

**National Company Law Appellate Tribunal,**  
**Principal Bench**  
**Company Appeal (AT) (Ins) No. 445 of 2021**

**IN THE MATTER OF:**

1. **Amit Gupta**  
**Son of Mr. Virender Nath Gupta**  
**Residing at 8 Uggar Sain Bhawan,**  
**Railway Road, Opposite S.D. Model School,**  
**Karnal (Rural) Part (I), Karnal, Haryana-**  
**132001**

**...Appellant**

**Versus**

1. **Anil Kohli**  
**Resolution Professional for Dunar Foods Ltd.**  
**Residing at, 1011, Kriti Shikhar,**  
**District Centre, Janakpuri, New Delhi-**  
**110058**

2. **State Bank of India**  
**Chief Manager**  
**Sector 8-C, Chandigarh**

**...Respondents**

**Present:**

**For Appellant:**        **Mr. P. Nagesh, Sr. Advocate with Mr. Abhishek Singh,**  
                                 **Mr. Himanshu Dubey, Advocates.**

**For Respondents:** **Mr. Abhishek Anand, Mr. Mohak Sharma, Mr. Karan**  
                                 **Kohli, Mr. Pathik Choudhury, Advocates for RP.**  
                                 **Mr. Ramji Srinivasan, Sr. Advocate with Ms. Vishrutyi**  
                                 **Sahni, Ms. Fatema Kachwala, Ms. Priyansha Sharma,**  
                                 **Advocates for SBI, R-2.**

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

**Dr. Ashok Kumar Mishra, Technical Member**

The Appeal has been filed under Section 61 of IBC, 2016 against the order passed by the Adjudicating Authority (National Company Law Tribunal) Mumbai Bench, Mumbai Court –II on 30.04.2021 in IA No. 661 of 2020 & IA No. 1327 of 2020 in CP (IB) No. 1138/MB/2017 on the applications of the Appellant. The Adjudicating Authority vide the impugned order was pleased to dismiss the Company Application being IA No. 1327 of 2020 filed by the Appellant and partly allowed the Company Application being IA No. 661 of 2020 filed by the Appellant.

2. The Appellant has sought the following relief:

- (a) Set aside the direction of the Ld. Adjudicating Authority (in paragraph 17 & 20 of the order dated 30.04.2021) passed vide impugned order dated 30.04.2021 qua levying of interest @ 12% per annum upon the Appellant from the date it became due and payable as per the Resolution Plan and directing the Appellant to pay the same;
- (b) Direct the Respondent to take immediate steps and expedite removal of all attachments, liens, charges, encumbrances etc. from the assets of the Corporate Debtor.
- (c) Set aside the direction contained in the impugned order (paragraph 18) for fastening the liability to remove the attachment, lien, charge,

encumbrance etc. over the assets of the Corporate Debtor upon the Appellant;

- (d) Pass order permitting the Appellant to make payment of the balance amount under the Resolution Plan within a period of 2 months from lifting/removing all the attachment, charges, encumbrances and lien from the assets of the Corporate Debtor;
- (e) Direct the Respondent/ Monitoring Professional Respondent to take urgent steps to get all attachment, charges, encumbrances, lien on the assets of the Corporate Debtor lifted and removed expeditiously;
- (f) Pass an ex-parte ad-interim order in favour of the Appellant staying the operation of the order dated 30.04.2021 passed by the Ld. Adjudicating Authority qua the direction to the Appellant to pay interest @ 12% per annum from the date it became due and payable as per the Resolution Plan;
- (g) Stay the direction contained in para 18 of the impugned order giving the Appellant liberty to approach the concerned authority for lifting the attachment and encumbrances over the assets of the Corporate Debtor; etc.

