided for the mandatory contents prescribed under Regulation 38 of the IBC Regulations in the manner signposted in the table below;

Detail of the Regulation	Prescription under the Regulation 38 of the IBC Regulations	Reference to the relevant portions and page numbers of the Resolution Plan
38 (1)	The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors	Provided at Table under Para no.2.2, table under Para no.8 and point I under Schedule-II of the Resolution Plan.
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.	Provided at Table under Para no.2.2, Para no.8 completely.
38 (1B)	A resolution plan shall include a statement giving details if the resolution applicant or any	This provision was Inserted by Notification No. IBBI/2019-20/ GN/

	of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.	REG040, dated 24th January, 2019 (w.e.f. 24-01-2019). Resolution Plan was Approved on 18.12.2018 i.e. prior to the amendment.
38 (2) (a)	A resolution plan shall provide the term of the plan and its implementation schedule;	Para Nos 3.2, 6, 7, 8 and Schedule-II of the Resolution Plan.
38 (2) (b)	A resolution plan shall provide the management and control of the business of the corporate debtor during its term;	Para No. 4 and Schedule-II of the Resolution Plan.
38(2) (c)	A resolution plan shall provide adequate means for supervising its implementation.	Para Nos. 4 and 8 of the Resolution Plan.
38(3)(a)	A resolution plan shall demonstrate that; it addresses the cause of default;	Para no. 5(a) of the Resolution Plan.
38(3)(b)	it is feasible and viable;	Para no. 5(c), 5(d) 5 (e) and 5 (f) of the Resolution Plan.
38(3)(c)	it has provisions for its effective implementation;	Para nos. 4 and 8 of the Resolution Plan.
38(3)(d)	it has provisions for approvals required and the timeline for the same; and	Para no. 7 of the Resolution Plan.
38(3)(e)	the resolution applicant has the capability to implement the resolution plan.	Para no. 5(c) and Annexure-2 (Details of the Track Record of the Resolution Applicant) of the Resolution Plan.

D. <u>Submissions of CoC in relation to the objections of the Promoter/ LN Sharma</u>:

i. The Scheme or proposals of the Corporate Debtor cannot be considered as an alternative to the CIRP process or the Resolution Plan as the statute does not provide for any such consideration. Further, the promoters of the Corporate Debtor are not entitled to submit any proposal for resolution in view of the provisions contained in Section 29A (as amended).

ii. Core Hotels through Mr. L.N. Sharma the promoter and Corporate Guarantor of the Debt to the Financial Creditors and/or could not have sought for the consideration of their OTS (which has lapsed)or any Resolution plan (including other plans if any) as prescribed under the IBC Code or otherwise except as indicated under Section 12A of the IBC Code.

iii. That at no point of time the Corporate Debtor has chosen to avail the opportunity of settling the case out of the Adjudicating Authority, by making the necessary payments as prescribed under Section 12A which could have enabled the Financial Creditors/CoC to proceed for the withdrawal of the case in the manner detailed in Regulation 30A of the IBC Regulations 2016. Hence their objections for approval of the Resolution Plan cannot stand.

E. Submissions of CoC in relation to the objections of the EIH Ltd/ Operational Manager of the Corporate Debtor:

i. Resolution Applicant cannot have EIH as the Operational Manager during the implementation of CIRP in view of the provisions contained under 29A. Hence any resolution plan having or prescribing to have EIH as its operational Manager, who will again have the control on the accounts of the corporate debtor including the bank accounts under the management and who is acting as constituted Representative/Agent of the Corporate Debtor under the management Agreement with the Corporate Debtor, would be violate of the mandatory provisions prescribed for the Resolution Plan and approval of the same. Hence the objections of EIH against approval of the Resolution Plan are obtuse and cannot stand.

F. Submissions of CoC in relation to the objections of the objections of the Operational Creditors: The interest of the Operational Creditors has been suitably addressed and their interest is covered squarely. Neither the IBC Code nor the IBC Regulations lay a manner or mode of payment of the Operational Debt, which undoubtedly received a priority in payment vide the amendment carried out to Regulation 38 of the IBC Regulations. The Resolution Plan cannot be rejected on the highly hypothetical apprehensions which are primarily hit by the principle of *Petitio Principi.*

The Operational Creditors' assumptions are all based on the erroneous presumptions hence arriving at erroneous conclusions. Hence their objections against the approval of the Resolution Plan cannot stand.

G. Submissions of CoC in relation to the objections of the Lessors/YATC and Shilparamam/Special Operational Creditor: The obligation of the Corporate Debtor to pay the lease Rents and the outstanding lease rent has been accepted by the Resolution Professional and necessary steps to clear the dues would be considered subject to the Arbitration Proceedings. The Resolution Plan makes necessary provision for payment of the debt/the outstanding lease rent thus the Lessor should neither have a concern nor objection for passing of the Resolution Plan which is otherwise fit and in order.

H. The role of NCLT & NCLAT in approving the Resolution Plan: the Apex Court, in the case of **K. Sashidhar vs Indian Overseas Bank** elucidated the role of NCLT and NCLAT in dealing with the applications for the approval/rejection of the Resolution Plan; the relevant portions have been extracted below for the kind consideration:

"35. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides : (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which

the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.

.....39. In our view, neither the adjudicating authority (NCLT) nor the appellate authority (NCLAT) has been endowed with the jurisdiction to reverse the commercial wisdom of the dissenting financial creditors and that too on the specious ground that it is only an opinion of the minority financial creditors. The fact that substantial or majority percent of financial creditors have accorded approval to the resolution plan would be of no avail, unless the approval is by a vote of not less than 75% (after amendment of 2018 w.e.f. 06.06.2018, 66%) of voting share of the financial creditors. To put it differently, the action of liquidation process postulated in Chapter III of the I&B Code, is avoidable, only if approval of the resolution plan is by a vote of not less than 75% (as in October, 2017) of voting share of the financial creditors. Conversely, the legislative intent is to uphold the opinion or hypothesis of the minority dissenting financial creditors. That must prevail, if it is not less than the specified percent (25% in October, 2017; and now after the amendment w.e.f. 06.06.2018, 44%). The inevitable outcome of voting by not less than requisite percent of voting share of financial creditors to disapprove the proposed resolution plan, de jure, entails in its deemed rejection.

42. .....Concededly, the process of resolution plan is necessitated in respect of corporate debtors in whom their financial creditors have lost hope of recovery and who have turned into nonperformer or a chronic defaulter. The fact that the concerned corporate debtor was still able to carry on its business activities does not obligate the financial creditors to postpone the recovery of the debt due or to prolong their losses

indefinitely. Be that as it may, the scope of enquiry and the grounds on which the decision of "approval" of the resolution plan by the CoC can be interfered with by the adjudicating authority (NCLT), has been set out in Section 31(1) read with Section 30(2) and by the appellate Adjudicating Authority (NCLAT) under Section 32 read with Section 61(3) of the I&B Code. No corresponding provision has been envisaged by the legislature to empower the resolution professional, the adjudicating authority (NCLT) or for that matter the appellate authority (NCLAT), to reverse the "commercial decision" of the CoC much less of the dissenting financial creditors for not supporting the proposed resolution plan. Whereas, from the legislative history there is contra indication that the commercial or business decisions of the financial creditors are not open to any judicial review by the adjudicating authority or the appellate authority."

.....44. Suffice it to observe that in the I&B Code and the regulations framed thereunder as applicable in October 2017, there was no need for the dissenting financial creditors to record reasons for disapproving or rejecting a resolution plan. Further, as aforementioned, there is no provision in the I&B Code which empowers the adjudicating authority (NCLT) to oversee the justness of the approach of the dissenting financial creditors in rejecting the proposed resolution plan or to engage in judicial review thereof. Concededly, the inquiry by the resolution professional precedes the consideration of the resolution plan by the CoC. The resolution professional is not required to express his opinion on matters within the domain of the financial creditor(s), to approve or reject the resolution plan, under Section 30(4) of the I&B Code. At best, the Adjudicating Authority (NCLT) may cause an enquiry into the "approved" resolution plan on limited grounds referred to in Section 30(2) read with Section 31(1) of the I&B Code. It cannot make any other inquiry nor is competent to issue any direction in relation to the exercise of commercial wisdom of the financial creditors be it for approving, rejecting or abstaining, as the case may be. Even the inquiry before the Appellate Authority (NCLAT) is limited to the grounds under Section 61(3) of the I&B Code. It does not postulate jurisdiction to undertake scrutiny of the justness of the opinion expressed by financial creditors at the time of voting. To take any other view would enable even the

minority dissenting financial creditors to question the logic or justness of the commercial opinion expressed by the majority of the financial creditors albeit by requisite percent of voting share to approve the resolution plan; and in the process authorize the adjudicating authority to reject the approved resolution plan upon accepting such a challenge. That is not the scope of jurisdiction vested in the adjudicating authority under Section 31 of the I&B Code dealing with approval of the resolution plan.

