IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

I.A. (I.B.C) No. 542(KB)2024
In
C.P. (IB) No. 142(KB)2023

An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 ("NCLT Rules") and under Section 8 of the Arbitration and Conciliation Act, 1996.

IN THE MATTER OF:
CENTURY ALUMINIUM COMPANY LIMITED, having its Registered Office at Raja Road, P.O. Sukchar, 24 Parganas (North), Kolkata, West Bengal – 700 115.

... Applicant.

-Versus-

IN THE MATTER OF:
RELIGARE FINVEST LIMITED, (CIN: U74999DL1995PLC064132), having its Registered Office at 1407, 14th Floor, Chiranjiv Tower, 43, Nehru Place, New Delhi – 110 019.

... Respondent.

Date of Pronouncement: 10.07.2024

CORAM:
SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)

Appearances:

Mr. Sanjeev Singh, Adv.	**] For the Financial Creditor/**
Ms. Taniya Bansal, Adv.	**] Religare Finvest Limited**
Ms. Sandipa Bhattacharjee, Adv.	**]**
Mr. Anujit Mookherji, Adv.	**]**
Mr. Joy Saha, Sr. Adv.	**] For the CD/**
Mr. Avishek Guha, Adv.	**] Century Aluminium Manufacturing**

Ms. Urmila Chakraborty, Adv.] **Co. Ltd.**
Ms. Arunika Dutta, Adv.]
Mr. Kaustov De Sarkar, Adv.]

O R D E R

Per: D. Arvind, Member (Technical)

1. The Court is convened through hybrid mode**.**

2. Learned Sr. Counsel/Counsel appearing on behalf of the parties were heard at length**.**

3. This is an application, i.e., **IA (I.B.C)/542(KB)2024** preferred by Century Aluminium Manufacturing Company Limited ("Applicant"/ "Corporate Debtor") against Religare Finvest Limited "Respondent"/ "Financial Creditor") seeking following relief(s), inter alia**: -**

a) *An Order and/or direction be made referring the disputes between the parties to arbitration**;***
b) *An Order thereby dismissing the petition being C.P.(IB)/142(KB)/2023**;***
c) *An Order thereby staying the proceeding being C.P.(IB)/142(KB)2023 till disposal of the present application**;***
d) *Ad-interim Order(s) in terms of Prayers above**;***
e) *Costs**;***
f) *Further and/or other Orders and/or directions as this Hon'ble Tribunal may deem fit and proper**.***

4. **Factual matrix of the case is as under: -**

a) A loan agreement dated 14.09.2015 was executed by and between the Applicant and Respondent. The loan agreement contained an arbitration clause at Clause 20**.**

b) As the Applicant defaulted in re-payment of loan, the Respondent issued a recall notice and notice of invocation to arbitration under the said loan agreement for settling disputes and differences that have arisen between the parties on June 8, 2019**.**

c) Thereafter Respondent has unilaterally appointed an Arbitrator to adjudicate the disputes between the parties without requesting the Applicant to nominate an Arbitrator of his choice, for mutual agreement on appointment of Arbitrator**.**

d) Upon hearing both the parties, the sole Arbitrator appointed by the Respondent held *vide* his Order dated 26.10.2021 that his appointment as Arbitrator is contrary to the law laid down by the **Hon'ble Supreme Court** in ***Perkins Eastman Architects DPC & Anr.***

e) In this judgment the Hon'ble Apex Court held that unilateral appointment of an Arbitrator by a Company, who has interest in the subject matter of the dispute or the outcome of the dispute or the decision thereof, is impermissible in law**.**

f) Therefore, it can be inferred that an arbitration proceeding has commenced but the sole Arbitrator appointed by the Respondent has withdrawn (recused himself) leading to need for fresh Constitution of Arbitration Tribunal, which we note is it yet to happen**.**

g) Since, there is an arbitration clause in the agreement executed for resolving disputes between the parties and the arbitration proceedings have commenced at the instance of the Respondent, the Applicant herein prays for reliefs claimed in Para 3 of this Order**.**

