

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,**  
**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) Nos. 221 and 222 of 2024**

(Arising out of Order dated 04.01.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-I, in IA No.4034 of 2023 and I.A. No.483 of 2023 in C.P. (IB)/3448/MB/2018)

**IN THE MATTER OF:**

1. Ashok Dattatray Atre,  
Address at Flat No. 3 & 4, Ameya Apartments,  
CTS No 1210/B, Deccan Gymkhana,  
Shivajinagar, Pune- 411004
2. Ajit Ulhas Apte,  
Address At A-46, Mohite Township, Simhagad Road,  
Hingane-Khurd, Pune- 411051.
3. Haridas Narayan Wadghule,  
Address at Flat No 703, A-1 Building, Shivsagar  
City, Suncity Road, Pune- 411051
4. Chintamani Shridhar Vaidya,  
Address at Flat No 703, 264/3, Shaniwar Peth,  
Anugraha Apartment, Flat No 402, Pune- 411030 ... Appellants

Versus

1. State Bank of India,  
Address at Stressed Assets Management Branch  
(Samb) 2, Raheja Chambers, Ground Floor, B Wing,  
Free Press Journal Marg,  
Nariman Point, Mumbai - 400 021  
Registered Office At- State Bank Bhavan,  
Madam Cama Road, Nariman Point,  
Mumbai - 400021
2. Mr. Vijendra Kumar Jain  
Address at Kanchansobha Debt Resolution  
Advisors Pvt. Ltd., 1507-B, One BKC, G-Block,  
Bandra Kurla Complex,  
Bandra (East), Mumbai - 400 051
3. Mr. Avil Jerome Menenze  
Address at- Unit No 106, Kanakia Atrium - 2,  
Chakala, Andheri Kurla Road, Andheri (East),  
Mumbai - 400 093 ... Respondents

**Present:**

**For Appellants:        Mr. Pankaj Jain and Mr. Sarthak Dugar, Advocates**

**For Respondents: Mr. Harshit Khare and Mr. Prafful Saini, Advocates for R-1.**

**Ms. Udit Singh, Advocate for R-2**

## **J U D G M E N T**

**ASHOK BHUSHAN, J.**

These Appeal(s) by Successful Resolution Applicant (“**SRA**”) has been filed challenging the order dated 04.01.2024 passed by National Company Law Tribunal, Mumbai Bench-I in IA No.483 of 2023 and IA No.4034 of 2023. By the impugned order, the Adjudicating Authority allowed IA No.4034 of 2023 filed by the State Bank of India praying for liquidation of the Corporate Debtor and has dismissed IA No.483 of 2023 filed by the Appellant – SRA seeking extension of timeline for making the payments under the approved Resolution Plan. The Appellant aggrieved by the aforesaid two orders has filed these Appeal(s).

2. Brief facts necessary to be noticed for deciding the Appeal(s) are:

- (i) The Appellant, who is a technocrat entrepreneur and is the promoter and founder of the Corporate Debtor – M/s Transparent Energy Systems Pvt. Ltd., submitted a Resolution Plan for revival of the Corporate Debtor. Under the Resolution Plan, the Appellant offered a settlement amount totaling to Rs.1972.02 lakhs. The Corporate Debtor is a registered MSME.
- (ii) The Resolution Plan submitted by the Appellant was approved by the Committee of Creditors (“**CoC**”), which consists of State Bank of India (“**SBI**”) as sole CoC Member, having 100% vote

share. The Resolution Plan was approved by the Adjudicating Authority vide order dated 16.04.2021. Under the Resolution Plan, total amount was to be paid in six tranches. The first three tranches were to be paid on 15.10.2021, 15.04.2022 and 15.10.2022. The Appellant paid amount of first three tranches amounting to Rs.692.27 lakhs. The amount of fourth tranche was to be paid by the Appellant in April 2023, amount of fifth tranche was to be paid in October 2023 and last tranche was to be paid before 16.04.2024. The period of implementation of Resolution Plan was three years, i.e. three years from 16.04.2021 to 16.04.2023.

- (iii) The Resolution Plan contemplated sources of fund, which included the amount from recovery expected from ongoing litigations. The recoveries as expected from the litigation, could not be made and Appellant filed IA No.483 of 2023 praying for extension of time in making the payment as prayed in paragraph-17 of the Application. IA No.483 of 2023 was filed in February, 2023 by the Appellant before the fourth tranche of payment became due. IA No.483 of 2023 remained pending and there has been correspondence between the parties.
- (iv) SBI filed an Application in August 2023 being IA No.4034 of 2023 praying for liquidation of the Corporate Debtor as the SRA committed default in payment of fourth tranche. The SRA

filed reply to IA No.4034 of 2023 opposing the prayer of the State Bank of India for liquidation.

- (v) During the pendency of the aforesaid Applications, the Appellant sent letter dated 10.11.2023 to Chairman of Monitoring Committee, highlighting the efforts for recovery of litigation of Corporate Debtor and to make the balance payment. In the letter it was informed that under the Arbitration Award dated 09.11.2023 in the arbitration proceedings against M/s Lloyd Steel Industries, the arbitrator has awarded an amount of approx. Rs.102 lakhs in favour of the Corporate Debtor against the projected amount of Rs.50 lakhs in the Resolution Plan.
- (vi) The IA Nos.4034 and 483 of 2023 came for consideration before the Adjudicating Authority and the Adjudicating Authority by the impugned order dated 04.01.2024 allowed IA No.4034 of 2023 filed by the SBI and dismissed IA No.483 of 2023. Aggrieved against which order this Appeal has been filed.

