NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 729 of 2022

IN THE MATTER OF:

1. Sintex Plastics Technology Ltd., **...Appellant**
Through authorized signatory,
Mr. Amit Dineshchadra Patel,
Having address at,
07th Floor, Abhijeet-1, Mithakali Six Roads,
Ellis Bridge, Ahmedabad - 380006

Versus

1. Mahatva Plastic Products and Building Materials Pvt. Ltd.,
Survey No. 650, Welspun City,
Village Versamedi,
Taluka Anjar, District Kutch,
Anjar, Gujarat 370110
mukulraj_raghotry@welspun.com **...Respondent No. 1**

2. Zielen Industries Private Limited,
Having address at:
Survey No. 459, At Post Tajpur (Oran)
Nr. Majara Chokdi, Ta:Prantij
District: Sabarkantha
zip_crb@yahoo.co.in **...Respondent No. 2**

3. Sintex BAPL Limited,
Represented through the IRP,
Mr. Ketulbhai Ramubhai Patel,
R.S. Patel & Company Chartered Accountants,
801, Popular House,
Nr. Income Tax Circle,
Ashram Road, Ahmedabad, Gujarat – 380009
ketul@rspatelca.com **...Respondent No. 3**

4. Asset Reconstruction Company (India) Limited,
10th Floor, The Ruby, 29,
Senapati Bapat Marg, Dadar West,
Mumbai, Maharashtra - 400028 **...Respondent No. 4**

Cont'd.../

Present:

For Appellant:	Mr. Arvind Kumar Gupta, Ms. Henna George, Ms. Shivani Sharma, Advocates.
For Respondents:	Mr. Arun Kathpalia, Sr. Advocate with Mr. Aman Raj Gandhi, Mr. Parth Bose, Mr. Pranay Tuteja, Advocates for R-1
	Mr. Arun Kathpalia, Sr. Advocate with Mr. Samar S. Kachwaha, Ms. Shivangi Nanda, Ms. Kavita Vinayak, Ms. Rini Mehra, Advocates for R-4/ARCIL

With

Company Appeal (AT) (Insolvency) No. 730 of 2022

IN THE MATTER OF:

1. Sintex Plastics Technology Ltd., **...Appellant**
Through authorized signatory,
Mr. Amit Dineshchadra Patel,
Having address at,
07th Floor, Abhijeet-1, Mithakali Six Roads,
Ellis Bridge, Ahmedabad - 380006

Versus

1. State Bank of India,
Lead Bank of SBI Consortium,
Having its Corporate Centre at:
58 Shrimali Society, Navrangpura, Ahmedabad – 390009

Having Branch Office At:
Stressed Asset Management Branch
2nd Floor, Paramsiddhi Complex, Opp. V.S. Hospital,
Ashram Road, Ahmedabad, Gujarat

2. Sintex BAPL Limited,
Represented through the IRP,
Mr. Ketulbhai Ramubhai Patel,
801, Popular House,
Nr. Income Tax Circle,
Ashram Road, Navrangpura, Ahmedabad – 380014

3. Bank of Baroda,
Kalol (Ng) Branch, MG Road,
Kalol – 382721

4. Yes Bank Ltd.,
Unit No. G/3, 102-103, CG Centre,
CG Road, Ahmedabad – 380006

5. HDFC Bank Ltd.,
3rd Floor, HDFC Bank House,
Near Mithakali Six Roads,
Navrangpura, Ahmedabad – 380009

6. Zielen Industries Private Limited,
Having Address at:
Survey No. 459, At post Tajpur (Oran),
Nr. Majara Chokdi, Ta:Prantij
District: Sabarkantha
zip_crb@yahoo.co.in **...Respondents**

Present:

For Appellant: Mr. Arvind Kumar Gupta, Ms. Henna George, Ms. Shivani Sharma, Advocates.

For Respondents: Mr. Malak M. Bhatt and Mr. Rajat Bector, Advocates for R-1.

With
Company Appeal (AT) (Insolvency) No. 475 of 2021
&
I.A. No. 1813 of 2021

IN THE MATTER OF:

1. KKR India Financial Services Ltd., **...Appellant**
A company registered with the Reserve Bank of India as non-banking financing company, having its registered office at 2nd Floor, Piramal Towers, Peninsula Corporate Park, Ganpatrao Kadam Marg, Lower Parel (W),
Mumbai 400013

Versus

1. Sintex Plastics Technology Ltd.,
A Copy incorporated under the Indian Companies Act, having its office at Near Seven Garnala Kalol, Gandhinagar – 382721.

