THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA

WRIT PETITION No.20620 OF 2024

Mr. Avinash Desai, learned Senior Counsel representing Mr. V.V.S.N.Raju, learned counsel for the petitioner.

Mr. S.Niranjan Reddy, learned Senior Counsel appearing for the respondent No.1 (online).

Mr. Vivek Reddy, learned Senior Counsel representing Mr. Amir Bavani, learned counsel for the respondent No.3.

ORDER:

The petitioner prays for a writ of Mandamus on the respondent No.1 (R.1) with regard to a letter dated 30.10.2023 rejecting the petitioner's One Time Settlement (OTS) Proposal dated 17.10.2023. The petitioner is the promoter of the Insolvent Entity/NSL Nagapatnam Power and Infratech Limited (NNPIL) which is presently in CIRP. The cause of action in the writ petition is R.1's rejection of the petitioner's OTS without following the Reserve Bank of India Framework for Compromise Settlements and Technical Write-offs dated 08.06.2023 (RBI Framework). The petitioner also seeks a direction on R.1 to reconsider the OTS submitted by the petitioner in terms of the RBI Framework.

2. R.1, which rejected the petitioner's OTS proposal by way of the impugned letter dated 30.10.2023, is a Financial Services

Company. The respondent No.2 (R.2) is the Reserve Bank of India and the respondent No.3 (R.3) is the Successful Resolution Applicant (SRA) which was impleaded by an order passed by a Co-ordinate Bench on 12.09.2024.

3. The Court is informed that NNPIL filed an application for Corporate Insolvency Resolution Process (CIRP) pursuant to a Special Resolution passed by the majority of share holders under section 10 of The Insolvency and Bankruptcy Code, 2016 (IBC) i.e., Initiation of Corporate CIRP by corporate applicant. The CIRP is currently pending in the National Company Law Tribunal (NCLT) and NNPIL is being represented by a Resolution Professional (RP). NNPIL has not been made a party to the writ petition.

4. The relevant events leading to filing of the writ petition are as follows:

5. On 17.11.2017, NNPIL (Corporate Debtor) filed a petition for CIRP before the NCLT, Hyderabad Bench. The petition was admitted by the NCLT on 18.01.2018 and moratorium was declared under section 14 of the IBC. An Interim Resolution Professional (IRP) was appointed from 2018 to 2022. A Committee

of Creditors (CoC) was constituted to take decisions concerning the Corporate Debtor. R.1/PTC India Financial Services Limited sought to be made part of the CoC as the Financial Creditor. The Supreme Court by its order dated 12.05.2022 directed the inclusion of R.1 in the CoC. On 17.10.2023, the petitioner made an OTS proposal of Rs.90 Crores to R.1 but it was rejected by R.1 on 30.10.2023 (impugned letter).

6. On 21.11.2023, the Resolution Professional invited Prospective Resolution Applicants to submit a Resolution Plan for resolution of the Corporate Debtor/NNPIL. On 19.02.2024, three Prospective Resolution Applicants, including R.3, submitted their Resolution Plans. On 16.07.2024, the Resolution Plan submitted by R.3 was put to vote by the Resolution Professional in the CoC. R.1 voted in favour of the Resolution Plan submitted by R.3 on 30.07.2024. On 31.07.2024, a Co-ordinate Bench passed an interim order directing the respondents not to take any final decision in respect of the step-down subsidiary company of the petitioner but clarified that all other proceedings shall continue.

7. On 01.08.2024, e-Voting in the CoC was completed and the plan submitted by R.3 was approved by 83.35% of the CoC. The Resolution Professional issued the Letter of Intent to R.3 in view of R.3's Resolution Plan being voted with the requisite majority in the CoC. On 02.08.2024, R.3 paid the Performance Bank Guarantee of Rs.17 Crores being 10% of the total Resolution Plan Value. The Resolution Professional filed an application on 04.08.2024 before the NCLT for approval of the Resolution Plan as approved by the CoC.

8. Learned Senior Counsel appearing for the petitioner, R.1 and R.3 have made their respective submissions and made extensive arguments on the law on the subject.