3. This Appeal was heard on 07.02.2024 and this Tribunal passed following order:

**“07.02.2024** Learned Counsel for the Appellant submits that the plan was approved on 16.04.2021 and three instalments has already been paid by the Appellant, fourth instalment which was due in April, 2023 could not be paid and the next instalment also became due in October, 2023. Learned Counsel for the Appellant submits that Appellant has now arranged fund and he shall make the

payment of fourth instalments within 30 days from today in terms of the plan.

List this Appeal on 11th March, 2024.

In the meantime, liquidator in pursuance of the impugned order shall not proceed with the liquidation proceeding.

Issue notice. Requisites along with process fee be filed within three days. Let Reply be filed by the Respondent within two weeks. Appellant may file Rejoinder within two weeks, thereafter.

4. After order dated 07.02.2024, the Appellant wrote to the SBI to permit the Appellant to make payment of fourth tranche. The Appellant in the email wrote to SBI as well as Chairman of Monitoring Committee to permit payment of fourth tranche of Rs.91.41 lakhs, which was scheduled on 15.04.2023 by utilizing the sources of fund as mentioned in the letter. A reply was sent on behalf of the SBI that amount of Performance Guarantee of INR 0.4 crores cannot be permitted to be utilized for payment of fourth tranche and further amount of Rs.23,65,865/-, which is yet to be paid to various creditors cannot be used. However, with regard to two payments, i.e. Rs.28,50,119/- and Rs.1,32,500/-, the Bank expressed its no objection. The Appellant again wrote to the SBI on 26.02.2024, where an offer was made to sell factory at Shirwal and on sale of Shirwal factory an amount of Rs.6 Crores would be realized, which may be utilized for payment of fourth and fifth tranches and there will be also balance for payment of sixth tranche.

5. In response to the notice issued, the SBI filed its reply to which a rejoinder has also been filed. Both the parties were heard and on 27.03.2024, judgment was reserved.

6. Shri Pankaj Jain, learned Counsel for the Appellant challenging the impugned order dated 04.01.2024 passed in IA No.4034 of 2023 ordering for liquidation submits that present was not a case where Adjudicating Authority ought to have directed for liquidation. The Appellant has made payment of three tranches within time. The total amount required to be paid by the Appellant before 16.04.2024 and for payment of fourth tranche the amount was available, which request was made to SBI to utilize the amount, which the SBI did not accept. It is submitted that Appellant in his IA No.483 of 2023 has given sufficient reason for extension of timeline for making the payment of balance amount under the Resolution Plan, which Application has been rejected on the erroneous ground that CoC has not agreed for extension. It is submitted that CoC being 100% consist of SBI, who ought to have collaborated and extended its cooperation to the SRA to implement the Resolution Plan. The SBI has adopted an attitude which did not permit the Appellant to implement the Plan. It is further submitted that an offer has already been submitted on 26.02.2024 for sale of Shirwal Factory, which sale is permissible as per the Resolution Plan. The SBI did not give its consent for the said sale. In event the Bank had permitted the sale of the assets of Shirwal Factory, entire payment of fourth and fifty tranches would have been completed and certain amount would also have been left balance to pay the last tranche. It is submitted that Resolution Plan itself has permitted sale of the assets as a last resort and the Bank having not permitted the Appellant to sell the assets, the payments could not be made within the time. It is submitted that the

Appellant is still ready to implement the entire Plan and pay all balance amount, i.e., fourth, fifth and sixth tranches.

7. Shri Harshit Khare, learned Counsel appearing for SBI refuting the submissions of learned Counsel for the Appellant submits that Appellant had not made the payment of fourth tranche which was due on 15.04.2023, hence the Bank had filed IA No.4034 of 2023 for liquidation. It is submitted that subsequent request received from the Appellant to utilize the amount lying in different accounts, which included the utilization of Performance Guarantee of Rs.40 lakhs was duly replied by the Bank. It is submitted that Appellant having not paid the amount, SBI has rightly initiated proceedings for liquidation. It is further submitted that Adjudicating Authority has rightly rejected IA No.483 of 2023 filed by the Appellant for extension of time for payment of fourth, fifth and sixth tranches. It is submitted that extension of time is nothing but modification of the Resolution Plan, which jurisdiction is not with the Adjudicating Authority. The learned Counsel for the SBI has relied on the judgment of Hon'ble Supreme Court in ***Ebix Singapore Pvt. Ltd. vs. Committee of Creditors of Educomp Solutions Ltd. and Anr. – (2022) 2 SCC 401***, as per which the Resolution Plan cannot be permitted to be modified or withdrawn by the SRA.

8. We have considered the submissions of learned Counsel for the parties and have perused the records.

9. The Resolution Plan, which has been approved on 16.04.2021 is part of the record. The Resolution Plan indicates that Resolution Applicant is a

technocrat entrepreneur, who is a M. Tech from Indian Institute of Technology (IIT), Mumbai and holds more than three decades of experience in the field of Boilers and Thermal systems related equipment's design and manufacturing. In his Resolution Plan, the Appellant claimed completion of various projects and detailed the potential and technologies developed by the CD.

