

State Bank of India and Ors
v.
The Consortium of Mr Murari Lal Jalan and
Mr Florian Fritsch and Anr

(Civil Appeal Nos 3736-3737 of 2023)

18 January 2024

[Dr Dhananjaya Y Chandrachud*, CJI, J B Pardiwala and
Manoj Misra, JJ.]

Issue for Consideration

Consortium of lenders represented by the State Bank of India filed affidavit stating that the lenders were agreeable that if Successful Resolution Applicant (SRA) satisfied particular criteria, including infusing Rs. 350 Crores by 31.08.2023, adhering to the resolution plan terms, and meeting employee payment obligations in accordance with the NCLAT order, they would abstain from challenging extension of time issues. However, the inability to meet these conditions would necessitate directing the Corporate Debtor-Jet Airways Limited into liquidation. SRA sought extension of time for the deposit of Rs 350 crores in two tranches of Rs 100 crores and the balance of Rs 150 crores by the adjustment of the Performance Bank Guarantee (PBG) issued in favour of the lenders. NCLAT whether justified in allowing the plea of the SRA for adjustment and consequential release of the PBG at the interlocutory stage.

Headnotes

Insolvency and Bankruptcy Code, 2016 – NCLAT permitted the Successful Resolution Applicant (SRA) to adjust the last tranche of Rs 150 crores by adjusting the Performance Bank Guarantee (PBG) of Rs 150 crores – Correctness:

Held: The occasion for an extension of time to the SRA for the deposit of Rs 350 crores arose as a consequence of the affidavit which was filed by SBI before the NCLAT – SBI's affidavit envisaged that the lenders would not contest the issues pertaining to the grant or exclusion of time; or extension in terms of the orders passed by the NCLT on 13.01.2023 and 26.05.2023; and compliance of the conditions precedent by the SRA – However, SBI's offer was subject to the fulfillment of three conditions that the SRA must infuse

* Author

Digital Supreme Court Reports

Rs. 350 Crores by 31.08.2023, adhering to the resolution plan terms, and meeting employee payment obligations in accordance with the NCLAT order dtd. 21.10.2022 upheld by this Court – Conditional on compliance with the three conditions, SBI stated that it would be willing to withdraw the company appeals pending before the NCLAT as well as the Civil Appeals pending before this Court – The offer made by SBI on behalf of the lenders had to be complied with as it stood in the event that the SRA sought the benefit of the offer – According to the SRA, the PBG was liable to be released on adjustment in terms of the Resolution Plan – This is a matter which would have to await an adjudication by NCLAT in the pending appeal – Impugned order allowing the plea of the SRA for adjustment and consequential release of the PBG at the interlocutory stage prima facie would not be in accordance with the tenor of the affidavit filed by SBI – Infusion meant that the third tranche has to be paid in the same manner – Adjustment of the PBG was not permissible – NCLAT not justified in holding that the last tranche of Rs 150 crores which was to be paid would be adjusted against the PBG – The SRA having deposited the first two tranches each of Rs 100 crores must comply with the remaining obligation of depositing Rs 150 crores (to make up a total payment of Rs 350 crores) – Having by its conduct accepted the terms set up by SBI it must be obligated to comply with the entirety of its obligations – It must do so in strict compliance with the time schedule as set out – Directions issued. [Paras 20-22 and 25]

List of Acts

Insolvency and Bankruptcy Code, 2016.

List of Keywords

Corporate Debtor (Jet Airways Limited); Conditions Precedent; Director General of Civil Aviation; Effective Date; Successful Resolution Applicant; Consortium of lenders; Performance Bank Guarantee; Adjustment of Performance Bank Guarantee; Infusing funds; Employees payment obligations

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.3736-3737 of 2023.

**State Bank of India and Ors v. The Consortium of Mr Murari Lal Jalan
and Mr Florian Fritsch and Anr**

From the Judgment and Order dated 03.03.2023 of the National Company Law Appellate Tribunal, Principal Bench at New Delhi in Company Appeal (AT) (Insolvency) Nos.129-130 of 2023.

