

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 539 of 2022

(Arising out of Order dated 11.03.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in I.A. No.(IB)626/KB/2021 in C.P.(IB) No.170/KB/2017)

IN THE MATTER OF:

State Bank of India
Stressed Asset Resolution Group,
Corporate Centre, 21st Floor,
Make Tower 'E' Cuffe Parade,
Mumbai-400005.

... Appellant

Vs

1. MBL Infrastructures Limited,
308, 3rd Floor, Baani Corporate One,
Commercial Centre, Jasola, New Delhi-110025.

2. Anjaneer Kumar Lakhota,
B-37, 1st Floor, Soami Nagar (South),
New Delhi – 110017.

... Respondents

Present:

For Appellant: Mr. Krishnendu Datta, Sr. Advocate, Ms. Moulshree Shukla, Mr. Rahul Gupta, Ms. Varsha, Mr. Krishan Singhal, Advocates

For Respondents: Mr. Ratnako Banerji & Mr. Arun Kathpalia, Sr. Advocate, Ms. Anusuya Salwan, Mr. Bankim Garg, Mr. Rachit Wadhwa, Ms. Nikita Salwan, Mr. Shaunak Mitra, Mr. Aditya Dhupar, Advocates

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by State Bank of India (“SBI”), one of the Member of the erstwhile Committee of Creditors (“CoC”) of M/s MBL Infrastructures Limited has been filed challenging the order dated 11.03.2022 passed by

National Company Law Tribunal, Kolkata Bench, Kolkata in I.A. No.(IB)626/KB/2021 filed by Respondent herein, in which IA, the Adjudicating Authority has issued certain directions to the Appellant for implementation of the approved Resolution Plan. Aggrieved by the order and directions issued by the Adjudicating Authority, the Appellant has come up in this Appeal.

2. Brief facts of the case for deciding the Appeal are:

- (i) M/S MBL Infrastructures Ltd. was set-up by one Mr. A. K. Lakhotia. Certain financial facilities were extended to M/S MBL Infrastructures Ltd. in which default was committed, resulting in initiation of proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**Code**”). On 30.03.2017, Section 7 Application was admitted and Corporate Insolvency Resolution Process (“**CIRP**”) begun.
- (ii) Mr. A.K. Lakhotia, submitted a Resolution Plan. After submission of Plan by Mr. A.K. Lakhotia, Section 29A was introduced in the Code with effect from 23.11.2017. The Adjudicating Authority declared the Resolution Applicant eligible vide order dated 18.12.2017, which was challenged by Punjab National Bank by way of an Appeal, where an interim order was passed that without prior approval of the Appellate Tribunal, no Plan shall be accepted. An Appeal was also filed by the RBL Bank.

- (iii) The Appellate Tribunal permitted the Appeals to be withdrawn on 23.03.2018. Thereafter, Resolution Plan was approved by 75.80% voting share. By an order dated 18.04.2018, the Adjudicating Authority approved the Resolution Plan and also excluded the period of 106 days.
- (iv) The State Bank of India, IDBI Bank, Bank of Baroda and Bank of India filed four separate Appeals, challenging order dated 18.04.2018 passed by the Adjudicating Authority, before the Appellate Tribunal. The main ground of challenge in the Appeal was that Resolution Applicant was ineligible in view of Section 29A. From time-to-time meeting of all financial creditors and lenders were held wherein various issues were discussed.
- (v) By order dated 16.08.2019, Appellate Tribunal confirmed the Plan approval order. A Contempt Application was also filed by the Resolution Applicant against the State Bank of India, on which an order was passed by the Adjudicating Authority on 21.10.2019, disposing of the Contempt Petition with direction to the Committee of Creditors/ Monitoring Committee to implement the Resolution Plan in entirety.
- (vi) Bank of Baroda filed a Civil Appeal No.8411 of 2019, assailing the Plan approval order. The Consortium Bank has appointed Forensic Auditor.

(vii) The Hon'ble Supreme Court vide its judgment dated 18.01.2022 dismissed the Appeal filed by Bank of Baroda. The Hon'ble Supreme Court although held that Resolution Applicant was not eligible under Section 29A, but noticing the subsequent facts, including the fact that Resolution Applicant has already infused Rs.63 crores and Corporate Debtor is a on-going concern, Hon'ble Supreme Court did not interfere with the order approving the Resolution Plan and was of the view that Resolution Plan be implemented.

