

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 351 of 2024

[Arising out of order dated 08.12.2023 passed by the Adjudicating Authority
(National Company Law Tribunal, Mumbai Bench, Court – II) in I.A. No.
1857/2023 in CP (IB) No.1790/MB/C-II/2017]

IN THE MATTER OF:

Taguda Pte Ltd.

...Appellant

Versus

State Bank of India & Anr.

...Respondents

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Kumar Anurag Singh, Mr. Zain A. Khan, Mohd. Abran Khan and Mr. Vijay Kumar, Advocates.

For Respondents : Mr. Navin Pahwa Sr. Advocate with Mr. Vaijyant Paliwal and Ms. Kirti Gupta, Advocates for R-1/SBI.

Mr. Soummo Biswas, Mr. Rishabh Jaisani, Ms. Aditi Tomar and Advocates for R-2/ PNB.

J U D G M E N T

ASHOK BHUSHAN, J.

This appeal by a Successful Resolution Applicant (SRA) has been filed challenging the order dated 08.12.2023 passed by the adjudicating authority (National Company Law Tribunal, Mumbai Bench, Court – II), partly allowing I.A.1857/2023 filed by the State Bank of India (SBI), Respondent No. 1, praying for direction to the SRA to implement the revised resolution plan. By the impugned order, prayers made in I.A. i.e., Prayer (a) has been allowed

directing the SRA (appellant) to implement the resolution plan within a period of 2 months. Aggrieved by which order, this appeal has been filed.

2. Brief facts of the case necessary to be noticed for deciding the appeal are:

- i. The corporate debtor, namely Ushdev International Limited was admitted to Corporate Insolvency Resolution Process (CIRP) by order dated 17.05.2018 passed by the adjudicating authority on an application filed under Section 7 by the SBI.
- ii. The appellant submitted revised resolution plan on 22.06.2021. Revised resolution plan of the appellant was approved by the Committee of Creditors (CoC) on 22.06.2021 by the CoC with 91.06%, vote shares.
- iii. The adjudicating authority vide its order dated 03.02.2022 allowed the I.A. filed by the Resolution Professional (RP) for approving the plan. After approval of the resolution plan an Implementation and Monitoring Agency (IMA) of the corporate debtor was constituted consisting the two members of the CoC (SBI & IDBI Bank) two members of the appellant, Mr. Deepak Netto and Ms. Radha Rawat and the RP of the corporate debtor.
- iv. Under the resolution plan, the resolution applicant proposed the committed payment of ₹227 crore out of which ₹225.14 crore was to be paid towards the settlement of the financial creditors.

- v. Various meetings of the Monitoring Agency (MA) were held from 15.03.2022 till April 2023, with regard to implementation of the resolution plan. Various steps were discussed in the meetings of the Implementation Committee. In the second meeting of the Monitoring Committee held on 08.04.2022, the representative of the appellant submitted that the company has already submitted brief application to SEBI and RBI seeking approval.
- vi. The SBI filed an application I.A. No.1857/2023 on 28.04.2023, seeking various relief including directions to the SRA to forthwith implementation of the revised resolution plan. In the application, reply was filed by the resolution applicant (appellant herein) objecting to the maintainability of the application. It was pleaded that implementation of the resolution plan is pending solely on the ground of the fact resolution applicant is awaiting the approval from the RBI, which is condition precedent to the implementation of the resolution plan in terms of Schedule I Clause 14 of the resolution plan.
- vii. It was further pleaded that the closing date as per the resolution plan shall commence only after all government authorities have granted the requisite approval.
- viii. The adjudicating authority heard both the parties and vide order dated 08.12.2023 has partly allowed the application with respect to Prayer (a) in the application, directing the SRA to implement the resolution plan in a timeframe not later than 2 months from the date of the order. After

passing of the order by the adjudicating authority, 19th meeting of IMA was held on 11.01.2024. The IMA took update of status of approval from the RBI. The IMA meeting was held on 06.02.2024, where representative of the appellant requested the IMA to grant time for one week to the resolution applicant to implement the resolution plan who was asked to submit a formal request.

