

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA**

**Coram :**

Shri Jinan K.R.,  
Hon'ble Member (J)  
&  
Shri M.B.Gosavi  
Hon'ble Member (J)

**CA(IB) No.270/KB/2017  
&  
CA(IB) No.238/KB/2018  
&  
CA(IB) No.288/KB/2018  
IN**

**CP (IB) No.170/KB/2017**

By this common order we propose to dispose of three applications filed under sub section (5) of Section 60 of the Insolvency and Bankruptcy Code, 2016 along with CP (IB) No.170/KB/2016

**In the matter of:**

An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

-And-

**In the matter of:**

**RBL BANK LIMITED**, a Banking Company and having its Registered Office at First Lane Shahupuri, Kolhapur 416 001 and having one of its Zonal Office at 28, Dr. Gopal Das Bhawan GF, Barakhamba Road, Connaught Place, New Delhi 110 001 within the aforesaid jurisdiction;

-And-

**In the matter of:**

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**MBL INFRASTRUCTURES LIMITED**, a Company having Corporate Identity No.L27109WB1995PLC073700 incorporated under the provisions of the Companies Act, 1956 having its Registered Office at 2/3 Judges Court Road, Divine Bliss, 1<sup>st</sup> Floor, Kolkata 700 027, in the state of West Bengal within the aforesaid jurisdiction,

-And-

**Counsel on Record:**

- |  |   |                             |
|--|---|-----------------------------|
| 1. Mr. Ratnanko Banerjee, Sr. Advocate | ] |                             |
| 2. Mr. D.N. Sharma, Advocate           | ] |                             |
| 3. Mr. Shaunak Mitra, Advocate         | ] | For Resolution Applicant    |
| 4. Ms Neha Somani, Pr. Cs.             | ] | Mr. Anjani Kumar Lakhotia   |
| 5. Mr. Manoj Banthia, Pr.CS            | ] |                             |
| 6. Mr. Ramesh Ch. Prusti, Advocate     | ] | State Bank of India         |
| 7. Ms Manini Kabi, Advocate            | ] |                             |
| 8. Mr. Jishnu Chowdhury, Advocate      | ] |                             |
| 9. Mr. Aritro Basu, Advocate           | ] | For RBL                     |
| 10. Mr. Sanjib Dawan, Advocate         | ] |                             |
| 11.Mr. Arun Khatri, Advocate           | ] | For Bank of Baroda          |
| 12.Mr. Sanjeev Ahuja,                  | ] | Resolution Professional     |
| 13.Ms.Jyoti Singh, Advocate            | ] | For Resolution Professional |
| 14.Mr. Rahul Auddy, Advocate           | ] |                             |
| 15. Mr. Joy Saha, Advocate             | ] |                             |
| 16. Ms. Rakhi Purnima Paul, Advocate   | ] | For IDBI Bank               |
| 17. Mr. Ramanuj Raychaudhuri, Advocate | ] |                             |

**Date of pronouncement of order: 18<sup>th</sup> April, 2018.**

**ORDER**

**Per Shri Jinan K.R., Member (J)**

The Company Petition (C.P.) was filed under Section 7 of the Insolvency and Bankruptcy Code 2016 by the Financial Creditor / RBL Bank Limited in

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respect of MBL Infrastructures Limited / Corporate Debtor for initiating corporate insolvency resolution process. Vide order dated 30.03.2017 the C.P was admitted by appointing Mr. Atanu Mukherjee as Interim Resolution Professional (IRP). However, the Committee of Creditors in its first meeting took a unanimous decision to change Mr. Atanu Mukherjee and proposed appointment of Shri Sanjeev Ahuja as Resolution Professional. The name of Shri Sanjeev Ahuja as a Resolution Professional has been confirmed by Insolvency and Bankruptcy Board of India (IBBI) vide order dated 11<sup>th</sup> September 2017. In the meanwhile, the initial period of the CIR process was expired on 25.09.2017. As per an application moved by the Resolution Professional ( C.A. No.388 of 2017) the CIRP duration has been extended by 90 days on the strength of a unanimous decision of the CoC, thereby the extended period of CIR process was expired on 25.12.2017.

2. In the meanwhile, on 04.01.2018 Ld. Resolution Professional filed a report stating that upon conclusion of CoC meeting on 21.12.2017 the resolution plan was put to vote and that the plan has been approved with a vote share of 68.50% by way of e-voting. In the meanwhile two of the financial creditors of CoC moved appeals against an interim order passed by this Adjudicating Authority and got a stay and therefore this Adjudicating Authority was prevented from approving resolution plan. While so Resolution applicant filed CA (IB) 50/KB/ 2018 before this Adjudicating Authority for direction to issue notice to dissenting creditors so as to reconsider their decision in regards the approval of the plan and on receipt of notice of the application two of the dissenting creditors changed their voting status and given assent to the resolution plan of Mr. Lakhota. Upon casting their vote in favour of the resolution plan the plan acquired a voting share of 78.15% and it is that plan came up for approval before this Bench under Section 31(1) of the Code. It is contended that the Resolution Plan meets all the requirements as per Sub-Section (2) of Section 30 of the Code and that certificates as required



under Regulation 39 (4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation is also annexed with the report.

