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

I.A.(IB) (Liq.) No. 29 of 2024
In
C.P.(IB) No. 170 of 2017

An application under Section 60(5) and 33(3) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016.

IN THE MATTER OF:
RBL Bank Limited

... Financial Creditor

Versus

MBL Infrastructures Limited

... Corporate Debtor

And

IN THE MATTER OF:
IDBI Bank Limited & Ors.
... Applicant

Versus

Mr. Anjanee Kumar Lakhotia & Anr.
... Respondents

Date of Pronouncement: 20th of December 2024

CORAM:

SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)

SHRI. D. ARVIND, MEMBER (TECHNICAL)

APPEARANCE:

Mr. Joy Saha, Sr. Adv. **Mr. Santosh Kr. Ray, Adv.** **Ms. Rituparna Sanyal, Adv.** **Ms. Zeba Khan, Adv.** **Ms. Muskan Saha, Adv.**	]	**For IDBI, BOI, BOB, Indian Bank, PNB**
Mr. Ratnanko Banerji, Sr. Adv. **Mr. Shaunak Mitra, Adv.**	]	**For R1**

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

Mr. Kanishk Kejriwal, Adv.
Ms. Neha Somani, PCS

Ms. Shweta Dubey, Adv.] **For Respondent No.2/SBI**
Ms. Kanishka Prasad, Adv.

ORDER

Per: D. Arvind, Member (Technical):

1. The Court congregated through hybrid mode.

2. Heard Ld. Counsels for the parties.

3. This application had been preferred by IDBI Bank Limited, Bank of Baroda, Indian Bank, Bank of India and Punjab National Bank (hereinafter referred as **"Applicant/Dissenting Financial Creditors"**) against Mr. Annanee Kumar Lakhotia, the Successful Resolution Applicant of the corporate debtor **MBL Infrastructures Limited** (hereinafter referred as **"SRA/Respondent No. 1"**) and **The Monitoring Committee of MBL Infrastructures Limited** (hereinafter referred as **"MC/Respondent No. 2"**) seeking following reliefs:

"a) *An order be passed by this Hon'ble Tribunal directing the Respondent no.1 to make full and final upfront payments to the applicants' banks in priority in terms of clause 21 of the approved resolution plan;*

b) *An order of injunction be passed by this Hon'ble Tribunal restraining the Respondent No.1 from making any other disbursement to the assenting financial creditors till the disposal of the instant application;*

c) *An order of injunction be passed by this Hon'ble Tribunal restraining the Respondent No.1 from implementing the approved Resolution Plan in any manner whatsoever without first making the upfront full and final payment to the applicants herein;*

d) *An order be passed by this Hon'ble Tribunal restraining the assenting financial creditors, particulars whereof are provided in* *the schedule as Annexure "X" hereto from using, utilizing and/or in any manner whatsoever spending the amounts disbursed, if any, to them by the Respondent No.1;*

e) *An order of injunction be passed by this Hon'ble Tribunal to keep apart and/or segregate and/or earmarked and/or keep invested all such amounts received by the assenting financial creditors from the Respondent No.1;*

f) *Alternatively, the resolution plan approved by the order dated 18.04.2018 read with 18.01.2022 be set aside and/or cancelled and appropriate orders be passed under section 33 of the Code.*

g) *In the event, the Respondent No.1 fails and/or neglects to make such payments in terms of prayer;*

h) *hereinabove, an Order for Liquidation of the Corporate Debtor be passed by virtue of non-compliance of the terms of the approved Resolution Plan by the Respondent and the Resolution Plan be annulled by appointment of a Liquidator by this Hon'ble Tribunal;*

i) *Such further orders or directions be passed as this Hon'ble Tribunal may deem fit and proper;***"**

Brief facts of the case:

4. MBL Infrastructures Limited (hereinafter referred as **"Corporate Debtor/CD"**) was put into Corporate Insolvency Resolution Process (CIRP). Upon commencement CIRP, advertisement inviting Expression of Interest (EoI) was published and the respondent No. 1 had filed its EoI and subsequently, its resolution plan in accordance with the provisions of Insolvency and Bankruptcy Code, 2016 and the Rules and Regulations made thereunder.

