State Bank Of India vs The Consortium Of Mr. Murari Lal Jalan ... on 7 November, 2024

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Bench: Dhananjaya Y. Chandrachud

2024 INSC 852 REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 5023-5024 OF 2024

STATE BANK OF INDIA & ORS …APPELLANT(S)

VERSUS

THE CONSORTIUM OF MR. MURARI LAL

JALAN AND MR. FLORIAN FRITSCH & ANR …RESPONDENT(S)

WITH
CIVIL APPEAL NOS. 12220-12221 OF 2024

JUDGMENT

J.B. PARDIWALA, J. :-

For convenience of exposition, this judgment is divided into the following parts: -

1. These appeals arise from the judgment and order dated 12.03.2024 passed by the National Company Law Appellate Tribunal (hereinafter, the "NCLAT") in Company Appeal (AT) (INS) 129-130 of 2023 filed by the Appellant herein by which the NCLAT dismissed the appeal and upheld the order dated 13.01.2023 passed by the National Company Law Tribunal (hereinafter, the "NCLT"). The order of the NCLT held that Respondent No.1 had fulfilled all the Conditions Precedent as stipulated in the

Resolution Plan. The NCLAT further issued several directions including a direction that the Performance Bank Guarantee of Rs. 150 Crore (hereinafter, the "PBG") could be adjusted towards the first tranche payment of Rs. 350 Crore which was to be made by Respondent No.1.

A. FACTUAL MATRIX

2. The NCLT vide its order dated 20.06.2019 in C.P. 2205 (IB)/ (MB)/ 2019 admitted the application for initiation of Corporate Insolvency Resolution Process (hereinafter, the "CIRP") filed by State Bank of India (hereinafter, "SBI") in respect of Jet Airways (India) Limited (hereinafter, the "Corporate Debtor") in accordance with Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter, the "IBC, 2016"). The total admitted claim of the Financial Creditors was Rs. 7800 Crore (approx.). Pursuant to the aforesaid Order, Mr. Ashish Chhawchharia, was appointed as the Interim Resolution Professional and was appointed as the Resolution Professional (hereinafter, the "RP") as well.

3. On 02.06.2020, the RP issued the 4th Round of the Request for Resolution Plan (hereinafter, the "RFRP") as approved by the Committee of Creditors (hereinafter, "CoC") which invited submissions of Resolution Plans for the Corporate Debtor from potential Resolution Applicants. The relevant clauses of the RFRP are reproduced hereinbelow:

> "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").

> xxx xxx xxx 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.

3.13.8 The Performance Security shall be returned to the Successful Resolution Applicant within a period 7 (seven) Business Days (based on the request received from the Successful Resolution Applicant) upon 100% (one hundred percent) of the completion of the implementation of the Approved Resolution Plan by the Successful Resolution Applicant.

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." (emphasis supplied)

4. On 21.09.2020, the Consortium of Murari Lal Jalan and Florian Fritsch (hereinafter, the "Respondent No.1 / SRA") submitted its Resolution Plan. It was amended by the version dated 30.09.2020 and further supplemented and amended by the addendum dated 02.10.2020. At the 17th meeting of the CoC held on 03.10.2020, the Resolution Plan was placed before the CoC by the RP and was voted upon by the CoC from 05.10.2020 to 17.10.2020 in accordance with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter, the "2016 Regulations"). The CoC, in its commercial wisdom, approved the Resolution Plan proposed by Respondent No. 1 with a majority of 99.22% votes. The relevant clauses of the Resolution Plan are reproduced hereinbelow:

> "2. INTRODUCTION OF THE RESOLUTION APPLICANT

2.1.4. The resolution applicant ("Resolution Applicant") is defined to mean a Consortium of:

> a) Mr. Murari Lal Jalan who is the Lead Partner of the Consortium;
>
> b) Mr. Florian Fritsch is the Other Partner of the Consortium; and 2.1.5. Mr. Murari Lal Jalan will hold shares in the Corporate Debtor in his personal capacity.

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6.3.1(c) Summary of Financial Proposal

THE RESOLUTION PLAN SUBMITTED BY THE RESOLUTION APPLICANT IS UNCONDITIONAL AND NOT SUBJECT TO SALE OF THE ASSETS OF THE CORPORATE DEBTOR.

HEADS	PACKAGE OF AMOUNT (In Rs.)			PAYMENT TERMS
	~RS. 4,783 CRORES COMPRISING OF • ~RS. 1,090.1 CR COMMITTED CASH • ~Rs. 3,668 Crores – estimated value of 10% Equity Stake in Jet 2.0 at Year • 7.5% Equity stake in JPPL			
	for Assenting FCs. • Airport Savings • Additional Upside on Aircraft + ATR + Spares + BKC • ~ Rs. 25 Crores for acquisition of additional 50.1% stake in JPPL from Etihad		Within 180 days from the Effective Date	After 180 from Effective Date
CIRP Cost	CIRP COST	25 Cr	100%	-
ASSENTING FCS	• Rs. 195 Cr + up to Rs. 185 Cr +	380 Cr	185 Cr (Incl. 10 Cr for	195 Cr in Yr. 2

	Guaranteed NPV of Rs. 391 Cr (using the discount rate specified in the Evaluation Matrix) • Rs. 40 Cr of Positive Cash Balance • 9.5% equity in Jet 2.0 (5th Yr Value ~Rs. 3,485 Crore) • 7.5% equity in JPPL • Upside on Aircrafts + ATR Inventory + Spares + BKC Property (if given) • Savings on CIRP Costs • Savings on airport and parking charges • Savings on Contingency Fund • All payments are secured against tangible security • Dissenting FCs will be paid in priority as per IBC	BKC) 9.5% Equity in Jet 2.0 7.5% equity in JPPL Additional Upside on Aircrafts Sales + ATR Sales + Spares Savings on CIRP Costs	Guaranteed NPV of 391 Cr (using the discount rate specified in the Evaluation Matrix) in Yr. 3, 4, 5 Upside on BKC Savings on Airport Positive Cash Balance		
Workmen & Employees	• Rs. 52 Crores	52 Cr	100%	-	
OCs	• Rs. 15,000 to				

	each of the Operational Creditors, irrespective of their claim	10 Cr	100%	-
OC (Dutch Admin)		10,000	100%	-
Other Creditors (other than FCs and OCs)		10,000	100%	-
Shareholders (promoters, Etihad and PNB)		10,000	100%	-
Contingency Fund		8 Cr	100% Established	
JPPL	Offer from RA to acquire 50.01% shareholding in JPPL from Etihad. The said sum of Rs. 25 Crores will be infused by the RA in addition to the abovementioned amounts.	25 Cr	-	100%
TOTAL		475 Cr + 25 Cr		

*THIS IS A SUMMARY OF THE FINANCIAL PROPOSAL. PLEASE REFER TO THE DETAILED PROVISION UNDER THE RESPECTIVE HEAD.

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(d) PROPOSAL FOR RESOLUTION OF OUTSTANDING AIRPORT AND PARKING DUES (RS. 240 CRORES AS OF AUGUST 31, 2020)

[…]

BKC Property not part of resolution - If CoC decides to retain the BKC Property as a non-core asset and not offer it as part of this resolution process as proposed above, then the Resolution Applicant will not pay the upfront sum of Rs. 10 Crores to the Assenting Financial Creditors as envisaged in the above Clause for BKC Property. Further, then the airport dues and parking charges after the ICD (approx. Rs.

240 Crores as of August 31, 2020) will be paid by the Resolution Applicant upfront in priority over any other payments to the creditors of the Corporate Debtor, subject to a maximum of Rs. 475 Crores. As per the general aviation practice in respect to parking and airport space, as and when the Corporate Debtor will intend to use/ move the aircrafts or use the airport space, such claimants will seek their past dues. Therefore, their payments need to be resolved upfront by pro rata reduction of amounts payable to other creditors, to enable the Corporate Debtor to re-commence its operation, which is why the Resolution Applicant has suggested that their payments be made upfront against the BKC Property. SUCH PAYMENTS WILL BE SETTLED UPFRONT IN FULL IN FIRST 180 DAYS FROM THE EFFECTIVE DATE AND WITHOUT ANY CONDITIONS (INCLUDING NOT BEING STAGGERED PAYMENTS SPREAD ACROSS A PERIOD OF TIME) SO THAT FLYING CAN START IMMEDIATELY WITHOUT ANY FUTURE DISPUTES AND CONCERNS WITH SUCH CLAIMANTS FOR PAST DUES. Alternatively, the Resolution Professional can provide the Resolution Applicant with a no-dues certificate from such contingent creditors, in which case, these creditors will be treated in compliance with the provisions of the IBC.

The Resolution Applicant states and confirms that this "Proposal for Resolution of outstanding airport and parking dues (approx. Rs. 240 Crores as of August 31, 2020)" which deals with the appropriation of the BKC Property is merely a proposal and not a condition to the implementation of this Resolution Plan and the CoC has the discretion to accept/ reject such proposal. If the above-mentioned proposal is acceptable to the CoC, then it is acceptable to the Resolution Applicant in the manner stated hereinabove.

(g) Infusion of funds and timelines

Infusion Timelines (In Days)	Amount (In Rs.) As Equity	As ECB	Purpose/Utilization
Upfront (within 180 days)	350,00,00,000	-	CIRP Cost; Contingency Fund; Payment to FCs, OCs, Other Creditors, and other stakeholders; working capital for business; Misc. Admin Expenses

181-365 days	250,00,00,000	-	Working capital for business; Portion of funds can be used for acquiring Etihad's stake in JPPL; making payments to creditors if RA is inclined in advancing any payment timelines
Year 2	-	175, 00,00,000	Remaining payment to FCs.; Misc. expenses for general corporate and day-to-day operations, in compliance with the extant ECB Regulations.
After Year 2	-	600,00,00,000	Working capital for business
Sub-Total	600,00,00,000	775,00,00,000	
TOTAL			1,375,00,00,000

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6.4. Treatment of Stakeholders

6.4.1. Treatment of outstanding CIRP Costs

(a) In terms of Section 30(2)(a) of the IBC, the CIRP Costs are to be paid in priority to any other creditor of the Corporate Debtor.

(b) As per the information disclosed by the Resolution Professional on August 14, 2020, the CIRP Costs includes:

> i. Operating and Process Costs (Rs. 27.16 Crores, as of August 31, 2020) which includes fees, charges, salaries of Asset Protection Team (APT) of the Corporate Debtor and other costs incurred by the Resolution Professional in running the operations of the Corporate Debtor as a going concern;
>
> ii. Interim Finance Cost (Rs. 54.4 Crores, as of August 31, 2020).
>
> [...]

(d) The Resolution Professional has also disclosed to the Resolution Applicant that the Corporate Debtor has a positive bank balance of approx. Rs. 92 Crores and estimates to collect a further sum of Rs. 40 Crores in the next 2-3 months.

[...]

(f) The Resolution Professional has estimated an approx.

sum of Rs. 240 Crores (as of August 31, 2020) towards parking charges for aircrafts and airport space lease charges. Such amounts are good faith estimates of the Resolution Professional based on previous invoices as it has not received any invoice/ demand from any of the lessors/ owners for such amounts. The Resolution Applicant shall endeavour to negotiate the parking fee and rental fee for the Corporate Debtor with the various airports and will endeavour that the cost for such heads is kept to the minimum.

[...]

(h) Based on the information provided, the Resolution Applicant have assumed that the amounts standing to the credit of the bank account of the Corporate Debtor (including amounts estimated to be received subsequently) are sufficient to cover for the CIRP Costs of the Corporate Debtor (excluding parking charges, rental charges, employee dues, taxes etc). Accordingly, the Resolution Applicant has set aside a sum of Rs. 25 Crores as CIRP Costs towards payment of any such costs until the Approval Date. Any expenses incurred by the Corporate Debtor from the Approval Date until the Effective Date will be incurred out of the positive bank balance of the Corporate Debtor.

(i) As stated in Clause 6.3.1(d) above, if the CoC agrees to offer a clear and marketable title in the BKC Property (one floor) to the Resolution Applicant, then the Resolution Applicant shall settle the airport and parking charges (estimated at approx. Rs. 240 Crores, as of August 31, 2020). Savings from such charges will be distributed to the Assenting Financial Creditors. If the airport and parking charges over are over Rs. 245 Crores, then amounts over and above Rs. 245 Crores will be first paid out of Rs. 25 Crores reserved as CIRP Costs (if there are no outstanding CIRP Costs) and then out of the positive cash flows of the Corporate Debtor. Any amounts over and above such amounts will be shared between the Resolution Applicant and the Assenting Financial Creditors in equal proportion.

(j) The Resolution Applicant states that if the CIRP Cost is less than the estimated amounts and the airport dues are less than Rs. 245 Crores, then the differential amounts will be paid by the Resolution Applicant to the Assenting Financial Creditors, which amounts are over and above the amounts reserved for them this Resolution Plan. However, if the CIRP Cost exceeds the current estimates, then the CIRP Costs will be paid by the Resolution Applicant as per actuals in compliance with the provisions of the IBC and commercial proposal for other creditors of the Corporate Debtor will be adjusted accordingly, subject however to a maximum of Rs. 475 Crores. It is clarified that on account of such payments from the amounts infused by the Resolution Applicant in the Corporate Debtor, the pay-outs towards other claimants as currently stated will be reduced proportionately to account for such additional CIRP Costs, subject to a minimum payment of liquidation value to the

Operational Creditors and Dissenting Financial Creditors of the Corporate Debtor and subject to a maximum of Rs. 475 Crores.

(k) The outstanding CIRP Costs shall be paid by the Resolution Applicant out of funds infused by the Resolution Applicant in the Corporate Debtor and as per the Implementation Schedule set out in Clause 7.7 below. [...]

(m) Priority of Payment CIRP Cost shall be fully paid and discharged after the Effective Date before payment is made to any of the Creditors as per the Resolution Plan. The Resolution Applicant will be entitled and will use funds available with the Corporate Debtor on the Effective Date for making any portion of CIRP payments.

(n) The Resolution Applicant has sufficient funds and do not envisage any challenge in terms of source for making such payments. The net worth and financial capabilities of the Resolution Applicant are evident from its financial statements submitted at the time of submitting its EOI. Regarding the Source of Funds, the CIRP Costs shall be met out of funds infused by the Resolution Applicant in the Corporate Debtor.

xxx xxx xxx 6.4.2. Treatment of Employees/Workmen dues, including dues of Authorized Representatives of Employees/ Workmen

(a) The Resolution Applicant proposes to pay a fixed sum of Rs. 52 Crores to the Workmen/ Employees towards settlement of all the claims made by the Employees and Workmen of the Corporate Debtor, including to the Authorized Representatives of Employees and Workmen as set out in the List of Creditors ("Admitted Workmen and Employees Dues").

(b) The payments towards Admitted Workmen and Employees Dues shall be made out of funds infused by the Resolution Applicant in the Corporate Debtor and as per the Implementation Schedule set out in Clause 7.7 below. The said payment is also being made in priority to the payment to the financial creditors.

(c) In any case, if the Liquidation Value due to Operational Creditors (Employees/ Workmen dues, including dues of the Authorized Representatives of Employees/ Workmen) is not "NIL", then the Resolution Applicant undertakes that the Liquidation Value due to such Operational Creditors (Employees/ Workmen dues including dues of Authorized Representatives of Employees/ Workmen) shall be paid and shall be given priority in payment over Financial Creditors as is already reflected in the Implementation Schedule in Clause 7.7 below. The entire payment to the Employees/ Workmen dues including dues of Authorized Representatives of Employees/ Workmen is being made in priority within 175 (one hundred seventy five) days from the Effective Date. [...]

(g) Other than Admitted Workmen and Employees Dues which the Resolution Applicant proposed to pay, all other potential obligations and workmen dues including any dues towards Provident Fund (Contribution of Employees / Company), Gratuity, Employees State Insurance Scheme, Professional Tax or any other taxes in nature of employment owed or payable to, (including any

demand for any penalty, penal interest already accrued/ accruing or in connection with any claims) and all rights and entitlements of present or past, direct or indirect, permanent or temporary, employees and/or workmen of the Corporate Debtor, whether admitted or not, due or contingent, asserted or unasserted, crystalized or uncrystallized, known or unknown, secured or unsecured, disputed or undisputed, present or future, whether or not set out in the balance sheet of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor or the List of Creditors, claim submitted or not submitted, claim admitted or not admitted, in relation to any period prior to the ICD will be written off in full and shall be deemed to be permanently extinguished and waived off subject to Clause 9.9 of this Resolution Plan by virtue of the order of Adjudicating Authority approving the Resolution Plan and neither the Corporate Debtor nor the Resolution Applicant shall, at no point of time be, directly or indirectly, held responsible or liable in relation thereto.

[...]

(i)(xi) For the avoidance of doubt it is hereby clarified that notwithstanding the acceptance or rejection of the terms of the proposed demerger by the employees and/or workmen, the Resolution Applicant shall ensure the payment of (i) minimum value due and payable to such employees and workmen (under Section 30(2) of the IBC); and (ii) the CIRP costs admitted by the Resolution Professional, subject to a maximum of Rs. 475 Crores.

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6.4.4. Treatment of Financial Creditors
[…]
Summary of payments and security package

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 BKC Property (if given)	Rs. 393.5 Cr (with BKC) Or	Effective Date	PBG adjusted To be released on sale of BKC
		Mortgage over Dubai Property No. 1 valued at more than Rs. 100 Crores	Rs. 147.5 Cr (without BKC)		Year 5 or on complete payment, whichever is earlier
Cash Payment	Rs. 195 Crores	BKC Property (if given)	Rs. 445 Cr (with BKC)	Effective Date	To be released on sale of BKC

		Mortgage over Dubai Property No. 1 valued at more than Rs. 100 Crores Or Mortgage over Dubai Property No. 2 valued at more than Rs. 100 Crores	Rs. 200 Cr (without BKC)	Effective Date Effective Date	Year 5 or on complete payment, whichever is earlier
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 Mortgage over Dubai Property No. 2 valued at more than Rs. 100 Crores Mortgage over Dubai Property No. 3 valued at more than Rs. 50 Crores.	Rs. 600 Crores	Effective Date Effective Date Effective Date	Year 5 or on complete payment, whichever is earlier
		Floating charge by way of hypothecation on India POS Credit Card Receivables of Year 3, Year 4, Year 5 of the Corporate Debtor of Rs. 350 Crores or the total outstanding dues of the Assenting FCs, whichever is		Effective Date	

		lower.			
Upside on Aircrafts	Rs. 60 Crores + upside as per terms of Series B ZCB	Three 737s; Five 777s & Three A330	BV of Rs. 1,900	Effective Date	On sale of relevant aircraft(s) as it could be sold in Lots and in phases or on relevant redemption date, whichever is earlier.
Upside on ATR Inventory	Rs. 15 Crores + upside as per terms of Series C ZCB	Entire ATR Inventory	BV of Rs. 134 Cr	Effective Date	On sale of ATR Inventory on relevant redemption date, whichever is earlier.
Upside on Spares	Rs. 50 Crores + upside as per terms of Series D ZCB	Aircraft Spares	BV of Rs. 600 Cr	Effective Date	On sale of Spares on relevant redemption date, whichever is earlier.

(a) COMMITTED CASH PAYMENTS

(i) The Resolution Applicant will pay the Assenting Financial Creditors a total sum of Rs. 185 Crores on 180th day from the Effective Date. If the BKC Property is not provided to the Resolution Applicant as per the proposal stated in Clause 6.3.1(d), then the Resolution Applicant will pay the Assenting Financial Creditors, a total sum of Rs. 175 Crores on 180th day from the Effective Date. The said amounts shall be paid on the following principal terms:

> Amount Payable Up to Rs. 185 Crores/ up to Rs. 175 Crores Payable By Jet Airways (India) Limited Payable To Financial Creditors against conversion of admitted claims of equivalent amount.

Date of Payment 180th day from the Effective Date.

Security	• Performance bank guarantee of Rs. 47.5 Crores • Mortgage over BKC Property (if given to the RA).
	• Mortgage over Dubai Property No. 1 valued at more than Rs. 100 Crores.
Date of creation of security	Effective Date
Date of release of Security	• BKC Property - On sale of BKC Property (if given to the RA) or on the date of payment, whichever is earlier. • Charge over Dubai Property No. 1 with respect to this payment will be released on the date of payment.
Security	Related RBI approval required for creating will be applied after the CoC approves this Resolution Plan. If the RBI approval for creating such charge is not received by the Effective Date, then alternate security will be provided in India of equivalent value on the Effective Date.
Event of Default	Corporate Debtor's failure to make such committed payment
Consequences of Event of Default	Enforcement of security for recover the outstanding amounts. Governing Law and Indian Law and courts of Mumbai Jurisdiction will have exclusive jurisdiction.

xxx xxx xxx 6.4.12. Request for the consideration of the CoC - As required under the RFRP, the Resolution Applicant shall provide the performance security bank guarantee ("PBG") for a total sum of Rs. 150 Crores. The PBG will be provided in two parts, with the first PBG of Rs. 47.5 Crores provided within 7 (seven) days from the date of receipt of LOI; and PBG for the remaining sum of Rs. 102.5 Crores provided on the Effective Date.

7.3. Compliance with respect of Regulation 36B (4A) The Resolution Applicant undertakes to provide the performance security bank guarantee as per the terms of

> the RFRP in favour of "State Bank of India" (in its capacity as an agent of the CoC (and acting on behalf of the Corporate Debtor)), within 7 (seven) days of it being declared 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, as per the terms of the RFRP.
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> xxx xxx xxx 7.1. Term of the Resolution Plan 7.1.2. The effectiveness and implementation of the Resolution Plan by the Resolution Applicant shall be subject to the approval of the NCLT. Notwithstanding anything set out in this Resolution Plan, the implementation of this Resolution Plan by the Resolution Applicant shall not be conditional upon satisfaction of any conditions, other than approval of the NCLT.

7.6. Conditions to the Implementation of the Resolution Plan 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 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).

7.6.2. Fulfilment of Conditions Precedent - The date of fulfilment of all the Conditions Precedent as stated in Clause 7.6.1 above shall be the effective date for the purposes of this Resolution Plan ("Effective Date").

7.6.4. 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.

7.7. Implementation Schedule -

7.7.1. The Resolution Applicant shall take the following steps in the order of sequence (except otherwise mentioned in any step for any part of the step) as an integral part of the Resolution Plan. It is provided that the procedure, timelines and the sequence of steps listed below are only indicative and that they may be re-arranged/ changed as may be required or directed based on discussions with the necessary Governmental Authorities/ stock exchange (on account of past non-compliances of the Corporate Debtor or otherwise) or for the purposes of advancing any payments to the stakeholders, and at all times in compliance with Applicable Laws:

Step	Activity	Days
1.	Receipt of approval from the Competition Commission of India under the provisions of the Competition Act, 2002 read with the provisions of the IBC.	Before approval of Resolution Plan by CoC
2.	Declaration of the Successful Resolution Applicant and Receipt of LoI from the CoC	X
3.	Unconditional acceptance of the LoI	X+3
4.	Issuance of Performance Security Bank Guarantee	X+7
5.	Finalization of the members of the Monitoring Committee	Between X and Approval Date

6.	Approval Date	Y
7.	Monitoring Committee to take control as per Clause 7.8.2.	Y
8.	Fulfilment of Conditions Precedent as per Clause 7.6.1	After Y
9.	Filings of the certified copy of the Order of Approval received from Adjudicating Authority sanctioning the Resolution Plan with the relevant Government Authorities/ Stock Exchange/ Departments.	Y + 10
10.	Effective Date	Z
11.	Infusion of Rs. 350 Crores in the Corporate Debtor	Z + 150
12.	Setting up the Contingency Fund	Z + 170
13.	Cancellation of Shares (excluding Public Shares) as per Clause 7.4.1(c).	Z + 170
14.	Reconstitution of Share Capital as per Clause 7.4.2 above.	Z + 170
15.	Steps towards issuance of equity shares as per Clause 7.4.3 above.	Z + 170
16.	Payment of CIRP Costs as per Clause 6.4.1.	Z + 170
17.	Payment to the Operational Creditors (Workmen and Employees, including Authorized Representatives of Workmen and Employees) as per Clause 6.4.2.	Z + 175
18.	Payment to all the Operational Creditor (other than Workmen and Employees) as per Clause 6.4.3 above.	Z + 175
19.	Payment to Other Creditors and Stakeholders as per Clause 6.4.5, Clause 6.4.6, 6.4.7, and 6.4.8	Z + 175
20.	Payment to Dissenting Financing Creditors as per Clause 6.4.4(m)(i).	Z + 176
21.	1st Tranche payment to Financial Creditors as per Clause 6.4.4.	Z + 180
22.	Monitoring Committee to be released and Reconstituted Board of Directors to take over the management of the Corporate Debtor.	Z + 180
23.	Closing Date.	Z + 180
24.	Redemption of Series B, Series C; and Series D ZCBs	Z + 365
25.	Necessary statutory approvals	Y + 365 (in accordance with Sec

		31(4) of the IBC)
26.	Redemption of Series A ZCB	Z + 730
27.	Release of charge (if any) over assets of the Corporate Debtor (which have not been previously released).	Z + 730
28.	Redemption of NCDs and release of any charge (if any)	Z + 5 Years
xxx	xxx	xxx

9.4. Implementation - The performance guarantee provided by the Resolution Applicant can be invoked in accordance with the terms of the RFRP."