3. When the Resolution Plan came up for consideration, IDBI filed CA(IB) 238/KB/2018 and Bank of Baroda filed CA(IB) 270/KB/2018 objecting the resolution plan. Both banks are financial creditors. Both banks are dissenting creditors too. Both contentions are similar. Both dissenting financial creditors contends that the Resolution Plan submitted before the adjudicating authority being filed after the extended period of 270 days the adjudicating authority has no power under Section 12 of the Code to extend the CIRP beyond 270 days already expired on 25.12.2017. The financial creditor IDBI also raised a contention that the voting regarding the approval of the resolution plan held on 21.12.2017 in the 12<sup>th</sup> CoC meeting and continued till 22.12.2017 by E-Voting become final and since the resolution plan which was approved at a voting share below the required majority of the voting share ie 68.50% as provided under section 30(4) of the Code the resolution plan submitted for the approval cannot be approved. Both the financial creditors also objected the reconsideration of vote by the Bank of Maharashtra and Indian Overseas Bank in favour of resolution plan. Upon the said contentions IDBI and Bank of Baroda prays for rejection of Resolution Plan since it violates the provisions of the Code.

4. The Ld. Resolution Professional in reply to the above said objections on the side of IDBI who has 6.5% vote share and who voted against the approval of the Resolution Plan submits that the delay in filing the Resolution Plan approved by the CoC is because of the stay of the proceedings of this Bench by the Hon'ble appellate Tribunal in CA (AT) (Insolvency)No. 330 of 2017 in the appeal filed by PNB. It is contended on behalf of the Resolution Professional that the period of stay obtained by the above said financial creditor before the Hon'ble Appellate Tribunal shall be excluded from the period of CIRP and if it is excluded the filing of the Resolution Plan is within

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time. The Resolution Professional also contends that the reconsideration of votes of assenting and dissenting creditors was considered by the financial creditors as per an order of the adjudicating authority in CA(IB) No.50 of 2018 and CA (IB) No.50 of 2018 has been filed by the Resolution Applicant seeking directions against the dissenting and absenting creditors to reconsider their decision regarding the approval of the plan. Upon the said contentions resolution professional prays for approving the plan.

5. Considering the objections of two financial creditors as against approval of the resolution plan submitted by the resolution professional on 06.04.2018, two questions arise for consideration. Firstly whether this Adjudicating Authority has empowered to extend the time limit prescribed under section 12 of the Code? If not whether this Adjudicating Authority has power to exclude the duration of continuation of stay order of Hon'ble Appellate Tribunal and the period rendered for the disposal of interim applications by this Bench during the CIRP?. Secondly whether reconsideration of vote in respect of approval of the resolution plan already finalised on 22.12.2017 is permissible under law?

6. Heard the Ld. Counsel for the Resolution Professional, Ld. Counsel for the State Bank of India, RBL, Bank of Baroda, IDBI and the Ld. Sr. Counsel for the Resolution Applicant Mr. A.K. Lakhotia and perused the records. This is a unique case in which a Resolution Plan which has been originally failed for want of requisite voting percentage as required under Sub-Section (4) of Section 30 of the Code when put up for reconsideration obtained the required voting share so as to approve the resolution plan by the CoC. Sub-Section (4) of Section 30 of the Code read as under:

"The Committee of Creditors may approve the Resolution Plan by vote of not less than 75% of voting share of the financial creditors."

7. The last CoC meeting as per records available seems to have held on 21<sup>st</sup> December 2017. The extended period of CIR process of 270 days here in



the case in hand expired on 25.12.2017. (Resolution professional in his report stated that extended period of CIRP expires on 23.12.2017. it is not correct). Ld. Sr. Counsel for the Resolution Applicant submits that the period during which the stay order passed by the Appellate Tribunal was in force and period due to pending litigation before this Bench is to be excluded and if it excluded total 106 days to be excluded from 270 days. Seeking exclusion of 106 days from 270 days the resolution applicant filed CA (IB) No. 288/KB/2018. According to him reconsideration of voting was done as per the order passed by this Bench in CA(IB) No.50/KB/ 2018 and that till date none of the financial creditors challenged the interim order of the adjudicating authority and therefore reconsideration of voting is legal and proper and therefore the resolution plan being approved by a voting share of 78.15% and since the resolution plan meets all the requirement under section 30(2) of the Code it is to be approved under section 31(1) of the Code. Argued by the Ld.Sr.Counsel for the resolution applicat.

8. Before answering the above said questions, let us see the background in filing the CP and the events took place during the CIRP in the case in hand. CIRP initiated as per the order of this Bench dated 30.03.2017. The CP No.170/KB/2017 has been filed by RBL Bank Limited under Section 7 for initiating CIR process as against the Corporate Debtor/MBL Infrastructure Limited. MBL Infrastructure Limited seems to have set up in 1995 is engaged in infrastructure projects (mainly roads and buildings) which are under development / construction across the state. From a perusal of the records it is understood that due to various factors including recurrent downturn, mismanagement of cash flows, excess of short term funds being used for long term purposes, termination of few projects, the dues from the clients getting into litigation, non-renewal of working capital limits from the Consortium of Banks and resultant loss of important personnel from various sites and offices led to delay in completion of most of the projects and got the company into the current situation of financial distress.