5. The respondent No. 1 was the promoter of the corporate debtor and also stood as personal guarantor for credit facilities availed by the corporate debtor. In the 12th meeting held by the Committee of Creditors of the corporate debtor, on 21.12.2017, resolution plan submitted by the respondents was put up for voting and the same was approved with 78.5% of the votes casted in favour of the plan.

However, the following creditors did not consent to the approval of the resolution plan and accordingly, they became dissenting financial creditors (DFC)

1. IDBI Bank Limited: voting share of 6.56%
2. Bank of Baroda: voting share of 4.01%
3. Indian Bank: voting share of 6.10%
4. Bank of India: voting share of 3.20%
5. Punjab National Bank: voting share 1.98%

Copy of the approved resolution plan has been annexed as Annexure "A2" of the application.

6. Thereafter, *vide* Order dated 18.04.2018, this Tribunal approved resolution plan upon an application filed under Section 30(6) of the Code, read with Regulation 39(4) of CIRP Regulations, 2016. The said plan was upheld by the Hon'ble NCLAT and thereafter, by the Hon'ble Supreme Court. Copies of the Orders are annexed as Annexure "A3" in the application.

7. As per the applicant, the dissenting financial creditors (the applicants herein) will have to be paid in priority over the assenting financial creditors, in terms of Regulation 38 of IBBI (CIRP Regulations, 2016). However, the applicants claim that they have received meagre payment on par with the assenting financial creditors, which is against the provisions of the Resolution Plan read with Regulations mentioned above.

8. The plan provides repayment of sums allotted in the resolution plan in 39 total instalments commencing in September 2024 and ending in December 2034.

9. According to the applicant, the repayment in 39 total instalments in terms of the percentage mentioned therein would apply to assenting financial creditors and not to dissenting financial creditors who will have to be paid in priority over the assenting financial creditors. The table which contains repayment schedule has been extracted and reproduced hereinbelow:

	March	**June**	**September**	**December**
2024	-	-	0.125%	0.125%
2025	0.125%	0.125%	0.250%	0.250%
2026	0.250%	0.250%	0.250%	0.250%
2027	0.250%	0.250%	0.250%	0.250%
2028	0.250%	0.250%	0.500%	0.500%
2029	0.500%	0.500%	1.500%	1.500%
2030	1.500%	1.500%	3.125%	3.125%
2031	3.125%	3.125%	5.500%	5.500%
2032	5.500%	5.500%	6.750%	6.750%
2033	6.750%	6.750%	9.000%	9.000%
2034	9.000%			

Since Respondent 1 is refusing to pay in full to the Applicants before any payment could be made to the assenting Financial Creditors , this application seeking reliefs mentioned in Paragraph No. 3 above.

Ld. Sr. Counsel for Applicants:

10. Ld. Sr. Counsel for applicants submits that against an admitted claim of huge sums, the dissenting financial creditors have been allocated very less sums with nearly 85% haircut. To demonstrate, he relies on a table mentioned in Paragraph No. 23 of the application, which has been extracted and reproduced hereinbelow:

Name of the dissenting lender bank	**Bank-wise allocation of Liquidation value to dissenting lenders as per the approved Resolution Plan and amount received**		**Bank-wise allocation of Working Capital Facilities and NCD as per the approved Resolution Plan**			
	Sare of Liquidation	**Amount received**	CC	WCTL	NCD	Total as assenting lender
IDBI Bank	14.27	0.0178	3.45	3.45	88.6	**95.5**
Indian Bank (e-Allahabad Bank)	13.19	0.0165	3.45	3.45	80.94	**87.84**
Bank of Baroda	8.75	0.0109	1.72	1.72	54.71	**58.15**
Bank of India	10.00	0.0125	2.41	2.41	41.31	**46.13**
Punjab National Bank (e-OBC)	4.21	0.0053	1.59	1.59	25.42	**28.6**

11. He submits that had they assented to the resolution plan, they would have got amount mentioned in the last column of this table as against the amount proposed to be paid in the resolution plan which is mentioned in first column of the table. For example, IDBI Bank would have got Rs. 95.5 crores against their dues had they assented to the resolution plan and since they dissented, allocation has been made in the resolution plan only for Rs. 14.27 crore. They had agreed to the massive haircut and consequent reduction in allocation only because, in terms of Clause 21 of the Resolution Plan read with Regulation 38 of IBBI (CIRP Regulation, 2016) they would get payment in priority in payment before any payment could be made to secured assenting financial creditors.