5. The RP preferred an application under Section 30(6) read with Section 31 of the IBC, 2016 before the NCLT seeking approval of the Resolution Plan submitted by Respondent No.1 and vide order dated 22.06.2021, the NCLT approved the Resolution Plan. In view of the uncertainty regarding the achievement of the "Effective Date" under Clauses 7.6.2 and 7.6.4 of the Resolution Plan, it was clarified that the same would be fixed on the 90 th day from the Plan Approval Order dated 22.06.2021. Respondent No.1 was also given liberty to approach the NCLT for appropriate orders with respect to an extension of the timeline, subject to a maximum of another 180 days, in case they fail to fulfill all the Conditions Precedent within 90 days. The relevant observations are reproduced hereinbelow:

> "33. During the hearing, the uncertainty of the time frame for implementation of the Resolution Plan was discussed. It is stated by the SRA in clause no. 7.6.2 (pdf 276) of the Resolution Plan that the effective date would mean the date of the fulfilment of all the conditions precedent as stated in clause 7.6.1 thereof. The SRA, at clause no. 7.6.4, has gone on to add that the consortium would make all endeavor to ensure all the compliances are done for the fulfillment of the conditions precedent within a period of 90 days. In the unlikely event that the conditions precedent are not complied within this period, SRA would require a maximum of 180 days more to fulfil the conditions. Failing which the Resolution Plan would stand automatically withdrawn without any further act, deed or thing. In view of such uncertainty in the 'effective date' the Bench suggested that let the effective date be the 90th day from the Approval Date (clause 3.1 at pdf page 201). The SRA as well as the Applicant (RP of the Corporate Debtor) had agreed to the suggestion. This in our opinion is not in the nature of a substitution or addition to the decision, commercial or otherwise, of the CoC. The suggestion is made only to give finality and certainty to the effective date, which the SRA has otherwise committed in the Resolution Plan to endeavor to do. It could accordingly be ordered so. Failing which the SRA / Corporate Debtor would be at liberty to approach this Authority for appropriate orders with regard to extension of the timeline, as would be deemed proper. That would help prevent the SRA from the frustration of 'automatic withdrawal' referred to in clause 7.6.4 of the Resolution Plan." (emphasis supplied)

6. Since the initial period of 90 days for fulfilment of the Conditions Precedent expired on 22.09.2021, an extension of another 90 days was granted by the NCLT vide order dated 29.09.2021 (1st extension). The 1st extension of 90 days expired on 22.12.2021. The NCLT vide order dated 20.01.2022, again, granted an extension of another 90 days (2nd extension). The 2nd extension of 90 days expired on 22.03.2022. The maximum extension that could have been provided under Clause 7.6.4 of the Resolution Plan i.e., an additional 180 days, had now come to an end. However, vide order dated 11.04.2022, the NCLT granted exclusion of a period of 65 days from 17.01.2022 to 22.03.2022, which was spent in moving the application for grant of time. This finally extended the time for achieving the Effective Date from 22.03.2022 to 25.05.2022 (3rd extension).

7. On 20.05.2022, Respondent No.1 obtained the Air Operation Certificate (hereinafter, the "AOC") and asserted that all the Conditions Precedent required under Clause 7.6.1 of the Resolution Plan had been met and that the Effective Date in accordance with Clause 7.6.2 had been achieved. As a consequence, Respondent No.1 had 180 days from 20.05.2022 i.e., until 16.11.2022 to infuse an amount of Rs. 350 Crore in the Corporate Debtor as per Clause 6.3.1(g) and the Implementation Schedule under Clause 7.7.1 of the Resolution Plan.

8. The workmen and employees of the Corporate Debtor and several Operational Creditors challenged the order of the NCLT dated 22.06.2021 by which the Resolution Plan was approved before the NCLAT. Vide order dated 21.10.2022, the NCLAT upheld the order of the NCLT dated 22.06.2021. However, it was observed that the workmen and employees are entitled to the payment of their full provident fund and gratuity which was unpaid as on the insolvency commencement date and that the balance of the above dues should be paid by the Successful Resolution Applicant i.e., Respondent No.1, in order to satisfy its statutory obligations. It was further stated that "Non-payment of full PF and Gratuity shall lead to violation of Section 30(2)(e) and hence, to save the plan, the above payments have to be made". On 20.12.2022, Respondent No.1 preferred Civil Appeal Nos. 465-469 of 2023 against the aforesaid order dated 21.10.2022 passed by the NCLAT, before this Court.

9. It is the case of Respondent No.1 that between May 2022 and October 2022, the Appellants disputed the fulfilment of the Conditions Precedent by Respondent No.1 on one ground or another. Therefore, on 18.10.2022, Respondent No.1 filed two Interim Applications – First, IA No. 3398 of 2022 (hereinafter, "Implementation Application") before the NCLT seeking necessary directions for the implementation of the Resolution Plan and a declaration that all the Conditions Precedent have been fulfilled; Second, IA No. 3508 of 2022 requesting that the period from 20.05.2022 till the date on which the Implementation Application would be decided by the NCLT be excluded for the purpose of calculating 180 days from the Effective Date, for the purpose of making the first tranche payment of Rs. 350 Crore.

10. The NCLT allowed both the aforesaid IAs and vide its common order dated 13.01.2023 held that all the Conditions Precedent have been duly complied with and therefore, 20.05.2022 would be the Effective Date. Further, it excluded the period from 20.05.2022 to 16.11.2022 (180 days) from the period of 180 days within which the first tranche payment had to be made, in the interests of justice and to achieve the primary objective of maximization of assets and resolution of the Corporate

Debtor. As a consequence, the deadline to meet with the first tranche payment obligation of Rs. 350 Crore was extended till 15.05.2023 (hereinafter, "1st implementation extension"). The appellants challenged this common order dated 13.01.2023 passed by the NCLT before the NCLAT by way of Company Appeal (AT)(INS) Nos. 129- 130 of 2023 (hereinafter, "Company Appeal") and also sought a stay on the same.

11. On 30.01.2023, this Court dismissed Civil Appeal Nos. 465-469 of 2023 filed by Respondent No.1 and upheld the order dated 21.10.2022 passed by the NCLAT. In such circumstances, Respondent No.1 was obliged to pay the full provident fund and gratuity that the workmen and employees were entitled to within 180 days from the Effective Date.

12. The NCLAT vide its order dated 03.03.2023, declined to stay the order dated 13.01.2023 passed by the NCLT while observing that the steps regarding the implementation of the Resolution Plan have to be taken by the SRA which needs to be overseen by the Monitoring Committee. On 17.04.2023, the Appellants filed Civil Appeal Nos. 3736-3737 of 2023 before this Court against the order of the NCLAT declining the grant of stay.

13. Since 15.05.2023 was fixed as the deadline to make the first tranche payment of Rs. 350 crore, Respondent No.1, on 11.05.2023, filed IA Nos. 2028-2029 of 2023 respectively before the NCLAT in the Company Appeal for the purpose of seeking exclusion of the period from 16.11.2022 till the time the Company Appeal is decided from the calculation of 180 days stipulated for the infusion of first tranche of funds under the Resolution Plan. Immediately thereafter, on 17.05.2023, IA Nos. 2059-2060 of 2023 in the Company Appeal were also filed by Respondent No.1 seeking to restrain the Appellants from encashing or appropriating the Performance Bank Guarantee and Earnest Money deposited by Respondent No.1 in favor of the Appellants under the Resolution Plan.

14. The NCLAT vide its common order dated 26.05.2023, stated that the period between 16.11.2022 and 03.03.2023 (107 days) be excluded from the calculation of 180 days for the infusion of first tranche of funds under the Resolution Plan and also held that the Appellants could invoke the PBG only with the leave of the NCLT. This, effectively, extended the period to infuse Rs. 350 Crore under the first tranche till 31.08.2023 (2nd implementation extension). Soon thereafter, on 13.06.2023, the Appellants filed Civil Appeal Nos. 4131-4134 of 2023 against the common order dated 26.05.2023 passed by the NCLAT.

15. On 16.06.2023, Respondent No. 1 filed two other IA Nos. 3789-3790 of 2023 (hereinafter, "Gratuity Application") in the Company Appeal requesting that they be allowed to discharge the gratuity claims of the employees and workmen of the Corporate Debtor in three tranches and also allow them to approach the EPFO authorities in order to reduce or waive off the claim towards damages amounting to Rs. 24.4 Cr imposed on the Corporate Debtor or grant permission to challenge the imposition of damages in an appeal before the appropriate authority.

16. In the meantime, vide letter dated 27.07.2023, the Office of the Director General of Civil Aviation, Government of India (hereinafter, "DGCA") extended the validity of the AOC issued to the Corporate Debtor until 03.09.2023 subject to certain conditions. The relevant extracts from the

letter are reproduced hereinbelow:

> "Sir, Reference is invited to Jet Airways Letter dated 16.05.2023 followed by email dated 12.06.2023 and discussions with Sh Ankit Jalan, representative of Jalan-Kalrock Consortium (SRA) on 14.07.2023 and 27.07.2023 regarding extension of validity of AOC.

2. In view of the fact that Jet Airways is still undergoing CIRP under IBC, 2016, NCLT and NCLAT having the jurisdiction in respect of the insolvency of the Company have granted extension(s)/exclusion(s) of time for implementation of the approved Resolution Plan upto 03.09.2023, the AOC No. 6A in respect of Jet Airways (India) Ltd. shall be considered as valid until 03.09.2023, subject to the following conditions:-

> i. This extension shall be applicable only for the limited purpose of completing the ongoing CIRP.
>
> ii. Jet Airways shall be required to undergo re-
>
> certification in accordance with the procedure contained in CAP 3100, as applicable for issuance of AOC and demonstrate compliance of all the applicable regulatory requirements afresh before commencement of flight operations.
>
> iii. Fee as applicable for issuance of AOC, shall be payable for such re-certification.
>
> iv. Jet Airways shall submit a firm action plan for revival of operations after the company is taken over by the SRA in accordance with the NCLT approved resolution plan.
>
> This issues with the approval of the Director General.".
>
> 17. While the Company Appeal was pending before the NCLAT, the Appellants filed an Affidavit dated 16.08.2023 (hereinafter, "Lender's Affidavit") before the NCLAT. The Lender's Affidavit provided that, if Respondent No.1, firstly, infuses Rs. 350 Crore by 31.08.2023; secondly, complies with the payment obligations to the workmen and employees, and; thirdly, scrupulously follows the other terms and conditions of the Resolution Plan -

the Appellants would not contest the issues relating to the grant of exclusion/extension of time as well as the issue relating to the compliance of all Conditions Precedent by the Respondent and would withdraw the Company Appeal pending before the NCLAT along with the Civil Appeals filed before this Court. The Lender's Affidavit also provided that, upon failure to comply with the aforesaid conditions, the Corporate Debtor should be directed to go into liquidation. This opportunity was given to Respondent No.1/SRA as a one-time measure. Para 8 of the Lender's Affidavit which stipulates these conditions is reproduced hereinbelow:

"8. In the present appeal, the lenders are agreeable that in case;

a) 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

b) SRA Undertakes to scrupulously follow the other terms and conditions of the resolution plan and

c) 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. 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."

18. In response to the aforesaid Lender's Affidavit, Respondent No.1 on 18.08.2023 filed IA Nos. 3801 and 3802 of 2023 (hereinafter, "Adjustment application") in the Company Appeal seeking inter alia – First, a direction to the Appellants to adjust the PBG of Rs. 150 Crore towards part payment of the first tranche under the Resolution Plan; second, to allow Respondent No.1 to infuse Rs. 100 Crore as share application money on or by 31.08.2023 and; thirdly, to allow Respondent No.1 to infuse the remaining Rs. 100 Crore as share application money on or before 30.09.2023. Through these applications, Respondent No.1 further urged that, in the event the Gratuity Application was not allowed, the Resolution Plan would not be implemented and in such eventuality, the Appellants and the Corporate Debtor may be directed to refund all the amounts infused or deposited by Respondent No.1. including the share application money and the PBG.

19. The NCLAT, vide its order dated 28.08.2023, partly allowed the Adjustment Application so far as the payment of the first tranche of Rs. 350 Crore was concerned and stated that as regards the prayer with respect to the Gratuity Application, the submissions required further consideration. The PBG of Rs. 150 was allowed to be adjusted against the first tranche payment and the remaining Rs. 200 Crore was allowed to be infused on or by 31.08.2023 and 30.09.2023 respectively. Therefore, the deadline to infuse the aforesaid amount and implement the Resolution Plan was further extended to 30.09.2023 (3rd implementation extension). Immediately thereafter, the Appellants filed Civil Appeal Nos. 6427-6428 of 2023 before this Court against the aforesaid order dated 28.08.2023 passed by the NCLAT.

20. Meanwhile, on 03.09.2023, the conditional AOC issued by the DGCA came to an end. Before the expiry of the 3rd implementation extension i.e., 30.09.2023, Respondent No. 1 had deposited an amount of Rs. 200 Crore. However, it is the case of the Appellants that the manner of infusion of the same was in contravention of the Resolution Plan, specifically Clause 2.1.5, since Respondent No.1 infused a portion of the funds through a third party, thereby inducting them into the Resolution Plan as a shareholder.

21. Before this Court, the following three Interim Orders passed by the NCLAT came to be challenged by the Appellants over a period of time:

> i) Civil Appeal Nos. 3736-3737 of 2023 challenging the Interim Order dated 03.03.2023 passed by the NCLAT by which it declined to stay the NCLT Order dated 13.01.2023 which held that all the Conditions Precedent had been fulfilled;
>
> ii) Civil Appeal Nos. 4131-4134 of 2023 challenging the Interim Order dated 26.05.2023 passed by the NCLAT through which the NCLAT restrained the Appellants from invoking the PBG and extended the time for infusion of first tranche payment of Rs. 350 Crore up to 31.08.2023; and
>
> iii) Civil Appeal Nos. 6427-6428 of 2023 challenging the Interim Order dated 28.08.2023 passed by the NCLAT allowing the PBG of Rs. 150 Crore to be adjusted against the first tranche payment and allowing the remaining amount of Rs. 200 Crore to be infused by 30.09.2023.

22. All the aforementioned appeals were heard together and vide common judgment and order dated 18.01.2024, this Court held that the PBG cannot be permitted to be adjusted against the first tranche payment and therefore, directed that the amount of Rs. 150 Crore be infused in cash on or before 31.01.2024 (4th implementation extension). In the event of failure by Respondent No.1 to infuse the said amount within the said date, this Court held that the consequences under the Resolution Plan would follow. It disposed of the appeals as thus:

> “25. The lenders have argued in the appeals that there has been a failure on the part of the successful resolution applicant to comply with the conditions precedent. If the successful resolution applicant were to comply with the terms as envisaged in SBI's affidavit dated August 16, 2023, evidently issues pertaining to compliance with the conditions precedent were not to be pressed thereafter. In order to furnish this successful resolution applicant a final opportunity to comply and consistent with the above position, we issue the following directions:
>
> (i) The successful resolution applicant shall peremptorily on or before January 31, 2024, deposit an amount of Rs. 150 crores into the designated account of SBI, failing which the consequences under the resolution plan shall follow;

(ii) The performance bank guarantee of Rs. 150 crores shall continue to remain in operation and effect, pending the final disposal of the appeal before the National Company Law Appellate Tribunal, and shall abide by the final outcome of the appeal and the directions that may be issued by the National Company Law Appellate Tribunal; and

(iii) Whether or not the successful resolution applicant 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 August 16, 2023 shall be decided by the National Company Law Appellate Tribunal in the pending appeal." (emphasis supplied)

23. Respondent No.1 failed to deposit Rs. 150 Crore in cash by 31.01.2024 as directed by this Court. Therefore, on 27.01.2024, Respondent No.1 filed Misc.

Application Nos. 216-217 of 2024 in the Civil Appeal Nos. 6427-6428 of 2023 seeking an extension of time for making the deposit of Rs. 150 Crore. The same was dismissed by us vide order dated 02.02.2024 as being misconceived in view of our previous order dated 18.01.2024. This order is reproduced hereunder:

" ORDER

1. The Miscellaneous Application is misconceived in view of the final order passed by this Court on 18 January 2024.

2. The Miscellaneous Application is accordingly dismissed.

3 Pending applications, if any, stand disposed of."

24. Later, the NCLAT, vide its impugned order dated 12.03.2024, dismissed the Company Appeal filed by the Appellants against the order of the NCLT dated 13.01.2023 while holding that Respondent No.1 had fulfilled all the Conditions Precedent and had also complied with all the other terms of the Resolution Plan. The following were the concluding observations in the impugned order of the NCLAT:

"129. In view of our foregoing discussions and conclusions, we dispose of these Appeals in the following manner:

1. The impugned order passed by the Adjudicating Authority dated 13.01.2023 is upheld.

2. The Monitoring Committee and MC Lenders as well as SRA are directed to take steps for creation of charge over the Dubai Property No. 1, Dubai Property No. 2, and Dubai Property No.3 within a period of 30 days from today. The SRA to bear all necessary expenses for creation of necessary charge.

3. The Performance Bank Guarantee of INR 150 Crores, which is lying with the Monitoring Committee/MC Lenders, shall be adjusted towards the first tranche payment of INR 350 crores as INR 200 crores have already been paid by the SRA. By adjustment of PBG as per the Resolution Plan, the first tranche of payment of INR 350 crores shall be completed.

4. Steps shall be taken for re-constitution of the shares as per the Resolution Plan forthwith.

5. Out of the first tranche payment of INR 350 crores, payments shall be made to the workmen and employees and the creditors as per the Resolution Plan, including the payment of CIRP cost as per the Resolution Plan, which payment shall be completed within 60 days from the date of this judgment.

6. The SRA shall submit an Application for re-issue of Air Operation Certificate which may be obtained within 90 days from the date of this judgment.

7. The closing date shall be 90th day from the date of this judgment, on which date, handing over of the Corporate Debtor to the SRA by the Monitoring Committee shall be completed.

8. Towards the payment of provident fund dues, as per the order dated 21.10.2022 passed by this Tribunal in Company Appeal (AT) (Insolvency) Nos. 643 of 2021, SRA has undertaken to make payment of provident fund upfront along with payment of dues of workmen and employees as per the Resolution Plan, which payment of INR 12 Crores as undertaken, shall be made in addition to the payments as directed above." (emphasis supplied)

25. The aforesaid judgment and order of the NCLAT once again extended the time limit for implementation of the Resolution Plan and satisfaction of the first tranche payment obligation of Rs. 350 Crore to 11.04.2024 i.e., the date within which the creation of charge over the various Dubai properties was to be completed (5th implementation extension). The same charge has, admittedly, not been created as on date.

26. In light of the above, the Appellants have challenged the aforesaid impugned order of the NCLAT dated 12.03.2024 by way of the present Civil Appeals filed under Section 62 of the IBC, 2016.

B. SUBMISSIONS ON BEHALF OF THE APPELLANTS

27. Mr. N. Venkataraman, learned ASG appearing for the Appellants broadly classified his submissions into the following issues:

i. That the direction of the NCLAT in the impugned order dated 12.03.2024 allowing Respondent No.1 to adjust the PBG of Rs. 150 Crore towards the first tranche payment of Rs. 350 Crore, runs counter to the judgement of this Court dated 18.01.2024. The Resolution plan mandates a cash infusion and the question of PBG adjustment would arise only when the three Dubai properties valued at Rs.250 crores are mortgaged by Respondent No.1.

ii. That the NCLAT, through its impugned order dated 12.03.2024 erroneously limited the Airport Dues to Rs. 25 Crore and further categorising it as a part of the CIRP costs especially when the Resolution Plan obligates an upfront payment of Rs. 475 Crore towards Airport Dues. Such an error is glaring since the Resolution Plan clearly excludes the Airport Dues from the ambit of CIRP costs.
iii. That the NCLAT while approving the Resolution Plan vide its Order dated 21.10.2022 increased the workmen's dues from Rs. 52 Crore to Rs. 289.2 Crore (which according to the appeals filed by the workmen would be reduced to Rs. 226 Crore post the demerger of the ground handling business). An appeal against the order stood dismissed by this Court on 30.01.2023. Therefore, it is a matter of concern that the impugned order of the NCLAT limited the workmen's compensation to a mere Rs. 12 Crore which is contrary to its earlier order dated 21.10.2022 as upheld by this Court on 30.01.2023.

iv. Clause 7.6.1 of the Resolution Plan deals with the five Conditions Precedent and imposes an obligation on the SRA to fulfil the same in order to recommence the operations of the Corporate Debtor as an aviation company. The SRA could be said to have breached three of these conditions i.e. Condition (a) on obtaining the AOC; Condition (c) on obtaining the Slots Allotment Approval, and; Condition (d) on obtaining the International Traffic Rights Clearance. The NCLT, vide its order dated 13.01.2023 had held that the Conditions (a) and (c) stood fulfilled and amended Condition (d) which effectively transformed it from a condition precedent to a condition subsequent. Such erroneous findings came to be wrongly affirmed by the NCLAT through its impugned order dated 12.03.2024.

i. Issue No.1: Adjustment of PBG of Rs. 150 Crore towards the first tranche payment

28. As far as the first tranche payment of Rs. 350 Crore is concerned, it was submitted that a payment of only Rs. 200 Crore in cash has been made and the SRA has failed to infuse the remaining Rs. 150 Crore in cash.

29. The learned ASG submitted that Clause 6.3.1(g) relating to the "Infusion of Funds and Timelines" provides that the timeline for the infusion of the upfront first tranche payment of Rs. 350 Crore was within 180 days from the Effective Date. The clause also indicates the manner in which the first tranche would be utilized and obligates a distribution pattern towards the CIRP costs, contingent fund, payments to FCs, OCs, other creditors and other stakeholders, working capital for business and miscellaneous administrative expenses.

30. The learned ASG then elaborated on the scope of Clause 7.7 of the Resolution Plan which provides the "Implementation Schedule" and requires that the Resolution Plan be completed within

5 years from the Effective Date. According to this clause, the performance of different obligations was to be completed within the said corresponding timelines. S.No. 11 under this table specifically requires the infusion of Rs.350 Crore in the Corporate Debtor by the SRA within "Z+150 days" where "Z" represents the Effective Date. The expression "infusion" has been interpreted by this Court vide its judgement dated 18.01.2024 to mean "payment in cash".

31. Reference was made by the learned ASG to the RFRP, more particularly to Clauses 3.13.1, 3.13.2, 3.13.7(iii) and 3.13.9 which mandate the execution of a PBG for an amount of Rs. 150 Crore and also provide that the PBG cannot be set-off against or used as a part of the consideration which the SRA proposes to offer in relation to the company even if expressly indicated as such in the successful Resolution Plan. It also provides for an automatic right to invoke the PBG without any reference to the SRA, should the SRA fail to implement the approved Resolution Plan in accordance with the terms of the Resolution Plan and to the satisfaction of the CoC. It was also submitted that vide Clauses 7.3 and 9.4 of the Resolution Plan respectively the spirit and intention of the RFRP stood translated into the Resolution Plan. Under Clause 7.3 of the Resolution Plan, the SRA undertook to provide the PBG as per the RFRP and in compliance with Regulation 36B(4A) of the 2016 Regulations. Clause 9.4 of the Resolution Plan authorizes the invocation of the PBG in terms of the RFRP.