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9. Due to failure on the side of the corporate debtor to clear its dues due to the creditors one among the financial creditors namely RBL Bank Limited approached this adjudicating authority by filing application under Section 7 of the Code. That application was allowed on 30.03.2017 by appointing one Mr. Atanu Mukherjee as Interim Resolution Professional (IRP). However, the Committee of Creditors (CoC) upon its own reason changed the Interim Resolution Professional and proposed appointment of Mr. Sanjay Ahuja as the Resolution Professional as per a unanimous decision of the CoC dated 26.04.2017. Since the change of Resolution Professional by the CoC is subject to the approval of IBBI, the proposed change of Resolution Professional has been forwarded to the IBBI and finally after approval of the change of Resolution Professional, the name of Mr. Sanjay Ahuja has been approved by this Bench by order dated 18.07.2017.

10. The Resolution Professional thereafter continued the process which already had been initiated by the Interim Resolution Professional Mr. Atanu Mukherjee and in the meanwhile 180 days of CIR process initiated has been expired on 25.09.2017. Mr. Sanjay Ahuja, the Resolution Professional then moved CA (IB) No.388/KB/2017 before this Bench on the basis of a unanimous decision of the CoC for extension of duration of CIRP. This Bench by order dated 11.09.2017 extended the CIR process duration by 90 days and that extended period of 270 days expired on 25.12.2017.

11. While continuing the Resolution Process, the Resolution Professional also faced with so many issues regarding the operation of the Corporate Debtor. In an effort to see the Corporate Debtor Company is a going concern, various steps have been initiated at the instance of the Resolution Professional in compliance of the statutory requirements. In the meanwhile he was managed to receive two Resolution Plans. One plan submitted by Mr. A.K. Lakhotia and another submitted by Mr. Venkatesh Lakhotia who is none other than the son of Mr. Lakhotia. Mr. Lakhotia's plan was originally received by the



CoC on 29.06.2017. That plan has been discussed by the CoC in various meetings held by the CoC. As requested and suggested by the CoC several modifications were carried out by the resolution applicant in his plan. A final plan after modification as suggested by the CoC was submitted by the resolution applicant on 22.11.2017 before the CoC. In the meantime the Ministry of Law and Justice, Government Of India, notified the IBC (Amendment) Ordinance 2017 on 23.11.2017 which provides for, inter-alia, additional provision laying down certain disqualification in respect of persons interested in submitting the resolution plan. After the amended ordinance came in force the financial creditors raised concerns questioning the eligibility of the resolution applicant who is none other than a promoter director of the corporate debtor who has given personal guarantee to the corporate debtor. According to them he is not eligible under amended section Section 29A (c) and (h). The CoC therefore took a decision on the basis of the objections of certain financial creditors on 11.12.2017 to seek clarification regarding the resolution applicant's eligibility from the Adjudicating Authority.

12. While so the Resolution Applicant Mr. A.K. Lakhotia himself filed CA (IB) No.543/KB/2017 before this Bench on 12.12.2017 for clarification regarding his eligibility under section 29A (c) (h) of the Code. That application was disposed of by this Adjudicating Authority vide order dated 18.12.2017. It is good to read two paragraphs in page No.14 of the order dated 18.12.2017 in CA (IB) No.543/KB/2017. It is self explanatory as to the objections raised against the resolution applicant.

*"It is pertinent to mention that in the case in hand the extended period for submission of Resolution Plan is going to expire on 23<sup>rd</sup> Dec 2017. The Resolution Applicant has submitted the revised Resolution Plan after elaborate discussion in consecutive meetings of CoC, and the same was under consideration meanwhile IB Amendment Ordinance promulgated on 23<sup>rd</sup> November 2017. Aims and objective of the Ordinance were to prohibit certain persons from submitting a Resolution Plan who, on account of their antecedents, may adversely impact the credibility of the processes under the Code." It is clear that*

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*contract of guarantee under which no claim has been made and which need not be performed cannot be treated as a subsisting or enforceable contract for clause (h) of Section 29A, as the liability to pay for a guarantor arises when the debt is crystallised. If the guarantee is not invoked and demand is not made on the guarantor, debt payable by him is not crystallised.*

*The Company Application has been decided to clarify the position of the Resolution Applicant, who happens to be the personal guarantor of a corporate debtor, against whom guarantee has not been invoked, and demand has not been made, regarding his eligibility to submit a resolution plan. In such a situation guarantor cannot be deemed to be a defaulter, therefore, his case is not covered under clause (c) and (h) of Section 29A of the amended I.B. Code. Disqualifying the entire class of guarantors under clause (h) of Section 29A would be discriminatory. However, it is to be made clear that we have clarified the legal position only and CoC has to take independent decision on the Resolution Plan of the applicant.*

13. Being satisfied that the Resolution Applicant is eligible under Section 29A (c) (h) of the amended Code, the Resolution Professional placed the order before the CoC for its consideration in the 12<sup>th</sup> meeting held on 21<sup>st</sup> December 2017. The members of the Committee discussed in detail regarding the Resolution Plan. Being satisfied that the order of clarification of this Bench, the CoC unanimously taken a decision to put the Resolution Plan of Mr. Lakhotia to voting and decided not to consider the Resolution Plan submitted by Mr. Venkatesh Lakhotia for shortage of time. There were 100% attendance of the members of the CoC meeting held on 21.12.2017. However, certain members of the CoC expressed their intention to discuss internally among themselves before voting.

