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In 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)

C.A.(IB) No.201/KB/18  
And

C.A.(IB) No.234/KB/18

And

C.A.(IB) No.245/KB/18

And

C.A.(IB) No.210/KB/18

And

C.A.(IB) No.227/KB/18

And

C.A.(IB) No.233/KB/18

And

C.A.(IB) No.223/KB/18

And

C.A.(IB) No.249/KB/18

And

Int.App.(IB) No.248/KB/18

And

Int. App.(IB) No.343/KB/18

And

Int. App.(IB) No.344/KB/18

And

C.A.(IB) No.246/KB/18

In

C.P.(IB) No.359/KB/2017

**In the matter of:**

An application under sections 60(5) and Section 30 and 31 of the Insolvency and Bankruptcy Code, 2016, read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate

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Persons) Regulations, 2016;

-And-

**In the matter of:**

**BANK OF BARODA**, a body corporate constituted by and under the Banking Companies (Acquisition and Transfer of Undertakings Act, 1970), with the head office at Baroda House, Mandvi, Baroda, Gujarat 1971) and acting through its Corporate Financial Service branch at 1972) 1<sup>st</sup> Floor, Walchand Hirachand, Ballard Pier, Mumbai 400 001, 1973), India

.... **Financial Creditor**

-And-

**IN THE MATTER OF:**

**BINANI CEMENT LIMITED**, a Company incorporated under the Companies Act, 1956 and having its registered office at 37/2, Chinar Park, New Town, Rajarhat Main Road, P.O. Hatiara, Kolkata 700 154.

... **Corporate Debtor**

-And-

**BRAJ BHUSANDAS BINANI**, Member of Board of Director of Binani Cement Limited, Residing at Shubham, 6 Laburnum Road, Gamdevi, Mumbai 400 007;

.... **Applicant**

-And-

**ULTRA TECH CEMENT LTD.**, having its registered office at B Wing, Ahura Centre, 2<sup>nd</sup> floor, Mahakali Caves Road, Andheri East, Mumbai- 400093;

.... **Applicant**

-And-

**State Bank of India HONG KONG**, having its office/branch at State Bank of India, Hong Kong branch, 15<sup>th</sup> floor, Central Tower, 28, Queen's Road, Central Hong Kong, Hong Kong SAR

.... **Applicant**

-And-

**EXPORT IMPORT BANK OF INDIA**, having its head office at Centre One Building, floor 21, World Trade Centre Complex, Cuffe Parade, Mumbai;

.... **Applicant**

-And-

**SHRI KHEMISATIA POLYSACKS PRIVATE LIMITED and 07 others**  
... **Applicants**

-And-

**ARKA CARBON FUELS PRIVATE LIMITED and 04 others**

.... **Applicants**

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-And-  
**SWASTIK COAL CORPORATION PRIVATE LTD. And 07 Others**  
 .... Applicants

-Versus -

**Mr. Vijaykumar V. Iyer, Resolution Professional of Binani Cement Limited**, Deloitte Touche Tohmatsu India LLP, India Bulls Finance Center, Tower-e, 27<sup>th</sup> Floor, Senapati Bapat Marg, Elphinstone Road (West), Mumbai 400 013.

... Applicant/Respondent

Counsels appeared:

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| For the Financial Creditor/<br>EXIM Bank in<br>CA(IB)No.249/KB/2018 | 1. Mr. Krishnaraj Thaker, Advocate<br>2. Mr. Varun Kedia, Advocate<br>3. Mr. Kumardeep Majumdar, Advocate   |
| For Intervenor /Operational<br>Creditors<br>S.K.Singhi & Company.   | 1. Mr. Jishnu Chowdhury, Advocate<br>2. Mr. Asif Doctor, Advocate<br>3. Mr. S.K.Singhi, Advocate<br>4. Mr. Ankur Singhi, Advocate<br>5. Ms. Divyata Badiani, Advocate<br>6. Ms. Riti Basu, Advocate<br>7. Mr. Subhadeep Basak, Advocate<br>8. Mr. Dhaval Vussonji, Advocate<br>9. Mrs. Manju Bhuteria, Advocate<br>10. Ms. Sweta Kakkad, Advocate<br>11. Mr. Angad Baxi,<br>13. Ms. Pallavi Kumar |
| For SBI HongKong  | 1. Mr. P. V. Dinesh, Sr. Advocate<br>2. Mrs. Poonam Keswani, Advocate<br>3. Mr. Dwaipayan Ghosh, Advocate<br>4. Ms. Neha Negar Alam, Advocate<br>for INDIALAW LLP   |
| For Income-Tax Dept.  | 1. Mr. Shiv Chandra Prasad, Advocate  |
| For Rajputana Properties<br>Pvt. Ltd. (H1 Bidder)                   | 1. Mr. S.K.Kapur, Sr. Advocate<br>2. Mr. Kathpalia, Sr. Advocate<br>3. Mr. Siddhartha Datta, Advocate<br>4. Mr. Rudrajit Sarkar, Advocate<br>5. Ms. Suhani Dwivedi, Advocate<br>6. Ms. Isha Sinha, Advocate<br>7. Mr. Debangshu Dinda, Advocate<br>8. Ms. Mishra, Advocate  |