5. <u>Ld. Counsel for the Applicant</u>: -

a) Ld. Sr. Counsel Mr. Joy Saha relies on the arbitration clause contained in the Clause 20 of the agreement and submits that any and all disputes, claims, differences arising out of or in connection with the agreement shall be settled by arbitration to be referred to a sole Arbitrator to be appointed by the Respondent herein and the agreement binds both the parties to the exclusive jurisdiction of the Court at Delhi, for this purpose**.**

b) Consequent to the Hon'ble Supreme Court Judgment in ***Perkins Eastman Architects DPC & Anr.,*** the law relating to Arbitration and Conciliation Act 1996 was amended to ensure that the Arbitrators/Arbitration Tribunal is constituted keeping Conflict of Interest (in short "COI") in mind, and consequently, no unilateral appointment of Arbitrator is legally permissible, if the proposed Arbitrator has interest in the subject matter of the dispute or the outcome of the dispute**.**

c) The Ld. Sr. Counsel submits that the disputes and differences that have arisen between the parties herein are arbitrable, and the parties have valid, live and subsisting arbitration clause in the loan agreement, executed by and between the parties herein**.**

d) The Ld. Sr. Counsel further submits that it is the Respondent, who had invoked the arbitration clause and filed statement of claim before the Arbitral Tribunal and now as per the amended provisions of the Arbitration and Conciliation Act, 1996 new Arbitrable Tribunal may be constituted for reference of disputes before the said Tribunal and the proceedings should continue**.**

e) He submits that as per **Section 8** of the **Arbitration and Conciliation Act, 1996,** which is extracted and reproduced as under**: -**

Power to refer parties to arbitration where there is an arbitration agreement –

"[*(1) A judicial authority, before which an action is brought in a matter which is subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists****.]"***

f) Ld. Sr. Counsel submits that it cannot be the case of the Respondent that there is no valid agreement exists with arbitration clause or arbitration has not commenced as on date**.**

g) Therefore, when the Respondent has invoked arbitration clause and has gone before Arbitration Tribunal cannot come to this Tribunal to initiate proceeding for the same cause of action. Referring to Para 41 of the judgment of **Hon'ble High Court of Delhi at New Delhi** reported in **2023 SCC OnLine Del 7136 (*Madhu Sudan Sharma and Others vs. Omaxe Ltd.),*** referring to Para 44 of the judgment, the Ld. Senior Counsel made his note that the view expressed by the **Hon'ble Delhi High Court** held that**: -**

"*The requirement of making an application seeking reference of the disputes between the parties to arbitration, as engrafted in sub-Section 8(1) of the Arbitration and Conciliation Act, 1996, is more a requirement of from than of substance. What matters is whether there is, in fact, an arbitration agreement between the parties, which is valid and subsisting. If such an agreement is in place, the*

*jurisdiction of this Tribunal perishes the moment, the relevant clause in arbitration agreement is brought to its notice**."***

h) Ld. Sr. Counsel further relying on the judgment rendered by **Hon'ble Supreme Court** in ***Rashtriya Ispat Nigam Ltd. vs. Verma Transport Co. reported in (2006) 7 Supreme Court Cases 275*** referring to Para 36 of this Order(s)**: -**

"*The expression "first statement on the substance of the dispute" contained in Section 8(1) of the Arbitration and Conciliation Act, 1996 must be contra-distinguished with the expression "written statement". It employs submission of the party to the jurisdiction of the judicial authority. What is, therefore, needed is a finding on the part of the judicial authority that the party has waived its right to invoke the arbitration clause. If an application is filed before actually filing the first statement on the substance of the dispute, the party cannot be said to have waived its right* ***[…]."***

"[…] *What is, therefore, material is as to whether the petitioner has filed his first statement on the substance of the dispute or not, if not, his application under Section 8 of the Arbitration and Conciliation Act, 1996 be held wholly unmaintainable* ***[…]."***

i) The Ld. Sr. Counsel refers to **Section 32** of the **Arbitration and Conciliation Act, 1996**, which deals with termination of proceedings as per Section 32(2) are as under**: -**

"*(2) The arbitral tribunal shall issue an Order for the termination of the arbitral proceedings where –*

(i) *the claimant withdraws his claim, unless the Respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute**,***