32. The learned ASG submitted that Clause 6.4.4 of the Resolution Plan on "Treatment of Financial Creditors - Summary of payments and Security package" under its tabular column evidently conveys the mandate that the SRA is under an obligation to execute a mortgage over the three Dubai properties i.e., Property No. 1 valued at Rs. 100 Crore, Property No.2 valued at Rs. 100 Crore and Property No.3 valued at Rs. 50 Crore. The table provides that the date of creation of such security would be the Effective Date. This security had to be created at the cost of the SRA. Therefore, the SRA was obliged to not only infuse an amount of Rs. 350 Crore within 180 days of the Effective Date, but also execute the mortgage of the three Dubai properties on the Effective Date. In other words, the Resolution Plan obligated the SRA to satisfy the following twin conditions for the PBG to be discharged – (a) infusing Rs. 350 Crore as the first tranche payment and (b) executing a mortgage on the three Dubai properties worth Rs. 250 Crore on the Effective Date. The learned ASG submitted that, it is not in dispute that the NCLT vide its order dated 11.04.2022 extended the time for achieving the Effective Date to 25.05.2022 and Respondent No.1 claimed to have achieved the same on 20.05.2022. Consequently, all the three Dubai properties ought to have been mortgaged on or before 20.05.2022.

33. It was submitted that the Respondent SRA failed to make the first tranche payment of Rs. 350 Crore despite the fact that it ought to have been infused within 6 months from 20.05.2022. Instead, the Respondent SRA continuously contended that the order of the NCLT dated 13.01.2023 (holding that the Conditions Precedent have been fulfilled) was challenged by the Appellants before the NCLAT and that they could not therefore bring in Rs. 350 Crore since the Effective Date had not yet materialized.

34. It was submitted that the Appellants filed the Lender's Affidavit dated 16.08.2023 before the NCLAT and vide Para 8 of the Lender's Affidavit, the Appellants agreed not to contest the issues

relating to the grant of exclusion of time (granted by the Order of the NCLT dated 13.01.2023 and the NCLAT dated 26.05.2023) and the issue relating to the compliance with the Conditions Precedent. In the said affidavit, the Appellants also agreed to withdraw the Company Appeal pending before the NCLAT along with the Civil Appeal Nos. 4131-4134 of 2023 and Civil Appeal Nos. 3736-3737/2023 filed before this Court. However, this would be subject to the fulfilment of the three conditions imposed vide Para 8 by the SRA. The conditions were that – firstly, the SRA infuses an amount of Rs. 350 Crore by 31.08.2023 i.e., the date by which the said payment is to be made as per the Resolution Plan read with order dated 26.05.2023 passed by the NCLAT; secondly, the SRA undertakes to scrupulously follow the other terms and conditions of the Resolution Plan and; thirdly, the SRA complies with the liabilities in relation to the payment to be made to the employees as per the order of NCLAT dated 21.10.2022, which has been upheld by this Court vide order dated 30.01.2023

35. It was submitted that in terms of Serial No. 11 under Clause 7.7.1 read with Clause 6.1.3(g), the SRA had to infuse cash amounting to Rs 350 Crore and it was for this reason alone that Para 8(a) of the Lender's Affidavit refers specifically to the infusion of Rs. 350 crore in cash by 31.08.2023. It was reiterated that the first tranche payment had to necessarily be made in cash since such a requirement flows from the Resolution Plan. It was not open to the SRA to contend that the Resolution Plan had a different mode of payment namely, the payment of Rs. 200 Crore in cash and Rs. 150 Crore by way of adjusting the PBG. The learned ASG contended that none of the clauses in the Resolution Plan stipulates such condition. To the contrary, under Clause 6.4.4, the PBG could be released or adjusted only upon the satisfaction of the twin requirements abovementioned. Therefore, the assumption by the Respondent that the infusion of Rs. 350 Crore emanates only out of the Lender's Affidavit dated 16.08.2023, is totally incorrect. The Lender's Affidavit has not and cannot impose any condition over and above those which are provided under the Resolution Plan. The Lender's Affidavit was filed to only set out a deadline for infusing Rs. 350 Crore by 31.08.2023, which was subsequently extended by the order dated 28.08.2023 of the NCLAT to 30.09.2023. The Lender's Affidavit only insisted on compliance with payment obligations within specified timelines and neither did it alter the Resolution Plan nor lay out new conditions.

36. The NCLAT in its order dated 28.08.2023 fell in error in allowing the adjustment of PBG of Rs. 150 Crore as a part of the first tranche payment. This is evident from the order of this Court dated 18.01.2024, specifically under Para 21, wherein it was held that an infusion of Rs. 350 Crore would only mean an infusion by cash and the same could not be substituted for the adjustment of PBG. This Court, further, under Para 25 directed that a failure to make this payment on or before 31.01.2024 would necessitate the consequences under the Resolution Plan to follow. This Court further issued a direction that the NCLAT shall decide whether the SRA had been compliant with all the conditions contained in the Resolution Plan as well as the conditions in Clause 8 of the Affidavit dated 16.08.2023. This Court made it clear that the non-infusion of Rs. 150 Crore in cash would lead to consequences both in terms of the Affidavit and also the Resolution Plan since the condition insofar as infusion was concerned, remained the same both in the Affidavit and in the Resolution Plan. Therefore, the observation of the NCLAT in the impugned order holding that the consequences of non-deposit of Rs. 350 Crore was that "the SRA was not entitled to take any benefit of the offer" is contrary to the Resolution Plan and the order of this Court dated 18.01.2024.

37. This Court had directed a cash payment of Rs. 150 Crore on or before 31.01.2024 and the SRA had admittedly failed to remit the same. Realizing that this would lead to the initiation of the consequences under the Resolution Plan, Respondent No.1 had applied for an extension before this Court which was declined outright as being misconceived vide order dated 02.02.2024. Therefore, the SRA having failed to make the payment and having breached this Court's order dated 18.01.2024, the NCLAT ought to have concluded that the Resolution Plan had failed.

38. In the alternative, the ASG argued that, assuming without admitting that the non-compliance of this Court's Judgement dated 18.01.2024 would only have the consequence of bringing a closure to the offer made in the Lender's Affidavit dated 16.08.2023 and not have any effect on the Appeal that was pending before the NCLAT, the NCLAT while passing it's final order dated 12.03.2024 ought to have insisted on the payment of Rs. 150 Crore in cash. That would have been in tune with the specific direction that was issued by this Court & the intent with which the direction was issued, and the SRA having not paid the same, had committed a breach of the Resolution Plan. The NCLAT went to the extent of swapping the conditions laid out in the Resolution Plan by directing the adjustment of the PBG first and the execution of the mortgage on the three Dubai properties later i.e., within 30 days from its order dated 12.03.2024. It was submitted that even the extension that was allowed for the execution of mortgage expired on 11.04.2024 and the SRA continues to be a defaulter in this regard as well.

39. The ASG vehemently contended that, there has been a triple breach on the part of SRA – Firstly, breach of the Resolution Plan; secondly, violation of the directions issued by this Court dated 18.01.2024 and; thirdly, the failure to execute the mortgage of the three Dubai properties before 11.04.2024.

40. The ASG submitted that the impugned order of the NCLAT dated 12.03.2024 at Para 129, granted 30 days' time to the SRA for the creation of charge over the Dubai properties and directed the SRA to bear all the necessary expenses. It was submitted that there was complete inaction on the part of the SRA for 29 days from the date of the impugned order and on 10.04.2024 at 16:38 hours, the SRA sent an email stating that they are willing to proceed with the security creation of the Dubai properties and also informed that since its value had reduced by Rs. 14 Crore, they would bridge the gap with an additional property or a cash security. On the same date, another email was sent by the SRA at 17:18 hours stating that an account balance of Rs. 76.07 Lakh is available with the Appellants and the same may be used to execute the mortgage. The ASG submitted that the Appellants replied to the said communication on the same day at 19:18 hours stating that:

> (a) The assenting financial creditors on 13.10.2023 have appointed Mashreq Bank to act as the agent for creation of the mortgage in terms of the prevailing law in Dubai and the necessary amount required to be paid to them had not yet been received.
>
> (b) After the impugned order of the NCLAT came to be passed on 12.03.2024, the Appellants sent an email on 22.03.2024 regarding the cost for the creation of a mortgage over the properties located in Dubai, which had not been paid till date.

(c) That, instead of remitting the amount for creation of security as already advised, the SRA was sending an email that it had "no objection with the MC lenders immediately proceeding with the security creation of the Dubai properties".

(d) It was also brought to the notice of the SRA that 11.04.2024 would be the last date for complying with the impugned order of the NCLAT and that the SRA was well aware of the fact that the cost of creation of securities is Rs. 2,36,00,767 and not Rs. 76.07 lakh. This shows the SRA's clear disinclination to execute the mortgage. It was further brought to the SRA's notice that they had failed to comply with the Resolution Plan and the impugned order of the NCLAT dated 12.03.2024.

Further, on the same day, at 21:05 hours, the SRA sent an email referring to 12 acres of contiguous land situated in Aligarh, Uttar Pradesh which had been valued in excess of Rs. 250 Crore, owned by a reputed individual entrepreneur resident in India and that the SRA was ready to offer this property as an alternative security in India. The Appellants replied to the said email on 16.04.2024 and stated that the period of 30 days had already expired on 11.04.2024, the expenses for creation of charge had not been paid and that accepting the property in India which belongs to a third party would tantamount to modification of the Resolution Plan.

41. The ASG therefore submitted that the above exchanges patently bring out the SRA's non-cooperation, defiance to judicial orders and desperate attempts to suggest the creation of security of unknown third-party properties, all of which were done after the expiry of the time period of 30 days provided by the NCLAT for compliance with their order dated 12.03.2024. Consequently, even in terms of the impugned Order of the NCLAT, there has been a total breach on the part of the SRA which only indicates that they have no inclination worth the name to implement the Resolution Plan. Consequently, in terms of Clause 9.4 of the Resolution Plan and Clause 3.13.7(iii) of the RFRP respectively, the Appellants are entitled to invoke the PBG automatically without any reference to the SRA.

ii. Issue No. 2: Non-payment of Airport dues

42. It was submitted that in terms of Clause 6.3.1(d), the airport dues and parking charges are to be paid by the SRA upfront in priority over any other payment to the creditors of the Corporate Debtor. Clause 6.4.1(f) provides that on 31.08.2020, an approximate figure of Rs 240 Crore towards parking charges for aircrafts and airport space lease charges was arrived at through the estimate given by the RP and this was subject to a maximum of Rs. 475 Crore. Specific attention was drawn to the expression in Clause 6.3.1(d) which states that "such payments will be settled upfront in full in first 180 days from the effective date and without any conditions (including not being staggered payments spread across a period of time) so that flying can start immediately without any future disputes and concerns with such claimants for past dues". The respondents, however, have not remitted any amount towards the airport dues nor have they allowed the Resolution Plan to be implemented. As a result of the several extensions/exclusions given by the NCLT and NCLAT to the SRA, the airport dues as on date stand at a staggering figure of Rs. 1100 Crore approx., which amount, again, is to be paid by the respondents alone.

43. The ASG submitted that, when the aforesaid is the position in the Resolution Plan, the NCLAT in its impugned order dated 12.03.2024 vide Paras 53-55 respectively has chosen to restrict the Airport dues to a mere Rs. 25 Crore and has erroneously construed it to be a part of the CIRP cost. The counsel drew specific attention to Para 53 of the impugned order wherein the NCLAT had referred to Clause 6.4.1(h) and stated that "...CIRP cost of the Corporate Debtor (excluding parking charges, rental charges, employees dues, taxes etc.) Accordingly, the Resolution Applicant has set aside a sum of Rs 25 crores as CIRP cost towards payment of any such cost until the approval date...". Thus, despite the fact that Clause 6.4.1(h) on treatment of Outstanding CIRP Costs excludes the parking charges, rental charges, employees' dues, taxes etc., the NCLAT has surprisingly read the same to mean as "inclusive of/included in" the CIRP costs while directing the payment of a mere Rs. 25 Crore. Therefore, this is an error apparent on the face of it which requires interference by this Court.

44. It was submitted that, in case the argument of the SRA that a maximum of only Rs. 475 Crore is to be paid by the SRA under the Resolution Plan, is accepted, then the entire amount of Rs. 475 Crore shall go towards the airport dues and as a consequence, nothing would become payable to the financial creditors, operational creditors, workmen etc. The amount of Rs. 240 Crore was a mere estimate of the dues payable in the year 2020. Due to non-payment and non-commencement of flying operations, the same amount in the year 2024 has increased multi-fold. To contend that such an increased amount does not fall under the Resolution Plan and therefore, is not payable, will cast a further burden on the CoC of the Corporate Debtor. Further, it would be unfair to accept that, for the reason of the Respondent's default in payment, the CoC would have to bear the Airport dues of Rs. 1100 Crore and none of the creditors or workmen would get anything out of this plan. This misconceived contention which intentionally makes the plan unworkable needs to be outrightly rejected.

iii. Issue No. 3: Non-payment of Workmen and Employees' dues

45. The ASG submitted that the Resolution Plan originally provides for a sum of Rs. 52 Crore towards the payment of workmen's and employees' dues. However, the NCLAT vide its order dated 21.10.2022, in Para 78, had increased the same to Rs. 289.2 Crore which now stands modified to about Rs. 226 Crore. The NCLAT in the order dated 21.10.2022 under Para 80 had observed in unambiguous terms that "the workmen are entitled to full payment of provident fund and gratuity, hence the balance of above dues ought to be paid by the SRA to satisfy statutory obligations. Non-payment of full provident fund and gratuity shall lead to violation of Section 30(2)(e) and hence, to save the Plan the above payments have to be made". This view of the NCLAT had also been upheld by this Court vide its order dated 30.01.2023. The Resolution Plan under Clause 6.3.1(c) obligates the payment of such dues within 180 days from the Effective Date.

46. It was submitted that, the NCLAT, vide Paras 111-114 had erroneously directed the payment of an amount of Rs. 12 Crore towards the Provident Fund and has completely ignored the payment of dues pertaining to gratuity of the workmen and employees. The Appellants contend that this finding is not only an error apparent but completely inconsistent with the NCLAT's own earlier order dated 21.10.2022, which stood upheld by this Court on 31.01.2023.

iv. Issue No. 4: Achievement of Effective Date

47. It was submitted that Clause 7.6.2 of the Resolution Plan provided that the date of fulfilment of all the Conditions Precedent as stated in Clause 7.6.1, shall be the Effective Date for the purposes of the Resolution Plan. A failure to fulfill the Conditions Precedent within 270 days of the Approval Date would lead to an automatic withdrawal of the Resolution Plan as per Clause 7.6.4. However, the NCLT, vide its order dated 22.06.2021, expressed its opinion that there was uncertainty with respect to the achievement of the Effective Date under the Resolution Plan and therefore, modified Clause 7.6.4. As a consequence, it fixed the Effective Date to be the 90 th day from the Approval Date of 22.06.2021 and stated that this could be extended for a maximum period of another 180 days. The Effective Date, therefore, became 22.09.2021 i.e., 90 days from 22.06.2021. Subsequently, three extensions were given to the SRA with respect to the achievement of the Effective Date – First, vide order dated 29.09.2021, the NCLT extended it to 22.12.2021; Secondly, vide order dated 20.01.2022, the NCLT extended to 22.03.2022 through which the maximum extension of 270 days that could be provided under the Resolution Plan had been reached and; Thirdly, vide order dated 11.04.2022, the NCLT further extended it to 25.05.2022 by excluding a period of 65 days spent in moving the application for grant of time. Therefore, the Effective Date was finally frozen on 25.05.2022.

48. The learned ASG submitted that the SRA, however, contended that the Effective Date had been achieved on 20.05.2022 and the same was accepted by the NCLT in its order dated 13.01.2023. Therefore, the calculation of 180 days for the infusion of the First Tranche Payment begins from 20.05.2022. The initial 180 days had expired on 16.11.2022. However, several extensions were given to the SRA for infusion of the first tranche payment – Firstly, vide order dated 13.01.2023, the NCLT extended the timeline for infusion of First Tranche Payment till 15.05.2023; Secondly, vide order dated 26.05.2023, the NCLAT further extended the timeline of 180 days till 31.08.2023; Thirdly, vide order dated 28.08.2023, the NCLAT extended the timeline of 180 days till 30.09.2023 and; Fourthly, vide Order dated 18.01.2024, this Court extended the time of 180 days for infusion till 31.01.2024.

49. The learned ASG highlighted that Respondent No.1 had failed to make the first tranche payment of Rs. 350 Crore, airport dues of Rs. 475 Crore and the workmen's and employees' dues of Rs. 226 Crore within the initial 180 days from the Effective Date as well as within the multiple extensions granted by the NCLT, NCLAT and this Court. The ASG submitted that multiple extensions and accommodations have already been granted to the SRA for implementation of the Resolution Plan. Therefore, it is too late in the day to claim that the non-infusion of Rs. 150 Crore to complete the first tranche payment of Rs. 350 Crore is only a breach of the Lender's Affidavit dated 16.08.2023 and not the Resolution Plan. The same needs to be rejected outrightly.

v. Issue No. 5: Non-fulfilment of Conditions Precedent

50. The ASG submitted that the respondents have failed to comply with 3 Conditions Precedent, specifically under Clauses 7.6.1(a), (c) and (d) of the Resolution Plan respectively.

51. It was submitted that Clause 7.6.1 (a) requires the SRA to obtain an AOC which has to be validated by the DGCA and the Ministry of Civil Aviation (hereinafter, "MoCA"). The Respondent possessed an AOC on 20.05.2022 i.e., the Effective Date as contended by the SRA. The validity of the AOC was further extended by the DGCA on 27.07.2023 up to 03.09.2023 subject to certain conditions. It was clearly stated that the extension is only for the limited purpose of completing the ongoing CIRP process and the Corporate Debtor would be required to undergo fresh re-certification in accordance with the prescribed procedure for issuance of an AOC and also submit a firm action plan for the revival of its operations. The AOC expired on 03.09.2023 and the same was never extended by the SRA.

52. It was submitted that the NCLT in its order dated 13.01.2023 had recorded a finding that the Condition Precedent with respect to the AOC was fulfilled but it must be noted that this was an observation made during a time when the SRA had a valid subsisting AOC, which subsequently expired.

53. It was further submitted that vide letter dated 26.12.2023, the Director General of Civil Aviation confirmed that no further extension of the AOC was granted to the Corporate Debtor beyond 03.09.2023. The NCLAT in its impugned order dated 12.03.2024 required the SRA to submit an application for re- issuance of the AOC within 90 days from the date of its order and the deadline for the same had expired on 12.06.2024. It was submitted that, even today, the Respondents do not have a valid AOC and the fact that the Respondents are contending that they had not renewed the AOC solely because of the matter being under litigation, only exposes their disinterest and disinclination in taking their obligations forward.

54. It was then submitted that Clause 7.6.1(c) requires the SRA to obtain Slot Allotment Approval. The NCLT in its order dated 13.01.2023 vide para 124 had clearly rendered a finding that "there is no dispute that slots for which SRA applied were granted to them by the concerned competent authority including the slots in Delhi and Mumbai on settling the old dues and as such, it cannot be considered as non-allotment of slots, as SRA has received the slots it requested for in compliance with the plan approval order." The ASG also referred to the email dated 27.06.2022 issued by MAIL and the same reads as under: "We are happy to consider your request for slots on parking bay during the ongoing summer schedule. The same is subject to the closure of ongoing discussions pertaining to settlement of outstanding dues of jet airways towards MAIL."

55. While the NCLT had correctly recorded a finding that the slot allotment is subject to the payment of airport dues (which the Respondents had not paid even today), the NCLAT vide para 50 and Para 55 erroneously concluded that "the adjudicating authority has rightly observed that settling of old dues cannot be considered as non-allotment of slots" and therefore condition 7.6.1(c) stands fulfilled. This finding is contrary to the finding recorded by NCLT and the Resolution Plan and as a consequence, the Respondents could be said to have breached this condition precedent as well.

56. The ASG submitted that Clause 7.6.1(d) requires the SRA to obtain the International Traffic Rights Clearance. The NCLT, vide Para 125, had righty held that "the international traffic rights

clearance is required to be obtained in compliance with the applicable laws which stipulates that minimum 20 aircrafts are required to be deployed before applying for such clearance". However, after holding so, the NCLT proceeded to conclude that this condition cannot be satisfied upfront and can be fulfilled only when the operations have recommenced successfully and that, therefore, this condition precedent stood fulfilled. In simple terms, the NCLT could be said to have modified a condition precedent to a condition subsequent and this view of the NCLT has been upheld by the NCLAT in Paras 56 to 58. These findings are in clear contradiction to the express stipulation in the Resolution Plan and therefore, this condition too stands breached by the respondents.

57. One more aspect that the learned ASG highlighted through his submissions was that, the Circular F.No.AV.14027/17/2018-AT-1 issued by the Office of Director General of Civil Aviation provides certain requirements for undertaking aerial work. Para 6 of the said Circular deals with Security Clearance and the same requires the Applicant or Company and its Board of Directors to obtain Security Clearance from the Ministry of Home Affairs (MHA) if they are foreign nationals. It was submitted that according to the communications dated 09.07.2024 issued by the Ministry of Civil Aviation, it had been confirmed that Security Clearance had not been conveyed in respect of Mr. Florian Fritsch. Hence, the threshold requirement of security clearance has not yet been obtained by one of the Resolution Applicants, who according to Clause 2.1.4 of the Resolution Plan, is the other partner to the Consortium along with Mr. Murari Lal Jalan. The ASG also placed reliance on news items which suggested that Mr. Florian Fritsch is facing money laundering proceedings in three different jurisdictions. The same had been dealt with by the NCLAT summarily in its impugned order in Para 125. However, it was wrongly concluded that this was yet another attempt by the Appellants to create roadblocks in the process of implementation of the Resolution Plan.

58. The counsel finally submitted that, since the Airport Dues and the CIRP costs have substantially increased solely on account of the delay, the Court should invoke its powers under Article 142 of the Constitution of India and direct that the Corporate Debtor be sent to liquidation.

C. SUBMISSIONS ON BEHALF OF THE RESPONDENTS

59. On the other hand, Mr. Mukul Rohatgi, learned senior counsel appearing on behalf of Respondent No.1 submitted that Section 62 of the IBC, 2016 requires an appeal to the Supreme Court from an order of the NCLAT to be on a "question of law". He submitted that the present appeal only seeks to challenge the concurrent findings of fact recorded by the NCLT and the NCLAT, with regard to compliance of the Conditions Precedent by the SRA and does not bring out any question of law. To fortify this submission, the counsel placed reliance on the decision of this Court in IFCI Ltd. v. Sutanu Sinha and Others reported in 2023 SCC OnLine SC 1529.

60. The counsel submitted that the directions issued by this Court vide order dated 18.01.2024 were interim and not final. The appeals which were decided by this Court arose out of an interlocutory application which was filed by the SRA seeking directions from the NCLAT on the mode of satisfying the conditions in the Lender's Affidavit dated 16.08.2023. It was submitted that the same is evident from a reading of Para 19 which reads that ".. Observations in the present judgment are confined to

the arrangement which must operate during the pendency of the appeal without the court expressing a final view on merits of the appeal, which will fall for consideration before the NCLAT". Further, Para 21 of the same order stated that, "...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...". Therefore, it was submitted that the directions issued by this Court only related to a scenario were the SRA sought benefit of the offer made in the Lender's Affidavit.

61. The counsel submitted that the NCLAT in its impugned order dealt with this Court's order dated 18.01.2024 at length and concluded that the direction issued by this Court to deposit the amount of Rs. 150 Crore peremptorily on or before 31.01.2024 was in reference to the Lender's Affidavit dated 16.08.2023. Meaning thereby, the order of the NCLAT dated 28.08.2023 to adjust the PBG of Rs. 150 Crore was substituted by the direction of the Supreme Court. Therefore, the SRA would render itself disentitled to take benefit of the offer of the Appellant that they would withdraw the Company Appeal and the appeals before the Supreme Court. As such, the pending Company Appeal was to be heard on merits and decided in accordance with law by the NCLAT. In short, the entire issue before this Court was confined to an interpretation as to how the condition of Rs. 150 Crore in the affidavit was to be interpreted and if the condition was complied with, the Appeals would stand withdrawn, if not, they would be decided on their own merits.

62. It was further submitted that the NCLAT rightly observed that, the submission of the Appellant that the Corporate Debtor should be directed to be liquidated on account of non-deposit of Rs. 150 Crore, cannot be accepted since the Supreme Court neither considered nor expressed any opinion on the question of liquidation. Liquidation was never recorded as a consequence and this is evident from liquidation not being mentioned in; (a) the arguments of the Appellants recorded by the NCLAT in its order dated 28.08.2023, (b) the judgment of the NCLAT dated 28.08.2023, (c) the arguments of the Appellants recorded by this Court in its order dated 18.01.2024 and, the findings or the directions of this Court in its order dated 18.01.2024.

