

**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**PRINCIPAL BENCH**

**C.A No.929(PB)/2018 in**  
**C.P. (IB)-530(PB)/2017**

**IN THE MATTER OF:**

State Bank of India

.... Applicant/petitioner

vs.

Bhushan Energy Limited

.... Respondent

**Order under Section 7 of Insolvency & Bankruptcy Code, 2016**

**Judgment delivered on 30.05.2019**

**CORAM:**

**CHIEF JUSTICE (RTD.) M.M. KUMAR**  
**HON'BLE PRESIDENT**

**SH. S.K. MOHAPATRA,**  
**HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Resolution Applicant:	Mr. Rajiv Nayar, Senior Advocate with Mr. V.P. Singh, Mr. A.R Chaudhary, Mr. Utsav Trivedi, Mr. Sahil Monga, Ms. Ruby Singh, Ms. Tahira, Ms. Vatsala Rai, Mr. Aditya Jalan, Mr.Aman Sharma, Mr. Navandeep Matta, Advocates for Resolution Applicant-TSL
For the non-applicant	Dr. U.K Chaudhary, Sr. Adv. with Mr. Anuj Malhotra, Mr. Himanshu Vij, Advs. for Neeraj Singhal
For the Vistrat	Mr. Parminder Singh, Adv.
For the CoC	Mr. Abhinav Vashisht, Sr. Adv. with Ms. Misha, Mr. Vaijayant Paliwal, Mr. Saurav Panda, Advs.
For the RP	Mr. Arun Kathpalia, Sr. Adv. with Mr. Amar Gupta, Mr. Mayank Mishra, Ms. Pallavi Kumar, Advocates.
For the Ex. Management	Mr. Abhishek Anand, Adv. Mr. Pankaj Jain, Adv. for CA-384/19.

**M.M.KUMAR, PRESIDENT**

**JUDGMENT**

1. This order shall dispose of C.A. No. 929(PB)/2018 filed by Resolution Professional (for brevity 'RP') under Section 30(6) & 31 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (for brevity 'Regulations, 2016') with the prayer to accept the resolution plan approved by the Committee of Creditors (for brevity 'CoC') submitted by H1 Resolution Applicant. The resolution plan has been filed by TATA Steel Limited (for brevity 'TSL') in the Corporate Insolvency Resolution Process (for brevity 'CIR Process') in respect of Bhushan Energy Ltd. (for brevity 'the Corporate Debtor'. The consequential prayers have also been made namely (i) to declare that after approval of the Resolution Plan by this Tribunal it would be binding on the company, its creditors, guarantors, members, employees and other stakeholders and thereafter reduction of share capital of the Corporate Debtor as contemplated by Annexure 5 of the Resolution Plan, would take effect without any further deed or act on the part of the Corporate Debtor and/or its

constituents; (ii) approve the appointment of the Monitoring Agency from the effective date until the closing date, and a direction is sought that during this period, the CoC and the RP would continue as Monitoring Agency; (iii) a further direction is also sought to suspend the powers of the Board of Directors of the Corporate Debtor until the closing date & (iv) to approve and grant the reliefs and directions as envisaged under Section 10.2 & 14 of the resolution plan.

2. Brief facts of the case necessary for disposal of the controversy raised in the present proceeding may first be noticed. The State Bank of India filed C.P. No. (IB)-530(PB)/2017 against Bhushan Energy Limited under Section 7 of the Code. After issuance of notice and considering the reply of the Corporate Debtor we admitted the petition on 08.01.2018 (Annexure A-3). As a consequence, the CIR process commenced and moratorium in terms of Section 14 was imposed. In pursuance of Section 15 of the Code the Interim RP invited claim on 10.01.2018 (Annexure A-5). He received and collated the claims amounting to INR 2779,94,79,058/- (Rupees Two Thousand Seven Hundred

Seventy Nine Crores Ninety Four Lakhs Seventy Nine Thousand Fifty Eight) from twelve (12) financial creditors and further claims of Rs. 98,20,03,794/- (Rupees Ninety Eight Crores Twenty Lakhs Three Thousand Seven Hundred Ninety Four) from nineteen (19) operational creditors as on 13.09.2018. No claims were received from workmen/employees and other creditors. A true copy of list of claims admitted by the Resolution Professional has been placed on record (Annexure A-6). The RP convened 10 meetings of the CoC upto 14.09.2018.

3. It is also pertinent to mention that RP issued a public notice which was published on 22.02.2018 and invited prospective resolution applicants to put forward their resolution plans in respect of the Corporate Debtor. A true copy of the public notice has been placed on record (Annexure A-7). In response to the publication two (2) potential resolution applicants namely (i) Tata Steel Limited ('TSL') and (ii) JSW Energy Limited expressed their interest to submit the resolution plans for the Corporate Debtor. A Virtual Data Room (VDR) was set up wherein relevant documents, data and

information in relation to the Corporate Debtor and the ongoing CIR process were provided to potential resolution applicants. The RP prepared an information memorandum in accordance with the provisions of Section 29 of the Code read with Regulations 35 & 36 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 and uploaded the same on the VDR, for ready reference. There were only two (2) potential resolution applicants who sought access to the VDR, in order to carry out necessary due diligence on the Corporate Debtor.

4. The RP has further disclosed that he appointed Grant Thornton Advisory Private Limited as its financial/professional advisors ('Professional Advisor') and J. Sagar Associates, Advocates and Solicitors as its legal advisors ('RP's Legal Counsel'). He has further highlighted that in obedience to Regulation 35 of the CIR Regulations and with the assistance of Professional Advisor as well as RP's Legal Counsel, he appointed two registered valuers, namely (i) Rakesh Narula & Company and (ii) RBSA Valuation Advisors LLP to ascertain the liquidation value of the

Corporate Debtor. The CoC approved the process and evaluation criteria for evaluating a resolution plan in compliance with the requirements of the Code, in order to ensure a fair and transparent system of evaluation and also to ensure that the best resolution plan for the Corporate Debtor is selected in a most transparent manner. The CoC appointed Shardul Amarchand Mangaldas & Co. as its legal counsel ('CoC's Legal Counsel'). To identify and scrutinize the suspected transactions undertaken by or concerning the Corporate Debtor under Sections 43, 45, 50 & 60 of the Code, T.R. Chadha & Co. LLP, Chartered Accountants were appointed as the special audit advisor ('Special Auditor') with the consultation & guidance of Professional Advisor and the RP's Legal Counsel. For gathering the advice on the operations of the power plant etc., Mr. Boben Anto C. was appointed as the power sector expert ('Power Sector Expert').

5. In the 4<sup>th</sup> meeting held on 22.05.2018 the CoC decided to seek extension of time beyond the period of 180 days for the CIR Process. The reason for extension of time was based on the fact that the deadline for submission of approved plan to

this Tribunal was 22.06.2018 and till that date plans were not evaluated and voted upon. Further same was followed by acceptance of Letter of Intent (LoI) and submission of a contract performance guarantee by the Resolution Applicant. The resolution for extension of time was voted and carried by adequate majority (i.e. 87.89% majority). Accordingly, we granted extension vide order dated 06.06.2018. In the light of the said order the date for submission of resolution plan was extended up to 90 days beyond 07.07.2018 which works out to be 05.10.2018.