Reiterating above, the counsel for the CoC prayed to allow the application filed for the approval of the Resolution Plan under section 30 of the Insolvency and Bankruptcy Code 2016.

Submissions made by the Resolution Applicant:

30. The Resolution Applicant was issued notice vide order of this Adjudicating Authority dated 18.06.2019. The Resolution Applicant in its submissions has inter-alia stated as under:

a. That the CoC in its commercial wisdom has approved the Resolution Plan with the Condition Precedent. In light of the law laid down by the Hon'ble Supreme Court in the case of *K. Sashidhar v Indian Overseas Bank & Others* [2019 SCC Online SC 257] (*paras 39-47, 49, 51, 60, 71, 73-74*) ("**K. Sashidhar judgment**"), it is not open for the Hon'ble Tribunal to sit in adjudication over the commercial wisdom of the CoC, and the Hon'ble Tribunal's jurisdiction under Section 31 of the Code is limited to scrutiny of the Resolution Plan 'as approved' by the CoC. It is pertinent to note that the Report on the Insolvency Law Committee of March, 2018, also states that objective of the Code is to respect the commercial wisdom of the committee of creditors.

b. The distribution under the Resolution Plan is as per the provisions of the Code: With regard to the contention of the Promoters and the Operational Creditors that since under the Resolution Plan NIL amount is being given to operational creditors, the Resolution Plan is not in compliance with the law and does not deserve to be approved. In relation to the same the Resolution Applicant makes the following submissions:

i. That the distribution of assets between the financial creditors and operational creditors is in accordance with applicable law.

ii. The payment to the creditors of the corporate debtor under the Resolution Plan is in accordance with Section 30(2) of the Code.

iii. The Amendment Act has clarified and provided that a valid resolution plan is required to provide that the payment received by operational creditors must not be less than the higher of:

(i) The amount such operational creditors would have received in the event of a liquidation of the corporate debtor as per section 53 of the Code; or

(ii) the amount such operational creditors would have received if the amount distributed under the resolution plan was distributed in accordance with the priority specified as per the liquidation waterfall under section 53 of the Code ("**Minimum OC Amount**").

iv. Additionally, the Amendment clarifies that such payments made to creditors under the resolution plan will be deemed to be fair and equitable to such creditors.

v. The Amendment Act also provides that the said clarification in relation to the Minimum Amount required to be made to Operational Creditors shall apply to all pending CIRP proceedings including those CIRPs where the resolution plan has not been approved or rejected by the NCLT.

vi. While objecting to the Resolution Plan, the parties have *inter alia* relied upon the judgment of the Hon'ble National Company Law Appellate Tribunal ("NCLAT") in *Binani Industries Limited v Bank of Baroda & Ors.* [Company Appeal (Insolvency) AT No. 82 of 2018] ("Binani Industries judgment") and *Standard Chartered Bank vs. Satish Kumar Gupta, R.P. of Essar Steel Ltd. & Ors.* [Company Appeal (AT) (Ins.) No. 242 of 2019] ("Essar NCLAT judgment") to submit that the operational creditors cannot be provided with merely the liquidation value and must be treated at par with the financial creditors. However, in light of the Amendment Act, which is subsequent to the aforesaid judgments, this objection cannot be considered. The Amendment Act, as submitted above, has made the requirement of payment to operational creditors abundantly clear and therefore, it is submitted that the Adjudicating

Authority is only required to ensure compliance of the Resolution Plan with the Code as amended by the Amendment Act and the regulations thereunder and is not required to defer to any findings made by the NCLAT in the aforesaid judgments prior to such amendment.

vii. That the decision of the Hon'ble Supreme Court in *Swiss Ribbons vs Union of India & Ors.* [(2019) SCC Online SC 73] ("Swiss Ribbons judgment"), is in keeping with the changes brought about under the Amendment Act. Paragraph 77 of the said judgment are as under:

> *"77.NCLAT has, while looking into viability and feasibility of resolution plans that are approved by the Committee of Creditors, always gone into whether operational creditors are given roughly the same treatment as financial creditors, and if they are not, such plans are either rejected or modified so that the operational creditors' rights are safeguarded. It may be seen that a resolution plan cannot pass muster under Section 30(2)(b) read with Section 31 unless a minimum payment is made to operational creditors, being not less than liquidation value. Further, on 5-10-2018, Regulation 38 has been amended." ("emphasis supplied")*

I. Thus, the Swiss Ribbons Judgement also makes it clear (with the reference to the provisions prior to the Amendment Act) that the payment of liquidation value to the operational creditors is fair and equitable treatment of such creditors under the Code and a resolution plan which provides for such payment, even if such amount is NIL, is a valid plan under the Code.

J. The Explanation 2 to Section 30(2) of the Code as amended, now expressly provides that "*it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors*". It is hence submitted that Binani Industries and Essar NCLAT judgments are superseded by the Amendment Act.

K. That under the October Plan, a sum of Rs. 76,13,93,422 was set aside for the claims of GoT and an upfront financial commitment of Rs. 416.13 crores was provided for the financial creditors of the Corporate Debtor. The said October Plan *inter alia* in clause 1.2.4 provided that

"if at any time until the Effective Date, the Resolution Applicant is made aware that the Society Claim is in addition to INR 76,13,93,422 as specified in detail in Clause 8.2.1, the Society Claim shall be paid from the Upfront FC Amount in priority to the payment to the Financial Creditors." Hence, in the October Plan any amounts due to GoT over and above Rs. 76,13,93,422 up to the Society Claim i.e., approximately 42 crores, would be deducted from the financial commitment to the financial creditors of the Corporate Debtor. Hence, the maximum amount payable to GoT envisaged under the October Plan was capped at INR 118 crores (which includes the Society Claim of approximately INR 42 crores plus the amount of INR 76,13,93,422) and anything over INR 76,13,93,422 would have been paid from the upfront financial commitment that is from the money earmarked for the financial creditors.

L. On the other hand, in the Resolution Plan, the upfront financial commitment of the Resolution Applicant is Rs. 384 crores and the claim of GoT has been assessed at INR 41,99,92,797. However the said Resolution Plan,provides as under:

"If the Actual Special Operational Creditor Amount is higher than the Society Claim, then the difference between the Actual Special Operational Creditor Amount and the Society Claim will be added to INR 384,00,00,000 and shall be deemed to be the restated Upfront Financial Commitment."

M. Hence, under the Resolution Plan the actual amount payable to GoT is not capped and entire amount without any cap payable to GoT is the responsibility of the Resolution Applicant without in any manner affecting the payment to financial creditors. To clarify, if any additional amount unlike the October Plan will not be taken from the amounts earmarked for the financial creditors of the Financial Creditors.

N. That the power of the CoC to negotiate with the resolution applicant has been recognised both in the CIRP Regulations and the Request for Expression of Interest and Resolution Plan Submission dated 5th October 2018 ("RFRP") issued by the Resolution Professional for submission of resolution plans for the Corporate Debtor. Regulation

39(3) of the CIRP Regulations provides that "*The committee may approve any resolution plan with such modifications as it deems fit.*"

c. Treatment of GoT is as per the provisions of the Code:

i. The approval of the GoT is a sine qua non for acquisition of the Corporate Debtor by the Resolution Applicant.

ii. That the GoT owns the land parcels on which the Project is located. It is submitted that the GoT has argued that the Development Agreement executed between the Governor of Andhra Pradesh and the Corporate Debtor stipulates that without the prior approval of the YATC, the combined shareholding of all the original consortium members of the Corporate Debtor (i.e My Home Group, EIH Ltd. & VBC Group) shall not be reduced to less than 68% till the termination of the DMA.

iii. The Corporate Debtor is a special purpose vehicle with the sole business of the managing and operating the Project. The Corporate Debtor does not have any other business apart from the Project, which is situated entirely on the land parcels owned by the GoT and forming the subject matter of the GoT Transaction Documents. It is submitted that in case the consent of the GoT to permit the Resolution Applicant to continue lease of the lands is not forthcoming, the acquisition of the Corporate Debtor by the Resolution Applicant under the Resolution Plan will be rendered meaningless.