(ii) *the parties agree on the termination of the proceedings**,** or*

(iii) *the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible**.”***

j) The Ld. Sr. Counsel submits that none of the parameters mentioned above has happened, to infer that arbitration proceedings have been terminated. Therefore, steps should be taken by the Respondent to proceed with the arbitration proceedings by appointing another Arbitrator as per the amended **Section 8** of Arbitration and Conciliation Act, 1996**.**

k) Ld. Sr Counsel submits that consequent to the amendment in Arbitration and Conciliation Act new arbitral tribunal as and when appointed, for the purpose of arbitration, will continue with arbitration proceedings, whereas the commencement of arbitration proceedings cannot be questioned **or disputed.**

l) Ld. Sr. Counsel submits that diverse and multiple claims have been made against the Respondent by the Applicant and if this Tribunal admits the Respondents’ petition under Section 7 of IBC, 2016 then the Applicant will have no remedy to pursue its claims against the Respondent**.**

m) The Ld. Sr. Counsel further submits that arbitration clause was invoked on 08.06.2019 much after the commencement of IBC and the Respondent still chosen to file application before Arbitration Tribunal/Sole Arbitrator and now under IBC also on 23.06.2023 which is nothing but a forum **shopping** which cannot be permitted**.**

n) Ld. Sr. Counsel also submits that the loan recall notice was dated 08.06.2019 whereas the present petition has been filed on 23.06.2023, and therefore, the present petition under Section 7 of Insolvency and Bankruptcy Code, 2016 in C.P.(IB)/142(KB)2023 is time barred**.**

o) Therefore, he strongly submits that as long as a valid and live agreement exist which has got arbitration clause, unless both the parties agree to withdraw from the arbitration proceedings, a judicial authority such as this Tribunal will have to refer the parties to arbitration in terms of Section 8 of Arbitration and Conciliation Act, 1996, and consequently, the relief(s) sought by the Applicant must be allowed**.**

6. <u>Ld. Counsel for the Financial Creditor/Respondent</u>: -

a) Ld. Counsel refers to the OTS proposal dated 25.05.2022 wherein debt has been acknowledged by the Corporate Debtor, whereas this Company Petition Numbered C.P.(IB)/142(KB)2023 under Section 7 has been filed on 23.06.2023, and therefore, the question of time bar as claimed by the Applicant does not arise, as it has been filed well within the time limit**.**

b) Ld. Counsel further submits that the application under Section 8 of Arbitration and Conciliation Act, 1996 is to be considered by this Tribunal only after exclusively deciding the application under Section 7 of the IBC**.**

c) To support the above contention, he relies on the **Hon'ble Supreme Court** judgment rendered in ***Indus Biotech Private Limited vs. Kotak India Venture (Offshore) Fund*** *reported* ***in (2021) 6 Supreme Court Cases 436*** wherein the **Hon'ble Supreme Court** has held that the Adjudicating Authority is duty bound to first to decide an

application under Section 7 of the IBC which was pending. He relies on the relevant Paras of this judgment, which is extracted and reproduced herein, for the sake of convenience, as under**: -**

> ***"27.*** *As noted, the issue which is posed for our consideration is arising in a petition filed under Section 7 of IB Code, before it is admitted and therefore not yet an action in rem. In such application, the course to be adopted by the Adjudicating Authority if an application under Section 8 of the Act, 1996 is filed seeking reference to arbitration is what requires consideration. The position of law that the IB Code shall override all other laws as provided under Section 238 of the IB Code needs no elaboration. In that view, notwithstanding the fact that the alleged corporate debtor filed an application under Section 8 of the Act, 1996, the independent consideration of the same dehors the application filed under Section 7 of IB Code and materials produced therewith will not arise. The Adjudicating Authority is duty bound to advert to the material available before him as made available along with the application under Section 7 of IB Code by the financial creditor to indicate default along with the version of the corporate debtor. This is for the reason that, keeping in perspective the scope of the proceedings under the IB Code and there being a timeline for the consideration to be made by the Adjudicating Authority, the process cannot be defeated by a corporate debtor by raising moonshine defence only to delay the process. In that view, even if an application under Section 8 of the Act, 1996 is filed, the Adjudicating Authority has a duty to advert to contentions put forth on the application filed under Section 7 of IB Code, examine the material placed before it by the financial creditor and record a satisfaction as to whether there is default or not. While doing so the contention put forth by the corporate debtor shall also be noted to determine as to whether there is substance in the defence and*