14. The Resolution Professional as well as the Corporate Debtor team were asked to move out from the hall of the meeting and after having an internal discussion among the Committee of members themselves, they informed the professional to put the Resolution Plan of Mr. Lakhotia to votes instead of ballot voting directed the Resolution Professional to conduct e-voting. It is



significant to to note here that when the voting requisition of the plan has been finally considered by the CoC, the CIR process duration is to be expired within four days of the meeting held on 21.12.2017. The e-voting have been completed on 22.12.2017 by the Resolution Professional. As per the said voting the plan was approved with 68.50% voting share. Out of 20 members of the Committee of Creditors /financial creditors, the majority financial creditors' voted in favour of the Resolution Plan. Three financial creditors supported the plan. Six financial creditors voted against the plan and one financial creditor abstained from voting. But their voting share does not exceed 68.50%. In the meantime, the financial creditors namely IDBI, Punjab National Bank as well as RBL Bank (all descending creditors) expressed their intentions to challenge the order of this Bench dated 18.12.2017 in CA (IB) No.543/KB/2017 and their decisions to challenge the said order seen recorded in the minutes of the 12<sup>th</sup> meeting of the CoC convened on 21.12.2017.

15. It is significant to note here that the PNB filed an appeal before the Hon'ble NCALT on 21,12,2017 itself challenging the order dated December 18, 2017 passed by this Adjudicating Authority as CA (AT) (Insolvency) No.330 of 2017. The Hon'ble NCLAT vide order dated 21.12.2017 granted stay in the said appeal as under:-

*"In the meantime, if second respondent files any Resolution Plan, the Resolution Professional and the Committee of Creditors may go through the same but the adjudicating authority will not accept or reject the Resolution Plan or pass any order in lower court without prior approval of this Appellate Tribunal."*

16. RBL Bank Limited who is the financial creditor also filed appeal (Company Appeal AT (Insolvency) No.1 of 2018) before the Hon'ble National Company Law Tribunal (NCLAT). It is good to read the order dated 11.01.2018 of the Hon'ble NCLAT in CA (AT) (Insolvency) No.1 of 2018. It read as follows:



*Reply affidavit has been filed by the respondent – MBL Infrastructures Limited and copy of the same is now being handed over to the learned counsel for the appellant. The appellant may file a rejoinder within a week.*

*Post the matter on 25<sup>th</sup> January, 2018 along with Company Appeal (AT) (Insolvency) No.01/2018.*

*In the meantime, the Adjudicating Authority may pass any appropriate order in the interest of the company and stakeholders, but will not pass any order accepting the resolution plan.*

17. The above said orders were brought to our notice when the CP came up for consideration on 15.01.2018. In the meantime, the Resolution Applicant filed an application CA (IB) No.50/KB/2018 praying for issuing directions to the dissenting and abstaining creditors so as to ascertain their views and reconsider their decision in the matter of approval of the final resolution plan of MBL Infrastructures Limited which is under consideration of the resolution professional. After hearing on both sides this Bench allowed the CA No.50/KB/2018 in part vide order dated 15.01.2018 and issued directions to the resolution professional to issue notice of the application to the dissenting and abstaining creditors. The effect of the said notice is that the above said financial creditors were given one more opportunity to reconsider their option either to reconfirm the disapproval or to approve the only one resolution plan which was not acquired required voting share as per section 30(4) of the Code in the 12<sup>th</sup> meeting of the CoC held on 21.12.2017.

18. On the basis of the directions, the Resolution Professional has issued notice by serving copy of the C.A. No.50 of 2018 to the dissenting creditors namely Allahabad Bank, Bank of Baroda, Bank of India, Bank of Maharashtra, IDBI Bank, and the Oriental Bank of Commerce and to Indian Overseas Bank (IOB) who abstained from voting. Upon receipt of the notice, out of the 7 creditors, the above referred Indian Overseas Bank and Bank of Maharashtra gave its assents. The relevant extract of the said two creditor's reply is shown as below.



- (i) The Indian Overseas Bank issued an email on January 31, 2018 under which Indian Overseas Bank has stated; "we hereby advise that our top management approved mandate in favour of the resolution plan submitted by the applicant".
- (ii) The Bank of Maharashtra on February 02, 2018 issued an email enclosing its letter dated January 31, 2018 conveying its stand. The Bank of Maharashtra accorded approval in favour of the final Resolution Plan submitted by Mr. A.K. Lakhotia subject to inter-alia, the condition; "Our Bank unutilized BG limit of Rs.27.23 Crores stands cancelled and shall not be available under resolution plan. The RA shall make alternate arrangement of funds from their own sources."

19. The remaining five creditors not changed their stand. Upon receipt of the reply to the notice issued to the above referred creditors, the Resolution Professional filed a report on 12.02.2018 praying for recording the status of response from the dissenting and abstained creditors. As per the said report it is reported that the voting share was increased up to 78.50% as per reconciled voting.

