NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 2012-2013 of 2024
&
I.A. No. 7544 of 2024

[Arising out of Order dated 06.09.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Court – II, Mumbai Bench), in I.A. No. 1956/2024 & I.A. No. 2520/2024 in C.P (IB) No. 1765/MB/2018]

IN THE MATTER OF:

Darwin Platform Infrastructure Limited
H-127, Ansa Industrial Estate,
Sakivihar Road, Saki Naka,
Andheri East, Mumbai-400072. **...Appellant**

Versus

1. Union Bank of India
Through its Managing Director
Having branch at:
Stressed Assets Management
Branch, 104, Ground Floor
Bharat House, B.S. Marg,
Fort, Mumbal-400 023
Also at:
Union Bank Bhavan, 239,
Vidhan Bhavan Marg,
Nariman Point, Mumbai–400021. **...Respondent No. 1**

2. State Bank of India
Branch Office:
Overseas Branch, Ashok Mahal,
1204, Tulloch Road, Colaba,
Mumbal-400038.
Also at:
Stressed Assets Resolution
Group Corporate Centre, 21st Floor,
Maker Tower "E", Cuffe Parade,
Colaba, Mumbai – 400005. **...Respondent No. 2**

3. Bank of India
Head Office:
"Star House" C-5, G – Block,
Bandra Kurla Complex,
Bandra (East), Mumbai – 400 051

Also at:
Bank of India Building,
4th Floor, 70-80, M.G. Road, Fort,
Mumbai – 400001 **...Respondent No. 3**

4. Central Bank of India
Head Office:
Chander Mukhi, Nariman Point,
Mumbai – 400 021
Also At:
Stressed Asset Management Branch (II),
B.K.C Mumbai 2nd Floor, NCL Building,
Plot No. 6, E Block, Bandra Kurla Complex,
Bandra East, Mumbai – 400051 **...Respondent No. 4**

5. Punjab National Bank
Head Office:
7, Bhikaji Cama Palace,
New Delhi – 110066.
Branch Office:
Punjab National Bank Zonal
Sastra Centre, 181A, 18th Floor,
E Wing, Maker Tower, Cuffe Parade,
Mumbai – 400005 **...Respondent No. 5**

6. Indian Bank
Corporate Office:
PB No.5555, 254-260, Avvai Shanmugam Salai,
Royapettah, Chennai – 600014. **...Respondent No. 6**

7. Bank of Baroda
Head Office:
Suraj Plaza-I Sayajiganj,
Baroda – 390005
Also At:
Stressed Asset Management Branch,
17/B, First Floor,
Homji Street, Horniman Circle,
Fort, Mumbai – 400023 **...Respondent No. 7**

8. Phoenix Arc Private Limited
5th Floor, Dani Corporate Park,
158, CST Road, Kalina, Santacruze,
Mumbai – 400098 **...Respondent No. 8**

9. Asset Reconstruction Company of India Ltd. (ARCIL)
The Ruby, 10th Floor, 29,
Senapati Bapat Marg,

Dadar (W), Mumbai – 400028. **...Respondent No. 9**

10. Axis Bank Ltd.
Structured Asset Group,
Axis Bank Ltd., 7th Floor, B Wing,
C-2, Wadia International Centre,
P.B. Marg, Worli,
Mumbai – 25. **...Respondent No. 10**

11. Asset Care & Reconstruction Enterprise Ltd. (ACRE)
502, C Wing, One BKC, G Block,
BKC, Bandra (East),
Mumbai – 51
Also At:
Unit No. 1504, 15th Floor, B Wing,
One BKC Building, Plot No. C – 66,
GB CK, Bandra Kurla Complex,
Bandra, Mumbai – 400051. **...Respondent No. 11**

12. SSG Investment Holding India Ltd.
Rogers House,
5 President John Kennedy Street Port,
Louis, Mauritius **...Respondent No. 12**

13. Edelweiss Asset Reconstruction Company Ltd.
Edelweiss House, 1st Floor,
Off CST Road, Kalina,
Mumbai – 4000098. **...Respondent No. 13**

14. India Opportunities II PTE Ltd.
39, Robinson Road, 15-03, Robinson Point,
Singapore 068911, SG **...Respondent No. 14**