With

Civil Appeal Nos.4131-4134 And 6427-6428 of 2023.

Appearances for Parties

R. Venkataramani, Attorney General for India, Tushar Mehta, Solicitor General, N. Venkataraman, A.S.G., Mukul Rohatgi, Krishnendu Datta, Saurabh Kripal, Amit Sibal, Sanjay Singhvi, Ritin Rai, Sr. Advs., Vikas Mehta, Mayan Prasad, Ms. Anshula Vijay Kumar Grover, Ms. Rashmi Rampal, Ms. Nitika Grover, Sahil Khan, Sanjay Kapur, Devesh Dubey, Ms. Isha Virmani, Ms. Mahima Kapur, Ms. Mansi Kapur, Mrs. Shubhra Kapur, Aashish Vats, Harish Nadda, Kumar Shashank, Anant Singh, Ms. Srishty Kaul, Rajat Sinha, Ms. Pooja Mahajan, Ms. Arveena Sharma, Ms. Shruti Pandey, Avinash B. Amarnath, Raghav Shankar, Rajendra Barot, Dhirajkumar Totala, Suharsh Sinha, Ms. Liz Mathew, Nishant Upadhyay, Vinay Tripathi, Mayank Bhargava, Darpan Sachdeva, Mehul Bachhawat, Ankit Pal, Ms. Mallika Agarwal, Nisarg Bharadwaj, Ms. Rohini Thyagarajan, Shakti Vardhan, Ms. Amiy Shukla, Pawanshree Agrawal, Ms. Shubhangi Negi, Ms. Ekta Choudhary, Divyank Dutt Dwivedi, Ms. Aditi Sharma, Ms. Petrushka Dasgupta, Mridul Yadav, Ms. Tahira Kathpalia, Ms. Pallavi Pratap, Advs. for the appearing parties.

Judgment / Order of the Supreme Court

Judgment

Dr. Dhananjaya Y Chandrachud, CJI

1. This batch of appeals arises from three orders of the National Company Law Appellate Tribunal¹. A Resolution Plan was submitted under the Insolvency and Bankruptcy Code, 2016² by a consortium of Murari Lal Jalan and Florian Fritsch in respect of the Corporate

1 “NCLAT”

2 “IBC”

Digital Supreme Court Reports

Debtor (Jet Airways Limited). The Plan was voted upon and approved by the Committee of Creditors on 17 October 2020. The Resolution Professional then filed an application before the Adjudicating Authority to seek approval of the Resolution Plan. The Plan received the imprimatur of the Adjudicating Authority – the National Company Law Tribunal³ - on 22 June 2021⁴.

2. Clause 7.6 of the Resolution Plan stipulates conditions for implementation. Clause 7.6.1 spells out the “conditions precedent”:

“7.6.1. Conditions Precedent - The obligation of the Resolution Applicant to re-commence operations as an aviation company, being the business proposed to be acquired is subject to the fulfilment of the following conditions after the Approval Date (“Conditions Precedent”):

- (a) Validation of AOP of the Corporate Debtor by DGCA & MoCA - The AOP of the Corporate Debtor shall have been validated by the DGCA, the MoCA and any other relevant Government Authority and grant of all other mandatory approvals to the Corporate Debtor to enable it to re-commence flying operations (including commercial/ cargo operations) and related on-ground services.
- (b) Submission and approval of the Business Plan to DGCA & MoCA The Business Plan of the Resolution Applicant shall have been submitted after the Approval Date to the DGCA and MoCA for their review, and approval. The Resolution Applicant agrees to modify its business plan to incorporate all reasonable changes required by the DGCA/ MoCA, which otherwise does not make the business unviable for the Resolution Applicant.
- (c) Slots Allotment Approval The DGCA and MoCA shall have approved the reinstatement of all the suspended slots (including the bilateral rights and traffic rights) back to Jet Airways/ Corporate Debtor. The slots (along with related bilateral rights and traffic rights) can be allotted to the Corporate Debtor gradually as per its Business

3 “NCLT”

4 “Plan Approval Order”

**State Bank of India and Ors v. The Consortium of Mr Murari Lal Jalan
and Mr Florian Fritsch and Anr**

Plan with immediate slots allotment approval (along with related bilateral rights and traffic rights) for sectors on which Jet 2.0 proposes to recommence operations after the Effective Date.