iv. That the Resolution Applicant has under the Resolution Plan provided for payment of the Special Operational Creditor Amount to the GoT. It is submitted that the payment to the GoT is necessary for the Resolution Applicant to continue to manage the Project and on account of this the Resolution Applicant has provided for the aforestated payment to the GoT. Thus, there is a clear and intelligible differentia for treating the GoT on a different footing as compared to the operational creditors of the Corporate Debtor. The said differential treatment is required for the purpose of achieving a prudent business objective. The Hon'ble NCLAT has recognised this distinction between creditors of a class in the case of *Renaissance Steel India Pvt. Ltd. vs. Electrosteel Steels Ltd.* [Company Appeal (AT) (Insolvency) No 175 of 2018] order dated 10th August 2018.

v. That the rights of the GoT against the Corporate Debtor arise out of the GoT Transaction Documents. The GoT is merely the lessor of the land parcels on which the Project is located. The relationship between the GoT

and the Corporate Debtor is that of lessor and lessee. The Hon'ble NCLAT, in the case of *Jindal Steel & Power Ltd vs DCM International Ltd* [Company Appeal (Insolvency) AT No. 288/2017] has held that a tenant and the landlord do not share an "operational debtor" and "operational creditor" relationship.

vi. That in the case of *M/s Citicare Super Speciality Hospital v Vighnaharta Health Visionaries Pvt. Ltd.* [CP (IB) No. 567/2018] a petition was filed under Section 9 of the Code for seeking admission into insolvency of the respondent on account of default in payment of fee by the respondent under a leave and license agreement with the petitioner. The Hon'ble National Company Law Tribunal, Mumbai bench, vide its order dated 11th March 2019 had dismissed the petition on the ground that the claim of the petitioner does not fall under the definition of operational debt and therefore the petitioner cannot be treated as the operational creditor of the respondent.

vii. The operational creditors of the Corporate Debtor have been treated similarly under the Resolution Plan. It is therefore submitted that the Resolution Plan does not discriminate *inter se* between the operational creditors.

d. <u>Approval of GoT can be obtained post approval of the Resolution Plan:</u>

(i) That under the Resolution Plan, there is no change in the shareholding till implementation of the Resolution Plan. In fact, prior to the implementation of the Resolution Plan, the management of the Corporate Debtor stays with the Resolution Professional. Under Clause 4.1 of the Resolution Plan, the Resolution Professional is required to be guided by a steering committee from the date of approval of the Resolution Plan by the Adjudicating Authority till the Effective Date i.e. the date on which the Resolution Applicant acquires the complete shareholding of the Corporate Debtor. Since the Effective Date has not occurred, there is no change in the shareholding of the Corporate Debtor. Further, even if this Adjudicating Authority approves the Resolution Plan, there is no change either in the shareholding or management and control of the Corporate Debtor till the Effective Date, which will occur only after the completion of the Condition Precedent.

(ii) That until and unless the approval of the GoT is not taken by the Resolution Applicant, there will be no change in the management of the Corporate Debtor. Accordingly, for the purpose of approval of the Resolution Plan there arises no question of taking the approval of GoT, as under the Development Agreement there is no requirement of taking approval of GoT unless there is a change in the shareholding of the Corporate Debtor. In view of the aforesaid, the YATC Objections and the Society Objections ought not to be considered

(iii) That the Code itself contemplates that government approvals may be taken within one year of the approval of the resolution plan by the Adjudicating Authority.

(iv) That Section 31(4) of the Code itself contemplates that the approval from government authorities can be taken within one year of the approval of the resolution plan. Section 31(4) of the Code reads as under:

"The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later.

(v) Further, Regulation 37 of the CIRP Regulations also contemplates taking necessary government approvals for the implementation of a resolution plan. Reliance is place on the Judgement of *Standard Chartered Bank and State Bank of India v Essar Steel India Ltd.* [CP (IB) No. 39 & 40 of 2017]; Hon'ble NCLT Hyderabad Bench in the case of *Canara Bank v Deccan Chronicles Holdings Limited*, the Hon'ble NCLT Hyderabad Bench [CP (IB) No. 41/7/HDB/2017]; the Hon'ble NCLT Delhi Bench in *SBI v Bhushan Energy Limited*, the Hon'ble NCLT, New Delhi Bench [CP (IB) No. 530(PB)/2017] in order dated 30th May 2016)the Hon'ble NCLT, Ahmedabad Bench in *Korba West Power Company Limited,* [CP (IB) No. 190 of 2018], in order dated 24th June 2019. The Adjudicating Authority ought not to concern itself with the government approvals, which the resolution applicant can obtain by making applications/ submissions before the appropriate authorities, in a manner which may be prescribed and obtain the same as per the applicable law.

(vi) That the allegations of collusion between the Resolution Applicant and the Sattva Group ("**H2 Bidder**") cannot be considered by the Hon'ble Tribunal. There is no material on record or evidence to show that the Resolution Applicant and the H2 Bidder were in collusion, or that the CIRP of the Corporate Debtor was impacted by such purported collusion.

(vii) That on 22.11.2019 , the counsel for Applicant/ L.N.Sharma in IA No.61/2019 filed supplementary written submissions to which the Resolution Applicant has filed its written submissions inter-alia stating as under:-

a. That the Essar Judgement reiterates the law laid down by the Hon'ble Supreme Court in the case of K. Sashidhar Judgment i.e., that the commercial wisdom of the CoC is paramount and that the Adjudicating Authority and the Appellate Authority have no jurisdiction to sit in appeal over the commercial decisions of the CoC taken in relation to a resolution plan.

b. That the CoC has given its due consideration to the Resolution Plan, and thereafter duly approved the same with 68.26% of the total voting share of the CoC voting in favour of the Resolution Plan. It is submitted that the CoC in its commercial wisdom has approved the Resolution Plan and in light of the law down by the Hon'ble Supreme Court in the matter of K. Sashidhar Judgment reiterated in the Essar Judgment, it is not open for this Adjudicating Authority to sit in adjudication over the commercial wisdom of the CoC, and the Adjudicating Authority's jurisdiction under Section 31 of the Code is limited to scrutiny of the Resolution Plan as approved by the CoC.

c. The Swiss Ribbons judgement and the Essar Judgment also make it clear that the payment of liquidation value to the Operational Creditors is fair and equitable treatment of such creditors under the Code and a resolution plan which provides for such payment, even if such amount is NIL, is a valid plan under the Code. The Essar Judgment in this regard inter-alia holds that: " *The minimum value that is required to be paid to Operational Creditors under a resolution plan is set out under section 30(2)(b) of the Code as being the amount to be paid to such creditors in the event of a liquidation of the Corporate Debtor under section 53...*"

d. That the liquidation value due and payable to operational creditors has been provided in the Resolution Plan and accordingly, the same cannot be said to be in contravention of any provision of law. Hence, the treatment of operational creditors under the Resolution Plan is in accordance with the Code as well as the dicta of the Hon'ble Supreme Court in the Essar Judgment.

Final Submissions of RP

31. The RP filed his written submissions with regard to the objections raised by various objectors, *inter-alia,* stating as under:

i. That as per the Lease Agreement dated 09.05.2007, the Tenure of Lease is for (33) years commencing from the Appointed Date. Further it is submitted that as per clause 2.6 (Renewal) of Lease Agreement dated 09.05.2007 says that after expiry of the Lease tenure, the Lease may be renewed at the absolute discretion of YATC & (PMU) Department on such terms and conditions as maybe determined by the lessor and the lessee shall have the first right of refusal for the revised terms & conditions. As such, the term of present lease agreement will expire in the year 2041 and the decision on entering into lease agreement for a further period will be decided by the GoT at that time. Hence, there is no possibility of extending the present lease up to 2074 as proposed by the resolution applicant.

ii. The obligation of the Resolution Applicant to implement the Resolution Plan as detailed in Clause 6 shall commence immediately from the NCLT Approval Date subject to completion, or waiver by the Resolution Applicant, of the following condition, i.e. receipt of the written consent of the Department of Youth Advancement, Tourism and Culture of the Government of Andhra Pradesh ("YATC") and of Shilparamam Arts, Crafts and Cultural Society ("Society", and together with YATC, "GoT") for change of control and restructuring of the Company ("**Condition Precedent**").