- ix. On 08.02.2024, Joint Lenders Meeting (JLM) took place where it was decided to authorise SBI to invoke the Performance Bank Guarantee (PBG) and of filing of the application before the NCLT for initiation liquidation against the corporate debtor. In pursuance of the JLM held on 05.02.2024, the PBG was invoked on 09.02.2024.
- x. The appellant filed the present appeal on 16.02.2024, challenging the order impugned directing the appellant to implement the resolution plan in a timeframe not later than 2 months. Appeal was entertained on 19.02.2024, and time was allowed to the SBI to file a reply to the appeal as well as stay application. On request of the appellant, the appeal was adjourned on several occasion. Counsel for the SBI also took time to obtain instructions with regard to stage of process regarding Reserve Bank of India (RBI) approval.
- xi. On an application filed by the appellant, Punjab National Bank (PNB), the authorised dealer of the corporate debtor was also impleaded who was also allowed time to file a reply. Reply was filed on behalf of PNB. The appeal was heard on 05.07.2024. Reply affidavit filed by PNB was

also noticed by this Tribunal in its order dated 05.07.2024. Appellant submitted that appellant is ready to park the balance amount in Singapore/UAE SBI branch. Appellant offered to deposit the amount ₹225.14 crore within 1 week after he received the details of the bank. This Court also observed that in the meantime, PNB as well as SBI shall take all necessary steps so that the applications, which are already submitted before the RBI for approval, are expedited. The appeal was thereafter taken on several occasion. Additional affidavits were filed by the appellant stating that certain requirements are being insisted by SBI for opening of the account and for receiving the funds from which correspondence continued for several months, however, the appellant and the SBI, the respondent could not come to a consensus with regard to opening of the account and parking of the funds and the result is that appellant did not deposit the amount as offered by it.

xii. Learned counsel for the parties addressed the arguments on the merits.

3. We have heard learned senior counsel, Mr. Abhijeet Sinha appearing for the appellant and learned senior counsel, Mr. Navin Pahwa has appeared for the SBI. Learned counsel Mr. Soummo Biswas has appeared for the PNB.

4. Learned counsel for the appellant submitted that adjudicating authority by passing an impugned order has modified the provisions of the resolution plan which is not within the jurisdiction of the adjudicating authority. It is submitted that the resolution plan could not be implemented by the appellant because of the fact that necessary approval as contemplated

in the plan from RBI with respect to certain transaction which required prior approval could not be granted. It is submitted that closing date contemplated in the resolution plan shall arise only when all conditions precedent are fulfilled and closing date having not yet been achieved, appellant cannot be said to have not implemented the resolution plan. It is submitted that obtaining approval of RBI are not within the domain of the appellant. Although, necessary applications were filed by the appellant through the authorised dealer i.e., PNB, which application have also filed and pending for approval. Mr. Sinha further submitted that appellant was ready to park the amounts under the resolution plan with the branch of the SBI at UAE, however, due to several requirement communicated by the SBI, the said event could not happen.

5. Learned senior counsel, Mr Naveen Pahwa appearing for the respondent submitted that after the impugned order dated 08.12.2023, appellant in the meeting of the IMA held on 06.02.2024, asked for only one week time to implement the resolution plan, thereafter, he sent an email on 07.02.2024 asking for 1 month time to implement the resolution plan. Appellant having failed to implement the plan in the JLM held on 08.02.2024, it was decided to invoke the PBG and file an application for liquidation which has been done. It is submitted that the Request for Resolution Plan (RFRP) itself contemplated that all necessary and regulatory approvals are to be obtained by the resolution applicant and resolution applicant having failed to obtain necessary regulatory approval from Reserve Bank of India. Resolution plan