(viii) Before dismissal of the Appeal on 18.01.2022, the Resolution Applicant had filed IA No. (IB)626/KB/2021 seeking exclusion of period between 18.04.2018 until disposal of the application. The Adjudicating Authority vide order dated 11.03.2022 disposed of the IA No. (IB)626/KB/2021 and in paragraphs 11, 12 and 13, the Adjudicating Authority issued following directions:

“11. After hearing both the parties at length and after going through the pleadings and documents placed on record including the judgments passed by the Hon'ble Supreme Court and the Hon'ble NCLAT, we direct the SBI, the lead bank of the working capital consortium to take steps for implementation of the approved resolution plan by executing working capital consortium documents;

- i. By executing capital consortium documents;*
- ii. By issuing Bank guarantee and letters of credit as per approved resolution plan*

- iii. *By issuing certificate regarding availability of line of credit as per approved resolution plan*
- iv. *And by issuing net worth certificate/ solvency certificate required for bidding in tenders for public section infrastructure projects.*

12. *It is further directed that meeting available Non Fund Based limits and execution of documentation in respect thereof, shall form an integral part of the approved plan. It is further ordered that the period from 18th April, 2018 till 18th January, 2022 when the Hon'ble Supreme Court passed the judgment and order shall be formally excluded from calculation of the period for implementation of the plan and all dates mentioned in the resolution plan are consequentially extended for implementation of the resolution plan.*

13. *We understand the concern of the State Bank of India as submitted by the Ld. Counsel, and we direct that forensic audit on the issues like whether the applicants have infused Rs.66 crore or not can be taken up and continued at their end, and the applicants shall provide all the necessary cooperation to the bank in this regard but for the present the prime importance is the implementation of the resolution plan. In case there is any hindrance or non-cooperation by the applicants in the conduct of the forensic audit, the bank can always seek directions from this Adjudicating Authority.”*

(ix) *The State Bank of India aggrieved by this order has come up in this Appeal.”*

3. We have heard Shri Krishnendu Datta, learned Senior Counsel appearing for the Appellant, Shri Ratnako Banerji, learned Senior Counsel

and Shri Arun Kathpalia, learned Senior Counsel appearing on behalf of Respondent.

4. The learned Counsel for the Appellant submits that there was no interim order passed by the Hon'ble Supreme Court staying the implementation of the Plan, hence, there was no occasion to exclude the period from 18.04.2018 to 18.01.2022. It is submitted that Lenders have approved the Resolution Plan keeping in mind a particular time-line under which the Plan was to be implemented and Lenders have to receive the money. By exclusion of period of three years and nine months, the Resolution Plan stands modified, which is impermissible. Granting of exclusion of three years and nine months fundamentally alters the Resolution Plan from one by term of ten years to one by term of fourteen years. It was not open to the Adjudicating Authority to allow modification of any nature or to permit the conditional implementation. The impugned order passed by the Adjudicating Authority has altered the very basis on which the Resolution Plan was adjudged as feasible and viable. The impugned order failed to take into account that Respondent No.2 (Resolution Applicant) has repeatedly defaulted in implementing the Resolution Plan. First default committed by the Resolution Applicant is its failure to bring promoters contribution. The Resolution Applicant has also failed to discharge the debt of Operational Creditor. The Resolution Applicant has also failed to comply with cash flow monitoring. The Resolution Applicant was obliged to issue NCD to the Financial Creditors. The Corporate Debtor failed to issue the NCD in accordance with due

procedure of law including SEBI guidelines. The Resolution Applicant has never been serious about implementing the Plan. The SBI is a public financial institution and it cannot disburse finance to entities without satisfying itself that financial affairs of the entities are not mismanaged. The SBI and other Financial Creditors were unable to further finance the Corporate Debtor as the implementation requirement under the Resolution Plan, the Resolution Applicant never cooperated for a proper forensic audit. The forensic audit conducted by the erstwhile Resolution Professional remained inconclusive and unsatisfactory for the Lenders. The Lenders appointed new Forensic Auditor on 04.10.2019. The new Forensic Auditor also could not provide a conclusive report. The Lenders appointed another Forensic Auditor - M/s BDO LLP, but the Corporate Debtor did not cooperate with the Forensic Auditor.