(a) *Promptly upon, and in any event within 10 (ten) days of the satisfaction and/ or waiver of the Condition Precedent, the Resolution Applicant shall notify the Resolution Professional and the COC in writing ("**CP Satisfaction Notice**") and also set out the*

date(s) on which it proposes to complete the steps set out in ***Schedule 2 (Resolution Plan Steps).***

(b) *The Resolution Applicant shall undertake all efforts as may be commercially reasonable to procure the satisfaction of the Condition Precedent as soon as practicable following the issuance of the LOI, and in any case within 1 (one) year of the NCLT Approval Date. However, if the Condition Precedent is not completed to the satisfaction of the Resolution Applicant, despite such commercially reasonable efforts, notwithstanding any other provision in this Resolution Plan, the EOI and RFP or the Code, the COC shall return the Performance Bank Guarantee in full.*

iii. That as per the above stated provision under the Code, the Resolution Applicant, M/s. BREP ASIA II INDIAN HOLDINGCO II (NQ) PTE LTD., SINGAPORE is statutorily given a time frame of one year to obtain all the necessary approvals, licenses etc from the Central Government/State Government, Local Authorities. Further, it is submitted that as per Sub-Section (1) of Section 31, upon the approval of plan by the Adjudicating Authority, the plan shall be binding on all the stakeholders including Central Government, any State Government and any local authority.

iv. That as per the claim made in form-B by YATC (Shilparamam included) before the Resolution Professional, the total claim is Rs. 41,99,92,797 and further vide its letter dated September 14, 2018 YATC has claimed an amount of INR 76,13,93,422. As per the Resolution Plan submitted by the Resolution Applicant it is submitted that the Special Operational Creditor (YATC &Shilparamam) will be paid the actual amount as may be arrived upon the negotiated settlement with the Special Operational Creditor as stated under Clause 8.2.1 of the Resolution Plan.

<u>RP's reply to EIH Ltd.</u>

v. That EIH Ltd. is the equity shareholder holding 16% of the equity share capital and also a Promoter of GJHPL. EIH Ltd. should fulfill the requirements of Section 29A (j) of the IBC. The hurdle posed by Section 29A (j) of the IBC would have to be overcome by EIH Ltd. as it would be a connected person and will be associated with the Resolution Applicants during the implementation of the Resolution Plan. It is a fact that Corporate Debtor's account has been termed as an NPA and EIH Ltd.

holds 16% equity share in Corporate Debtor and therefore, EIH Ltd. by virtue of this attracts the disqualification under Section 29A (c) of the IBC.

vi. That as per the Management Agreement Incorporating Technical Assistance Services between the Corporate Debtor and EIH Limited, at Page 494, Article XIV, point no. 3, the operator i.e. EIH Limited shall have the sole power to designate the signatories on such bank accounts. The said point no. 3 is reproduced hereunder:

> *"All bank accounts shall be opened and operated by Operator in the name of the Hotel for and on behalf of Owner, and Operator shall have the sole power to designate the signatories on such bank accounts.*

vii. That EIH Limited filed CA 73 of 2018 in which it prayed for *inter-alia* directions to the IRP to conduct all and any actions only for and on behalf of the Corporate Debtor without interfering with the independent rights of EIH Limited, including its rights of entering into appropriate arrangements for the operating and managing the hotel in accordance with the Management Agreement Incorporating Technical Assistance Services dated 05.08.2006. The Application was allowed by the Adjudicating Authority, however on an appeal filed by the Resolution Professional before the Hon'ble Appellate Tribunal (Company Appeal (AT) (Ins) No. 483 of 2018), the Hon'ble NCLAT vide its order dated 20.09.2018 modified the orders of the NCLT by stating that the Resolution Professional and his authorized representatives were permitted to supervise all the payments and further directed that any payment to related party who had supplied goods or services on the request of the RP to keep the Corporate Debtor as a going concern shall be made by the RP. Therefore, it is clear that EIH Limited was in control of the bank account of the Corporate Debtor which implies that EIH Limited was in control of the operations of the Corporate Debtor and it is only upon the order passed by NCLAT, the control of operations of Corporate Debtor were vested with the Resolution Professional.

viii. That upon review and analysis of the clauses of the Shareholders Agreement, it is clear that EIH Ltd. has been involved in the day to day affairs of the Corporate Debtor and is not confined merely to the maintaining of the Hotel as per the Management Agreement. The authority and power being wielded by EIH Ltd. cannot be brushed aside. If EIH Ltd. had not been a shareholder or promoter, but only managing

the Hotel, the qualification to be associated with Resolution Applicant would have been different. However, the fact that EIH Ltd. has been as associated with the Corporate Debtor as stated in the Restated Shareholder Agreement, it must be considered and kept in mind while determining the eligibility of EIH Ltd. on being associated with the Resolution Applicant during the implementation of the Resolution Plan.

ix. That the Resolution Plan with EIH Ltd. as the operator / technical member to manage the Hotel will be liable to be rejected as being not in compliance of Section 29A(j)(ii) and Section 30 read with Regulations 37 and 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)Regulations, 2016.

RP's reply to NCC, IRPL and CEC (**Operational Creditor**)

x. That within the group of operational creditors there can be a separate class of creditors who have not supplied any essential services or any goods to the corporate debtor at any point of time but fall under the head "operational creditors" by virtue of operation of law. As per the definition under section 5(20) an operational creditor means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred. As there was a legally enforceable development & management agreement (with YATC) and Lease agreements with Shilparamam (SACCS) it partakes the character of lease and the debts which are due become the operational debt by virtue of the agreements entered into with the latter. It is submitted that being the owner of the land the GOT, (through YATC & SACCS) which has given the permission/ approval for the construction of the hotel on the premises and which is or forms part of the substratum of the lease agreements. Therefore to contend that the special operational creditor(YATC & SACCS) are to stand on the same footing as the other operational creditors is misconceived understanding of the given situation both in law and on facts.

xi. That the Hon'ble NCLAT in Binani Cements case at Para 23, held that:

"23. However, the 'I&B Code' or the Regulations framed by the Insolvency and Bankruptcy Board of India do not prescribe differential treatment between the similarly situated 'Operational Creditors' or the 'Financial Creditors' on one or other grounds."

xii. That the words used are "similarly situated operational creditors or financial creditors". It is further submitted that all the Operational creditors in the instant case are not SIMILARLY situated in view of the fact that the position of the operational creditors who have supplied goods and services are to be distinguished from a critical operational creditor i.e. the GOT (The Government of Telangana through YATC & Shilparamam) who is the owner of the land and who had leased out the premises to the corporate debtor. That there is no discrimination between the operational creditors who are similarly situated and this principle has been recognised by Hon'ble NCLAT in the matter of Binani Cements as stated Supra and the same was upheld by the Hon'ble Supreme Court. Further the Hon'ble Apex Court also dealt with the principle of the intelligible differentia based on which discrimination has been permitted under Article 14 of the constitution of India in the case of Swiss Ribbons vs. Union of India and at Para 20 held as under:

> *"20. The tests for violation of Article 14 of the Constitution of India, when legislation is challenged as being violative of the principle of equality, have been settled by this Court time and again. Since equality is only among equals, no discrimination results if the Court can be shown that there is an intelligible differentia which separates two kinds of creditors so long as there is some rational relation between the creditors so differentiated, with the object sought to be achieved by the legislation. This aspect of Article 14 has been laid down in judgments too numerous to cite, from the very inception."*

xiii. That as regards the contention that the payment and distribution amongst the creditors under the plan is not fair and equitable and that is in contravention of Section 30(2)(b) of the Code, it is clarified by the amended section 30(2)(b) (notified with effect from 06.08.2019). Thus, so long as the payment and distribution to the creditors under the plan is in compliance of the amended Section 30(2)(b)(i) & (ii), the same has been laid down to be fair and equitable by the statute itself thus, the allegation of the payment and distribution being not fair and equitable is liable to be rejected.

xiv. The Resolution Professional stated that the reliefs sought in IA 32/2019 at Page 43 & 44 under Para (vii), (ix) and (x) relating to payment of taxes, waivers from GOT and extension of lease from GOT are not being pressed

and therefore, the Applicant craves the leave of this Adjudicating Authority to consider all other reliefs as sought under the Application.

xv. Reiterating above, the counsel for the RP prayed to pass an order approving the Resolution Plan.