- (d) International Traffic Rights Clearance The Corporate Debtor shall have received the International Traffic Rights Clearance in compliance with Applicable Laws.
- (e) Demerger - The Scheme filed as part of this Resolution Plan shall have been approved under Applicable Laws and the Demerged Employees shall have demerged from the Corporate Debtor to AGSL along with all their past dues, liabilities and outstanding's with effect from the Approval Date, without the requirement of any further consent or approval of any other stakeholder of AGSL (since we understand that AGSL currently does not have any creditor) or any stakeholder of the Corporate Debtor (including existing or past employee or workmen or employees' unions of the Corporate Debtor)."

3. Clause 7.6.4 contains a stipulation for "automatic withdrawal":

"Automatic Withdrawal - The Resolution Applicant is confident of completing all the Conditions Precedent (as set out in Clause 7.6.1 above) within 90 (ninety) days from the Approval Date. In the unlikely event that all the Conditions Precedent cannot be fulfilled within 90 (ninety) days, the Resolution Applicant takes the responsibility of completing the outstanding Conditions Precedent at the earliest and seeks to extend the Conditions Precedent fulfilment period by another term of maximum 180 (one hundred and eighty) days. If all the Conditions Precedent are not fulfilled within such period (i.e. 270 (two hundred and seventy) days from the Approval Date), then this Resolution Plan shall automatically stand withdrawn without any further acts, deeds, or things. On such withdrawal, the members of the Resolution Applicant in the Monitoring Committee shall resign, and the remaining members of the Monitoring Committee shall assume absolute control of the Corporate Debtor."

Digital Supreme Court Reports

4. In terms of Clause 7.6.1 of the Resolution Plan, the SRA is obligated to re-commence operations as an aviation company subject to the fulfilment of five conditions precedent, namely- (i) Validation of Airline Operator Permit of the Corporate Debtor by the Director General of Civil Aviation (DGCA) and Ministry of Civil Aviation (MoCA); (ii) Submission and Approval of Business Plan by DGCA and MoCA, (iii) Slot Allotment Approval, (iv) International Traffic Rights' Clearance; and (v) Approval of Demerger of ground handling business into a company, namely AGSL. The date of completion of the Conditions Precedent was defined as the 'Effective Date'. Given the uncertainty surrounding the Effective Date, the NCLT, in its Plan Approval Order, mandated the completion of Conditions Precedent and the attainment of the Effective Date within the first 90 days from the Approval Date. The Order also granted the flexibility to request an extension of the 180-day timeline, allowing for an outer limit of 270 days, in accordance with the provisions outlined in the Resolution Plan.
5. These conditions precedent had to be fulfilled, in any event, within an outer limit of 270 days failing which the Resolution Plan would automatically stand withdrawn. Upon this eventuality taking place, the members of the Resolution Applicant in the Monitoring Committee are to resign, and the remaining members of the committee are to assume absolute control over the Corporate Debtor. Following the Effective Date, the SRA is then required to infuse funds and fulfil specified payments to stakeholders, including disbursements to Employees, Workmen, and other Operational Creditors, within 180 days from the Effective Date.
6. The Successful Resolution Applicant⁵ and the consortium of lenders represented by the State Bank of India⁶ were not *ad idem* on whether the conditions precedent were fulfilled. The SRA took the position that all conditions precedent had been duly fulfilled. Consequently, on May 20 2022, the DGCA reissued an Air Operation Certificate, confirming the authorization for the Corporate Debtor to engage in commercial air operations. The SRA communicated via email to the Lenders, affirming compliance with all prerequisites and proposing that May 20 2022, should be recognized as the effective date

5 "SRA"

6 "SBI"

**State Bank of India and Ors v. The Consortium of Mr Murari Lal Jalan
and Mr Florian Fritsch and Anr**

under the Resolution Plan. However, the lenders took a position to the contrary. On 15th November 2022, the SRA filed I.A. No. 3398 of 2022 (Implementation Application) and I.A. No. 3508 of 2022 (Exclusion Application) before the NCLT seeking a determination in accord with its position.