5. The learned Counsel for the Respondents, refuting the submissions of the learned Counsel for the Appellant submits that it is the Appellant and other Lenders, who were never interested in implementing the Plan and the order of the approval dated 18.04.2018 was challenged by many Lenders including the State Bank of India. Challenge by the Lenders, culminated in dismissal of Civil Appeal by Hon'ble Supreme Court on 18.01.2022. During this period, the Lenders had no intention to implement the Plan. It is apparent from the fact that SBI did not execute necessary documents regarding execution of working capital consortium document. The argument regarding cash flow monitoring, in the meeting held on 03.05.2018, all the Banks unanimously agreed that the pool account with

SBI shall be the pool account envisaged in the Plan. All proceeds of Respondent No.1 were deposited and all expenditure were made from the said pool account. There was sufficient cash flow monitoring in terms of the Plan. The pool account was in absolute control of the SBI. The Banks have appointed independent and reputed statutory Auditors of their choice. Two rounds of forensic audit were already concluded by the Forensic Auditors empaneled with SBI and approved unanimously by the CoC without any adverse findings against Respondent No.1. The Promoters contribution of Rs.63.30 crores (Rs.40.11 crores fresh + Rs.23.19 crores existing credit) was brought in the pool account by the Promoters within one quarter of order dated 18.04.2018. All payments that could made, which were not dependent on execution of documents by SBI were made. The payment of liquidation value to Dissenting Financial Creditors were always been available with Respondent No.1 in form of working capital. Despite being assured since 30.05.2018, the liquidation value has not been collected by Dissenting Financial Creditors, first on the ground of pending Appeals before the Appellate Tribunal, thereafter pending Civil Appeal before the Hon'ble Supreme Court and now again pending Appeal before this Tribunal. The issue of NCD and their redemption is dependent on SBI executing the documents as decided unanimously by all Banks on 03.05.2018. The Respondents have implemented all terms of the Plan except which is dependent on the SBI. The exclusion of period from 18.04.2018 to 18.01.2022 was reasonable and necessary since during the aforesaid period Lenders themselves were litigating against the approval of

Resolution Plan and they had no intention to implement the Plan. The Banks were clearly of the view that the Plan being already under challenge, they cannot risk disbursement of significant public money without final adjudication of the issue raised. When the Banks themselves had no mindset to implement the Plan, they cannot complain regarding the exclusion of the subject period during which period was Lenders themselves, who were challenging the approval of the Plan. The Corporate Debtor is an infrastructure company executing civil engineering projects particularly roads and highways. Before approving the Plan, a TEV Study Report was got conducted by PNB Investment Services Ltd. There was an economic viability study much before approval of the Resolution Plan. As per the Techno Economic Viability Report for effective implementation of the Resolution Plan availability of Bank Guarantees, Letters of Credit and working capital facility by the Working Capital Consortium was essential. By approving the Plan, assenting working capital Banks agreed to continue to make available Non-Fund Based (“**NFB**”) facilities (Bank Guarantees and Letters of Credit) of Rs.303.63 crores. After approval of the Plan erstwhile Resolution Professional handed over the management to the Board of Directors of the Company in terms of the approved Plan. A new working capital consortium comprising of six assenting Banks was constituted with the Appellant-SBI as the lead Bank. The Bank got conducted forensic audit, in which audit report, nothing adverse was found. The Plan was not implemented by working capital consortium led by SBI. Despite all, the Banks unanimously agreed to implement the Plan in meeting held on

03.05.2018, the Bank had returned NCD stating non-implementation of the Plan by SBI. Under the circumstances, Respondent was constrained to file IA No. (IB)626/KB/2021. The Respondent is continuing as a going concern and several projects have been completed by the Respondent after approval of Resolution Plan and it was due to non-cooperation of the Lenders that further steps could not be taken.

6. We have considered the submissions of learned Counsel for the parties and have perused the record.

7. While noticing the facts of the case, we have noted that even before approval of the Resolution Plan by the CoC, the issue of ineligibility of Resolution Applicant was raised and against the order of the Adjudicating Authority, declaring the Resolution Applicant eligible, Appeals were filed by Punjab National Bank and RBL Bank, which Appeals were withdrawn on 23.03.2018 by an order of the Appellate Tribunal. Thereafter, Plan was approved on 18.04.2018. After approval of the Plan by the Adjudicating Authority, again a set of litigation was initiated by the Lenders, including the SBI. Four Appeals were filed challenging the Plan approval order. In the Appeal, which was filed by the Lenders against the Plan approval order, there was order passed by this Appellate Tribunal that decision regarding approval or rejection of the Plan, shall not be taken without leave of the Appellate Tribunal. Ultimately, the Appeals were dismissed by the Appellate Tribunal on 16.08.2019. We may notice the Minutes of the Meeting of Consortium Lenders held on 02.03.2019, where issues regarding Resolution Plan were noticed. The Minutes clearly notice that