RP's reply to L.N. Sharma/Promoter

32. With regard to the contentions of Applicant in IA No. 61/ 2019, the RP has, *inter-alia,* submitted as under:

a. That since the Resolution Plan was not submitted to the Applicant on the date of approval of the plan by CoC i.e 18.12.2018 and that the CoC should be reconvened in order to enable the Applicant to participate and offer his comments on the Resolution Plan, it is submitted that the law in force on the date of approval of Resolution Plan i.e 18.12.2018 was that no resolution plan or any related document was required to be shared with the suspended directors (participants) of a corporate debtor. However, the Hon'ble Apex Court in Vijay Kumar Jain Vs. Standard Chartered Bank vide its order dated 31.01.2019, held that, the copies of resolution plan are to be circulated amongst the suspended board of directors as well. Therefore, pursuant to the order passed by the Hon'ble Apex Court, the Resolution Professional vide email dated 20.02.2019 had circulated the final Resolution Plan as approved by the CoC at its meeting held on 18.12.2018.

b. That the applicant is fully aware and has knowledge of the rejection of his OTS proposal by the lenders which have been purportedly communicated to him earlier post lenders meeting of 31/07/2018.

c. That the "settlement amounts" of Rs.430 Crores as indicated in the averment has not found favour with the members of the CoC may be due to the committed defaults/earlier inactions of the applicant and as well as his, conditional counter offers which are against the applicable rules and regulations. The amounts proposed by the Applicant under the OTS to settle his outstanding dues with the financial creditors under debt resolution plan stands on a different footing as it falls under the policy and guidelines issued by the RBI, which shall not be compared with a resolution Plan which is submitted under Section 31 of the Code.

d. That as regards the allegation of non-pursuance of Section 12A of the Code by the RP/CoC based on his proposal for OTS with the financial creditors, it is submitted that the Resolution Professional placed the

agenda for OTS in meeting of CoC held on 18.04.2018 and the discussion of OTS also took place in the meeting of CoC held on 24.04.2018. Further, the Resolution Professional in the 21st CoC meeting convened on 25.03.2019 had an elaborate discussion on Section 12A with the CoC members as well as the suspended directors who had participated in the meeting, with legal inputs as provided by the legal counsel of the Resolution Professional. In the above said meeting, the Resolution Professional had facilitated a detailed discussion on Section 12A. The same has been recorded in the minutes of the 21st CoC dated 25.03.2019. The supreme authority for the settlement under OTS or debt resolution plan is the CoC (JLF) and Resolution Professional is only a facilitator for the process.

e. That as per provision under the Code, the Resolution Applicant, M/s. BREP ASIA II INDIAN HOLDINGCO II (NQ) PTE LTD., SINGAPORE is statutorily given a time frame of one year to obtain all the necessary approvals, licenses etc., from the Central Government/State Government, Local Authorities. Further, it is submitted that as per Sub-Section (1) of Section 31, upon the approval of plan by the Adjudicating Authority, the plan shall be binding on all the stakeholders including Central Government, any State Government or any local authority.

f. That the reliefs sought in IA 32/2019 at Page 43 & 44 under Para (vii), (ix) and (x) relating to payment of taxes, waivers from GOT and extension of lease from GOT are not being pressed by the Resolution Applicant.

g. In so far as the allegation that the payment and distribution amongst the creditors under the plan is not fair and equitable and that it is in contravention of Section 30(2)(b) of the Code, it is clarified by the amended section 30(2)(b) (notified with effect from 06.08.2019). Thus, so long as the payment and distribution to the creditors under the plan is in compliance of the amended Section 30(2(b)(i) & (ii), the same has been laid down to be fair and equitable by the statute itself thus, the allegation of the payment and distribution not being in accordance with Section 30(2(b) is liable to be rejected.

h. In response to the contention of the Applicant that the approved Resolution plan by the CoC is not in consonance with the Evaluation Matrix which was provided in the RFRP documents, it is submitted that Resolution Professional has taken all the steps under the Code and the

regulations made there under in verifying and placing the valid resolution bids. That the COC is having ultimate power under the IBC and the regulations made there under to decide on the commercial aspects of the resolution plan placed before it and engaging in deliberations and discussions with the resolution applicants on the various aspects of the bids in the course of its evaluation, keeping the spirit and objective of the Code in mind. The members of the COC have deliberated extensively and have taken a collective decision by exercising their commercial wisdom in approving the resolution plan which has been submitted before them. It is submitted that in the 18th CoC meeting held on 24.10.2018, the evaluation criteria has been discussed and deliberated by the CoC members and further the process advisors had made a detailed presentation on the Resolution Plan's qualitative and Quantitative Parameters. That it is the collective commercial decision of the COC which has been taken after due deliberations in the COC meetings and through voting (E-voting) as per voting shares which is non-justiciable.

i. In response to the allegation of the Applicant that BREP ASIA II INDIAN HOLDING CO II (NQ) PTE LTD., SINGAPORE (Blackstone) and M/s. Sattva Developers Private Limited are acting in concert, it is stated that M/s. Sattva Developers participated only in the Second round of bidding whereas it did not participate in the first round. There were two rounds for submitting bids pursuant to the EOI process and it was open to anyone to participate in the same and Blackstone had participated in both rounds of bidding. Therefore, the contention that they were acting in concert stands defeated. Further, as part of the CIRP, the Resolution Professional has duly verified the contents of both the resolution plans after obtaining the requisite legal opinion and satisfying himself with other statutory formalities relating to the Resolution Plans.

j. In response to the allegation of the Applicant that the CoC failed to discuss on the feasibility and viability of the Resolution Plan submitted by the successful Resolution Applicant i.e Blackstone, it is submitted that in the 20th CoC meeting held on 18.12.2018, the CoC members informed that the voting result on the plan will imply the CoC's acceptance or otherwise on the feasibility and viability of the Resolution Plan. That the Hon'ble Supreme Court in *K. Shashidhar Vs. Indian*

Overseas Bank &Otrs in CIVIL APPEAL No.10673/2018has held at Para 33 as follows:

.....The opinion on the subject matter ***expressed by them after due deliberations in the CoC meetings through voting, as per voting shares, is a collective business decision.***

k. Thus, the collective decision on the feasibility and viability of the Resolution Plan was positively expressed by the CoC members by way of approval of the Resolution Plan submitted by Blackstone through evoting held on 20.12.2018 & 21.12.2018.

l. That the counter claim in terms of the arbitral amounts and their distribution has not been discussed or considered by the CoC, it is submitted that members of the CoC are having the fullest of knowledge about the Arbitration proceedings and the matters connected thereto. The probable arbitral award and its impact by way of the financial amounts have been discussed and deliberated in the 19th CoC meeting held on 4.12.2018. Further, the same has been taken into account by the Resolution Applicant in the Resolution Plan under Clause 9.3.5 at Page 401 of IA 32/2019.

m. That on 22.11.2019, the counsel for Applicant/ L.N.Sharma in IA No.61/2019 filed supplementary written submissions to which the Resolution Professional has filed its written submissions inter-alia stating as under:-

a. That the Resolution Professional has apprised both the CoC and the resolution applicants on the need to earmark or allocate committed funds to the claims of the Operational Creditors. However, after detailed deliberations with resolution applicants, the CoC has taken a collective decision by exercising their commercial wisdom in giving their approval to the resolution plan submitted by the resolution applicant.

b. That the provisions of AIDEA (Andhra Pradesh Infrastructure Development Enabling Act, 2001) which have been cited by the member of suspended board in emphasizing that the project has been envisaged in line with the provisions of the said act is not within the knowledge of the resolution professional and the member of suspended board is put to strict proof of the same. To that extent the resolution professional denies the contents of the submissions of

the member of suspended boards connected with the above cited AIDEA, 2001 and its impact on the present project of the Corporate Debtor.

c. That the Resolution Applicant vide his written submissions in the common written submissions to the contentions of all the parties, has indicated his intention 'NOT TO PRESS' for the waivers from the government of Telangana and the same as filed on 07.11.2019 with this Adjudicating Authority.

d. The facts of the case mentioned by the member of suspended board (Municipal Corporation of Greater Mumbai Vs Abhilash Lal & Ors in Civil Appeal No.6350/2019 are not applicable to the present case as the resolution plan approved by NCLT/NCLAT in that case stands on a different footing. In the said case, no lease agreement was even entered and the lease could be entered only upon completion of the Hospital Project and fulfilment of various other conditions especially those relating to treatment of patients belonging to economically weaker sections etc. It is in this factual background and context that the Hon'ble Supreme Court evaluated the overriding effect of section 238 over the relevant provisions of MMC Act. The approved Resolution Plan in the said case contains the clause mortgaging the project land which belongs to BMC (Municipal Corporation of Mumbai) which is a third party asset there by seriously impeding the independent rights of a statutory body which is governed by the permissions to be accorded by the government. In the instant case (IA No.32 of 2019) filed by the resolution professional, the resolution applicant has sought to seek the approvals and waivers of the YATC connected with the resolution plan within a time period of one year which is also permitted under section 31(4) of the code. It is further submitted that the resolution professional has endeavoured to convene series of meetings with the officials of the YATC during the CIRP to consider the proposals put forward by the resolution applicant and contemplates that there would not be any impediment and violation of the legal/independent rights of the lessor (YATC) which are adversely affected by the covenants/recitals mentioned in the resolution plan as submitted for the approval before this Adjudicating Authority.

n. Reiterating above, the Counsel for RP prayed to allow the Application as prayed for.