3. The Appellant has provided the chronology of events commenced from 22.12.2017 to 28.05.2021. The same is given below:

**List of Dates and Events**

| <b>Date</b> | <b>Event</b>                       |
|-------------|------------------------------------|
| 22.12.2017  | The Ld. Adjudicating Authority was |

|            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|            | pleased to admit the application filed by the Financial Creditor ("State Bank of India") under Section 7 of the Insolvency and Bankruptcy Code, 2016 and was further pleased to appoint the Respondent as the Interim Resolution Professional of the Corporate Debtor ("Dunar Foods Limited").                                                                                                                                                                                  |
| 04.06.2019 | Thereafter, the CoC, in the meeting, approved the Resolution Plan submitted by the Appellant by a majority of 96.92% which became 100% after IDBI Bank gave its consent. Accordingly, the Respondent approached the Ld. Adjudicating Authority by filing an application being M.A. No. 2166 of 2019 under Section 30(6) of the IBC, 2016 read with regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) 2016 for approval of the Resolution Plan. |
| 26.11.2019 | <p>The Ld. Adjudicating Authority was pleased to approve the Resolution Plan submitted by the Appellant subject to certain further directions.</p> <p>The Ld. Adjudicating Authority was pleased to grant time of 30 months for making the total payment from the date of approval of the Resolution Plan as mentioned in paragraph 18(g) of the said order.</p>                                                                                                                |
|            | However, the Respondent had filed an application (being M.A. No. 3977 of 2019) before the Ld. Adjudicating Authority for correction of certain error that had stated to have been occurred in the order dated 26.11.2019.                                                                                                                                                                                                                                                       |
| 27.01.2020 | Ld. Adjudicating Authority was pleased to allow the said application (M.A. No. 3977 of 2019) filed by the                                                                                                                                                                                                                                                                                                                                                                       |

|            |                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|            | Respondent and carried out certain rectification in the order dated 26.11.2019. Accordingly, the time period mentioned in paragraph 18(g) of the order dated 26.11.2019 was revised to 3 months from the date of approval of the Resolution Plan by the Ld. Adjudicating Authority in place of 30 months as originally mentioned in the order dated 26.11.2019. The Appellant was never served with the copy of the MA No. 3977 of 2019. |
| 11.02.2020 | The Respondent sent to the Appellant a copy of the order dated 27.01.2020 when the Respondent was enquired about any further proceedings/orders passed by the Ld. Adjudicating Authority.                                                                                                                                                                                                                                                |
| 20.02.2020 | Appellant was constrained to approach the Ld. Adjudicating Authority by filing an application being I.A. No. 661 of 2020 requesting the Ld. Adjudicating Authority to pass certain orders/directions including order that the time period mentioned in paragraph 18(g) of the order dated 25.11.2019 be reckoned from 27.01.2020 as the order dated 27.01.2020 was made available only on 11.02.2020.                                    |
| 20.02.2020 | The arguments before the Ld. Adjudicating Authority on the aforesaid application (IA no. 661 of 2020) was heard and the same was reserved for passing of orders.                                                                                                                                                                                                                                                                         |
| 10.07.2020 | The Financial Creditor of Dunar Foods Ltd. filed an application being I.A. No. 1114 of 2020 for pronouncement of order in I.A. No. 661 of 2020.                                                                                                                                                                                                                                                                                          |
| 10.08.2020 | The Ld. Adjudicating Authority was pleased to pass an order directing de novo hearing of the matter, noting reconstitution of the Hon'ble Bench of                                                                                                                                                                                                                                                                                       |

|                         |                                                                                                                                                                                                                                                                                                                                                                                    |
|-------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                         | the Ld. Adjudicating Authority.                                                                                                                                                                                                                                                                                                                                                    |
| 19.08.2020              | The Appellant appeared before the Ld. Adjudicating Authority and requested to file an application for direction/ amending IA No. 661 of 2020 and to bring on record certain additional and subsequent facts which were material to the effective adjudications of the matter. The Appellant also prayed for appropriate orders and directions from the Ld. Adjudicating Authority. |
| 02.09.2020              | The Respondent filed a detailed reply to the said application opposing the relief sought for by the Appellant in I.A. No. 1327 of 2020.                                                                                                                                                                                                                                            |
|                         | The Appellant filed a rejoinder to the said application wherein the Appellant reiterated that the Respondent should forthwith lift/remove all the attachments, charges, encumbrances on the assets of the Corporate Debtor.                                                                                                                                                        |
| 30.04.2021              | The National Company Law Tribunal, Mumbai Bench was pleased to pass the Impugned Order dismissing the Company Application being I.A. No. 1327 of 2020 filed by the Appellant and partly allowing the Company Application being I.A. No. 661 of 2020 filed by the Appellant.                                                                                                        |
| 28.05.2021 & 01.06.2021 | The Impugned order dated 30.04.2021 was uploaded on the website of the Hon'ble NCLT, Mumbai.                                                                                                                                                                                                                                                                                       |