20. While so the Hon'ble NCLAT on 23.03.2018 disposed of the appeal filed by PNB and RBL. The effect of the disposal of appeal is that the order passed by this Bench regarding the eligibility of the Resolution Applicant has attained finality and this Bench can consider the resolution plan if any filed for approval under section 31 of the code. In the above said circumstances the Ld. Resolution professional filed his final report on 06.04.2018 along with the Resolution Plan stating that resolution plan was passed with 78.50% vote share of financial creditors and that it meets all the requirement of section 30(2) of the Code. A certificate as required under Regulation 39(4) of the CIRP Regulations also annexed with the report.



21. The above said are the events and backgrounds from the date of admission of the CP till the date of final report filed by the resolution professional along with the resolution plan allegedly passed by the financial creditors with 78.50% vote share. In the said background let us see whether the resolution plan came up for approval was filed within the statutory period of 270 days as per section 12 of the Code?.

22. At this juncture the Resolution Applicant filed CA (IB) No.288 of 2018 for exclusion of 106 days due to pending litigation before the Hon'ble NCALT at the instances of two financial creditors and the period of litigation taken before this Adjudicating Authority. According to the Ld. Counsel appearing for the Resolution Applicant, in computation of the period of CIR process the period of inter party litigation initiated at the instance of the financial creditors is to be excluded and if it is excluded, the Resolution Plan submitted for the approval of the adjudicating authority is within time. The said submission was challenged by the Ld. Counsel appearing for the IDBI. IDBI also filed CA(IB) 238/KB/2018 challenging extension of the CIRP beyond 270 days as it is prohibited under section 12 of the Code and also challenged the reconsideration of voting after the expiry of 270 days. The objection raised by the IDBI in the application is therefore is the objection against the approval of the resolution plan. Therefore the said CA was heard along with the CP.

23. Similarly Bank of Baroda also filed C.A. (IB) No. 270/KB/2018 challenging the approval of the Resolution Plan contending the very same contention of the IDBI. It contended that any modification of the resolution plan after completion of 270 days as provided under section 12 of the Code is bad in Law and that any reconsideration by dissenting creditors on resolution plan after the time limit for completion of insolvency process in terms of section 12 of the code cannot be allowed.

24. The Ld. Counsel appearing for the IDBI as well as Bank of Baroda unanimously argued that under Section 12 of the Code this Adjudicating

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Authority cannot extend the period of CIR process beyond 270 days and that section 12 of the Code mandate a statutory bar upon the Adjudicating Authority and therefore, this Bench cannot take into consideration of the Resolution Plan which has been approved by the financial creditors after the expiry of 270 days. Their main argument is on the strength of Sub-Section 3 of Section 12 of the Code. Both Id. Counsel reiterated that Corporate Insolvency Resolution Process shall be completed within the period specified under Section 12 of the Code and the Resolution Professional being failed in completing the resolution process within the period stipulated by the Code, then no question of extension or exclusion arises for consideration in a case of this nature.

25. It is significant to note here that the Resolution Applicant in its application CA (IB)288/KB/ 2018 not at all prays for extension of CIR process period but prays for exclusion of period due to pending litigation. Therefore, the question is whether this Adjudicating Authority can exclude the period spent for litigation during the CIRP and consider the plan for approval as if it was filed with in time as per section 12 of the Code. At the outset a reading of Section 12 of the Code and its proviso, it appears to us that it does not specify any restriction upon the Adjudicating Authority in excluding the period taken for inter party litigation before the conclusion of CIR process. What is prohibited is extension beyond 270 days.

26. At this juncture, Ld. Sr. Counsel for the Resolution Applicant cited a decision of Hon'ble Supreme Court in C.V. No.135 of 2017 (Macquarie Bank Ltd. Vs. Shilpi Cable Technology Ltd.) for stressing an argument that in interpreting a provision of the Code care should be taken keeping in mind the legislative object of the Code. According to the Ld. Counsel appearing for the Resolution Applicant, Para 24 of the above cited decision laid down a proposition that in order to interpret a provision of the statute, the Adjudicating Authority is bound to look into the objective of the Code as well as the text of

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the statute. It is good to read the last part of the paragraph 24 of the above cited decision. It reads as follows:

*Regard being had to be modern trend of authorities referred to in the concurring judgement in Ms. Eera through Dr. Manjula Krippendorf (supra), we need not be afraid of each Judge having a free play to put forth his own interpretation as he likes. Any arbitrary interpretation, as opposed to fair interpretation, of a statute, keeping the object of the legislature in mind, would be outside the judicial ken. The task of a Judge, when he looks at the literal language of the statute as well as the object and purpose of the statute, is not to interpret the provision as he likes but is to interpret the provision keeping in mind Parliament's language and the object that Parliament had in mind. With this caveat, it is clear that judges are not knight-errants free to roam around in the interpretative world doing as each judge likes. They are bound by the text of the statute, together with the context in which the statute is enacted; and both text and context are Parliaments', and not what the Judge thinks the statute has been enacted for. Also, it is clear that for the reasons stated by us above, a fair construction of Section 9(3)©, in consonance with the object sought to be achieved by the Code, would lead to the conclusion that it cannot be construed as a threshold bear or a condition precedent as has been contended by Dr. Singhvi."*

27. This proposition no doubt applicable in the case in hand. The very object of the code is resolution of falling corporate debtor companies and not liquidation of corporate debtor. Our Parliament enacted the I&B Code with the following objects:-

*"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 maximisation 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."*



Keeping in mind the above said proposition in the above cited decision of the Hon'ble Supreme Court and reading the object behind the enactment of the code the intention behind the enactment is no doubt to have resolution rather liquidation. Here in this case resolution applicant is none other than a promoter/director of the corporate debtor who is familiar with the operation of the corporate debtor company attempted to convince the then existing CoC to approve his plan by modifying it so as to suit the CoC requirements from 22.06.2017 onwards and ultimately succeeds in his endeavour to convince majority of the financial creditors except few so as to see his company may not go for liquidation but to survive upon the approval of the plan in hand.