33. Heard submissions of all the parties and perused the record.

34. While considering the merits of the above Applications, this Adjudicating Authority deems it proper to discuss the background of the case for better appreciation of the matter:-

a. The Corporate Debtor is a SPV for owning and running hotel business under the name Trident in Hyderabad, 84% of its shareholding is held by Mr. L.N Sharma through Core Hotels Pvt. Ltd. and 16% of the Equity shares of the Corporate Debtor were held by EIH Ltd. Apart from holding16% Equity shares of the Corporate Debtor, EIH Ltd was also operating and managing the Hotel business of the Corporate Debtor.

b. The Hotel building of the Corporate Debtor is constructed on the lands owned by YATC and the Society based on lease agreements dated 09.05.2007 and 11.06.2009 respectively. As such YATC and Society are the owners of the lands on which the Hotel Trident building stands.

c. That the arbitration proceedings are pending between YATC and the Corporate Debtor with regard to non-fulfilment of contractual obligations by the Corporate Debtor.

d. It is also relevant to note that the lease period between YATC and the Corporate Debtor is for a limited period of 33 years only.

e. Another Arbitration proceedings are pending between the Corporate Debtor and EIH Ltd. with respect to violation of stipulations of Management Agreement.

35. That upon Application filed by Bank of Baroda Under Section 7 of the Code, the Corporate Debtor was admitted for CIRP vide order dated 27.02.2018.

36. That during the CIRP, several meetings of CoC were held and there were two Expression of Interest called by the Resolution Professional. In response to the second EOI two potential Resolution Applicants came forward to submit their Plan. However, only one M/s. BREP ASIA II INDIAN HOLDING CP II (NQ) PTE LTD has submitted its Resolution Plan.

37. That the CoC after carefully considering the Resolution Plan has approved the same with 68.26% voting shares in its e-voting dated 21.12.2018 submitted by the Resolution Applicant i.e., BREP ASIA II INDIAN

HOLDING CP II (NQ) PTE LTD and accordingly, RP has filed an Application under section 30 of the Code seeking approval of the Resolution plan by this Adjudicating Authority.

38. In terms of provisions section 30(2)(a) to (f) of the Code, this Adjudicating Authority before approving the resolution plan has to satisfy itself to the compliance of the following points.

39. Section 30(2) of the Code as amended w.e.f. 06.08.2019 enjoins upon the resolution professional to examine each resolution plan received by him/her to confirm that such plan –

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

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

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

ii. the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the Corporate Debtor.

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) confirms to such other requirements as may be specified by the Board.

40. Section 30(4) of the Code as it stands at present after the amendment reads as follows: -

"(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six percent. of voting share of the financial creditors, after considering its feasibility and viability, the manner of

distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board."

41. Section 30(6) of the Code enjoins the resolution professional to submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority. Section 31 of the Code deals with the approval of the resolution plan by the Adjudicating Authority, if it is satisfied that the resolution plan as approved by the committee of creditors under section 30(4) meets the requirements as referred to in section 30(2).

42. Thus, before approving the Resolution plan, it is the duty of the Adjudicating Authority that it should satisfy itself that the Resolution plan as approved by the COC meets the requirements as referred to in sub-section (2) of Section 30.

43. On perusal of the Resolution Plan, this Adjudicating Authority has observed that the Resolution plan placed for consideration provides for the following:

a. The plan provides for payment of the CIRP cost.

b. The Resolution Plan is approved by 68.2% of the voting shares of the Financial Creditors/CoC.

c. The Successful Resolution Applicant is eligible to submit its Resolution plan in terms of Section 29A of the Code.

d. The Liquidation value of the Corporate Debtor is assessed to be INR 458 Cr.(Replacement Cost Method) and INR 448cr (DCF Value Method). The plan provides for a payment of 37% of admitted claim for the secured Financial Creditors (including dissenting Financial Creditors) and also to bring in capital funds to the tune of INR 180 Cr. The table as placed in the Plan is extracted below:-

Particulars	Amounts (INR Crores)
1. Workmen Liquidation Dues, if any. 2. Employee Liquidation Dues, if any. 3. Liquidation Value of Operational Creditors and Other Creditors, if any. 4. Any other Liquidation Value required to be paid under the Code in priority to the amounts owed to the Financial Creditors, if any (Amunts mentioned in serial	384[1] "Upfront Financial Commitment"

numbers 1,2,3 and 4 above collectively referred to as "**Mandatory Payment Amounts**"). 5. Actual Special Operational Creditor Amount. 6. Upfront FC Amount.	
1. Payment of excess CIRP Costs to the extent not met out of the Company's operating cash flows; 2. Capex and Working Capital Requirements, on a need to do basis; and 3. Transaction related expenses	180 **"Capex Financial Commitment"**
Identified Bank Guarantees	20.02
Financial Commitment	584.02

[1] If the Actual Special Operational Creditor Amount is higher than the Society Claim, then the difference between the Actual Special Operational Creditor Amount and the Society Claim will be added to INR 384,00,00,000 and shall be deemed to be the restated Upfront Financial Commitment.

e. The amounts payable to Government Agencies (classified as Special Operational Creditor) i.e., the lessor of the Land on which the hotel business of the Corporate Debtor runs, are admitted to the tune of 41.99 Crores and the plan provides for payment in full.

f. Though an amount of 60.14 Crores has been admitted as against a claim of Rs. 200.08 Crores with regard to Operational Creditor, the plan provides for 'Nil' amount to operational Creditors, being the liquidation value as per Sec.53 of the Code.

g. The plan provides for effective implementation and supervision of the Resolution Plan through a Steering Committee.

h. The plan provides for an Independent O&M Contractor nominated by the Resolution Applicant and appointed by the Resolution Professional for running the business of the Corporate Debtor as an operator during the implementation period.

i. The Plan provides that if the Corporate Debtor receives any compensation pursuant to any award passed by relevant Arbitral Tribunal, such amounts shall be distributed to the Financial Creditors through a structure as may be agreed between Resolution Applicant and Financial Creditors. If any adverse award is passed then any liability

arising out of such adverse judgement/award shall be deemed to be extinguished.

j. The plan also provides an implementation schedule and term of the plan.

k. The plan sought to be approved by this Adjudicating Authority is approved by 68.26% of voting share of CoC members subject to receipt of written consent from YATC and Society for change of control and restructuring of Corporate Debtor as contemplated under Section 31(4) of the Code.

44. From the above, this Adjudicating Authority finds that the plan submitted by the RP conforms to the conditions laid down in Section 30(2)(a) to (f) of the Code and hence qualifies for approval by this Adjudicating Authority on the following terms:

a. Receipt of the written consent of the Department of Youth Advancement, Tourism and Culture of the Government of Andhra Pradesh ("YATC") and of Shilparamam Arts, Crafts and Cultural Society ("Society", and together with YATC, "GoT") for change of control and restructuring of the Company ("Condition Precedent").

b. The Resolution Applicant shall make all efforts as may be commercially reasonable to procure the satisfaction of the Condition Precedent as soon as practicable following the issuance of the LOI, and in any case within 1 (one) year of the NCLT Approval Date.

c. In the event of satisfaction / or waiver of the Condition Precedent the Resolution Applicant will within 10 days thereof notify the Resolution Professional and the COC in writing ("CP Satisfaction Notice") and also set out the date(s) on which it proposes to complete the steps set out in Schedule 2 (*Resolution Plan Steps*).

45. Now, at this juncture we would like to deal with the objections raised by various parties i.e., EIH Limited, L.N. Sharma, NCC, CEC, IIPL, YATC and the Society in that order.

46. With regard to the objections raised by EIH Limited/ Applicants in IA No. 433/2018, IA No. 447/2018 & IA No. 448/2018 in IA No. 433/2018 against the Resolution Plan, the following observations are made:

47. This Adjudicating Authority observes that Section 29A of the Code puts a prohibition on certain classes of persons submitting Resolution Plan in respect of the Corporate Debtor. For the sake of convenience and better understanding, the relevant portion of the Code is reproduced below:

"29A. A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—

(a) is an undischarged insolvent;

(b) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;

(c) 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 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;

(d) has been convicted for any offence punishable with imprisonment for two years or more;

(e) is disqualified to act as a director under the Companies Act, 2013;

(f) is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;

(g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code;

(h) has executed an enforceable guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code;

(i) has been subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or

(j) has a connected person not eligible under clauses (a) to (i).

