

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,**  
**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 877 of 2024**

[Arising out of order dated Order dated 11.03.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-I in IA 794 of 2020 in CP(IB) 171 of 2017]

**IN THE MATTER OF:**

**PKH VENTURES LIMITED**

(Formerly known as PK Hospitality Services Pvt. Ltd.)  
201, A Wing, Fortune 2000, C-3 Block,  
Bandra Kurla Complex, Bandra (E),  
Mumbai, Maharashtra – 400051  
E-MAIL: admin@pkhs.in.

**...Appellant**

**Versus**

**MONITORING AGENCY OF AMAR REMEDIES**

Through Anil Goel  
Having its office at  
E – 10A, Kailash Colony,  
New Delhi – 110048  
E-MAIL- amar.remedies@aaainsolvency.com

**...Respondent**

**Present:**

**For Appellants: Mr. Abhijeet Sinha, Sr. Advocate with Mr. Soayib Qureshi, Mr. Rishabh Dua and Ms. Vanshika Ahlawat, Advocates.**

**For Respondent: Mr. Dhananjay Sud and Mr. Akhand Pratap Singh, Advocates for Liquidator.**

**Mr. Mustafa Doctor, Sr. Advocate with Mr. Shadab Jain, Ms. Suchitra Valjee, Mr. Sanidhya Kumar, Ms. Rajiv Shah and Ms. Riya Vasa, Advocates for Edelweiss.**

**With**

**Company Appeal (AT) (Insolvency) No. 878 of 2024**

[Arising out of order dated Order dated 11.03.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-I in I.A. No.2969/2021 in C.P.(IB)/1053(MB) 2017]

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**IN THE MATTER OF:**

**PKH VENTURES LIMITED**

(Formerly known as PK Hospitality Services Pvt. Ltd.)  
201, A Wing, Fortune 2000, C-3 Block,  
Bandra Kurla Complex, Bandra (E),  
Mumbai, Maharashtra – 400051  
E-MAIL: admin@pkhs.in.

**...Appellant**

**Versus**

**1. EDELWEISS ASSET RECONSTRUCTION CO. LTD.**

Edelweiss House, off CST Road, Kalina,  
Mumbai – Maharashtra – 400 098  
E-MAIL: earc.cs@edelweissfin.com

**2. CA ANIL GOEL**

**ERSTWHILE RESOLUTION PFFROFFESIONAL OF  
AMAR REMEDIES LIMITED AND THE CHARIMAN OF  
THE MONITORING AGENCY CONSTITUTED UNDER  
THE APPROVED RESOLUTION PLAN,**

Having its office at  
E – 10A, Kailash Colony,  
New Delhi – 110048  
Email: amar.remedies@aaainsolvency.com

**3. AMAR REMEDIES LIMITED**

Block No. 3, 2nd Floor, Guruji Premises,  
386, S.V. Savarkar Marg,  
Opp. Siddhivinayak Temple,  
Prabhadevi, Mumbai  
E-MAIL: amar.remedies@aaainsolvency.com

**...Respondents**

**Present:**

**For Appellants: Mr. Abhijeet Sinha, Sr. Advocate with Mr. Soayib Qureshi, Mr. Rishabh Dua and Ms. Vanshika Ahlawat, Advocates.**

**For Respondent: Mr. Mustafa Doctor, Sr. Advocate with Mr. Shadab Jain, Ms. Suchitra Valjee, Mr. Sanidhya Kumar, Ms. Rajiv Shah and Ms. Riya Vasa, Advocates for Edelweiss.**

**Mr. Dhananjay Sud and Mr. Akhand Pratap Singh, Advocates for Liquidator.**

**With**

**Company Appeal (AT) (Insolvency) No. 882 of 2024**

[Arising out of order dated Order dated 11.03.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-I in I.A. No.2399/2021 in C.P.(IB)/1053 (MB) 2017]

**IN THE MATTER OF:**

**PKH VENTURES LIMITED**

(Formerly known as PK Hospitality Services Pvt. Ltd.)  
201, A Wing, Fortune 2000, C-3 Block,  
Bandra Kurla Complex, Bandra (E),  
Mumbai, Maharashtra – 400051  
E-MAIL: admin@pkhs.in.

**...Appellant**

**Versus**

**1. SECURITIES AND EXCHANGE BOARD OF INDIA**

A statutory body having its address at:  
Plot No. C4-A, 'G' Block, Bandra Kurla Complex  
Bandra (E), Mumbai – 400051  
EMAIL: RECOVERYERO@SEBI.GOV.IN

**2. MONITORING AGENCY OF AMAR REMEDIES LTD,  
THROUGH ANIL GOEL**

Having its office at  
E – 10A, Kailash Colony,  
New Delhi – 110048  
EMAIL: [earc.cs@edelweissfin.com](mailto:earc.cs@edelweissfin.com)

**...Respondents**

**Present:**

**For Appellants: Mr. Abhijeet Sinha, Sr. Advocate with Mr. Soayib Qureshi, Mr. Rishabh Dua and Ms. Vanshika Ahlawat, Advocates.**

**For Respondent: Mr. Dhananjay Sud and Mr. Akhand Pratap Singh, Advocates for Liquidator.**

**With**

**Company Appeal (AT) (Insolvency) No. 918 of 2024**

[Arising out of order dated Order dated 11.03.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-I in I.A. No. 327/2024 in C.P.(IB)/1053 (MB) 2017]

**IN THE MATTER OF:**

**PKH VENTURES LIMITED**

(Formerly known as PK Hospitality Services Pvt. Ltd.)  
201, A Wing, Fortune 2000, C-3 Block,  
Bandra Kurla Complex, Bandra (E),  
Mumbai, Maharashtra – 400051  
E-MAIL: admin@pkhs.in.