12. Ld. Sr. Counsel brought to our notice clause 21 of the resolution plan which provides as under:

> "*The liquidation value due to dissenting financial creditors, if any, will be made (in proportion to the liquidation value arrived as above)* ***before any recoveries are made by the financial creditors who voted in favour of the resolution plan."***

13. Therefore, the Ld. Sr. Counsel submits that the dissenting financial creditors will have to be paid in priority before any payment could be made to assenting financial creditors. He submits that the payment made to the dissenting financial creditors is now on par with the assenting financial creditors in terms of timeframe, whereas in terms of amount allocated, the amount payable to dissenting financial creditors is far less than the payment proposed in the resolution plan for assenting financial creditors.

14. He further submits that this is not only in violation of Insolvency and Bankruptcy Code and the Regulations made thereunder but also against the resolution plan itself which is unfair and not equitable to such dissenting financial creditors.

15. Ld. Sr. Counsel submits that the plan envisages that the assenting financial creditors will be paid over a period of 10 years. The applicants being the dissenting financial creditors having accepted huge haircut of about 85% compared to the assenting financial creditors. As dissenting financial creditors were not willing to wait for a period of 10 years for the recovery of their dues and that is precisely the reason why they accepted for much lower amount compared to the assenting financial creditors, believing that as per clause 21 of resolution plan they will be paid entire due before any payment is made to assenting financial creditors.

16. Ld. Sr. Counsel submits that respondents are, however, seeking to make payment to the applicants over the same period of 10 years as that of assenting financial creditors and in the process are completely violating the provisions of Regulation 38(1)(b) of IBBI Regulations, 2016 and clause 21 of the resolution plan.

17. Ld. Sr. Counsel relying on clause 21 of the resolution plan, submits that the use of words *"before any recoveries are made by the financial creditors who voted in favour of the resolution plan"* makes it abundantly clear that the entire dues of the applicants must be made before any payments are made to the assenting financial creditors.

18. Ld. Sr. Counsel further points out that the dissenting financial creditors got a haircut of above 85% whereas there is no haircut at all for the assenting financial creditors. He further submits that the assenting financial creditors are getting full value of their claim together with interest in the resolution plan and in contradiction the applicants, the dissenting financial creditors are getting payment only the liquidation value with haircuts of around 85%.

19. Ld. Sr. Counsel further submits that the case laws relied by the respondents in ***Puro Naturals JV Vs Warana Sahakari Bank & Ors.*** is actually in favour of the applicants. In the following portion of the said Judgment:

> *"[…] shall be made upfront within 90 days, which clarification was given before the Adjudicating Authority also. The Successful Resolution Applicant having himself came out to make entire payment to the dissenting Financial Creditors within 90 days, we are of the view that there can be no question of any contravention of provisions of IBC as well as*

CIRP Regulations with regard to payment to dissenting Financial Creditors. [...]"

20. Ld. Sr. Counsel submits that Monitoring Committee is supposed to implement the plan but instead has chosen to take sides of the promotors/Successful Resolution Applicant and trying to argue the case of the promotors. Therefore, he submits that the submissions made by the Monitoring Committee in this regard, is without any right and consequently, should not be considered at all.

21. Ld. Sr. Counsel further submits that since the Successful Resolution Applicant having failed to make payment of the dues of the applicants in priority over the assenting financial creditors have no right to remain in possession and/or control of the assets and properties of the corporate debtor and as such the same should be immediately taken over by the Monitoring Committee.

Ld. Counsel for respondents:

22. Ld. Counsel for respondent submits that the resolution plan is in nature of restructuring of debt rather than a plan providing an upfront infusion of funds by the Successful Resolution Applicants. Therefore, the applicants' demand for upfront full and final payment is contrary to the very nature of the restructuring plan that has been approved by CoC.