9. The primary contention of learned Senior Counsel appearing for the petitioner is that the RBI Framework is binding on R.1 and it is undisputed that R.1 has not followed the Board-Approved Policy laid down by the RBI Framework for considering the petitioner's OTS proposal. Counsel relies on paragraph 6 of the RBI Framework in this context and further submits that R.1 has taken an *ad hoc* decision rejecting the petitioner's proposal for OTS

without considering the binding nature of the RBI Framework. Counsel submits that the pendency of the CIRP would not be a factor for R.1 to consider the petitioner's OTS proposal and that R.1 considered the OTS proposal after admission of the CIRP. Counsel relies on section 12A of the IBC to urge that an application for withdrawal under the said provision should be submitted before issuance of the invitation for expression of interest and that no restriction exists under the law to accept withdrawal of an application filed under sections 7, 9 or 10 of the IBC after issuance of invitation of expression of interest. Counsel relies on the relevant provisions of the IBC including section 30A of the IBC in this context. It is further submitted that each of the CoC members must deliberate on the OTS proposal independently to ensure that the decision complies with the RBI Framework dated 08.06.2023 which consists of mandatory Guidelines for considering the OTS Proposals. Counsel seeks setting aside of the impugned letter and a direction on R.1 to reconsider the OTS proposal dated 17.10.2023 submitted by the petitioner in terms of the RBI Framework.

10. Learned Senior Counsel appearing for R.1/Financial Creditor places the relevant dates in the context of the impugned rejection of the petitioner's OTS proposal and initiation of the CIRP. Counsel submits that the petitioner made its offer for OTS during the pendency of the CIRP and that there had never been any agreement between the parties for accepting the OTS of Rs.90 Crores. Counsel submits that the outstanding amount due from the Corporate Debtor is approximately Rs.671 Crores as on 30.11.2024. Counsel also argues against the maintainability of the writ petition and that the RBI Framework has no application to the facts of the present case. Counsel lays stress on the legal impermissibility of considering an OTS proposal after approval of the Resolution Plan by the CoC. Counsel submits that the only attempt of the petitioner is to derail the CIRP and defeat implementation of the Resolution Plan.

11. Learned Senior Counsel appearing for R.3/Successful Resolution Applicant submits that the petitioner is not entitled to any relief in view of the delay in filing of the writ petition i.e., 6 years after commencement of the CIRP and 1 year after the rejection of the OTS proposal. Counsel submits that the petitioner

has an adequate alternative remedy under section 60(5) of the IBC and that the RBI Framework is not applicable to the borrower entity under the CIRP since the borrower entity has also not been made a party to the writ petition. Counsel urges that R.1/Financial Creditor does not have jurisdiction to entertain an OTS proposal after initiation of the CIRP and that the petitioner cannot bypass the legal mandate under the IBC in terms of deviating from the Resolution Plan submitted by R.3.

12. These are the Issues which arise in the context of the arguments put forth on behalf of the parties:

I. Is the petitioner entitled to relief after commencement of the CIRP ?

II. Can the RBI Regulations create new rights which are not contemplated under the IBC - which is a self-contained Code?

III. Was the Rejection of the Petitioner's OTS vitiated by reason of R.1 not having a Board-Approved Policy as on 30.10.2023?

IV. Is the writ petition maintainable in the face of the alternative remedy under section 60 (5) of the IBC ?

V. Can R.1, as the sole Financial Creditor, entertain an OTS once the Corporate Debtor enters CIRP ?

VI. Can an application for withdrawal from CIRP be entertained after the CoC approves the Resolution Plan?

VII. Is the writ petition maintainable in the absence of a necessary party/the borrowing entity?

I Is the petitioner entitled to relief after commencement of the CIRP ?

13. The Borrower Entity (which in a step-down subsidiary of the petitioner) was admitted into insolvency on 18.01.2018. Section 12 of the IBC contemplates completion of the Insolvency Resolution Process within 180 days which can be extended by another 90 days. The petitioner's OTS proposal was rejected by R.1 on 30.10.2023 (impugned in the present writ petition). The petitioner has however waited almost 6 years after admission of the Borrower Entity into insolvency and almost a year from the impugned rejection and filed the present writ petition on 30.07.2024.

14. It is clear from the above that the petitioner failed, for reasons unaccounted for, to immediately approach this Court after the impugned rejection. The petitioner has not given any credible reason for the intervening delay in filing the writ petition which includes a delay of almost a year from the impugned rejection.