15. Karnataka Bank Ltd.
Overseas Branch:
104-106, Embassy Centre,
Jamnalal Bajaj Road,
Nariman Point, Mumbai – 400021. **...Respondent No. 15**

16. Bennett Coleman & Company Limited
Trade Avenue, Ground Floor, Suren Road,
Off Western Express Highway,
Andheri (East), Mumbai – 400093.
<u>Also at:</u>
Bennett, Coleman & Company Ltd.,
Times of India Building, 2nd Floor,
Dr. D.N. Road, Fort,

Mumbai – 400 001. **...Respondent No. 16**

17. Mr. Shailesh Verma
Resolution Professional of Lavasa Corporation Limited, Warasgaon Assets Maintenance Ltd., Dasve Convention Centre Ltd. Dasve Retail Ltd., Warasgaon Power Supply Ltd.
Address:
E1004, Vijaya Apartments, Mall Road,
Ahinsa Khand 2, Near Shanti Gopal Hospital,
Indirapuram, Ghaziabad – 201014. **...Respondent No. 17**

Present:

For Appellant	:	**Mr. Nagesh P., Sr. Advocate and Mr. Lovkesh Sawhney, Sr. Advocate with Mr. Rohit Jain and Mr. Gaurav Jain, Advocates.**
For Respondents	:	**Mr. Krishnendu Datta, Sr. Advocate with Mr. Abhishek Swaroop, Mr. Anupm Prakash, Ms. Kirti Talreja and Ms. Alina Merin, Advocates for R-1 to 16.** **Mr. Vaijayant Paliwal, Ms. Kirti Gupta, Mr. Devansh Rathi, Advocates with Mr. Udayraj Patwardhan, RP for RP.**

O R D E R

ASHOK BHUSHAN, J.

This appeal has been filed challenging the order dated 06.09.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Court – II, Mumbai Bench) rejecting I.A. No.1956/2024 filed by the appellant and allowing I.A. No.2520/2024 filed by the Respondent/Union Bank of India (UBI). Both the orders are under challenged in these two appeals.

2. Brief facts of the case necessary to be noticed for deciding these appeals are:

i. On an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short 'the Code' or 'the IBC'), the Corporate

Debtor – Lavasa Corporation Limited was admitted to insolvency resolution process by order dated 30.08.2018.

ii. In the Corporate Insolvency Resolution Process (CIRP) of the corporate debtor, resolution plans were invited.

iii. The appellant submitted its resolution plan on 20.11.2021. In the Committee of Creditors (CoC) meeting held on 13.12.2021. The resolution plan of the appellant was approved with 96.41% vote shares.

iv. Adjudicating Authority also passed an order approving the resolution plan vide its order dated 23.12.2021.

v. Appellant gave a Performance Bank Guarantee (PBG) of Rs.25 crore on 31.12.2021.

vi. Under the orders of Adjudicating Authority, certain modification in the resolution plan was approved by the CoC and the addendum submitted by appellant was approved.

vii. Subsequently, Adjudicating Authority passed an order on 21.07.2023, approving the resolution plan of the appellant which is referred herein as plan approval order.

viii. On 25.07.2023 Monitoring Committee was constituted. 25.07.2023 was treated as an effective date as per the resolution plan. Several meetings of Monitoring Committee were held.

ix. On 11.09.2023, State Bank of India (SBI) filed an appeal in this Tribunal challenging the plan approval, which appeal was subsequently dismissed on 13.02.2024.

x. On 16.09.2023, UBI filed I.A.4340/2023, praying for recall of the plan approval order, which application also came to be dismissed on 10.11.2023 and the appeal to this Tribunal also dismissed on 10.01.2024.

xi. 7th meeting of the Monitoring Committee was held on 19.03.2024.

xii. On 06.04.2024, Joint Lenders Meeting (JLM) was held, where lenders were of opinion that Successful Resolution Applicant (SRA) has failed to implement the plan. Lenders decided to invoke the PBG.

xiii. On 08.04.2024, UBI invoked the PBG.

xiv. An I.A. No.1956/2024 was filed by the appellant challenging the invocation of PBG by the UBI.

xv. On 26.04.2024, the UBI and other lenders filed I.A.2520/2024, praying for various reliefs, including a re-initiation of CIRP of the corporate debtor.

xvi. Both the applications were heard by Adjudicating Authority and Adjudicating Authority by impugned order dated 06.09.2024, rejected the I.A.1956/2024 filed by the appellant and allowed the I.A.2520/2024.