23. Ld. Counsel further submits that the term of the resolution plan is for 10 years and the plan specifically provides that the control of business of the corporate debtor lies with the board of directors of the company during this period. Therefore, he submits that the applicants demand for immediate payment is inconsistent with the long-term framework for the resolution of the corporate debtor provided in the approved resolution plan.

24. He submits that Regulation 38(1) of CIRP Regulations provides that operational creditors and dissenting financial creditors ought to be paid in priority. The payment in priority under the resolution plan has to be interpreted in the context of other provisions contained in the plan. The contentions of the applicants that clause 21 of the resolution plan stipulates payment to dissenting financial creditors in priority to financial creditors who voted in favour of the resolution plan has to be read with provision for payment to operational creditors (which is within 3 years of the approval of the resolution plan) who are at par with the dissenting financial creditors as per Regulation 38(1) of CIRP Regulations 2016.

25. He further submits that the applicants have opted for liquidation value to be paid in terms of the approved resolution plan. On 22.11.2017, they have received bank guarantees furnished to the corporate debtor and therefore, there is no exposure on such bank guarantees anymore to the applicants, whereas assenting financial creditors bank guarantees have not been returned to them and as such they continue to have exposure.

26. Thus, the allegation that they are receiving amounts with huge haircut is meaningless as they have otherwise benefited by not voting in favour of the resolution plan.

27. Ld. Counsel submits that the first tranche of the payments in terms of the plan was made to dissenting financial creditors in priority on 27.09.2024, whereas assenting financial creditors were paid only on

30.09.2024. He relied on the Judgment of Hon'ble NCLAT in Company Appeal No. 661-663 of 2023 in ***Puro Naturals JV Vs Warana Sahakari Bank & Ors.*** wherein it has been held as under:

> *"What is required by law is the payment in priority over the financial creditors who voted in favour of the plan.:"When we look into the relevant clauses of the resolution plan i.e. clause C-3(v) which has been dealt with dissenting financial creditors, the clauses clearly provided for payment to dissenting financial creditors in priority, since the payment in favour of the dissenting financial creditors has to be made prior to payment to the assenting financial creditors, be it upfront or payment of instalments. Submissions of the Ld. Counsel for respondents No. 1 and 2 that*
>
> *"[…] they were entitled for upfront payment and the provision of not providing upfront payment violates the provisions of IBC and the CIRP Regulations cannot be accepted […]."*

He submits that the above Judgment squarely covers their case against the applicants.

28. Ld. Counsel for respondent No. 1 submits that the only purported grievance raised by the dissenting FCs relates to manner of payment of liquidation value to them i.e. whether the payment should be in instalments or upfront. In other words, the issue pertains to distribution of amount and has nothing to do with validity or legality of the approved Resolution Plan. The contention of the applicants that entire liquidation value needs to be paid upfront is neither in terms of the approved resolution plan nor in terms of the statutory scheme as contained in the IBC and the CIRP Regulations.

29. Ld. Counsel further submits that in the past some of the applicant banks unsuccessfully challenged the approved resolution plan on various grounds. The approved resolution plan was upheld by Hon'ble NCLAT by order dated 16.08.2019. Civil Appeal No. 8411 of 2019 filed against Hon'ble NCLAT's order was disposed of by Hon'ble Supreme Court by a detailed Judgment and Order dated 18.01.2022, upholding the resolution plan. Paragraphs 63 and 64 of the Hon'ble Supreme Court's judgment dated 18.1.2022 are important and set out below:

> *"63. We need to take note of over 23,000 shareholders and thousands of employees of the Respondent No.1. Now, about Rs.300 crores has also been approved by the shareholders to be raised by the Respondent No. 1. It is stated that about Rs. 63 crores have been infused into the Respondent No.1 to make it functional.* ***There are many ongoing projects of public importance undertaken by the Respondent No.1 in the nature of construction activities which are at different stages.***
>
> *We remind ourselves of the ultimate object of the Code, which is to put the corporate debtor back in the rails.* ***Incidentally, we also note that no prejudice would be caused to the dissenting creditors as their interests would otherwise be secured by the resolution plan itself, which permits them to get back the liquidation value of their respective credit limits.*** *Thus, on the peculiar facts of the present case,* ***we do not wish to disturb the resolution plan leading to the on-going operation of the Respondent No.1."***