Explanation. — For the purposes of this clause, the expression "connected person" means—

(i) any person who is the promoter or in the management or control of the resolution applicant; or (ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or

(iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii):

Provided that nothing in clause (iii) of this Explanation shall apply to—

(A) a scheduled bank; or

(B) an asset reconstruction company registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; or

(C) an Alternate Investment Fund registered with the Securities and Exchange Board of India.".

48. It is an undisputed fact that at the time of initiation of CIRP in the case of the Corporate Debtor, EIH held 16% equity shares in the Corporate Debtor as a Promoter Shareholder, the balance 84% Equity shares being held by M/s.Core Hotels, the other Promoter of the Corporate Debtor, which was promoted by both as a SPV for construction and management of Hotel Trident on the land allotted by Government of Telangana for the purposes of Tourism Development in the State of Telangana.

49. M/s.EIH Limited is a Company incorporated under the Companies Act, 1956, and is only an artificial juridical person. Being an artificial juridical person, it cannot have separate personalities in view of the fact that it promoted the Corporate Debtor under the Shareholders Agreement with the understanding that it will be given the Operation and Management rights of the proposed Hotel. In one of the cases relied upon by EIH itself (Indian Aluminium *supra*) Hon'ble Supreme Court have laid down that in the case of a Company, it is difficult to separate the purpose of the juristic 'persona' from the character of the 'persona' itself. The other case relied upon by the applicant viz. Ram Pershad *vs* CIT (supra) is on different facts altogether (relating to an Individual's taxation) and cannot be applied either.

50. Again, as regards the claim of EIH Limited that they have independent right under the Management Agreements with the Corporate Debtor, which cannot be infringed by approval of the proposed Resolution Plan, it is observed that the independent right as claimed by EIH is not independent of its shareholding in the Corporate Debtor, as the two Promoters namely EIH Ltd (16%) and Core Hotel (84%) jointly bid for the project, with the understanding that EIH will be the operator of the Hotel business of the Corporate Debtor. Further the aforesaid Management Agreements have

already been terminated and the matter is already before Hon'ble Arbitral Tribunal for determination of parties rights under the said Agreements. The Arbitral Tribunal have only given an interim award for maintaining status quo of respective rights of parties because of which EIH has been continuing as an operator of the Hotel. Nobody can predict the outcome of the arbitration proceedings which will be available only after the approval of the proposed Resolution Plan and cessation of the Moratorium imposed U/s.14 of the Code. Therefore, it will not be proper for this Adjudicating Authority to decide this issue at this juncture, as the same will be nothing but pre-empting the Final Award in the arbitration proceedings.

51. This also brings us to prayer (xi) sought in IA No.32/2019. Since the Management Agreements are subject to the Final Award of the Arbitral Tribunal, we do not find it proper to adjudicate on this issue either.

52. In their Additional Written Submissions filed on 06.12.2019, M/s. EIH Limited have contended that the Hon'ble Supreme Court's Judgement in Essar Steels does not cause any impediment in consideration of the Applications made by EIH Limited, as it would not amount to a modification of the Resolution Plan as the Resolution Plan is premised on continuation of EIH as the operator unless such an arrangement is found to be prohibited under Section 29A of the Code.

53. In this connection, it is pertinent to note that the EIH being a promoter shareholder having 16% equity of the Corporate Debtor, cannot be treated differently from the other Promoter M/s. Core Hotels having 84% of the equity shareholding in Corporate Debtor. Provisions of Sec.29A(c) clearly debar a Promoter/Shareholder to be a part of the Corporate Insolvency Resolution Process of the Corporate Debtor. Hon'ble Supreme Court in the case of **Chitra Sharma & Ors Vs UoI & Ors Writ Petition (Civil) No.744 of 2017 in Jaypee Infratech** case has put an end to the questions raised with respect to the application and scope of Sec.29A. While dealing with the eligibility of Jaiprakash Associate Limited (JAL), the parent company of Jaypee Infratech Limited as a Resolution Applicant under Sec.29A, the Hon'ble Apex Court observed that JAL and other Promoters are disqualified from submitting a Resolution Plan as they fall within the scope of Sec.29A and therefore ineligible. Hon'ble Supreme Court has also described the insertion of Sec.29A as plugging a loophole and has ruled that strict adherence to Sec.29A is mandatory and that wilful defaulters shall not be permitted to participate in the Corporate Insolvency Resolution Process.

Keeping in view, the above Ruling of the Apex Court it is clear that EIH, being a promoter of the Corporate Debtor will be ineligible under Sec.29A(c) of the Code and therefore, any direction by this Adjudicating Authority to include EIH as integral part of the Resolution Plan will vitiate the Resolution Plan, EIH being ineligible to participate in the Corporate Insolvency Resolution Process of the Corporate Debtor of which it is indisputably a Promoter.

54. However, if the Resolution Applicant either on advice or desire wishes to consider EIH as a potential Hotel Operator per se, we are of the view that EIH may not be excluded from the consideration zone provided EIH will play its role purely and exclusively as an operator and does not indulge in or interfere with the Management of the affairs of the Corporate Debtor and in any of its decision making process in the course of its business.

55. With the above observations, Applications filed by EIH i.e., IA No. 433, 447 & 448 /2018 stand disposed.

56. With regard to the grievance of the erstwhile promoter i.e., Mr. L.N. Sharma that the OTS proposal submitted by him was not considered, though he has offered to pay a sum of Rs. 430 Crores to the Financial Creditors as against the instant Resolution Plan which provides for payment of Rs. 342 Crores to the Financial Creditors, this Adjudicating Authority is of the considered opinion that once the CIRP is initiated the Code provides for settlement between the parties in terms of Section 12A of the Code, provided a consensus is arrived between the parties in this regard and the proposal U/s.12A is submitted with the approval of 90% voting share of CoC members. It is pertinent to note that the amounts advanced by the Financial Creditors to the Corporate Debtor are contractual in nature and, therefore, this Adjudicating Authority cannot compel the Financial Creditors to consider the OTS submitted by Mr. L.N. Sharma.

57. The erstwhile promoter has further alleged that the plan suffers from infirmities inasmuch as it does not treat all the Operational Creditors on equal footing and that the Resolution Plan is contrary to the provisions of IB Code,2016. As regards the contention that the Plan gives preferential treatment to Government agencies, suffice it to say that the Government Agencies (YATC/Society) as the lessors of land are on a different footing as compared to other Operational Creditors as held by NCLAT in CA(I) AT No.288/2017. The instant case in hand is peculiar in nature as the project stands on the land provided on lease by Government agencies namely YATC

and Society. If in case, these government agencies are treated at par with other Operational Creditors and are paid nil amount in terms of the Liquidation value as provided by the Resolution Plan, the project would come to a standstill and would defeat the very purpose of CIRP. In such case the Corporate Debtor would be forced to undergo Liquidation process which may not guarantee the stakeholders any amount more than what is envisaged in the instant Resolution Plan.

58. With regard to the objections raised by Shri L.N Sharma regarding the Resolution Plan, this Adjudicating Authority finds that it is the commercial wisdom of the CoC members in approving the Resolution Plan which is paramount as it is a commercial decision.

59. In view of the judgment rendered by Hon'ble Supreme Court in the matter of *K. Shashidhar Vs IOB*, this Adjudicating Authority finds that the objections raised by the Applicant in IA No. 61/2019 cannot be sustained and accordingly the objections are over ruled.

60. With regard to the prayers made by NCC, CEC and IIPL (Operational Creditors) vide IA No. 950, 960 & 961/2019 respectively, the Applicants in these Applications have prayed to reject the present Resolution Plan mainly on the ground that there has been discrimination between the Operational Creditors inasmuch as YATC and the Society are being given preferential treatment under the plan as Special Operational Creditors. It is the contention of the Applicants that while the claims of YATC and the Society has been paid in full, the Applicants are being paid nil amount in the Resolution Plan.