7. By an order dated 13 January 2023, the NCLT came to the conclusion that the SRA was compliant with the conditions precedent. It allowed the Implementation Application, thereby *inter alia* permitting the SRA to take control and management of the Corporate Debtor. The period of six months for implementation would commence from 16 November 2022. The tribunal reasoned that:
- (i) On 21 October 2022, the NCLAT confirmed SRA's compliance with necessary conditions precedent (CPs) to the satisfaction of MC. Despite the lenders seeking clarification through IA 4771 of 2022, the NCLAT's findings were reaffirmed on 20 December 2022;
 - (ii) There is no dispute regarding compliance with CPs at serial no. (i) and (v) as per the approved plan, including the validation of the Air Operator Certificate by DGCA and MoCA, and the approval of the demerger of the ground handling business into AGSL;
 - (iii) Concerning CP at serial no. (ii), the business plan's submission and approval to DGCA and MoCA were deemed as complete, with the issuance of the Air Operator Certificate (AOC), considered as implicit approval;
 - (iv) Regarding slot allotment approval, aligned with the plan approval order, confirming slots were granted as per the plan;
 - (v) For International Traffic Right Clearance, the requirement was deemed satisfied after successfully recommencing operations, adhering to applicable laws, and plan approval order conditions. Consequently, all Conditions Precedent were duly complied with; and
 - (vi) Regarding the Exclusion Application, it was deemed appropriate to grant an exclusion for 180 days until November 16, 2022, in the interest of justice and to achieve the primary objective of maximizing assets and resolving the insolvency of the Corporate Debtor.

Digital Supreme Court Reports

The order of the NCLT has been challenged by SBI in appeal. The appeal is pending before the NCLAT.

8. On 3 March 2023, the NCLAT declined to stay the order of the NCLT, which has given rise to the first in the three sets of appeals being Civil Appeal Nos 3736-3737 of 2023. By a subsequent order dated 26 May 2023, the NCLAT allowed an extension commencing from 3 March 2023 until 31 August 2023. This order has given rise to the second in the batch of appeals being Civil Appeal Nos 4131-4134 of 2023.
9. The Resolution Plan envisaged that with an intent to settle the total outstanding claims made by domestic banks, foreign banks and financial institutions, the assenting financial creditors would be entitled to the benefit of payments and securities. This is described as “Summary of payments and security package”. Clause 6.4.4 of the Resolution Plan is titled as “Treatment of Financial Creditors” and is reproduced below, insofar as it is relevant:

“Head	Amount payable	Security Offered	Value of Security	Date of Creation of Security	Date of Release of Security
Cash payment	Up to Rs.185 crores	PBG of Rs. 47.5 crores	Rs. 393.5 cr (with BKC) or Rs. 147.5 Cr (without BKC)	Effective Date	PBG adjusted
		BKC Property (if given)			To be released on sale of BKC
		Mortgage over Dubai Property No. 1 valued at more than Rs. 100 crores			Year 5 or on complete payment, whichever is earlier
Cash payment	Rs. 195 Crores	BKC Property (if given)	Rs. 445 Cr (with BKC) or Rs. 200 Cr (without BKC)	Effective Date	To be released on sale of BKC
		Mortgage over Dubai Property No. 1 valued at more than Rs. 100 crores		Effective Date	Year 5 or on complete payment, whichever is earlier
		Mortgage over Dubai Property No. 2 valued at more than Rs. 100 crores		Effective Date	

**State Bank of India and Ors v. The Consortium of Mr Murari Lal Jalan
and Mr Florian Fritsch and Anr**

Cash payment	NPV of Rs. 391 Crores (using the discount rate specified in the Evaluation Matrix)	Mortgage over Dubai Property No. 1 valued at more than Rs. 100 crores	Rs. 600 Crores	Effective Date	Year 5 or on complete payment, whichever is earlier"
		Mortgage over Dubai Property No. 2 valued at more than Rs. 100 crores		Effective Date	
		Mortgage over Dubai Property No. 1 valued at more than Rs. 50 crores		Effective Date	