15. In any event, the rejection of the petitioner's OTS proposal by R.1 on 30.10.2023 was followed by four crucial events, which are as under:

i. On 21.11.2023, the CoC (through the Resolution Professional) invited Prospective Resolution Applicants to submit their Resolution Plans.

ii. On 19.02.2024, the Prospective Resolution Applicants submitted their Plans.

iii. On 16.07.2024, the Resolution Plans were put to vote by the CoC.

iv. On 30.07.2024, R.1 who holds 85% of the CoC voting share, voted in favour of the Resolution Plan submitted by R.3.

16. The above four significant events would lead to a reasonable presumption that the petitioner, as the promoter of the Borrowing Entity/Corporate Debtor, waited in the wings for the entire process to be completed and only then approached the Court by way of the present writ petition, ostensibly for frustrating the time-bound Resolution Process as contemplated under the IBC.

17. The Supreme Court took note of the importance of a time-bound Resolution Process in *Arcelor mittal India Private Limited vs. Satish Kumar Gupta*[1]; *Gujarat Urja Vikas Nigam Limited vs. Amit Gupta*[2]; and *Bharti Airtel Limited vs. Vijaykumar V. Iyer*[3]. These decisions placed emphasis on the primary object of the IBC which is to resolve the CIRP in a time-bound manner for the purpose of facilitating investments and higher economic development. After all, the focus of the IBC is to ensure the revival and continuation of the Corporate Debtor in the shortest possible time.

18. As stated above, the petitioner has not given any explanation, credible or otherwise, as to why the petitioner failed to approach the Court in 2018 or immediately after the rejection of

---

[1] (2019) 2 SCC 1
[2] (2021) 7 SCC 209
[3] Civil Appeal Nos.3088-3089 of 2020

the OTS in October, 2023. The petitioner's delay would have the effect of upending the Resolution Process. The delay thus clouds the petitioner's *bona fides* in filing the writ petition.

19. Further, the multiple OTS proposals given by the petitioner during pendency of the writ petition may be seen as an attempt to derail the CIRP and defeat realization of the funds through the CIRP. In any event, the Court cannot compel the respondent No.1 to accept any OTS proposal made by the petitioner on behalf of its step-down subsidiary/Borrowing Entity.

II Can the RBI Regulations create new rights which are not contemplated under the IBC - which is a self-contained Code?

20. The Preamble to the IBC provides as follows:

> *"An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto."*

21. It is settled law that the IBC is a self-contained Code. In the scheme of such an enactment, a party would have to trace its legal right to the mechanisms, time frames and the relief provided for in the Code itself. The petitioner now seeks to trace its legal right to the OTS with only one of the creditors i.e., R.1. The IBC does not provide for such a scenario, namely, that the borrowing entity can negotiate with only one of the creditors in the CoC to the exclusion of the other creditors. It is of seminal importance that the CIRP was set in motion from 18.01.2018.

22. The IBC has been described as an exhaustive Code on the subject matter of insolvency in relation to Corporate entities: *Innoventive Industries Ltd. v. ICICI Bank*[4] and more categorically as "a Complete Code in itself" defining fair and equitable treatment of stakeholders in the CIRP by constituting a comprehensive framework within which the actors participate in the insolvency process: *Pratap Technologies Private Limited vs. Monitoring*

[4] (2018) 1 SCC 407

Committee of Reliance Infratel Limited[5] and *E.S. Krishnamurthy vs. M/s. Bharath Hi-Tech Builders Pvt. Ltd*[6].

23. The petitioner's contention that the RBI Circular would apply to the facts of the case notwithstanding the ongoing CIRP would also attract the Supreme Court's decision in *Bharti Airtel Limited* (supra) which considered whether the principle of set-off under Order VIII Rule 6 of The Code of Civil Procedure, 1908, can apply to claims against an entity undergoing insolvency. The Supreme Court held that the principle of set-off/insolvency cannot be made applicable as it is not permitted under the IBC. The notable aspect is that a right which has not specifically been provided for in the IBC cannot be applied to a Company undergoing insolvency.

24. The Court is hence of the view that the mandate of the RBI Framework must give way to the CIRP of the Borrower Entity once the process has been initiated. It is further relevant that paragraph 14 of the RBI Circular provides that "*the compromise settlements with the borrowers under the above framework shall be without prejudice to the provisions of any other statute in force*"

---

[5] (2021) 10 SCC 623
[6] 2022 3 SCC 161

which indicates that the RBI Framework recognizes the precedence of the relevant statute (the IBC in this case) and that any settlement must be done within the statutory framework of the IBC.