2. Zielem Industries Private Limited,
A company incorporated under the Indian Companies

Act, having its office at Survey No. 459, Mazara Chokdi B/H Sabar College, Tajpur (Oran) Chiloda, Himmatnagar, Highway, Taluka – Prantij, District – Sabarkantha, 383205 (Gujarat)

3. Sintex – BAPL Limited,
Through its Interim Resolution Professional-Mr. Ketulbhai Ramubhai Patel, A Company registered under the Companies Act, 1956, Having its registered office at Abhijeet-I, Seventh Floor, Mithakali Six Roads, Ellisbridge, Ahmedabad – 380006

4. DSP Investment Managers Private Limited,
A company incorporated under the Indian Companies Act, 1956 and having its registered office at Mafatlal Centre, 10th Floor, Nariman Point, Mumbai - 400021 **...Respondents**

Present:

For Appellant:	Mr. Arun Kathpalia, Sr. Advocate with Mr. Vividh Tandon, Ms. Kaazvin Kapadia, Mr. Ribhu Garg, Advocates
For Respondents:	Mr. Arvind Kumar Gupta, Advocate for R-1.
	Mr. Malak M. Bhatt and Mr. Rajat Bector, Advocates
	Mr. Varun Sharma, Ms. Vanshika Gupta, Mr. Shivam Goel, Advocates in I.A. 1032/ 2022.

with
Company Appeal (AT) (Insolvency) No. 577 of 2021

IN THE MATTER OF:

1. Amit Patel, **...Appellant**
S/o Dineshchandra Patel, Having Address at:
Abhijeet-1, Mithakali Six Roads,
Ellis Bridge,
Ahmedabad 380006

Versus

1. KKR India Financial Services Ltd.,
2nd Floor, Piramal Towers, Peninsula Corporation Park,
GK Marg, Lower Parel (W)
Mumbai 400013

2. Mr. Ashish Chhawchharia,
In his capacity as Interim Resolution Professional of Sintex-BAPL Limited (Corporate Debtor/CD) Grant Thornton, 10C Hungerford Street, Kolkata, West Bengal, 700017 **...Respondents**

Present:

For Appellant:	Mr. Arvind Kumar Gupta, Ms. Henna George, Ms. Shivani Sharma, Advocates.
For Respondents:	Mr. Arun Kathpalia, Sr. Advocate with Mr. Samar S. Kachwaha, Ms. Shivangi Nanda, Ms. Kavita Vinayak, Ms. Rini Mehra, Advocates

With
Company Appeal (AT) (Insolvency) No. 674 of 2021

IN THE MATTER OF:

1. DSP Investment Managers Pvt. Ltd., **...Appellant**
A company incorporated and registered under the provisions of the Companies Act, 1956 and, having its registered office at Mafatlal Centre, 10th Floor, Nariman Point, Mumbai – 400021, Maharashtra

Versus

1. Sintex Plastics Technology Ltd.,
A Company registered under the Companies Act, 1956, Having its registered office at Near Seven Garnala Kalol, Gandhinagar – 382721

2. Zielem Industries Private Limited,
A company incorporated under the Indian Companies Act, having its office at Survey No. 459, Mazara Chokdi B/H Sabar College, Tajpur (Oran), Taluka – Prantij, District – Sabarkantha, 383205 (Gujarat)

3. Sintex – BAPL Limited,
Through its Interim Resolution Professional-Mr. Ketulbhai Ramubhai Patel, A Company registered under the Companies Act, 1956, Having its registered office at Abhijeet-I, Seventh Floor, Mithakali Six Roads, Ellisbridge, Ahmedabad – 380006

4. KKR India Financial Services Ltd.,
2nd Floor, Piramal Towers, Peninsula Corporation Park, GK Marg, Lower Parel (W)

Mumbai 400013

...Respondents

Present:

For Appellant:

For Respondents: Mr. Arvind Kumar Gupta, Advocate for R-1.

Mr. Arun Kathpalia, Sr. Advocate with Mr. Samar S. Kachwaha, Ms. Shivangi Nanda, Ms. Kavita Vinayak, Ms. Rini Mehra, Advocates

With

Company Appeal (AT) (Insolvency) No. 814 of 2021

IN THE MATTER OF:

1. Insolvency and Bankruptcy Board of India, **...Appellant**
Through its Authorised Representative,
Having its Office at:
2nd Floor, Jeevan Vihar Building,
3, Parliament Street,
New Delhi – 110001.