10. As per the Resolution Plan, the amount was to be paid in six tranches. There is no dispute that first three tranches were paid in time and the fourth tranche, which was due on 15.04.2023, could not be paid and fifth tranche also became due in October 2023. It is relevant to notice certain clauses of the Resolution Plan, which contains the sources of fund. Para 5.1.2 refers to 'Sources of funds' and one of the items, which was mentioned at Item 10 in table 'funds for Resolution' is 'Recoveries from Litigation, from which it was expected that between 18-24 months Rs.51.40 lakhs would be recovered and total recovery was expected to be Rs.1040.85 lakhs. In paragraph 5.1.2.5, which is 'Recoveries expected from the ongoing legal cases' are mentioned, which is as follows:

**"5.1.2.5 Recoveries expected from the ongoing legal cases**

These envisaged recoveries are expected from ongoing recovery litigations pertaining to commercial disputes with clients for services that has already been rendered. A sum of Rs. 1285 lakhs is envisaged to be collected during the 3 year period in a manner as shown in the Table above.

The above amount of Rs. 1285 lakhs is expected from the following sources:



| S. no. | Client Name           | Expected realization<br>(Rs. lakhs) |
|--------|-----------------------|-------------------------------------|
| 1.     | Lloyd Steel           | 50.00                               |
| 2.     | New India Assurance   | 20.00                               |
| 3.     | Simon India           | 200.00                              |
| 4.     | GACL                  | 230.00                              |
| 5.     | GAIL                  | 635.00                              |
| 6.     | Shree Digvijay Cement | 150.00                              |
|        | <b>Total</b>          | <b>1285.00”</b>                     |

11. Paragraph 5.1.2.12 mentions ‘Alternate sources of funding’, which clause being relevant for the present case is as follows:

*“5.1.2.12 Alternate sources of funding*

The RA is confident to honour this plan based on the sources of funding identified above. However, in the unlikely event that there is any shortfall from any of the sources, the RA would endeavour to make good such shortfall through any of the following sources within a reasonable time and as expeditiously as possible:

1. Equity infusion: The RA has already taken substantial efforts to infuse equity in the last three years through strategic investors. Once the prevailing economic situations improves, the RA would once again explore to rope in strategic investors for equity infusion in the CD, the proceeds of which would be utilized to compensate for any shortfall in the funds.
2. Funding through Debt: The RA would also favourably consider meeting any unlikely shortfall by raising fresh debt. It would need the consent of FC at relevant time to extend charge on the assets mortgaged with the FC to such future lenders. It is expected that the FC would extend reasonable cooperation in this regard.
3. Sale of factory at Shirwal: As reiterated above, the RA is confident of meeting its commitments under this Plan. It is therefore very unlikely that any of the alternate sources of funding will actually be needed. However, in the worst case

scenario and if there is no other alternative whatsoever, as a last resort, the RA would consider selling its Shirwal factory to meet up the shortfall.

The RA would closely monitor and evaluate the progress of recovery through litigations and would initiate the above steps as and when necessary with due intimation to the Monitoring Committee.”

12. IA No.483 of 2023 was filed by the Appellant before the time for payment of fourth tranche came, i.e., before 15.04.2023. In the Application, the Appellant has given the details including details regarding the amount, which was earned by the Corporate Debtor after the approval of the Plan. In the Application in paragraph-10, ‘Payment schedule’ was noticed, which is as follows:

“10. The total amount payable to all the creditors under the Resolution Plan was Rs. 19,72,02,000/- (Rupees Nineteen Crores Seventy-Two Lakhs and Two Thousand only) over a period of three years from the date of approval of the Resolution Plan i.e., up to 16th April 2024. The payment schedule is set out hereunder

| S. No. | Payment Schedule [Amount in Lakhs] |          |
|--------|------------------------------------|----------|
| 1.     | 0-6 months                         | 326.63   |
| 2.     | 6-12 months                        | 182.82   |
| 3.     | 12-18 months                       | 182.82   |
| 4.     | 18-24 months                       | 91.41    |
| 5.     | 24-30 months                       | 274.23   |
| 6.     | 30-36 months                       | 914.10   |
|        | Total                              | 1972.01” |

13. It was mentioned that pending recovery litigations did not proceed initially on account of the lockdown and other measures in place amidst

COVID-19 pandemic and its after-effects, which were beyond the control of the Applicant. The Appellant in paragraph-17 prayed for extension of timeline, which is as follows:

17. The Applicant is therefore filing the present Application seeking appropriate directions/ reliefs from this Hon'ble Tribunal for extension of timelines under the Resolution Plan in the following manner so that the overall timeline under the Resolution Plan is extended by 2 years—

| S. No. | Amount | Original timeline | Revised timeline |
|--------|--------|-------------------|------------------|
| 1.     | 91.41  | April 2023        | April 2024       |
| 2.     | 274.23 | October 2023      | July 2025        |
| 3.     | 914.10 | April 2024        | April 2026”      |

and in the Application, the Appellant made the following prayers:

- “a. That this Hon'ble Tribunal be pleased to extend the time period for making balance payment as per the schedule set out in Paragraph No. 17 of the present Application on such terms as it may deem fit to this Hon'ble Tribunal;
- b. Pending the hearing and disposal of the present Application, this Hon'ble Tribunal be pleased to extend the time period for payment as contemplated in Paragraph No.9 of the Order dated 16<sup>th</sup> April 2021 till hearing and final disposal of the present Application;
- c. That this Hon'ble Tribunal be pleased to pass such other and further directions and reliefs as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice”

14. As noted above, the SBI has filed an Application being IA No.4034 of 2023 praying for liquidation on account of non-payment of the amount. The Adjudicating Authority in the impugned order has noticed the

submissions of the Appellant as well as of the SBI. The submissions of SRA has been noticed by the Adjudicating Authority in paragraph-3, which is as follows:

“3.1. The SRA has accordingly sought extension by 2 years and proposed a revised payment plan as follows:

| S. No. | Amount (Rs. Lakh) | Original timeline | Revised timeline |
|--------|-------------------|-------------------|------------------|
| 1.     | 91.41             | April 2023        | April 2024       |
| 2.     | 274.23            | October 2023      | July 2025        |
| 3.     | 914.10            | April 2024        | April 2026”      |

3.2. It is case of SRA that, after taking over the operations of the Corporate debtor, it has also taken the necessary steps for revamping the manufacturing establishments, particularly for exploring exports to USA and other countries. The Corporate Debtor, for the said purpose, has obtained certification on 3.7.2022 from American Society of Mechanical Engineers (ASME) for manufacturing boilers and pressure vessels as per the ASME Code, which has global acceptance for export. The Corporate Debtor has already earned revenue of Rs. 24 Lakhs from the export to USA through its group companies, as contemplated in the approved resolution plan. Even on this front, the Corporate Debtor has been facing certain delays due to uncertainties prevailing in international market on account of the ongoing Ukraine-Russia war and such other factors.”

15. The SBI opposed the prayer for extension of timeline and has raised objection, which is noted by the Adjudicating Authority in paragraph-4, which is as follows:

“4. The SBI has opposed the prayer for extension of timelines stating that the Resolution Plan provides for alternative sources of payment; the extension is permissible only with the assent of CoC; and this Tribunal cannot invoke its residuary powers to extent the timelines dehors COC consent. It is stated the clause 5.1.2.12 of the Resolution Plan dealing with alternative source of funds specifies (i) equity infusion through strategic investor, (ii) funding through Debt, and (iii) Sale of factory at Shirwal, and exercise of these options would be procedurally less time consuming and within the control of the SRA.”

16. The Adjudicating Authority heard the parties and recorded its findings in paragraph-5. Paragraphs 5.1 and 5.2 is the total consideration of the Adjudicating Authority, while deciding both the Applications. Paragraphs 5.1 and 5.2 of the judgment are as follows:

“5.1. We find that the SRA has placed on record the status of recoveries from litigation in the 7th Monitoring Committee Meeting, however, we are of considered view that extension of timelines on the ground of delay in recovery can not be considered as the infusion of Resolution Money and can never be said to contingent upon recoveries from the Litigation considering that the Plan was not contingent in nature. We are conscious of legal proposition that this Tribunal, generally, should refrain from modifying the terms of approved Resolution Plan unless the same is concurred by the CoC. In view of this, we are of considered view that this Tribunal cannot consider the request of SRA for extension of timelines in view of express prayer of the CoC to order the liquidation of the Corporate Debtor. We find force in the contention of CoC that the SRA ought to have explored the alternative source of funding to avoid missing the deadlines for payment of money.

- 5.2. In view of the express unwillingness of the CoC to consider the extension of timelines, we are of considered view that the Corporate Debtor ought to be liquidated.”

17. The Adjudicating Authority in the impugned order has observed that Tribunal should refrain from modifying the terms of approved Resolution Plan unless the same is concurred by the CoC. The reason which was reflected in paragraph 5.1, is the reason for rejecting the extension of timeline.

18. The learned Counsel for the SBI before us has also advanced the same submission stating that SRA has no jurisdiction to pray for modification of the Plan and the Plan once approved, cannot either be modified or withdrawn, which is the law laid down by the Hon’ble Supreme Court in ***Ebix Singapore Pvt. Ltd. vs. Committee of Creditors of Educomp Solutions Ltd. and Anr. – (2022) 2 SCC 401***. The judgment of the Hon’ble Supreme Court in ***Ebix Singapore*** was a case where an Application filed by the SRA for withdrawal of Resolution Plan was allowed by the Adjudicating Authority, which order was set-aside by this Tribunal against, which an Appeal was filed in the Hon’ble Supreme Court. The Hon’ble Supreme Court in the facts of the said case has held that Plan once approved, both SRA as well as CoC are bound by the Plan and SRA cannot be allowed to withdraw from the Plan. This Tribunal had occasion to consider the question of extension of time in payment under the Resolution Plan in a judgment – ***Tricounty Premier Hearing Service Inc. vs. State Bank of India and Ors. in Company Appeal (AT) (Insolvency) No.1038 of 2021***, where this Tribunal took the view that extension of time in the

payment as per Resolution Plan is not a modification of the Resolution Plan, which jurisdiction can be exercised by the Adjudicating Authority/ Appellate Tribunal and extension of time for payment cannot be treated to be withdrawal of the Resolution Plan or modification of the Resolution Plan. In **Tricounty** case also, the Tribunal noticed the judgment of the Hon'ble Supreme Court in **Ebix Singapore**. The relevant paragraph in **Tricounty** noticing the judgment of the Hon'ble Supreme Court in **Ebix Singapore** and conclusion are as follows:

**"22.** We may also refer to the judgment of the Hon'ble Supreme Court in **Ebix Singapore Private Limited** (supra) relied by learned Senior Counsel for the State Bank of India in support of his submission. In **Ebix Singapore Private Limited** (supra), following conclusion has been recorded by the Hon'ble Supreme Court in paragraphs 202, 203 and 204:

*"202 The residual powers of the Adjudicating Authority under the IBC cannot be exercised to create procedural remedies which have substantive outcomes on the process of insolvency. The framework, as it stands, only enables withdrawals from the CIRP process by following the procedure detailed in Section 12A of the IBC and Regulation 30A of the CIRP Regulations and in the situations recognized in those provisions. Enabling withdrawals or modifications of the Resolution Plan at the behest of the successful Resolution Applicant, once it has been submitted to the Adjudicating Authority after due compliance with the procedural requirements and timelines, would create another tier of negotiations which will be wholly unregulated by the statute. Since the 330 days outer limit of the CIRP under Section 12(3) of the IBC, including judicial proceedings, can be extended only in exceptional circumstances, this open-ended process for further negotiations or a withdrawal, would have a deleterious impact on the Corporate Debtor, its creditors, and the economy at large as the liquidation value depletes with the*

*passage of time. A failed negotiation for modification after submission, or a withdrawal after approval by the CoC and submission to the Adjudicating Authority, irrespective of the content of the terms envisaged by the Resolution Plan, when unregulated by statutory timelines could occur after a lapse of time, as is the case in the present three appeals before us. Permitting such a course of action would either result in a down-graded resolution amount of the Corporate Debtor and/or a delayed liquidation with depreciated assets which frustrates the core aim of the IBC.*

*If the legislature in its wisdom, were to recognize 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 the 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.*

*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) of the 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 analyzed 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 the 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 (supra), a one-time relief under Article 142 of the Constitution is provided with the conditions prescribed in Section K.2.”*

**23.** Shri Saha relying on the paragraph 202 of the above judgment submits that Adjudicating Authority under the IBC cannot exercise jurisdiction, which is not provided in IBC. Hon’ble Apex Court in the said judgment has held that residual powers of the Adjudicating Authority cannot be exercised to create procedural remedies, which have substantive outcomes on the process of insolvency. The above observations have been made in a case where the question before the Hon’ble Apex Court was as to whether after submission of Resolution Plan, Resolution Applicant can withdraw the Plan. Hon’ble Apex Court held that it is only Section 12-A, which enables withdrawal from the CIRP, hence, it was held that Resolution Applicant cannot withdraw from the Plan. The Hon’ble Apex Court has also laid down in the above case that existing insolvency framework in India provides no scope for effecting further modification and withdrawals of CoC approved Resolution Plans, at the behest of the Successful Resolution Applicant.

**24.** The present is not a case where the Resolution Applicant wants to withdraw from the Plan or seeks any modification in the Plan. We are of the view that a prayer for extension of 30 days’ time

to comply financial commitments as per order dated 20th September, 2021 cannot be said to modification of the Plan when the Adjudicating Authority itself granted time to the Resolution Applicant to comply the financial obligations till 31st March, 2021. The issue which is sought to be raised in the Appeal that whether Adjudicating Authority erred in exercising its jurisdiction in refusing to grant extension by 30 days as prayed by Resolution Applicant or not? The judgment of the Hon'ble Supreme Court in the **Ebix Singapore Private Limited** (supra) thus, does not support the submission of learned Counsel for the State Bank of India that Adjudicating Authority has no jurisdiction to extend the time for complying the financial obligations in the Resolution Plan.

19. Judgment of this Tribunal in **GP Global Energy Pvt. Ltd. vs. Mr. Sandeep Mahajan and Anr. in Company Appeal (AT) (Insolvency) No.954 of 2021** decided on 6<sup>th</sup> May, 2022 has also clearly laid down that extension of timelines for complying the financial obligations under the Resolution Plan is not modification of the Plan. In the said case also the Adjudicating Authority has rejected the Application holding that it was not the powers of the Tribunal to make amendments to the approved Resolution Plan. It is useful to extract paragraphs 25 and 26 of the judgment in the **GP Global Energy Pvt. Ltd.**, which is as follows:

25. In Para 13, the Adjudicating Authority has observed that “it is beyond the powers of this Tribunal to make amendments to the approved resolution plan”. The above observation of the Tribunal was not appropriate in context of the prayers which have been made in C.A. No. 2357/2019. The Appellant was not claiming any modification of the Resolution Plan and the Appellant was only claiming for extension of time for making payments which the Adjudicating Authority itself by order dated 03.09.219, as quoted above, has already approved the revised timelines to make

payments. When the Adjudicating Authority has itself granted revised timelines, the observation that Tribunal that it has no powers to amend the approved resolution plan is not justified and uncalled for. In this context we refer to a recent judgment of this Appellate Tribunal dated 20.01.2022 in Company Appeal (AT) (Ins.) No. 1038 of 2021, 'Tricounty Premier Hearing Service Inc vs. State Bank of India & others', which was filed against the order in which the application of the Successful Resolution Applicant for extension of time for making deposit was rejected by the Adjudicating Authority which came to be questioned before this Appellate Tribunal. One of the arguments raised before this Tribunal was that in view of the judgment of Hon'ble Supreme Court in 'Ebix Singapore Private Limited vs. CoC Educomp', the Adjudicating Authority cannot even extend the time for making payment. This Tribunal in Para 22, 23 and 24 laid down following:

“22. We may also refer to the judgment of the Hon'ble Supreme Court in Ebix Singapore Private Limited (supra) relied by learned Senior Counsel for the State Bank of India in support of his submission. In Ebix Singapore Private Limited (supra), following conclusion has been recorded by the Hon'ble Supreme Court in paragraphs 202, 203 and 204:

“202 The residual powers of the Adjudicating Authority under the IBC cannot be exercised to create procedural remedies which have substantive outcomes on the process of insolvency. The framework, as it stands, only enables withdrawals from the CIRP process by following the procedure detailed in Section 12A of the IBC and Regulation 30A of the CIRP Regulations and in the situations recognized in those provisions. Enabling withdrawals or modifications of the Resolution Plan at the behest of the successful Resolution Applicant, once it has been submitted to the Adjudicating Authority after due compliance with the procedural requirements and timelines, would create another tier of negotiations which will be wholly unregulated by the statute. Since the 330 days outer

limit of the CIRP under Section 12(3) of the IBC, including judicial proceedings, can be extended only in exceptional circumstances, this open-ended process for further negotiations or a withdrawal, would have a deleterious impact on the Corporate Debtor, its creditors, and the economy at large as the liquidation value depletes with the passage of time. A failed negotiation for modification after submission, or a withdrawal after approval by the CoC and submission to the Adjudicating Authority, irrespective of the content of the terms envisaged by the Resolution Plan, when unregulated by statutory timelines could occur after a lapse of time, as is Company Appeal (AT) (Insolvency) No. 1038 of 2021 28 the case in the present three appeals before us. Permitting such a course of action would either result in a down-graded resolution amount of the Corporate Debtor and/or a delayed liquidation with depreciated assets which frustrates the core aim of the IBC. 203 If the legislature in its wisdom, were to recognize 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 the 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. 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) of the IBC when an Adjudicating Authority rejects a Resolution Plan under Section 31. In this context, we hold that the existing Company Appeal (AT) (Insolvency) No. 1038 of 2021 29 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 analyzed 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 the 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 (supra), a one-time relief under Article 142 of the Constitution is provided with the conditions prescribed in Section K.2."

23. Shri Saha relying on the paragraph 202 of the above judgment submits that Adjudicating Authority under the IBC cannot exercise jurisdiction, which is not provided in IBC.

Hon'ble Apex Court in the said judgment has held that residual powers of the Adjudicating Authority cannot be exercised to create procedural remedies, which have substantive outcomes on the process of insolvency. The above observations have been made in a case where the question before the Hon'ble Apex Court was as to whether after submission of Resolution Plan, Resolution Applicant can withdraw the Plan. Hon'ble Apex Court held that it is only Section 12-A, which enables withdrawal from the CIRP, hence, it was held that Resolution Applicant cannot withdraw from the Plan. The Hon'ble Apex Court has also laid down in the above case that existing insolvency framework in India provides no scope for effecting further modification and withdrawals of CoC approved Resolution Plans, at the behest of the Successful Resolution Applicant.

24. The present is not a case where the Resolution Applicant wants to withdraw from the Plan or seeks any modification in the Plan. We are of the view that a prayer for extension of 30 days' time to comply financial commitments as per order dated 20th September, 2021 cannot be said to modification of the Plan when the Adjudicating Authority itself granted time to the Resolution Applicant to comply the financial obligations till 31st March, 2021. The issue which is sought to be raised in the Appeal that whether Adjudicating Authority erred in exercising its jurisdiction in refusing to grant extension by 30 days as prayed by Resolution Applicant or not? The judgment of the Hon'ble Supreme Court in the Ebix Singapore Private Limited (supra) thus, does not support the submission of learned Counsel for the State Bank of India that Adjudicating Authority has no jurisdiction to extend the time for complying the financial obligations in the Resolution Plan."

26. This Tribunal rejected the submission that the Adjudicating Authority has no jurisdiction to extend the time for complying the financial obligations in the Resolution Plan. This Tribunal ultimately

after considering all facts and circumstances allowed the Appeal and granted 30 days' time to the Appellant to make the payment of the balance amount.”

20. We, thus, are satisfied that Adjudicating Authority has jurisdiction to grant extension of timeline in making the payment in a Resolution Plan and the view of the Adjudicating Authority that granting of extension of the timeline is modification of the terms of the Resolution Plan is not a correct view. Further, for extension of timeline it is not necessary that CoC should express its concurrence, only then the Adjudicating Authority can exercise its jurisdiction. The jurisdiction is there with the Adjudicating Authority in appropriate case. Granting extension of time in payment as per Resolution Plan for implementation of the Resolution Plan, appropriate jurisdiction is always vested with the Adjudicating Authority to pass appropriate order. We have already noticed that SRA has sent a letter to the Bank on 10.11.2023 citing the arbitration award dated 09.11.2023, which has been received by the Corporate Debtor of Rs.102 lakhs. The letter dated 10.11.2023 is as follows:

“Ref: TESPL/2023/45

Date: 10<sup>th</sup> November 2023

To

Mr. V.K. Jain

Chairman of Monitoring Committee

Transparent Energy Systems Private Limited

Kanchansobha Debt Resolution Advisors Pvt. Ltd.

1507-B, One BKC, G-Block,

Bandra Kurla Complex,

Bandra (East), Mumbai – 400 051

Tel: 022 – 66933013, 26521269

**Sub: Our efforts for recovery litigations of Corporate Debtor (CD), Transparent Energy Systems Private Limited (TESPL) to make the balance payments under approved resolution plan.**

**Ref: Our following letters/ meetings to SBI and the monitoring committee**

- 1. Letter to Chairman, Monitoring Committee dated 10.10.2023.**
- 2. Letter to DGM, SAMB II Branch, SBI dated 25.10.2023.**
- 3. Our meeting with DGM, SAMB II Branch, SBI on 27.10.2023**
- 4. Letter to DGM, SAMB II Branch, SBI dated 30.10.2023.**
- 5. Letter to the Chairman, SBI dated 31.10.2023.**
- 6. Letter to Chairman, Monitoring Committee dated 01.11.2023.**
- 7. Letter to the Chairman, SBI dated 03.11.2023.**
- 8. Letter to Chairman, Monitoring Committee dated 04.11.2023.**

Dear Shri V.K. Jainji,

This letter is in furtherance of our above-mentioned letters, discussions and meetings with you and the officers of SBI on the above issue.