30. Ld. Counsel further submits that all the applicants herein were parties in Civil Appeal No. 8411 of 2019. The resolution plan has attained finality and an order of stay on the implementation of the same would be tantamount to overreaching and negating the Order of the Hon'ble Supreme Court dated 18.01.2022, which recognized and permitted implementation of the resolution plan.

31. Ld. Counsel further submits that the language of Clause 21 is crystal clear i.e. that the dissenting FCs will be paid in proportion before recoveries are made by assenting FCs. Put it simply, the instalments due and payable to the assenting CDs in 39 un-equated quarterly instalments as per the schedule given in the resolution plan at page 90 (which timelines stand extended by the orders mentioned above) will be paid after the corresponding/ proportionate instalments are paid to dissenting FCs. Clause 22 makes it clear that the term of the Plan is 10 years. There is no provision in the IBC that mandates entire /upfront payment of liquidation value to dissenting FCs. They can very well be paid in instalments so long as each proportionate instalment is paid in priority to the assenting FCs' proportionate instalments.

32. Ld. Counsel also submits that the applicants are misconstruing and misinterpreting Clause 21 of the resolution plan in a manner which no reasonable person would and the applicants' reliance on regulation 38(1)(b) and Section 30(2)(b) is totally misplaced. The dissenting creditors are statutorily not required to be paid the entire liquidation value in priority over the assenting financial creditors. There is no non-compliance or breach of the terms of the resolution plan or the IBC as has been alleged in the application or at all.

Analysis and Findings:

33. We find from the Reply made by the Respondents that, both dissenting and assenting financial creditors are proposed to be paid by the respondent in 39 quarterly instalments spread over a period of 10 years as per the table mentioned in Paragraph No 10 above.

34. While assenting financial creditors will get (approximately) 100% of their admitted claims with interest, the dissenting financial creditors will get (approximately) 15% of their admitted claims.

35. Applicants have dissented to the plan, consequent to which they have been allocated liquidation value as per Section 32(b) of the Insolvency and Bankruptcy Code.

36. It is the contention of the applicants that, had they assented they would have got much more in the resolution plan as indicated in the table in paragraph No. 10 above. It is their contention that as per resolution plan they are eligible for receiving entire payment of the allocated amount before any payment is made to assenting financial creditors.

37. So, the issue in hand is whether the payment in terms of the plan will have to be made to the dissenting financial creditors in full before any payment could be made to the assenting financial creditors or not.

38. To examine this, it is appropriate to reproduce clause 21 of the resolution plan which reads as under:

> *"21. On the basis of the valuation report, the liquidation value due to secured financial creditors works out to be Rs. 269.90 crs and after providing for resolution cost, the value comes to Rs. 267.40 crs. In case of liquidation of the company, the outstanding BG of Rs. 236.36 crs will be invoked. Also, the clients will not pay their outstanding amounts, security or withheld amounts. In case of unsecured financial creditors, the share in the liquidation value works out to be Nil.*
>
> *The liquidation value due to dissenting financial creditors, if any, will be made (in proportion to the liquidation value arrived*

as above) before any recoveries are made by the Financial Creditors who voted in favour of the resolution plan."

39. It is the contention of the respondents that if clause 21 of the resolution plan is interpreted in the manner that before any payment to assenting financial creditors is made dissenting financial creditors will have to be paid in full, would result in non-payment to assenting financial creditors any sum for few years as the Successful Resolution Applicant is bringing in limited funds during the initial years which will not be even sufficient to pay the operational creditors and some portion of dissenting financial creditors.