Versus

1. Sintex Plastics Technology Ltd.,
A Company registered under the Companies Act, 1956,
Having its registered office at Near Seven Garnala Kalol,
Gandhinagar – 382721
Email: smt.mishra@sintex.co.in

2. Zielen Industries Private Limited,
Having Address at:
Survey No. 459, At post Tajpur (Oran),
Nr. Majara Chokdi, Ta:Prantij
District: Sabarkantha
zip_crb@yahoo.co.in

3. M/s. DSP Investment Managers Pvt. Ltd.,
having its registered office at Mafatlal Centre, 10th Floor, Nariman Point, Mumbai – 400021, Maharashtra
Email Id: pritesh.majumdar@dspim.com **...Respondents**

Present:

For Appellant: Mr. Vikas Mehta and Mr. Apoorv Khator, Advocates for IBBI.

For Respondents: Mr. Arvind Kumar Gupta, Ms. Henna George, Ms. Shivani Sharma, Advocates for R-1.

Mr. Arun Kathpalia, Sr. Advocate with Mr. Samar S. Kachwaha, Ms. Shivangi Nanda, Ms. Kavita Vinayak, Ms. Rini Mehra, Advocates

J U D G M E N T

PER: DR. ALOK SRIVASTAVA:

1. This common Judgement disposes of following six Appeals filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **"IBC"**) and the Orders impugned in these Appeals are order dated 29.06.2021 passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench, Ahmedabad) in IA 18(AHM)/2021 in CP (IB) 759 (AHM)2019 and order dated 19.07.2021 passed by the Adjudicating Authority in CP(IB) No. 276/7/NCLT/AHM/2020;

a) Company Appeal (AT) Ins. No. 729 of 2022 has been filed by the Appellant-Sintex Plastics Technologies Ltd. wherein by order dated 29.06.2022, I.A. No. 413(AHM)2022 in I.A. 374(AHM)2022 filed by Suspended Management was rejected, IA/374(AHM)2022 was allowed and I.A./474(AHM)2022 in IA/374(AHM)2022 was disposed of in CP(IB) No. 759 of 2019 has been challenged and seeking order to set aside and quash the impugned order dated 29.06.2022 passed by the Adjudicating Authority;

b) Company Appeal (AT) Ins. No. 730 of 2022 has been filed by the Appellant-Sintex Plastics Technology Ltd. through the Authorised Signatory-Mr. Amit Dineshchadra Patel challenging the order dated

29.06.2022 passed by the Adjudicating Authority in I.A. No. 380/2022 in CP(IB) No. 759 of 2019 seeking appropriate order setting aside and quashing the impugned order dated 29.06.2022 passed by the Adjudicating Authority Ahmedabad and staying the operation and implementation of impugned order dated 29.06.2022;

c) Company Appeal (AT) Ins. No. 475 of 2021 has been filed by the Appellant-M/s. KKR India Financial Services Ltd. with a prayer to set aside order dated 29.06.202, to direct the IRP to continue with responsibilities towards the corporate debtor and pass order for the constitution of CoC against the order dated 29.06.2021 passed by the Adjudicating Authority in I.A. 18(AHM)/2021 in CP(IB) 759(AHM) 2019 with Inv. P.1(AHM)/2021 in I.A. 18 of 2021 whereby the Adjudicating Authority permitted the corporate debtor to be released from the rigours of the Corporate Insolvency Resolution Process;

d) Company Appeal (AT) Ins. No. 577 of 2021 is filed by the Appellant-Amit Dineshchandra Patel who is an Ex-Director of the Corporate Debtor M/s. Sintex-BAPL Limited with a prayer to set aside the order dated 19.07.2021 passed by the Adjudicating Authority in CP(IB) No. 276/07/NCLT/AHM/2020 whereby the Section 7 Application under the Code filed by the Financial Creditor-KKR India Financial Services Limited was admitted and CIRP was initiated against the corporate debtor;

e) Company Appeal (AT) Ins. No. 674 of 2021 is filed by the Appellant-DSP Investment Managers Pvt. Ltd. with a prayer to set aside the Impugned Order dated 29th June, 2021 passed by the Adjudicating

Authority in I.A. No. 18 of 2021 in CP(IB) No. 759 of 2019 releasing the corporate debtor from all rigours of CIRP and allow the resumption of CIRP against the corporate debtor;

f) Company Appeal (AT) Ins. No. 814 of 2021 filed by the Appellant-Insolvency and Bankruptcy Board of India (hereinafter referred to as "IBBI") with a prayer to stay order dated 29.06.2021 in I.A. No. 18 /AHM/2021 in CP(IB) No. 759/AHM/2019 with Inv. P.1 /AHM/2021 in I.A. No. 18 of 2021 releasing the corporate debtor from all rigours of CIRP.

