

**NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI**

MA/264/IB/2018

In

TCP/198/IB/CB/2017

Under Section 30(6) of the IBC, 2016

In the matter of

M/s.MALABAR HOTELS PRIVATE LIMITED

Shri.V.Nagarajan,
Resolution Professional

...Applicant

Order delivered on: 17.09.2018

CORAM

**K. ANANTHA PADMANABHA SWAMY, MEMBER (JUDICIAL)
S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)**

For the successful Resolution Applicant : Shri.Nirav Shah, Advocate
: Shri. A.Kevin Thomas, Advocate
For the RP : Shri.T.K.Bhaskar, Advocate
: Shri.Shwetha Vasudevan, Advocate
: Shri.J.Manivannan, Advocate
: Shri.V.Nagarajan, Advocate.
For the Promoters/Shareholders/Directors : Shri.S.Aravindah, Advocate
For the proposed Resolution Applicant : Shri.Pawan Jhabakh, Advocate.

ORDER

Per: S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

- 1) This Tribunal vide order dated 16.08.2017 admitted the Insolvency petition and Mr.Venkataramanarao Nagarajan was appointed as an IRP. Moratorium under section 14 of the Code was made effective vide the order dated 16.08.2017. The COC in their 1st meeting dated 17.10.2017 confirmed the IRP as RP.

4

- 2) The public announcements as required under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 was made by the Applicant on 26.09.2017 for the purpose of inviting claims. The RP for the corporate debtor published an advertisement on 13.04.2018 for inviting any prospective investors to put forwards their resolution Plans. The insolvency resolution period was extended from time to time to 26.06.2018 vide order dated 02.02.2018 and 14.05.2018.
- 3) The last meeting of the COC where all the resolution applicants presented their respective resolution plans was held on 18.06.2018. The COC has unanimously approved the Resolution Plan presented by Mr.Sarang Kale on 18.06.2018.
- 4) The Applicant prays as follows;
- a. *That this Hon'ble Tribunal be pleased to approve the resolution plan and the prayers/terms set out therein submitted by Mr.Sarang Sudhakar Kale for the corporate debtor as has been approved by the COC pursuant to its meeting dated 20.06.2018 as per section 31(1) of the Insolvency and Bankruptcy Code, 2016.*
 - b. *That this Hon'ble Tribunal be pleased to approve the amendment of Memorandum of Association and Articles of Association of the Corporate Debtor as proposed in the Resolution Plan of Mr.Sarang Sudhakar Kale as has been approved by the COC pursuant to its meeting dated 20.06.2018;*
 - c. *Upon approval by the Hon'ble Tribunal as mentioned in prayer (a) above, declare that the moratorium order passed by the*

Hon'ble Tribunal under Section 14 of the Code vide its order dated August, 16, 2017 shall cease to have effect;

- d. For such other orders as this Hon'ble Tribunal deems fit in the facts and circumstances of the case for implementation of the Resolution plan.*

5) The key components of the Resolution Plan are as follows;

- *The Resolution Applicant shall cause an initial investment of Rs.45,00,00,000/- (Rupees Forty Five Crores only) in the Company towards the resolution process. In support of this the Resolution Applicant has obtained an in principle approval from IL&FS Financial Services Limited. A copy of the letter is annexed.*
- *The aforesaid investment will be utilized to meet the resolution costs, repay the agreed claims of the financial creditors, pay the operational creditors, employees, license fees etc. in compliance with the Code. The Resolution Plan does not propose any haircut or loss of value to any creditor.*
- *A part of the investment will be utilized for the repair and renovation of the Hotel so that the operations of the Hotel can be resumed.*
- *The Resolution Applicant and his nominee(s) will acquire 100% (one hundred per cent) equity share capital against the proposed investment for effective control over the affairs of the Company and operations of the Hotel. Erstwhile promoters and shareholders will not be in control of the Company.*
- *The existing paid up equity shareholding will be converted into redeemable, non-cumulative preference share capital (RPS-Series A), bearing 0.001% p.a. coupon on a non-cumulative basis and shall not carry any voting rights available to the equity shareholders without any loss/reduction of face value of the shares. The redemption of these shares shall in any case be subordinated to the secured debt.*
- *The existing outstanding loan amounts (including unpaid interest thereon) by the companies associated with the erstwhile promoters will be converted into Redeemable*

Non-cumulative Preference Shares (RPS- Series B) bearing 0.001% p.a. coupon on a non-cumulative basis and shall not carry any voting rights available to the equity shareholders. The redemption of these shares shall in any case be subordinated to the secured debt.

6) The details of the Resolution plan are as follows;

Particulars	Amount (Rs.Crores)	Remarks
Insolvency Resolution Process costs	0.23	These are estimated amounts payable to the Resolution Professional and other resolution process cost.
Payments to employees	0.11	Past salary dues to be paid
Payment to SBI	24.96	This represents the claims admitted as per the Information Memorandum. Over and above the same, the Resolution Applicant shall pay interest at a mutually agreed rate till the date of approval by the Committee of Creditors.
Payment to TJSB	8.80	
Payments to Operational Creditors	1.28	These payments to operational creditors as admitted and disclosed in the Information Memorandum.
For repairs & renovation of Hotel Kohinoor Asiana	4.56	These expenses will enable the company to resume its operations in the Hotel Kohinoor Asiana
Payment of License Fees	0.43	This payment will be made towards obtaining/renewing various licenses to commence the hotel operations.
Contingencies	4.63	This amount of Rs.4.63 crores will be utilized to fill in any shortfall that may occur in any of the above mentioned end uses.
Total	45.00	

7) From the perusal of the Resolution Plan it is seen that the revised shareholding of the Company post investment by the Resolution Applicant;