10. In an effort to resolve the imbroglio, on 16 August 2023, an affidavit was filed on behalf of SBI, by its Chief Manager. The affidavit stated that the lenders were agreeable to a certain course of action. In other words, the lenders had agreed that if SRA satisfies particular criteria, including infusing Rs. 350 Crores by 31 August 2023, adhering to the resolution plan terms, and meeting employee payment obligations in accordance with the NCLAT order dated 21 October 2022, they would abstain from challenging exclusion/extension of time issues. However, the inability to meet these conditions necessitates directing the Corporate Debtor into liquidation, as stipulated in Paragraphs 8(a) to (c). Paragraph 8 is reproduced below:

- "8. In the present appeal, the lenders are agreeable that in case;
- SRA infuses Rs. 350 Crores by 31.08.2023, the date by which said payment is to be made as per the Resolution Plan, read with Order dated 26.05.2023 passed by this Hon'ble Tribunal; and
 - SRA Undertakes to scrupulously follow the other terms and conditions of the resolution plan and
 - SRA complies with the liabilities relating to payment to the employees as per order of NCLAT dated 21.10.2022 which has been upheld by the Hon'ble Supreme Court in its order dated 30.01.2023,

the Lenders would not contest the issues relating to granting of exclusion/extension of time (in terms of the orders dt. 13.01.2023 passed by NCLT and order dt.

Digital Supreme Court Reports

26.05.2023 passed by this Hon'ble Tribunal) as well as on the issue relating to compliance of condition precedent by the SRA and accordingly undertakes to withdraw the present Company Appeal (AT) Ins 129-130 of 2023 which is pending adjudication before this Hon'ble Tribunal along with Civil Appeal Nos. 4131-34 of 2023 & 3736-37 of 2023 filed before the Hon'ble Supreme Court, on the said two issues. In other words, lenders would not contest the granting of exclusions as well as on the issue regarding the compliance of Conditions Precedent, in case the aforesaid steps are taken by SRA without any further delay. Failing to comply with the conditions mentioned in Para 8(a) to (c) above, the Corporate Debtor should be directed to go into liquidation."

11. Following the affidavit, which was filed by SBI, an application was moved by the SRA on 18 August 2023 seeking liberty to pay the amount of Rs 350 crores as envisaged in the affidavit of SBI in the following manner:
 - (i) The first tranche of Rs 100 crores by 31 August 2023;
 - (ii) The second tranche of Rs 100 crores by 30 September 2023; and
 - (iii) The balance of Rs 150 crores by the adjustment of the Performance Bank Guarantee⁷ issued by the SRA in favour of the lenders.
12. Permission to do so was granted by the NCLAT on 28 August 2023 extending time until 31 August 2023 for the payment of Rs 100 crores; till 30 September 2023 for the payment of Rs 100 crores and for the balance of Rs 150 crores by adjusting the payment against the PBG issued by the SRA.
13. The reference to the PBG was contained in the tabulated statement in clause 6.4.4 of the Resolution Plan, which is set out above. Apart from the above stipulations, it would be material to make a reference, at this stage, to certain provisions of the Request for Resolution Plans⁸. Clause 3.13 of the RFRP provides for performance security. It stipulates that (i) the SRA must furnish an unconditional

7 "PBG"

8 "RFRP"

**State Bank of India and Ors v. The Consortium of Mr Murari Lal Jalan
and Mr Florian Fritsch and Anr**

and irrevocable PBG, either INR 150 Crores or 10% of the upfront amount, within seven days of declaration; (ii) The PBG, following Format VIII-A, remains valid for 180 days or until Resolution Plan completion, extendable by SRA as directed by the CoC; (iii) Failure to provide the Performance Security upon accepting the Letter of Intent may lead to its cancellation at the discretion of the CoC :