3. We have heard Learned Sr. counsel, Mr. P Nagesh appearing for the appellant. Learned Sr. counsel, Mr. Krishnendu Dutta has appeared for the Financial Creditors/Respondent Nos. 1 to 16. Learned counsel, Mr. Vaijayant Paliwal has appeared for the Resolution Professional (RP).

4. Learned Sr. counsel, Mr. P Nagesh appearing for the appellant submits that after the plan approval order dated 21.07.2023, financial creditors including UBI and SBI took steps objected to the approval of the plan. SBI filed an appeal on 11.09.2023 and UBI filed an application before NCLT for recall of the order on 16.09.2023. Financial creditor having started questioning the approval of the plan, stage of uncertainty was set in and it was not possible for the SRA to implement the resolution plan. There was absolute non-cooperation on part of the lenders to the appellant. Appellant agreed to all terms and conditions concerning the commercial aspect of the plan. Appellant submitted PBG well within the time. Appellant has always been ready to implement the plan. Adjudicating Authority ought to have allowed the application filed by the appellant and permitted him to deposit the amount. The invocation of the Bank Guarantee by UBI on 08.04.2024 was uncalled for. In the meeting held on 19.03.2024, the Resolution Applicant (RA) expressed his willingness to implement the plan, post 20.04.2024.

5. Learned Counsel appearing for the CoC refuting the submissions of the appellant submits that as per the timeline for the payment under the resolution plan, SRA was to infuse Rs.100 crore within 90 days. In the Monitoring Committee, meetings held from time to time. SRA was asked to implement the plan and it was then JLM was held on 06.04.2024. JLM opined that SRA has failed to implement the plan. Decision was taken to invoke the PBG by majority of lenders. In the application filed by the UBI, as well as, the appeal filed by the SBI, there was no interim order restraining the SRA to implement the plan or to infuse the amount, more than 409 days have been elapsed, but the plan has not been implemented. Plan having not been implemented by the SRA, no error has been committed by the Adjudicating Authority in allowing the I.A.2520/2024 filed by the UBI. It is submitted that timelines for implementation of the resolution plan are of significance and when the SRA failed to implement the plan within the timeline as allowed, Adjudicating Authority has rightly passed the impugned order which does not warrant any interference in this appeal.

6. Learned counsel for the RP has also supported the submissions of counsel for the CoC.

7. We have considered the submissions of counsel for the parties and perused the record.

8. In the Monitoring Committee meeting held on 19.03.2024, it was noticed that SRA was obliged to make the payment within 90 days of the effective date. In the meeting held on 19.03.2024 on Agenda Item No. 15, following was noticed:

> ***"Agenda 15: To discuss on the infusion of upfront payment in terms of the Approved Resolution Plan***
>
> *Deloitte team presented the Schedule for Payment within 90 days under the Resolution Plan:*

Schedule for Payment within 90 days under the Approved Resolution Plan*			
Sr no.	**Category**	**Timeline**	**Amount**
1	CIRP Costs**	E+90	120.57
2	Upfront Payment to SFCs***	E+90	4.74
3	Operational Creditors	E+90	9.69
4	Workmen and Employees	E+90	5.57
5	Environmental Clearance extension/renewal cost	E+90	5.00
	Total (INR in crores)		**145.57**

**The approved resolution Plan under Financial structure section provides that in order to operate the CD as a going concern, working capital investment to the tune of "" INR 22.50 Crores would also be infused on monthly basis from Effective Date and the said amount is fully payable within 15 months from the Effective Date.*

***i. CIRP cost would be completely payable at the end of 90 days from receipt of certified copy of Hon'ble NCLT order approving the resolution plan.*

ii. CIRP Cost over INR 80 crore shall be adjusted from payments to secured financial creditors.

****AS per para 18 of the Plan Approval Order:*

"18. In relation to Dissenting Financial Creditors, the Resolution Plan clarifies that financial creditors, who do not vote in favour of this Resolution Plan, will be entitled to receive at least the amount that they would have received in i:Jccordance with sub-section (1) of Section 53 of the Code in the event of a liquidation of the Corporate Debtor, in priority to the payments being made to the financial creditors who vote in favour of the Resolution Plan, in compliance with Section 30 of the Code and Regulation 38 of the CIRP Regulations...."