*to arrive at the conclusion whether there is default. If the irresistible conclusion by the Adjudicating Authority is that there is default and the debt is payable, the bogey of arbitration to delay the process would not arise despite the position that the agreement between the parties indisputably contains an arbitration clause**."***

"28. *That apart if the conclusion is that there is default and the debt is payable, due to which the Adjudicating Authority proceeds to pass the order as contemplated under sub section 5(a) of Section 7 of IB Code to admit the application, the proceedings would then get itself transformed into a proceeding in rem having erga omnes effect due to which the question of arbitrability of the so called inter se dispute sought to be put forth would not arise. On the other hand, on such consideration made by the Adjudicating Authority if the satisfaction recorded is that there is no default committed by the company, the petition would stand rejected as provided under sub section 5(b) to Section 7 of IB Code, which would leave the field open for the parties to secure appointment of the Arbitral Tribunal in an appropriate proceedings as contemplated in law and the need for the NCLT to pass any orders on such application under Section 8 of Act, 1996 would not arise**."***

"29. *Therefore, to sum up the procedure, it is clarified that in any proceeding which is pending before the adjudicating authority under Section 7 of IB Code, if such petition is admitted upon the adjudicating authority recording the satisfaction with regard to the default and the debt being due from the corporate debtor, any application under Section 8 of the Arbitration and Conciliation Act, 1996* ***made thereafter*** *will not be maintainable. In a situation where the petition under Section 7 of IB Code is yet to be admitted and, in such proceedings, if an application under Section 8 of the Arbitration Act, 1996 is filed,* ***the adjudicating authority is***

duty-bound to first decide the application under Section 7 of the IB Code by recording a satisfaction *with regard to there being default or not, even if the application under Section 8 of the 1996 Act is kept along for consideration. In such event,* ***the natural consequence of the consideration made therein on Section 7 of IB Code application would befall on the application under Section 8 of the 1996 Act.”***

d) He further submits that Section 238 of IBC, shall have an overriding effect over any laws which are inconsistent with the provisions of IBC**.**

e) He further submits that application under Section 8 of the Arbitration and Conciliation Act, 1996 ought to be made in the first instance. He submits that on a bare perusal of Section 8 of Arbitration and Conciliation Act, 1996 it is clear that an application under it cannot be filed later than the date of submitting first statement on the substance of the dispute, i.e., such application has to be made in the first instance. For the sake of convenience Section 8 of the Arbitration and Conciliation Act, 1996 which is extracted and reproduced as under**: -**

“8. Power to refer parties to arbitration where there is an arbitration agreement – *(1) A judicial authority, before which an action is brought in a matter which is subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists***.”**

f) He submits that in the present case after the termination Order dated 26.10.2021 by the sole Arbitrator, the Corporate Debtor sent an **OTS proposal** dated 25.05.2022 which was rejected by the Applicant *vide* email dated 02.06.2022. In the said OTS proposal the debt has been acknowledged. Recall notice was dated 08.06.2019 which is within three (3) years**.**

g) The Respondent thereafter filed a petition under Section 7 of IBC dated 22.06.2023 and the Applicant has also filed a detailed reply to the petition filed under Section 7 of IBC. In other words, after filing reply to Section 7 petition filed by Respondent, Applicant cannot take the point of reference to arbitration**.**

h) Ld. Counsel relies on the judgment of **Hon'ble High Court at Calcutta** in ***Khatu Villa Pvt. Ltd. v. National Insurance Co. Ltd.,*** wherein it has been held in the judgment extracted as under**: -**

> ***"****The expression "first statement on the substance of the dispute" contained in Section 8(1) of the Arbitration and Conciliation Act, 1996 must be contra-distinguished with the expression "written statement". It employs submission of the party to the jurisdiction of the judicial authority. What is, therefore, needed is a finding on the part of the judicial authority that the party has waived its right to invoke the arbitration clause****."***

i) He further relies on another judgment of ***Assam Petroleum Ltd. vs. China Petroleum Technology Dev. Corpn.,*** case rendered by the **Hon'ble High Court at Delhi** reported in **2024 SCC OnLine Del 1832**, which is re-produced as under**: -**