2. The impugned order dated 29.06.2021 in I.A. No. 18 of 2021 in CP(IB) No. 759 of 2019 with Inv. P.1/AHM/2021 in I.A. No. 18 of 2021 relates to the release of the corporate debtor from the rigours of CIRP. This order effectively closes the CIRP against the corporate debtor-Sintex Plastics Technology. Ltd. initiated on 18.12.2020 by the Adjudicating Authority after the application admitted vide order dated 18.12.2020 was allowed to be withdrawn by the Adjudicating Authority.

3. Briefly, the case of the Appellant-KKR India Financial Services Ltd. as stated in Company Appeal (AT) Ins. No. 475 of 2021 is that on an insolvency application under Section 9 of the IBC filed by the operational creditor-Zielen Industry Pvt. Ltd., CIRP was initiated upon the admission of the said Application on 18.12.2020 along with appointment of IRP-Mr. Ketulbhai Ramubhai Patel. It is stated by the Appellant that the operational debt owed to the operational creditor by the corporate debtor-Sintex Plastics Technology Ltd. was settled on the basis of an "MoU" whereupon the holding company of the corporate debtor-Sintex Plastics Technology Ltd. filed an appeal before the Appellate Tribunal seeking withdrawal of the insolvency application under Section 9 filed by the operational creditor and set aside the admission order dated 18.12.2020 initiating CIRP. He has further stated that NCLAT dismissed the appeal filed by the Sintex Plastics Technology Ltd.-the holding company of the corporate debtor-Sintex BAPL Limited on 04.01.2021 holding that the Appellate Tribunal was not correct forum for filing the application for withdrawal of Section 9 Admission Order and simultaneously stayed the constitution of the Committee of Creditors (hereinafter referred to as "CoC") for a week upto 07.07.2021 which was further extended by the NCLT during the adjudication of the settlement application. The Appellant has further stated that the application bearing I.A. No. 18 of 2021 filed before the NCLT for withdrawal of the Insolvency Admission Order was allowed vide order dated 29.06.2021 (which was uploaded on NCLT Website on 30.06.2021) whereby the corporate debtor was released from the rigours of the insolvency resolution and the CIRP was closed. At the request of the Appellant-KKR India Financial Services Ltd., the NCLAT granted stay on the implementation of the impugned order for a period of one week up to 07.07.2021 so that funds lying in the credit of "Trust and Retention Account" for the benefit of lenders of the corporate debtor may not be misappropriated. The Appellant has alleged that despite a stay on the order dated 30.06.2021, State Bank of India in its capacity as lead bank of the lenders consortium withdrew an amount of Rs. 116.41 Crores without prior approval and knowledge of the IRP and also placed hold over an additional amount of Rs. 31.27 Crores which was laying in the Credit of Trust and Retention Account.

4. The Appellant-KKR India Financial Services Ltd. then filed an application I.A. No. 18 of 2021 before the Adjudicating Authority highlighting the conduct of the SBI and seeking direction to SBI for reversing the unauthorised withdrawal of Rs. 116.41 Crores and also releasing hold put on an amount of Rs. 31.27 Crores.

5. Company Appeal (AT) Ins. No. 729 of 2022 is filed by the Sintex Plastics Technology Ltd. challenging the Order dated 29.06.2022 whereby the Adjudicating Authority has ordered that CIRP against the corporate debtor-Sintex BAPL Limited shall be proceeded with based on another Section 7 Application filed by the financial creditor-KKR India Financial Services Pvt. Ltd. It may be recalled that the Appeal filed against the order dated 29.06.2021 permitting withdrawal of the Section 9 Proceedings against the corporate debtor was stayed by the NCLAT vide order dated 12.07.2021 with the further direction that IRP appointed in CP(IB) No. 759 of 2019 will continue to operate and manage the affairs of the corporate debtor. Soon after and subsequently, by an order dated 19.07.2021, a fresh CIRP was initiated against the corporate debtor in CP(IB) No. 276 of 2020 as a result of the Section 7 Application filed by the M/s. KKR India Financial Services Pvt. Ltd. It is further claimed by the Appellant that as a result of order dated 12.07.2021 in Company Appeal (AT) Ins. No. 475 of 2021, CIRP against the corporate debtor which was initiated as a result of application under Section 9 continues and the IRP is incharge of the management of the corporate debtor. This Appeal which challenged the order of withdrawal of Section 9 Application was finally disposed of vide order dated 27.07.2021 wherein Company Appeal (AT) Ins. No. 577 of 2021 was heard along with Company Appeal (AT) Ins. No. 475 of 2021.

6. The main issue that arises in the above stated appeals is whether the initiation of the first CIRP on the basis of Section 9 Application filed by the Zielen Industry Pvt. Ltd., which was later permitted to be withdrawn by order dated 29.06.2021 of the NCLT and which order was stayed vide order dated 12.07.2021 of the NCLAT with the IRP continuing to operate and manage the affairs of the corporate debtor, should be the effective CIRP against the corporate debtor or the CIRP initiated vide order dated 19.07.2021 passed by the Adjudicating Authority in CP(IB) No. 276 of 2020 filed under Section 7 of IBC should be the effective CIRP which insolvency resolution of the corporate debtor should be carried out.