**...Appellant**

**Versus**

**1. MONITORING AGENCY OF AMAR REMEDIES LTD,  
THROUGH ANIL GOEL**

Having its office at  
E – 10A, Kailash Colony,  
New Delhi – 110048  
E-MAIL- amar.remedies@aaainsolvency.com

**2. EDELWEISS ASSET RECONSTRUCTION CO. LTD.**

Edelweiss House, Off CST Road, Kalina,  
Mumbai – 400098  
MOBE-MAIL- earc.cs@edelweissfin.com

**...Respondents**

**Present:**

**For Appellants: Mr. Abhijeet Sinha, Sr. Advocate with Mr. Soayib Qureshi, Mr. Rishabh Dua and Ms. Vanshika Ahlawat, Advocates.**

**For Respondent: Mr. Dhananjay Sud and Mr. Akhand Pratap Singh, Advocates for Liquidator.**

**Mr. Mustafa Doctor, Sr. Advocate with Mr. Shadab Jain, Ms. Suchitra Valjee, Mr. Sanidhya Kumar, Ms. Rajiv Shah and Ms. Riya Vasa, Advocates for Edelweiss.**

**With**

**Company Appeal (AT) (Insolvency) No. 974 of 2024**

[Arising out of order dated Order dated 11.03.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-I I.A. No.5843/2023 in C.P.(IB)/1053 (MB) 2017]]

**IN THE MATTER OF:**

**PKH VENTURES LIMITED**

(Formerly known as PK Hospitality Services Pvt. Ltd.)  
201, A Wing, Fortune 2000, C-3 Block,  
Bandra Kurla Complex, Bandra (E),  
Mumbai, Maharashtra – 400051  
E-MAIL: admin@pkhs.in.

**...Appellant**

**Versus**

**1. MONITORING AGENCY OF AMAR REMEDIES LTD,  
THROUGH ANIL GOEL**

Having its office at  
E – 10A, Kailash Colony,  
New Delhi – 110048  
E-MAIL- amar.remedies@aaainsolvency.com

**2. EDELWEISS ASSET RECONSTRUCTION CO. LTD.**

Edelweiss House, Off CST Road, Kalina,  
Mumbai – 400098  
MOBE-MAIL- earc.cs@edelweissfin.com

**...Respondents**

**Present:**

**For Appellants: Mr. Abhijeet Sinha, Sr. Advocate with Mr. Soayib Qureshi, Mr. Rishabh Dua and Ms. Vanshika Ahlawat, Advocates.**

**For Respondent: Mr. Dhananjay Sud and Mr. Akhand Pratap Singh, Advocates for Liquidator.**

**Mr. Mustafa Doctor, Sr. Advocate with Mr. Shadab Jain, Ms. Suchitra Valjee, Mr. Sanidhya Kumar, Ms. Rajiv Shah and Ms. Riya Vasa, Advocates for Edelweiss.**

**With**

**Company Appeal (AT) (Insolvency) No. 975 of 2024**

[Arising out of order dated Order dated 04.01.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-I I.A. No.5843/2023 in C.P.(IB)/1053 (MB) 2017]]

**IN THE MATTER OF:**

**PKH VENTURES LIMITED**

(Formerly known as PK Hospitality Services Pvt. Ltd.)  
201, A Wing, Fortune 2000, C-3 Block,  
Bandra Kurla Complex, Bandra (E),  
Mumbai, Maharashtra – 400051  
E-MAIL: admin@pkhs.in.

**...Appellant**

**Versus**

**1. MONITORING AGENCY OF AMAR REMEDIES LTD,  
THROUGH ANIL GOEL**

Having its office at  
E – 10A, Kailash Colony,  
New Delhi – 110048  
E-MAIL- amar.remedies@aaainsolvency.com

**2. EDELWEISS ASSET RECONSTRUCTION CO. LTD.**

Edelweiss House, Off CST Road, Kalina,  
Mumbai – 400098  
MOBE-MAIL- earc.cs@edelweissfin.com

**...Respondents**

**Present:**

**For Appellants: Mr. Abhijeet Sinha, Sr. Advocate with Mr. Soayib Qureshi, Mr. Rishabh Dua and Ms. Vanshika Ahlawat, Advocates.**

**For Respondent: Mr. Dhananjay Sud and Mr. Akhand Pratap Singh, Advocates for Liquidator.**

**Mr. Mustafa Doctor, Sr. Advocate with Mr. Shadab Jain, Ms. Suchitra Valjee, Mr. Sanidhya Kumar, Ms. Rajiv Shah and Ms. Riya Vasa, Advocates for Edelweiss.**

**J U D G M E N T**

**ASHOK BHUSHAN, J.**

The above first five appeals have been filed against order dated 11.03.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench -1 allowing I.A. No.2969 of 2021 filed by the Financial Creditor for liquidation and deciding other I.As. by the same order filed in the case.

The sixth appeal being Company Appeal (AT) (Ins.) No.975 of 2024 has been filed against order dated 04.01.2024 passed by the Authority (National Company Law Tribunal), Mumbai Bench -1 in I.A. No. 5843 of 2023 filed by the Appellant. All the appeals having arisen out of the common facts and events have been heard together and are being decided by this common judgment. Brief facts of the case necessary to be noted for deciding the appeals are:

- (i) The Corporate Debtor – Amar Remedies Ltd. was subjected to insolvency on an application filed by the Corporate Debtor itself under Section 10 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as ‘I&B Code’) by order dated 16.06.2017.
- (ii) In the CIRP of the Corporate Debtor, the Appellant submitted Resolution Plan which was approved by the Committee of Creditors (CoC) by 88.78% voting share on 08.01.2021. Letter of intent was issued to the Appellant on 15.01.2021.
- (iii) I.A. No. 137 of 2021 was filed by the Resolution Professional seeking approval of the Resolution Plan which was allowed by the Adjudicating Authority vide order dated 25.03.2021. The Adjudicating Authority while approving the Resolution Plan did not grant various reliefs and concessions as was claimed by the Successful Resolution Applicant. The Adjudicating Authority held that the Successful Resolution Applicant has to approach the authority concerned.