We have attached herewith the arbitration award received pronounced by the arbitrator on 9<sup>th</sup> November, 2023 in the arbitration proceedings against M/s Lloyd Steel Industries Ltd. The arbitrator has awarded an amount of approx. Rs.102 Lacs in favour of the Corporate Debtor against the projected amount of Rs.50 Lacs in the resolution plan.

The abovementioned award amount of Rs.102 Lacs and the amount of Rs.25 Lacs available from the recent de-freezing of the HDFC bank account is well above the entire amount payable to all the creditors in the fourth tranche due on 15<sup>th</sup> April, 2023.

These two recoveries are the most glaring illustrations of the unforeseen delays that the RA/CD have been experiencing for all the recovery litigations and has made the application for extension of timelines.

It is therefore high time for the members of the monitoring committee, other than the CD, to review their decision to oppose the IA No.483 of 2023 from the RA before the Hon'ble NCLT for a reasonable and justified extension of timelines.

As a matter of abundant clarifications, this letter is made in good faith and without any prejudice to or without waiver of any of the rights of the Resolution Applicant or the Corporate Debtor.

Thanking you



With Best regards

SD/-

Ashok Atre

(Promoter and Successful Resolution Applicant – Transparent Energy Systems Pvt. Ltd.)

Copy to—

1. State Bank of India, (Member of Monitoring Committee\_ SAMB II Branch, Mumbai,  
Represented by  
Mr. Hirankumar Chavah (Chief Manager)
2. Transparent Energy Systems Pvt. Ltd., Pune  
(Member of Monitoring Committee)  
Represented by  
Mr. Ajit Apte (Executive Director)  
Mr. Chintamani Vaidya (Director)  
Mr. Haridas Wadghule (Executive Director)”

21. In the rejoinder affidavit filed by the Appellant, several subsequent correspondences between the parties have been brought on record including offer letter dated 26.02.2024, which was submitted by SRA seeking Letter of Intent for sale of Shirwal Factory. The letter gives the details, as to how by sale of Shirwal Factory, the entire payment of fourth and fifth tranches will be made and there will be fund available for sixth tranche also. It is useful to extract the letter dated 26.02.2024 issued by the Appellant to the State Bank of India, which is as follows:

“To

**State Bank Of India,**

**Address at** - Stressed Assets Management Branch (SAMB) 2,  
Raheja Chambers, Ground Floor, B Wing,  
Free Press Journal Marg, Nariman Point, Mumbai - 400 021  
Registered Office at - State Bank Bhavan, Madam Cama Road,  
Nariman Point, Mumbai - 400021  
email: team3.15859@sbi.co.in

Attn. - Mr. Hiran Kumar Chavah (Case Lead Office and Asst. General Manager)

**Subject: Letter of Intent ("LOI") to purchase the factory owned by Transparent Ener Systems Private Limited at Gat No 312, Village - Shindewadi, Tal - Khandala, Dis Satara on NH4**

**Highway, Bangalore Pune Highway, Maharashtra ("Shirwal Factory")**

**Ref: Resolution Plan of Transparent Energy Systems Private Limited**

Dear Sir,

I am pleased to hereby provide an update about the firm proposal received for sale factory of the Corporate Debtor at Shirwal -

- 1) Please take Notice that pursuant to newspaper advertisement published in Economic Times, Pune edition dated May 24, 2023 by the Corporate Debtor in terms of t arrangement for alternative sources of funds for payments of funds under the approved resolution plan of Transparent Energy Systems Private Limited ("**Corporate Debtor**") by the Hon'ble NCLT, Mumbai Bench vide its order dated 16.04.2021, we had received expression of interest/ Letter of Intent for purchasing the factory of the Corporate Debtor located at Shirwal on NH4 Highway, Bangalore Pune Highway Maharashtra from a prospective Buyer. A Copy of the said Letter of Intent (LOI) is annexed for your kind consideration and approval. 54
- 2) In terms of the approved Resolution Plan -the SBI being sole Financial Creditor / member of Monitoring Committee is bound to support the sale of assets of the Company as alternate source of funds for raising funds in order for successful implementation of the approved Resolution Plan.
- 3) Further, in terms of the approved Resolution Plan funds raised from sale of the aforesaid Property of the Company shall be utilized for payment to creditors in terms of the NCLT approved Resolution Plan
- 4) The details of sources of funds and payment liability anticipated by the SRA for payment of 4<sup>th</sup> and 5<sup>th</sup> Tranches (after keeping in abeyance the other funds namely (a) performance security and (b) amounts lying in unclaimed payments, already available with the Company as specified in our notice for the meeting sent on February 18, 2024), is as hereinbelow -