4. The grievance of the Appellant is that the Adjudicating Authority has dismissed the Company Application being IA No. 1327 of 2020 in CP (IB) 1138/MB/2017 on the ground that the Adjudicating Authority is not vested with the jurisdiction to entertain the prayer wherein the Appellant had prayed that the Appellant should be permitted to make payments of the balance

amount within two months after the lifting/removing all attachments, charges, encumbrances and liens from the assets & properties of the Corporate Debtor & in respect of IA No. 661 of 2020 for imposing Commercial interest @ 12% p.a. from the date it become due & payable.

5. The Appellant being the Successful Resolution Applicant is entitled to take over the assets and properties of the Corporate Debtor free from attachments, charges, encumbrances, liens and it was the duty of the Resolution Professional Mr. Anil Kohli of Corporate Debtor to implement the plan and give the assets of the Corporate Debtor free from attachments, Liens, Charges, encumbrances.

6. The Applicant has also submitted that it will be a miscarriage of justice and take over the assets of the Corporate Debtor with the attachments, liens, encumbrances and take legal steps to remove them. The basic responsibility to implement this is on the Resolution Professional and hence the present Appeal.

7. The Appellant in this Appeal is also aggrieved with the Adjudicating Authority as it has allowed partly the Company Application being IA No. 661 of 2020 particularly the direction giving the Appellant to pay interest @ 12% p.a. from the date it became due and payable as per the Resolution Plan.

8. It was also submitted by the Ld. Sr. Counsel of the Appellant that payment of interest ordered to be paid by the Appellant is contrary to the terms of Resolution Plan and also contrary to the Magnate of the Code (IBC, 2016).

9. It was also submitted by the Ld. Sr. Counsel for the Appellant that there are charges on the properties of the Corporate Debtor amounting to Rs. 5,600 Crores by MPID Court, Rs. 141.61 crores by Central Excise Authority, the Enforcement Directorate has attached the property of Corporate Debtor- Dunar Foods Ltd. under the provisions of the Prevention of Money-Laundering Act, 2002.

10. The Ld. Sr. Counsel for the Appellant has also mentioned that the Resolution Applicant if it gets the assets of the Corporate Debtor which are not free from encumbrances, liens, attachments etc. then the scheme of CIRP will not be successful.

11. The Ld. Sr. Counsel for the Appellant has also mentioned that originally the Adjudicating Authority granted 30 months time for making the total payment from the date of the approval of the Resolution Plan. However, the Adjudicating Authority vide its order dated 27.01.2020 made certain changes at the behest of the Respondent no.1/Resolution Professional of Corporate Debtor and the time period mentioned was curtailed to 3 months from the date of the approval of the Resolution Plan and the Respondent No.1/Resolution Professional has not given notice of the Application so filed for correction of period to the Appellant seeking modification of the order dated 26.11.2019.

12. The Respondent No.1/Resolution Professional sent the copy of the order dated 27.01.2020 to the Appellant only on 11.02.2020. The Revised time schedule to make the payment of the amount was expiring on 25.02.2020. In



above circumstances it was difficult for the Appellant to arrange balance funds to make the payment, so filed IA no. 661 of 2020 seeking relief to make payment within 3 months not from 26.11.2019 but from 27.01.2020.

13. It was also submitted by the Ld. Sr. Counsel of the Appellant that IA 661 of 2020 was reserved for orders on 26.02.2020. As a result of Global Pandemic of Covid -19 and Nationwide Lockdown, announced on 24.03.2020, the functioning of the Courts/Tribunals remained suspended and the order could not be pronounced. In the meantime, SBI (Financial Creditor)/Respondent No.2 filed an application bearing no. 1114 of 2020 requesting Tribunal to pronounce order in IA No. 661 of 2020 and the Tribunal vide order dated 19.08.2020 directed de-novo hearing of the matter.