III Was the Rejection of the Petitioner's OTS vitiated by reason of R.1 not having a Board-Approved Policy as on 30.10.2023?

25. The petitioner's contention that the respondent No.1 was disqualified from rejecting the petitioner's OTS proposal by reason of not having a Board-Approved Policy in place - is not acceptable for the following reasons.

26. Clauses 1 and 2 of the RBI Framework for Compromise Settlements and Technical Write-offs dated 08.06.2023, relied upon by the petitioner, makes it clear that;

> *"Regulatory Entities (REs) shall put in place Board-approved policies for undertaking compromise settlements with the borrowers…"*

27. Clause 1 defines "Compromise Settlement" as any negotiated arrangement with the borrower to fully settle the claims of the Regulated Entity ('RE') against the Borrower in Cash. Clause 2 of

the Framework requires that the Board-Approved Policy "*shall comprehensively lay down the process to be followed for all compromise settlements and technical write-offs, with specific guidance on the necessary conditions precedent such as minimum ageing, deterioration in collateral value*". Clauses 1 and 2 of the RBI Framework reveals that a Board-Approved Policy will only be required for taking a compromise settlement forward i.e., any arrangement initiated between the RE and the Borrower for settling the claims of the former. Clause 2 of the RBI Framework clarifies that a Board-Approved Policy is essentially for putting in place "the Process" to be followed in compromise settlements.

28. Therefore, not having a Board-Approved Policy at the time of rejection of the petitioner's OTS would not undermine the rejection since the rejection itself precluded any compromise settlement between the petitioner and the respondent No.1 after 30.10.2023. The requirement of following the process under a Board-Approved Policy was a part of the RBI Prudential Framework for Resolution of Stressed Assets dated 07.06.2019, which preceded the 08.06.2023 Framework. The meaning given to a Board-Approved Policy in Clause 9 of the 07.06.2019 Framework was similar to

that of the 2023 Framework, namely, that a Board-Approved Policy would kick-in only after the lender puts a timeline for resolution of the stressed asset in place.

29. However, the more fundamental question is whether the petitioner can question the respondent No.1 for not having a Board-Approved Policy in place as on 30.10.2023, which is the date of the impugned rejection of the petitioner's OTS proposal. The undisputed dates indicate that the Corporate Debtor (step-down subsidiary of the petitioner) filed an application for initiation of the CIRP on 17.11.2017 before the NCLT, at Hyderabad. The application was admitted on 18.01.2018 and the CIRP commenced on and from that date. The Prudential Framework of 07.06.2019 and the Compromise Framework of 08.06.2023 came after one year and five years respectively, from the date of admission of the Corporate Debtor into CIRP. Therefore, there was no mandate on the respondent No.1 to establish that it had a Board-Approved Policy in respect of the Corporate Debtor as on 30.10.2023 specially since the CIRP was already five years into the process post - admission.

30. Even more fundamental is the fact that none of the RBI Frameworks cast any duty or obligation to the lender/Regulated Entity to consider the OTS proposal given by the Borrower. This would be evident from the introduction to the Framework of 08.06.2023 which recognizes that a compromise settlement is a step in aid to a valid Resolution Plan for stressed accounts for providing further impetus to resolution of stressed assets in the system. In other words, there is no duty on the part of the RE/the respondent No.1 to consider the OTS of any Borrower/the petitioner. The RBI Circulars/Frameworks constitute a regimented procedure for resolution of stressed assets as opposed to a duty cast on the lenders to consider OTS proposals given by the Borrowers. Hence, in the absence of such a duty, there cannot be a corresponding right on the part of a borrower to be considered for OTS. In any event, a Writ Court does not have the power to issue a writ of Mandamus directing a financial institution to positively grant the benefit of OTS to a borrower. Such a decision is exclusively within the commercial wisdom of the concerned lender: *Bijnor Urban Cooperative Bank Limited, Bijnoor Vs. Meenal Agarwal*[7]

---

[7] (2023) 2 SCC 805

31. The RE's request to the petitioner to extend the EMD of the OTS offer for 3 months cannot be equated to an acceptance of the petitioner's OTS. In any event, the respondent No.1 was dealing with a Borrower which was already in CIRP as on 10.10.2020 (the date of the mail by which the request was made) and would hence be under an obligation to act in terms of the law, i.e., the provisions of the IBC.