6. The RP had received only one resolution plan of TSL as on 11.06.2018 which was the final deadline fixed. It is appropriate to mention that the initial deadline for receipt of resolution plans was 28.05.2018 which was later extended from time to time. Eventually the deadline was fixed at 11.06.2018. In order to evaluate the Resolution Plan submitted by TSL and to negotiate with TSL's representatives, a core committee headed by six top members of the CoC was constituted on 12.06.2018. The RP constituted a core committee on 12.06.2018, comprising of the top 6 members

of the COC (by virtue of their voting shares in the COC) ("Core Committee"), viz.:

- "a. Edelweiss Asset Reconstruction Company Ltd. (22.25% voting share);
- b. State Bank of India (18.19% voting share);
- c. UCO Bank (13.39% voting share);
- d. Andhra Bank (12.03% voting share);
- e. ICICI Bank Limited (11.23% voting share); and
- f. Axis Bank Limited (6.85% voting share)"

In the 7<sup>th</sup> CoC meeting held on 06.08.2018 it was found that TSL is a sole resolution applicant as no other resolution plan was received. In the said meeting the aforesaid resolution plan of TSL was discussed in consultation with members of the CoC and the RP. Accordingly, on the recommendation of the CoC, TSL was notified as the 'sole resolution applicant' in the CIR Process vide email dated 08.08.2018 (Annexure A-9). Having been determined as the 'sole resolution applicant', the Advisors, Core Committee and the RP have held extensive negotiations and consultations with the TSL, to improve and clarify its resolution plan. Pursuant to the negotiations, the TSL submitted an amended and restated Resolution Plan on



01.09.2018 after the first one which was submitted on 11.06.2018.

7. In the 9<sup>th</sup> CoC meeting held on 04.09.2018, the RP intimated to the CoC that aforesaid amended and restated Resolution Plan submitted by the TSL is a 'highest evaluated compliant resolution plan'. It was also informed by the RP that the average of the liquidation values provided by the two Registered Valuers was approximately INR 721 Crores. Vide e-mail dated 06.09.2018 information to the effect that TSL is the 'highest evaluated compliant resolution plan' was also sent to it.
8. In the 10<sup>th</sup> CoC meeting aforesaid amended and restated Resolution Plan came up for approval of the CoC and subsequently same was put for e-voting. In e-voting process conducted from 15.09.2018 to 16.09.2018 the CoC approved the resolution plan with an affirmative voting share percentage of 100% which is much more than the minimum threshold of 66% as required by Section 30 (4) of the Code. A copy of the CoC approved resolution plan of H1 Resolution Applicant-TSL along with all the Annexures and letter dated

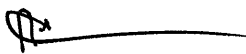
12.09.2018 has been placed on record [Annexure-11 (Colly)]. The voting pattern of financial creditors approving the resolution plan has been discussed in details through compliance certificate in Form-H dated 15.10.2018. In accordance with the process document, the H1 Resolution Applicant was issued a letter of intent (Annexure A-13) subsequently. The aforesaid resolution plan approved by the CoC has now been placed before us for our acceptance and approval in terms of the Code and CIRP Regulations.

9. The RP has also ascertained that under Sections 10.2 & 14 of the approved Resolution Plan the Resolution Applicant has sought certain reliefs and concessions and submissions have been made that this Tribunal may approve and direct the grant of the reliefs and concessions envisaged in the CoC approved resolution plan [Annexure A-16 (Colly)].
10. The RP has stated that in terms of Section 5.1.1 of the approved Resolution Plan, the date of the approval of the Resolution Plan by this Tribunal, is to be regarded as effective date and until the date on which all the steps for the



implementation set out in Annexure 5 would be completed (closing date). The plan envisaged *inter alia* the following:

- “(i). the Resolution Professional along with its Professional Advisor shall be appointed by this Hon’ble Tribunal as the Monitoring agency for the Corporate Debtor (**“Monitoring Agency”**). The Monitoring Agency shall have the same functions, powers and protections as ascribed to the Resolution Professional under the Code. The CoC shall continue with its roles and responsibilities, and have protections, as set out in the Code including approving the matters as are being approved during the period prior to the Effective Date;
- (ii) the board of directors of the Corporate Debtor (and its powers) shall remain suspended until the Closing Date and shall be exercised by the Monitoring Agency. The Monitoring Agency shall be required and entitled to do all such acts, deeds, matters and things as may be necessary, desirable



or expedient in order to implement and give effect to the Resolution Plan in accordance with its terms;

- (iii) The Corporate Debtor and all its facilities shall continue to receive supply of essential supplies, goods and services (as defined under the Code and the CIRP Regulations) on an uninterrupted basis and shall not for any reason be shut down or restricted in its activities in any manner;
- (iv) The existing shareholders and the current management team of the Corporate Debtor will undertake all such actions and shall do all such acts, deeds and things required by the Monitoring Agency, including executing any and all documents as may be required for the purposes of implementation of the Resolution Plan”.

11. The RP further stated that in terms of Section 5.1.2 of the approved Resolution Plan, on the closing date, it would be reckoned that the Resolution Plan Applicant acquired control



over the Corporate Debtor including the steps set out in Annexure 5 & Annexure 12 of the Resolution Plan.

12. The RP has appointed T.R. Chadha & Co. LLP, Chartered Accountants as Special Auditor to assist in identifying & securitizing suspect transactions involving the Corporate Debtor which may be preferential, undervalued, extortionate credit, and/or fraudulent, as mandated under Sections 43, 45, 50 and 66 of the Code (Avoidable Transactions).
13. We issued notice of the application on 26.09.2018 and the erstwhile promoters accepted notice. There were lacunas in the application as pointed out after scrutiny and the following order was passed:

“CA-929(PB)/2018

Notice of the application.

Mr. Abhishek Anand, Ld. Counsel appearing for the Ex-Management accepts notice. A copy of the application filed U/s. 30(6) and 31 of the IBC has been furnished to him.

Objections, if any, be filed within a week with a copy in advance to the counsel opposite.

On examination of the application we find that there is certain lacuna which the resolution professional



undertakes to remove before the next date of hearing. However, all objections including the objections to locus standi of the Ex-Management shall remain open.

List on 15.10.2018.”

14. The lacuna of filing Form-H prescribed under Regulation 39 (4) was cured. According to Regulation 39 (4) the RP is obliged to submit the resolution plan approved by the CoC to the Adjudicating Authority-NCLT, at least fifteen days before the maximum period prescribed for CIR Process along with a compliance certificate in Form-H of the Schedule. It further requires the filing of evidence of receipt of performance security required under Sub-Regulation 4(A) of Regulation 36 (B). The aforesaid lacuna was cured to the extent Form-H was filed and a copy of the same was also furnished to the counsel for the objector on 15.10.2018. The objector also filed their objections and time was sought by the RP to file reply to the objections. The arguments continued and were concluded.

**OBJECTIONS OF EX-PROMOTER:**

15. In the objections filed by the Ex-Promoter of the Corporate Debtor namely Mr. Neeraj Singal it has been submitted that he is not opposing the resolution of the Corporate Debtor,

however, he raised three following issues for consideration of this Tribunal those are as under:-

- (A) biased conduct of the Resolution Professional towards the Resolution Applicant; and
- (B) lower valuation at which the debts of the Company have been resolved, and
- (C) Tata Steel Ltd. ineligible under Section 29A of the Code.

16. Elaborating the aforesaid three issues it has been submitted that the Corporate Debtor is a group company of Bhushan Steel Ltd. ('BSL') which underwent CIRP and was later on taken over by the TSL. The Corporate Debtor and BSL entered into two Power Purchase Agreements (PPA) dated 29.03.2007 and 26.10.2010 and the terms of supply under both the PPA was upto 2024. TSL in its resolution plan of BSL had sought termination of both the PPAs and the said issue was raised by the BSL before this Tribunal. This Tribunal in its order dated 15.05.2018 while approving the resolution plan of TSL in relation to BSL rejected the submission of BSL. Aggrieved by the order dated 15.05.2018 passed by this Tribunal, the

RP of the Corporate Debtor preferred a Company Appeal (Ins) No. 267/2018 before the Hon'ble Appellate Tribunal. The said appeal was dismissed by the Hon'ble Appellate Tribunal vide its order dated 10.08.2018. Thereafter the RP of the Corporate Debtor approached Hon'ble the Supreme Court by filing Civil Appeal No. 8517/2018 and same is still pending. It has been submitted that an issue raised in the aforesaid proceeding has a direct bearing on the resolution process of the Corporate Debtor. It is submitted that it was incumbent upon the RP to disclose the pendency of the aforesaid Civil Appeal but same has not been disclosed with a malafide motive.