14. Ld. Sr. Counsel of the Appellant has also stated that the Appellant filed an application IA No. 1327 of 2020 pointed out the new development in the matter and the problem related to the existence of the attachments, liens, charges, encumbrances, courts cases on the assets of the Corporate Debtor and uncertainty about the lifting of all such encumbrances etc.

15. Ld. Sr. Counsel of the Appellant went on to submit that the HDFC Bank which has agreed to fund Resolution Plan refused to fund due to existence of such attachments/encumbrances etc. HDFC Bank vide its letter dated 10.03.2020 also informed that the Appellants proposal for funding could be processed only after receipt of NOC from the MPID Court and ED etc. and that the charges on the property are satisfied. The Appellant vide IA No. 1327 of

2020 as stated above also highlighted all the problems of attachment of properties by ED, Mumbai under Prevention of Money Laundering Act and various Constitutional Courts etc.

16. It was also stated emphatically by the Ld. Sr. Counsel that the Resolution Plan approved by the order dated 26.11.2019 also granted liberty for filing Miscellaneous Application if required in connection with implementation of the Resolution Plan.

17. The record of reveals vide para 21 of the order dated 26.11.2019 as follows:

*“21. As far as question of waiver of outstanding statutory dues and other claims as on the date of approval of the Resolution Plan is concerned, the Resolution Applicant, who will step into the shoes of Corporate Debtor subsequent to approval of Resolution Plan by the Bench, shall not be held responsible for any outstanding statutory dues and other claims for the period before commencement of CIRP.”*

18. The Ld. Sr. Counsel for the Appellant also mentioned that it was already mentioned in the Resolution Plan paragraph 18(a) that the sum of Rs. 77 Crore would be taken as loan from HDFC Bank so as to satisfy the Resolution Plan. The HDFC Bank required that the assets of the Corporate Debtor would be free from all sorts of encumbrances and the Resolution Professional has failed to do the same.

19. It was also stated that payment of interest from 27.01.2020 instead of 26.11.2019 and that to @ 12% p.a. from 27.01.2020 will

only burden the Appellant to remove encumbrances etc. from the assets of the Corporate Debtor.

20. It was also stated by the Ld. Sr. Counsel of the Appellant that the Appellant has already paid the entire amount of Rs. 87.10 Crore under the Resolution Plan on 15.11.2021 but still the attachments have not been removed by the Resolution Professional.

21. Based on all these submissions the Appellant is asking for waiver of interest @12% p.a. for the delay period as well as fixing the responsibility on the Appellant to remove all attachments from the assets of the Corporate Debtor.

22. The Ld. Counsel for the Respondent No.1/Resolution Professional for the Corporate Debtor has made following submissions:

- (a) It is astonished to find that the Appellant is seeking amendment of the Resolution Plan approved by the CoC and that the Adjudicating Authority which is neither maintainable nor tenable in the eye of law.
- (b) The Adjudicating Authority after extensive deliberation and consideration of the principles of amendment under order VI, Rule 17 of the Code of Civil Procedure, 1908 rejected the Appellant's prayer.
- (c) Modification in the Resolution Plan was impermissible and it is the job of the Appellant to approach the concerned authorities to remove the attachments on assets lifted.

- (d) As certain typographical errors had inadvertently crept into the order dated 26.11.2019 passed by the Adjudicating Authority and accordingly, the Adjudicating Authority was constrained to correct such error which were rectified by order dated 27.01.2020 in MA No. 3977 of 2019 and that's why time granted for making payment under the Resolution Plan was permitted to be reckoned from 27.01.2020 instead of 26.11.2019.
- (e) The Ld. Sr. Counsel for R-1/RP has also submitted that the Appellants stand to arrange funds keeping in mind 30 months time for making the payment is on the face of the Plan is wrong as the Resolution Plan itself ambiguously mentions that the payment of balance amount will be made within three months from the approval of Resolution Plan by Adjudicating Authority.
- (f) The Appellant himself has signed the unconditional Letter of Intent dated 04.06.2019 issued pursuant to the approval of the Resolution Plan by the CoC, and therefore the Appellant is estopped in law from raising any condition precedent to make payment under the terms of the approved Resolution Plan.
- (g) Section 32(A) of the Code already provides relief to the Appellant qua the removal of attachments and consequential reliefs therein and the immunity granted to the Appellant, hence there is no infirmity on the

order. “**Manish Kumar v. Union of India & Anr.** Writ Petition (C) No. 26 of 2020.