- (iv) The Resolution Applicant in the Resolution Plan has offered to make payment of Rs.31.59 crores which payment was to be made within the period of 180 days from the date of approval of the Resolution Plan. Upfront payment of Rs.525 Lakhs was to be made within 90 days from the date of approval of Resolution Plan. The Successful Resolution Applicant has also deposited EMD and Bank Guarantee of Rs.35 Lakhs and Rs.25 Lakhs, respectively.
- (v) The Adjudicating Authority by the order dated 25.03.2021 has constituted a Monitoring Committee to ensure implementation of the Resolution Plan. The Monitoring Committee immediately after approval of the Resolution Plan on 25.03.2021, on 04.06.2021 wrote to Registrar of Companies seeking necessary waivers and directions.
- (vi) The first meeting of the Monitoring Committee held on 19.05.2021, where the Chairman of the Monitoring Committee apprised the members that Form INC 28 has been submitted before the Registrar of Companies, Mumbai dated 09.04.2021, which form has also been approved by the ROC by letter dated 21.04.2021.
- (vii) The second meeting of the Monitoring Committee held on 23.06.2021, in which meeting under Item No.2 discussion was made on the upfront payment to be made under the Resolution Plan. The Successful Resolution Applicant was requested to deposit the upfront amount of Rs.525 Lakhs latest by 23.06.2021.
- (viii) The third meeting of the Monitoring Committee was held on 16.08.2021 where it was noted that the Successful Resolution Applicant has defaulted in making the upfront payment. Further,



the SRA has not made payment of Rs.9 Crore which was due on 23.07.2021.

- (ix) The fourth meeting of the Monitoring Committee took place on 18.10.2021, where under Item No.1, Non-implementation of duly approval Resolution Plan by the SRA was discussed. Under Item No.2 discussion was made on possible action under I&B Code for non-implementation of Resolution Plan.
- (x) An I.A. No.2747 of 2021 was filed by the Appellant seeking direction to the Registrar of Companies to update the status of the Corporate Debtor in the records as 'active' and not 'under liquidation'. The Appellant has also written a letter to the Monitoring Committee to take steps to obtain clarifications from the Adjudicating Authority.
- (xi) An I.A. No.2399 of 2021 was filed by the Appellant seeking direction to the Securitization and Exchange Board of India (SEBI) to not take any coercive action against the Appellant and further Appellant sought waiver of applicability of the amendment in the Securities Contracts (Regulation) Rules 1957 so that the Resolution Plan can be implemented without contravention of any law.
- (xii) I.A. No. 2969 of 2023 was filed by Edelweiss Asset Reconstruction Company Limited on 13.12.2023 praying for direction to liquidate the Corporate Debtor on account of failure of the Successful Resolution Applicant to implement the Resolution Plan.
- (xiii) The Corporate Debtor was handed over to the Successful Resolution Applicant in June, 2021 itself. In the meeting of the Monitoring

Committee held from time to time update regarding litigation and different I.As. were placed before the Monitoring Committee.

- (xiv) The Successful Resolution Applicant filed I.A. No.2057 of 2023 seeking extension of time for payment as per the Resolution Plan for 30 days on (1) changing the status of the Company in the Registrar of Companies, (2) clarifications with respect to amended provisions of Securities Contract (Regulation) Rules 1959 and (3) setting aside of the order delisting of the shares by the Recognized Stock Exchanges.
- (xv) In December, 2023, the Appellant filed another I.A. No.5843 of 2023 where the Appellant prayed that I.A. No. 2969 of 2021 filed for liquidation be rejected and permit the Appellant to deposit the entire of the amount i.e. 29.34 Crore into an escrow account and direct the amount to be appropriated only after change of status of the Corporate Debtor, clarification with respect to amended provisions of Securities Contract (Regulation) Rules 1959 and setting aside of the illegal delisting order of the shares.
- (xvi) I.A. No. 5843 of 2023 came for consideration before the Adjudicating Authority. The Adjudicating Authority passed order dated 02.01.2024 in I.A. No.5843 of 2023 directing the Registrar of companies to modify the status of the Corporate Debtor on the Portal subject to the evidence of the deposit of Resolution Money in the Escrow Account and to change the status to "Active".
- (xvii) On 04.01.2024, another order was passed in I.A. No.5843 of 2023 directing the Successful Resolution Applicant to deposit the

remaining amount in an escrow account and the CoC was granted liberty to appropriate the same towards the implementation of the plan.

- (xviii) After passing of the order dated 04.01.2024, the Appellant filed another application being I.A. No.327 of 2024 praying for modification of order dated 04.01.2024.
- (xix) All applications which were filed by the Appellant as well as Edelweiss Asset Reconstruction Company Ltd. came for hearing before the Adjudicating Authority and by order dated 11.03.2024, I.A. No. 2969 of 2021 filed by Edelweiss was allowed directing for liquidation. I.As. filed by the Appellant 5843 of 2023, 2399 of 2021, 2494 of 2022 and I.A. No.327 of 2024 were dismissed. It was also noted in the order dated 11.03.2024 that I.A. No. 2747 of 2021 is disposed of in terms of order dated 04.01.2024.
- (xx) The Appellant aggrieved by order dated 04.01.2024 has filed Company Appeal (AT) (Ins.) No.975 of 2024 and all other Appeals have been filed against order dated 11.03.2024.
- (xxi) The Adjudicating Authority passed order dated 04.01.2024 directing the SRA to deposit the amount of resolution money in the escrow account and the CoC was to appropriate the same towards implementation of the plan. The SRA did not comply with the order and did not deposit the money and filed application for modification of the order, as noted above.
- (xxii) The Adjudicating Authority thereafter heard the parties on all the applications and by the impugned order has directed for liquidation.

The Adjudicating Authority returned the finding that the SRA has failed to implement the plan. The Adjudicating Authority has held that the payment of resolution money is dehors any of the conditions as sought to be put by the Appellant, it was also noticed by the Adjudicating Authority that Bench had allowed another opportunity to the SRA to pay the money which has already fallen due, which has not been complied with by the SRA. Aggrieved by order dated 04.01.2024 and 11.03.2024 these appeals have been filed.

2. We have heard Shri Abhijeet Sinha, learned senior counsel for the Appellant and Shri Mustafa Doctor, learned senior counsel appearing for the Respondent – Edelweiss. We have also heard Mr. Dhananjay Sud, learned counsel appearing for the Liquidator.