17. It has been highlighted that the collusion of the RP with the Resolution Applicant is apparent from the fact that in the CoC meeting held on 17.08.2018 in which it was pre-decided to unduly help the Resolution Applicant by deciding to withdraw the pending Civil Appeal in case it adversely affect the Resolution Applicant. The relevant para of the minutes of the CoC meeting held on 17.08.2018 has been relied and the same reads as under:-



“EARC (Edelweiss Assets Reconstruction Company) strongly recommended that the RP should immediately proceed and file an appeal in the Hon’ble Supreme Court. SBI requested the members of the CoC to consider that the discussions on the resolution plan was at advanced stages and it was not sure how fruitful further appeal would be and whether it may adversely affect the discussions with the resolution applicant. Axis Bank agreed with SBI and mentioned that any decision to file an appeal should be a considered decision. The members of the CoC deliberated on this issue and also explored the option to withdrawal of the appeal to be file before the Supreme Court depending on how discussions with the Resolution Applicant progress. On being queried, the RP’s Legal Counsel informed the members of the CoC that such appeal can be withdrawn at any point time. However, the withdrawal of the appeal will be subject to such withdrawal being permitted by the judge of the Supreme Court hearing the appeal.”



18. It is asserted that in the CoC meeting held on 14.09.2018, it was decided to apprise the Hon'ble Supreme Court about the developments before this Tribunal but the RP failed to do so.
19. Regarding the issue of 'lower valuation at which the debts of the company have been resolved', it has been submitted that the cancellation of the PPAs was a deliberate act done by TSL to reduce the fair market value of the Corporate Debtor. It is stated that TSL is only offering Rs. 730 Cr. to the Financial Creditors being the sole bidder though in light of setting up of plant of 485 MW capacity of the Corporate Debtor it should essentially require the investment of Rs. 2425 crores.
20. Substantiating the allegations, it has been pointed out that the Resolution Applicant-TSL is ineligible under Section 29A of the Code to submit the Resolution Plan as its fully owned subsidiary namely Tayo Rolls Ltd. who continues to be an undischarged insolvent in light of the order dated 04.10.2018 passed by Hon'ble Appellate Tribunal in the case Mr. Suresh Padmanabhan & Anr. v. Tata Steel Ltd. & Ors., Company Appeal (AT) (Ins) No. 29 of 2018.

**REPLY TO OBJECTIONS BY THE RESOLUTION APPLICANT**



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21. Reply to the objections raised by Ex-Promoter has been filed by Resolution Applicant-TSL. It has been urged that the resolution plan has been unanimously approved by the CoC with a 100% voting majority and that the challenge is entirely motivated. The argument was earlier rejected by this Tribunal in the BSL's case vide its order dated 15.05.2018 wherein same promoter and erstwhile group companies raised such issues. It has further been submitted that this Tribunal vide its order dated 15.05.2018 passed in BSL's case clearly and unequivocally found the PPAs onerous and allowed for the termination of the same. Subsequently said judgment has been affirmed in appeal by the Hon'ble Appellate Tribunal and mere filing of appeal before Hon'ble the Supreme Court would not change the position or determination in the eyes of law. The issue pertains to ineligibility suffered by it in the wake of certain proceedings with respect to Tayo Rolls Ltd., it has been submitted that Tayo Rolls Ltd. is not a wholly owned subsidiary of TSL and its shareholding in the TSL is 54.91%. It is submitted that only an individual can be adjudged as an insolvent and not a corporate entity.

22. The RP submitted compliance certificate in Form-H under Regulation 39 (4) of the Regulations, 2016. It is certified by the RP that resolution plan has complied with all the provisions of the Code and the Regulations, 2016 and that it did not contravene any of the provisions of law for the time being in force. In order to confirm compliance with Section 29A of the Code, the RP and the CoC sought and obtained affidavit from the Resolution Applicant which is patent from a perusal of aforesaid compliance certificate specifically declaring and affirming its eligibility under Section 29A of the Code which has been duly submitted by H1 Resolution Applicant as part of their respective resolution plans confirming that it was not disqualified by virtue of the provisions of Section 29A of the Code.
23. We have heard learned counsel for the parties and have perused the record with their able assistance.
24. Dr. U.K. Chaudhary, learned Senior counsel for the Ex-Promoter/Ex-Director has advanced following arguments:
- (i) That, the Resolution Plan Applicant is ineligible under Section 29A (a) & (j) of the Code at the time of approval

of the resolution plan for the reason that its wholly owned subsidiary namely Tayo Rolls Limited is an 'undischarged insolvent'.

- (ii) A body corporate can be an undischarged insolvent as the expression used in Section 29A of the Code is 'person' and the expression 'person' has been defined by Section 3 (23) of the Code to include a company incorporated under the Companies Act, a limited liability partnership etc.

Learned counsel has also placed reliance on the literal meaning given to the expression an 'insolvent' by citing the *Stroud's Judicial Dictionary of Words and Phrases*. Explaining the facts, Dr. U.K. Chaudhary has submitted that an application under Section 10 of the Code was filed before the Kolkata Bench of NCLT being CP (IB) No. 398/2017 by Tayo Rolls Limited on 13.07.2017 admitting that they were unable to discharge their liability/debt and sought initiation of Insolvency Resolution Process. That petition was dismissed by the NCLT Kolkata Bench on 22.12.2017 and the order was

challenged before the Hon'ble NCLAT in Company Appeal (AT) (Ins) No. 29/2018. The plea taken before the Hon'ble National Company Law Appellate Tribunal was that they were unable to pay the debts and the application ought to be admitted. The Appellate Tribunal vide order dated 04.10.2018 observed that the CIR Process was required to be initiated against Tayo Rolls Limited as an event of default has taken place judicially confirming that it was unable to discharge its debts and default had occurred.

Again, another application under Section 9 of the Code was filed before NCLT Kolkata Bench being Company Petition (IB) No. 701/KB/2017 against Tayo Rolls which was again dismissed on 03.01.2018 on the ground that application under Section 9 of the Code could have been filed by the 'Operational Creditor' individually and not jointly. The Hon'ble Appellate Tribunal entertained Company Appeal (AT) (Ins) No. 112/2018 and on 26.09.2018 set aside the order of the NCLT Kolkata Bench and remitted the matter back to the NCLT Kolkata Bench. Therefore, ineligibility of the TSL is established. Learned counsel argued that the judgment in

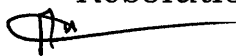
***Arcelormittal India Private Limited v. Satish Kumar Gupta & Ors.*** [(2019) 2 SCC 1] did not lay down any preposition that the resolution plan applicant become ineligible post submission of resolution plan then the Adjudicating Authority would lose power to check the eligibility at the time of approving the resolution plan.