23. Ld. Sr. Counsel for the Respondent No.2 i.e. SBI has made the following submissions:

- (a) The total amount claimed by the Financial Creditor is Rs. 978,57,08,408/- out of that the amount relating to SBI is Rs. 783,19,47,562/-.
- (b) The Resolution Plan has been approved by 100% of the CoC Members and also by the Adjudicating Authority in 2019. As per the Resolution Plan the balance payment was supposed to be released within 3 months and not 30 months. This error was rectified by the Adjudicating Authority. However, the Adjudicating Authority even permitted to count the delay from 27.01.2020 instead of 26.11.2019.
- (c) The CIRP was initiated in 2017 and the Financial Creditor have received the principal amount under the Resolution Plan only on 15.11.2021, after delay of almost two years from the date of approval of the Resolution Plan.
- (d) The code vide Section 32-A already provides the Appellant quo the removal of the attachment and consequential reliefs and immunity granted to the Appellant. So, the apprehension and consequent request of the Appellant regarding release of the attachment is needless. They also stated that the Resolution Plan cannot be

modified or altered whether by the Adjudicating Authority or by the Appellate Authority and cited several judgments as are given below:

***“Rahul Jain v. Rave Scans Pvt Ltd., (2019) 10 SCC 548 and Jaypee Kensington Boulevard Apartments Welfare Association & Ors. v. NBCC (India) Ltd. & Ors.”, (2021) 5 SCC 624.***

(e) The Resolution Plan is not a contract which is capable of withdrawal or modification and is to be implemented by the Appellant. They have also Cited the judgment:

***“Ebix Singapore Pvt. Ltd. vs. Committee of Creditors of Educomp Solutions Ltd. & Anr.”, 2021 SCC Online SC 707.***

(f) The imposition of interest is in accordance with the time value of money. They have also cited the judgment as given below:

***“Gajendra Sharma v. Union of India, (2021) 1 SCC 210 and Small Scale Industrial Manufacturers Association v. Union of India”, (2021) 8 SCC 511.***

24. We have gone through the submissions made by the Sr. Counsels of the Appellant/ Respondents, the record produced before us, the extant provisions of the law on the subject including the citations available/ produced by the parties at different point of time and are having following observations:

(a) It is not in dispute that the Resolution Plan has not been approved on 26.11.2019.

- (b) It is also not in dispute that the Resolution Plan per se was not mentioning three months time period for releasing the balance payment from the date of the approval of the Resolution Plan.
- (c) The correction of the mistake apparent from record erupting in the impugned order of 30 months instead of 3 months and should also not be a bone of contention because typographical error is a part of human error and needs correction and so almost all the laws allow the same including the NCLT Rules 2016 (clause 154). Any clerical or arithmetical mistakes in any order of the tribunal or error arising from any accidental omission of slip may at any time can be corrected by the tribunal on its own motion. Hence, for such correction if notice has not been issued which is not an irregular activity or unenforceable activity.

25. It is no doubt a matter of concern that the CIRP which commenced on 22.12.2017 is still in litigation on one pretext or the other. Section 12 provides time limit for completion of Insolvency Resolution Process. For brevity and clarity, the same is reproduced below:

*Section 12: Time-limit for completion of Insolvency Resolution Process.*

**“12.** (1) *Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.*

(2) *The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one*

*hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of <sup>1</sup>[sixty-six] per cent. of the voting shares.*

*(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days:*

*Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once.”*

26. This makes amply clear that the CIRP shall mandatorily be completed within a period of 330 days from the insolvency commencement date. Including the extension of CIRP Period and time taken in legal proceedings.