3. Shri Abhijeet Sinha, learned senior counsel for the Appellant submits that the Appellant could not have made any payment as per the Resolution Plan before status of Corporate Debtor is changed as 'active' by the Registrar of Companies. It is submitted that the amount which was to be infused in the Corporate Debtor was to be infused as share capital as per the terms and conditions of the plan. The status of the Corporate Debtor having not been 'active', no infusion of share capital was permissible. Appellant has actively taken steps for change of status of the Corporate Debtor and has filed application I.A. No.2747 of 2021 for seeking direction to the Registrar of Companies to update the status. Shri Sinha further submits that the Appellant at this stage does not insist for company becoming a listed company and is ready to deposit the amount under the Resolution Plan before this

Tribunal, however, the amount needs to be disbursed as per the plan only after status of Corporate Debtor is changed as 'active'. It is submitted that the finding of the Adjudicating Authority that Appellant has failed to implement the plan is not correct. This Tribunal in several judgments delivered by it has granted opportunity to the Successful Resolution Applicant to implement the plan even after expiry of timeline as in the Resolution Plan. It is submitted that the Appellant is still willing to implement the plan and was always ready to implement the plan. The amount could not be infused due to status of Corporate Debtor being not 'active' in the records of Registrar of Companies. It is submitted that the direction passed by the Adjudicating Authority on 04.01.2024 are against the terms of the Resolution Plan. The terms of the Resolution Plan that amount to be paid were to be infused as share capital and then to be disbursed, which terms were agreed by the CoC and are binding on them. To show its bonafide to deposit the amount in the escrow account, the Appellant filed IA No.5843 of 2023. The Adjudicating Authority by the order dated 02.01.2024 directed the amount to be deposited in the escrow account and further directed the ROC to change the status of the Corporate Debtor to 'active'. On the next date i.e. 04.01.2024, direction was also issued to appropriate the amount, which was prayed to be modified by filing the application by the Appellant. The Adjudicating Authority has wrongly inferred that the de-listing of shares is a condition precedent for the implementation of the Resolution Plan. The Appellant has already filed a Writ Petition in the Bombay High Court seeking direction with respect to the listing of the company and has been actively pursuing the said Writ Petition. The Objective of the Code is value maximization of the Corporate Debtor. The plan

value submitted by the Appellant is much more than the liquidation value of Rs.17,72,53,337/- and fair value of Rs.29,54,59,986/-. It is submitted that there is no default by the SRA since the amount was to be infused as share capital and the company being not active no share capital could be infused.

4. Shri Mustafa Doctor, learned senior counsel appearing for Edelweiss opposing the submission of the Appellant submits that the Resolution Plan approved on 25.03.2021 was unconditional plan. The timelines for payment under the plan were to be adhered to. The Appellant failed to make even single payment as required under the Resolution Plan, which was approved as far back as on 25.03.2021. The Appellant having contravened the payment obligation, I.A. No.2969 of 2021 was filed by the Edelweiss praying for liquidation which could be decided after more than two years. The application filed by the Appellant I.A. No.5843 of 2023 proposing to offer to deposit the amount in escrow account was also conditional payer which was dependent on fulfilment of several conditions as prayed in the application itself. Appellant was never ready to implement the plan as per the timelines and was only making one or other excuse for non-payment. The status of delisting of the Corporate Debtor was known to the Appellant when Resolution Plan was approved. The Resolution Plan sought waiver of several conditions which was specifically denied by the Adjudicating Authority by its order dated 25.03.2021. Hence, the Appellant could not have insisted for granting waiver before making payment to the creditors. The payment terms under the Resolution Plan were unconditional. The Adjudicating Authority in the impugned order has considered all facts and pleadings of the parties and even

after 04.01.2024 given opportunity to the Appellant to deposit the amount in the escrow account. The Appellant instead of depositing the amount has rather filed an appeal challenging order dated 04.01.2024. This clearly indicate that the Appellant has failed to fulfil its obligations under the Resolution Plan and is trying to introduce pre-conditions for payment. It is submitted that the Adjudicating Authority has considered all aspects of the matter and has returned finding that the Appellant has failed to implement the plan. It is submitted that the Appeals deserve to be dismissed. Appellant has delayed implementation of the plan for more than three years now and Appellant cannot be permitted to drag the matter by filing many applications and appeals.

5. We have considered the submissions of learned counsel for the parties and perused the record. The main issue which is to answered in this appeal is as to whether the Appellant has failed to implement the Resolution Plan approved by the Adjudicating Authority on 25.03.2024 and whether the company being not active, the Appellant could not infuse the share capital for payments to the creditors as per the Resolution Plan. We need to first notice the contents and necessary clauses of Resolution Plan to answer the question. Copy of Resolution Plan has been filed in all the appeals. In Company Appeal (AT) (Ins.) No.975 of 2024, the plan is filed as Annexure 13 to the appeal.

6. In the Resolution Plan Section 5 Clause 5.1(c) deals with infusion and utilization of funds by the Resolution Applicant, on which much reliance has been placed by the learned counsel for the Appellant. Clause 5.1(c) is as follows:

**“c. Infusion and Utilisation of Funds by Resolution Applicant:**

**SOURCING OF FUNDS**

*Rs. In Crores*

<b>Sr. No.</b>	<b>Particulars</b>	<b>Notes</b>	<b>Amount</b>
1	<b>Existing Business of Resolution Applicant</b>		
	(a) Share Capital		26.06
	(b) Unsecured Loans		5.53
	<b>TOTAL</b>		<b>31.59</b>

**UTILISATION OF FUND**

*Rs. In Crores*

<b>Sr. No.</b>	<b>Nature</b>	<b>Notes</b>	<b>Amount</b>
			(Amt in Crs.)
A.	Assumed CIRP Cost (As approved by CoC -approx.)	1	2.50
B.	Labour Liabilities	2	0.00
C.	<b><u>Financial Creditors</u></b>		
	Full & Final Consideration	3&4	29.09
	<b>GRAND TOTAL</b>		<b>31.59</b>

*\*From the date of approval of Resolution Plan by NCLT*

*Notes:*

- 1. CIRP Cost as approved by COC:** It shall be paid from 0 to 90 days on approval of this Resolution Plan by COC from the EMD (1) and EMD (2) totaling to Rs. 60 Lakhs (Rupees Sixty Lakhs Only) Balance amount of CIRP Cost if any shall be paid from the 1 payment of Rs.4.90 Crs (after adjusting the Rs.60 lakhs EMDs already paid) to be paid within 0 to 90 days from the date of Approval of the Resolution Plan by the adjudicating authority through own funds of Resolution Applicant. (As per regulation 38(1)(a)).