has to implemented in the timeline. It is submitted that a resolution plan was approved by the adjudicating authority on 03.02.2022 and from approval of the resolution plan more than 3 years have elapsed, but the appellant has failed to implement the plan. It is submitted that under Section 31(4) of the Insolvency and Bankruptcy Code, 2016, (for short the 'IBC' or the 'Code'), the resolution applicant has to obtain all necessary approvals required under any law within a period of 1 year. Appellant having failed to obtain necessary approval the plan has failed and it is submitted that appellant has no capacity to deposit the amount which is reflected from the fact that initially the appellant offered to deposit the amount through an entity of UAE i.e., Anza Capital Investment LLC, and after the order dated 05.07.2024 passed in this appeal, appellant offered to obtain amount to be sourced from UAE, including receiving fund from Shaikh Mohammed Bin Sultan Bin Hamdan. It is submitted that the order dated 05.07.2024 was passed by this Tribunal on the request made by the appellant to show his bona fide to deposit the amount of ₹215 crore at Singapore/UAE, however, under the resolution plan, the amount which was required to be paid for foreign lender was only ₹2.40 crore and rest of the amount ₹225.14 crore was to be paid to the Indian financial creditor out of ₹227.4 crore. Appellant having not paid the amount to the financial creditor, even as per the timeline provided to the resolution plan the appellant has failed to implement the plan. Appellant cannot be allowed to drag the implementation for years on the pretext that approval by the RBI has not been received. Appellant was solely responsible for obtaining approval from the regulatory authorities. 1 year as prescribed under Section 31(4) of

the IBC has long elapsed and the resolution plan has failed and has not been implemented. There was no ground in the appeal to interfere with the order passed by the adjudicating authority directing the appellant to implement the plan within 2 months. Order passed by the adjudicating authority gave an opportunity to the appellant to implement the resolution plan and appellant having agreed before the Interim Monitoring Committee on 06.02.2024 to implement the plan have backed out from its commitments and have filed this appeal to further prolong the implementation. It is submitted that in the appeal, appellant has obtained various adjournment to delay the implementation of the plan, the appeal deserves to be dismissed.

6. We have considered the submissions of the counsel for the parties and perused the records.

7. Before we consider the respective submission of the parties, it is useful to notice the relevant provisions in the RFRP regarding obtaining the requisite statutory and regulatory approvals. Clause 3.1 of the RFRP is as follows:

“3.1 Obtaining requisite Statutory and Regulatory Approvals

The Successful Resolution Applicant is expected to obtain all the relevant statutory and regulatory approvals required under Applicable Law for the Proposed Transaction upon acceptance of the Resolution Plan by the Adjudicating Authority, including, but not limited to, approvals required from the Competition Commission of India, under the Competition Act, 2002/ any other regulatory approvals, within a period of one year from the date of approval of the Resolution Plan by the Adjudicating Authority or within such period as provided for under Applicable Law, whichever is later. It is hereby clarified that neither the Resolution Professional nor the COC shall be responsible in any manner whatsoever for obtaining these approvals.”

8. The provisions in the IBC, which provides for obtaining necessary approvals in Section 31(4) which provides as follows:

“31. Approval of resolution plan.

(4) 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:

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002 (12 of 2003), the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.]”

9. The resolution plan was approved by the adjudicating authority on 03.02.2022. We need to first notice the prayers made in the application I.A.1857/2023. The prayers in the application have been noticed in paragraph 1 of the impugned order, which is as follows:

“(a) Order and direct the Respondent/Resolution Applicant (RA) to forthwith implement the revised Resolution Plan (‘Revised Resolution Plan’);

(b) Order and direct the Respondent/RA to pay an interest at 10% per annum on the total resolution amount in terms of the Revised Resolution Plan;

(c) In the event the Respondent /RA fails to implement the revised Resolution Plan (Resolution Plan), pass the necessary orders and directions with respect to the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor.

(d) Pending final hearing and disposal of the present application, order and direct the Respondent/ RA to forthwith deposit the total resolution amount in terms of the Revised Resolution Plan in an escrow account with the Applicant bank;

(e) Any other order and directions as the Hon’ble Tribunal may deem fit.”