- *I propose that the entire existing issued equity share capital of the Company is converted into RPS- Series A bearing 0.001% p.a. coupon and shall be redeemable at the end of 6 years or immediately upon liquidity event arising, whichever occurs earlier. The redemption amount after 6 years will be 2.75 times of the existing capital. However, if redeemed earlier by the company at its sole discretion, then commensurate NPV at a discount rate of 10% will be redeemed. Each such equity share will be converted into one preference share of Rs.1 face value. in the event that the Company fails to redeem RPS-Series A as stipulated herein, the redemption value of RPS- Series A shall be converted into Equity Share Capital at that point of time. For clarification, for every 1 RPS-Series A, 2.75 Equity Shares of the Company shall be issued.*

In reference to related parties the clause under the Resolution Plan is as under;

- *I propose that the existing outstanding loan amounts (including interest thereon) of (i) Rs.16,67,30,732/- (as per Information Memorandum) provided by Kohinoor Planet Constructions Private Limited ("KPCPL") to the Company; (ii) Rs.71,80,754/- provided by Hotel Airport Kohinoor Private Limited to the Company; (iii)Rs.15,69,878/- provided by PK Enterprise and (iv) Rs.83,853/- provided by Asiana Hotel Management India, will be converted into RPS- Series B bearing 0.001% p.a. coupon and shall be redeemable at the end of 6 years or immediately upon liquidity event arising, whichever occurs earlier. The redemption amount after 6 years will be 2.50 times of the existing capital. However,*

if redeemed earlier by the company at its sole discretion, then commensurable NPV at a discount rate of 10% will be redeemed. Such loan amount will be converted into one preference share of Rs.1 face value. in the event that the Company fails, to redeem RPS- Series B as stipulated herein, the redemption value of RPS-Series B shall be converted into Equity Share Capital at that point of time. For clarification, for every 1 RPS-Series B, 2.50 Equity Shares of the Company shall be issued.

- 8) Upon the aforesaid restructuring the equity share capital and the preference share capital of the company shall be as follows;

Name of the Equity shareholders	No. of equity shares held (equity share of face value Rs.1 each)	% of shares held
Resolution Applicant and his Nominee(s)	10,00,00,000/-	100
Total	10,00,00,000/-	100.00

Issued Redeemable Non-Cumulative Preference Share Capital Series- A

Names of the Preference shareholders	No. of RPS – Series A held	Face value of RPS-Series A held
Kohinoor Planet Construction Pvt Ltd	9,18,10,000	9,18,10,000
Asiana Hotel Management Company Pvt Ltd	2,50,90,000	2,50,90,000
Mamallapuram Development Pvt Ltd	2,65,00,000	2,65,00,000
K.R.Patel	1,20,00,000	1,20,00,000
Sriharan Sripathmanathan	21,00,000	21,00,000
Alagurajan Suruliandi	5,00,000	5,00,000
S.Pathmakumar	20,00,000	20,00,000
Total	16,00,00,000	16,00,00,000

9) With regard to the disputed creditors the amounts claimed by Mr.Bharat Kumar Dugar and M/s.Vijayalakshmi Enterprises shall be paid on the basis of the outcome of the adjudication of the legal proceedings.

10) With regard to statutory dues it is stated that

“The total statutory dues of the Company as on 31st March, 2018 (as per the unaudited balance sheet) are Rs.4.44 Crores excluding interest & penalties. I propose to pay off the entire dues in staggered manner depending upon the surplus cash flows available to the Company. I request for waiver of interest/damages/penalties etc. against the statutory dues and condonation for delay in submission of returns.”

In this regard, the Tribunal directs the Resolution Applicant to settle all the statutory dues and unpaid license fee along with dues of Operational Creditors as no specific time limit has been specified in this regard in the resolution plan.

11) It is observed that as per the Resolution Plan, the board approves the restructuring of share capital can be carried out without being subject to the shareholders special resolution or the board resolution of the existing board for appointing the nominee(s) of the Board of Directors of the Resolution Applicant.

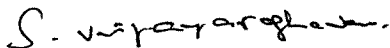
- 12) The Tribunal vide its earlier order dated 08.03.2018 has made few observation with regard to the financial credibility of the Resolution Applicant as an individual and the few clarifications regarding any financial tie ups of the Resolution Applicant, payment to the operational creditors and post resolution mortgage on the properties. The same has been addressed and clarified by the Resolution Applicant vide page 61 of the memo and status report filed by the RP dated 24.08.2018. With regard to payment to the operational creditor it is addressed at page 52 of the Application. With regard to the primary security and collaterals post payment to the creditors it is addressed at clause 3(c) at page 51 of the Application.
- 13) In view of the above, the resolution plan submitted by the Resolution Applicant, Mr.Sarang S. Kale which was recommended by the COC vide meeting dated 18.06.2018 stands approved.
- 14) The Resolution applicants are directed to adhere to the provisions of Section 53 of the IBC 2016 duly following the procedure for “water fall” in relation to the amounts brought in by the Resolution Applicants.

8

- 15) The Tribunal further observes that the as per Section 14 of the IBC, 2016, the moratorium shall cease to have effect from the date of approval of the resolution plan.
- 16) As per section 31(3)(b), the resolution professional is directed to forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the IBBI to be recorded on its database.
- 17) The Resolution Plan stands approved and the Resolution Process is to be concluded as per the terms of approved resolution plan with the modification made in para 10 of this Tribunal's order.

With the above directions, the Application **MA/264/IB/2018**

In TCP/198/IB/CB/2017 stands disposed of.



(S.VIJAYARAGHAVAN)
MEMBER (TECHNICAL)



(K.ANANTHA PADMANABHA SWAMY)
MEMBER (JUDICIAL)

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