IV Is the Writ Petition maintainable in the face of the Alternative Remedy under section 60 (5) of the IBC ?

32. Section 60(5) of the IBC provides as follows:

> *"60. Adjudicating Authority for corporate persons:*
>
> *.....*
>
> *(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—*
>
> > *(a) any application or proceeding by or against the corporate debtor or corporate person;*
> >
> > *(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and*
> >
> > *(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code."*

33. Under section 60(5) of the IBC, the NCLT has the jurisdiction to resolve any disputes concerning the insolvency of a Corporate Debtor. As discussed above, the IBC is a comprehensive and self-contained Code dealing with insolvency and bankruptcy by creating a dedicated forum for resolving disputes arising out of or concerning insolvency of a Corporate Debtor.

34. Therefore, the appropriate remedy of the petitioner, insofar as R.1 or R.3 are concerned, is to apply before the NCLT for appropriate relief. The petitioner cannot upend the insolvency process by invoking the writ jurisdiction of the High Court under Article 226 of the Constitution of India. The IBC also provides for challenging any order passed by the NCLT before the National Company Law Appellate Tribunal (NCLAT) under section 61 of the IBC.

35. The petitioner has not given any explanation for not approaching the NCLT, and filing the present writ petition instead. The turn of events is all the more significant since the petitioner previously invoked the remedies provided under the IBC in relation to the petitioner being included in the CoC.

36. The IBC has overriding effect in view of the non-obstante clause in section 238 of the IBC: *Anand Rao Korada, Resolution Professional vs. Varsha Fabrics Private Limited*[8] and *Maha Hotel Projects Private Limited vs. Government of Telangana*[9]. It was also held in the first decision that the High Court was not justified in passing orders for auction of the assets of the Corporate Debtor who was before the NCLT. The Court is therefore of the view that the petitioner has an alternative remedy within the framework of the IBC and has fallen short of giving reasons for refusing to avail of the effective statutory remedy.

V Can R.1, as the Sole Financial Creditor, entertain an OTS once the Corporate Debtor enters CIRP ?

37. As stated in the earlier part of this judgment, the petitioner seeks a direction on R.1/sole financial creditor to consider the petitioner's OTS proposal. R.1 is however only one of the creditors in the CoC.

[8] (2020) 14 SCC 198
[9] W.P.No.17129 of 2020

38. Under the IBC, once an entity is admitted in CIRP, the proceeding before the NCLT is transformed from a single or two-party proceeding into one *in rem* i.e., a collective proceeding with public ramifications. This means that if any entity wants to withdraw the CIRP, it would have to obtain the approval of the entire CoC in accordance with law. The option of negotiating with only one creditor (R.1 in this case) is not contemplated under the law: *GLAS Trust Company LLC Vs. BYJU Raveendran*[10].

39. In essence, any decision concerning the creditors must be in the form of a collective decision once an entity (in this case the Corporate Debtor) has subjected itself to the CIRP mechanism. In *BYJU Raveendran* (supra), the Supreme Court, relying on *Swiss Ribbons (P) Ltd. Vs. Union of India*[11], recognized that the CoC, which oversees the Resolution Process, must be consulted before allowing the claim to be settled. The Supreme Court further held that the NCLT and the NCLAT are the designated fora for a challenge to the CoC's decision.

---

[10] Civil Appeal No.9986 of 2024
[11] (2019) 4 SCC 17

40. Therefore, the position of law is this. The High Court conferring jurisdiction on a single creditor (R.1) to consider the settlement proposal of the petitioner cannot be permitted once the insolvent entity has entered the portals of the CIRP. Notably, the petitioner seeks this relief not within the scheme of a self-contained Code like the IBC but by invoking the writ jurisdiction of the Court. The petitioner's undoing of a legal prohibition under the IBC is thus contrary to law and legally impermissible.

41. The Resolution Plan once approved by the CoC and submitted before the NCLT is binding on the CoC, the Successful Resolution Applicant (SRA) and the concerned stakeholders : *Ebix Singapore Private Limited* (supra), *Hem Singh Bharana* (supra), *Kalinga Allied Industries India (P) Ltd. Vs. Committee of Creditors (Bindals Sponnge Industries Limited), through Punjab National Bank*[12].