SBI has challenged the eligibility of the Resolution Applicant before the Appellate Tribunal. The Appellate Tribunal has also passed an order directing that no order shall be passed in the contempt proceedings, if any, filed against the Financial Creditor. Following part of the Minutes is relevant to notice where details of challenge in the Appellate Tribunal has been noticed:

“In the meantime IDBI, BOB and OBC approached NCLAT, challenging Resolution Plan approved by NCLT Kolkata. NCLAT vide order dated 09.05.2018 instructed execution as per its orders.

Against the final order of NCLT Kolkata regarding approval of Resolution Plan, IDBI Bank vide appeal No.194/2018 and BOI vide 235/2018 have approached NCLAT Delhi. The case has been admitted on 21.05.2018 and the next date of hearing is 20.03.2018.

The NCLAT Delhi has issued orders on 09.05.2018 and directed that the execution of plan is subject to decision of NCLAT and till then the company has to ensure to protect the value of its assets.

As this, SBI also filed an appeal in NCLAT, reporting ineligibility of Sh. Lakhotia u/s 29A on 03.07.2018. The Hon’ble NCLAT dismissed the appeal on the basis of limitation & did not hear the merits on request of senior lawyer from Sh. A.K. Lakhotia side.

SBI has impleaded application with BOI and approached NCLAT, challenging eligibility of Sh. Lakhotia to be Resolution Applicant with suppressing the facts before NCLT Kolkata to become eligible Resolution Applicant u/s 29A on 18.12.2017.

On 20.03.2019 Hon'ble NCLAT issued orders

“Heard in part. We also discussed the matter with the promoters, who are also the Resolution Applicant, about improving the plan before going into the question of legality of the approved plan and the impugned order. Post the case for further under the heading for “Orders on 8th April, 2019 at 2 PM. Until further order, the Adjudicating Authority will not pass any order on the contempt proceedings petition, if any, filed against the Financial Creditor and the officers of the Financial Creditor and others.”

SBI apprised that SAMB-II is being shifted to new location and requested all lenders to note new address as under:-

State Bank of India, SAMB-II, 11st Floor, STC Building, Jawahar Vayapar Bhawan, Janpat, New Delhi-110001.

The meeting ended with a vote of thanks by AGM, SBI.”

8. The fact that the Financial Creditors right from the very beginning, even before approval of the Resolution Plan have been raising ineligibility issue in respect of the Resolution Applicant and after approval of the Plan several Appeals were been filed by the Lenders themselves, challenging the approval order contending that Resolution Applicant is ineligible. When Lenders themselves were challenging the approval of the Plan, it is reasonable to comprehend that Lenders were not keen to implement the Plan. The Resolution Applicant has initiated contempt proceedings in which also subsequently the Adjudicating Authority while disposing of the contempt application directed the SBI to implement the Resolution Plan.

9. Now, we come to the judgment of the Hon'ble Supreme Court dated 18.01.2022 by which order, the Appeal filed by the Bank of Baroda against the order of the Appellate Tribunal, confirming the approval order was dismissed. It is relevant to notice that in paragraph 31 of the judgment, the Hon'ble Supreme Court had noted that Respondent is an on-going concern. The Hon'ble Supreme Court has also noticed that Respondent No.3 has infused over Rs.63 crores. The Hon'ble Supreme Court has also approved the order of Adjudicating Authority, granting extension of exclusion on account of pending litigation. The Hon'ble Supreme Court although after considering the submission of the parties held that the Resolution Applicant was not eligible to submit the Resolution Plan under Section 29A(b) of the Code, however, Hon'ble Supreme Court even after holding that Resolution Applicant is not eligible, did not chose to interfere with the Plan approval order. We may in this regard refer to paragraphs 61, 62, 63 and 64 of the judgment of the Hon'ble Supreme Court, which is to the following effect:

“61. Having held so, we would like to come to the last part of our order. Though the very resolution plan submitted by the Respondent No. 3, being ineligible is not maintainable, much water has flown under the bridge. The requisite percentage of voting share has been achieved. We may also note that the percentage has been brought down from 75% to 66% by way of an amendment to Section 30(4) of the Code.