2. **Labour Liabilities:** *No provision of payment to labour has been made as there are no claims with the Resolution Professional. (As per regulation 38(1)(b)).*
3. **Dissenting Financial Creditors:** *Liquidation value due f any to dissenting financial creditors would be paid in priority to other financial creditor. (As per regulation 38(1)(c)).*
4. **Payment to Financial Creditors:** *Out of the total payment of Rs.31.59 Crores (Rupees Thirty One crores and fifty nine lakhs only), after the payment of the CIRP costs, Labour Liabilities and if any payment is to be made to Dissenting Financial Creditors, balance amount shall be paid within total of 180 days as mentioned herein from the date of approval of Resolution Plan by Hon'ble Mumbai NCLT as per the distribution plan made and shared vide email dated 05.01.2010 by Resolution Professional, in consultation with the members of CoC, which is tabulated hereunder in Section 14.”*

7. Clause 5.2 deals with Payment Schedule and conditions. Clause 5.2 (a) (a.1) provides as follows:

**“5.2 PAYMENT SCHEDULE AND CONDITIONS**

**a.1. Payment Schedule and release of assets stepwise;**

<b>Sr. No.</b>	<b>Particulars</b>	<b>Amount (in Lakhs)</b>	<b>Payment Days</b>	<b>Release of complete charge whatsoever on the mentioned Assets and</b>

				<b>Bank Guarantees</b>
1	<i>EMD (1) &amp; EMD (2)</i>	25.00	PAID	
2	<i>Up Front Payment</i>	525.00	0 to 90 ("0" Day to be considered the day on which NCLT passes order accepting this Resolution Plan)	<i>EMD Bank Guarantee of Rs.35 lakhs and Rs.25 lakhs amount deposited as EMD to be adjusted in the total payment. Complete control of the company (corporate debtor) to be handed over to the RA simultaneously against payment.</i>
3	<i>Payment</i>	900.00	91 to 120	
4	<i>Payment</i>	900.00	121 to 150	
5	<i>Payment</i>	809.00	151 to 180	<i>Rest all assets to be released, lien to be released and original documents to be handed over simultaneously against payment.</i>
	<b><u>TOTAL</u></b>	<b><u>3159.00</u></b>		

8. Clause (c) on which reliance has been placed by the Appellant is under heading 'sourcing of fund'. When we look into Clause 5.2, which is payment schedule and conditions, timelines for payment have been provided, which is 180 days from the approval of the Resolution Plan. Upfront payment of Rs.525 Lakhs was to be paid within 90 days in which Bank Guarantee of Rs.35 Lakhs and Rs.25 Lakhs deposited as EMD was to be adjusted. In Section 5, Para 5.1, Resolution Applicant submitted that the company needs to be remain listed on Bombay Stock Exchange as well as National Stock

Exchange and request was made to the Adjudicating Authority to pass necessary order accordingly to facilitate the same. We need to notice one more clause of the Resolution Plan i.e. 'Terms of Resolution Plan', which provides for 180 days. Terms of Resolution Plan is as follows:

***"TERM OF RESOLUTION PLAN***

*The term of the Resolution Plan would run from the approval of Resolution Plan by Adjudicating Authority under section 31 of IBC, 2016 for a period of 180 days. The Scheme Period is for period of 180 days during which full & final settlement of all the agreed liability would be completed."*

9. Section 7 of plan deals with Liquidation Scenario (Clause 7.1). Section 8 of the plan contains indicative timelines of events for implementation of proposed plan. Para 8.1 indicate that the entire plan has to be implemented within E + 180 days. (E means approval of plan by NCLT (effective date)). In the end of Section 8 following has been proposed:

*"The above timeline is based on the assumption that all the relevant and necessary approvals will be obtained in timely manner, however, any delay in obtaining the same, may affect the assumed timeline mentioned above. The Adjudicating Authority shall give extended moratorium for the implementation of this Resolution Plan for the duration of Implementation or 6 months whichever is earlier."*

10. The above indicates that in event of delay in obtaining the necessary approval extended moratorium shall be granted for the duration of

implantation or 6 months whichever is earlier. These timelines were subject to delay only up to 6 months as per the Resolution Plan itself in event any necessary approvals etc. are delayed.

11. We may now notice the order dated 02.01.2024 passed by the Adjudicating Authority which was IA No.5843 of 2023 which is as follows:

*“1) Ld. Counsel for the Parties are present.*

*2) Stand over to 04.01.2024, for further consideration and hearing.*

*3) Registrar of Companies is directed to modify the status on the Portal subject to the evidence of the deposit of Resolution Money in the Escrow Account and to change the status to “Active”*”

12. Subsequent to passing of the said order another order dated 04.01.2024 was passed on the next date, which was passed after further consideration and hearing. On 04.01.2024 following order was passed:

*“2. Heard the Counsel. The Ld. Counsel for SRA pleaded that the withdrawal of Resolution money by the CoC is depended on adjudication of three conditions, subject to which the money is agreed to be deposited. However, this Bench finds that, as far as prayer IV (3) is concerned, this Bench cannot deal with the same as this would tantamount to review of its own order. Counsel for the SRA also accepts that this Bench may not deal with this prayer in this Application.*

*3. As far as prayer IV (1) is concerned, this Bench has already directed the RoC vide order dated 02.01.2024*

*to modify the status of the Corporate Debtor as "Active" subject to conditions placed therein.*