42. The IBC, 2016 provides for a scheme for resolution of insolvency in sequential steps after initiation of CIRP by a Corporate Applicant under Section 10. Sections 13 and 14

[12] 2022 SCC OnLIne NCLAT 1618

provides for declaration of moratorium and public announcements. The form of public announcement is provided under Section 15. Interim Resolution Professional (IRP) is appointed thereafter for management of the affairs of the Corporate Debtor under Sections 16 and 17. Section 20 provides for management of operation of Corporate Debtor as a going concern and Section 21 contemplates constitution of a CoC by the IRP after collation of all claims received against the Corporate Debtor and determination of the financial position of the Corporate Debtor. Section 22 provides for appointment of a Resolution Professional in the first meeting after which the Resolution Professional takes over the conduct of the CIRP under Section 23. Section 24 provides for meeting of the CoC and Section 28 for approval of certain actions by the CoC including raising of interim finance, creation of security interest and recording change in the ownership interest of the Corporate Debtor. Section 29 provides for preparation of information memorandum followed by Section 31 which contemplates for approval of the resolution plan by the CoC under Section 30 of the IBC.

43. The above sequence has been stated to understand the inexorable flow of proceedings once a corporate debtor enters into CIRP. The Corporate Debtor loses its voice/decision-making powers and relinquishes control over its fate once the CIRP takes over. The Corporate Debtor simply goes along with the flow of the processes without any counter movement to reverse the movement.

44. Significantly, between 18.01.2018 (the date of admission of the Borrower's application for CIRP) and 30.07.2024 (the date of filing of the present writ petition), there were at least four irreversible events which took place in the course of the CIRP. These are (1) the commencement of the CIRP of the petitioner's step-down subsidiary on 18.08.2018, (2) the invitation to prospective Resolution Applicants to submit Resolution Plans in respect of the Corporate Debtor on 21.11.2023, (3) the Resolution Plan of the respondent No.1 being put to vote on 16.07.2024, and (4) approval of the respondent No.3's Resolution Plan on 30.07.2024.

45. None of these events, as per the law declared by the Supreme Court, can now be reversed or be obliterated for a clean-

slate start for considering the petitioner's proposal afresh. As stated above, a CIRP replaces bipartite negotiations with multi-party resolutions. The other parties, which would include the respondent No.2 and the other members of the CoC, cannot be made to vanish from the advanced stage of the CIRP by clearing the stage for a re-raising of the curtains for replay of Act I when the stage is set for the denouement.

46. Notably, the petitioner unilaterally submitted an OTS offer on 29.07.2020 to the respondent No.1 for Rs.90 Crores and furnished an earnest money deposit of Rs.4.5 Crores during pendency of the CIRP. The petitioner made OTS proposals on 26.08.2023, 15.02.2023, 21.07.2023, 29.08.2023, 30.09.2023 and on 17.10.2023. The petitioner's 3 additional offers on 26.07.2024, 31.07.2023 and 24.09.2024.

47. The petitioner in effect wants the super structure to collapse when the substratum itself has crumbled.

VI Can an application for withdrawal from CIRP be entertained after the CoC approves the Resolution Plan?

48. Section 12A of the IBC provides for withdrawal of applications admitted under sections 7, 9 or 10 being initiation of CIRP by a Financial Creditor, an operational creditor and by the corporate applicant, respectively.

49. Section 12A of the IBC is set out below:

> *"Withdrawal of application admitted under section 7, 9 or 10.—The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent voting share of the committee of creditors, in such manner as may be specified."*

50. The provision makes it clear that withdrawing an application post-admission is not a two-way process i.e., an application by the applicant who seeks to withdraw and the adjudicating authority, allowing it, simpliciter. It involves multiple actors since the applicant must also get the approval of 90% of the voting share of the CoC in the prescribed form.