40. In this context, we refer to the Judgement of Hon'ble NCLAT in ***Puro Naturals JV Vs Warana Sahakari Bank & Ors.*** in Company Appeal No. 661-663 of 2023. The Hon'ble NCLAT has recorded the payment plan to dissenting financial creditors in the resolution plan of Shivaji Cane Processors Limited, the corporate debtor therein. The relevant extract recorded by Hon'ble NCLAT is reproduced hereinbelow:

"V. Dissenting Financial Creditors:

i. *Payment to the dissenting Financial Creditors: The dissenting Financial Creditors (i.e. those Financial Creditors who vote against, or abstain from voting for, the Resolution Plan approved by the CoC) shall be paid an amount not less than an amount to be paid to them in accordance with Sec 53(1) in the event of Liquidation of the Corporate Debtor.*

ii. *In terms of the code, if there are any dissenting Financial Creditors, then in such circumstances they shall be paid in accordance with Sec30(2) along with Sec 53(1) of the Code.*

iii. *The upfront payment will be made 1 day before the payment to the assenting creditor. At the same time payment of instalment will be made 1 month before the due date of instalment to the assenting Financial Creditor. In view thereof payment will be made as per 30(2), 53(1) and in priority to the assenting financial creditor.*

iv. *In the event, Resolution Applicant choose to make entire payment upfront, then in that event payment will be made as purchase consideration for assignment of debt and debt of dissenting financial creditor will also be assigned."*

41. After recording the same, the Hon'ble NCLAT held that what is required by law is payment in priority over the financial creditor who voted in favour of the plan, be it upfront payment or payment by instalments and the Hon'ble NCLAT rejected the arguments of the respondents therein that were entitled for upfront payment, as it in violation of the resolution plan.

42. In our view, the said ruling is on the basis of two important things that were considered.

i. The resolution plan contained mechanism/provision for payment to dissenting financial creditors in instalments.

ii. In the said case, the dissenting financial creditors were paid upfront within 90 days.

In fact, the Hon'ble NCLAT has recorded as under:

"The Successful Resolution Applicant having himself came out to make entire payment to the dissenting financial creditors within 90 days. We are of the view that there can be no question in contravention of provision of IBC as well as CIRP Regulations, 2016 with regard to payment to dissenting financial creditors."

43. We find there is no such contemplation in the resolution plan approved by CoC that dissenting financial creditors will also be paid in instalments over a period of 10 years.

44. Clause 21 clearly contemplates payment to the dissenting financial creditors before any recoveries are made by financial creditors who voted in favour of the resolution plan. "Ld. Counsel for respondents vehemently argued that the words *"in proportion to the liquidation value"* arrived ´ in the clause 21 of the Resolution Plan means that the "proportionate value in instalments".

45. We are of the view of the view that *"in proportion to the liquidation value"* mentioned in this clause would only mean the liquidation value applicable to dissenting financial creditors as contemplated under Section 30(2)(b)(ii). The words *"before any recoveries are made by the financial creditors who voted in favour of the resolution plan"* makes it abundantly clear that before any sum could be paid to the assenting financial creditors, the dissenting financial creditors will have to be paid in priority.

46. We have also considered the letters issued by the Respondent 1 to the all the applicant banks two which are reproduced below where in the respondents have reproduced the same clause 21 of the resolution plan and categorically asserted (in para 5 of the letter to IDBI Bank and in para 3 of the letter to Bank of Baroda) that it is assenting financial creditors who are to be paid in instalments. For the sake convenience letters addressed to IDBI Bank and Bank of Baroda, have been extracted and reproduced as examples.

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MBL
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Ref.: MBL/2024/1140
Date: 27.09.2024

The Deputy General Manager,
IDBI Bank Ltd,
IDBI House, 44 Shakespeare Sarani,
Kolkata- 700 017

Sir,

Subject: Payment of Liquidation Value in terms of the Approved Resolution Plan

1. Please refer to our letter no. MBL/2024/1105 dated 20.09.2024 (copy enclosed as Annexure-1), your email dated 25.09.2024 (copy enclosed as Annexure-2) and your No Objection Certificate no. IDBI Bank/KOL/NMG/MBL/2024-25/294 dated 25.09.2024) confirming reconciled amount of Rs.14,27,00,552.56 as full and final liquidation value to be paid in the manner as provided in the Resolution Plan dated 22.11.2017 approved under IBC,2016 (copy enclosed as Annexure-3).