*4. The only prayer which remains is IV (2). The registry is directed to post this IA on 10.01.2024.*

*5. In view of this the SRA is directed to deposit the amount of resolution money within the proposed period in Escrow account and the CoC shall be at liberty to appropriate the same towards implementation of the Plan."*

13. We may also notice the prayers in IA No. 5843 of 2023, which prayers have been referred to in order dated 04.01.2024. IA No.5843 of 2023 was filed by the Appellant in which following reliefs were sought:

*"21. In the above circumstances, the Applicants humbly pray that this Hon'ble Tribunal may be pleased to:*

- i) Dismiss Interlocutory Application No. 2969 of 2021 filed by the Respondent No. 2;*
- ii) Declare that Applicant is not liable to pay any interest upon the amount outstanding to be paid under the Sanctioned Resolution Plan;*
- iii) Permit the Applicant to deposit the entirety of the amount remaining to be paid under the Sanctioned Resolution Plan, i.e., Rs. 29.34 Crores, into an Escrow Account identified and opened by the Respondent for this very purpose, within a period of three weeks from the date of the order permitting it to do so;*

- iv) *Direct that the amount deposited into the Escrow Account shall be appropriated by the Respondent towards payments to stakeholders under the Sanctioned Resolution Plan only after:*
  - (1) *Change of status of Corporate Debtor from a company "in liquidation" to an "active" company, in the records of the Registrar of Companies, as sought in IA/2747/2021;*
  - (2) *Clarity as to the applicability of the amended provisions of the Securities Contracts (Regulations) Rules, 1959, as sought in 1A/2399/2021;*
  - (3) *Setting aside of the illegal order of delisting of the shares of the Corporate Debtor during its CIRP. by the recognized stock exchanges;*
- v) *For costs of this interlocutory application;*
- vi) *Any other order that this Hon'ble Tribunal may deem fit in the facts and circumstances of this case."*

14. When we look into the prayers made in the application, it is clear that the Appellant after having failed to make infusion of any amount as per the Resolution Plan and make payment as per timelines has offered to deposit entire remaining amount of Rs.29.34 Crores into an Escrow Account, which deposit is also made subject of fulfilment of condition as noted in prayer (iv). It is further relevant to notice that in the 4<sup>th</sup> meeting of the Monitoring Committee held on 18.10.2021 in Item No.1 it was noticed that the Successful Resolution Applicant has defaulted in making payment of all the instalments.

It was noted that the whole amount is overdue. In Item No.1 in the 4<sup>th</sup> meeting of Monitoring Committee following was minuted:

**“Item No. 1**

**To discuss on the non-implementation of the duly approved Resolution Plan by Hon’ble NCLT, Mumbai Bench**

*The Chairman of the Monitoring Committee apprised the members that Hon’ble NCLT, Mumbai Bench vide its order dated 25/03/2021 approved the Resolution Plan submitted by M/s. PK Hospitality Services Private Limited. Therefore, in compliance to the approved Resolution Plan, the Resolution Applicant was required to implement the Resolution Plan within 6 months from the effective date i.e. 25/03/2021 but no payment has been made by the successful Resolution Applicant till date.”*

15. Under Item No.2, the Committee also deliberated on possible action under IBC for non-implementation of Resolution Plan. In Item No.2 following was minuted:

**“Item No. 2**

**To consider possible actions under the IBC 2016 for non-implementation of the Resolution Plan**

*The Chairman of the Monitoring Committee apprised the members that Resolution Applicant was required to implement the Resolution Plan within 6 months from the date of approval of Resolution plan i.e. 25/03/2021 but no payment has been made by the*

successful Resolution Applicant till date therefore the remedy available with the creditors are as follows;

1. To invoke Performance Security amounting to Rs. 2 Cr. submitted by SRA during the submission of Resolution Plan
2. To initiate proceedings under Section 33(3) of the IBC 2016. The relevant extract of said section is reproduced hereunder;

### **33. Initiation of liquidation**

*(3) Where the resolution plan approved by the Adjudicating Authority 3 [under section 31 or under sub-section (1) of section 54L,] is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii), (iii) of clause (b) sub-section (1).*

3. To initiate proceedings under Section 74(3) of the IBC 2016. The relevant extract of  
  
Section 74(3) of the IBC 2016 is reproduced hereunder;

### **74. Punishment for contravention of moratorium or the resolution plan**

*(3) Where the corporate debtor, any of its officers or creditors or any person on whom the approved resolution plan is binding under section 31, knowingly and wilfully contravenes any of the terms of such resolution plan or abets such*



*contravention, such corporate debtor, officer, creditor or person shall be punishable with imprisonment of not less than one year, but may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.*

4. *To initiate proceedings under Regulation 39(9) of the CIRP Regulations 2016. The relevant extract of the said Regulation is reproduced hereunder;*

**39. Approval of resolution plan.**

*(9) A creditor, who is aggrieved by non-implementation of a resolution plan approved under sub-section (1) of section 31, may apply to the Adjudicating Authority for directions*

*The representative of Edelweiss ARC has mentioned that this matter is being discussed with other lenders and accordingly, action will be taken by them”*

16. Edelweiss after the aforesaid decision decided to file an application for liquidation, hence, application was filed on 13.12.2021 being IA No.2969 of 2021 praying for liquidation. In the IA 2969 of 2021, Edelweiss has given sequence of events and has pleaded that the Successful Resolution Applicant has failed to make the payment as per the Resolution Plan.

17. Shri Abhijeet Sinha, learned senior counsel for the Appellant has placed much reliance on Clause 5 (c) of the Resolution Plan (Infusion and Utilization of Funds by the Resolution Applicant), as noted above. Clause 5 was sourcing of fund and the payment schedule and conditions and timelines for payment were not dependent on or conditional to sourcing of funds. In event the funds

are not provided as per Clause 5 (c), the plan has to fail. The implementation of plan being not dependent on sourcing of funds because sourcing of fund was responsibility of the Resolution Applicant and the Resolution Applicant cannot be heard on contending that since the status of company was not changed into 'active', he cannot infuse the fund and make payment. The plan was approved on 25.03.2021 and in three years no payment was made as per the Resolution Plan.