10. The adjudicating authority by the impugned order dated 08.12.2023 has allowed only Prayer (a) under which appellant was directed to implement the revised resolution plan in a timeframe not later than 2 months from the

date of the order. Paragraph 17 of the order which contains necessary directions, allowed Prayer (a), which is as follows:

“17. After considering the facts and sequence of events in the present case, we deem it appropriate to direct the Respondent/the Resolution Applicant to implement the Revised Resolution Plan in a time frame not later than two months from the date of this order. It is further made clear that the obligation to comply with all prerequisites for due implementation of the Revised Resolution Plan rests with the Respondent, and the Monitoring Agency, where the Applicant is a member, shall extend full cooperation for obtaining approvals, as may be required for implementation of the Revised Resolution Plan. Accordingly, prayer (a) is allowed.”

11. Other prayers in the applications were not allowed. The first submission which has been pressed by the appellant is that the direction to implement the plan within 2 months is modification of the resolution plan which is beyond the jurisdiction of the adjudicating authority. We fail to see any substance in the submission of the appellant. The resolution plan was approved by the adjudicating authority on 03.02.2022. It was the case of the appellant before the Monitoring Committee Meetings that approval from the RBI with respect to certain transactions under the resolution plan are awaited hence, the resolution plan has not yet been implemented. As per the RFRP, Clause 3.1 noted above, it is the obligation of the resolution applicant to obtain necessary (regulatory approvals) and under Section 31(4) time allowed to the resolution applicant is for obtaining the necessary regulatory approval is only 1 year from the date of passing of the order. Application I.A.1857/2023 was filed by the SBI only on 28.04.2023, that is much after the elapse of period of 1 year from passing of the order. By the impugned order passed by the adjudicating authority on 08.12.2023 appellant was directed to

implement the resolution plan within a timeframe not later than 2 months. We fail to see that how the said direction can be read as modification of the resolution plan, rather by the said order, adjudicating authority granted further 2 months time to the appellant to implement the resolution plan.

12. We also need to notice the minutes of Monitoring Committee held on 06.02.2024, which has been brought on the record in the reply filed by the SBI. The 20th Interim Monitoring Committee was attended by representative of the SBI, IDBI and representatives of the appellant as well as the RP. Under Item 20.6, following was noticed:

“20.6 Update on Implementation of Resolution Plan:

Mr. Deepak Netto briefed the IMA that the Resolution Applicant has provided the required clarification to their financier/ investor Mis ANZA Capital Investment LLC as discussed in 19th IMA meeting.

Mr. Deepak Netto also clarified that the Mis ANZA Capital Investment LLC is analyzing the details given to them and it seems that they would require more time to analyze details before they disburse the funds.

In view of the same Mr. Deepak Netto requested the IMA to grant a time of one week to the Resolution Applicant to implement the Resolution Plan.

Mr. Sanjay Goyal replying to the request of Mr. Deepak Netto stated that a formal request should be submitted by the Resolution Applicant to the IMA members and for the discussion in the joint lenders meeting of the Company.”

13. The above indicates that on 06.02.2024, i.e., after passing the impugned order by the adjudicating authority request was made on behalf of the appellant to grant a time for 1 week to implement the resolution plan on which the representative of the SBI asked the resolution applicant to send a formal request. No formal request seeking 1 week time was send, however, email was sent from SRA on 07.02.2024, praying for extension of timeline by

1 month. In the JLM meeting held on 08.02.2024, the above was noticed. The JLM Meeting status of implementation of the resolution plan has been noticed in paragraph 1. Paragraph 1 of the JLM meeting is as follows:

“1. Status of implementation of Resolution Plan.

i) AGM, SBI informed that NCL T, Mumbai vide its order dated 08.12.2023 had passed an order directing the Successful Resolution Applicant ("**SRA**") to implement the resolution plan of the Corporate Debtor ("**Resolution Plan**") within a period of two months from the date of its order i.e. by 08.02.2024.

ii) The matter was taken up with the SRA and the SRA in Interim Monitoring Agency ("**IMA**") meeting held on 11.01.2024 apprised that they are in discussion with their investors M/s. ANZA Capital and entire resolution amount of Rs. 227 crores will be remitted in upfront (instead of four monthly tranches as per Resolution plan) well before 08.02.2024. However, in last IMA meeting held on 06.02.2024 the SRA has requested for extension of the timeline by one week. Therefore, SRA was advised to submit formal request in this regard so that matter can be taken up in the Joint Lenders Meeting ("**JLM**"). Further, SRA vide its email dated 07.02.2024 has sought extension of timelines by one month (instead of one week as sought in IMA meeting dated 06.02.2024).