51. Section 12A of the IBC further makes it clear that once a Resolution Plan is approved by the CoC, it becomes binding and cannot be undone even by the NCLT and neither the CoC nor the Successful Resolution Applicant can deviate from or abandon the

Resolution Plan: *Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited*[13]. The Supreme Court in *Ebix Singapore Private Limited* (supra) unequivocally declared that there was no scope for negotiation and discussion after approval of the Resolution Plan by the CoC. In other words, the submitted Resolution Plan is binding and irrevocable as between the CoC and the Successful Resolution Applicant in terms of the IBC and the Resolutions framed thereunder: *State Bank of India vs. The Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch*[14]. In the said decision, the Supreme Court placed emphasis on the commercial wisdom of the CoC which assumes a position of superiority to all the stake holders. In fact, the hands-off approach was also extended to the NCLT which cannot trespass into the commercial wisdom exercised by the CoC.

52. In *Hem Singh Bharana vs. Pawan Doot Estate Pvt. Ltd.,*[15] the National Company Law Appellate Tribunal (NCLAT) relied on *Ebix Singapore Private Limited* (supra) and reiterated that the CoC itself is bound by its approval of Resolution Plan and cannot be allowed

---

[13] (2022) 2 SCC 401
[14] Civil Appeal Nos.5023-5024 of 2024 dated 07.11.2024
[15] 2023 SCC Online NCLAT 34

to resile from its decision. The CoC's decision imparts the required finality on the different steps of the IBC for timely conclusion of the Resolution Process. *Hem Singh Bharana* was confirmed by the Supreme Court on 30.01.2023. In the present case, the CoC approved the Resolution Plan of R.3 on 01.08.2024 with the requisite majority. Therefore, the Resolution Plan approved by the CoC has become binding on the stakeholders including R.1 and R.3. The petitioner cannot be allowed to achieve indirectly what it could not have done under the IBC regime.

53. Therefore the petitioner's argument that an applicant (the petitioner herein/Corporate Debtor) can withdraw from the CIRP at any point of time without any strings attached is simplistic, to say the least. The effect of the withdrawal would undo what cannot be undone before the NCLT. The withdrawal would also unsettle a binding settlement between the CoC and the Successful Resolution Applicant (R.3).

VII Is the writ petition maintainable in the absence of a necessary party/the borrowing entity?

54. The Borrowing Entity i.e., NNPIL is a necessary party since the said entity was put under the Insolvency Process pursuant to obtaining the requisite approval of 3/4th of its shareholders.

55. Section 10 of the IBC provides as under:

> *"Section 10. Initiation of corporate insolvency resolution process by corporate applicant.*
> *(1) Where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority.*
>
> *(2)……*
>
> *(3) The corporate applicant shall, along with the application, furnish—*
>
> *(a) ……*
> *(b) ……*
> (c) *the special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, approving filing of the application."*

56. The prayer in the writ petition i.e., to declare the R.1's rejection of the OTS proposal of the petitioner, without following the RBI Framework dated 08.06.2023 as illegal and arbitrary and for a direction on R.1 to reconsider the OTS proposal submitted on 17.10.2023 in terms of the RBI Framework dated 08.06.2023, makes it clear that the Borrowing Entity is the main beneficiary of the relief. That is not at all. The petitioner seeks to reverse the effects of the Voluntary Insolvency Process which will necessarily affect the Borrowing Entity. The Borrowing Entity is undoubtedly a necessary party to the proceedings whose presence is required for a complete adjudication of the issues raised in the writ petition. The writ petition becomes vulnerable on this ground alone. Moreover, the Borrowing Entity is undergoing CIRP. The management and control of the Borrowing Entity presently rests with the Resolution Professional who is also not a party to the writ petition.

<u>On the other hand, Indian Overseas Bank is not a necessary or a proper party to the writ petition</u>:

57. The petitioner seeks impleadment of the Indian Overseas Bank in I.A.No.7 of 2024. However, as per the petitioner's own

showing, the principal prayer is against R.1 for rejection of the OTS proposal dated 17.10.2023. Indian Overseas Bank has no role to play with regard to the OTS proposal submitted by the petitioner to R.1 or the rejection thereof. I.A.No.7 of 2024 seeking impleadment of the Indian Overseas Bank should hence be dismissed. In any event, the admitted cause of action in the writ petition is against R.1.

58. Besides, R.1 constitutes 85.35% of the CoC and any application for withdrawal of the CIRP under section 12A of the IBC can only be done with the approval of 90% of the voting share of the CoC. The petitioner's prayer to implead the Indian Overseas Bank is therefore a relief which, by all means, falls within the regime of the IBC and is entirely within the powers of the NCLT. The petitioner cannot be permitted to crowd the Writ space with actors who should be in the arena of the NCLT.