25. Dr. U.K. Chaudhary has then submitted that concealment of proceedings pending before Hon'ble the Supreme Court must be viewed seriously which was intentional and was for malafide reasons to give undue advantage to the resolution applicant, as it has material bearing on the valuation of the assets of the Corporate Debtor. Another submission made by Dr. Chaudhary is that there is impairment of fair market valuation of the Corporate Debtor and the order of Hon'ble the Supreme Court in Civil Appeal No. 8517/2018 should be awaited as it would have a direct bearing on the resolution process of the Corporate Debtor. According to the learned counsel the fair market value of the Corporate Debtor would go up substantially if Hon'ble the Supreme Court uphold the Power Purchase Agreements. The last submission made by



Dr. Chaudhary is that there was no justification for lower valuation. The power plant of the Corporate Debtor is a '*captive power plant*' having 485 MW capacity and it was set up in the year 2014-15. As per the balance sheet in March 2018, the value of the plant and machinery alone is about Rs. 3282 Crores. The estimated capital cost of power projects for 2017-18 for Coal/Thermal Power Plant is Rs. 6.5 Crores per MW. Dr. Chaudhary also submitted that the Form-H certificate submitted by the RP highlights wide gap between the fair value of the Corporate Debtor which is assessed at Rs. 211,531.8 lakhs whereas liquidation value is shown to be about Rs. 721 crores. It would show that the lower resolution value of debts of Corporate Debtor has direct impact on the Promoters/Shareholders of the Corporate Debtor as the liabilities of the Promoters/Shareholders are directly proportional to the value of debt resolved for the Corporate Debtor. Accordingly, he urged that the resolution plan should not be approved and the application be rejected.

26. Mr. Arun Kathpalia, learned Senior Counsel for the Resolution Professional has supported the averments made





in the application and has submitted that the resolution plan has complied with each and every provision of the Code and Regulations. According to the learned counsel a perusal of Form-H (which after giving all the details of various steps taken by the RP, CoC and the Resolution Plan Applicant) would make it evident that against the liquidation valuation of 721 crores, the Resolution Plan Applicant has presented a plan offering a sum of Rs. 730 Crores and the resolution plan has been carried with 100% voting share.

27. Mr. Kathpalia, has also submitted that the non applicant-Ex Promoter/Director of the Bhushan Energy Limited, Mr. Neeraj Singal lacks locus standi to file any objection. According to the learned counsel such former Promoter/Ex-Director has a very limited right to attend the meetings of the CoC and there is no vested right in them either to vote or to participate in decision making process of the CoC. The non applicant was invited to attend the CoC meetings but failed to do so except 6<sup>th</sup> meeting held on 25.07.2018. It cannot be claimed that their rights in any manner have been prejudiced and that it is neither a Financial Creditor nor an Operational

Creditor, they are not coming forward as a prospective resolution applicant and therefore, they have no locus standi to raise any objection to the instant proceedings.

28. Mr. Kathpalia then argued that the allegation of concealment concerning the filing of Civil Appeal No. 8517/2018 challenging the resolution plan in respect of Bhushan Steel Limited, a sister concern of the Corporate Debtor is absolutely baseless and as a matter of fact there is no concealment. According to the learned counsel RP has preferred an appeal in respect of the resolution plan concerning Bhushan Steel Limited which is publicly known to all the stake holders including the non-applicant. Learned counsel argued that even otherwise it is not directly relevant as the Civil Appeal filed before Hon'ble the Supreme Court is in respect of a distinct and different entity than the one involved in the present case namely Bhushan Energy Limited. In any case the CoC of Bhushan Energy Limited was made fully aware of the proceedings before Hon'ble the Supreme Court as is evident from the minutes of the 10<sup>th</sup> meeting of the CoC held on 14.09.2018 (Annexure R-11 with



the objections filed by the Ex-Promoter). It has been pointed out that the RP had raised a limited challenge to the resolution plan of the TSL in respect of Bhushan Steel Limited which is pending before Hon'ble the Supreme Court. It establishes that the RP has acted only with a view to protect the interest of Bhushan Energy Limited without any favour to any party, much less TSL. Learned counsel has also placed reliance on the minutes of 4<sup>th</sup> CoC meeting held on 22.08.2018 (Annexure R-5) and has been constantly apprising the decisions of the Tribunal and the Appellate Tribunal as is evident from the proceedings of 8<sup>th</sup> CoC meeting held on 17.08.2018 (Annexure R-9) wherein future course of action was also discussed.

29. Controverting the allegations of bias against the RP, Mr. Kathpalia has argued that the allegations are wholly without substance. The interdependence between BSL and BEL, could have been commercially plausible for TSL to submit bid for both the entities. The interdependence of both the entities is not a factor which could be controlled by any stake holder including RP/CoC. The RP infact took steps to ensure that

JSW also submit its competing resolution plan keeping in mind the object of maximising the value of the assets of the Corporate Debtor. The RP treated both the resolution plan applicants TSL & JSW equally and granted equal opportunity to them. He went to the extent of seeking extension of CIR Process period under Section 12 (2) of the Code and approval was accorded by 4<sup>th</sup> CoC.

30. The allegation of lower value has also been vehemently controverted as it is a decision based on commercial wisdom of the CoC and the RP does not have any say. The resolution plan has been approved unanimously by the CoC after due consideration and negotiation with TSL. The liquidation value is Rs. 721,33,08,000 whereas the resolution plan offers Rs. 730,00,000 which is far higher than the liquidation value.

31. Mr. Kathpalia also submitted that the resolution plan applicant does not suffer from any disqualification envisaged under Section 29A (a) & (i) of the Code. The allegation is wholly unfounded that the Tayo Rolls Ltd. is a wholly owned subsidiary of TSL-H1 Applicant and is an undischarged



insolvent. Learned counsel has pointed out that an affidavit has been furnished by TSL on 28.08.2018 stating that it is eligible under Section 29A of the Code and it is reconfirmed on the date of submission of the resolution plan. Mr. Kathpalia has controverted the allegations that acceptance of appeal on 04.10.2018 by the NCLAT setting aside the order of NCLT, Kolkata Bench has any bearing on the issue. It is appropriate to mention that Kolkata Bench of NCLT had refused to admit the petition filed in respect of M/s Tayo Rolls Limited and the order was reversed by the NCLAT. According to the learned counsel this will not make M/s Tayo Rolls Limited as undischarged insolvent.

32. Mr. Rajiv Nayar, learned senior counsel for the TSL has highlighted that the resolution plan proposes payments of INR 805 Crores and the break up is INR 730 Crores for Financial Creditors and INR 25 Crores for CIRP Costs and INR Rs. 50 Crores for Operational Creditors. Mr. Nayar has also highlighted that INR 367 Crores is to be invested as equity to improve operations of the Corporate Debtor. The investment would be subject to market conditions, business

requirements and regulatory approvals, as and when required by the Corporate Debtor, as determined by the Resolution Applicant. According to the learned counsel the total proposal made by the Resolution Applicant is upto INR 1,172 Crores.

33. Mr. Nayar has denied the allegations of Ex-Promoter of the Corporate Debtor as completely unfounded and baseless and that there is no collusion. They were asked to participate in various CoC meetings and the allegation of diminutive value, on account of termination of the Power Purchase Agreements is wholly imaginary. Mr. Nayar has argued in the same line as that of the counsel for the RP.
34. Controverting the allegations that TSL is disqualified under Section 29A (a) of the Code, learned counsel has submitted that only an individual/natural person can be an 'undischarged insolvent' and it cannot be extended to include bodies corporate. According to the learned counsel the eligibility of the TSL-Resolution Applicant has been evaluated, upheld and affirmed by the RP as well as by the CoC. The contentions of the objector are merely an attempt



to push the Corporate Debtor to liquidation to the determinant of its creditors and employees. It is infact a malafide and motivated approach and the objections are liable to be rejected. Explaining the term 'undischarged insolvent' learned counsel has submitted that the Code does not define the expression it has specific meaning in legal parlance and should not be construed by adopting the meaning in common parlance or as defined in dictionaries. In that regard reliance has ben placed on para 22 of the judgment rendered in case of **Thampanoor Ravi v. Charupara Ravi**, (1999) 8 SCC 74. Referring to the provisions of Provincial Insolvency Act, 1920, learned counsel has argued that the expression 'undischarged insolvent' applies only to an individual i.e., a natural person and not a corporate entity; that too when such an individual is adjudicated and upon adjudication by a Court of law. Learned counsel has maintained that pursuant to a court adjudging an individual as an "insolvent", the "insolvent" person is required to aid in realization of his property (Section 27 and 28 of the 1920 Act). Upon realization of the assets of