7. We have heard the arguments of Learned Sr. Counsel for the Appellant-KKR India Financial Services Ltd. and the Learned Counsel for the corporate debtor-Sintex BAPL Limited and Sintex Plastics Technology Ltd.

8. The Learned Sr. Counsel for the Appellant-KKR India Financial Services Pvt. Ltd. has argued that Company Appeal (AT) Ins. No. 475 of 2021 and Company Appeal (AT) Ins. No. 674 of 2021 are filed by two financial creditors vis. DSP Investment Managers Pvt. Ltd. and KKR India Financial Services Ltd. respectively, which pertain to the Section 7 Application filed while the Section 9 Application against the corporate debtor was under consideration, and the Section 9 Application was admitted earlier vide order of Adjudicating Authority dated 18.12.2020, the Section 7 Application was decided later. He has submitted that on the basis of a settlement between the operational creditor-Zielen Industries Pvt. Ltd. and corporate debtor-Sintex BAPL Limited, withdrawal of the Section 9 Application was permitted by the Adjudicating Authority on 29.06.2021 but since the Appellate Tribunal stayed the withdrawal Order by its order dated 12.07.2021 with further direction that the IRP appointed in CP(IB) No. 759 of 2019 (Section 9 Application) shall continue to operate and manage the affairs of the corporate debtor.

9. The Learned Sr. Counsel of KKR India Financial Services Ltd. has further argued that the Section 7 Application filed by the Appellant-KKR India Financial Services Ltd. was also admitted vide order dated 19.07.2021 passed in CP(B) No. 276 of 2020 which only seeks to start a fresh CIRP against the same corporate debtor whereas the earlier CIRP initiated as a result of admission of Section 9 Application was continuing with the IRP in the control of the operation and management of the corporate debtor. He has pointed to the operative part of the NCLAT Order dated 12.07.2021 to emphasize that the Appellate Tribunal took note of the fact that it was not proper for the Adjudicating Authority to pass an order on 19.07.2021 for initiation of CIRP on an application under section 7 once a ‘stay’ had been granted on the withdrawal application by the appellate tribunal on 12.07.2021 which meant that CIRP against the corporate debtor would continue. He has claimed that in the facts and circumstances of this case, the CIRP initiated under Section 9 Application should be the correct CIRP and the amount withdrawn by the State Bank of India and by any other creditor should be deposited back in the account of the corporate debtor for a proper and appropriate insolvency resolution of the corporate debtor. He has buttressed his argument by pointing out that order dated 12.07.2021 of the appellate tribunal means that the corporate debtor's CIRP is continuing and with the constitution of CoC situation the other debt of financial creditors has also be considered in the insolvency resolution of the corporate debtor.

10. The Learned Sr. Counsel for the Financial Creditor-KKR India Financial Services Ltd. has further submitted that once it is decided that the insolvency of the corporate debtor has to be resolved it is only appropriate and necessary that this resolution takes place in accordance with the objective and underlying spirit of the IBC by taking care of the interests of all the creditors and to achieve such an objective the effective date of initiation of CIRP should be the date of passing of the admission order given on the application under section 9 of the IBC.

11. The Learned Counsel for the Respondent-Sintex Plastics Technology Ltd. has referred to the turn of events in the two company petitions namely CP No. 759 of 2019 and CP No. 276 of 2020 to claim that once the corporate debtor and the operational creditor had settled the debt between themselves which was acknowledged by the Adjudicating Authority and the application for withdrawal was orally pronounced on 29.06.2021 (though this order was uploaded on the website of NCLT on 30.06.2021) the CIRP had automatically abated. He has further argued that the admission of Section 7 Application by the Adjudicating Authority has therefore given rise to a fresh CIRP, and in such a situation there is no reason now to permit continuation of the CIRP initiated as a result of Section 9 Application, and the CIRP initiated as a result of Section 7 Application should be the correct insolvency proceedings against the corporate debtor.