63. The counsel also submitted that the adjustment of the PBG against the first tranche payment was possible under the Resolution Plan, specifically under Clause 6.4.4 which sets out the "Summary of payments and security package". It is evident through Clause 6.4.4 that a revolving package was agreed against each tranche of the payment under the Resolution Plan. For the first tranche of payment, the security package comprises of the PBG and one of the Dubai Properties and it is stated that the PBG will be adjusted against the first tranche payment. For subsequent tranches of payment, the security package does not include the PBG and instead includes other types of security. It was submitted that the Lenders are relying on the RFRP to claim that no adjustment of the PBG was possible. However, the RFRP is only a wish list of the CoC which was informed to the applicants at the time of inviting plans. Therefore, it cannot override a negotiated and approved provision of the Resolution Plan. This is precisely why the approved Resolution Plans often deviate from the RFRP.

64. The counsel submitted that according to Clause 6.4.4 of the Resolution Plan, the Balance Security is in the form of immovable properties located in Dubai and since they are located outside

India, the approval of the RBI was necessary for the creation of security. The security on the Dubai properties of the SRA was to be created on the Effective Date, i.e., 20.05.2022. On 21.05.2022, a day after the Effective Date, the SBI had applied for the approval and the same was received on 22.07.2022.

65. It was submitted that, on 03.02.2023 the SRA had shared drafts of the transaction documents required for the creation of security. However, no comments were received from the Appellants. It is the case of the SRA that the Appellants did not reply to the reminder emails sent between the months of May and October 2023 and this issue was also discussed during the 37th MC Meeting dated 09.10.2023. However, after more than a year of sharing the transaction documents, the Appellants sent their comments on the same on 08.04.2024 i.e., three days before the expiry of the 30-day timeline given under the impugned order of the NCLAT.

66. It was further submitted that, only in the 42nd MC Meeting that took place on 02.04.2024 the SRA was informed for the first time that, as per the recent valuation, the valuation of the Balance Security worked out at Rs. 236 Crore and that there was a shortfall of Rs. 14 Crores. In the same meeting, the SRA suggested that a property in India valued at Rs. 250 Crore could be provided as an alternate security. Vide email dated 10.04.2024, the SRA provided details of the alternate security equivalent to Rs. 250 Crore in India. However, the Appellants responded to the above vide their email dated 16.04.2024 stating that providing an alternate security would tantamount to modification of the Resolution Plan.

67. The counsel submitted that the SRA, vide email dated 16.04.2024 conveyed that they had not received any invoice from Mashreq Bank towards payment of their costs for acting as an agent for security creation and that the payment of security related costs to the extent of Rs. 76 Lakh could be done from the existing deposit with the Appellants. For the balance amounts, they requested that the invoices be shared with the SRA and that the same would be processed immediately. On 20.04.2024 and 01.05.2024 respectively, the SRA reminded the Appellants to share the invoices for the purpose of security creation.

68. On the issue of security creation, the counsel summed up submitting that the SRA had done everything within its control to enable the Appellants to create security including agreeing to bear all costs and expenses for creation and preservation of security, providing contracts for such security creation, and providing title documents of all the immovable properties to the Appellants. Therefore, the contention that the SRA failed to create Balance Security is factually incorrect.

69. With respect to the payment of the Airport Dues, it was submitted that, the Resolution Plan provides for the adjustment of CIRP dues from the positive cash balance of the Corporate Debtor and then from the share of the Lenders. The Appellants' own case is that the Airport Dues amount to Rs. 1000 Crore approximately. Therefore, as per the Resolution Plan, Rs. 400 Crore approx. is payable towards the airport dues, first, from the positive cash balance of the Corporate Debtor and if that is insufficient, then from the Lenders' share being CIRP Dues. Finally, the remaining Rs. 600 Crore would be borne by the SRA

70. As regards the payment of Provident Fund and Gratuity to the workmen and employees, it was submitted that the NCLAT did not waive off the liability of the SRA towards the payment of PF and Gratuity. On the contrary, for the implementation of the same, the NCLAT had provided timelines for making such payments in compliance with the applicable laws. It was further submitted that in the 42nd MC meeting held on 02.04.2024, the SRA undertook to make the payment towards the dues of PF and gratuity and the Appellants are aware of the same.

71. The counsel submitted that there are concurrent findings on the fulfillment of Conditions Precedent vide the order of the NCLT dated 13.01.2023 and the impugned order of the NCLAT dated 12.03.2024. Clause 7.6.1 of the Resolution Plan sets out five Conditions Precedent. It was submitted that two of the five Conditions Precedent were "admittedly complied" with. On the remaining three, both the Tribunals have rendered concurrent findings, which ought not to be interfered with in an appeal under Section 62 of the IBC, 2016, which is effectively a Second Appeal.

72. The counsel submitted that the SRA cannot suo moto infuse funds into the Corporate Debtor since such infusion necessarily requires steps/actions to be taken by the Appellants and the Corporate Debtor acting through the MC. These steps include the appointment of directors on the board of the Corporate Debtor and seeking in-principal approval from the relevant stock exchanges under the SEBI LODR Regulations by the Corporate Debtor. However, despite constantly following up with the Appellants, the same has not been received yet and therefore, they have not allowed the SRA to undertake such a funding.

73. The Counsel submitted that the first Condition Precedent is the Validation of AOC by DGCA and MoCA as provided under Clause 7.6.1(a). The SRA had a valid AOC until 03.09.2023 and the lapse of the AOC during the pendency of the appeals cannot mean that the Condition Precedent was not met. It was submitted that the condition was met on the date of the implementation application being filed before the NCLT and that the AOC has not been renewed only due to the fault of the Appellants.

74. It was submitted that the third Condition Precedent was the requirement of Slot Allotment Approval as provided under Clause 7.6.1(c). The counsel rejected the contention of the Appellants that the slots were not provided because the airport charges were not paid and stated that the airport charges are a part of the CIRP costs which could be met as and when the Resolution Plan was operationalized. It was further submitted that the SRA had obtained 48 slots on the Effective Date when it was supposed to secure only 46 slots. The NCLT in its order dated 21.06.2022 had also held that it was not possible for the SRA to obtain the slots that were historically available to the Corporate Debtor. Therefore, this Condition Precedent has also been met.

75. The counsel submitted that the fourth Condition Precedent related to obtaining the International Traffic Right Clearance as stated under Clause 7.6.1(d) of the Resolution Plan. This Condition Precedent had to be satisfied in accordance with the "applicable laws". Upon applying for the Clearance, the MoCA had informed the SRA that, Clause 8(b) of the National Civil Aviation Policy, 2016 requires a minimum of 20 aircrafts to be deployed for domestic operations before applying for international clearance and that therefore, the same can be granted when 20 aircrafts of the

Corporate Debtor are in operation. The Business Plan only envisages 6 aircrafts and the SRA can operationalize 20 aircrafts once the operations of the Corporate Debtor begin. This is evident from Clause 8.2.6(f) that states that the restart of international operations can be envisaged only after the completion of 12 months of operating the airline. Since this condition requires operations to re-commence before it can be satisfied, this Condition Precedent has also been complied with.

76. Mr. Gopal Sankaranarayanan, learned senior counsel also appearing for the Respondents, concurred with all the aforesaid submissions made on behalf of the SRA. In addition to bringing our attention to Clause 6.4.4 on the issue of adjustment of the PBG, he also referred to Clause 6.4.12 of the Resolution Plan which stated that the PBG will bring financial flexibility for the SRA and help the SRA to advance the committed payments and achieve its goal of re- commencing the operations of the Corporate Debtor at the earliest.

77. It was submitted that the NCLAT order dated 28.08.2023 rightly recognized that Regulation 36B(4A) of the 2016 Regulations only provides for the PBG requirement for the purposes of the RFRP and the same has been complied with by the SRA. Further, the counsel pointed out that Clause 6.4.4 (a)(i) elaborates on the "Committed Cash Payments" to be made to the Financial Creditors. In the table, under the heading "Date of release of Security", the PBG of Rs. 150 Crore was not mentioned while the other two forms of security find a mention. Thus, the intention was that, the PBG be adjusted in making the first tranche payment.

78. The counsel further submitted that there is no specific consequence provided under the Resolution Plan for a default in the creation of security. It was reiterated that the SRA had undertaken all possible steps to further the execution of the mortgage of the Dubai properties as per the Resolution Plan and it is the Appellants who have not cooperated in this regard.

79. The counsel submitted that the Appellants have taken contradictory stances at different stages of the dispute before different forums. Before the NCLAT in its pending Company Appeal, it was contended by the Appellants that the NCLT had erroneously allowed the Resolution Plan to be implemented without the complete compliance of the Conditions Precedent by the SRA. However, before this Court, they have argued that the SRA has claimed that the Conditions Precedent were fulfilled on 20.05.2022 and has asserted that it would be the Effective Date. As a consequence, the SRA should have met with their first tranche payment obligations within 180 days from the Effective Date.

80. The counsel submitted that the consequences of non-compliance with the Conditions Precedent were that the SRA would not be able to re-commence operations as an aviation company as stated in Clause 7.6.1 of the Resolution Plan. He also submitted that the Effective Date for the purposes of the Resolution Plan would only kick in upon the fulfillment of all the Conditions Precedents. The consequence of non-compliance with the Conditions Precedent would be that the Resolution Plan shall automatically stand withdrawn and upon, such withdrawal, the members of the SRA in the MC shall resign and the remaining members of the MC shall assume absolute control of the Corporate Debtor.

81. Adding to the submissions as regards the Airport Dues, it was submitted that as per the estimates made by the RP, the airport dues i.e., the parking charges and airport space lease charges were Rs. 240 Crore and this was reflected in Clause 6.4.1(f) of the Resolution Plan. It was submitted that the dues accrued during the period of CIRP i.e., till the date of approval of the Resolution Plan, is a part of the CIRP costs and such payments have to be made within 170 days from the Effective Date as per Clause 6.4.1 of the Resolution Plan. As per Clause 6.4.1(h), a sum of Rs. 25 Crore was set aside for CIRP costs. However, it must be noted that Clause 6.4.1(m) allows the SRA to utilize the funds available with the Corporate Debtor for making payments of any portion of the CIRP costs. It was submitted that the Lenders rely on Clause 6.3.1(d) to state that the airport dues have to be settled upfront and not in staggered payments. However, Clause 6.3.1(d) is just a proposal and not a condition of the Resolution Plan.

82. On workmen and employees' dues, it was submitted that, as per Clause 6.4.2 on the "Summary of Financial Proposal" the amount demarcated for all the claims related to employees or workmen was Rs. 52 Crore and as per the Implementation Schedule, these claims were to be paid within 175 days from the Effective Date. However, the NCLAT vide its order dated 21.10.2022 increased it to Rs. 113 Crore since it was the minimum liquidation value that they were entitled to as per the estimates of the RP. The final directions issued by the NCLAT in the aforesaid order conveyed that the workmen and employees are entitled to the payment of unpaid PF and gratuity till the Insolvency Commencement Date and the RP was directed to compute such payment within 30 days. The RP had calculated such amounts to be Rs. 14 Crore towards PF and Rs. 188.7 Crore towards gratuity. It was submitted that neither the NCLAT order dated 21.10.2022 nor the order of this Court dated 30.01.2023 had provided any specific timelines for fulfillment of these additional liabilities which were cast upon the SRA. This is precisely why the SRA proposed to pay Rs. 14 Crore towards PF upfront in compliance with Section 11 of the PF Act and pay the Gratuity dues of Rs. 188.2 Crore in a staggered manner.

83. The counsel finally referred to the letter dated 16.08.2024 sent by MoCA which provided Security Clearance in respect of a proposed Director of the Corporate Debtor, Mr. Swapnil Jain. The validity period of this Security Clearance was stated to be co-terminus with the validity period of the AOC which was issued by the DGCA.

D. ISSUES FOR DETERMINATION

84. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following questions of law fall for our consideration: -

> i. Whether the Performance Bank Guarantee (PBG) could have been adjusted against the first tranche payment which was to be made under the Resolution Plan, within 180 days from the Effective Date, in contravention of the order of this Court dated 18.01.2024, the terms of the Resolution Plan and the provisions of law? To put it in other words, whether the impugned order of the NCLAT allowing the adjustment of the Performance Bank Guarantee (PBG) in lieu of payment of the first tranche could be said to be perverse?

ii. Whether the non-implementation of the Resolution Plan by the SRA necessarily leads to the consequence of liquidation as provided under Section 33(3) of the IBC, 2016?

iii. Whether the timely implementation of the Resolution Plan is also one of the objectives of the IBC, 2016?

E. ANALYSIS

85. Before we proceed to advert to the rival submissions canvassed on either side and the issues outlined above, we must look into the preliminary objection raised on behalf of the SRA i.e., that the scope of an appeal under Section 62 of the IBC must be restricted to a "question of law". In this regard, reliance was placed on the decision of this Court in IFCI Ltd. v. Sutanu Sinha and Others reported in 2023 SCC OnLine SC 1529 which dealt with the issue as to whether compulsorily convertible debentures could be treated as a "debt" instead of an equity instrument, to submit that the jurisdiction under Section 62 is restricted to a question of law akin to a second appeal. The relevant observations are reproduced hereinbelow:

"29. Last but not the least, we must also note that our jurisdiction comes from section 62 of the Code. The said section reads as under:

"62. (1) Any person aggrieved by an order of the National Company Law Appellate Tribunal may file an appeal to the Supreme Court on a question of law arising out of such order under this Code within forty-

five days from the date of receipt of such order".

30. The jurisdiction is restricted to a question of law akin to a second appeal. The law does not envisage unlimited tiers of scrutiny and every tier of scrutiny has its own parameters.

Thus, the lis inter se the parties has to be analysed within the four corners of the ambit of the statutory jurisdiction conferred on this court.

31. We are thus of the view that the appeal does not raise any such question of law and that the findings of the courts below are in accordance with settled principles." (emphasis supplied)

86. Section 100 of the Code of Civil Procedure, 1908 is the provision related to a second appeal and it reads as thus:

"100. Second appeal – (1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of

> law. (2) An appeal may lie under this section from an appellate decree passed ex parte. (3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal. (4)Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.
>
> (5)The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:
>
> Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question." (emphasis supplied)

87. This Court in Chandrabhan (Deceased) Through Lrs. And Others v. Saraswati and Others reported in 2022 SCC OnLine SC 1273 explained as to what constitutes a "substantial question of law" under Section 100 of the Code of Civil Procedure, 1908. The relevant observations made are reproduced hereinbelow:

> "33. The principles relating to Section 100 of the CPC relevant for this case may be summarised thus:
>
> (i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.
>
> (ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law.

A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents and involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

(iii) The general rule is that the High Court will not interfere with findings of facts arrived at by the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the

courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to "decision based on no evidence", it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding." (emphasis supplied) This Court recapitulated that a substantial question of law would also arise in a situation where the legal position is clear, either on account of express provisions of law or binding precedents, but the Court below has ignored or acted contrary to such legal principles while deciding the matter. In such circumstance, the decision rendered by the Court below would violate a settled position of law and therefore, constitute a substantial question law. Furthermore, it was observed therein that it is not an absolute rule that the Court in a second appeal will not interfere with findings of fact. One of the well-recognized exceptions is where the Courts below have drawn wrong inferences from proved facts, by applying the law erroneously.

88. In Maria Colaco and Another v. Alba Flora Herminda D'souza and Others reported in (2008) 5 SCC 268, it was held that in the second appeal under Section 100 CPC, the High Court should not interfere on the questions of fact. However, if on a scrutiny of the evidence, it is found that the finding recorded by the first appellate court is totally perverse then an interference is certainly possible in the matter as it constitutes a question of law. The relevant observations are reproduced hereinbelow:

> "7. The learned Single Judge after considering the matter found that these averments did not constitute the basis on the part of the plaintiff that he was not in possession of the suit property. On the contrary, the learned Single Judge found in reply to Para 13 of the plaint that the defendants in their written statement admitted that the work was stopped by Defendant 1 for some time but they restarted the work again. This, according to the learned Single Judge was a proof of the fact that Defendants 1 and 2 and Defendant 3 were not sure about the possession and right of Defendants 1 and 2 over the property. In fact, what transpires from all these facts is that the trial court reached the same conclusion as the learned Single Judge in second appeal in the High Court. It is true normally that in the second appeal the High Court should not interfere on the questions of fact. But if on the scrutiny of the evidence it is found that the finding recorded by the first appellate court is totally perverse then certainly the High Court can interfere in the matter as it constitutes the question of law." (emphasis supplied)

89. In Abdul Raheem v. Karnataka Electricity Board and Others reported in (2007) 14 SCC 138, the Court acknowledged that the High Court's jurisdiction in terms of Section 100 is limited. Having said so, it was also observed that a consideration of irrelevant facts, non-consideration of relevant facts and a finding of fact arrived at by overlooking vital documents would also give rise to a substantial question of law. The relevant observations are reproduced hereinbelow:

> "10. A substantial question of law ordinarily would not arise from the finding of facts arrived at by the trial court and the first appellate court. The High Court's jurisdiction

in terms of Section 100 of the Code is undoubtedly limited.

11. The question as to whether the plaintiff was ready and willing to perform its part of contract by itself may not give rise to a substantial question of law. Substantial question of law should admittedly be formulated relying on or on the basis of findings of fact arrived at by the trial court and the first appellate court.

12. However, there cannot be any doubt whatsoever that consideration of irrelevant fact and non-consideration of relevant fact would give rise to a substantial question of law.

Reversal of a finding of fact arrived at by the first appellate court ignoring vital documents may also lead to a substantial question of law. In Vidhyadhar v. Manikrao [(1999) 3 SCC 573] this Court held : (SCC p. 586, para 23) “23. The findings of fact concurrently recorded by the trial court as also by the lower appellate court could not have been legally upset by the High Court in a second appeal under Section 100 CPC unless it was shown that the findings were perverse, being based on no evidence or that on the evidence on record, no reasonable person could have come to that conclusion.” (See also Iswar Bhai C. Patel v. Harihar Behera [(1999) 3 SCC 457] .)

14. We may, however, notice a few decisions in regard to the jurisdiction of the High Court under Section 100 of the Code. In Commr. of Customs (Preventive) v. Vijay Dasharath Patel [(2007) 4 SCC 118] this Court held : (SCC p. 128, paras 22-26) “22. We are not oblivious of the fact that the High Court's jurisdiction in this behalf is limited. What would be substantial question of law, however, would vary from case to case.

23. Moreover, although, a finding of fact can be interfered with when it is perverse, but, it is also trite that where the courts below have ignored the weight of preponderating circumstances and allowed the judgment to be influenced by inconsequential matters, the High Court would be justified in considering the matter and in coming to its own independent conclusion. (See Madan Lal v. Gopi [(1980) 4 SCC 255] .)

24. The High Court shall also be entitled to opine that a substantial question of law arises for its consideration when material and relevant facts have been ignored and legal principles have not been applied in appreciating the evidence. Arriving at a decision, upon taking into consideration irrelevant factors, would also give rise to a substantial question of law. It may, however, be different that only on the same set of facts the higher court takes a different view. (See Collector of Customs v. Swastic Woollens (P) Ltd. [1988 Supp SCC 796 : 1989 SCC (Tax) 67] and Metroark Ltd. v. CCE [(2004) 12 SCC 505] .)

25. Even in a case where evidence is misread, the High Court would have power to interfere. (See W.B. Electricity Regulatory Commission v. CESC Ltd. [(2002) 8 SCC 715] and also Commr. of Customs v. Bureau Veritas [(2005) 3 SCC 265] .)

26. In Dutta Cycle Stores v. Gita Devi Sultania [(1990) 1 SCC 586] this Court held : (SCC p. 587, para 4) '4. Whether or not rent for the two months in question had been duly paid by the defendants is a question of fact, and with a finding of such fact, this Court does not ordinarily interfere in proceedings under Article 136 of the Constitution, particularly when all the courts below reached the same conclusion. But where the finding of fact is based on no evidence or opposed to the totality of evidence and contrary to the rational conclusion to which the state of evidence must reasonably lead, then this Court will in the exercise of its discretion intervene to prevent miscarriage of justice.' (See also P. Chandrasekharan v. S. Kanakarajan [(2007) 5 SCC 669] .)".

(emphasis supplied) Therefore, what would constitute a substantial question of law would differ in each case. When material and relevant facts have been ignored and legal principles have not been applied while appreciating the evidence, a substantial question of law can be said to have arisen. Additionally, even in a case where evidence is misread, the power to interfere under Section 100 would exist.

90. In our considered view the impugned order of the NCLAT directing the SRA to adjust the PBG of Rs. 150 Crore against the first tranche payment of Rs. 350 Crore was in flagrant disregard of the order of this Court dated 18.01.2023, the terms of the Resolution Plan and established law. Such an order was perverse for having not properly considered several material and relevant facts and misreading evidence as well. Furthermore, the non-infusion and payment of funds in compliance with the applicable laws and the terms of the Resolution Plan had led to circumstances causing a failure of the Resolution Plan. We have no doubt in our mind that the NCLAT acted contrary to the settled legal principles and went to the extent of drawing wrong inferences from proved facts while deciding the matter. This itself justifies the examination of various issues in exercise of the jurisdiction afforded to us under Section 62 of the IBC, 2016.

i. Whether the Performance Bank Guarantee (PBG) could have been adjusted against the first tranche payment which was to be made under the Resolution Plan, within 180 days from the Effective Date, in contravention of the order of this Court dated 18.01.2024, the terms of the Resolution Plan and the provisions of law?

a. Whether the Conditions Precedent were fulfilled by Respondent No.1/SRA and the Effective Date was fixed at 20.05.2022?

91. Clause 7.6.1 of the Resolution Plan details five Conditions Precedent that have to be fulfilled by the SRA. They are: - (a) Validation of AOC, (b) Approval of Business Plan, (c) Slot Allotment Approval, (d) International Traffic Rights Clearance, and (e) Demerger of AGSL. Of the five Conditions Precedent that find mention under Clause 7.6.1 of the Resolution Plan, the Appellants have only disputed the fulfilment of three Conditions Precedent i.e., Validation of AOC, Slots Allotment Approval and International Traffic Rights Clearance. According to Clause 7.6.2 of the Resolution Plan, the date of fulfillment of all the Conditions Precedent as stated in Clause 7.6.1 would be the Effective Date for the purposes of the Resolution Plan. A failure to fulfil the Conditions Precedent within a maximum of 270 days from the date of approval of the Resolution Plan would lead to an automatic withdrawal of the Resolution Plan as per Clause 7.6.4.

92. On 22.06.2021, the NCLT had given its imprimatur to the Resolution Plan that was submitted by the SRA and this was the Approval Date i.e., "Y" as per the Implementation Schedule set out under Clause 7.7 of the Resolution Plan. The SRA had to fulfil the five Conditions Precedent within a period of 90 days, that was extendable to an additional 180 days i.e., 270 days in total. This period expired on 22.03.2022. However, the same was extended vide order dated 11.04.2022 by the NCLT until 25.05.2022, by allowing an exclusion of 65 days.

93. Upon receiving the AOC from the relevant authorities on 20.05.2022 i.e., within the extended time period as allowed by the NCLT, the SRA asserted that the Effective Date had been achieved. The SRA had approached the NCLT seeking a declaration from the Tribunal that all the Conditions Precedent have been met and that the SRA be allowed to begin the implementation of the Resolution Plan. Vide order dated 13.01.2023, the NCLT held that all the Conditions Precedent had indeed been met and that 20.05.2022 would be considered as the Effective Date for the purposes of implementation of the Resolution Plan. The findings of the NCLT in the aforesaid order are reproduced hereinbelow:

> "Findings:
>
> 122. [...] However, having considered the rival submissions and on perusal of record with regards to satisfactory compliance of conditions precedent (CPs) it is noted that there is no dispute so far as satisfactory compliance of CPs at serial no. (i) and (v) as per approved plan i.e.:- (i) Validation of Air Operator Certificate by Directorate General of Civil Aviation (DGCA) and Ministry of Civil Aviation (MoCA) and (v) Approval of demerger of ground handling business into all capital AGSL.

In this background we have thus considered if the remaining three CPs are duly complied with by the applicant or otherwise.