Note: RA has filed an IA 4863 of 2023 wherein they has sought an exclusion for the period from 6.10.2023 till the disposal of IA 4340/2023 filed by UBI. The said application is still sub-judice and is listed before Hon'ble NCLT on April 26, 2024.

The Chair apprised the MC members that the abovementioned amount was required to be paid by the RA within 90 days of the effective date in terms of the resolution plan, however on account of various issues and ongoing litigations, it has not been paid even though there was no stay on the approval of the resolution plan. Therefore, the MC members may discuss on the way forward in this regard."

9. SRA was obliged to pay Rs.100 crore within 90 days. Adjudicating Authority in the impugned order has also noticed that SRA has failed to deposit the amount within 90 days as per the resolution plan. The invocation of Bank Guarantee with the UBI on 08.04.2024 was taken, which was noticed and Adjudicating Authority has observed that with consent of majority lenders of the corporate debtor, the Bank Guarantee was invoked. Letter dated 08.04.2024 invoking the Bank Guarantee itself clearly mentions that SRA failed to implement the approved resolution plan.

10. The submission of the appellant that PBG was not properly invoked was considered and rejected. In paragraphs 33.12, 34.3 & 35.1, following findings have been returned:

"33.12 It is pertinent to observe that SRA not only failed to make the Upfront payment as required under the approved Resolution Plan but also failed to take any real steps even after the dismissal of appeals by Hon'ble NCLAT on 10.01.2024 (appeal filed by Union Bank) and 13.02.2024 (appeal filed by SBI). The PBG was invoked by Union Bank on 08.04.2024 i.e., many days after the rejection of the appeals. This clearly demonstrates that the SRA was never ready to implement the plan and was only making excuses to somehow save tile PBG amount. In the light of the

discussion, we have no hesitation in holding that SRA has starkly contributed to the failure of implementation of the Approved Resolution Plan in accordance with the terms of the Approved Resolution Plan. Consequently, Union Bank has rightly invoked and encashed the PBG furnished for by SRA, and the proceeds thereof can be used for the purposes as decided by CoC.

34.3 There is no dispute with regard to the proposition of law laid down in the above-cited case. However, our consideration here is limited to whether the present is a case fit for an extension of time. It is noticed that the Resolution plan was approved by this Tribunal way back on 21.07.2023 and even after one year, nor a single positive action appears to have been taken by the SRA towards the implementation of the plan. It is also pertinent to observe that even in the Application, the SRA has not given any specific period for making the upfront payment and the remaining payments under the Resolution Plan but only states that it is ready and willing to implement the Resolution Plan subject to the lender banks and home buyers giving an assurance that they will not prosecute and/or initiate any proceedings challenging the Resolution Plan. It is only a conditional prayer without a clear timeframe for making payments including the upfront payment. Thus, we are of the considered view that the facts and circumstances of the present case, the applicant Jacks the bona fides to justify an extension of timelines under the Resolution Plan.

35.1 Having come to the conclusion that the SRA has failed to implement the approved Resolution Plan, the question which now arises for consideration is as to whether the CIRP can be restored or not. While the Union Banlc on behalf of secured creditors of the Corporate Debtor has sought restoration of CIRP as well as exclusion of period from the date of submission of the resolution plan to the date of the filing of the application for approval to the Tribunal, and dissolution of the Monitoring Committee, the SRA, however has submitted that in the event of failure of an approved resolution plan, the only consequence permissible under the Code is liquidation."

11. Although, the appellant has referred to filing of the application by the UBI to recall of the approval order and filing of the appeal by the SBI, it is relevant to notice that even after dismissal of the appeal on 13.02.2024 and rejection of IA filed by the UBI on 10.11.2023, no amount was infused by the SRA. The litigation which was initiated with respect to approval of the resolution plan could not be a reason to appellant to not adhere to the timelines as provided in the resolution plan regarding the infusion of fund upfront payment of Rs.100 crore, which was required to be paid within 90 days admittedly has not been paid by the SRA. Effective date having been achieved on 25.07.2023, it is not even contested. The letter dated 08.04.2024 by which the appellant was informed by ICICI Bank about the invocation letter received on 08.04.2024 has been brought on the record. Invocation of the Bank Guarantee on 08.04.2024 by UBI was in pursuance of majority decision taken by the JLM on 06.04.2024. Invocation of PBG was on the reason that SRA failed to implement the plan. Adjudicating Authority has rightly rejected the submission of the appellant that invocation was not in accordance with the law. When the plan is not implemented by SRA, PBG can be statutorily invoked, which is the statutory scheme as delineated by Regulation 36B(4A) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which is as follows:

> *"36B Request for resolution plans.*
>
> *(4A) The request for resolution plans shall require the resolution applicant, in case its resolution plan is approved under sub-section (4) of section 30, to provide a performance security within the time specified therein and such performance security shall stand forfeited if the resolution applicant of such plan, after its approval by the Adjudicating Authority, fails to implement or contributes to the failure of implementation of that plan in accordance with the terms of the plan and its [4][implementation schedule:]*
>
> *[5][Provided that where the corporate debtor has any real estate project, the committee may relax the*

requirement to provide for performance security for an association or group of allottees in such real estate project, representing not less than ten per cent. or one hundred creditors out of the total number of creditors in a class, whichever is lower.]

Explanation I. – For the purposes of this sub-regulation, "performance security" shall mean security of such nature, value, duration and source, as may be specified in the request for resolution plans with the approval of the committee, having regard to the nature of resolution plan and business of the corporate debtor. Explanation II. – A performance security may be specified in absolute terms such as guarantee from a bank for Rs. X for Y years or in relation to one or more variables such as the term of the resolution plan, amount payable to creditors under the resolution plan, etc.]"

12. Learned counsel for the CoC has rightly contended that not a single penny has been paid by the SRA, although, more than 409 days have been elapsed. The CIRP process has to be completed in a timeline and timeline of the CIRP process has to be adhered by all, including the SRA. In this context, we may refer to the judgment of the Hon'ble Supreme Court in the matter of ***'State Bank of India & Ors.' Vs. 'Consortium of Murari Lal Jalan and Florian Fritsch & Anr.'*** reported in 2024 ***SCC OnLine SC 3187.*** Timely implementation of the resolution plan is also one of the underlying objectives of the IBC as was held by the Hon'ble Supreme Court in ***'State Bank of India & Ors.' (Supra)*** in paragraph 154, which is as follows:

"154. *Several decisions of this court have highlighted the importance of a speedy resolution process under the Insolvency and Bankruptcy Code, 2016 in the context of either completing the corporate insolvency resolution process in a time-bound manner as per section 12 of the Insolvency and Bankruptcy Code, 2016 or ensuring that the liquidator does not cause unnecessary delay or inefficiency in the liquidation process. A primary and predominant consideration behind minimising delay is to ensure that the assets of*

> *the corporate debtor do not get frittered away or depreciated due to the time lag caused either during the corporate insolvency resolution process or during the liquidation process overseen by the Liquidator. Such a time bound action is also equally important and imperative while the resolution plan is being implemented by the successful resolution applicant. Unnecessary delay caused in implementation of the resolution plan would also lead to similar consequences of the assets of the corporate debtor diminishing in value. Therefore, there is no doubt that the timely implementation of the resolution plan is also one of the underlying objectives of the Insolvency and Bankruptcy Code, 2016."*

13. Learned counsel for the CoC had submitted that in the CIRP process which was revived after the impugned order, several plans are under consideration.

14. We may further notice that appellant before the Adjudicating Authority as well as before this Tribunal has submitted that appellant is still ready to deposit amount, when the appellant has failed to deposit the amount within the timeline, it is not open for the appellant to deposit the amount at the stage when the application was filed or in the hearing of the appeal. Consequences of non-adhering to the timelines in the resolution plan, cannot be reversed after considerable lapse of time, and specially, when not even first tranche of payment has been made by the SRA.

15. We are of the view that Adjudicating Authority has rightly after considering the submissions of the parties taken a decision to reject the I.A.1956/2024. Coming to the order passed by the Adjudicating Authority on I.A.2520/2024, after dismissal of the application I.A.1956/2024 by the SRA, Adjudicating Authority did not commit any error in restoring the CIRP and excluding certain time.

16. We, thus are of the view that no grounds have been made out to interfere with the order impugned in these appeals. Appeals dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

NEW DELHI

06th March, 2025

himanshu