“3.13 Performance Security

3.13.1 The Successful Resolution Applicant shall furnish or cause to be furnished, an unconditional and irrevocable performance bank guarantee or a demand draft, issued by any scheduled commercial bank in India or a foreign bank which is regulated by the central bank of a jurisdiction outside India which is compliant with the Financial Action Task force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding, provided that it is acceptable to the Resolution Professional (acting for the CoC) (“PBG Bank”), of an amount of INR 150 Crores (Indian Rupees Hundred and Fifty Crores only) or 10% of upfront amount (payable as per the resolution plan by the Successful Resolution Applicant), whichever is higher in favour of “State Bank of India, (that is, SBI) (in its capacity as an agent of the CoC (and acting on behalf of the Company), within 7 (seven) days of declaration of the Successful Resolution Applicant, or by way of a direct deposit by way of the real time gross settlement system into a bank account held by the SBI Bank, the details of which shall be shared separately with the Successful Resolution Applicant (“Performance Security”)

3.13.2 If the Performance Security is being provided as a performance bank guarantee, it shall be in accordance with Format VIII-A of this RFRP (“PBG”). The PBG shall be valid, till the later of (i) a period of 180 days from the date of the PBG; and (ii) the date of completion of the implementation of the Resolution Plan (as determined by the RP and the (CoC) and shall be subject to re-issuance or extension by the Successful Resolution Applicant as may be required by the CoC (as assisted by the Resolution Professional) (“PBG Validity”).

Digital Supreme Court Reports

- 3.13.3 It is hereby clarified that non-submission of the Performance to permit the Resolution Applicant, along with the acceptance of the Letter of Intent, shall lead to cancellation of Letter of Intent issued by the CoC, unless otherwise determined by the CoC at its sole discretion...”
14. Clause 3.13.7 empowers SBI as an agent of the Committee of Creditors to invoke the performance security on the occurrence of certain eventualities:
- “3.13.7 SBI, in its capacity as an agent of the CoC (and acting on behalf of the Company), shall have the right to invoke the Performance Security on behalf of the CoC (and upon receiving approval from the CoC), (by issuance of a written demand to the Bank to invoke the Performance Security, if provided as a PBG). The Performance Security can be invoked and appropriated at any time, upon occurrence of any of the following conditions, without any reference to the Resolution Applicant.
- i. any of the condition under the Letter of Intent or the Successful Resolution Plan are breached;
 - ii. if the Resolution Applicant fails to re-issue or extend the Performance Security (if provided as a PBG), in accordance with the terms of this RFRP; or
 - iii. failure of the Successful Resolution Applicant to implement the Approved Resolution Plan to the satisfaction of the CoC, and in accordance with the terms of the Approved Resolution Plan.”
15. Clause 3.13.9 specifies that the performance security shall not be set off against or used as part of the consideration which the SRA proposes to offer in relation to the company:
- “3.13.9 The Performance Security shall not be set-off against or used as part of the consideration that the Successful Resolution Applicant proposes to offer in relation to the Company, even if expressly indicated as such by the Successful Resolution Applicant in the Successful Resolution Plan.”