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| For EARC & Lenders            | 1. Mr. Sumant Batra, Advocate  |
| For IDBI Bank Ltd.            | 1. Mr. Jishnu Saha, Sr. Advocate<br>2. Mr. Indranil Nandi, Advocate<br>3. Mr. Ishaan Saha, Advocate<br>4. Mr. Sayak Konar, Advocate<br>5. Mr. Anubhav Sinha, Advocate<br>6. Mr. Siddharth Barua, Advocate<br>7. Ms. Paheli Majumder, Advocate  |
| For Resolution Professional   | 1. Mr. Abhrajit Mitra, Sr. Advocate<br>2. Mr. Joy Saha, Sr. Advocate<br>3. Mr. Rishad Meclova, Advocate<br>4. Mr. Soumava Mukherjee, Advocate<br>5. Mr. Sarbapriya Mukherjee, Advocate<br>6. Mr. Pranshu Paul, Advocate<br>7. Mr. Prashant Pakhiddey, Advocate<br>8. Mr. Vijay Kumar Iyer, Resolution Professional   |
| For Committee of Creditors    | 1. Mr. Pratap Chatterjee, Sr. Advocate<br>2. Mr. Samrat Sen, Sr. Advocate<br>3. Mr. Soorya Ganguli, Advocate<br>4. Ms. Pooja Chakrabarti, Advocate<br>5. Mr. Adheesh Agarwal, Advocate   |
| For Intervenor Director       | 1. Mr. Ratnanko Banerji, Sr. Advocate<br>2. Mr. Sabhyasachi Chaudhury, Advocate<br>3. Mr. S. Mitra, Advocate<br>4. Mr. Neelesh Choudhury, Advocate<br>5. Ms. Anuradha Poddar, Advocate   |
| For Ultratech Cements Limited | 1. Mr. Mukul Rohatgi, Sr. Advocate<br>2. Mr. Venkatesh Dhond, Sr. Advocate<br>3. Mr. Siddhartha Mitra, Sr. Advocate<br>4. Mr. Mahesh Agarwal, Advocate<br>5. Ms. S. Mukherjee, Advocate<br>6. Mr. Aritra Basu, Advocate<br>7. Mr. Abhijit Sarkar, Advocate<br>8. Mr. Abhik Kundu, Advocate<br>9. Mr. Domingo Gomes, Advocate<br>10. Mr. Devanshi Singh, Advocate |

Order pronounced on 2<sup>nd</sup> May, 2018

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

By this common order we propose to dispose of 12 applications filed under sections 60(5), 30 and 31 of the Insolvency and Bankruptcy Code, 2016 as common questions arise for consideration and for avoiding repetition of facts and for convenience.

2. Briefly, stating the facts of the applications as follows:-

**CA(IB)No.201/KB/2018,CA(IB)No.234/KB/2018 and CA(IB)No.245/KB/2018**

3. All these applications were filed by one Braj Bhushan Das Binani, a promoter director of the Corporate Debtor on 20.02.2018 mainly raising serious challenge against the resolution process initiated at the instance of the Resolution Professional. CA(IB) No 234/KB/2018 was filed on 16.03.2018 alleging wrongful and illegal actions of RP and CoC and prays for issuing directions to allow him to participate in the CoC meeting. CA(IB)No. 245/KB2018 was filed on 16.03.2018 alleging violation of master restructuring agreement by EARC and prays for issuing injunction restraining EARC from making any claim in excess of Rs.2594.24 Crores and to correct voting share by restructuring CoC excluding IDBI from CoC. CA (IB)No. 201/KB/2018 was filed alleging misconduct of the Resolution Professional by causing wrongful losses to the Corporate Debtor. He contents that the valuation of the assets of the Company was not properly done. The Resolution Professional acted malafide and in contravention of the provisions of the I&B Code. Despite directions given to the Resolution Professional vide Order in CA (AT)(Insolvency)No.82/2018, dated 09.03.2018 of NCLAT he was not allowed to participate in the CoC meeting from the beginning till the conclusion of the meeting. Whenever certain crucial points affecting the Corporate Debtor arise for deliberation, he was directed to leave the meeting room and to wait outside.

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