> ***"[...]*** *that if a party fails to pursue an application under Section 8(1) of the Arbitration and Conciliation Act, 1996 within the time available or granted for filing the first statement on the substance*

of the dispute, including a Written Statement, ***the party would forfeit its rights to apply under Section 8(1) of the Arbitration and Conciliation Act, 1996 […].”***

j) He further submits that this Adjudicating Authority has to only see the existence of debt and default for the purpose of adjudication of a petition under Section 7 of the Code**.**

k) He relies on the judgment rendered by the **Hon’ble Supreme Court** in ***Innoventive Industries Ltd. vs. ICICI Bank, (2018) 1 SCC 407*** and in ***E.S. Krishnamurthy and Others vs. Bharath Hi-Tecch Builders Private Limited, (2022) 3 SCC 161,*** to support his above contention**.**

l) Therefore, the Ld. Counsel for the Respondents submits that the application filed by the Applicant is liable to be dismissed with costs**.**

7. Analysis & Findings: -

a) We find that though the loan recall notice was dated 08.06.2019, and after series of letters and documents exchanged between the parties on OTS proposal was initiated by the Applicant. The Applicant has acknowledged the debt that the principal amount outstanding as on 25.05.2022 is 08.09 Crore as could be seen in Annexure P – 12 to the application. Thus, acknowledgment of debt extended the limitation period when it has been done within three years from the date of recall notice**.**

b) The petition under Section 7 of IBC being **C.P. (IB)/142(KB)2023** has been filed on June 23, 2023, which is well within the time limit, and therefore, the question of time bar of the petition under Section 7 of IBC, that has been filed by the Respondent herein, does not arise**.**

c) Ld. Sr. Counsel arguing on behalf of the Applicant vehemently argued that the judgment rendered by the **Hon'ble Supreme Court** in ***Indus Biotech Private Limited vs. Kotak India Venture (Offshore) Fund*** *reported in* ***(2021) 6 Supreme Court Cases 436*** *is distinguishable in the sense that any application made under Section 8 after filing petition under Section 7 under IB Code will not be maintainable as the Adjudicating Authority first to dispose of the petition filed under Section 7 of IB Code before it and if debt and default exists which meets the criteria for admission then the same will have to be admitted and the consequence of consideration made therein of under Section 7 of IB Code petition would be fall on the application under Section 8(1) of the Arbitration and Conciliation Act, 1996***.**

d) Learned Sr. Counsel for the Applicant had contended that decision in the above case was under different facts and circumstances. In that case first petition under Section 7 of IBC was filed and pending for disposal and during the pendency before NCLT, an application under Section 8 of Arbitration was filed and therefore decision was taken by the Hon'ble Apex court, that first the application under Section 7 should be disposed, the result of which will befall on the application filed under Section 8 of Arbitration and conciliation Act 1996. Whereas in the current case, it is his submission that the arbitration proceeding commenced years before the Section 7 petition under IBC was filed and the arbitration proceedings were suspended as the sole Arbitrator appointed by the Respondent herein (recused himself) by stating that his appointment as Arbitrator is contrary to the law laid down by the **Hon'ble Supreme Court** in ***Perkins Eastman Architects DPC & Anr.***

e) Therefore, it is his contention is that if Section 7 petition under IBC is admitted then his remedy under the Arbitration and Conciliation Act, 1996 which commenced prior to the filing of Section 7 would

become infructuous, and he will be remediless with regard to his counter claim against the Respondent.

f) It is the claim of the Ld. Sr. Counsel arguing for the Applicant that due to non-performance of certain obligations under the loan agreement, their client has suffered huge financial losses and damages and wanted to file counter claim against the Respondent herein**.**

g) Considering the arguments and counter arguments made by the both the parties, the issue that needs to be decided is whether commencement of arbitration proceeding prior to filing of Section 7 of IBC petition under IBC will negate the proceedings under Section 7 of IBC, not the law laid down by the Hon'ble **Supreme Court** in ***Indus Biotech Private Limited vs. Kotak India Venture (Offshore) Fund*** *is distinguishable***.**