**State Bank of India and Ors v. The Consortium of Mr Murari Lal Jalan
and Mr Florian Fritsch and Anr**

16. Clause 9.4 of the Resolution Plan specifically contemplates that the performance guarantee provided by the Resolution Applicant can be invoked in terms of RFRP. NCLAT has permitted the SRA to adjust the last tranche of Rs 150 crores by adjusting the PBG of Rs 150 crores. This forms the subject matter of appeal in this Court.
17. Mr N Venkataraman, Additional Solicitor General appearing on behalf of SBI, submitted that:
 - (i) By its affidavit dated 16 August 2023, SBI had clearly stipulated three conditions, among them being that the SRA must infuse Rs 350 crores by 31 August 2023;
 - (ii) The plain meaning of the expression “infuse” is that the SRA was liable to pay three tranches of a total amount of Rs 350 crores and the NCLAT was not justified at the interim stage in permitting an adjustment of the PBG of Rs 150 crores against the obligation to deposit the last tranche;
 - (iii) The SRA had to undertake to comply with the other terms and conditions of the Resolution Plan besides complying with the liabilities relating to the payment to the employees. As regards the payment to the employees, an appeal filed by the SRA before this Court against the order of the NCLAT dated 21 October 2022 was dismissed on 30 January 2023. Yet there is no compliance towards the employees and staff; and
 - (iv) There has been a default on the part of the SRA in complying with the conditions precedent spelt out in clause 7.6 and on various other aspects, including the payment of workmen’s dues, airport dues and other matters.
18. The submission which has been urged on behalf of the lenders has been opposed on behalf of the SRA by Mr Krishnendu Datta, senior counsel. On behalf of the SRA, it has been submitted that:
 - (i) The Resolution Plan specifically contemplates the adjustment of the PBG (originally of Rs 47.5 crores, subsequently enhanced to Rs 150 crores). In support of this submission, reliance has been placed on the summary of payments and security package forming a part of clause 6.4.4 of the Resolution Plan;
 - (ii) The SRA was in the first tranche required to pay an amount of up to Rs 185 crores against the creation of securities, namely,
 - (i) PBG of Rs 47.5 crores; (ii) BKC Property (if given); and (iii)

Digital Supreme Court Reports

Mortgage over Dubai Property No 1 valued at over Rs 100 crores. In the last column of the table, it has been stipulated that the securities would be released, as indicated;

- (iii) The PBG was liable to be adjusted against the cash payment of the first tranche of Rs 185 crores;
 - (iv) No specific date for the release of the security in relation to the PBG has been mentioned;
 - (v) Moreover, in respect of the second tranche comprising of Rs 195 crores, there was no requirement to furnish any security in the form of a PBG;
 - (vi) The securities, in other words, were of a revolving nature, but significantly on the release of the PBG against a cash payment of Rs 185 crores, the PBG is not required to be renewed as a fresh security for the following tranches; and
 - (vii) As regards the creation of security in respect of the Dubai property, at all material times, the SRA has been ready and willing to effect the security and, as a matter of fact, this is evident in the 37th Meeting of the Monitoring Committee of the Corporate Debtor held on 9 October 2023.
19. While considering the rival submissions, it must be noted, at the outset, that the appeal, stemming from the NCLT's January 13 2023 order holding that the SRA is compliant with the conditions precedent is pending before the NCLAT. Hence, the observations in the present judgment are confined to the arrangement which must operate during the pendency of the appeal without this Court expressing a final view on the merits of the appeal, which will fall for consideration before the NCLAT.
20. The occasion for an extension of time to the SRA for the deposit of Rs 350 crores arose as a consequence of the affidavit which was filed by SBI before the NCLAT on 16 August 2023. SBI's affidavit envisaged that the lenders would not contest the issues pertaining to (a) the grant or exclusion of time; or (b) extension in terms of the orders which were passed by the NCLT on 13 January 2023 and 26 May 2023; and (c) compliance of the conditions precedent by the SRA. SBI's offer was, however, subject to the fulfillment of three conditions. The three conditions were:

**State Bank of India and Ors v. The Consortium of Mr Murari Lal Jalan
and Mr Florian Fritsch and Anr**

- (i) The SRA must infuse an amount of Rs 350 crores by 31 August 2023 (the date by which the payment was to be made in terms of the Resolution Plan read with the order dated 26 May 2023 of NCLT);
 - (ii) The SRA must undertake to scrupulously follow the other terms and conditions of the Resolution Plan; and
 - (iii) The SRA must comply with the liabilities in regard to the payment to the employees in terms of the order of the NCLAT dated 21 October 2022 which has been upheld by this Court on 30 January 2023.
21. Conditional on compliance with the three conditions set out above, SBI stated that it would be willing to withdraw both the company appeals which were pending before the NCLAT as well as the Civil Appeals which were pending before this Court, details of which were set out in the affidavit. The offer which was made by SBI on behalf of the lenders had to be complied with as it stood in the event that the SRA sought the benefit of the offer. According to the SRA, the PBG was liable to be released on adjustment in terms of the Resolution Plan. This is a matter which would have to await an adjudication by NCLAT in the pending appeal. The impugned order of the NCLAT, on the other hand, allowed the plea of the SRA for adjustment and consequential release of the PBG at the interlocutory stage. This *prima facie* would not be in accordance with the tenor of paragraph 8 of the affidavit which was filed by SBI in which it stated that the lenders would not contest the issues in the pending appeal conditional on compliance with the three conditions which were set out in the affidavit. Infusion of Rs 350 crores, as envisaged in the affidavit, could not have been substituted with a direction for adjustment of the PBG, at that stage. Infusion meant that the third tranche has to be paid in the same manner. Adjustment of the PBG was not permissible.
22. In the circumstances, we have come to the conclusion that NCLAT was not justified in holding, in its order dated 28 August 2023, that the last tranche of Rs 150 crores which was to be paid would be adjusted against the PBG. The SRA having deposited the first two tranches each of Rs 100 crores must comply with the remaining obligation of depositing Rs 150 crores (to make up a total payment of Rs 350 crores). Having by its conduct accepted the terms set