62. Secondly, majority of the creditors have given their approval to the resolution plan. The adjudicating authority has rightly noted that it was accordingly

approved after taking into consideration, the techno-economic report pertaining to the viability and feasibility of the plan. The plan is also put into operation since 18.04.2018, and as of now the Respondent No. 1 is an on-going concern. Though, the Respondent No.11 has taken up the plea that its offer was conditional, it has got a very minor share which may not be sufficient to impact by adding it with that of the appellant and Respondent No.7. The Respondent No.7 and the Respondent No.11 did not choose to challenge the order of the appellate tribunal.

63. *We need to take note of the interest of over 23,000 shareholders and thousands of employees of the Respondent No.1. Now, about Rs. 300 crores has also been approved by the shareholders to be raised by the Respondent No.1. It is stated that about Rs. 63 crores has been infused into the Respondent No.1 to make it functional. There are many on-going projects of public importance undertaken by the Respondent No.1 in the nature of construction activities which are at different stages.*

64. *We remind ourselves of the ultimate object of the Code, which is to put the corporate debtor back on the rails. Incidentally, we also note that no prejudice would be caused to the dissenting creditors as their interests would otherwise be secured by the resolution plan itself, which permits them to get back the liquidation value of their respective credit limits. Thus, on the peculiar facts of the present case, we do not wish to disturb the resolution plan leading to the on-going operation of the Respondent No.1.”*

10. The Hon'ble Supreme Court in its order made it clear that Resolution Plan has to be implemented as the Corporate Debtor being a on-going concern and Promoters have infused over Rs.63 crores. The Hon'ble Supreme Court also noticed that interest of over 23,000 shareholders and thousands of employees have to be taken care of. The observations made by the Hon'ble Supreme Court is clear and categorical that Plan is required to be implemented.

11. The submission of learned Counsel for the Appellant that order of Adjudicating Authority excluding the period from 18.04.2018 to 18.01.2022 amounts to modification of the Plan, cannot be accepted. The Adjudicating Authority has only excluded the period for implementation of the Plan. Under the Plan, period was provided for implementation was ten years, the exclusion was granted because of series of litigations, which were initiated by the Lenders themselves, culminating into dismissal of Civil Appeal filed by the Bank of Baroda before the Hon'ble Supreme Court. The exclusion of the period during which litigations between the parties, instituted by the Lenders was going on, is both just and fair. The Lenders, who were throughout contending that the Resolution Applicant is ineligible and they were challenging the approval order before the Appellant Tribunal as well as before the Hon'ble Supreme Court, have no mindset to implement the Resolution Plan. The learned Counsel for the Appellant has cited judgment of the Hon'ble Supreme Court in **Jaypee Kensington Boulevard Apartments Welfare Association vs. NBCC (India) Ltd. – (2022) 1 SCC 401; Ebix Singapore Pvt. Ltd. vs. CoC of Educomp Solutions Ltd. –**

(2021) SCC OnLine 707; Committee of Creditors of Essar Steel India Ltd. vs. Satish Kumar Gupta and Ors. – (2020) 8 SCC 531 and **Pratap Technocrats v. Monitoring Committee Reliance Infratel – (2021) 10 SCC 623** to support its contention that Resolution Plan cannot be modified by the Adjudicating Authority, not it can be whittled down by the Adjudicating Authority.

12. As observed above, present is not a case where Resolution Plan has been modified by the Adjudicating Authority. The Adjudicating Authority vide order dated 11.03.2022 has already granted extension by the impugned order for the period from 18.04.2018 to 18.01.2022, which period was taken in the litigation initiated by the Lenders themselves. It is also relevant to notice that while approving the Resolution Plan on 18.04.2018, the Adjudicating Authority has granted exclusion of 106 days. The Hon'ble Supreme Court in its judgment dated 18.01.2022 has approved the exclusion on account of litigation and proceedings. We may recapitulate paragraph 32 of the Hon'ble Supreme Court, which is to the following effect:

“32. Both the forums have rightly construed the issue qua extension and exclusion. Admittedly, there were earlier rounds of litigation and proceedings were pending against the interim orders. This issue has also been concluded finally by this Court inter alia holding that in such a scenario exclusion has to be granted, in light of the time spent in litigation.”