12. The Learned Counsel for the Respondent has referred to Judgements of the Hon'ble Supreme Court in the matter of **Ashok G. Rajani Vs. Beacon Trusteeship Ltd. & Ors. [Civil Appeal No. 4911 of 2021]** and of the NCLAT in the matter of **Anuj Tejpal Vs. Rakesh Yadav and Anr. [In I.A. No. 815 of 2021 in Company Appeal (AT) Ins. No. 298 of 2021]** to claim that the proceedings are only between the applicant-operational creditor and the corporate debtor till the constitution of CoC and no rights accrue to other creditors till then. Therefore, KKR India Financial Pvt. Ltd. and the other creditor DSP Investment Managers Pvt. Ltd. can not claim any rights on the basis of admission of Section 9 Application which was withdrawn before the constitution of CoC. He has also pointed out that it was not appropriate for the Appellant-KKR India Financial Services Ltd. to have intervened during the consideration of the withdrawal application and his rights would accrue on after admission of the Section 7 Application which it had filed and which was admitted on 19.07.2021 by an order of the Adjudicating Authority.

13. The Learned Counsel for the IBBI, which is appellant in Company Appeal (AT) Ins. No. 814 of 2021 has argued that the Adjudicating

Authority, while passing the impugned order dated 29.06.2021 in I.A. No. 18 of 2021 has, inter alia, made certain observations about the provisions of the IBBI (Insolvency Resolution Process for Corporate Persons), Regulations 2016 which are completely out of place and uncalled for, since the Adjudicating Authority does not have jurisdiction to comment on the illegality of said provisions and therefore they should be expunged. He has referred to the Judgement of the Hon'ble Delhi High Court in the matter of **Insolvency and Bankruptcy Board of India Vs. State Bank of India & Ors., W.P (C) No. 10189/2018 [2022/DHC/00524]** in this regard wherein it is held that NCLT does not have the jurisdiction to decide whether any legal provision is ultra vires.

14. We have considered the arguments submitted on behalf of the parties and perused the pleadings submitted in all the Appeals

15. It is noted that the Adjudicating Authority admitted Section 9 Application filed by the operational creditor Zielem Industries Pvt. Ltd. against the corporate debtor-Sintex BAPL Limited on 18.12.2020. It is also noted that the operational creditor-Zielem Industries Pvt. Ltd. and the corporate debtor entered into a settlement which led to the filing of an Application bearing I.A. No. 18/AHM/2021 seeking withdrawal of the Section 9 admission order and closure of the CIRP.

16. We also note that the said withdrawal application was challenged in Company Appeal (AT) Ins. No. 475 of 2021 wherein this Tribunal, after hearing both the Financial Creditor-KKR India Financial Services Ltd. and

Respondent-Sintex Plastics Technology Pvt. Ltd., passed order on 12.07.2021 which is as follows:

> *"..........In the meanwhile, we stay the impugned order and direct that status quo ante-before passing of the impugned order dated 29th June, 2021 shall be restored.*
>
> *It is stated that the Interim Resolution Professional (IRP) is still incharge of the Management. The IRP will continue to be in Management.*
>
> *The CIRP in CP(IB) 759(AHM)2019 shall continue during pendency of this Appeal or further orders in this regard by this Tribunal whichever is earlier.........."*

17. We further note that when the Adjudicating Authority passed order dated 29.06.2021 effecting withdrawal of admission order of section 9, it also stayed the operation of the said order for a period of one week till 07.07.2021. The said 'stay order' is as follows:

> *"This matter was heard from time to time. Different counsels for the Intervenor i.e. M/s. KKR India Financial Services Limited, have appeared. On 14.06.2021 hearing in IA/18(AHM)2021 was completed after hearing the learned Sr. Counsel appearing on behalf of this Intervenor. The contentions raised on behalf of such Intervenor find mention in our order dated 29.06.2021. Thus, due to technical error occurring in our daily proceeding order dated 14.06.2021, which has not been pointed by any of the parties till 29.06.2021 including our Court*

> *Master. Be that as it may, to avoid any adverse situation to any of the parties, our order dated 29.06.2021 is stayed till 07.07.2021."*

18. Therefore, the order to maintain status quo-ante with regard to the corporate debtor and its assets means that the withdrawal of Rs. 116.41 Crores by State Bank of India on 30.06.2021 was against this 'stay order' and this amount should be put back in the account of the corporate debtor, and additionally the hold put by SBI on amount of Rs. 31.27 Crores which is in the the Trust and Retention Account should also be released so that the amount remains as an asset and under the control of the corporate debtor. We also find that the KKR India Financial Services Ltd. had intervened during hearing in *CP(IB) 759(AHM)2019* and thus shown its interest and claim even when the withdrawal application was under consideration of the Adjudicating Authority. This fact has been noticed by the Adjudicating Authority in its Order dated 30.06.2021 while staying the operation of its own order dated 29.06.2021. Further when an appeal was filed against the 'withdrawal' order dated 29/30.06.2021 which bears Company Appeal (AT) Ins. No. 475 of 2021, the Appellate Tribunal took note of the fact that other financial creditors and operational creditors had large claims pending for payment by the corporate debtor-Sintex BAPL Limited. Therefore, a 'stay' on the impugned order dated 29.06.2021 given in Company Appeal (AT) Ins. No. 475 of 2021 restoration of 'status quo ante' was also ordered with the stipulation that the IRP will continue to be in Management of the corporate debtor and CIRP would also continue.