Digital Supreme Court Reports

up by SBI it must be obligated to comply with the entirety of its obligations. It must do so in strict compliance with the time schedule set out hereafter.

23. The lenders have submitted that:

- (i) The admitted claim of the Financial Creditors is Rs 7800 crores, while the package offered by the SRA in the Resolution Plan is Rs 4783 crores payable in tranches in five years;
- (ii) Instead of infusing Rs 350 crores, being the first tranche of payment, which was to be paid in 180 days, the SRA has infused a sum of Rs 187 crores after two years, in addition to Rs 13 crores paid by a third party; and
- (iii) The lenders have already incurred Rs 386.72 crores during the CIRP and after the approval of the Plan towards maintaining the Corporate Debtor, excluding airport dues. In addition, the lenders are incurring Rs 22.26 crores on a monthly basis towards expenses/carrying cost for maintaining the Corporate Debtor.

24. SBI has stated that the lenders have been saddled with huge recurring expenditure every month to maintain the remaining airline assets of the Corporate Debtor. The lenders have been embroiled in litigation before the NCLT and NCLAT with little progress on this ground towards implementing the resolution plan. Such a state of affairs cannot be permitted to continue interminably as it defeats the very object and purpose of the provisions of and timelines under the IBC. The timely resolution of insolvency cases is vital for sustaining the effectiveness and credibility of the insolvency framework. Therefore, concerted efforts and decisive actions are imperative to break the deadlock and ensure the expeditious implementation of the resolution plan.

25. The lenders have argued in the appeals that there has been a failure on the part of the SRA to comply with the conditions precedent. If the SRA were to comply with the terms as envisaged in SBI's affidavit dated 16 August 2023, evidently issues pertaining to compliance with the conditions precedent were not to be pressed thereafter. In order to furnish this SRA a final opportunity to comply and consistent with the above position, we issue the following directions:

- (i) The SRA shall peremptorily on or before 31 January 2024, deposit an amount of Rs 150 crores into the designated account of SBI, failing which the consequences under the Resolution Plan shall follow;

**State Bank of India and Ors v. The Consortium of Mr Murari Lal Jalan
and Mr Florian Fritsch and Anr**

- (ii) The PBG of Rs 150 crores shall continue to remain in operation and effect, pending the final disposal of the appeal before NCLAT, and shall abide by the final outcome of the appeal and the directions that may be issued by NCLAT; and
 - (iii) Whether or not the SRA has been compliant with all the conditions of the Resolution Plan as well as of the conditions set out in paragraph 8 of the affidavit dated 16 August 2023 shall be decided by the NCLAT in the pending appeal.
26. The order dated 28 August 2023 of the NCLAT is modified in part in terms of the above directions and, hence, the permission which was granted to the SRA to adjust the last tranche of Rs 150 crores against the PBG shall stand substituted by the above directions.
27. The NCLAT is requested to endeavour an expeditious disposal of the appeal by the end of March 2024.
28. The appeals are accordingly disposed of.
29. Pending applications, if any, stand disposed of.

Headnotes prepared by: Divya Pandey

*Result of the case:
Appeals disposed of.*