iii) Thereafter, the SAM team was requested to advise on options available with lenders. Representative from SAM team advised that Resolution Plan is to be implemented by 08.02.2024 as per NCL T order dated 08. 12.2023, hence, any extension of timeline will require NCL T approval. If lenders decide to allow extension of timeline as per request of the SRA, an application needs to be filed with NCL T. In other scenario, since SRA is in breach of NCL T order dated 08.12.2023 as well certain terms of RFRP for not implementing the Resolution Plan within one year from approval of Resolution Plan by NCL T and subsequently by NCLAT (i.e. 01.04.2022). In this regard, the following options can be explored:

A. An application can be filed with NCLT seeking direction for SRA to implement the Resolution Plan; or

14. B. Bid Bond Guarantee ("**BBG**") and Performance Bank Guarantee ("**PBG**") submitted by the SRA as a part of the Resolution Plan can be invoked and an application needs to be filed with NCL T seeking approval of short timeline (say 90 days) to re-invite EOIs or to take the Corporate Debtor into liquidation.

iv) The lenders discussed the matter at length and following decisions were taken unanimously:

A. Even after consuming more than 2 years, the SRA is still struggling to obtain funds and requisite approvals for implementation of

Resolution Plan. Hence, even after allowing the extension, the SRA may not be able to implement the Resolution Plan.

B. Since, the SRA is in breach of NCL T order as well RFRP terms & conditions, BBG and PBG is required to be invoked immediately.

C. The Corporate Debtor is .in CIRP since 14.05.2018 (RBI list II account) and even after an expiry of more than 5 years, only one Resolution Plan was received during CIRP and the same has not been implemented so far. Therefore, running a fresh CIRP may not fetch any result, hence, taking the Corporate Debtor into liquidation is the only option available with lenders.

D. Decision on distribution of BBG/PBG amount will be taken in next JLM.

v) Accordingly, the lenders authorized SBI to take following actions:

A. Reply to SRA for non-acceptance of its request for extension of further timelines for implementation. SAM team was advised to prepare suitable email.

B. Pass necessary instruction for invocation of BBG and PBG. SBI advised that BBG of Rs. 5 crores (original amount) and PBG of Rs. 11.50 crores (Original amount) have been kept in form of FDRs with SBI. The same will be invoked and transferred in the No lien account of SBI.

C. Filing of suitable application with NCL T for initiating liquidation against the Corporate Debtor. IDBI Bank requested SBI to select Mumbai based liquidator before filing of the liquidation application with NCL T. SBI advised that they will take up the matter with their higher authority in this regard.

D. Filing of necessary information with the IBBI regarding default of the SRA in implementation of Resolution Plan under Section 74(3) of IBC.

vi) On query raised by IDBI Bank on continuation of IMA as it consists of (SRA members also, representative from SAM replied that IMA will continue till liquidation order passed by NCLT or we need to take specific directions from NCLT in this regard. IDBI Bank requested SAM team to provide advice in this regard.”

15. The aforesaid minutes noticed that as per the direction of the NCLT, the appellant has to implement the resolution plan by 08.02.2024. The lenders deliberated on all necessary option and decision was taken to authorise SBI to invoke the PBG and file a suitable application before the NCLT for initiating liquidation against the corporate debtor. Under Part IV, following decision was taken in the JLM:

“iv) The lenders discussed the matter at length and following decisions were taken unanimously:

A. Even after consuming more than 2 years, the SRA is still struggling to obtain funds and requisite approvals for implementation of Resolution Plan. Hence, even after allowing the extension, the SRA may not be able to implement the Resolution Plan.

B. Since, the SRA is in breach of NCL T order as well RFRP terms & conditions, BBG and PBG is required to be invoked immediately.