123. As regards to CP No. 2 i.e. Submission and approval of business plan to DGCA and MoCA: The business plan was submitted to above Authorities to fulfil compliance of DGCA's Show Cause Notice (SCN) to CD of April 2019.

SCN states that Air Operator Certificate will be issued after MoCA approves the business plan. Thus, with issuance of Air Operator Certificate, it is implied that the business plan has been approved. Even otherwise, guidelines for issuance of Air Operator Certificate being CAP 3100 clearly states that the DGCA will review the detailed business plan of the Applicant before issuance of Air Operator Certificate and with issuance of Air Operator Certificate there is implied approval of MoCA. In the background of above we find that this CP is satisfactorily complied with the issuance of AOC.

124. As regards to CP No. 3 i.e. Slots Allotment Approval: It is noted that plan approval order of this Tribunal dated 22nd June, 2021 stipulates that no historic slots will be granted to Corporate Debtor or SRA. Admittedly, there is no challenge to this order thereby accepting the fact that old slot cannot be reinstated. Accordingly, this CP needs to be read with plan approval order, where Corporate

Debtor shall be provided with such slots for which it applies. There is no dispute that slots for which SRA applied were granted to them by the concerned Competent Authority including the slots in Delhi and Mumbai, on settling the old dues and as such it cannot be considered as non-allotment of slots, as SRA has received the slots it requested for in compliance with plan approval order. The SRA cannot get all previous slots as this condition needs to be read with plan approval order of this Tribunal. In that view of the matter, above CPs is also found to be Satisfactorily complied with.

125. As regards to CP no. 4: International Traffic Right Clearance: On perusal of the plan approval order dated 22nd June, 2021, it is found that no blanket approval can be granted upfront to the SRA as it has to approach the concerned authorities for grant of such approval as per applicable laws. As already stated above, the plan approval order has reached its finality, thus, accepting the fact that all the approval issued upfront cannot be reinstated.

Accordingly, this condition precedent needs to be read with plan approval order. Even otherwise there is no dispute that under the approved plan, SRA has to re-commence with operation of six aircrafts. The International Traffic Rights clearance is required to be obtained in compliance with the applicable laws which stipulates that minimum twenty aircrafts are required to be deployed before applying for such clearance. In view of this, we find that this condition cannot be satisfied upfront and needs to be satisfied in compliance with applicable laws i.e., after the SRA has twenty aircrafts in operation which can only be achieved once the operation is re-commenced successfully.

Accordingly, this condition can only be fulfilled after the SRA/Applicants re-commences its business and not prior to its commencement.

It goes without saying that plan approved by this Tribunal has to be implemented without any modification much less than on satisfaction of any other undertaking and thus, the effective date and completion date of condition precedent under the plan shall have to be read as 20th May, 2022.

126. In the background of above facts and for the reasons stated above we hold that in addition to CPs (I) & (V) which are admittedly complied, remaining CPs (II), (III), (IV) are also duly complied."

94. During the period when the aforesaid order of the NCLT was passed, the SRA possessed a valid AOC and therefore, there was no dispute pertaining to this Condition Precedent. With respect to the Slot Allotment Approval, the NCLT observed that although the historic slots which were available to the Corporate Debtor could not be obtained by the SRA, yet the slots for which the SRA had applied were granted to it by the concerned authorities upon settling the old dues and as such, this could not be considered as non-allotment of slots. Therefore, this Condition Precedent was found to be satisfactorily complied with. As regards the Condition Precedent on obtaining International Traffic Rights Clearance, the applicable law required a minimum of 20 aircrafts to be deployed before applying for such a clearance. However, under the approved Plan, the SRA had to re-commence with the operations with only six aircrafts. It was, therefore, held that this Condition Precedent could not have been satisfied upfront and could only be satisfied once the operations of the Corporate Debtor had commenced successfully. With such observation, this Condition Precedent was also found to be duly complied with. The NCLT noted that the plan which was approved vide the Plan approval order

dated 22.06.2021 had to be implemented without any modification and thus the Effective Date i.e., the date of completion of the Conditions Precedent under the Resolution Plan should be read as 20.05.2022.

95. The Appellants filed a statutory appeal against the order of the NCLT dated 13.01.2023 before the NCLAT and also sought a stay on the same. However, the grant of stay was declined by the NCLAT on 03.03.2023. This should have closed the debate on the understanding between the parties that the Effective Date was set in stone.

96. The NCLAT also vide its impugned order held that the SRA had fulfilled all the required Conditions Precedent. On Slot Allotment Approval, it was held that 48 slots have been obtained by the SRA for the recommencement of operations. The contention of the Appellants that airport charges are required to be paid upfront for obtaining such slots was rejected since the NCLAT was of the opinion that the payment towards airport charges, which are a part of CIRP costs, must be made as per the terms of the Resolution Plan when its implementation had begun. Therefore, it was declared that the Condition Precedent on Slot Allotment Approval was fulfilled despite the non-payment of Airport Dues by the SRA. On International Traffic Rights Clearance, the NCLAT echoed the opinion of the NCLT that it could not have obtained this clearance without commencing and amplifying the operations of the Corporate Debtor. It was observed that this Condition Precedent should not come in the way of the implementation of the Resolution Plan. As regards the AOC, it was contended by the Appellants that the same had lapsed after 03.09.2023 and no extension was granted by the DGCA thereafter. However, the NCLAT was of the view that the AOC was valid on the date when the SRA had approached the NCLT for a declaration that the Conditions Precedent were fulfilled and also when the order dated 13.01.2023 of the NCLT was passed. The expiry of the validity period of the AOC during the pendency of the Company Appeal was not considered sufficient grounds to hold that the Condition Precedent was not fulfilled. The NCLAT while reaffirming that all the Conditions Precedent were satisfactorily fulfilled observed that there was no infirmity in the order of the NCLT dated 13.01.2023. The NCLAT further directed the SRA to make an application for the re-issuance of the AOC within 90 days from the date of its order i.e., by 12.06.2024.

97. The nature of the Conditions Precedent laid out under the Resolution Plan were such that several of them could not be fulfilled before the operationalization of the Corporate Debtor. The assertion that the Effective Date would kick in only upon fulfilment of all the Conditions Precedent and since the Appellants had challenged the fulfilment of the Conditions Precedent, such a date could not be said to have yet arrived, cannot be accepted. The order of the NCLT dated 22.06.2021 approving the Resolution Plan had fixed the Effective Date as the 90th day from the Approval date, which was subject to a maximum extension of another 180 days. It consciously removed the ambiguity that plagued Clauses 7.6.2 and 7.6.4 respectively for the precise reason & with the idea that the Effective Date should not be endlessly postponed. Agreeing to such an erroneous proposition would mean that the Effective Date would never be achieved as long as the parties are litigating before the Courts and the SRA would be absolved of taking the implementation under the Resolution Plan further. The NCLAT had declined to stay the order of the NCLT dated 13.01.2023 which held that all the Conditions Precedent were fulfilled. Further, on a perusal of the impugned

order, it is evident that the NCLT and NCLAT rendered concurrent findings of fact that the SRA had fulfilled all the Conditions Precedent. In other words, it was repeatedly declared by different fora that the Effective Date was frozen on 20.05.2022 and the obligation of the SRA to implement the Resolution Plan was absolute. All steps necessary should have been undertaken by the SRA, at least post the impugned order of the NCLAT dated 12.03.2024. To contend that its hands were tied since the Conditions Precedent were still being challenged before this Court is nothing but a reflection of the mala fide intention on the part of the SRA to not fulfil its obligations in accordance with the Resolution Plan under the garb of pendency of litigation. Such an undue delay cannot be permitted, especially in light of the intention of the IBC, 2016 to ensure a successful and time-bound revival of the Corporate Debtor. This places a higher obligation on the SRA to act in an expeditious manner.

b. Whether the NCLAT could have directed the Performance Bank Guarantee (PBG) to be adjusted against the first tranche payment which was to be made within 180 days of the Effective Date?

98. There is no dispute to the fact that the Effective Date was frozen on 20.05.2022. Therefore, as per Clause 6.3.1(g) on the "Infusion of Funds and Timelines", and Serial No.11 under Clause 7.7, the first tranche payment of Rs. 350 Crore had to be made by the SRA, upfront, within a period of 180 days from the Effective Date i.e., 20.05.2022. As per the Resolution Plan, this 180-day timeline otherwise would have expired on 16.11.2022. Several extensions were granted to the SRA to infuse this amount, at different stages of this litigation, by the NCLT, the NCLAT and this Court as well - First, by the NCLT vide order dated 13.01.2023, by which the timeline for infusion of first tranche payment was extended till 15.05.2023; Secondly, by the NCLAT vide order dated 26.05.2023, where the timeline of 180 days was further extended up to 31.08.2023; Thirdly, again by the NCLAT vide order dated 28.08.2023, where the timeline of 180 days was extended up to 30.09.2023; and Fourthly, by this Court vide order dated 18.01.2024, whereby the time of 180 days for infusion was extended up to 31.01.2024.

I. The adjustment of the PBG was impermissible under the terms of the Resolution Plan read with Regulation 36B(4A) of the 2016 Regulations.

99. It is the case of the SRA that as per Clause 6.4.4 on the "Treatment of Financial Creditors" and the table adduced under the heading "Summary of payment and security package", the PBG of Rs. 150 Crore could have been adjusted against the payment of the first tranche. It was submitted that in the last column of the table, the "Date of Release of Security" is provided. In the very first head in the column on date of release of security, the expression "PBG adjusted" has been mentioned against the first tranche of cash payment to be made to the Financial Creditors. Further, in the explanation given to the said table under Clause 6.4.4(a)(i), against the heading "Date of Release of Security", there is no mention of the PBG while the other two types of security find a mention. It was submitted that the only good reason for this exclusion was the understanding that the PBG was adjustable against the obligation of the SRA towards payment of the first tranche. Further, it is the case of the SRA that since a revolving security package was agreed to under Clause 6.4.4, other types of security were envisioned for the subsequent tranches of payment and therefore, no issue could have been raised in adjusting the PBG towards the first tranche. However, we find it extremely difficult to agree with the stance of the SRA for multiple reasons which are detailed below.

100. The RFRP under Clause 3.13 deals with the Performance Security to be given by the SRA. Clause 3.13.1 provides that the SRA shall furnish or cause to be furnished, an unconditional and irrevocable PBG, of an amount of Rs. 150 Crore in favor of the SBI within 7 days of being declared as the SRA. Clause 3.13.2 provides that the PBG shall be valid, till the later of (a) a period of 180 days from the date of the PBG; and (b) the date of completion of the implementation of the Resolution Plan, as determined by the RP and the CoC. Clause 3.13.7 provides that the PBG can be invoked or appropriated at any time by the SBI, without any reference to the SRA, upon the occurrence of any of the following conditions;

i. If any of the conditions under the Letter of Intent or the Resolution Plan are breached;

ii. If the SRA fails to re-issue or extend the PBG in accordance with the terms of the RFRP; or iii. Failure of the SRA to implement the Resolution Plan to the satisfaction of the CoC, and in accordance with the terms of the Resolution Plan. Clause 3.13.8 provides that the PBG shall be returned to the SRA within a period of 7 days, upon 100% completion of the implementation of the Resolution Plan by the SRA. Finally, Clause 3.13.9 states in categorical terms that, the PBG shall not be set-off against or used as part of the consideration that the SRA proposes to offer in relation to the Corporate Debtor, even if expressly indicated as such by the SRA in the Resolution Plan.

101. It is of vital importance that the aforementioned clauses of the RFRP are read conjointly with Clauses 7.3 and 9.4 of the Resolution Plan. Clause 7.3 of the Resolution Plan deals with the "Compliance with respect to Regulation 36B(4A)" and states that the SRA undertakes to provide the PBG as per the terms of the RFRP in favor of the SBI within 7 days of it being declared as the SRA. Clause 9.4 of the Resolution Plan is titled "Implementation" and states that "the performance guarantee provided by the Resolution Applicant can be invoked in accordance with the terms of the RFRP". Therefore, it is as clear as a noonday that the terms of the RFRP, particularly in relation to the performance security i.e., PBG, stood incorporated in the Resolution Plan by way of Clauses 7.3 and 9.4 respectively of the Resolution Plan.

102. Furthermore, in the Covering Letter adduced with the Resolution Plan, the SRA stated as thus:

> "4. We hereby undertake that we, and our Representatives, shall at all times, be in compliance with the provisions of the RFRP, the Non-Disclosure Agreement, the IB Code and the CIRP Regulations.
>
> xxx xxx xxx
>
> c. Acceptance
>
> We hereby unconditionally and irrevocably agree and accept the terms of the RFRP and that the decision made by the Resolution Professional, CoC and/or the Adjudicating Authority in respect of any matter with respect to, or arising out of, the RFRP and the Resolution Plan Submission Process shall be binding on us... xxx xxx xxx

> 10. We confirm that we have not taken any deviations so as to be deemed non-responsive with respect to the provisions of the RFRP, the IB Code and the CIRP Regulations." (emphasis supplied) A bare reading of the above also strengthens the conclusion that the SRA has to remain compliant with the terms of the RFRP, at all times, in addition to being obedient to the terms of the Resolution Plan. Therefore, to say that the RFRP was merely a wish list of the CoC which was informed to the applicants at the time of inviting plans is incorrect, to say the least. The provisions of the RFRP, especially those provisions related to the Performance Security or PBG, were binding on the SRA.

103. The learned counsel for the SRA tried to place reliance on one another Clause of the Resolution Plan i.e., Clause 6.4.12 which stated that the PBG would bring financial flexibility and help the SRA to advance certain committed payments. This according to the SRA is an affirmation of the fact that the PBG could have been adjusted against the first tranche payment. However, it must be pointed out that Clause 6.4.12 was amended vide an Addendum to the Resolution Plan dated 02.10.2020. The erstwhile Clause 6.4.12 of the Resolution Plan reads thus:

> "6.4.12. Request for the consideration of the CoC - The Resolution Applicant shall provide a performance security bank guarantee for a total sum of Rs. 47.5 Crores, which will bring financial flexibility for the Resolution Applicant and help the Resolution Applicant advance the committed payments and achieve its goal of re-commencing the operations of Jet Airways at the earliest." However, the aforesaid Clause 6.4.12 of the Resolution Plan was deleted in its entirety and replaced with the following:
>
> "6.4.12. Request for the consideration of the CoC - As required under the RFRP, the Resolution Applicant shall provide the performance security bank guarantee ("PBG") for a total sum of Rs. 150 Crores. The PBG will be provided in two parts, with the first PBG of Rs. 47.5 Crores provided within 7 (seven) days from the date of receipt of LOI; and PBG for the remaining sum of Rs. 102.5 Crores provided on the Effective Date." A reading of the amended Clause 6.4.12 of the Resolution Plan indicates that the parties had mutually agreed to do away with the phrase "which will bring financial flexibility for the Resolution Applicant and help the Resolution Applicant advance the committed payments and achieve its goal of re-
>
> commencing the operations of Jet Airways at the earliest". What can be plainly deduced from such a deletion is that the PBG cannot be used by the SRA to advance any payments that are required to be paid under the scheme of the Resolution Plan. This, additionally, cements the idea that the PBG could not be adjusted towards any consideration or payment which had to be made by the SRA. Such an amendment in Clause 6.4.12 only brought the Resolution Plan further in line with the terms of the RFRP.

104. An adjustment of the PBG against the first tranche payment would also be in violation of Regulation 36B(4A) of the 2016 Regulations which was inserted by Notification No. IBBI/2019-20/GN/REG040 dated 24.01.2019. The same is reproduced hereinbelow:

> "(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 implementation schedule.
>
> 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." (emphasis supplied)

105. Regulation 36B(4A) states that the performance security shall stand forfeited if the resolution applicant fails to implement or contributes to the failure of implementation of the plan, in accordance with the terms of the Resolution Plan and its implementation Schedule. Therefore, the PBG had to be kept alive until the complete implementation of the Resolution Plan as per Regulation 36B(4A) as well. This is also what is provided under Clauses 3.13.2 and 3.13.8 of the RFRP respectively wherein the PBG was required to be kept alive and was to be returned to the SRA only upon 100% completion of the implementation of the Resolution Plan. This binding nature of the RFRP was transferred onto the Resolution Plan through Clauses 7.3 and 9.4 respectively of the Resolution Plan.

106. The NCLAT in one of its orders i.e., the order dated 26.05.2023, had restrained the Appellants from invoking the PBG without the leave of the NCLT. While saying so, the following observations were made;

"19. When the Resolution Plan of the Corporate Debtor has received approval up to Hon'ble Supreme Court and the Monitoring Committee is constituted under the Plan to oversee implementation, the Monitoring Committee has to act as a facilitator for implementation of the Resolution Plan instead of finding fault and taking steps, which does not facilitate the implementation, rather delay the implementation. There is no doubt that Performance Bank Guarantee can be invoked by the MC Lenders, but the said invocation can only take place when SRA has failed to implement the Plan. Present is a case where directions have been issued to both MC Lenders and SRA to implement the Plan and the event of failure of the Plan has not yet arrived.

When the Adjudicating Authority has directed on 13.01.2023 to take steps towards the implementation of the Plan and which order was not been stayed by this Tribunal on 03.03.2023, the steps ought to have been taken by the MC Lenders in furtherance of the implementation. The time has not arrived for invoking the Performance Bank Guarantee. When the SRA is ready to undertake to perform its obligations under the Plan, we are of the view that Performance Bank Guarantee given by the SRA cannot be permitted to the invoked by the MC Lenders. MC Lenders instead of threatening to invoke Performance Bank Guarantee, should take steps, which may help implementation of the Plan and to achieve the objective of Resolution Plan. The Resolution Plan has been approved with the intent and purpose to revive the Corporate Debtor, which revival is in accordance with objective and purpose of the IBC. We again reiterate that efforts by MC Lenders and SRA should be coordinated for revival of the Corporate Debtor, so as to start its operations at an early date, which is in the interest of all stake holders as well as in the interest of Corporate Debtor.

20. In view of the aforesaid, we direct that MC Lenders shall not invoke the Performance Bank Guarantee in the facts of the present case as on date, and for invocation, if any, MC Lenders may take leave of the Adjudicating Authority. The IA Nos.2159-2160 is disposed of accordingly." (emphasis supplied)

107. A careful reading of the aforesaid order of the NCLAT reflects that the NCLAT had itself conceded to the position that the Appellants have a right to invoke the PBG in a situation where the SRA had failed to implement the Resolution Plan. This is again in line with the intention under Regulation 36B(4A). Therefore, even in light of the NCLAT's own order dated 26.05.2023, it does not follow that the PBG could have been adjusted by the SRA, mid-implementation, against its payment obligation.

108. The NCLAT in its order dated 28.08.2023 dealt with the issue of adjustment of PBG against the first tranche payment in light of the offer made in the Lender's Affidavit dated 16.08.2023 and made certain observations regarding Regulation 36B(4A) of the 2016 Regulations. The same are as follows:

> "26. When we look to the Regulation 36B (4A) it is clear that the provision provides that RFRP shall require Resolution Applicant to provide Performance Bank Guarantee within the time specified. Sub-Section 4A provides that if Resolution Applicant after approval fails to implement Performance Security it shall stand forfeited. Present is a case, where Performance Security has already been provided in compliance of sub- Regulation 4A and present is not a case that any power to forfeit the Performance Bank Guarantee to be exercised under sub-Regulation (4A). On Explanation I, attention of the Court was drawn by Learned Counsel for SRA, which indicates that the performance security which is contemplated, can be of such nature, value, duration and source as may be specified. Thus, Performance Security can be of a particular duration and when the Resolution Plan provides release of security at the time of first tranche of payment of Rs. 350 Crores, no exception can be taken to adjustment of the Performance Bank Guarantee. The request of SRA to adjust Performance Bank Guarantee of Rs. 150 Crores is thus according to Clause 6.4.4 of

the Resolution Plan on which no exception can be taken.

27. Submission was made by Learned Sr. Counsel for the Appellant that performance Bank Guarantee has to be maintained till the completion of the plan. The summary of payment and security package as contained in the table indicate that there are large numbers of other securities which are to be continued. The securities in the last column which are mortgaged over three Dubai Properties are to be released on year 5 or on complete payment whichever is earlier. The plan thus provides for adequate securities to ensure the payment hence the adjustment of Performance Bank Guarantee in the first tranche of payment cannot be said to be against the Resolution Plan. We thus are of the view that prayer made by the Applicant in the Application in Prayer (a) is to be allowed." (emphasis supplied)

109. A bare perusal of the above observations would indicate that the NCLAT proceeded on an incorrect understanding of Regulation 36B(4A) and its First Explanation. Regulation 36B(4A) does not state that if the Resolution Applicant, after approval, fails to implement the PBG, then it shall stand forfeited. Instead, what the Regulation actually states is that the performance security shall stand forfeited, if the resolution applicant of such a 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 implementation schedule". It is not the failure to implement the performance security i.e., the PBG, that is dealt with in this Regulation but the consequence of the failure to implement "the Plan" by the SRA.

110. Further the order dated 28.08.2023 proceeds to interpret Explanation I to Regulation 36B(4A) and states that since according to Explanation I, the performance security can be of a particular duration, the Resolution Plan can provide for the release of security at the time of the first tranche payment of Rs. 350 Crore and no exception can be taken to the adjustment of the PBG. However, what the NCLAT failed to take notice of is that under Explanation I to Regulation 36B(4A), the performance security shall mean security of such nature, value, duration and source, as may be specified "in the request for resolution plans". The duration of the performance security that has been specified in the RFRP is given under Clauses 3.13.2 and 3.13.8 of the RFRP which categorically states that the PBG shall be kept alive until the Resolution Plan has been completely implemented. This is the duration which is referred to in Explanation I to Regulation 36B(4A).

111. Now, if the intention under the RFRP, the Resolution Plan (under Clauses 7.3 and 9.4) and Regulation 36B(4A) was that the PBG had to be kept alive till the completion of implementation of the Resolution Plan by the SRA and that it cannot be set-off against any payment obligation, then how do we reconcile such an intention with the expression "PBG adjusted" mentioned under Clause 6.4.4 of the Resolution Plan? As mentioned above, Clauses 7.3 and 9.4 respectively of the Resolution Plan incorporated the terms of the RFRP into the Resolution Plan. Clause 3.13.9 of the RFRP states that the PBG shall not be set off against any payment or consideration which is to be made by the SRA, even if expressly provided so under the Resolution Plan. Clause 6.4.4 is quite ambiguous in its construction regarding the question whether the PBG can be specifically adjusted against the first tranche payment. Although in the Summary of Payments and Security Package, under the column

titled “Date of release of security”, the expression “PBG adjusted” exists, yet Clause 6.4.4(a)(i) which furnishes some additional clarity on the Summary of Payments and Security Package provides no mention of the PBG under the heading “Date of release of Security”, while the other two forms of security i.e., the BKC property and Dubai property No.1 are mentioned. The argument of the counsel for the Respondent is that this omission indicates that the PBG would be adjusted under the first tranche payment. However, in our considered opinion irrespective of whether Clause 6.4.4 expressly or impliedly provided for the PBG to be adjusted, such a provision would create a dissonance with Clause 3.13.9 of the RFRP which has also been made binding on the SRA through Clauses 7.3 and 9.4 respectively of the Resolution Plan. Therefore, such an adjustment should not be allowed in the facts of the present case.

II. The Lender’s Affidavit dated 16.08.2023 did not impose conditions which were different from the terms of the Resolution Plan.

112. It is the case of the Appellants that Serial No.11 under Clause 7.7.1 read with Clause 6.1.3(g) evidences that the SRA had to infuse Rs. 350 Crore “in cash” and it was for this reason alone that Para 8(a) of the Lender’s Affidavit required the infusion of Rs. 350 Crore to be done in cash by 31.08.2023. It was submitted that such a requirement for cash payment flowed directly from the Resolution Plan under which an adjustment of the PBG was impermissible and not just out of the Lender’s Affidavit dated 16.08.2023. This is because the Lender’s Affidavit has not and cannot impose any condition over and above the one laid under the Resolution Plan.

113. On the other hand, the Respondents vehemently submitted that it was only the Lender’s Affidavit dated 16.08.2023 which stipulated the condition that Rs. 350 Crore had to be infused in cash by 31.08.2023, while the Resolution Plan, under Clause 6.4.4 allowed for the payment of Rs. 200 Crore in cash and Rs. 150 Crore through adjusting the PBG. In other words, they argued that the conditions envisaged in the Lender’s Affidavit were different from those stipulated in the Resolution Plan.