18. There is one more aspect which need to be considered. The submission which has been pressed by the Appellant is that he has to infuse share capital of Rs.26.06 Crores which has to be infused as per the 'sourcing of funds' in the Resolution Plan and Rs.5.53 Crores was to be realized by unsecured loans. Even upfront payment of Rs.525 Lakh which payment was obligation of the Resolution Applicant and could have been discharged as per Clause 5(c) itself. The Appellant cannot make even the upfront payment of Rs.525 Lakh which was noticed in the 4<sup>th</sup> Monitoring Committee meeting. Even prior to 4<sup>th</sup> meeting of Monitoring Committee, in the 2<sup>nd</sup> Monitoring Committee meeting it was noticed that that the Appellant has defaulted in making the payment as per the Resolution Plan.

19. It is also relevant to notice that in June, 2021 itself the complete control of the company was handed over to the Resolution Applicant which although was contemplated to complete after payment. An application was filed by the Chairman of the Monitoring Committee for taking back the custody of the assets from the Successful Resolution Applicant being IA No.2494 of 2022.

20. The submission of the learned counsel for the Appellant is that payment under the Resolution Plan was conditional and dependent on sourcing of fund as contemplated under Clause 5(c). The funds being not available for SRA to implement the plan is itself sufficient ground to hold the plan to have been contravened by the Successful Resolution Applicant. Appellants submission that plan could not be held to be contravened unless the funds are available as per Clause 5(c) cannot be accepted. Furthermore, we have noticed the various applications filed by the Appellant seeking direction to set aside the order of delisting of the company and prayers made in IA No.5843 of 2023, as extracted above, which clearly makes the deposit in the escrow account conditional of three conditions, as noted above. The sequence of events indicate that the Successful Resolution Applicant has clearly failed to implement the Resolution Plan and the ground that fund cannot be infused since status of company was not made active is not sufficient to absolve the liability of the Appellant to implement the plan. It is also relevant to notice that the Resolution Applicant before the Adjudicating Authority at the time of approval of the plan has prayed for waivers which prayer was not granted by the Adjudicating Authority by order dated 25.03.2021. The Adjudicating Authority has noticed the prayer of the Appellant and its decision in Paras 16, 17 and 18 of the judgment, which is as follows:

*“16. The SRA has sought certain waivers such as waiver of statutory liabilities/contingent and/or other liabilities. As far as liabilities are concerned, the SRA is liable to the extend specified in the Plan and nothing*

*else and the same would have to be based on clean slate principle.*

*17. As far as the waiver sought in the Resolution Plan in respect of Minimum Alternate Tax Liability (MAT), the SRA has to approach the jurisdictional Income Tax Authority concerned which will be decided in accordance with law. No direction in that regard can be passed.*

*18. The Resolution Applicant has sought certain other reliefs and concessions. We however are not inclined to grant such concessions or reliefs. The Resolution Applicant needs to approach the authorities concerned (viz. SEBI, Stock Exchanges, etc.) for permits, licenses, renewal of various facilities like electricity connections etc. as and when required. They shall have to be considered by the appropriate authorities in accordance with law.”*

21. When the Adjudicating Authority expressly refused to grant any reliefs and concessions, as prayed, the plan was to be implemented by the Successful Resolution Applicant and Appellant cannot be heard to say that unless the Registrar of Companies change the status of the Corporate Debtor into active implementation of plan cannot proceed further. It is also relevant to notice that when no waiver was granted to the Successful Resolution Applicant and there was no challenge to the order of the Adjudicating Authority approving the Resolution Plan, the order dated 25.03.2021 has become final and plan as approved by the Adjudicating Authority along with refusal to grant any waiver and relief was liability of the SRA to implement and it was binding on the SRA. The Adjudicating Authority in the impugned

order has considered all the aspects of the matter. The Adjudicating Authority rightly observed that the applications filed by the Corporate Debtor clearly indicates the mindset of the SRA that the plan is conditional and it shall be implemented only after the status of the Corporate Debtor is updated on MCA Portal. It is useful to notice the observations made by the Adjudicating Authority in Para 7.6, 7.7, 7.8, 7.9 and 7.10 in order dated 11.03.2024:

*“7.6. The Application in IA 2057/2021 filed on 17.05.2023, clearly indicates the mindset of the SRA that the said plan is conditional and it shall implement the Plan only after i. status of the Corporate Debtor is updated on MCA Portal; ii. The shares of the Corporate Debtor are re-listed; & iii. Amendment to the security contract regulation act, mandating minimum 5% public shareholding, held to be not applicable to the present Resolution Plan.*

*7.7. Nonetheless, on 04.01.2024, this Bench passed an interim order in LA 5843/2023 providing the SRA another opportunity to deposit the amount of resolution money within the period proposed by it in escrow account and dealt with the conditions in this Application in the following manner:*

*“2. Heard the Counsel. The Ld. Counsel for SRA pleaded that the withdrawal of Resolution money by the CoC is depended on adjudication of three conditions, subject to which the money is agreed to be deposited. However, this Bench finds that, as far as prayer IV (3) is concerned, this Bench cannot*

*deal with the same as this would tantamount to review of its own order. Counsel for the SRA also accepts that this Bench may not deal with this prayer in this Application.*

- 3. As far as prayer IV (1) is concerned, this Bench has already directed the RoC vide order dated 02.01.2024 to modify the status of the Corporate Debtor as "Active" subject to conditions placed therein.*
  - 4. The only prayer which remains is IV (2). The registry is directed to post this IA on 10.01.2024.*
  - 5. In view of this the SRA is directed to deposit the amount of resolution money within the proposed period in Escrow account and the CoC shall be at liberty to appropriate the same towards implementation of the Plan.*
- 7.8. Prior to this, learned counsel for SRA had submitted before us on 14.12.2023 that if the Monitoring Committee gives details of the Escrow Account, then they will deposit the amount within two weeks from the date of intimation. Accordingly, the money was to be deposited within two weeks from the order dated 04.01.2024, however, it is pleaded in the next hearing by the counsel for the SRA that the order dated 04.01.2024 was displayed on the DMS Portal on 14.01.2024. Accordingly, this Tribunal*