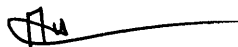
the insolvent, the insolvent was required to apply to the court for a 'discharge' to be considered as a person who has cleared his dues. Till such discharge under Section 41 of the 1920 Act, the insolvent is considered as an 'undischarged insolvent' In this regard, reliance has again been placed on paragraph 21 of the ***Thampanoor Ravi*** judgment (supra). Learned counsel has maintained that status of an undischarged insolvent is a declaration *in rem* and the same is in the context of an individual, as the 1920 Act applies only to individuals. According to the learned counsel the above interpretation of the term 'undischarged insolvent' is also consistent with the use of the term 'undischarged insolvent' under the Code. Apart from Section 29A(a) of the Code, the term 'undischarged insolvent' is used only in Section 79(3) (which falls under Chapter III of the Code which deals with 'Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms' and it is yet to be enforced). The term "bankrupt", defined under Section 79(3) of the Code, refers only to "individuals". It is clear therefore, that "any person adjudged as an undischarged insolvent" refers only to



"individuals". Mr. Nayar then submitted the drafters of the Code could not have intended the same term 'undischarged insolvent' to have different meanings under Chapter II of the Code (of which Section 29A is a part) and Chapter III of the Code. In light of the same, adoption of the interpretation proposed by the Objector, (i.e. whereby "*a person is an undischarged insolvent*" may also refer to a body corporate), would result in the application of sub-section (c) of Section 79 (3) to body corporates. This would lead to the introduction of a body corporate, into a chapter which deals with persons *other* than bodies corporate. Accordingly, such an interpretation would be clearly contrary to the language and scheme of the Code. Mr. Nayar has further argued that mere filing of a petition under Section 9 of the Code against the wholly owned subsidiary of TSL namely Tayo Rolls Limited cannot be equated with an adjudication of being an insolvent. It is an undisputed fact that adjudication is required before someone is conferred an *in rem* status of an insolvent. Hence a mere filing may not be enough. Reliance again has been placed on the ***Thampanoor Ravi*** Case (supra), where the

Hon'ble Supreme Court held that in order to be considered an insolvent, the law does not contemplate mere impecuniosity or incapacity to pay one's debt, but in fact mandates an adjudication as an insolvent followed by the finding that it has remained undischarged. The Court further held that as the same was a disqualification imposing determination, a narrow and strict interpretation of the expression should be followed, as opposed to a liberal or expansive interpretation (see **Thampanoor Ravi Case** (*supra*), paragraph 18). Learned counsel has placed reliance on para 19 of the judgment in that regard. According to the learned counsel no petition against Tayo Rolls Limited has yet been admitted as is evident from the order dated 26.09.2018 and 04.10.2018 passed by Hon'ble National Company Law Appellate Tribunal and CIR Process would be deemed to have commenced from the date of admission of the application when we read the 'insolvency commencement date' as defined under Section 5 (12) of the Code.

35. Mr. Nayar has lastly submitted that Section 29A of the Code is a penal provision and it should be given a strict and narrow



interpretation. He maintains that the disqualification if any is to be determined at the time of “submission of a resolution plan” and not on account of subsequent event. The stage of ineligibility attaches when the resolution plan is submitted by a resolution applicant as is endorsed by Hon’ble the Supreme Court in para 43 of its judgment rendered in the case of ***Arcelormittal India Private Limited (supra)***. The last date for considering this qualification under Section 29A of the Code has to be at the time of submission of the Resolution Plan which was 11.06.2018 in the present case and not thereafter. No order of admission was passed for initiation of CIR Process in respect of Tayo Rolls Limited at that time.


36. Mr. Nayar also submitted that Section 29A (c) of the Code or any other clause concerning disqualification has no application at all. It has not even been pleaded and is irrelevant to the facts of the present case as each contingency specified under Section 29A of the Code is a distinct circumstance and it encompasses a separate mischief.



Therefore, it is not possible to read conjunctively or rely upon any other grounds of disqualification under Section 29A.

37. On behalf of the CoC supporting submissions have been advanced by Mr. Abhinav Vashisht learned Senior counsel adopting virtually the arguments advanced on behalf of the Resolution Plan Applicant as well as RP.
38. A primary question of law arises for determination is [a] whether a body corporate could be an 'undischarged insolvent' on proper interpretation of Section 29A (a) read with Sub Section (j) of the Code; (b) if the answer to the aforesaid question is 'yes' then in the facts and circumstances of this case whether H1 Applicant-TSL would incur disqualification on the date of submission of resolution plan by it and thereafter.
39. In order to understand the aforesaid controversy, it would first be appropriate to first read Section 29A (a) and (j) along with the explanation concerning 'connected parties' and the same read as under:

**"Persons not eligible to be resolution applicant.**



**29A.** A person shall *not be eligible to submit a resolution plan*, if such person, or any other person acting jointly or in concert with such person—

- (a) is an undischarged insolvent;
- (b) to (i)
- (j) has a connected person not eligible under clauses (a) to (i).

[Explanation I].— For the purposes of this clause, the expression "connected person" means—

- (i) any person who is the promoter or in the management or control of the resolution applicant; or
- (ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or
- (iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii):

**[Provided]** that nothing in clause (iii) of Explanation I shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor:

**Provided further** that the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date;]

[Explanation II.- For the purpose of this section, "financial entity" shall mean the following entities which meet such criteria or conditions as the Central Government may, in consultation with the financial sector regulator, notify in this behalf, namely: -

(a) a scheduled bank;

(b) .....

(c) .....

(d) .....

(e) .....

(f) .....

40. A perusal of the aforesaid provision makes it patent that a person is not to be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person is an 'undischarged insolvent'. In other words, clause (j) covers a connected person who may not be eligible under clauses (a) to (i). The explanation further assigns meaning to the expression 'connected person'. Clause (iii) of explanation clearly stipulates that it would cover the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii). The first unnumbered proviso excludes specified entities from

disqualification contemplated by Section 29A(a) of the Code. In other words, financial entities like scheduled banks would not incur any such disqualification as has been provided in unnumbered proviso 2. Explanation II clarifies the expression 'financial entity' to mean a scheduled bank etc.