13. When the Hon'ble Supreme Court in earlier round has approved the exclusion of the period during which litigation were pending, no exception can be taken to the exclusion of the period from 18.04.2018 to 18.01.2022 as directed in the impugned order by the Adjudicating Authority. The learned Counsel for the Appellant submitted that it was the Respondent, who did not cooperate in the implementation of the Plan and they have not issued the NCD as per the due procedure, hence, the documents regarding working capital were not executed by the Bank. Whereas, the Respondent case is that it was the Appellant, who did not discharge its obligation under the Plan and on the other hand the Respondent has discharged its obligation by bringing Promoters' contribution to the extent of Rs.63 crores. The learned Counsel for the Appellant submitted that Promoters' contribution which was required to be brought up was about Rs.102 crores and Rs.63 crores was not sufficient. Be that as it may, when the substantial money was brought by the Promoters contribution, the Lenders could have initiated the part of process, requiring the Promoters to bring the balance money.

14. The object of the Code especially in a case where Resolution Plan has been approved and which approval also received the confirmation from Hon'ble Supreme Court, it is obligatory on all stake holders to initiate the implementation of the Plan, trying to find excuses for refusal to implement by either of the parties cannot be justified. All stake holders had to act in a manner so as to implement the Resolution Plan. The Lenders cannot absolve themselves from carrying out their obligation in the Resolution Plan

by raising one or other pretext. The submission of the learned Counsel for the Appellant that due to granting of extension of three years and nine months in the implementation of the Plan, the Plan is no more viable, cannot be accepted. Viability and feasibility of the Plan is required to be considered at the stage when Plan is to be approved by the CoC. After the Plan has been approved, the issue of viability and feasibility cannot be allowed to be raised by the Appellant. The Adjudicating Authority did not modify the Plan in any manner and exclusion of the period from 18.04.2018 to 18.01.2022, cannot be said to be any kind of modification in the Plan.

15. In the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, under Regulation 39, sub-regulation (9), a creditor is allowed to apply to Adjudicating Authority for direction in case there is any non-implementation of the Resolution Plan. At no point of time, the Appellant made an application praying for any direction to the Resolution Applicant towards implementation of the Plan alleging any non-implementation. It was the Resolution Applicant, who had filed application for contempt against the Bank and thereafter I.A. No.(IB)626/KB/2021 praying for direction to the Appellant. The directions, which have been issued by the Adjudicating Authority in paragraph 11 as noted above, are directions, which were required to be undertaken by the Lenders and directions issued by the Adjudicating Authority are in accordance with the Resolution Plan. No exception can be taken to the directions issued in paragraph 11. The Lenders and Banks are obliged to discharge their obligations as per the

Resolution Plan. The fact that directions have been issued to the Appellant, cannot mean that Resolution Applicant is not to perform its obligation as per the Resolution Plan.

16. The learned Counsel for the Appellant has submitted that Respondent has not cooperated with forensic audit. The learned Counsel for the Respondent submits that although carrying out forensic audit was not part of the Resolution Plan, but Bank itself has got conducted the forensic audit in which audit Report no adverse findings were given against the Resolution Applicant. Hence, conducting the forensic audit again and again cannot be a ground for the Appellant to refuse the implementation of the Resolution Plan. The learned Counsel for the Respondent further submits that Hon'ble Supreme Court in its order dated 26.10.2021 recorded that the issue of forensic audit stood addressed.

17. The learned Counsel for the Resolution Applicant has undertaken to perform all its obligations under the Plan as and when it arises according to the Resolution Plan. Recording the aforesaid statement of the Resolution Applicant, we are of the view that there is no ground to interfere with the impugned order passed by the Adjudicating Authority, which order is clearly in aid of implementation of the Resolution Plan. The implementation of the Resolution Plan being obligation and duty of all stake holders as per the scheme of the IBC, as observed above, the Resolution Applicant shall also carry out its obligation under Resolution Plan promptly, while the Lenders will discharge their obligations in the Plan and as per directions issued in the impugned order by the Adjudicating

Authority. We, while upholding the impugned order also direct the Resolution Applicant to carry out its obligations in the Resolution Plan along with carrying out all the obligations by the Lenders. Subject to above, the Appeal is dismissed. No order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

NEW DELHI

23rd May, 2023

Ashwani