C. The Corporate Debtor is .in CIRP since 14.05.2018 (RBI list II account) and even after an expiry of more than 5 years, only one Resolution Plan was received during CIRP and the same has not been implemented so far. Therefore, running a fresh CIRP may not fetch any result, hence, taking the Corporate Debtor into liquidation is the only option available with lenders.

D. Decision on distribution of BBG/PBG amount will be taken in next JLM.”

16. The PBG was invoked on 09.02.2024, and the liquidation application has also been filed which has been noticed in our order dated 24.10.2024, which is as follows:

“1. Counsel for the Parties submits that pleadings are complete in this Appeal. Appeal itself be heard.

2. Counsel for the Respondent submits that Liquidation Application is coming up tomorrow before the Adjudicating Authority.

3. Parties may request the Adjudicating Authority to adjourn the matter for four weeks.

List this Appeal on **19th November, 2024.**”

17. We also need to notice the affidavit filed by the PNB with regard to requirement of obtaining approval of the RBI. In paragraph 9 of the reply filed by the PNB, it has been noticed that amount of ₹2,40,22,633/- is to be paid in consideration of assignment of debt from foreign financial creditors of the corporate debtor and since the above capital amount transaction, prior approval of the RBI will be required. It is useful to notice paragraph 9 of the reply of the PNB, which is as follows:

“9. In the present case of the Corporate Debtor IUIL, the requirement for an approval from the RBI is for the following transactions contemplated under the resolution plan (Annexure A-4 at Pg. 97 of Vol I Appeal) as approved by the Ld. Adjudicating Authority by its order dated 3'd February, 2022 (Annexure A-5 at PS. 173 of Vol II Appeal ("**Resolution Plan**")):

(a) Assignment of debt - In terms of the Resolution Plan, Taguda India Private Limited, an affiliate of the Appellant / SRA ("**TIPL**") is required to acquire debt aggregating to INR 50,00,00,000/- (Indian Rupees Fifty Crores) ("**Assigned Debt**") from the financial creditors of the Corporate Debtor I TJIL including the foreign financial creditors. An amount of INR 2,40,22,633/- (Indian Rupees Two Crore Forty Lakh Twenty-Two Thousand Six Hundred Thirty-Three) is to be paid in consideration for assignment of debt from the foreign financial creditors of the Corporate Debtor I TJIL. Since the above is a capital account transaction, prior approval of the RBI will be required.

(b) Conversion of balance financial debt to preference shares - The Appellant in its Resolution Plan has also proposed to restructure the balance unpaid financial debt of the financial creditors of the Corporate Debtor I UIL and convert it into non-convertible redeemable preference shares ("**New Preference shares**"), with zero dividend and non-cumulative in nature at their face value. The value of these preference shares is dependent on the recovery of the receivables by the Corporate Debtor IUIL within 3 (three) years of the Closing Date (*as defined under the Resolution Plan*). However, as these New Preference Shares are to be issued to 2 (two) foreign financial creditors, namely the foreign branches of Canara Bank and Indian Bank (erstwhile Allahabad Bank), the Corporate Debtor/UIL therefore approval from RBI is sought.”

18. In the affidavit filed by the PNB, the PNB who is authorised dealer has explained the necessary steps taken by the PNB as authorised dealer queries raised by the RBI has also been noticed and the reply submitted. The reply also noticed the email dated 10.08.2023 of RBI, which has noticed certain contravention by corporate debtor. In Paragraph 34 of the reply following has been pleaded:

“34. In response, the RBI vide its email dated 10th August,2023 observed as follows:

i. The Corporate Debtor IUIL may be in contravention of Regulation 6(3)(c)(b) of Notification No. FEMA 120/RB-2004 dated July 7, 2004 as they have issued open ended guarantees to the Foreign Financial Creditors;

ii. In view of above, the Corporate Debtor IUIL (via Respondent No.2 / AD Bank) was advised to approach the compliance officer of the OID department of the RBI with compliance details of the issued corporate guarantees against Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Amendment) Regulations, 2004; and

iii. Based on examination by OID, if the transaction is found to be in contravention of FEMA regulations, it would require regularisation by the RBI, only after which, Respondent No.2 / AD Bank may approach the ECB Department for approval regarding issuance of non-convertible redeemable preference shares.