27. Liability for prior offences etc. particularly removing/lifting attachments/liens/charges/encumbrances existing prior to CIRP needs to be dealt with in accordance with the provisions of Section 32(A) of the Code. For brevity and clarity, the same is reproduced below:

*Section 32(A): Liability for prior offences, etc.*

*[32A. (1) “Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person*



who was not—

*(a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or*

*(b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or court;*

*Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled:*

*Provided further that every person who was a “designated partner” as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or an “officer who is in default”, as defined in clause (60) of section 2 of the Companies Act, 2013, or was in any manner in charge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor’s liability has ceased under this sub-section.*

*(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter*

*III of Part II of this Code to a person, who was not—*

*(i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or*

*(ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority. Or court.*

*Explanation. —For the purposes of this sub-section, it is hereby clarified that, —*

*(i) an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;*

*(ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.*

*(3) Subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the immunity given in this section, the corporate debtor and any person who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process.”]*

28. It is also not in dispute that the object of the IBC would be defeated if the responsibility for prior offences is put on the Resolution Appellant. The Resolution Appellant is supposed to get a clean slate and all dues of the Corporate Debtor prior to commencement of CIRP stand extinguished.

29. It is also necessary to extract from the Resolution Plan as available in the 'Appeal Paper Book' from pg. 158 to 159 that the Successful Resolution Applicant is supposed to get all the assets of the Corporate Debtor free from any encumbrances and would be available for use by the Resolution Applicant without any fetters or brevity and clarity. The Terms and Conditions appearing at pg. 158 to 159 is given below:

"G. Terms and Conditions

*Shareholding*

*The Ownership along with 100% shareholding without any interference of existing promoters/existing shareholders (individual as well as Corporate)/Financial Creditors shall be transferred to Resolution Applicant upon receipt of complete payment as per terms of the approved Resolution Plan. It will be responsibility of the Lenders to get the complete issued shareholding of the Corporate Debtor transferred in the name of Resolution Applicant including his nominee.*

*Upon receipt of complete payment as per terms of the Resolution Plan entire shareholding of the Corporate Debtor shall vest with the Resolution Applicant i.e. the entire paid up share capital of the Corporate Debtor will stand transferred in the name of the Resolution Applicant or its nominee. Entire security including pledge of shares shall be released by the Lenders and the same will be assigned to the Resolution Applicant. On receipt of the complete payment as per the Financial Proposal, the existing lenders*

*will do the needful to remove all the charges created on the assets of the Corporate Debtor.*

*The Resolution Applicant may offer a part of equality to its associate firms, individuals or Asset Reconstruction Companies or Non- Banking Financial Companies in order to raise required finances for the acquisition of Corporate Debtor. Notwithstanding S1.Ich offer by the Resolution Applicant it shall not affect the Resolution Plan and/or its implementation. However, the Resolution Applicant undertakes that any such dilution of shareholding and transfer of assets would be in compliance with the requirements of Section 29-A of the Insolvency and Bankruptcy Code.*

#### *Asset Takeover*

*All the assets in the name of Corporate Debtor as listed in the Information memorandum will continue to remain as assets of the Corporate Debtor and taken over by the Resolution Applicant on "As Is Where Is and As Is What Is basis".*

*It is also understood that all the assets of the corporate debtor, tangible and intangible, will be free from any encumbrances, liens, charges, etc of the lenders, upon the approval of the Resolution Plan and available for use by the Resolution Applicant without any fetters.*

#### *Statutory Dues*

*As per Provisional financials as on 03.01.2018, other current liabilities including duties & taxes along with other payables total amounting to Rs. 73.82 lacs and duties and taxes payable total amounting to Rs. 79.20 lacs towards VAT including interest, no payment to be made to any of statutory dues since claims of financial creditors submitted is not expected to be fully paid out from the value of assets, any claim related to statutory dues (taxes/duties/cess, etc) arise in future pertaining to business/event/transactions before acquisition of the Corporate Debtor shall not be paid by the Resolution applicant.*

*Further, no payment shall be made by Resolution Applicant in future post acquisition of the Corporate Debtor, if claims*

*arise on account of past transactions/business made pre acquisition of the corporate debtor.*