114. However, the intent of the legislature is very clear on the aspect that once a Resolution Plan is approved by the Adjudicating Authority i.e., the NCLT, it becomes binding on all the stakeholders involved in the Resolution Plan. Section 31(1) of the IBC, 2016 reads as thus:

> “31. (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors,[including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan.” (emphasis supplied)

115. This Court in Ebix Singapore Private Limited v. Committee Of Creditors of Educomp Solutions Limited and Another reported in (2022) 2 SCC 401 was faced with the issue whether withdrawals or modifications by successful resolution applicants were permissible under the IBC, 2016 i.e., whether a resolution applicant is entitled to withdraw or modify its Resolution Plan, once it has been submitted by the Resolution Professional to the Adjudicating Authority and before it is approved by such authority under Section 31(1) of the IBC, 2016. It was unequivocally held that, based on the plain terms of the IBC, 2016, the Adjudicating Authority lacks the power to allow the withdrawal or modification of the Resolution Plan by a successful resolution applicant or to give effect to any such clauses in the Resolution Plan. The relevant observations made are reproduced hereinbelow:

> "164. The approval of the adjudicating authority under Section 31(1) IBC has the effect of making the resolution plan binding on all stakeholders. These stakeholders include the employees of the corporate debtor whose terms of employment would be governed by the resolution plan, the Central and State Governments who would receive their tax dues on the basis of the terms of the resolution plan and local authorities to whom dues are owed. These stakeholders are not direct participants in the CIRP but are bound by its consequence by virtue of the approval of the resolution plan, under Section 31(1) IBC. Section 31(1) ensures that the resolution plan becomes binding on all stakeholders after it is approved by the adjudicating authority. The language of Section 31(1) cannot be construed to mean that a resolution plan is indeterminate or open to withdrawal or modification until it is approved by the adjudicating authority or that it is not binding between the CoC and the successful resolution applicant. Regulation 39(4) of the CIRP Regulations mandates that the RP should endeavor to submit the plan at least fifteen days before the statutory period of the CIRP under Section 12 is due to expire along with a receipt of a PBG and a compliance certificate as Form H. It is pertinent to note that sub-section (3) to Section 12 mandates that the CIRP process, including legal proceedings, must be concluded within 330 days. This three-hundred-and-thirty- day period can be extended only in exceptional circumstances, if the process is at near conclusion and serves the object of IBC, as held by a three-Judge Bench of this Court in Essar Steel [Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta, (2020) 8 SCC 531 : (2021) 2 SCC (Civ) 443]. Therefore, after accounting for all statutorily envisaged delays which the RP has to explain in its Form H and otherwise through Regulation 40-B, the procedure envisages a fifteen-day window between submission of resolution plan and its approval or rejection by the adjudicating authority.
>
> This clearly indicates that the statute envisages a certain level of finality before the resolution plan is submitted for approval to the adjudicating authority. Even the CoC is not permitted to approve multiple resolution plans or solicit EoIs after submission of a resolution plan to the adjudicating authority, which would possibly be in contemplation if the resolution applicant was permitted to withdraw from, or modify, the plan after acceptance by the CoC. Regulation 36- B(4-A) requires the furnishing of a performance security which will be forfeited if a resolution applicant fails to implement the plan. This is collected before the adjudicating authority approves the

plan. Notably, the Regulations also direct forfeiture of the performance security in case the resolution applicant "contributes to the failure of implementation", which could potentially include any attempts at withdrawal of the plan.

xxx xxx xxx

172. Based on the plain terms of the statute, the adjudicating authority lacks the authority to allow the withdrawal or modification of the resolution plan by a successful resolution applicant or to give effect to any such clauses in the resolution plan. Unlike Section 18(3)(b) of the erstwhile SICA which vested the Board for Industrial and Financial Reconstruction with the power to make modifications to a draft scheme for sick industrial companies, the adjudicating authority under Section 31(2) IBC can only examine the validity of the plan on the anvil of the grounds stipulated in Section 30(2) and either approve or reject the plan. The adjudicating authority cannot compel a CoC to negotiate further with a successful resolution applicant. A rejection by the adjudicating authority is followed by a direction of mandatory liquidation under Section 33. Section 30(2) does not envisage setting aside of the resolution plan because the resolution applicant is unwilling to execute it, based on terms of its own resolution plan.

xxx xxx xxx

222. If the legislature in its wisdom, were to recognise the concept of withdrawals or modifications to a resolution plan after it has been submitted to the adjudicating authority, it must specifically provide for a tether under IBC and/or the Regulations. This tether must be coupled with directions on narrowly defined grounds on which such actions are permissible and procedural directions, which may include the timelines in which they can be proposed, voting requirements and threshold for approval by the CoC (as the case may be). They must also contemplate at which stage the corporate debtor may be sent into liquidation by the adjudicating authority or otherwise, in the event of a failed negotiation for modification and/or withdrawal. These are matters for legislative policy.

223. In the present framework, even if an impermissible understanding of equity is imported through the route of residual powers or the terms of the resolution plan are interpreted in a manner that enables the appellants' desired course of action, it is wholly unclear on whether a withdrawal of a CoC-approved resolution plan at a later stage of the process would result in the adjudicating authority directing mandatory liquidation of the corporate debtor. Pertinently, this direction has been otherwise provided in Section 33(1)(b) IBC when an adjudicating authority rejects a resolution plan under Section 31. In this context, we hold that the existing insolvency framework in India provides no scope for effecting further modifications or withdrawals of CoC-approved resolution plans, at the behest of the successful resolution applicant, once the plan has been submitted to the adjudicating authority. A resolution

> applicant, after obtaining the financial information of the corporate debtor through the informational utilities and perusing the IM, is assumed to have analysed the risks in the business of the corporate debtor and submitted a considered proposal. A submitted resolution plan is binding and irrevocable as between the CoC and the successful resolution applicant in terms of the provisions of IBC and the CIRP Regulations. In the case of Kundan Care, since both, the resolution applicant and the CoC, have requested for modification of the resolution plan because of the uncertainty over the PPA, cleared by the ruling of this Court in Gujarat Urja [Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta, (2021) 7 SCC 209 : (2021) 4 SCC (Civ) 1] , a one-time relief under Article 142 of the Constitution is provided with the conditions prescribed in Section K.2." (emphasis supplied)

116. In light of the aforesaid, it is clear that the existing insolvency framework does not provide any scope for effecting further modifications or withdrawals of the Resolution Plan approved by the CoC, at the behest of the successful resolution applicant, once the plan has been submitted to the adjudicating authority. The submitted Resolution Plan is binding and irrevocable as between the CoC and the successful resolution applicant in terms of the provisions of the IBC, 2016 and the 2016 Regulations as well. In other words, once a CoC-approved resolution plan is submitted to the Adjudicating Authority i.e., NCLT, it immediately becomes binding on the CoC and the SRA, even if the Adjudicating Authority has not yet given its stamp of approval on the same. While deciding so, this Court re-emphasized the object under Section 31(1) of the IBC, 2016 and observed that once the Adjudicating Authority has approved the plan under Section 31(1) of the IBC, 2016, the Resolution Plan is binding on all the stakeholders including those stakeholders who are not direct participants of the CIRP. Therefore, there is absolutely no scope for modification of the terms of a Resolution Plan which has received the imprimatur of the Adjudicating Authority, be it by the Adjudicating Authority itself, the CoC or the SRA.

117. When the aforesaid is the position of law, and the NCLT had approved the present Resolution Plan vide order dated 22.06.2021, the Resolution Plan was immune to any modification or alteration whatsoever. Therefore, the Appellants could have only proposed an offer under the Lender's Affidavit dated 16.08.2023 which stood true to the terms of the Resolution Plan approved by the NCLT. They could not have created any deviations, alterations or modifications of the terms of the Resolution Plan. It is in this context that the submission of the SRA that, the Lender's Affidavit required an infusion of Rs. 350 Crore in cash, while the Resolution Plan allowed for the payment of Rs. 200 Crore in cash and Rs. 150 Crore through adjustment of the PBG, must be rejected. Both the Resolution Plan and the Lender's Affidavit dated 16.08.2023 reflected the same terms i.e., infusion "in cash" of the first tranche payment of Rs. 350 Crore. In fact, even the date within which the Lender's Affidavit required Rs. 350 Crore to be infused in cash i.e., 31.08.2023 was in compliance with the order dated 26.05.2023 passed by the NCLAT granting the 2nd Implementation Extension. Therefore, no new terms were cast on the SRA.

118. The fact that the Lender's Affidavit did not impose any condition which was different from that contemplated under the Resolution Plan, was also understood by all the parties involved, including the SRA. This is evident from the arguments put forth by the SRA, before the NCLAT and before this

Court respectively, which dealt with the issue of whether the adjustment of the PBG was possible under the terms of the Lender's Affidavit. The following were the submissions made by the SRA in the order dated 28.08.2023 as recorded by the NCLAT:

> "20. Learned Sr. Counsel for the SRA has submitted that approved Resolution Plan provides adjustment of Performance Bank Guarantee towards first tranche of payment whereas Learned Counsel for the Appellants has referred to certain clauses of RFRP and also provisions of Regulation 36B (4A) to support his submission that performance bank guarantee cannot be permitted to be invoked towards payment of first tranche." (emphasis supplied)

119. The submissions made by the SRA as recorded in the order of this Court dated 18.01.2024 are as follows:

> "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) 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 ..." (emphasis supplied)

120. A perusal of the abovementioned would indicate that both the parties as well as the NCLAT were ad idem on the fact that the terms imposed by the Lender's Affidavit dated 16.08.2023 were in pursuance of and similar to the terms of the Resolution Plan. This is because, in order to take benefit of the offer made in the Lender's Affidavit, the SRA had repeatedly asserted that the PBG should be allowed to be adjusted under the terms of the Resolution Plan and as a consequence, such an adjustment must be allowed under the Lender's Affidavit as well. Even the NCLAT in its order dated 28.08.2023 had held that the SRA could adjust the PBG of Rs. 150 Crore to take benefit of the offer of the Lender's Affidavit by relying on Clause 6.4.4 of the Resolution Plan which provided for the summary of payments and security package.

121. Therefore, in our view the conditions imposed on the SRA under the Lender's Affidavit and the Resolution Plan were one and the same, the only difference being that the Appellants had offered not to press issues relating to the compliance of the Conditions Precedent and grant of extensions/exclusions along with offering to withdraw the Company Appeal and the Appeals pending before this Court.

122. The order of this Court dated 18.01.2024 must be seen & understood in the aforesaid background. While the appeal before us had resulted from several interim orders of the NCLAT, the question before us was whether the adjustment of the PBG of Rs. 150 Crore was permissible under the Lender's Affidavit as well as the terms of the Resolution Plan, being one and the same. We interpreted the term "infuse" as mentioned in the affidavit and under the Resolution Plan, and arrived at the conclusion that it demonstrably meant "payment in cash". Therefore, the directions that were issued by this Court, especially the direction that - "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", must have been necessarily seen in the context of the Resolution Plan as well. The phrase "failing which the consequences under the Resolution Plan shall follow" was a mandatory direction that should have been taken into account by the NCLAT in its impugned order dated 12.03.2024. There was no escape for the NCLAT in this regard. There was no option which was given to the SRA to deviate from this direction which purely stemmed from the Resolution Plan. The fact that this direction was binding was clearly understood by the SRA since it attempted to file another Miscellaneous Application before this Court requesting for an extension to comply with our order dated 18.01.2024 which was dismissed as misconceived.

123. There were two other directions which were issued by us in our order dated 18.01.2024 i.e., (ii) that the PBG of Rs. 150 Crore shall continue to remain in operation and effect pending the final disposal of the appeal before the NCLAT, and shall abide by the final outcome of the appeal and the directions that may be issued by the 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. These two directions must not be seen as giving any leeway to the NCLAT to act in complete ignorance or defiance of the first direction that was issued by us. Such a selective compliance with our order dated 18.01.2024 deserves to be nipped in the bud more particularly when it was mandated that our directions be considered and complied with in its entirety. Therefore, the NCLAT, while finally

deciding the pending Company Appeal on merits which led to the impugned order dated 12.03.2024 has, either by design or unknowingly, ignored the directions issued by this Court vide order dated 18.01.2024 that the remaining amount of Rs. 150 Crore had to be necessarily deposited in cash only. This has resulted in a perverse decision which stands contrary to law and to the terms of the Resolution Plan itself.

124. In view of our crystal clear order dated 18.01.2024, we are of the opinion that the PBG of Rs. 150 Crore could not have been allowed to be adjusted with the first tranche payment of Rs. 350 Crore. Non-compliance of the SRA with the order of this Court has led to a dereliction of its obligations to implement the Resolution Plan.

ii. Whether the non-implementation of the Resolution Plan by the SRA necessarily leads to the consequence of liquidation as under Section 33(3) of the IBC, 2016?

125. In the foregoing paragraphs, we have reached the conclusion that the SRA failed to implement the Resolution Plan by not infusing the first tranche payment of Rs. 350 Crore in cash, as required by Clause 6.3.1(g) and the Implementation Schedule under Clause 7.7 of the Resolution Plan. It is now to be seen if this has resulted in the contravention of other terms of the Resolution Plan as well.

a. Whether Respondent No.1/SRA had failed to implement the Resolution Plan on non-payment of the Airport Dues as per the terms of the Resolution Plan?

126. With respect to the Airport dues, the impugned order of the NCLAT had taken into consideration Clauses 6.4.1(e), 6.4.1(h) and 6.4.1(m) respectively. Specifically dealing with Clause 6.4.1(h), it said that this provision dealt with the treatment of outstanding CIRP costs which included parking charge i.e., Airport Charges. While considering so, the following observations were made:

> “54. The provisions of Resolution Plan as noted above clearly indicates that CIRP costs includes Airport Charges. SRA is also entitled to use funds available with the Corporate Debtor as on effective date to meet any portion of CIRP costs. The submission of the Appellants that the entire Airport Charges have to be borne by the SRA upfront cannot be accepted nor non-payment of Airport Charges by SRA as on date makes the allotment of slot unavailable to the SRA. Allotment of slot having been achieved by the SRA as noted above, non-payment of airport charges upfront by SRA cannot be said to be a reason to not accept the fulfillment of condition of slot allotment. The payment of Airport Charges has to be made as per the Resolution Plan when the implementation of the plans commences as per the Resolution Plan. We thus do not find any substance in the submission of Learned Counsel for the Appellant that allotment of slot is not completed since airport charges have not been paid by the SRA.
>
> 55. With regard to submission of the Appellant that old dues of Airport Charges having not been settled, the Adjudicating Authority has rightly observed that settling

> old dues cannot be conceded as non-allotment of slots. We thus fully concur with the finding of the Adjudicating Authority that conditions precedent under Clause 7.6.1(c) were fulfilled." (emphasis supplied).

127. The case of the Appellants is that upon consideration of Clause 6.4.1(h), the NCLAT erroneously concluded that the Airport Charges would be a part of the CIRP costs. Clause 6.4.1(h) of the Resolution Plan is reproduced hereinbelow:

> "(h) Based on the information provided, the Resolution Applicant have assumed that the amounts standing to the credit of the bank account of the Corporate Debtor (including amounts estimated to be received subsequently) are sufficient to cover for the CIRP Costs of the Corporate Debtor (excluding parking charges, rental charges, employee dues, taxes etc). Accordingly, the Resolution Applicant has set aside a sum of Rs. 25 Crores as CIRP Costs towards payment of any such costs until the Approval Date. Any expenses incurred by the Corporate Debtor from the Approval Date until the Effective Date will be incurred out of the positive bank balance of the Corporate Debtor." (emphasis supplied)

128. A plain reading of Clause 6.4.1(h) reveals that the amount standing to the credit of the bank account of the Corporate Debtor would be sufficient to cover the CIRP costs of the Corporate Debtor but that this would exclude the parking charges, rental charges, employee dues, taxes etc. Therefore, the clause does not expressly exclude Airport Charges from the ambit of CIRP costs entirely but only states that the amount available in the bank account of the Corporate Debtor would be insufficient to cover the parking charges, rental charges etc which also form a part of the CIRP costs. Since such a bank balance would not cover the parking charge, rental charges, employee dues, taxes etc, the Resolution Plan had set apart a separate sum of Rs. 25 Crore for the payment of any such CIRP costs which might have accrued till the Approval Date. Further, the other expenses including parking charges, rental charges etc. which have been incurred post the Approval Date but within the Effective Date i.e., the period during which the Conditions Precedent would be fulfilled, would also be incurred out of the positive bank balance of the Corporate Debtor. This is what Clause 6.4.1(h) provides for. To hold that Clause 6.4.1(h) excludes airport dues from the scope of CIRP costs altogether would also question the placement of clauses such as Clauses 6.4.1(f) (which provides for an estimate of Rs. 240 Crore towards parking charges) under the larger umbrella of Clause 6.4.1 which deals with the "Treatment of Outstanding CIRP Costs" in totality.

129. Therefore, what the Resolution Plan contemplates is that the Airport Charges be subsumed within the CIRP Dues and since all of the different CIRP dues cannot be satisfied through the bank balance which stands to the credit of the Corporate Debtor, a separate sum of Rs. 25 Crore was demarcated towards the remaining CIRP payments. Hence, the NCLAT was right in arriving at the conclusion that Airport Dues were indeed a part of the CIRP costs.

130. It must further be noted that, the impugned order of the NCLAT nowhere caps the Airport Dues to a maximum of Rs. 25 Crore. Moreover, such a mention of Rs. 25 Crore is plainly absent in its observations regarding Airport Dues. All that is mentioned is that "The payment of Airport Charges

has to be made as per the Resolution Plan when the implementation of the plan commences as per the Resolution Plan". It is in this regard that Clause 6.4.1(j) provides that if the CIRP costs exceed the current estimates, then they will be paid as per "actuals" in compliance with the provisions of the IBC and as a consequence, the pay-outs towards the other creditors would be reduced proportionately to account for such additional CIRP costs. This would be subject to a minimum payment of liquidation value to the Operational Creditors and Dissenting Financial Creditors of the Corporate Debtor and subject to a maximum of Rs. 475 Crore. Therefore, the Resolution Plan, too, does not contemplate the CIRP costs to be strictly subject to a maximum of Rs. 25 Crore. To accept such a contention of the Appellants would be to misinterpret the observations made in the impugned order.

131. The Appellants rely on Clause 6.3.1(d), specifically under the heading "BKC Property not part of Resolution" to assert that the Airport Dues have to be settled upfront and in full in the first 180 days from the Effective Date and that it cannot be in staggered payments spread across a period of time. However, Clause 6.3.1(d) which is titled "Proposal for Resolution of Outstanding Airport and Parking Dues (Rs. 240 Crores as of August 31, 2020" is attached with the following qualification:

> "The Resolution Applicant states and confirms that this "Proposal for Resolution of outstanding airport and parking dues (approx. Rs. 240 Crores as of August 31,2020)" which deals with the appropriation of the BKC Property is merely a proposal and not a condition to the implementation of this Resolution Plan and the CoC has the discretion to accept/reject such a proposal. If the above-mentioned proposal is acceptable to the CoC, then it is acceptable to the Resolution Applicant in the manner stated hereinabove".
>
> (emphasis supplied) The contention of the SRA is that the aforesaid qualification applies equally to the part of Clause 6.3.1(d) under the heading "BKC Property not part of resolution" and that the entire Clause 6.3.1(d) would remain a proposal and not a binding condition on the SRA. Irrespective of a determination on the same, even as per Clause 6.4.1, the payment towards CIRP costs including Airport Charges had to be made in full, in priority, within 180 days from the Effective Date. This is evident from – (a) Clause 6.4.1(a) which states that the CIRP Costs are to be paid in priority to any other creditor of the Corporate Debtor in terms of Section 30(2)(a) of the IBC, 2016; (b) Clause 6.4.1(k) which states that the outstanding CIRP costs shall be paid by the Resolution Applicant out of the funds infused by the Resolution Applicant in the Corporate Debtor and as per the Implementation Schedule set out in Clause 7.7 below; (c) Clause 6.4.1(m) which states that the CIRP cost shall be "fully paid and discharged after the Effective Date" before payment is made to any of the creditors as per the Resolution Plan; (d) Clause 6.4.1(n) which states that the Resolution Applicant has sufficient funds and that the CIRP costs shall be met out of funds infused by the Resolution Applicant; and (e) S.No. 16 of the Implementation Schedule under Clause 7.7 which states that the CIRP costs must be paid as per Clause 6.4.1 within Z+170 days.

132. Therefore, the SRA not having infused the first tranche payment of Rs. 350 Crore as per Clause 6.3.1(g) and S. No. 11 of the Implementation Schedule under Clause 7.7 within a period of 180 days from the Effective Date and within the multiple extensions granted therefrom, has defaulted on its obligation towards the payment of CIRP costs (which include airport dues) under Clause 6.4.1 as well.

b. Whether Respondent No.1/SRA could be said to have failed to implement the Resolution Plan on account of the non-payment of workmen and employees' dues as per the terms of the Resolution Plan and the order of the NCLT dated 21.10.2022 which was confirmed by the order dated 31.01.2023 of this Court?

133. The Resolution Plan, under Clause 6.4.2 deals with the "Treatment of Employees/Workmen dues, including dues of the Authorized Representatives of Employees/Workmen". Clause 6.4.2(a) provides for a fixed sum of Rs. 52 Crore to be paid to the workmen and employees towards settlement of all their claims. Clause 6.4.2(b) states that this payment shall be made out of the funds infused by the SRA in the Corporate Debtor, in priority to the payment to the financial creditors and as per the Implementation Schedule set out in Clause 7.7 i.e., within 175 days from the Effective Date. Clause 6.4.2(c) provides that if the Liquidation Value due to the workmen and employees is not "nil", then the SRA would pay such a Liquidation Value. If this Liquidation Value is over and above the amount proposed to be paid under the Resolution Plan, then such additional amounts shall be first paid out of the positive bank balance of the Corporate Debtor as on the Effective Date and the remaining amounts shall be paid out of the amounts reserved for other creditors on a pro rata basis, subject to a maximum of Rs. 475 Crore.

134. The order dated 21.10.2022 of the NCLAT dealt with the entitlements of the workmen and employees to several payments and made the following observations:

> "71. In view of the aforesaid discussion, we arrive at following conclusions:
>
> (i) The workmen and employees are entitled for payment of full amount of provident fund and gratuity till the date of commencement of the insolvency which amount is to be paid by the Successful Resolution Applicant consequent to approval of the Resolution Plan in addition to the 24 months workmen dues as the workmen is entitled to under Section 53(1)(b) of the Code. It is made clear that in addition to part amount of provident fund and gratuity as proposed in Resolution Plan to workmen, Successful Resolution Applicant is obliged to make payment of balance unpaid amount of provident fund and gratuity to workmen and employees.
>
> 72. Our answer to Question II and III is as follows:
>
> (i) The workmen and employees are entitled to receive the amount of provident fund and gratuity in full since they are not part of the liquidation estate under Section 36(4)(b)(iii).

(ii) The workmen are entitled to receive their dues from the Corporate Debtor for period of 24 months as per provision of Section 53(1)(b) at least to minimum liquidation value envisaged under Section 32(2)(b) read with Section 53(1).

xxx xxx xxx

80. As observed above, in admitted claim of workmen provident fund, gratuity and leave encashment was included, and payment proposed in plan partly satisfy above dues also.

The workmen are entitled to full payment of provident fund and gratuity, hence, the balance of above dues are to be paid by the Successful Resolution Applicant, to satisfy statutory obligations. Non-payment of full provident fund and gratuity shall lead to violation of Section 30(2)(e), hence, to save the plan the above payments have to be made.

xxx xxx xxx

128. In the forgoing discussions, we have noted that the liquidation value of the workmen as has been referred to in Form-H preferred by the Resolution Professional is Rs.113 crores and workmen were entitled to receive at least Rs.113 crores as per Section 30(2)(b) read with Section 53(1)(b) of the Code. Shri Krishnendu Datta, learned Counsel for Successful Resolution Applicant during his submission, submitted that Successful Resolution Applicant shall be paying an amount of Rs.113 crores to the workmen as per the Resolution Plan, since it was contemplated that, if liquidation value is more than Rs.52 crores, the liquidation value shall be payable to the workmen. To clear any doubt, we deem it fit and proper to issue direction to Successful Resolution Applicant to make payment to the workmen of Rs.113 crores as per the Resolution Plan.

xxx xxx xxx

134. In result, the Appeal(s) are decided in following manner:

(I) The Appeal(s) of workmen and employees being Company Appeal (AT) (Insolvency) Nos. 643 of 2021, 752 of 2021, 801 of 2021, 915 of 2021, 771 of 2022 are partly allowed with following directions:

(a) Successful Resolution Applicant is directed to make payment of unpaid provident fund to the workmen till date of insolvency commencement, after deducting the amount already paid towards provident fund in the Resolution Plan to the workmen.