19. We also find strength in the argument of Learned Sr. Counsel for the Financial Creditor-KKR India Financial Services Ltd. that if the CIRP under Section 9 Application is allowed to be closed, some creditors may have withdrawn amounts or received payments from the corporate debtor just as the SBI has done, which would be detrimental to the interest of the other creditors, particularly when another Section 7 Application filed by the KKR India Financial Services Ltd. for insolvency resolution of the same corporate debtor was pending. We also note the fact that the Adjudicating Authority, while imposing a stay on its own Order dated 29.06.2021, recognized that Intervenor-KKR India Financial Services Ltd. had raised its claim and interest before the Adjudicating Authority, and later the Appellate Tribunal also took note of the existence of Section 7 Application to pass a 'stay' vide order dated 12.07.2021, which was in the nature of 'status quo ante', we feel that it would not only lead to unnecessary complication in the Resolution Process if withdrawal of Section 9 Admission order is upheld and CIRP were to start afresh from the date of admission of the Section 7 Application, and it may also result in an inadequate insolvency resolution of the corporate debtor.

20. While coming to above conclusion, we consider the Judgement of this Tribunal in Company Appeal (AT) Ins. No. 298 of 2021 in the matter of **Anuj Tejpal (supra)**, dated 07.07.2021 wherein use of Rule 11 of NCLT Rules, 2016 has been considered by both NCLT and NCLAT in allowing an application of withdrawal of insolvency resolution order keeping in view the interest of the concerned parties. We are of the view that the fact of present case and the turn of events, particularly, the orders of NCLT and NCLAT staying the Order permitting withdrawal of Section 9 Application and the order of NCLAT restoring 'status quo ante' position, present totally different circumstance from that in the matter of Anuj Tejpal (supra).

21. We also note that Hon'ble Supreme Court in the matter of "**Ashok Rajani Vs. Beacon Trusteeship and Ors." [Civil Appeal No 4911 of 2021]** has held that before the Committee of Creditors is constituted, there is no bar for withdrawal of an application admitted under Section 7 of IBC, 2016 and rule 11 of NCLT Rules, 2016 enable the NCLT to pass order for meeting the ends of justice, and further that a settlement cannot be stifled before the constitution of CoC in anticipation of a debt and claim of a third person. This Judgement of the Hon'ble Supreme Court is distinguished on the basis of the fact that, in the instant case, the Adjudicating Authority itself permitted a stay of its own order dated 29.06.2021 (which permitted the withdrawal of Section 9 Application) and this order was further reinforced by order dated 12.07.2021 passed by this Appellate Tribunal in Company Appeal (AT) Ins. No. 475 of 2021 whereby 'status quo ante' was ordered to be restored with further stipulation that the CIRP shall continue with respect to the corporate debtor and the IRP shall remain in control of the management of the corporate debtor. The passing of 'stay orders' of the 'withdrawal order' is after acknowledging the situation that there are claims of other creditors including KKR Indian Financial Services Ltd. which are relevant for insolvency resolution of the corporate debtor, and further the pendency of section 7 application against the same corporate debtor also makes the situation and circumstance different in the present case.

22. Thus, in the light of the facts and circumstances of the present case and the 'stay orders' whose effects are discussed in above-stated paragraphs passed by the Adjudicating Authority and the Appellate Tribunal subsequent to the permission of withdrawal of Section 9 Application, we are of the view that once the claim and interest of financial creditor-KKR India Financial Service Ltd. had been noticed by the Adjudicating Authority while considering the withdrawal application and 'protection' was granted through stay of its own order on 30.06.2021, which was further reinforced by the order dated 12.07.2021 requesting restoration of 'status quo ante' by this Tribunal, it would only be appropriate that the CIRP, which was initiated as a result of Section 9 Application vide Order dated 18.12.2020, be allowed to continue and run its due course as it would allow adequate and proper insolvency resolution of the corporate debtor. While holding such a view, we are also conscious of the fact that despite stay order having been granted by the Adjudicating Authority on 30.06.2021, the State Bank of India withdrew Rs. 116.41 Crores from the Trust and Retention Account of the corporate debtor and further put a hold on an amount of Rs. 31.27 Crores lying in the same account which if allowed would be detrimental to insolvency resolution of the corporate debtor as required by the IBC. In holding such a view, we therefore, consider that if creditors like SBI withdraw amounts from corporate debtor's account or CD's assets are alienated, it would lead to inadequate and improper resolution of corporate debtor's insolvency.