*Any other dues and Claims*

*As per Information Memorandum, 17 matters are pending before various judicial forums (9 NSEL related matters+ 2 Central Excise related matters + 1 Enforcement Directorate+ 2 shareholders related matter+1 statutory Auditor related matter+ 2 Corporate Creditor related matter). There are two Income Tax related matters against the corporate debtor. The claims of two corporate creditors matter have been admitted by the Resolution Professional as per the Information Memorandum and are accordingly addressed in the Financial Proposal accompanied. Claims arising from the Operational Creditors are also addressed in the Financial Proposal. However, claims arising from other pending matters have not been crystallized and admitted by the Resolution Professional therefore no payment has been assigned towards them as a part of this Resolution Plan.*

*The Adjudicating Authority under the Insolvency and Bankruptcy Code has wide powers and Section 238 of the Code providing the widest possible non obstante clause, makes is clear that the decision of the Hon'ble Adjudicating Authority under the code shall have effect notwithstanding any provision of another law which is inconsistent.*

*Therefore, it is expected and understood that upon the approval of the Resolution Plan by the Hon'ble Adjudicating Authority under Section 31 of the IBC, no future claims would lie against the Corporate Debtor from any other proceeding pending against the Corporate Debtor and it will only be responsible for the liability which is crystallised as on the date of the approval or Resolution Plan and addressed in the Financial Proposal. Furthermore, it is expected and understood that upon the approval of the Resolution Plan and after making the payment agreed to lenders the assets of the Corporate Debtor would be available for use free from any attachment or encumbrance under any other act or proceedings. Prayer to Hon'ble NCLT is made accordingly their kind approval in this regard and also waiver of any*

*other claims against the Corporate debtor, by whatever name called, including but not limited to claims by any operational creditors, guarantors, employees, statutory authorities etc. which came into existence, or the cause of action for which came into existence, prior the date of approval of the Resolution Plan are deemed to be settled in full against the Corporate Debtor and no claims therein will lie in future against the corporate debtor or the Resolution Applicant.”*

30. In order to bring the clarity of the matter a look on the approval of the Resolution Plan as passed in MA 2166 of 2019 in CP No. 1138/I&BC/MB/MAH/2017 appearing at Annexure A-3 at Pg. 150 to 166 of the Appeal Paper Book certain clauses are extracted below:

*(b) The Financial Creditors will be given a uniform of 8.73% of the admitted claim amount, cumulatively amounting to Rs. 85.40 Crore. The Operational Creditors will be given a uniform of 0.32% of the admitted claim amount, cumulatively amounting to Rs. 0.10 Crore. An overview of the payments to Financial and Operational Creditors is given below:*

| Financial Creditors | Admitted claim (Rs.) | Amount Provided under Plan (Rs.) |
|---------------------|----------------------|----------------------------------|
| State Bank of India | 783,19,47,562        | 68,35,52,204                     |
| Bank of Baroda      | 109,23,98,141        | 9,53,41,695                      |
| Canara Bank         | 56,04,69,901         | 4,89,16,369                      |
| IDBI Bank Ltd.      | 30,08,92,804         | 2,62,61,149                      |
| Total               | 983,67,64,090        | 85,40,71,417                     |

| Operational Creditors                       | Admitted Claim (Rs.) | Amount provided under Plan (Rs.) |
|---------------------------------------------|----------------------|----------------------------------|
| Punjab State Power Corporation              | 60,03,020            | 19,176                           |
| Additional Commissioner of ITP (Income Tax) | 30,70,41,687         | 9,80,824                         |
| Total                                       | 31,30,44,707         | 10,00,000                        |



© It is submitted by the Resolution Professional that the net worth of the Resolution Applicant is around Rs. 30.29 Crore. The Resolution Applicant holds property worth Rs. 16.51 Crore. The Resolution Applicant intends to get the funding of the Resolution Plan from HDFC Bank Ltd. In support of the same, the Resolution Applicant has also furnished an Expression of Interest for funding issued by HDFC Bank Ltd. The Letter dated 14.01.2019 issued by HDFC Bank Ltd. For funding of loan of Rs. 77 Crore is annexed in the application. The RP further submits that the Resolution Applicant has already deposited a sum of Rs. 29.25 Crores (Rs. 10 Crore for EMD and Rs. 19.25 Crore as performance Security) i.e. 25% of the Resolution Amount.