2. As per the Approved Resolution Plan in terms of Clause 17, there is waiver of interest from the date of NPA to the date of implementation of the package / Resolution Plan. Accordingly, the interest for the month of January 2017 and February 2017 stand waived off. For ready reference Clause 17 of the Approved Resolution Plan is reproduced below:

   "17. ***WAIVER / REFUNDS***

   *As part of Resolution Plan, it is proposed to refund/**waive interest** / penal interest / interest on interest / other charges on the delayed payments **from the date of NPA till the implementation of the package**."*

3. Further, you have also not satisfied the following charge, detail whereof is as follows:

   Charge ID No. 10599391 dated 14.10.2015 for Rs. 1,00,00,00,000

   Kindly note that this satisfaction of charge is a Condition Precedent for implementation of the Resolution Plan by the Bank. The said charge ought to have been satisfied long back on execution of the Working Capital Consortium documents on 17.02.2016.

4. The treatment of financial creditors having a right to vote but who did not vote in favour of the Resolution Plan as per Approved Resolution Plan is in accordance with Section 30(2) of the IBC read with Regulation 38(1)(b) of the CIRP Regulations. Regarding the payment of Liquidation Value in terms of the Approved Resolution Plan, the provision of the plan is reproduced below: –

   "21. On the basis of the valuation report, the liquidation value due to secured financial creditors works out to be Rs 269.90 crs and after providing for resolution cost, the value comes to Rs 267.40 crs. In case of liquidation of the company, the outstanding BG of Rs 236.36 crs will be invoked. Also the clients will not pay their outstanding amounts, security or witheld amounts. In case of unsecured financial creditors the share in the liquidation

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value works out to be Nil.

The liquidation value due to dissenting financial creditors, if any, will be made (in proportion to the liquidation value arrived as above) before any recoveries are made by the Financial Creditors who voted in favour of the resolution plan.

22. The Term of the Plan and its implementation schedule is 10 years from the date of approval of the resolution plan by Hon'ble NCLT."

5. The assenting financial creditors are being paid in accordance with the following repayment schedule:

Quarter Ended	March	June	September	December
2024	-	-	0.125%	0.125%
2025	0.125%	0.125%	0.250%	0.250%
2026	0.250%	0.250%	0.250%	0.250%
2027	0.250%	0.250%	0.250%	0.250%
2028	0.250%	0.250%	0.500%	0.500%
2029	0.500%	0.500%	1.500%	1.500%
2030	1.500%	1.500%	3.125%	3.125%
2031	3.125%	3.125%	5.500%	5.500%
2032	5.500%	5.500%	6.750%	6.750%
2033	6.750%	6.750%	9.000%	9.000%
2034	9.000%			

6. In terms of the Approved Resolution Plan Rs.1,78,376 (0.125% of Rs.14,27,00,552.56, September 2024) has been remitted to the account intimated by the Bank in priority before payment to the Assenting Financial Creditors.

This is without prejudice to our rights and contentions in the matter.

Thanking you,

Yours faithfully,
for MBL Infrastructure Ltd

Anubhav Maheshwari
(Company Secretary)

Encl.: as above

NOTARY * GOVT. OF WEST BENGAL

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

I.A.(IB) (Liq.) No. 29 of 2024
In
C.P.(IB) No. 170 of 2017

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Ref.: MBL/2024/1137
Date: 27.09.2024

The Assistant General Manager,
Bank of Baroda
Stressed Asset Management Branch,
4th Floor, Rajendra Bhawan,
Rajendra Place,
New Delhi - 110008
Email: SAMDEL@bankofbaroda.com