23. With regard to the contention of the Learned Counsel for the IBBI, we peruse the relevant portion in the Impugned Order dated 29.06.2021, particularly paragraph 17, wherein the following comments have been made:

> *"17. Admittedly, NCLT is the Adjudicating Authority in terms of provisions of Section 5(1) of IBC, 2016. The Hon'ble Supreme Court, in the case of B.K. Educational Society, has also held that provisions of NCLT Rules, 2016 would be applicable while discharging of the functions by NCLT as Adjudicating Authority under IBC, 2016. Thus, having regard to provisions of Section 469(2) of Companies Act, 2013, NCLT can exercise its inherent jurisdiction under Rule 11 of NCLT Rules, 2016 for a situation not specifically covered under any provisions of IBC, 2016. It is needless to mention that NCLT Rules, 2016 are also applicable to IBC Proceedings where no specific Rules/Regulations have been prescribed under IBC, 2016 for that situation. It has also been held that Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 cannot be applied to this situation since this Regulation is inconsistent with the provisions of Section 12A of IBC, 2016 as its source is Section 12A of IBC, 2016 only, hence, a situation which is not covered under Section 12A cannot be covered by Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 as well. Now, we have to look into the scheme, structure and object of provision of IBC,*

> *2016 to find out whether inherent jurisdiction under Rule 11 of NCLT Rules, 2016 can be invoked in the facts of the case. It is also relevant to mention that neither under Section 12A of IBC, 2016, Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 there is no specific bar for application against invocation of Rule 11 of NCLT Rules, 2016 nor any other provisions exists under IBC, 2016 which covers a situation that prior to constitution of Committee of Creditors, if there happens a settlement and application for withdrawal of CIRP is filed, what can be done. Thus, considering all legal aspects, exercise of jurisdiction under Rule 11 of NCLT Rules, 2016 to the fact situation can not be doubted in any manner"*

24. We are of the view that above observations of the Adjudicating Authority in paragraph 17 of the impugned order dated 29.06.2021 were avoidable for the reason that NCLT does not have jurisdiction to comment on the illegality or appropriateness of any provision of IBC or Regulation framed thereunder. However, the observation that in appropriate case jurisdiction under Rule 11 of NCLT Rules 2016 can be exercised is held to be correct. We do not subscribe to the view of the Adjudicating Authority that Regulation 30-A is inconsistent with Section 12A of IBC. The Regulation 30-A has been made to give effect to the provisions of IBC and the Regulation 30-A has to be read harmoniously with the provisions of IBC. The provision of the Regulation 30-A has to be given effect to, unless it is contrary to any provisions of IBC. We do not find any inconsistency between Section 12A and Regulation 30-A so as to make Regulation 30A unworkable.

Further such a comment would cause needless doubt in the mind of practitioners. In so far as the prayer of IBBI in Company Appeal (AT) Ins. No. 814 of 2021 regarding stay of the impugned order dated 29.06.2021 is concerned, we feel that there is no need, at this stage, to consider stay in the operation of the impugned order dated 29.06.2021 since we are giving final orders now.

25. The appeals being considered in this judgement are, therefore, disposed of with the following directions:

i. The Application for withdrawal of Section 9 Application filed vide CP(IB) No. 759 (AHM) 2019 is set aside and consequently the CIRP initiated as a result of admission of Section 9 Application vide Order dated 18.12.2020 is allowed to run its due course and be completed in accordance with the provisions of IBC, 2016;

ii. The amount of Rs. 116.41 Crores withdrawn by State Bank of India from the Trust and Retention Account held by the corporate debtor-Sintex BAPL Limited be deposited back by SBI in the account of the corporate debtor and SBI shall also release its hold on the amount of Rs. 31.27 Crores in the Trust and Retention Account of the Corporate Debtor so that these amounts continue to be part of the assets of the corporate debtor-Sintex BAPL Limited. Additionally, any asset of the corporate debtor which may have been given to any creditor, or alienated from the corporate debtor after the section 9 admission order shall revert to the position as on 29.06.2021.

iii. The admission order dated 19.07.2021 passed on Section 7 Application in CP(IB) No. 276(AHM)2020 is set aside and the related CIRP shall stand closed with immediate effect.

iv. Any other asset which is in the possession of the corporate debtor particularly the machine which is claimed to be owned by KKR India Financial Services Ltd., shall be dealt with by the Resolution Professional under the provisions of IBC, 2016.

v. With the above stated directions, these Appeals are disposed of.

26. There is no order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Dr. Alok Srivastava]
Member (Technical)

03rd January, 2023
New Delhi

Basant B.