28. Ld. Sr. Counsel also stressed his argument citing a decision of NCLAT in Quantum Ltd Vs. Indus Finance Corporation Ltd (CA (AT) (Insolvency) No.35 of 2018. According to him in a similar situation the period rendered for the litigation has been excluded and the very same proposition can be applied in the case in hand. It is good to read Paragraph 4 of the order. It read as follows:-

*"4. From sub-section (2) of Section 12, it is clear that resolution professional can file an application to the Adjudicating Authority for extension of the period of the corporate insolvency resolution process, only if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of 75% of the voting shares. The provision does not stipulate that such application is to be filed before the Adjudicating Authority within 180 days. If within 180 days including the last day i.e. 180<sup>th</sup> day, a resolution is passed by the committee of creditors by a majority vote of 75% of the voting shares, instructing the resolution professional to file an application for extension of period in such case, in the interest of justice and to ensure that the resolution process is completed following all the procedures time should be allowed by the Adjudicating Authority who is empowered to extend such period up to 90 days beyond 180<sup>th</sup> day."*

29. While allowing the appeal preferred by Quantum Limited, the Hon'ble Appellate Tribunal set aside the interim order and extended the period of resolution process for another 90 days counted from the date of order of the

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appellate tribunal. The Hon'ble Appellate Tribunal has held that *"The period between 181 days and passing of this order shall not be counted for any purpose and is to be excluded for all purposes and is to be excluded for all purpose"*. According to Ld Counsel for the IDBI the proposition in the above cited order of NCALT is not applicable in the case in hand because the Hon'ble NCALT ordered extension under subsection (3) of section 12 of the Code beyond 180 days and not beyond 270 days. Truly the Hon'ble NCALT allowed the appeal holding that even after expiry of 180 days further extension can be allowed and ordered extension of 90 days beyond 180 days but the period between 181 days taken by the Hon'ble NCALT for disposing the appeal is excluded for counting extended period of 90 days. It is that proposition the Ld. Sr. Counsel for the Resolution Applicant stressed before us.

30. So also one another order in CP (IB) 202 (PB) (2017) (PNB Vs. Bhushan Power & Steel Ltd.) of Hon'ble NCLT Principal Bench also brought to our notice so as to apply the very same proposition of the Hon'ble NCALT. Hon'ble Principal Bench also excluded the period which has been consumed for the litigation. In the above cited decision, the Hon'ble Principal Bench of NCLT has held that *"In any case the period which is consumed in the litigation would not prima facie be part of the period prescribed for CIRP under the IBC"*.

31. Before coming to the conclusion as to the question of exclusion it is also good to read Rule 15 and Rule 153 of NCLT Rules, 2016.

**Rule 15 - Power to extend time:**

*"The Tribunal may extend the time appointed by these rules or fixed by any order, for doing any act or taking any proceeding, upon such terms, if any, as the justice of the case may require, and any enlargement may be ordered, although the application therefore is not made until after the expiration of the time appointed or allowed."*



**Rule 153 - Enlargement of time.-**

*"Where any period is fixed by or under these rules, or granted by Tribunal for the doing of any act, or filing of any document or representation, the Tribunal may, in its discretion from time to time in the interest of justice and for reasons to be recorded, enlarge such period, even though the period fixed by or under these rules or granted by the Tribunal may have expired."*

32. It is also good to read section 60(6) of the I&B Code.

**Section 60 (6)**

*"Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded."*

33. From a reading of the above rules what we understood is that a Tribunal in its discretion from time to time in the interest of justice and for reasons to be recorded, enlarge such period, even though the period fixed by or under these rules or granted by the Tribunal may have expired. This is a case in which so many issues came up for consideration before us during the period of CIRP. The CoC has changed the IRP thereby there is change of IRP. During the consideration of the only one plan of the resolution applicant an amended Ordinance was notified laying down certain disqualification to promoter directors of a company like the promoter in the case in hand. A clarification was sought for by the resolution applicant before the Bench. Against the order of clarification two of the financial creditors filed appeal before the Hon'ble NCALT. There was an order of stay restricting this Bench from proceeding further in regards approval of the plan.