*permitted the SRA to deposit the money within three weeks from 14.01.2024.*

*7.9. Instead of payment of the money SRA filed an application No. 327/2024 on 29.01.2024 praying for rectification of the order dated 04.01.2024 contending that without clarity as to whether the shares of the Corporate Debtor will be listed again on the recognized stock exchange, the deposit into Escrow account and appropriation of the funds by the CoC will be premature. This Application was taken up on 06.02.2024 and the learned Counsel for SRA submitted that the SRAs counsel had never proposed for deposition of the money as recorded in order dated 04.01.2024. After hearing the parties this Bench passed the following order.*

*“Ld. Counsel for the SRA in this case has filed another Interlocutory Application No.327/2024, seeking recall of Para 5 of the order dated 04.01.2024. However, this Bench finds that the recording was made after due deliberation of the Counsel present on that day and this deliberation was carried forward in the next hearing also when another Counsel appeared. Now the third Counsel has come before us saying that earlier two Counsels have never made any submission. The earlier Counsels shall be at liberty to place on record their personal affidavit, in case they still feel that the contents of Para 5 are not in accordance with what they pleaded before this Bench.”*

710. The above discussion clearly evidence that the .in so far as it has time and again linked the payment of Resolution Money to the issues raised by it. This Bench is of the considered view that the payment of resolution money is dehors any of the condition and holding this view, this Bench allows the another opportunity to the SRA to pay the money which is already fallen due after issuance of direction to the RoC to update the status of the Corporate Debtor and holding that the issue of listing has attained finality qua this Tribunal. We are of the considered view that the plea of listing and Applicability of amendments is either a condition precedent to the implementation of the Plan or the grounds made out for deferring the payment to unspecified time period. It is trite law that no conditional plan can be approved by this Tribunal u/s 31 of the Code and the insistence of the SRA at this juncture to link the payment with the successful resolution of issues raised by it makes the approved Resolution Plan a conditional Plan. Accordingly, we have no hesitation to hold that the SRA has failed to implement the Resolution Plan and the Corporate Debtor is to be liquidated in terms of the Provisions of IBC, Code. We direct the Resolution Professional to handover the control and management of the Corporate Debtor to the Liquidator appointing by this Tribunal along with all the records and assets in their possession.”

22. We fully concur with the view taken by the Adjudicating Authority that the Resolution Applicant has failed in implementing the Resolution Plan and



despite giving opportunity to the Appellant to deposit the amount by order dated 04.01.2024, the amount has not been deposited rather Appellant has challenged the order dated 04.01.2024 by filing Company Appeal (AT) (Ins.) No.975 of 2024.

23. Learned counsel for the Appellant has contended that the order dated 04.01.2024 is against the terms of the Resolution Plan. We fail to comprehend as to how order dated 04.01.2024 is against the terms of the Resolution Plan. The Appellant under the plan was required to pay entire payment within 180 days from the date of approval of the Resolution Plan and on application filed by the Appellant that he is ready to deposit the entire amount, said order was passed. The insistence of the Appellant that amount in the escrow account should not be appropriated, is clearly unjustified. The amount of the Resolution Plan has to be disbursed as per the Resolution Plan and it is for the benefit of the creditors. Appellant could not be heard to say that although he be permitted to deposit the amount in the escrow account but the amount should not be disbursed and it should be disbursed after fulfilment of conditions as indicated in his application, which was filed being IA No.5843 of 2023. We do not find any infirmity in the order dated 04.01.2024 warranting any interference in exercise of our appellate jurisdiction.

24. The Adjudicating Authority after considering all aspects of the matter and after returning the finding that the SRA has failed to implement the plan has rightly allowed IA No. 2969 of 2021 filed by the Financial Creditor directing for liquidation. When the Resolution Plan has not been implemented by the SRA, there was no option left with the Adjudicating Authority except

for direction for liquidation. The Adjudicating Authority has rightly passed the order for liquidation under Section 33 Sub-section (3) read with Section 33(1)(b) of the I&B Code. After directing for liquidation, the Adjudicating Authority has also not committed any error in dismissing different applications filed by the Appellant.

25. Learned counsel for the Appellant has referred to judgment of this Tribunal in ***“Tricounty Premier Hearing Service Inc. vs. State Bank of India, Company Appeal (AT) (Ins.) No. 1038 of 2021”***, ***“Cosmos Co-operative Bank Limited vs. Edelweiss Asset Reconstruction Company Ltd. & Ors., Company Appeal (AT) (Ins.) No.499 of 2023”*** as well as ***“State Bank of India & Ors. vs. The Consortium of Murari Lal Jalan and Mr. Florian Fritsch & Anr., Company Appeal (AT) (Ins.) No. 129 & 130 of 2023”*** decided on 26.05.2024. In the above cases, this Tribunal was considering the issue as to whether timelines as per the approved Resolution Plan can be extended by the Adjudicating Authority and whether the grant of extension of timelines shall amount to modification of the Resolution Plan. This Tribunal held that the timelines which were directed in the Resolution Plan can very well be extended on sufficient grounds by the Adjudicating Authority. It is endeavour of all concerned that plan is implemented. There is no quarrel to this proposition of law laid down in aforesaid cases but present is not a case for extension of timeline for payment as per the Resolution Plan. Present is a case where the Appellant’s case is that he having not been able to infuse the fund by share capital, the implementation of plan cannot begin, which submission has been noted and rejected by us in the

foregoing paras of this judgment. The above judgments in no manner help the Appellant in facts of the present case.

26. In view of the foregoing discussion and our conclusions, we are of the view that the Appellant is not entitled for any relief. All the appeals are dismissed.

**[Justice Ashok Bhushan]**  
**Chairperson**

**[Barun Mitra]**  
**Member (Technical)**

**NEW DELHI**

***1<sup>st</sup> July, 2024***

*Archana*