(d)The Resolution Applicant has sought a waiver of all outstanding statutory dues and other claims as on the date of approval of the Resolution Plan. Additionally, the Resolution Applicant has also sought waiver of all ascertained and contingent claim, dues, debts etc as on the date of approval of Resolution Plan.

(f)The Resolution Plan also provides for a Monitoring Committee comprising of  
i. Resolution Professional,  
ii. Independent Representative of the CoC,  
iii. Representative of the Resolution Applicant.

The aforementioned Monitoring Committee shall be in control of the Corporate Debtor till complete payment and execution of the Resolution Plan is carried out.

“21. As far as the question of waiver of outstanding statutory dues and other claims as on the date of approval of the Resolution Plan is concerned, the Resolution Applicant, who will step into the shoes of corporate debtor subsequent to approval of Resolution Plan by the Bench, shall not be held responsible for any outstanding statutory dues and other claims for the period before commencement of CIRP.

22. The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that revival of the

*Debtor Company shall come into force with immediate effect and the “Moratorium” imposed under Section 14 shall cease to have any effect henceforth. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the IBBI for their record and also return to the Resolution Applicant or New Promoters. Certified copy of this order be issued on demand to the concerned parties, upon due compliance. That liberty is hereby granted for moving any Miscellaneous Application if required in connection with implementation of this Resolution Plan. That in respect of stepping by the New Promoters/Resolution Applicant into the shoes of the erstwhile company and taking over the business, the provisions of companies Act, 2013 shall be applicable and because of this reason a copy of this order is to be submitted in the office of the Registrar of Companies, Mumbai.”*

31. It is very much clear that the Resolution Applicant has got the Corporate Debtor in less than 10% of the value of the admitted claim practically 90% is the waiver. However, this issue cannot be reckoned now but it can have a leverage impact on levy of interest @ 12% p.a. for delay in releasing the balance payment. The interest is to be paid for the period from 27.01.2020 to 15.11.2021. As it looks from the Written Submissions of the SBI submitted to the Registry of this tribunal vide diary no. 33701 dated 21.02.2022. This period also comprises the period resulting from global pandemic covid-19.

32. Since the Successful Resolution Applicant/Appellant has paid the full amount so now there is no question of going back and hence, perhaps this is the area where the question involved is now as far as whether the interest rate be reduced to be made at par of RBI base rate for lending to banks with



additional 2% margin subject to a limit of 12% p.a. or otherwise. Hence, we hereby approve a rate of interest of RBI base rate for lending to Banks + 2% margin as per the rate of interest applicable between 27.01.2020 to 15.11.2021 subject to a limit of 12% p.a.

33. It has been made amply care in the “CoC of Essar steel India Ltd. v. Satish Kumar Gupta & Ors.” that the SRA cannot suddenly be faced with undecided claims. After the Resolution Plan submitted by him has been accepted. It is the responsibility of the Resolution Professional to compile the claims submitted to him or observed from record and put the same in the information memorandum, so that the Prospective Resolution Applicant have a full idea of its own liability. The SRA is to start on a fresh slate.

34. All this reflect to suggest one thing very clearly that the Resolution Professional and the representative of the CoC who are the Chairman/Members of the Monitoring Committee should assist the Resolution Applicant in sorting out the issues pending at various forums be it Excise Authority, Enforcement Directorate etc. As reflected by the Appellant and at the same time the Resolution Applicant will have to bear certain interest burden which should be the rate of interest of RBI Base rate for lending to banks + 2% margin as per

the rate of interest applicable between 27.01.2020 to 15.11.2021 subject to a limit of 12% p.a.

35. With these observations we dispose of the Appeal. The Appeal is partially allowed in terms of the above observations. IA, if any, stands disposed of. No order as to costs.

**[Justice M. Venugopal]**  
**Member (Judicial)**

**[Dr. Ashok Kumar Mishra]**  
**Member (Technical)**

New Delhi  
10.06.2022  
sr