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34. Bare in mind the object of the Code, the legislative intention behind the enactment of the Code, in the larger interest of the public, the workmen and other employees of the corporate debtor why not the delay occurred for no fault of the resolution applicant in getting his plan approved in time is excluded. In the interest of justice and in order to achieve the object of the Code our endeavour is to see that the corporate debtor would continue as a going concern. Here in this case CIR process could not be completed within the statutory period fixed under section 12 of the Code by acts beyond control of the applicants and non-exclusion no doubt would cause grave injustice to the applicant. No specific legal bar enable us to prevent an order of exclusion as prayed for by the resolution applicant in his CA(IB) 288/KB/2018. In view of the above said discussion it appears to us that the time period of continuation of the stay order in CA(AT) (Insolvency) No. 330 of 2017 preventing us from approving the plan and the period taken for disposal of CA (IB) 543 of 2017 by this bench shall be excluded from the 270 days fixed for conclusion of CIRP

35. The next question is whether this Adjudicating Authority can extend the time limit beyond 270 days as per section 12 of the Code. In Surendra Trading Company Vs. Jugglial Kamalapat Jute Mills in Civil Appeal No.8400 of 2017 the Hon'ble Supreme Court in answering a question as to whether the time limit prescribed in Insolvency and Bankruptcy Code for admitting and rejecting a petition for initiating insolvency resolution process is mandatory. It has been held that:-

*"Further, we are of the view that the judgements cited by the NCLAT and the principle contained therein applied while deciding that period of fourteen days within which the adjudicating authority has to pass the order is not mandatory but directory in nature would equally apply while interpreting proviso to sub-section (5) of Section 7, Section 9 or sub-section (4) of Section 10 as well....."*

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*Thus, we hold that the aforesaid provision of removing the defects within seven days is directory and not mandatory in nature. (relevant portion in Para 23 and 24)"*

"Extension of time may be allowed if it is needed to be given for circumstances which are exceptional occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended. Costs may be imposed and affidavit or documents in support of the grounds pleaded by the defendant for extension of time may be demanded, depending on the facts and circumstances of a given case."

36. Bare in mind the above said proposition and the Rule 15 and 153 of NCLT Rule, 2016 it appears to us that even in a case if we are satisfied that grave injustice would be occurred if a prayer of extension for a no fault of applicant is occurred this Adjudicating Authority can extend the time limit provided under section 12 of the Code. However we are not asked to extend the time limit as provided under section 12 of the code but to exclude the period due to litigation and upon the above said finding we already held that exclusion of period due to litigation is liable to be allowed in a case of this nature. So we are not holding that we can extend the period of CIRP as prescribed under section 12 of the Code.

37. The next question is whether reconsideration by dissenting creditors and abstain creditor on resolution plan after the time limit of completion of insolvency process can be allowed?. Both Ld. Counsel for IDBI and Bank of Baroda raised the above question. In answering the first question posed by the above said financial creditors we already come to a conclusion that the time period due to continuation of stay order and period due to litigation before this Bench shall be excluded. So that the period of disposal of CA (IB) No.543/KB/2017 by this Bench and period of continuation of stay order of

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NCALT in CA (AT) (Insolvency) No. 330/2017 shall be excluded. That being so period from 11.12.2017 to 18.12.2017 (duration of disposal of CA 543 of 2017) and period of continuation of stay order in CA (AT) (Insolvency) No. 330 of 2017 from 21.12.2017 to 23.03.2018 shall be exclude. So also the resolution applicant prays for excluding the time duration taken for obtaining the certified copies of above orders so as to place before the CoC and before this Bench. It appears to us that upon the above said view we already taken that period also is to be excluded. Therefore total 106 days (96+10) should be counted for exclusion. That being so excluding 106 days from the 270 days fixed under section 12 of the code would expire on 10.04.2018.

38. The resolution plan in the case in hand was filed on 06.04.2018 for the approval of this Bench. The Indian Overseas Bank approved the plan by an e-mail date 31.01.2018 and Bank of Maharashtra approved the plan by an e-mail dated 02.02.2018 totalling the voting share to 78.50%. Upon the above said reason we hereby hold that the resolution plan submitted before the Adjudicating Authority is with in time.

39. At this juncture Ld. Counsel for the IDBI and bank of Baroda submits that reconsideration by dissenting and abstaining creditors after dissenting from vote and abstains from voting cannot be permissible. According to them, putting the Resolution Plan once failed for reconsideration is bad in law. The argument advanced on the side of the Ld. Counsel for IDBI and Bank of Baroda seems to have no legal force at all. The voting right has been exercised by them voluntarily with out having any kind of compulsion. Can a financial creditor not to change its mind and to have a review of earlier decision upon deliberation with the resolution applicant and vote in favour of a resolution plan who did not vote in favour when it was put to vote?. It appears to us that they can. Even in parliamentary proceedings, in our democracy, a motion to reconsider a policy decision which was once failed for not obtaining majority vote, is not uncommon.

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40. Whether or not a member of CoC can change its mind on a decision once it has been adopted, is within their own power and choice. No specific bar in the Code or Regulation brought to our notice to have a different view than the view we have taken as above. Two dissenting financial creditors out of 20 financial creditors alone challenging the reconsideration of resolution plan. Form a practical standpoint of a prudent man thinking also, if one person wish to change its mind who is not debarred from changing its mind, why not change stands considering the subsequent change in the circumstances or events. In the said background, we do not find any justifiable reason to hold that reconsideration of resolution plan is bad in law as contended by IDBI and Bank of Baroda.