Sir,

Subject: Payment of Liquidation Value in terms of the Approved Resolution Plan

1. Please refer to our letter no. MBL/2024/1110 dated 21.09.2024 (copy enclosed as Annexure-1), your email dated 25.09.2024 (copy enclosed as Annexure-2) and your No Objection Certificate no. BOB/SAMDEL/04-05/2024/MBL Infra dated 25.09.2024 confirming reconciled amount of Rs. 8,74,65,634.44 as full and final liquidation value to be paid in the manner as provided in the Resolution Plan dated 22.11.2017 approved under IBC,2016 (copy enclosed as Annexure-3).
2. The treatment of financial creditors having a right to vote but who did not vote in favour of the Resolution Plan as per Approved Resolution Plan is in accordance with Section 30(2) of the IBC read with Regulation 38(1)(b) of the CIRP Regulations. Regarding the payment of Liquidation Value in terms of the Approved Resolution Plan, the provision of the plan is reproduced below: –

"*21. On the basis of the valuation report, the liquidation value due to secured financial creditors works out to be Rs 269.90 crs and after providing for resolution cost, the value comes to Rs 267.40 crs. In case of liquidation of the company, the outstanding BG of Rs 236.36 crs will be invoked. Also the clients will not pay their outstanding amounts, security or witheld amounts. In case of unsecured financial creditors the share in the liquidation value works out to be Nil.*

The liquidation value due to dissenting financial creditors, if any, will be made (in proportion to the liquidation value arrived as above) before any recoveries are made by the Financial Creditors who voted in favour of the resolution plan.

22. The Term of the Plan and its implementation schedule is 10 years from the date of approval of the resolution plan by Hon'ble NCLT."

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3. The assenting financial creditors are being paid in accordance with the following repayment schedule:

Quarter Ended	March	June	September	December
2024	-	-	0.125%	0.125%
2025	0.125%	0.125%	0.250%	0.250%
2026	0.250%	0.250%	0.250%	0.250%
2027	0.250%	0.250%	0.250%	0.250%
2028	0.250%	0.250%	0.500%	0.500%
2029	0.500%	0.500%	1.500%	1.500%
2030	1.500%	1.500%	3.125%	3.125%
2031	3.125%	3.125%	5.500%	5.500%
2032	5.500%	5.500%	6.750%	6.750%
2033	6.750%	6.750%	9.000%	9.000%
2034	9.000%			

4. In terms of the Approved Resolution Plan Rs.1,09,333 (0.125% of Rs.8,74,65,634.44, September 2024) has been remitted to the account intimated by the Bank in priority before payment to the Assenting Financial Creditors.

This is without prejudice to our rights and contentions in the matter.

Thanking you.

Yours faithfully,
for MBL Infrastructure Ltd

Anubhav Maheshwari
(Company Secretary)

Encl.: As above.

NOTARY
GOVT. OF WEST BENGAL

47. Therefore, it is not open for the Successful Resolution Applicant to interpret clause 21 ingenuously now and say that dissenting financial creditors will also be paid over a period of 10 years though they have been allocated only 15% of their admitted claim whereas assenting financial creditors have been allocated nearly 100% of their admitted claim. We are of the view that the Judgment quoted by the respondents in ***Puro Naturals JV Vs Warana Sahakari***

Bank & Ors. would not be applicable in view of reasons stated in para 45 of this order.

48. It is well settled law that an approved Resolution plan is binding on all the stake holders and in this case, we are of the view the plan has been approved with payments in instalments only to the assenting financial creditors whereas the dissenting financial creditors will have to be paid in full before the assenting financial creditors are paid. We have also considered the explanation 1 of Section 30 (2) of IB Code which says that distribution in accordance with provisions of this clause shall be fair and equitable to **such creditors** (Operational creditors and dissenting financial creditors)

49. We are of the view that it will be just and equitable that dissenting financial creditors get payment in full before any payment is made to assenting financial creditors in view of reasons stated in the order.

50. Since this application is in the nature of seeking clarification/ direction about manner in which dissenting financial creditors to be paid as per the plan, and nothing to do with the plan itself (which stands approved up to Supreme court) , we have clarified only on the manner of payment to the Applicants and accordingly allow prayer a) of the application only and accordingly, this **I.A.(IB) No. 29 of 2024 is partly allowed and disposed of.**

51. Certified copy of this order, if applied for with the Registry be supplied to the parties in compliance with all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 20th day of December 2024.

PH[PS]