41. The expression 'person' has been defined in Section 3 (23) which includes a company. Therefore, the expression 'person' used in Section 29A of the Code is not to be understood in literal terms but has a statutory meaning assigned to it. It appears to us that a body corporate can be declared undischarged insolvent in its natural or generic meaning by any competent forum under any statute if it has not been discharged by that competent forum either in India or abroad.
42. The question then arises whether in the facts and circumstances of this case H1 Applicant-TSL would incur disqualification as one of its connected company is facing Corporate Insolvency Resolution Process.
43. Some backdrop facts leading to the admission of a petition against Tayo Rolls Limited which is a Listed Public Non-

Governmental Company need to be first set out. C.P. (IB) No. 398/KB/2017 was initially filed by Tayo Rolls Limited itself under Section 10 of the Code and the same was dismissed as not maintainable by Kolkata Bench of NCLT on 22.12.2017. Against the aforesaid order Tayo Rolls Limited filed Company Appeal (AT) (Ins) No. 29/2018. Likewise, another petition under Section 9 of the Code was filed by one Mr. Suresh Narayan Singh on behalf of workers against the Tayo Rolls Limited. That petition was also dismissed vide order dated 03.01.2018 by the Kolkata Bench of NCLT and an appeal was preferred being Company Appeal (AT) (Insolvency) No. 112 of 2018. The said appeal was disposed of and the order of the Adjudicating Authority-NCLT was set aside vide judgment dated 26.09.2018 rendered by the Hon'ble Appellate Tribunal. The matter was remitted back to the Adjudicating Authority-NCLT and the followings directions were issued by the Hon'ble Appellate Tribunal:

"In the result, the Adjudicating Authority is directed to admit the application filed by the Appellant- Mr. Suresh Narayan Singh and pass appropriate order of 'Moratorium' and appointment of



'Insolvency Resolution Professional' in accordance with law after



notice to the 'Corporate Debtor'. The application under Section 10 of the 'I&B Code', filed by the 'Corporate Debtor' as is under consideration before this Appellate Tribunal in an appeal and if the said appeal is allowed, the 'Interim Resolution Professional suggested by the 'Corporate Debtor', may be appointed. The appeal is allowed with aforesaid observations and directions. However, in the facts and circumstances of the case, there shall be no order as to cost."

44. In pursuance of the aforesaid directions issued by the Hon'ble Appellate Tribunal, the Kolkata Bench of NCLT admitted the petition filed under Section 9 of the Code vide order dated 05.04.2019. It is appropriate to notice that an application under Section 10 of the Code by Tayo Rolls Limited was filed on 13.07.2017 being C.P. (IB) No. 398/KB/2017 where the subsidiary company admitted that they were unable to discharge their liability/debt and invited the initiation of insolvency resolution process. The application was however dismissed despite the admission made by Tayo Rolls Limited in the aforesaid application that it was unable to discharged its debt.



45. In the backdrop of the aforesaid facts it requires to be determined whether H1 Applicant-TSL attracts disqualification under Section 29A (a) & (j). It has come on record that the H1 Applicant-TSL submitted its resolution plan on 11.06.2018 negotiated version as on 31.08.2018 which was finally submitted on 13.09.2018. The RP placed it before the CoC and the CoC approved the plan on 16.09.2018.
46. The expression 'undischarged insolvent' has not been defined in the Code nor in the Companies Act, 1956/2013. However, in common parlance an undischarged insolvent is a person or a body corporate who cannot pay its debts as they become due and payable and; as long as he remains in that position, he continues to be 'undischarged insolvent'. When a petition under Section 7 or 9 of the Code is admitted then the Adjudicating Authority-NCLT in a summary proceedings record a finding that there is non payment of debt when whole or any part of instalment of the amount of debt has become due and payable which has not been paid by the Corporate Debtor. If such a finding is recorded then the default is



supposed to have occurred. The event of default within the meaning of Section 3 (12) of the Code is sufficient to conclude that Corporate Insolvency Resolution is required to be triggered in respect of such a body corporate. The aforesaid proposition has been laid down by Hon'ble the Supreme Court in para 30 in the case of **Innoventive Industries Ltd. v. ICICI Bank and Ors.** (2018) 1 SCC 407.

47. At the first blush it may appear that H1-applicant-TSL is not eligible to submit the Resolution Plan. However, this impression is belied on a closer analysis. Mere admission of a petition under Section 9 of the Code may not necessarily lead to a safe conclusion that Toya Rolls Limited is an 'undischarged insolvent'. Firstly, there is no final adjudication with regard to the status of Tayo Rolls Ltd., as to whether it is 'undischarged insolvent'. For the aforesaid proposition we may place reliance on the following observations made by Hon'ble Supreme Court in paras 18 & 20 of the judgment rendered in the case of **Thampanoor**

**Ravi** (supra):-

"18.....Even though Article 191(1) of the Constitution does not include declaration by an insolvency court, but by

reason of expression used that he is an undischarged insolvent it clearly indicates that he could become discharged only in terms of the provisions of the insolvency Acts and not otherwise. It is implicit in the expression undischarged insolvent that a person does not become so unless he has been adjudged insolvent and is not discharged by the court under the insolvency Acts. The expression undischarged insolvent has acquired a particular legal connotation and such expression cannot be used otherwise than in terms of the insolvency enactments.

19.....

20.....The conditions for disqualification cannot be enlarged by importing to it any meaning other than permissible on strict interpretation of expressions used therein for what we are dealing with is a case of disqualification. Whenever any disqualification is imposed naturally the right of a citizen is cut down and in that event a narrow interpretation is required. Therefore, the liberal view taken by the learned Judge to the contrary does not appear to be correct.”

On the basis of prima facie facts, the petition has been admitted for initiating corporate resolution process. The resolution process is an attempt to rescue a fund starving body corporate from the financial challenging conditions and to restore it back to a sustainable financial ease. It may involve financial restructuring, any other arrangement by



involving another fund infusing company or even by compromise with its creditors. An 'undischarged insolvent' cannot be a one who is in the resolution process as is obtaining in the facts and circumstances in the present case. It may be possible to record a finding on the basis of admissible evidence to reach a conclusion about the status of a body corporate that it is an 'undischarged insolvent' but not at a stage wherein a petition has merely been admitted in a summary proceeding to provide a pedestal for resolving an insolvency. It would be wholly premature to jump to any such conclusion. Moreover, to record a finding about the status of body corporate that it is 'undischarged insolvent', the court should lean towards principles of strict interpretation for the reasons that the resulting effect is likely to cause serious prejudice to the rights of a body corporate. Such a finding would attract disqualification and numerous disabilities. Secondly, there are a number of exit passages provided by the Code to put an end to the corporate insolvency resolution process. The proceedings under Section 7, 9 or 10 of the Code could be brought to an end by an amicable settlement

between the parties before admission and Rule 8 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 can be invoked. The issues can be resolved even by submitting a proposal by the Ex.-promoters of the Tayo Rolls Limited under Section 12A of the Code and the same can be accepted by the Committee of Creditors. Even at the stage of liquidation Tayo Rolls Limited could be sold as 'going concern' as provided by Regulation 32(f) of the Liquidation Process Regulations, 2016. After all the object of the Code is resolution and not the liquidation. Hon'ble the Supreme Court highlighted the issue in the case of ***Arcelormittal India Private Limited (supra)***. In para 83, the following pertinent observations have been made to show how resolution is more significant:-

“.....the only reasonable construction of the Code is the balance to be maintained between timely completion of the corporate insolvency resolution process, and the corporate debtor otherwise being put into liquidation. We must not forget that the corporate debtor consists of several employees and workmen whose daily bread is dependent on the outcome of the corporate insolvency resolution process. If there is a resolution applicant who can continue to run the corporate debtor as a going concern, every effort must be made to try and see that this is made possible

(Regulation 32 of the Insolvency and Bankruptcy Board of India

(Liquidation Process) Regulations, 2016, states that the liquidator may also sell the corporate debtor as a going concern). A reasonable and balanced construction of this statute would therefore lead to the result that, where a resolution plan is upheld by the Appellate Authority, either by way of allowing or dismissing an appeal before it, the period of time taken in litigation ought to be excluded.”

Thirdly, the primary objective of the resolution is for maximisation of value of assets of the Corporate Debtor and thereby for the benefits of all creditors. Hon’ble the Appellate Tribunal in the case of Binani Industries Limited. v. Bank of Baroda & Anr. in Company Appeal(AT) (Insolvency) No. 82 of 2018 decided on 14.11.2018, has also highlighted that the object of the Code is also to promote entrepreneurship, availability of credit and to balance the interests. Hon’ble Appellate Tribunal has also indicated that the Code aims at promoting availability of credit by rescuing the failing but viable business. The Resolution plan is to result in resolving the insolvency and rather than the driving the corporate debtor into the death-whole of ‘undischarged insolvent’. If that is the underlying ideas of the Code then no way a body corporate like Tayo Rolls Ltd. could be regarded as ‘undischarged insolvent’ at the stage of admission of the petition against it.