41. Ld. Counsel for the IDBI at this juncture, stressed an argument that request for reconsideration was not from the side of the financial creditors but from the side of Resolution Applicant by way of filing CA(IB) No.50/KB/2018 and, therefore, on that ground also reconsideration of votes in respect of approval of Resolution Plan cannot be considered by the Adjudicating Authority. Truly, CoC meeting has not been convened subsequent to 22.12.2017 for the reason that CIR process, according to the Resolution Professional, commenced on 30.3.2017 ends on 25.12.2017. The Resolution Professional continued the management of the corporate debtor as per the direction of this Adjudicating Authority. Since the CoC could not be convene meeting after a period of 270 days from the date of commencement of CIRP and there is non-existence of CoC, unless period is extended or time duration for litigation is excluded by this Bench CoC cannot convene meeting and cannot ask its members to reconsider a resolution plan and hence the resolution applicant approached this Adjudicating Authority. We find some force in the argument advanced on the side of the Ld. Counsel for the resolution professional. It is significant to not here that an application CA(IB) No. 50/KB/2018 was moved by the resolution applicant and this Bench passed



an order dated 15.01.2018 directing the dissenting creditors and abstaining creditors to reconsider the resolution plan. That order was not challenged by any one of the financial creditors including IDBI and Bank of Baroda. In view of the above said discussion it appears to us that reconsideration of resolution plan by the dissenting and abstaining creditors is perfectly valid.

42. Ld. Counsel for the Resolution Professional reiterated that the Resolution Plan under consideration is the only one plan came up for consideration and it is economically and technically viable and meets all the requirements under section 30(2) of the code and therefore, to be approved. Except IDBI and Bank of Baroda nobody else challenged the Plan. Though the Corporate Debtor Company having liquidity crunch, it is otherwise found suitable and viable as argued by the Ld. Counsel for the Resolution Professional. She also submits that if it is liquidating each and every stakeholder will be prejudiced, and the effect will be seriously detrimental to all concerned. According to her, in the interest of all stakeholders, the liquidation process of Corporate Debtor is not at all beneficial and that liquidation process would prejudice not only stakeholders but also its employees and their families and, therefore, the Plan is to be approved.

43. Ld. Counsel appearing for the Resolution Applicant also highlighted the necessity of approving the Plan so as to see that the Corporate Debtor is a going concern and may not liquidate its assets for a meagre liquidation value. According to the Ld. Counsel pending projects are with the Company and upon completion of the pending projects the company will be in a position to pay off its entire loan. In the event of liquidation, the Company will not be in a position to complete pending projects and obtained new projects which will severely impact the right of all stakeholders and particularly the entire creditors.



44. From the aforesaid discussion we may conclude that the basic premises on which I&B code is built is that on failure of the Company in discharging its dues, its debt is to be restructured, for continuing the Company as a going concern, by giving the Company to any person who is found financially and technically capable to take over the Company. No challenge from any corner raised before us regarding the technical and economical viability of the resolution applicant in taking over the company by him. This is a unique case in which CIRP could not be completed within 270 days. The exceptional circumstances occasioned beyond the control of the resolution applicant in the case in hand upon the reasons already led in prompt us to exclude the period of litigation and thereby we also found the plan came up for approval within time. Under section 31(1) we have to look into whether the plan meets the requirements as referred to in sub-section (2) of section 30, this Adjudicating Authority shall by order approve the resolution plan. The resolution applicant also complied Regulation 39(4) (a) of IBBI (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 by producing a certificate to that effect.

45. Upon the above said reasons and discussions recorded herein above in our considered opinion CA(IB)No.270/KB/2017 and CA(IB)No.238/KB/2018 is liable to be dismissed and CA(IB)No.288/KB/2018 is liable to be allowed as prayed for. Accordingly we hereby approve the resolution plan upon the following orders.

#### ORDER

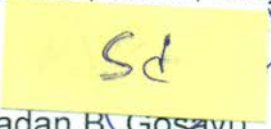
CA(IB)No.288/KB/2018 is allowed by excluding 106 days from 270 days and the Resolution Plan, which is approved by the financial creditors of CoC with a voting share of 78.50% is hereby approved under provisions of section 31(1) of the Insolvency & Bankruptcy Code, 2016, which will be binding on the Corporate Debtor, its employees, members, creditors, coordinators and other stakeholders involved in the Resolution Plan.

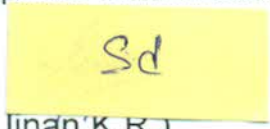


2. The approved Resolution Plan shall come into force with immediate effect.
3. The moratorium order passed under Section 14 shall cease to have effect.
4. The Resolution Professional shall forward all records relating to the conduct of the Corporate Insolvency Resolution Process and the Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded on its database.
5. CA(IB)No.270/KB/2017 is dismissed. However no order as to cost.
6. CA(IB)No.238/KB/2018 is dismissed. However no order as to cost.
7. CP(IB)No.170/KB/2017 is disposed as above.

Certified copy of the order may be issued, if applied for, upon compliance with all requisite formalities.

Urgent Photostat and/or certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

  
(Madan B. Gosavi)  
Member (J)

  
(Jinan K.R.)  
Member (J)

*Signed on this the 18<sup>th</sup> day of April 2018.*