(b) The workmen are also entitled for payment of their gratuity dues as on insolvency commencement date, after adjusting any amount towards gratuity paid under the Resolution Plan.

It is made clear that entitlement of those employees and workmen, who were demerged into AGSL shall not be there, since demerger has not been treated as termination of their services.

(c) The employees are also entitled for the payment of their full provident fund, unpaid up to the date of insolvency commencement date. It is made clear that full payment of provident fund would be of that unpaid part of provident fund, which has not been deposited by the Corporate Debtor in the EPFO.

(d) Employees shall also be entitled for the gratuity, which fell due up to insolvency commencement date.

(e) The rest of the prayers of the workmen and employees are denied.

(f) The Chairman of the Monitoring Committee, erstwhile Resolution Professional is directed to compute the payments to be made to workmen and employees within one month from today and communicate the same to the Successful Resolution Applicant to take steps for payment." (emphasis supplied)

135. Thus, it was held in clear terms that the workmen and employees are entitled to full payment of Provident Fund and Gratuity. The non-payment of these amounts shall lead to a violation of Section 30(2)(e) of the IBC, 2016 which requires that the Resolution Plan must not contravene any of the provisions of the law for the time being in force. Further, it was held that the workmen and employees are entitled to a liquidation value of Rs. 113 Crore instead of Rs. 52 Crore as contemplated in the Resolution Plan. The NCLAT directed the Chairman of the Monitoring Committee (the erstwhile Resolution Professional) to compute the payments to be made to the workmen and employees within one month and to communicate the same to the SRA. The RP had arrived at a figure of Rs. 226.6 Crore which comprised of Rs. 14 Crore towards Provident Fund dues, Rs. 188.2 Crore towards Gratuity dues and Rs. 24.4 Crore towards damages for non-payment of Provident Fund.

136. The SRA sought a clarification of the aforesaid order before the NCLAT and vide order dated 02.12.2022, it was made clear that the cost of paying the unpaid amount towards the Provident Fund and Gratuity to the workmen and employees has to be borne by the SRA. The same cannot be paid out of the amounts reserved for the other creditors of the Corporate Debtor on a pro-rata basis subject to a maximum of Rs. 475 Crore as stated in Clause 6.4.2(e) of the Resolution Plan since that was a contemplation pertaining to the liquidation value only and not for the dues relating to Provident Fund and Gratuity. An appeal against the order dated 21.10.2022 was dismissed by this Court vide order dated 30.01.2023. Therefore, there was no scope left for the SRA to avoid payment of the Provident Fund and Gratuity dues to the workmen and employees. Such an obligation was in addition to the payment of minimum liquidation value that the workmen/employees were entitled to under the terms of the Resolution Plan.

137. The SRA had filed IA Nos. 3789-3790 of 2023 in the Company Appeal on 16.06.2023 praying that the Gratuity Claims be allowed to be paid in three tranches i.e., within 3, 4 and 5 years from the

Closing Date. The SRA also sought leave from the NCLAT to approach the EPFO Authorities under Section 14B to seek a reduction or waiver of the damages of Rs. 24.4 crore imposed on the Corporate Debtor and to also pursue an appeal against the order of the EPFO Authorities directing the SRA to pay the damages. Subsequently, on 18.08.2023, the SRA filed two other IAs 3801-3802 of 2023 in the Company Appeal, praying that, in case the previous IA relating to the Gratuity and Provident Fund Claims is not allowed, then the Resolution Plan cannot be implemented under Section 30(2)(e) and as a consequence, the Lenders be directed to refund all amounts invested or infused into the Corporate Debtor by the SRA.

138. The NCLAT in its impugned order has taken note of its own order dated 21.10.2022 but has, however, only allowed the upfront payment of the Provident Fund dues of Rs. 12 Crore to the workmen and employees along with the payments that they are entitled to under the Resolution Plan. There is no specific direction as regard the payment obligations related to Gratuity nor any decision rendered on the two aforesaid IAs filed by the SRA in the Company Appeal. The NCLAT committed a serious error in failing to consider these IAs filed by the SRA and has given the impression that the SRA is liable to pay only the Provident Fund dues upfront.

139. According to the SRA, the dues relating to the Provident Fund would be paid upfront in compliance with Section 11 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. However, the Gratuity Dues could be paid in tranches since neither the order dated 21.10.2022 of the NCLAT nor the order dated 30.01.2023 of this Court had imposed any timelines for the payment of the Gratuity Dues. Furthermore, it was submitted that the provisions of the Payment of Gratuity Act, 1972 were not so stringent. However, such a proposal cannot be allowed especially in light of the fact that the order dated 21.10.2022 of the NCLAT is unambiguous in its declaration that both Provident Fund and Gratuity dues have to be paid by the SRA in order to save the Resolution Plan from being hit by Section 30(2)(e) of the IBC, 2016.

140. Therefore, by not infusing the first tranche payment of Rs. 350 Crore as per the Implementation Schedule of the Resolution Plan, the SRA has breached the terms of the Resolution Plan which required a minimum liquidation value of Rs. 113 Crore to be paid towards the Workmen and Employees' Dues as well. Moreover, both the Provident Fund and Gratuity Dues amounting to Rs. 226 Crore should also have been paid by the SRA as per the order dated 21.10.2022 of the NCLAT in fulfillment of its obligations, which it failed to do.

c. Whether there were sufficient grounds before the NCLAT to hold that Respondent No.1/SRA had contravened the terms of the approved Resolution Plan and that the Corporate Debtor must be directed to be liquidated under Section 33(3) of the IBC, 2016?

141. The NCLAT in its impugned order held that the non-deposit of Rs. 150 Crore in cash towards the first tranche payment of Rs. 350 Crore cannot lead to the conclusion that the Resolution Plan had failed. The relevant observations are reproduced hereinbelow:

> "79. The submission of the Appellant that on account of non- deposit INR 150 crores as directed by the Hon'ble Supreme Court, should lead to liquidation of the Corporate

> Debtor, cannot be accepted. The Hon'ble Supreme Court in its judgment dated 18.01.2024 has clearly held that its order modifying the direction of the Tribunal is confined only to the permission granted to the SRA to adjust INR 150 crores PBG. Thus, modification of the order by the Hon'ble Supreme Court also has to confine to the adjustment of the PBG. It was held by the Hon'ble Supreme Court that Appellant have asked for infusion of INR 350 crores and infusion does not include adjustment of PBG. The Hon'ble Supreme Court neither considered nor expressed any opinion on the question of liquidation of the Corporate Debtor, nor the order dated 18.01.2024 can be read to mean that non-compliance of the direction to deposit INR 150 crores by the SRA by 31.01.2024 should lead to liquidation of the Corporate Debtor. The submission of the Appellant that non-deposit of INR 150 crores leads to failure of Resolution Plan, cannot be accepted. As observed above, consequence of non-deposit of INR 150 crores is that these Appeals have to be heard on merits and the question, which has arisen in the Appeal has to be decided regarding compliance of conditions precedent by the SRA by 20.05.2022.

Further submission of the Appellant that this Tribunal may exercise jurisdiction under Section 33, sub-section (3) in directing liquidation of the Corporate Debtor due to non- compliance of deposit on INR 150 crores also cannot be accepted. For passing an order under Section 33, sub- section (3), there has to be adjudication that Resolution Plan approved by the Adjudicating Authority has been contravened by the Successful Resolution Applicant. We do not accept the submission of the Appellant that by non- deposit of INR 150 crores by 31.01.2024, the SRA has contravened the Resolution Plan and order be passed under Section 33, sub-section (3).

In view of our above observations and conclusions, we answer Question Nos. v, vi, and vii in following manner:

> Question No. v: Direction of Hon'ble Supreme Court permitting the Successful Resolution Applicant to infuse INR 150 crores by 31.01.2024 was in reference to offer made by Appellant in affidavit dated 16.08.2023 Question No. iv: The Successful Resolution Applicant having not been able to infuse funds by 31.01.2024 as directed by Hon'ble Supreme Court vide its judgment dated 18.01.2024, it cannot be held that Resolution Plan has failed and cannot be implemented by the SRA.

Question No. vii: No grounds have been made out to direct the liquidation of the Corporate Debtor under Section 33, sub-section (3) in these Appeals." (emphasis supplied)

142. The NCLAT declined to accept the submission of the Appellant that on account of non-deposit of Rs. 150 Crore as directed by this Court, the Corporate Debtor should be liquidated. However, this was based on the incorrect assumption that the direction of this Court to infuse to Rs. 150 Crore in cash was only confined to the terms of the Lenders Affidavit dated 16.08.2023. Previous segments of the judgment have elaborated in sufficient detail that the Lender's Affidavit could not have provided for conditions which were incompatible with the terms of the Resolution Plan. Such an affidavit would have been in direct contravention with Section 31(1) of the IBC, 2016 which does not permit

any modifications to be made in the Resolution Plan duly approved by the Adjudicating Authority. Therefore, the direction of this Court in its order dated 18.01.2024 was with respect to both the Lenders Affidavit and the underlying terms of the Resolution Plan. The same was so understood by all the parties involved.

143. The Lender's Affidavit in precise terms stated that "Failing to comply with the conditions mentioned in Para 8(a) to (c) above, the Corporate Debtor should be directed to go into liquidation". It was in this context that this Court stated that, "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 will follow". Therefore, it is incorrect to contend that this Court neither considered nor expressed any opinion on the question of liquidation of the Corporate Debtor. The consequence of non-implementation of the Resolution Plan by the SRA must necessarily be liquidation of the Corporate Debtor in accordance with Section 33(3) of the IBC, 2016. Section 33(3) of the IBC, 2016 reads as thus:

> "(3) Where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause
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> (b) of sub-section (1)." (emphasis supplied)

144. The non-deposit of Rs. 150 Crore had in fact lead to a failure of the Resolution Plan on several counts as elaborated herein. In addition to the breach of Clauses 6.3.1(g), 6.4.4 and S. No. 11 of the Implementation Schedule under Clause 7.7, the non-infusion of the first tranche payment in accordance with the terms of the Resolution Plan has also led to an infraction as regards Clause 6.4.1 on the payment of CIRP costs and Clause 6.4.2 on the payment of workmen/employees' dues. Further, the payment of the Provident Fund and Gratuity dues of the workmen/Employees as mandated by the order dated 21.10.2022 of the NCLAT which was confirmed by this Court on 31.01.2023, has also not been made by the SRA.

145. The SRA was given multiple extensions, post the Effective Date i.e., 20.05.2022 in order to implement the Resolution Plan and infuse the first tranche payment of Rs. 350 Crore into the Corporate Debtor. This includes the extensions granted by (a) the NCLT vide order dated 13.01.2023, by which the timeline for infusion of the first tranche payment was extended till 15.05.2023; (b) the NCLAT vide order dated 26.05.2023, where the timeline of 180 days was further extended up to 31.08.2023; (c) the NCLAT vide order dated 28.08.2023, where the timeline of 180 days was extended up to 30.09.2023; and (d) this Court vide order dated 18.01.2024, whereby the time of 180 days for infusion was extended up to 31.01.2024. However, indisputably, there has been a failure on the part of the SRA to abide by all these extended timelines as well. No further extensions or accommodations can be given to the SRA in light of the multiple opportunities already granted as aforesaid. Further, if such a request for further extension is entertained, it would only serve to bring us to the position that the parties were at when the order of this Court dated

18.01.2024 was passed.

146. In Kridhan Infrastructure Private Limited v. Venkatesan Sankaranarayan and Others reported in (2021) 6 SCC 94 the appellant had failed to fulfil its obligations under the Resolution Plan, including that of equity infusion, despite numerous opportunities granted over a period of 6 months. Therefore, the CoC voted by a majority to liquidate the corporate debtor as a result of failure to implement the resolution plan. The NCLT had allowed the liquidation to proceed and the NCLAT had upheld the same. On an appeal before this Court, a statement was made by the successful resolution applicant therein that an amount of Rs. 50 Crore would be deposited on or before 10.01.2021. Bearing in mind that liquidation under the IBC is a matter of last resort, such an opportunity was granted. The time for making the said deposit was further extended until 25.02.2021. However, no payment was made. By underscoring that time is a crucial facet of the scheme under the IBC, this Court held that there was a failure on part of the resolution applicant to implement the resolution plan and it was ordered that the liquidation proceedings against the corporate debtor be revived. The relevant observations are reproduced hereinbelow:

> "11. The appellant has been unable to raise the funds. The fact of the matter, as it emerges from Mr Viswanathan's submissions, is that the appellant will be unable to raise funds from the term lenders who are insisting that the status of the Company should change from a company under liquidation to an active status. The order of liquidation has not been set aside. Ultimately, what the request of the appellant reduces itself to, is that it would raise funds on a mortgage of the assets of the Company and unless the Company is brought out of liquidation, it would not be in a position to raise the funds. This is unacceptable. At this stage, the order of liquidation has only been stayed, but a final view was, thus, to be taken by this Court. Sufficient opportunities were granted to the appellant earlier during the pendency of the proceedings both before the NCLT and NCLAT. The orders of the NCLT and Nclat make it abundantly clear that despite the grant of sufficient time, the appellant has not been able to comply with the terms of the resolution plan. Since 9-10-2020, despite the passage of almost five months, the appellant has not been able to deposit an amount of Rs 50 crores. Time is a crucial facet of the scheme under IBC [Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407, paras 12-16 : (2018) 1 SCC (Civ) 356] . To allow such proceedings to lapse into an indefinite delay will plainly defeat the object of the statute. A good faith effort to resolve a corporate insolvency is a preferred course. However, a resolution applicant must be fair in its dealings as well. The appellant has failed to abide by its obligations. In that view of the matter, we see no reason or justification to entertain the civil appeal any further. The consequence envisaged under the order of this Court shall accordingly ensue in terms of the forfeiture of the amount of Rs 20 crores. As a consequence of this order, the management shall revert to the liquidator for taking steps in accordance with law. The civil appeal is accordingly dismissed." (emphasis supplied).

147. The SRA herein has failed to infuse the first tranche payment of Rs. 350 Crore as envisaged in the Resolution Plan despite the Effective Date being fixed on 20.05.2022. As a consequence, the

payment of CIRP costs, workmen and employees' dues etc. which must be made in priority over the dues of the other creditors have also not been made. More than 5 years have passed and the implementation of the Resolution Plan still seems to be a dim light at the far end of a long tunnel. Over this period of 5 years, several dues such as the Airport dues to be paid by the Corporate Debtor have increased multi-fold due to the fault of the SRA and this Court must ensure that such debts stop running at some point in time.

148. Although one of the key objectives of the IBC, 2016 is to ensure the survival of the corporate debtor as a going concern, yet the same must not come at the cost of efficiency. In scenarios such as the present, "timely liquidation" is indeed preferred over an "endless resolution process". Such a view will prevent the likelihood of adversely affecting the interests of all the creditors who have been suffering due to no fault of their own and also securing the maximization of value of the remaining assets.

149. At this stage of the implementation of the Resolution Plan, it is no longer viable for the SRA to submit that the Resolution Plan shall automatically stand withdrawn according to Clause 7.6.4 of the Resolution Plan and upon, such withdrawal, the members of the SRA in the MC shall resign, the remaining members of the MC shall assume absolute control of the Corporate Debtor and all the amounts infused by the SRA would be refunded. This is especially so, since the Conditions Precedent were declared to be fulfilled and the Effective Date was achieved on 20.05.2022. The consequence of the failure to implement the Resolution Plan in terms of Clause 9.4 of the Resolution Plan and Clause 3.13.7(iii) of the RFRP is that the Appellants are entitled to invoke the PBG automatically without any reference to the SRA. Therefore, it is directed that the PBG may be invoked by the Appellants in accordance with the terms of the Resolution Plan.

iii. Whether the timely implementation of the Resolution Plan is also one of the objectives of the IBC, 2016?

150. The Preamble to the Insolvency and Bankruptcy Code, 2016 reads as thus:

> "An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto." (emphasis supplied)

151. The Report of the Bankruptcy Law Reforms Committee, 2015 (hereinafter, the "2015 Report") also serves to provide valuable insight into the several purposes for which the Code was enacted. Upon highlighting the various benefits of a consolidated insolvency regime, the Report also emphasizes on the time-bound working of the Code. The relevant observations are reproduced hereinbelow:

> "Speed is of essence Speed is of essence for the working of the bankruptcy code, for two reasons. First, while the "calm period" can help keep an organisation afloat, without the full clarity of ownership and control, significant decisions cannot be made. Without effective leadership, the firm will tend to atrophy and fail. The longer the delay, the more likely it is that liquidation will be the only answer. Second, the liquidation value tends to go down with time as many assets suffer from a high economic rate of depreciation.
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> From the viewpoint of creditors, a good realisation can generally be obtained if the firm is sold as a going concern. Hence, when delays induce liquidation, there is value destruction. Further, even in liquidation, the realisation is lower when there are delays. Hence, delays cause value destruction. Thus, achieving a high recovery rate is primarily about identifying and combating the sources of delay." (emphasis supplied) The Report acknowledged that time and speed are of the essence for the working of the Code. It conceded that significant decisions cannot be made for the company without full clarity as to ownership and control. Therefore, the longer it takes for installing effective leadership, the quicker will be the rate of atrophy of the company. Over a period of time, this delay in taking control of the company will lead to liquidation being the only viable answer.
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> In this context, if there is additional delay during the process of liquidation, the liquidation value might also reduce significantly since the company's assets might suffer a high economic rate of depreciation.

152. We hasten to add that any delay in arriving at the conclusion that the company is to be liquidated is also detrimental to a Company, especially when the Company has long awaited timely and positive action from the successful resolution applicant as regards the implementation of the approved resolution plan. Therefore, although liquidation should be the last resort, yet one should also ensure that further delay in arriving at this decision does not have the effect of hampering the realizations that can be made through liquidation.

153. The decision in Innoventive Industries Limited v. ICICI Bank and Another reported in (2018) 1 SCC 407 held that the Maharashtra Relief Undertakings (Special Provisions) Act, 1959 was repugnant to the IBC, 2016 and elaborated on the scheme of the IBC, 2016 by placing reliance on the 2015 Report as aforementioned. The relevant observations are reproduced hereinbelow:

> "13. One of the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the object of speeding up of the insolvency process. As per the data available with the World Bank in 2016, insolvency resolution in India took 4.3 years on an average, which was much higher when compared with the United Kingdom (1 year), USA (1.5 years) and South Africa (2 years). The World Bank's Ease of Doing Business Index, 2015, ranked India as country number 135 out of 190 countries on the ease of resolving insolvency based on various indicia.

xxx xxx xxx

16. At this stage, it is important to set out the important paragraphs contained in the Report of the Bankruptcy Law Reforms Committee of November 2015, as these excerpts give us a good insight into why the Code was enacted and the purpose for which it was enacted:

xxx xxx xxx
Speed is of essence

Speed is of essence for the working of the bankruptcy code, for two reasons. First, while the "calm period" can help keep an organisation afloat, without the full clarity of ownership and control, significant decisions cannot be made. Without effective leadership, the firm will tend to atrophy and fail.

The longer the delay, the more likely it is that liquidation will be the only answer. Second, the liquidation value tends to go down with time as many assets suffer from a high economic rate of depreciation.

From the viewpoint of creditors, a good realisation can generally be obtained if the firm is sold as a going concern. Hence, when delays induce liquidation, there is value destruction. Further, even in liquidation, the realisation is lower when there are delays. Hence, delays cause value destruction. Thus, achieving a high recovery rate is primarily about identifying and combating the sources of delay.

xxx xxx xxx
Objectives

The Committee set the following as objectives desired from implementing a new Code to resolve insolvency and bankruptcy:

(1) Low time to resolution.

(2) Low loss in recovery.

(3) Higher levels of debt financing across a wide variety of debt instruments." (emphasis supplied)

154. Several decisions of this Court have highlighted the importance of a speedy resolution process under the IBC, 2016 in the context of either completing the CIRP process in a time-bound manner as per Section 12 of the IBC, 2016 or ensuring that the Liquidator does not cause unnecessary delay or inefficiency in the Liquidation process. A primary and predominant consideration behind minimizing 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 CIRP 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 IBC, 2016.

155. It is in the above context that the Rules regarding the power of the NCLT and NCLAT to extend time, have to be discussed. Rule 15 of the NCLT Rules, 2016 reads as thus:

> "15. Power to extend time.- The Tribunal may extend the time appointed by these rules or fixed by any order, for doing any act or taking any proceeding, upon such terms, if any, as the justice of the case may require, and any enlargement may be ordered, although the application therefore is not made until after the expiration of the time appointed or allowed."

156. Rule 15 of the NCLAT Rules, 2016 reads as thus:

> "15. Power to extend time.- The Appellate Tribunal may extend the time appointed by these rules or fixed by any order, for doing any act or taking any proceeding, upon such terms, if any, as the justice of the case may require, and any enlargement may be ordered, although the application therefore is not made until after the expiration of the time appointed or allowed.

157. Rule 15 of the NCLT and NCLAT Rules, 2016 grants power to the NCLT and NCLAT respectively, to extend the time limits for doing any act which have been fixed, either by the rules or by an order, as the justice of the case may require. However, such power must not be exercised mechanically without any application of mind. An extension on the strict timelines fixed under the resolution plan must be done by adequately weighing the period of extension sought with the consequences of such extension on the continued implementation of the Resolution Plan. After all, such a discretion cannot be exercised to the detriment of the resolution plan and its implementation itself. While one of the reasons supporting the grant of extension would be to ensure the successful revival of the corporate debtor, multiple extensions may seriously hamper the economic feasibility of the Resolution Plan and also lead to an increase in the debts of the corporate debtor. Not to mention, during the extended period, there are several costs incurred towards maintaining the corporate debtor as well. The feasibility and practicability of the resolution plan adjudged by the "commercial wisdom" of the CoC might no longer remain in cases where incessant extensions are granted by the NCLT and NCLAT under their discretionary powers.

158. The discretion in extending the time limits fixed under the Resolution Plan must be exercised in a much more circumspect manner, especially in cases such as the present, which pertains to the aviation sector, wherein timely resolution and revival of the Corporate Debtor is all the more crucial since the sector operates in such a way that a continuous flow of cash is required to maintain the company in a position of status quo.

159. We are now left to finally consider whether in view of the gross facts on record, we should, in exercise of our plenary jurisdiction under Article 142 of the Constitution, direct that the Corporate Debtor be taken in liquidation.