48. We accept the submission of Mr. Nayar based on the judgment of Hon'ble the Supreme Court rendered in the case of **Thampanoor Ravi** (supra) that unless a declaration is given by an Insolvency Court with regard to the insolvency no disqualification would be attracted to H1 Applicant-TSL which is not available in this case. We are however not able to persuade ourselves to accept the submission that it is only a person and individual who could incur disqualification but not a body corporate like H1 Applicant-TSL. Reliance placed on the provisions of Section 79(3) of the Code and argument raised that the term 'bankrupt' refers only to individuals could not be accepted as Section 29A itself figures in part II which deals with insolvency resolution and liquidation for corporate persons. It is further pertinent to notice that Section 29A of the Code was incorporated by amendment w.e.f. 23.11.2017 and the Parliament was fully aware of the provisions of Section 79 (3) of the Code which deals with expression 'bankrupt' which is made the basis for arguments that only individual could be undischarged insolvent not a Corporate entity. Even the expression 'person' used in



Section 29A of the Code has been defined to include a body corporate (company) by virtue of Section 3 (23) of the Code.

An adjudication in respect of the corporate debtor to conclude that it is 'undischarged insolvent' has to be entrusted to a court of competent jurisdiction. We are unable to persuade ourselves that the adjudicating authority-NCLT has been vested with the jurisdiction to declare a body corporate as 'undischarged insolvent'. Such a findings lead to a very serious prejudice for a body corporate and its 'Directors'. Even in the Companies Act, 2013 there is complete absence of any provision which provide that on admission of a petition under Sections 7, 9 or 10 of the Code, the company would be regarded as 'undischarged insolvent'. Therefore, it is extremely doubtful whether the Adjudicating Authority-NCLT has jurisdiction to issue such a declaration by adopting a summary procedure.

49. This brings us to the other objections raised by the Ex-Promoter/Director. We are unable to find any substance that there is a collusion between the H1 Applicant-TSL and the RP. The allegations are bald and could not be substantiated. The whole thing has been monitored and approved by the CoC and nothing specific could be imputed to the RP.

Likewise, an issue has been raised concerning valuation. It is true that on account of scrapping of Power Purchase Agreements the valuation might be on lower side but scrapping of the agreement is with the approval of the Adjudicating Authority-NCLT. It is appropriate to mention that on the application filed by RP in Bhushan Steel Limited the Power Purchase Agreements were found to be exorbitant in its rates and the aforesaid application was allowed on 15.05.2018. Therefore, if it might have impacted the valuation but it would not result in any illegality. We are also not impressed with the allegation of concealment of proceedings which are stated to be pending before Hon'ble the Supreme Court. There is sufficient material on record to show that the aforesaid facts were disclosed more than adequately.

50. As a sequel of the above discussion, the resolution plan is accepted and all objections are over-ruled. However, the acceptance and approval of the resolution plan shall be subject to the following;

a) The amount due to the operational creditor under the resolution plan must be accorded priority in payment over the financial creditor as is laid down in Regulation 38(1) of the Insolvency Resolution Regulations, 2016.

b) CA No. 384(PB)/2019 which has been disposed of today involves the claim of the Operational Creditor which

submitted on 22.11.2018 by the applicant namely M/s. Redeem Engineering while deciding the aforesaid application, the resolution professional has been asked to consider the claim and if it is found meritorious and in order then the name of the applicant is to be included in the list of creditors and is to be paid according to the resolution plan.

- c) The resolution plan would be binding on the corporate debtor, its creditors, guarantors, members, employees and other stakeholders. The reduction of share capital of the corporate debtor as contemplated by the resolution plan (Annexure -5) would take effect without any further deed or act on the part of the corporate debtor and/or its constitutes.
- d) We also approve the appointment of Monitoring Agency from the date of this order until the closing date. Accordingly, the CoC and the RP would continue as Monitoring Agency.
- e) The power of the Board of Directors of the Corporate Debtor shall remain suspended until the closing date.



f) The reliefs sought under Section 10.2 of the resolution plan cannot be regarded as condition precedent for approval of the resolution plan. Various reliefs are sought from the statutory authorities under the Income Tax Act, 1961, Ministry of Corporate Affairs, Department of Registration and Stamps, Reserve Bank of India and others have been sought. We do not feel persuaded to accept the prayer made in the resolution plan yet the resolution plan applicant may file appropriate applications before the competent authorities which would be considered in accordance with the law because it would not be competent for the Adjudicating Authority-NCLT to enter into any such area and granting relaxation, concession or waiver which is wholly within the domain of competent authorities.


g) In respect of the relief claimed under the caption 'Requests' we are again not in a position to grant those requests which pertains to criminal proceedings/penalties. It may only be observed that the

resolution plan applicant may file appropriate application before the competent authorities seized of the criminal proceedings/penalties which shall be considered in accordance with the applicable law.

h) It is needless to clarify that Section 30(2) (f) of the Code mandates that the Resolution plan should not be against any provisions of the existing law. The resolution applicant, therefore, shall adhere to all the applicable laws for the time being in force.

The application stands disposed of in the above terms.

51. The sealed covers which have been furnished during the course of hearing shall be returned after re-sealing by the Bench Officer to the learned Counsel for the RP and acknowledgment of receipt may be obtained.

  
(M.M. KUMAR) 30.05.  
PRESIDENT 2019

  
(S.K. MOHAPATRA)  
(MEMBER TECHNICAL)

30.05.2019  
Aarti Makker

**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**PRINCIPAL BENCH**

**CA No. 950(PB)/2018 in**  
**C.P. (IB)-530(PB)/2017**

**IN THE MATTER OF:**

State Bank of India  
vs.

.... Applicant/petitioner

Bhushan Energy Limited

.... Respondent

**Order under Section 7 of Insolvency & Bankruptcy Code, 2016**

**Order delivered on 30.05.2019**

**CORAM:**

**CHIEF JUSTICE (RTD.) M.M. KUMAR**  
**HON'BLE PRESIDENT**

**SH. S.K. MOHAPATRA,**  
**HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Resolution Applicant: Mr. Rajiv Nayar, Senior Advocate with  
Mr. V.P. Singh, Mr. A.R Chaudhary, Mr. Utsav  
Trivedi, Mr. Navandeep Matta, Mr. Sahil Monga, Ms.  
Ruby Singh, Ms. Tahira, Ms. Pallavi Kumar, Ms.  
Shweta Kakkad, Mr. Angad Baxi, Mr. Sumesh  
Dhawan, Mr. Rishi Mongia and Ms. Tanya Baranwal,  
Advocates for Resolution Applicant-TSL

For the non-applicant Dr. U.K Chaudhary, Sr. Adv. with Mr. Anuj Malhotra,  
Mr. Parminder Singh, Mr. Himanshu Vij, Advs. for  
Vistrat.

For the CoC Mr. Abhinav Vashisht, Sr. Adv. with Ms. Misha, Mr.  
Vaijayant Paliwal, Mr. Saurav Panda, Advs.

For the RP Mr. Arun Kathpalia, Sr. Adv. with Mr. Amar Gupta,  
Mr. Mayank Mishra, Ms. Pallavi Kumar, Advocates.

For Bhushan Steel Ltd. Mr. Aditya Jalan, Mr. Navandeep Matta, Advs.  
For the Ex. Management Mr. Abhishek Anand, Adv.  
Mr. Pankaj Jain, Adv. for CA-384/19.