61. Though the Code doesn't provide for any such classification as special Operational Creditor, this Adjudicating Authority finds that the instant case is very much peculiar in nature. It is to be noted that the very operation of the Corporate Debtor stands upon the lease agreement between the Corporate Debtor and YATC and Society. It is a matter of fact that already arbitration proceedings have been initiated and is pending adjudication between YATC and the CD for the alleged breach of contract between them. This Adjudicating Authority, therefore, understands the decision of the CoC to pay out the dues of YATC and the Society more so because they are the lessors of the land in which the business of the CD is being carried out. If in case, YATC and the Society are made to stand along with the Applicants in the above said IA's then YATC and Society are bound to receive no amounts in terms of the Resolution Plan which would result in

multiplicity of proceedings bringing into halt of the operations of the Corporate Debtor which would be detrimental to the interest of all the stakeholders of the Corporate Debtor. The members of CoC in their wisdom have taken a commercial decision to pay out the dues of YATC and Society being payment to the Government with a motive to sustain the business operations of the Corporate Debtor. It has been clarified by Hon'ble NCLAT in the case of Jindal vs DCM [CA(I) AT 288/2017] that the relationship of landlord and Lessee is not that of 'Operational Creditor' and 'Operational Debtor'. In the event of considering YATC and Society at par with other operational creditors the object of the Code would be defeated, compelling the Corporate Debtor to undergo Liquidation process.

62. With the above observations, Application filed by Operational Creditor i.e., IA No.950, 960 & 961/2019 stand disposed off.

63. In view of the foregoing discussions, this Adjudicating Authority finds that the decision of the CoC in treating YATC and the Society differently makes complete sense from the point of view of the lofty ideals of the Code.

64. It is to be noted that the essence of the Code is the time lines set therein. The stand of YATC as well as Society that without prior approval from them, the Resolution Plan submitted by the RP cannot be approved is not well founded taking into account the timelines of the Code. By the time, a resolution plan is placed for consideration and gets approved by the CoC, only a brief period may be left for completion of the CIRP. Since the Resolution Plan under consideration provides for payment of claims of YATC and Society in full, in all probabilities, pending arbitration proceedings may be resolved in terms of such payment and since the lease agreements held by YATC and Society with the Corporate Debtor being intact, both YATC and Society may very well consider granting necessary approvals to the Resolution Applicant on being approached. Further Section 34(1) of the Code provides for one year time period to obtain necessary approvals required under Law from the date of approval of the Resolution Plan. Thus the contention of the YATC and Society regarding obtaining their approval prior to the approval of the Resolution plan cannot be considered as the Code specifically provides time frame for the consideration of the same.

65. Further this Adjudicating Authority observes that in terms of Regulation 27 of CIRP Regulations, Liquidation value was ascertained through two

registered valuers, and total financial commitment in the Resolution Plan is higher than the average liquidation value.

66. The RP has complied with the code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of CIRP regulations.

67. The identity of the Resolution Applicant has been duly verified by the RP and affidavit as per section 30(1) of the Code has been obtained from the Resolution Applicants stating that he is not ineligible U/s 29A of the IB Code, 2016.

68. The Plan also provides for keeping the Company as a going concern and operate in its normal course of business upon implementation of Resolution Plan. There is no objection filed by any other person in this regard.

69. Copy of Form-H (Compliance Certificate) filed by the RP along with the Plan has been perused and considered. The RP *inter-alia* has certified as under:

i. The said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.

ii. The Resolution Applicant BREP ASIA II INDIAN HOLDING CO II (NQ) PTE LTD has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.

iii. The said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 68.26% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

iv. RP sought vote of members of the CoC by electronic voting system which was kept open at least for 24 hours as per the regulation 26 The e-voting was held from 20th December 2018, 11.00AM IST to 21st December 2018 11.00AM IST, wrt the CoC held on 18th December 2018.

70. The Resolution Plan includes a statement under regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interest of the stakeholders in compliance with the Code and Regulations thereunder.

71. It is also evident that the Resolution Plan placed before this Adjudicating Authority, was approved by the Committee of Creditors by electronic voting system concluded on 21.12.2018 with 68.26% votes cast in favour of Approval of Resolution Plan.

72. In ***K Sashidhar Vs. Indian Overseas Bank & Others,*** decided on 05.02.2019 in Civil Appeal No.10673/2018 with CA Nos.10719/2018, 10971/ 2018 and SLP(C) No.29181/2018, the Hon'ble Supreme Court, noticing the provisions of section 30(4), held that if the CoC had approved the resolution plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the resolution professional to submit the same to the adjudicating authority (NCLT). On receipt of such a proposal, the adjudicating authority (NCLT) is required to satisfy itself that the resolution plan as approved by CoC meets the requirements specified in Section 30(2). No more and no less.

73. In the said judgment, in para 35, the Hon'ble Supreme Court held that the discretion of the adjudicating authority is circumscribed by Section 31 and is limited to scrutiny of the resolution plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2) when the resolution plan does not conform to the stated requirements.

74. In the recent judgement in *Essar Steel* (*Civil Appeal No.8766-67 of 2019*) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority will not have power to modify the Resolution Plan as approved by the CoC in their Commercial Wisdom. In para 42 of the said judgment, Hon'ble Apex Court has observed as under:

> *Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in* ***K. Shashidhar*** *(supra).*

75. In view of the discussions in the foregoing paragraphs, the 'Resolution Plan' filed with the Application meets the requirements of Section 30(2) of the I&B Code, 2016 and Regulations 37, 38, 38(1A) and 39 (4) of IBBI

(CIRP) Regulations, 2016. The 'Resolution Plan' is also not in contravention of any of the provisions of Section 29A. Further the prayers (vii), (ix) and (x) regarding concessions in respect of payment of taxes, waivers from Government of Telangana and extension of Lease have been dropped by the Resolution Applicant. Hence, this Adjudicating Authority is satisfied that the Resolution Plan is in accordance with Law. Therefore, the 'Resolution Plan' annexed with Application bearing IA No. 32 of 2019 filed in CP(IB) No. 278/7/HDB/2018 is hereby approved, which forms part of this Order and which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

76. With regards to the Reliefs and Concessions sought by the Resolution Applicant in the Resolution Plan, it is made clear that the approved Resolution Plan shall not construe any waiver to any statutory obligations/liabilities arising out of the approved Resolution Plan. We are of the considered view that if any concession/waiver is sought in the Resolution Plan, the same shall be subject to approval by the concerned Authorities. The same view has also been held by Hon'ble Principal Bench, NCLT in the case of *Parveen Bansal Vs. Amit Spinning Industries Ltd.* in CA No.360 (PB) 2018 in CP No (IB) 131 (PB)/ 2017.

77. This Adjudicating Authority orders for the Constitution of a steering committee, comprising of representatives of Key Lenders and any other person as may be agreed between the CoC and the Resolution Applicant. During this period: (i) the Resolution Professional shall perform the same duties and have the same powers which it had during the CIRP, and for the avoidance of doubt, all rights, powers, duties and privileges of the Existing Board; (ii) the Steering Committee shall be deemed to have the same rights, powers and privileges which the CoC had during the CIRP; and (iii) an independent O&M contractor nominated by the Resolution Applicant, and appointed by the Resolution Professional. Further Resolution Professional is directed to file status of implementation of Resolution Plan before this Adjudicating Authority from time to time.

78. Accordingly, the MoA and AoA shall be amended and filed with the RoC for information and record as prescribed. While approving the 'Resolution Plan', as mentioned above, it is clarified that the Resolution Applicant shall pursuant to the Resolution Plan approved under Sub-Section (1) of Section 31 of the I&B Code, 2016, obtain all the necessary approvals as may be required under any law for the time being in force within the period as provided for in such law.

79. The approved 'Resolution Plan' shall become effective from the date of passing of this Order.

80. The order of moratorium passed by this Adjudicating Authority under Section 14 of the I&B Code, 2016 shall cease to have effect from the date of passing of this Order.

81. The Resolution Professional shall forward all record relating to the conduct of the CIRP and the 'Resolution Plan' to the IBBI along with Copy of this Order, so that the Board may record the same on its data-base.

82. With the above observations, these applications bearing IA No. 32/2019, IA No. 433/2018, 447/2018, 448/2018, 61/2019, 950/2019, 960/2019 and 961/2019 stand disposed off.

Dr. BINOD KUMAR SINHA
MEMBER TECHNICAL

K.ANANTHA PADMANABHA SWAMY
MEMBER JUDICIAL

Srikant Rathi/Alekhya/Ramkumar

By. Registrar
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER CP(IB)No.248/7/HDB/17.
निर्णय का तारीख
DATE OF JUDGEMENT 7/02/2020.
प्रति तैयार किया गया तारीख
COPY MADE READY ON 13/02/2020.