h) In our view, it does not matter whether the arbitration proceedings commenced before or after filing of petition under Section 7 of IBC before this Adjudicating Authority**.**

i) This is because, **we are of the view that "default" *per se* is not arbitrable.** Things like quantum of debt, rate of interest, various charges, period of debt, restructuring proposal, service levels of the respondent, penal interest levied etc. are arbitrable not the default per se or insolvency of the Applicant which can be adjudicated by this Tribunal**.**

j) The **Hon'ble Supreme Court** in ***Booz Allen and Hamilton Inc. vs. SBI Home Finance Ltd. & Ors.*** **CIVIL APPEAL NO. 5440 Of 2002** held that *where the dispute is non arbitrable the Court where a suit is pending can refuse to refer the parties to arbitration under Section 8 of*

*the Arbitration and Conciliation Act, even if the parties have agreed upon the arbitration as the forum of such disputes***.**

> ***"22.*** *Arbitral tribunals are private fora chosen voluntarily by the parties to the dispute, to adjudicate their disputes in place of courts and tribunals which are public fora constituted under the laws of the country. Every civil or commercial dispute, either contractual or non-contractual, which can be decided by a court, is in principle capable of being adjudicated and resolved by arbitration unless the jurisdiction of arbitral tribunals is excluded either expressly or by necessary implication. Adjudication of certain categories of proceedings are reserved by the Legislature exclusively for public fora as a matter of public policy. Certain other categories of cases, though not expressly reserved for adjudication by a public fora (Courts and Tribunals), may by necessary implication stand excluded from the purview of private fora. Consequently, where the cause/dispute is in arbitrable, the court where a suit is pending, will refuse to refer the parties to arbitration, under section 8 of the Act, even if the parties might have agreed upon arbitration as the forum for settlement of such disputes. **The well recognized examples of non-arbitrable disputes are** : (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) **insolvency and winding up matters**; (v) testamentary matters (grant of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes***."***

> ***"23.*** *It may be noticed that the cases referred to above relate to actions in rem. A right in rem is a right exercisable against the world at large, as contrasted from a right in personam which is an interest protected solely against specific individuals. Actions in personam refer to actions determining the rights and interests of the parties themselves in the subject matter of the case, whereas actions in rem refer to actions determining the title to property and the rights of the parties, not merely among themselves but also against all persons at any time claiming an interest in that property. Correspondingly, judgment in personam refers to a judgment against a person as distinguished from a judgment against a thing, right or status and Judgment in rem refers to a judgment that determines the status or condition of property which operates directly on the property itself. (Vide: Black's Law Dictionary). Generally, and traditionally all disputes relating to rights in personam are considered to be amenable to arbitration; and all disputes relating to rights in rem are required to be adjudicated by courts and public tribunals, being unsuited for private arbitration****."***
>
> ***(Emphasis Added)***

k) We further rely on the **Hon'ble Apex Court** in ***Innoventive Industries Ltd. vs. ICICI Bank, (2018) 1 SCC 407 wherein it*** *had been held that an Adjudicating Authority is to be merely satisfied itself that a default has occurred and the moment the Adjudicating Authority is satisfied that a default has occurred and default in excess of the application must be admitted****.***

8. In a recent judgement the **Hon'ble NCLAT** in **Company Appeal 905 of 2024**, in the case of ***Peanence Commercial Private Limited Vs Rolta Private Limited*** has held that *initiation of arbitration by Corporate Debtor is malafide act to prolong CIRP****.***

9. We are also not in agreement with the Sr. Counsel argument that Corporate Debtor will have no remedy to pursue its claim against the Respondent. If Corporate debtor is admitted to CIRP, the Resolution Professional can continue or re-initiate arbitration proceedings on behalf of CoC or Successful Resolution Applicant of the Corporate Debtor as may be agreed between them**.**

10. Hence, we find no merit in this application i.e., **IA (I.B.C)/542(KB)2024.** Accordingly, this application is **dismissed, without costs.**

11. The Registry is directed to send e-mail copies of the Order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps**.**

12. Urgent certified copy of this Order may be issued, if applied for, upon compliance of all requisite formalities**.**

13. File be consigned to records**.**

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order signed on: 10th of July, 2024.

Ar. [steno] / Bose, R. K. [LRA]