160. This Court in Ebix (supra) had opined that the exercise of powers, even under Article 142, must be broadly compliant with the insolvency framework and its underlying objective. It was highlighted therein that the Court must remain cautious in granting reliefs that may run counter to the timeliness and predictability that is central to the IBC, 2016. The relevant observations made are reproduced hereinbelow:

> "101. Any claim seeking an exercise of the adjudicating authority's residuary powers under Section 60(5)(c) IBC, NCLT's inherent powers under Rule 11 of the NCLT Rules, 2016 or even the powers of this Court under Article 142 of the Constitution must be closely scrutinised for broader compliance with the insolvency framework and its underlying objective. The adjudicating mechanisms which have been specifically created by the statute, have a narrowly defined role in the process and must be circumspect in granting reliefs that may run counter to the timeliness and predictability that is central to IBC. Any judicial creation of a procedural or substantive remedy that is not envisaged by the statute would not only violate the principle of separation of powers, but also run the risk of altering the delicate coordination that is designed by IBC framework and have grave implications on the outcome of the CIRP, the economy of the country and the lives of the workers and other allied parties who are statutorily bound by the impact of a resolution or liquidation of a corporate debtor." (emphasis supplied)

161. We are conscious of our recent decision Glas Trust Company LLC v. Byju Raveendran and Others reported in 2024 SCC OnLine SC 3032, taking the view that the Court must be circumspect in deviating from the prescribed procedure, especially in the context of the IBC, 2016. However, if such a deviation is made, then the Court must justify as to why the deviation was necessary to prevent the abuse of the process of the Court. The relevant observations are reproduced hereinbelow:

> "70. When a procedure has been prescribed for a particular purpose exhaustively, no power shall be exercised otherwise than in the manner prescribed by the said provisions. In such cases, the court must be circumspect in invoking its 'inherent powers' to deviate from the prescribed procedure. If such deviation is made, the court must justify why this was necessary to "prevent the abuse of the process of the Court".
>
> 71. The need to be circumspect while invoking "inherent powers", when there is an exhaustive legal framework is amplified in the context of a legislation like the IBC. In Ebix Singapore (P) Ltd. v. Educomp Solutions Ltd. (CoC), a two-

judge bench of this Court, speaking through one of us (DY Chandrachud, J), affirmed this position and observed as follows:

> "Any claim seeking an exercise of the adjudicating authority's residuary powers under Section 60(5)(c) IBC, NCLT's inherent powers under Rule 11 of the NCLT Rules or even the powers of this Court under Article 142 of the Constitution must be closely scrutinized for broader compliance with the insolvency framework and its underlying objective. The adjudicating mechanisms which have been specifically created by the statute, have a narrowly defined role in the process and must be circumspect in granting reliefs that may run counter to the timeliness and predictability that is central to the IBC. Any judicial creation of a procedural or substantive remedy that is not envisaged by the statute would not only violate the principle of separation of powers, but also run the risk of altering the delicate coordination that is designed by the IBC framework and have grave implications on the outcome of the CIRP, the economy of the country and the lives of the workers and other allied parties who are statutorily bound by the impact of a resolution or liquidation of a Corporate Debtor." (emphasis supplied)

162. However, the aforementioned decision should in no manner be read so as to restrict the exercise of plenary powers under Article 142 of the Constitution even while in deviating from the statutory procedure and framework of the IBC, 2016 or the rules and regulations thereunder, if such deviation is very much necessary. This Court in Glas Trust (supra) only went so far as to say that, where there is a prescribed procedure in place for a particular purpose, then that particular thing must be done only in the manner prescribed. It no way lays a dictum that even where cogent reasons exist warranting such deviation, the court would be powerless to exercise such inherent powers. In other words, Glas Trust (supra) only went to the extent of saying that in the absence of any exceptional circumstances or extraordinary reasons necessitating a deviation from the procedure laid down, the court should refrain from invoking its inherent jurisdiction to do something which otherwise could have been validly done in accordance with the procedure.

163. We are of the considered view that where there exists extraordinary circumstances warranting the exercise of such powers in order to ensure that the very salutary purpose of the Code, 2016 is not frustrated, then the Court would be well-within its prerogative to exercise them to secure the object of the IBC, 2016. If the proposition that there ought to be no exercise of the inherent powers where a procedure is laid down were to be blanketly accepted then it may have a very chilling effect whereby the very purpose of vesting this Court with inherent powers under Article 142 and Tribunals with Rule 11 of the NCLT Rules would be rendered otiose and meaningless.

164. On account of the inordinate delay in due implementation of the Resolution Plan, several dues including the CIRP costs of the Corporate Debtor have continuously multiplied. The Appellants are incurring huge expenditure and costs each month towards maintenance of the Corporate Debtor. The fundamental concern of this Court must not only be of doing substantial and complete justice but also to ensure expeditious resolution of the issues in the interests of the underlying objective of the IBC, 2016 and all the stakeholders involved. We must obviate the possibility of the Corporate Debtor being stuck, embroiled and its resolution being further delayed, especially in light of the delay that has already ensued.

165. Having due regard to the materials on record, a determination that the terms of the Resolution Plan have been contravened and that there has been a failure to implement on part of the SRA, has already been made on a consideration of the issues before us. As such, since the Resolution Plan is no longer capable of being implemented, we must ensure that at least liquidation remains as a "viable" last resort for the Corporate Debtor and its creditors. Being mindful of the underlying objective that "Time and Speed are of the essence under the Code" and to prevent the frustration of this objective, we have thought fit and necessary to exercise our plenary powers under Article 142 and direct the Corporate Debtor into liquidation in the manner as laid down in the IBC, 2016. Granting this relief to the Appellants would not run counter to the timelines and predictability that is central to IBC. On the contrary, it would be in furtherance of it. Ensuring that liquidation commences as soon as possible would also be in the best interests of the Corporate Debtor and the creditors including the workmen/employees who are yet to receive their rightful dues. To be precise, it would not be necessary for the parties to again approach the Adjudicating Authority for a determination under Section 33(3) of the IBC, 2016 on the ground that the provisions of the approved Resolution Plan have been contravened.

F. SHORTCOMINGS AND SUGGESTIONS TO THE IBC, 2016.

166. This litigation is an eye opener for one and all and therefore, before we close this matter, we deem it absolutely necessary to bring to light certain deficiencies in the IBC, 2016 which require immediate attention. We would also like to definitely say something as regards the functioning of the NCLTs and NCLAT.

167. Given the importance of the IBC, 2016 for the betterment of the economy at large, it is imperative that the insolvency ecosystem be continuously strengthened through a regular identification of its shortcomings and a quick redressal of its practical deficiencies. This would significantly improve its implementation and yield better results for all the stakeholders involved. While the receptiveness of the regime to the incorporation of novel and relevant recommendations is important, it is paramount that there also be strict adherence to the existing provisions of the Code, both in letter and spirit.

168. Scrupulous following of the provisions of the Code along with behavioural and ethical discipline is especially required from the key participants of the IBC who are central to its design i.e., the Adjudicating Authorities, Corporate Debtor, Resolution Professionals, Committee of Creditors, potential and Successful Resolution Applicants, Approved Valuers and Liquidators.

169. A Resolution Plan evolves through these players referred to above. However, it is the "commercial wisdom of the CoC" that assumes a position of superiority and becomes binding on all the stakeholders. The NCLT, which is the adjudicating authority and who has to approve the Resolution Plan under Section 31 of the IBC, 2016 also cannot trespass into the commercial wisdom exercised by the CoC. This decision to restrict the scope of interference on the commercial wisdom of the CoC was conscious and possibly taken bearing in mind the time delays that may arise out of a subsequent adjudication of the resolution plans approved by the CoC. Therefore, the commercial wisdom of the CoC has achieved paramount status, immune from any judicial intervention, to

ensure the completion of the respective processes under the IBC, 2016 within the timelines prescribed therein.

170. The position that the "commercial wisdom" of the CoC is non-justiciable and only a limited judicial review is available in this regard is well-settled through several decisions of this Court. This Court in the case of K Shashidhar v. Indian Overseas Bank and Ors. reported in (2019) 12 SCC 150, held that:

> "52. As aforesaid, upon receipt of a "rejected" resolution plan the adjudicating authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under Section 33(1) of the I&B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors. From the legislative history and the background in which the I&B Code has been enacted, it is noticed that a completely new approach has been adopted for speeding up the recovery of the debt due from the defaulting companies. In the new approach, there is a calm period followed by a swift resolution process to be completed within 270 days (outer limit) failing which, initiation of liquidation process has been made inevitable and mandatory. In the earlier regime, the corporate debtor could indefinitely continue to enjoy the protection given under Section 22 of the Sick Industrial Companies Act, 1985 or under other such enactments which has now been forsaken. Besides, the commercial wisdom of CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject-matter expressed by them after due deliberations in CoC meetings through voting, as per voting shares, is a collective business decision. The legislature, consciously, has not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority. That is made non-justiciable." (emphasis supplied)

171. Thus, there is no doubt that the commercial wisdom of the CoC cannot be subjected to judicial review. However, in order to foster a much more effective and time-bound decision making by the members of the CoC, in the interests of maximization of value of the assets of the Corporate Debtor, certain self- regulating guidelines were issued by the IBBI on 06.08.2024 with immediate effect. The Guidelines for Committee of Creditors are reproduced hereinbelow:

> "6. Guidelines A member of the CoC shall: -
>
> Objectivity and Integrity

(a) follow relevant provisions of the Code and regulations, in letter and spirit, while performing their roles and functions.

(b) maintain integrity in discharging their roles and functions as envisioned under the Code.

(c) maintain objectivity during the decision-making process.

(d) foster informed decision making and share with the CoC/ Insolvency Professional any relevant information relating to transactions, guarantees, recoveries, claims, etc. relating to the corporate debtor Independence and Impartiality

(e) disclose to the CoC/ Insolvency Professional the details of any existing or potential conflict of interest arising due to pecuniary, personal or professional relationship with any stakeholder, immediately on becoming aware of it. Professional Competence and Participation

(f) keep themselves updated with the provisions of the Code, rules and regulations and the role and responsibilities assigned thereunder.

(g) nominate representative with proper authorisation and sufficient mandate to effectively participate in meetings. The nominated representative may endeavour to obtain approval of the competent authority, if required, at the earliest.

(h) participate actively, constructively and effectively in deliberations and decision making of the CoC. Co-operation, supervision and timeliness

(i) supervise and facilitate the Insolvency Professional in discharging his duties under the Code.

(j) facilitate expeditious appointment of various professionals within the timelines prescribed under the Code and regulations.

(k) endeavour to resolve any inter-se disputes between the members, particularly in relation to claims, preferably, through dialogue, or other non-adversarial means, with a view to avoid litigation to the extent possible. Confidentiality

(l) ensure at all times complete adherence to the undertaking regarding confidentiality of information.

Costs

(m) take necessary measures to ensure that the insolvency resolution process cost is reasonable.

(n) expeditiously decide on all the expenses to be incurred by the Insolvency Professional including the going concern expenses of the corporate debtor and his fee.

(o) prudently fix the fee payable to the liquidator while deciding to liquidate the corporate debtor.

Meeting of the CoC

(p) regularly monitor the activities of the Insolvency Professional and seek rationale of decisions/actions taken by him.

(q) diligently recommend for the inclusion or otherwise of the belated claims collated by the Insolvency Professional and categorised as acceptable, in the list of creditors and its treatment in the resolution plan, if any.

(r) actively participate in the presentation of valuation methodologies made by the Registered Valuers.

(s) ensure the conduct of the meeting at regular intervals as specified in the regulations.

Sharing of information

(t) proactively share the latest financial statements, relevant extract from the audits of the corporate debtor, conducted by the creditors such as stock audit, transaction audit, forensic audit, etc. and other relevant information available, with the Insolvency Professional to enable efficient conduct of the process.

(u) seek details of all litigation filed against or by the corporate debtor from Insolvency Professional and recommend necessary actions to Insolvency Professional to safeguard the interest of the corporate debtor.

Feasibility and viability of corporate debtor

(v) carefully review and assess the information memorandum prepared by Insolvency Professional and offer additional insights.

(w) duly contribute to the preparation of the marketing strategy by the Insolvency Professional and may also take measures for marketing of the assets of the corporate debtor, if necessary.

(x) ensure that all resolution plans as received by Insolvency Professional are placed before CoC.

(y) suitably consider the requirement of a monitoring committee for the implementation of the resolution plan."

172. The aforesaid guidelines may go a long way in streamlining the functions of the CoC. Adding to the aforesaid guidelines, we suggest that the CoC exercise their commercial wisdom and approve/reject the Resolution Plans placed before them exhibiting fairness and with good reasons. Such a reasoned decision making on their part will only serve to further enable the other key players like the Adjudicating Authorities to understand the rationale behind their decision and to uphold the correctness of the same. Furthermore, it is also suggested that the Central Government or the IBBI explore the possibilities of better enforcement of the standards and practices enumerated in the guidelines through an independent mechanism under the auspices of an oversight committee instead of making them self-regulatory. This will enable the guidelines to achieve some level of practical and operational relevance and also prevent any significant lapse in decision making on the part of the CoC.

173. This litigation is an eye-opener also as regards the manner in which the implementation of plans are handled by the Successful Resolution Applicant and the Lenders involved in the process. Once a resolution plan is approved under the IBC, 2016 the Successful Resolution Applicant undertakes a profound responsibility to implement the plan in both letter and spirit. This obligation is not merely an empty formality but an enduring commitment to restore the corporate debtor to viability and ensure a meaningful turnaround. The role of a Successful Resolution Applicant is thus far more than a transactional duty towards the creditors or stakeholders; it embodies a pivotal responsibility to the distressed entity itself, which must be approached with utmost dedication and an earnest sense of duty. Regardless of the challenges that may arise, the Successful Resolution Applicant cannot treat its obligations as optional or conditional, nor can it abdicate its responsibility in the face of unforeseen obstacles. Its efforts must reflect a determination to implement the plan fully and to rejuvenate the debtor company, as this is integral to the success of the IBC framework and the spirit of economic revival it seeks to foster. The approach, therefore, must not be frugal or narrowly profit-driven, limited to viewing the transaction through a purely commercial lens. Instead, it must recognize that rescuing a distressed company is a responsibility of significant social and economic value, demanding a holistic and responsible strategy. This involves a dedication to long-term outcomes, where the Successful Resolution Applicant adopts measures that genuinely support the debtor's rehabilitation, rather than making minimal or half-hearted attempts at implementation. Courts and tribunals have consistently underscored that the Successful Resolution Applicant's role transcends commercial interest and embodies a commitment to the larger purpose of corporate revival. Consequently, it must make thoughtful and sustained efforts, demonstrating adaptability and resilience even when faced with obstacles or operational impediments. Simply put, the Successful Resolution Applicant cannot step back or dismiss its obligations by attributing delays or setbacks to the conduct of other stakeholders, as this would undermine the very purpose of insolvency resolution.

174. In this collaborative effort, the duty to implement the plan does not fall on the Successful Resolution Applicant alone; lenders and creditors are equally obligated to support the process by offering constructive and continuous cooperation. They must not impede the implementation

process through unnecessary demands beyond the pale of the resolution plan or with delays in implementation plan but rather should facilitate the Successful Resolution Applicant's efforts to revive the corporate debtor. Given their vested interest in the corporate debtor's successful revival, lenders have a fundamental duty to act in good faith and with transparency, recognizing that their cooperative stance is essential for overcoming the inevitable challenges of the resolution process. The lender's role is not merely passive; it requires active support that aligns with the ultimate goal of the IBC, 2016 — to provide a fair and equitable resolution that maximizes asset value while enabling the debtor's recovery.

175. Therefore, the lenders must balance their financial interests with the broader objective of rehabilitation. They should not take an obstructive approach or seek to leverage the resolution process solely for individual benefit, as such actions would risk destabilizing the corporate debtor's recovery trajectory. Instead, they must be prepared to collaborate fully, sharing the responsibility to make the resolution process work in practice. Through a spirit of cooperation and shared purpose, the Successful Resolution Applicant and lenders together can ensure that the corporate debtor is given the best chance for revival and sustained growth, reflecting the Code's intent to rescue viable companies and protect broader economic interests.

176. The IBC, 2016 is silent as regards the phase of implementation of the Resolution Plan by the Successful Resolution Applicant. This is mostly due to the fact that each Resolution Plan might be unique and customized to the specific needs of the Corporate Debtor and an excessive amount of statutory control over the implementation of the Plan may prove to be counterproductive to the cause of the Corporate Debtor. However, this has unfortunately led to the consequence of giving excessive leeway to the Successful Resolution Applicants to act in flagrant violation of the terms of the Resolution Plan in a lackadaisical manner. The SRAs repeatedly approach the Adjudicating Authority or the NCLAT for the grant of reliefs in relation to relaxation of the strict compliance to the terms of the Plan, including the timelines imposed therein. The NCLT and NCLAT more often than not, accede to such requests in exercise of their inherent powers under Rule 11 or their power to extend time under Rule 15 of the NCLT and NCLAT Rules, 2016 respectively. It is reiterated that the NCLT and NCLAT must not entertain such repeated attempts at violating the integrity of a CoC approved Resolution Plan by accommodating the incessant requests of the Successful Resolution Applicants. The exercise of discretion as regards altering the binding terms of the Resolution Plan, including the timelines imposed, must be kept at a minimum, at best. The NCLTs/ NCLATs need to be sensitised of not exercising their judicial discretion in extending the timelines fixed under IBC, 2016 or the Resolution Plan, in such a way that it may make the Code lose its effectiveness thereby rendering it obsolete.

177. Section 30(2)(d) of the IBC, 2016 states that the resolution professional shall mandatorily examine each resolution plan that is received to confirm that it provides for the implementation and supervision of the resolution plan. Regulation 38 of the 2016 Regulations provides for the mandatory contents of a Resolution Plan. Regulation 38(2) specifically states that the Resolution Plan shall provide for the term of the plan and its implementation schedule, along with adequate means for supervising its implementation. Further, under Regulation 38(3), a resolution plan must demonstrate that it addresses the cause of default, is feasible and viable, has provisions for its

effective implementation, has provisions for approvals required and the timelines for the same and, that the resolution applicant has the capability to implement the resolution plan. Therefore, in light of these provisions of the IBC, 2016 and the 2016 Regulations, it can be seen that the resolution plan must be impermeable to any shortcuts that prevent its implementation, including timely implementation, by the successful resolution applicant. A consideration of these provisions reinforces the idea that timely implementation and strict adherence to the terms of the resolution plan is crucial.

178. Furthermore, Section 74(3) of the IBC, 2016 provides for the punishment for contravention of the resolution plan and reads as follows:

> "(3) Where the corporate debtor, any of its officers or creditors or any person on whom the approved resolution plan is binding under section 31, knowingly and wilfully contravenes any of the terms of such resolution plan or abets such contravention, such corporate debtor, officer, creditor or person shall be punishable with imprisonment of not less than one year, but may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both." (emphasis supplied)

179. The Code comes down heavily on any knowing and willful contravention of the terms of the Resolution Plan, committed by any person, on whom the approved Resolution Plan has been made binding under Section 31 of the IBC, 2016. A punishment of minimum one year which may extend up to five years or minimum fine of one Lakh which may be up to one Crore rupees, or both, has been prescribed for such a contravention. In light of such strict consequence provided for the contravention of the resolution plan envisaged under the scheme of the Code itself, there is good reason for us to ensure that the successful resolution applicants abide by their commitments made under the Resolution Plan. Therefore, it is suggested that the authorities including the NCLT and NCLAT must not aid the Successful Resolution Applicants in circumventing the strict mandates of the law by acceding to their requests to relax the terms of the plan itself.

180. One another suggestion at our end that may aid in a coordinated and non- adversarial implementation of the Resolution Plan by all the stakeholders is that the Adjudicating Authority while approving a Resolution Plan under Section 31 of the IBC, 2016, should record the next steps which are to be taken by the respective parties for commencement of implementation of the approved Resolution Plan. This will ensure that the parties are ad idem about the next round of their obligations that each of them is required to discharge under the approved Resolution Plan and that they do not delay the implementation by initiating any further litigation on this aspect. If such an approach is adopted, the parties would be able to put forth any difficulty that they might face in performing those next steps before the NCLT itself and seek necessary relief in that regard. Recording the next steps that are to be undertaken in the order of the Adjudicating Authority, will keep the parties more vigilant since a non-performance of the obligation may lead to a violation of the terms of the approved Resolution Plan and also violation of the order approving the Resolution Plan as well.

181. As regards the implementation of the approved Resolution Plan, it is suggested that the IBC, 2016 statutorily provide for the constitution of a Monitoring Committee, once the plan has been approved, for a smooth handover of the Corporate Debtor to the Successful Resolution Applicant. Presently, such a provision is absent in the Code and it is the Adjudicating Authority that orders for the constitution of a Monitoring Committee to ensure smooth implementation of the Plan. The CoC must be empowered to constitute the Monitoring Committee which may, by default, include the Resolution Professional and also include other nominees from the CoC and the Resolution Applicant respectively. Such a Monitoring Committee would be entrusted with the powers of monitoring and supervising the resolution plan till the expiry of the term of the Resolution Plan. The Committee shall also be required to ensure all statutory compliances during the implementation of the plan along with updating the Adjudicating Authorities, Financial and other Creditors about the status of implementation of the Resolution Plan, on a quarterly basis.

182. Moving on to certain efficiency issues within the NCLTs and NCLAT, it has been noticed over a period of time that there is a serious lack of timely admission and disposal of the applications filed as regards the initiation of CIRP, approval of the resolution plan and liquidation. This only adds to the uncertainty of the process and prolongs the dispute thereby jeopardizing the interest of all the stakeholders involved. Adjudication in a time-bound manner would help prevent any further deterioration of the value of the corporate entity. The integrity of the original timelines laid down by the Code and the Resolution Plan must not be allowed to be violated since it would dilute the objective of the Code in its entirety, erode investor confidence and hinder all corporate restructuring efforts.

183. The Members often lack the domain knowledge required to appreciate the nuanced complexities involved in high-stake insolvency matters in order to properly adjudicate such matters. It has been noticed that the benches of NCLT(s) and NCLAT don't have the practice of sitting for the full working hours. They are particularly lacking in the capacity to manage the growing number of cases and giving undivided attention required in such matters. There are serious issues in the manner in which the insolvency matters are listed. There is no effective system in place before the NCLTs for urgent listings. The staff of the Registry is given wide power to list or not to list a particular matter. One of the salutary objects of the Code, 2016 is to protect the assets of the corporate entity in a timely manner and take prompt decisions, however, it has become a practice of the NCLT(s) and NCLAT to ignore the urgent mentionings and listings of time-sensitive matters and show no deference to long-pending matters resulting in value erosion of the assets of the Corporate Debtor and rendering their insolvency resolution process a foregone conclusion. Over a period of time, this Court has noticed the growing tendency amongst Members of the NCLT(s) and NCLAT to ignore the orders of this Court or act in its defiance. We put the NCLT(s) and the NCLAT to notice, that any act of contravention of this Court's order and the larger rubric of judicial propriety will not be tolerated. The NCLT(s) and the NCLAT must seriously rethink their approach towards admission and disposal of insolvency matters, they should not act as a mere rubberstamping authority and must take their roles seriously in ensuring time-bound hearings and resolutions. Proper and effective hearings, both virtually and in-court, must be given to insolvency matters of public importance, and the NCLT(s) and NCLAT(s) must earnestly work towards ensuring that the IBC, 2016 achieves its avowed object.

184. One another serious issue pertaining to the functioning of the NCLTs and NCLAT is that there is often a shortage of members in the Tribunals and inadequate infrastructure to support their functioning. These vacancies heavily impact the insolvency reform initiative undertaken by the government since they lead to operational inefficiencies. A shortfall of members and the lack of requisite strength has led to Tribunals only sitting for a few days of the week or a few hours in a day. Even in Tribunals where there is no vacancy, the absence of requisite infrastructure has forced the benches to share courtrooms or halls on a rotation basis. As a consequence, the strict timelines provided in Section 12 of the IBC, 2016 are not complied with. Filling such vacancies with experts having adequate domain knowledge in the field must be prioritized along with addressing the infrastructure needs of the Tribunals to prevent any adverse effect on the resolution process. There must be strict mandates regarding the functioning of the Tribunals within its normal working hours. The appointment of new members must be done in a manner such that it coincides with the date of retirement of the sitting members in a seamless manner to avoid such operational inefficiencies. Persons with high ideals & impeccable integrity should be appointed as Members in the NCLT as well as NCLAT. There should not be any political appointment.

185. It is now for the Parliament to look into our suggestions in consultation with the Insolvency Bankruptcy Board of India and the Ministry of Finance. G. CONCLUSION

186. For all the foregoing reasons, we have reached the conclusion that the impugned order passed by the NCLAT is perverse and unsustainable in law. It has led to further complications. As a result, the appeals succeed and are allowed. The impugned order passed by the NCLAT is set aside.

187. In the peculiar and alarming circumstances as discussed in this judgment and also keeping in mind the fact that almost five years have elapsed since the Resolution Plan was duly approved by the NCLAT and there being no progress worth the name, we are left with no other option but to invoke our jurisdiction under Article 142 of the Constitution and direct that the Corporate Debtor be taken in liquidation. The NCLT, Mumbai shall now take appropriate steps for appointment of liquidator and all other necessary formalities for commencement of liquidation of the Corporate Debtor.

188. The amount of Rs 200 Crore already infused by the SRA stands forfeited. The Lenders/ Creditors are further permitted to encash the Performance Bank Guarantee of Rs. 150 Crore furnished by the SRA. We accordingly order so.

189. These appeals are disposed of in the aforesaid terms.

190. The Registry shall forward one copy each of this judgment to the Principal Secretary, Ministry of Finance, Government of India and the Chairperson, Insolvency Bankruptcy Board of India with a request to look into this judgment more particularly the suggestions made by this Court.

..... CJI. (Dr. Dhananjaya Y. Chandrachud)

..... J.

(J.B. Pardiwala) ..... J.

(Manoj Misra) New Delhi;

November 7, 2024