**M.M.KUMAR, PRESIDENT**

**ORDER**

CA No. 950(PB)/2018  
In CP No. (IB)-530(PB)/2017 in the matter of  
State Bank of India v. Bhushan Energy Limited

**CA-950(PB)/2018:-**

Reply to the application has not been filed. The non-applicant-respondent is directed to file the reply within two weeks with a copy in advance to the counsel for the applicant-resolution professional.

List for arguments on 14.06.2019.

*Sd/-*  
**(M.M. KUMAR)**  
**PRESIDENT**

*Sd/-*  
**(S.K. MOHAPATRA)**  
**(MEMBER TECHNICAL)**

30.05.2019  
Aarti Makker

**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**PRINCIPAL BENCH**

**CA No. 1079(PB)/2018 in**  
**C.P. (IB)-530(PB)/2017**

**IN THE MATTER OF:**

State Bank of India

.... Applicant/petitioner

vs.

Bhushan Energy Limited

.... Respondent

**Order under Section 7 of Insolvency & Bankruptcy Code, 2016**

**Order delivered on 30.05.2019**

**CORAM:**

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Ruby Singh, Ms. Tahira, Ms. Pallavi Kumar, Ms.  
Shweta Kakkad, Mr. Angad Baxi, Mr. Sumesh  
Dhawan, Mr. Rishi Mongia and Ms. Tanya Baranwal,  
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For Bhushan Steel Ltd. Mr. Aditya Jalan, Mr. Navandeepp Matta, Advs.  
For the Ex. Management Mr. Abhishek Anand, Adv.  
Mr. Pankaj Jain, Adv. for CA-384/19.

**M.M.KUMAR, PRESIDENT**

**ORDER**

CA No. 1079(PB)/2018  
In CP No. (IB)-530(PB)/2017 in the matter of  
State Bank of India v. Bhushan Energy Limited




**CA-1079(PB)/2018:-**

The delay in filing the reply/objections by the Ex-promoters/directors is condoned and the reply is taken on record. Arguments on behalf of the applicant have already been heard and are dealt with in the main application being CA No. 929(PB)/2018.

The application stands disposed of.

  
(M.M. KUMAR)  
PRESIDENT

  
(S.K. MOHAPATRA)  
(MEMBER TECHNICAL)

30.05.2019  
Aarti Makker

**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**PRINCIPAL BENCH**

**CA-384(PB)/2019 in**  
**C.P. (IB)-530(PB)/2017**

**IN THE MATTER OF:**

State Bank of India

.... Applicant/petitioner

vs.

Bhushan Energy Limited

.... Respondent

**Order under Section 7 of Insolvency & Bankruptcy Code, 2016**

**Order delivered on 30.05.2019**

**CORAM:**

**CHIEF JUSTICE (RTD.) M.M. KUMAR**  
**HON'BLE PRESIDENT**

**SH. S.K. MOHAPATRA,**  
**HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Resolution Applicant: Mr. Rajiv Nayar, Senior Advocate with  
Mr. V.P. Singh, Mr. A.R Chaudhary, Mr. Utsav  
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For the CoC Mr. Abhinav Vashisht, Sr. Adv. with Ms. Misha, Mr.  
Vaijayant Paliwal, Mr. Saurav Panda, Advs.

For the RP Mr. Arun Kathpalia, Sr. Adv. with Mr. Amar Gupta,  
Mr. Mayank Mishra, Ms. Pallavi Kumar, Advocates.

For Bhushan Steel Ltd. Mr. Aditya Jalan, Mr. Navandeep Matta, Advs.

For the Ex. Management Mr. Abhishek Anand, Adv.

Mr. Pankaj Jain, Adv. for CA-384/19.

**M.M.KUMAR, PRESIDENT**

**ORDER**

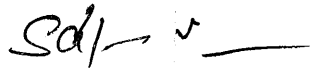
CA No. 384(PB)/2019


In CP No. (IB)-530(PB)/2017 in the matter of  
State Bank of India v. Bhushan Energy Limited

**CA-384(PB)/2019:-**

The claim of the operational creditor amounts to be Rs. 19, 69,296/- and it has not been included by the resolution professional in the list of creditors prepared by him in the CIR process of Bhushan Energy Limited. The claim is supported by various invoices and the same was submitted to the resolution professional on 22.11.2018. There is delay in submitting the claim which is ignorable. The resolution professional is directed to consider the claim of the operational creditor within a week. If it is found meritorious and in order then the name of the applicant be included in the list of creditors. The applicant-operational creditor shall be paid according to the resolution plan. It is directed that necessary amendment in the resolution plan be accordingly effected.

The application stand disposed of.

  
**(M.M. KUMAR)**  
**PRESIDENT**

  
**(S.K. MOHAPATRA)**  
**(MEMBER TECHNICAL)**

30.05.2019  
Aarti Makker

**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**PRINCIPAL BENCH**

**CA No. 616(PB)/2019 in**  
**C.P. (IB)-530(PB)/2017**

**IN THE MATTER OF:**

State Bank of India

.... Applicant/petitioner

vs.

Bhushan Energy Limited

.... Respondent

**Order under Section 7 of Insolvency & Bankruptcy Code, 2016**

**Order delivered on 30.05.2019**

**CORAM:**

**CHIEF JUSTICE (RTD.) M.M. KUMAR**  
**HON'BLE PRESIDENT**

**SH. S.K. MOHAPATRA,**  
**HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Resolution Applicant: Mr. Rajiv Nayar, Senior Advocate with  
Mr. V.P. Singh, Mr. A.R Chaudhary, Mr. Utsav  
Trivedi, Mr. Navandeepp Matta, Mr. Sahil Monga, Ms.  
Ruby Singh, Ms. Tahira, Ms. Pallavi Kumar, Ms.  
Shweta Kakkad, Mr. Angad Baxi, Mr. Sumesh  
Dhawan, Mr. Rishi Mongia and Ms. Tanya Baranwal,  
Advocates for Resolution Applicant-TSL

For the non-applicant Dr. U.K Chaudhary, Sr. Adv. with Mr. Anuj Malhotra,  
Mr. Parminder Singh, Mr. Himanshu Vij, Adv. for  
Vistrat.

For the CoC Mr. Abhinav Vashisht, Sr. Adv. with Ms. Misha, Mr.  
Vaijayant Paliwal, Mr. Saurav Panda, Adv.

For the RP Mr. Arun Kathpalia, Sr. Adv. with Mr. Amar Gupta,  
Mr. Mayank Mishra, Ms. Pallavi Kumar, Advocates.

For Bhushan Steel Ltd. Mr. Aditya Jalan, Mr. Navandeepp Matta, Adv.  
For the Ex. Management Mr. Abhishek Anand, Adv.  
Mr. Pankaj Jain, Adv. for CA-384/19.

**M.M.KUMAR, PRESIDENT**

**ORDER**


CA No. 616(PB)/2019  
In CP No. (IB)-530(PB)/2017 in the matter of  
State Bank of India v. Bhushan Energy Limited

**CA-616(PB)/2019:-**

This is an application for extending the order of moratorium passed under Section 14 of the Code, 2016 for 08.01.2018. On 04.04.2019 the interim order of moratorium was extended till the time it is revoked purportedly by virtue of proviso to sub-Section 4 of Section 14 of the Code. The order in the application under Section 31 namely CA-929(PB)/2018 has been pronounced today by approving the Resolution plan of H-1 applicant and the moratorium would come to an end with the pronouncement of the order as is provided by proviso to sub-Section 4 of Section 14 of the Code.

The application has been rendered infructuous and is disposed of as such.

  
(M.M. KUMAR)  
PRESIDENT

  
(S.K. MOHAPATRA)  
(MEMBER TECHNICAL)

30.05.2019  
Aarti Makker