A copy of the aforesaid email dated 10th August, 2023 of RBI is annexed herewith as **ANNEXURE R-17.**

19. All steps including meeting with the officers of the SBI, officers of RBI has been noticed where corporate debtor was asked to submit a compounding application regarding contravention of provisions of FEMA. Paragraph 44 of the reply of the PNB is as follows:

“44. Respondent No.2 / PNB is given to understand that on 7th December 2023, a meeting between the officials of the Respondent / SBI with Mr. Aditya Gaiha, Chief General Manager-in-Charge, Foreign Exchange Department of RBI took place, wherein it was decided that the Corporate Debtor ought to submit a compounding application regarding contravention of provisions of FEMA. Accordingly, the Corporate Debtor / UIL's officials (including the SRA) were asked to prepare a draft of the compounding application for approval of IMA members. The members of the IMA were informed that a compounding application can be filed after submission of the APRs etc. sought by RBI.”

20. From the reply affidavit filed by the PNB, it is clear that authorised dealer PNB has taken all necessary steps, it was due to certain contravention, pointed out by the RBI that approval has not yet been granted.

21. Be that as it may, the fact remains that regulatory approval which was required to be obtained by the SRA as per Clause 3.1 of the RFRP has not been obtained. The period of 1 year which is statutorily prescribed under Section 31(4) has also elapsed.

22. Learned counsel for the appellant referring to its additional affidavits filed after 05.07.2024 has sought to contend that it was due to requirement of inclusion of certain condition in the letter of the SBI and requirement of obtaining finances from specified agencies, the appellant could not deposit the amount as was offered by it in order dated 05.07.2024 of this Court. We need not enter into the reasons due to which appellant could not deposit the amount offered by it in order dated 05.07.2024. The order dated 05.07.2024 was passed on the request of the appellant to show his bona fide that he has capacity to park the amounts under the resolution plan with the branch of SBI at Singapore or UAE. The said direction dated 05.07.2024 by this Court was made only on the request made by the appellant that it shall deposit the balance amount to show his bona fide to deposit the amount in implementing the plan. The fact remains that the said amount has not yet been deposited even in the UAE. However, from the reply which has been filed by the SBI, it is clear that amount which was to be paid to the foreign lender under the resolution plan with respect to assigning of debt was only ₹2.4 crore. It is pleaded by the SBI that RBI permission is required for the payout to the foreign financial creditor only to aggregate sum of ₹2.24 crore as of the total payout to the financial creditor, i.e., ₹225.14 crore which has been pleaded in paragraph 33 of the reply, which is as follows:

“33. Accordingly, at this stage the stand taken by the Appellant that the Resolution Plan cannot be implemented citing pending regulatory approval cannot be countenanced. The Appellant ought to have ensured that the requisite regulatory approvals as required in terms of the Resolution Plan are received within the statutory timelines. It must be borne in mind that the RBI permission is required for the payout to the Foreign FCs only which aggregates to only Rs. 2.40 crores

(approximately) as against the total payout towards financial creditors of Rs.225.14 crores.”

23. Be that as it may, the fact remains that despite lapse of period of more than 3 years after approval of the resolution plan on 03.02.2022, the plan is yet to be implemented. On account of pendency of this appeal the liquidation application which has been filed before the adjudicating authority has not yet proceeded. We may notice a recent judgement of the Hon’ble Supreme Court in **‘Independent Sugar Corporation Ltd.’ Vs. ‘Girish Sriram Juneja & Ors.’** in **Civil Appeal No. 6071/2023**, interpreting the provisions of Section 31(4). The above judgement, although was considering Section 31(4) proviso which require approval of the Competition Commission of India (CCI) prior to approving the resolution plan by the CoC and in the said case, prior approval having not been obtained by the CCI prior to approval of the plan by CoC, the plan was held to be violated mandatory provisions and was struck down. The relevant paragraph of the Judgement is as follows:

“73. Both the Notes on Clauses and the Memorandum clearly mention that the approval from the CCI for the combination must be obtained prior to, the approval of the Resolution Plan by the CoC. However, the last line in the Memorandum states that the same is to clarify that the approval from CCI for the combination, shall be obtained prior to the approval of the Resolution Plan, by the Adjudicating Authority, instead of CoC, as mentioned in the preceding line and also the inserted proviso. A question might therefore arise – whether it was an inadvertent legislative error? As can be appreciated, the erstwhile Ordinance provided for a ‘postAdjudicating Authority’ approval stage. The Memorandum clarified that a new step had been added at a ‘pre-Adjudicating Authority’ approval stage. It would therefore be logical to hold that obtaining prior approval of the CCI before the CoC approval, would seamlessly cover the ‘pre-Adjudicating Authority’ approval stage without any possible disruption.”

24. The present is a case where there was no requirement obtaining any prior approval prior to approval of the resolution plan, however, under Section

31(4) all regulatory approval are to be obtained within a period of 1 year. When the approvals have not been obtained by SRA, who is under obligation to obtain the approval, it is not open to the SRA to contend that he could not obtain approval due to reason A or reason B. The fact remains that regulatory approval has not been obtained within a period of 1 year from passing the order approving the resolution plan. The fact remains that regulatory approval have not been obtained within a period of 1 year from the passing of the order, and even within a period extended by the NCLT by impugned order dated 08.12.2023, i.e. by 08.02.2023. There was sufficient ground to hold the plan has not implemented the application for liquidation, which is pending consideration before the adjudicating authority need to be proceeded.

25. Learned counsel for the appellant has also placed reliance on the judgement of the Hon'ble Supreme Court in the matter of **'Ebix Singapore Private Ltd.' Vs. 'Committee of Creditors of Educomp Solutions Limited & Anr.'** reported in **(2022) 2 SCC 401**. Reliance has been placed by the counsel for the appellant in paragraph 117, which is as follows:

"117. Certain stages of the CIRP resemble the stages involved in the formation of a contract. Echoes of the process involved in the formation of a contract resonate in the steps antecedent to the approval of a resolution plan such as : (i) the issuance of an RFRP may be equated to an invitation to offer; (ii) a resolution plan can be considered as a proposal or offer; and (iii) the approval by the CoC may be similar to an acceptance of offer. The terms of the resolution plan contain a commercial bargain between the CoC and resolution applicant. There is also an intention to create legal relations with binding effect. However, it is the structure of IBC which confers legal force on the CoC-approved resolution plan. The validity of the resolution plan is not premised upon the agreement or consent of those bound (although as a procedural step IBC requires sixty-six per cent votes of creditors), but upon its compliance with the procedure stipulated under IBC."

26. Hon'ble Supreme Court in the above judgement has held that terms of the resolution plan contain commercial bargain between the CoC and the resolution applicant and there is also intention to create legal relations with binding effect. It was also held that structure of the IBC confers legal force on the CoC approved resolution plan. The issue in the above case which came for consideration before the Hon'ble Supreme Court was as to whether after approval of the resolution plan by the CoC, whether the resolution plan can be allowed to be withdrawn by the resolution applicant by filing an application in the NCLT. In the above case, NCLT has allowed the application filed by the resolution applicant for withdrawal of the resolution plan, which gave rise to the appeal before this Tribunal, as well as before the Hon'ble Supreme Court. We fail to see that how the above judgement supports the submission raised by the appellant in the present case.

27. In view of the foregoing discussions, we are of the view that no grounds have been made out to interfere with the impugned order dated 08.12.2023. The appeal is dismissed.

28. We have already noticed that application for liquidation is pending consideration before the adjudicating authority and the parties were given liberty to request the adjudicating authority to adjourn the matter for 4 weeks on 24.10.2024, which order was not further extended.

29. While dismissing the appeal, we request the adjudicating authority to decide the application for liquidation pending before it at an early date,

preferably within a period of 3 months from the date copy of this order is produced.

Subject to above direction, the appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

NEW DELHI

30th May, 2025

himanshu