<u>The question mark on the maintainability of the writ petition</u>:

59. R.1 is a Non-Banking Financial Company (NBFC) registered with the Reserve Bank of India. R.1 is not a statutory authority and the Central or the State Governments have not infused any

funds in it. The activities of R.1 are of a private and commercial nature. R.1 is also not a creature of a statute and admittedly without State protection or monopoly and is not discharging sovereign functions or public duty. Therefore, it is arguable whether R.1 is a "State" under Article 12 of the Constitution of India or an "Authority" within the meaning of Article 226 of the Constitution.

60. Moreover, the activities of R.1 being regulated by the RBI will not make a difference since R.1 is engaged in the business of financing/lending on purely commercial terms. A Single Bench of the Delhi High Court in *M/s.Rajpur Hydro Power Ltd. vs. M/s.PTC India Financial Services Ltd*[16] held that R.1 (the party respondent therein) was not "State" under Article 12 of the Constitution. The decision was affirmed by the Division Bench in *M/s Rajpur Hydro Power Ltd. vs. M/s. PTC India Financial Services Ltd.*[17]

61. The cases cited by the petitioner may be distinguished in the following manner.

---

[16] 2017 SCC OnLine Del 8277
[17] LPA No.401 of 2017 and C.M.No.19750 of 2017

62. *Brilliant Alloys Private Limited Vs. S.Rajagopal*[18], a judgment of 2018, was considered in *Ebix Singapore Private Limited* (supra) pronounced by the Supreme Court in 2022 where it was held that an application under section 12A cannot be maintained once a Resolution Plan is approved by CoC. *Ebix* further held that a Resolution Plan once approved by the CoC and submitted before the NCLT is binding on the CoC, the successful Resolution Applicant and the concerned stakeholders. *Brilliant Alloys Private Limited* was also considered in *BYJU Raveendran* (supra) where the Supreme Court opined that the CIRP becomes a collective proceeding *in rem* after its initiation where all the creditors become necessary stakeholders.

63. S*haji Purshottam Vs. Union Bank of India*[19]**,** a decision of 2019 was considered by the NCLAT in 2023 in *Hem Singh Bharana* wherein it was pointed out that *Shaji Prurshottam* did not lay down any ratio with regard to entertaining an application under section 12A after approval of the Resolution Plan. *Pro Knits Vs. The Board of Directors Canara Bank*[20] is not applicable to the particular facts

---

[18] (2022) 2 SCC 544
[19] 2019 SCC OnLine NCLAT 1151
[20] (2024) 10 SCC 292

of this case since the Corporate Debtor was admitted in CIRP as of January, 2018.

64. The above discussion persuades the Court to conclude that the petitioner is not entitled to the relief prayed for under Article 226 of the Constitution of India. The petitioner should have taken recourse to the provisions of the IBC and approached the NCLT for appropriate relief. The writ petition is also not maintainable in view of the efficacious statutory remedy under section 60(5) of the IBC which is a comprehensive Code envisaging all possible scenarios and modes of redress within the four corners of the IBC. The first respondent, as the sole Financial Creditor, is also divested of powers to entertain an OTS once the CIRP of the Corporate Debtor is set in motion. The power to withdraw the applications under section 12A of the IBC post-admission must also be subject to the approval of the CoC in the manner prescribed in the said provision.

65. The Court agrees with the contention of the respondent Nos.1 and 3 with regard to the writ petition being rendered irrevocably vulnerable by not impleading the Borrowing Entity who

is presently in CIRP. The Court is of the view that the RBI Framework for Compromise Settlements dated 08.06.2023 will not apply in the case of the Borrowing Entity when the Framework was not in existence at the time of the entity's admission into CIRP. The question of the first respondent not having a Board-Approved Policy in place at the time of the impugned rejection hence becomes irrelevant and in any event not fatal to the impugned rejection.

66. In view of the above reasons, the writ petition fails on maintainability as well as on merits.

67. W.P.No.20620 of 2024 is accordingly dismissed. There shall be no order as to costs.

MOUSHUMI BHATTACHARYA, J

Date: 24.12.2024
VA/BMS