| No | Particulars   | Amount (Rs.)          |
|----|---|-----------------------|
| 1  | Balance in HDFC Bank (account under re-activation after order dated 17.10.2023 by the Hon'ble NCLT for de-freezing the same). | 28,50,119.00          |
| 2  | Balance in current account of SBI at Lonand as on 31/1/2024 (all funds for resolution plan are deposited in this account)     | 1,32,500.00           |
| 3  | Sale of Shirwal Factory   | 6,00,00,000.00        |
| 4  | <b>Total Amount available (1 + 2 + 3)</b>   | <b>6,29,82,119.00</b> |
| 5. | Less payment of 4 <sup>th</sup> tranche of resolution plan  | (91,41,000.00)        |
| 6. | Less payment of 5 <sup>th</sup> tranche of resolution plan  | (2,74,23,000.00)      |
| 7. | <b>Net funds available after payment of 4<sup>th</sup> and 5<sup>th</sup> tranche (4 – 5 – 6)</b>                             | <b>3,64,18,119.00</b> |
| 8  | Funds to be earmarked for payment of 6 <sup>th</sup> tranche  | 3,00,00,000.00        |
| 9  | Remaining funds (for operations of the Corporate Debtor for a period of 12 months (7 – 8)                                     | 64,18,119.00          |

- 5) It is hereby clarified that the utilization of funds proposed hereinabove is without prejudice to the earlier proposal, vide email dated 18<sup>th</sup> February 2024, for utilization of the funds lying in two fixed deposits to make the payments of 4<sup>th</sup> tranche of the resolution plan. The said proposal dates February 18, 2024, which has been unduly declined by the SBI, deserves reconsideration by the SBI, as the said two fixed deposits would now be utilized only for a very short time of less days and would get replenished from the consideration for proposed sale of Shirwal factory. The same would enable

compliance of the order passed by the Hon'ble NCLAT on 7th February 2024.

- 6) You are requested to provide your written No Objection/ Approval to the sale of the aforesaid factory of the Corporate Debtor located at Village - Shindewadi, Dist. Satara on NH4 Highway, Bangalore Pune Highway, Maharashtra at the earliest and preferably within 7 days of this receipt of this letter so that prospective buyer can complete its due diligence and proceed with the execution of Sale Deed for the said factory. You are also requested to release security interest on the said asset to complete the sale transaction.
- 7) This proposal for sale of Shirwal factory is with the condition precedent that on completion of the sale transaction and payment of 4<sup>th</sup> and 5<sup>th</sup> of tranche from the proceeds of the sale transaction as per the approved resolution plan, the SBI should unconditionally agree to the following -
  - a) The timeline for the payment of 6<sup>th</sup> tranche of the resolution plan shall get extended as prayed for in the IA 483 of 2023 before the Hon'ble NCLT, i.e. upto 16<sup>th</sup> April 2026 and Company Appeal (AT) INS 221 and 221 of 2024 before the Hon'ble NCLAT.
  - b) The progress of recovery litigations will be reviewed by the SRA and SBI on a quarterly basis; and if the progress of recovery litigations is not found to be on expected lines after as on 31<sup>st</sup> March 2025, the sale of Lonand factory will be explored as alternate source of funds.
  - c) In the unlikely event of any further delay in realization of funds from either of two sources mentioned above, the SBI would be entitled for payment of interest at prime lending rate of SBI for the period beyond 16<sup>th</sup> April 2026 and this provision for payment of interest shall prevail over the remedy or recourse of seeking liquidation of the Corporate Debtor.

I look forward to your early compliance and approval to sale of Shirwal factory along with the consent for extended timeline for payment of 6<sup>th</sup> tranche as elaborated hereinabove.

Thanking You

Yours Sincerely,

**Ashok Atre**

**(Promoter and successful Resolution Applicant – Transparent Energy Systems Pvt. Ltd.)**

Encl. – Letter of Intent dated 25<sup>th</sup> February 2024 from M/s Tooltech Components Pvt. Ltd. for purchase of Shirwal factory of the Corporate Debtor

Copy to –

1. Mr. Avil Menezes  
Address at – Unit No.106, Kanakia Atrium -2, Chakala, Andheri Kurla Road, Andheri East, Mumbai – 400 093  
Email: [Avil@Caavil.com](mailto:Avil@Caavil.com)
2. Mr. Ajit Apte, Mr. Chintamani Vaidya and Mr. H.N. Wadghule (representatives of the SRA/ Appellant No.2, 3 and 4 in the captioned appeal)  
Email : [ajit.apte@tespl.com](mailto:ajit.apte@tespl.com), [Chintamani.vaidya@tespl.com](mailto:Chintamani.vaidya@tespl.com), [h.wadghule@tespl.com](mailto:h.wadghule@tespl.com)”

22. The learned Counsel for the Bank has opposed the submission that Factory, which is mortgaged with the Bank cannot be permitted to be sold. We have noticed the relevant Clauses of Resolution Plan, i.e., 5.1.2.12 under the heading ‘Alternate sources of funding’. The Resolution Plan itself contemplated that as a last resort, the assets can be sold to make the payment under the Resolution Plan. When Resolution Plan itself contemplated sale of assets, we are of the view that request of the Appellant for permitting sale of Shirwal Factory was in accordance with Clauses of the Resolution Plan ought to be accepted. The Appellant has been throughout ready to make the payment and have been making the efforts.

23. The Adjudicating Authority has also noticed in paragraph-4 of the order the submission of the SBI that SRA had to deal with alternative source of fund and one of the alternative sources of fund was sale of Shirwal Factory. The Adjudicating Authority in paragraph 5.1 as extracted above also accepted the submission of the Bank that SRA ought to have explored the alternative source of funding to avoid missing the deadlines for payment of money. We have already noticed the steps taken by the SRA regarding sale of Shirwal Factory. We are of the view that SBI having already contended that SRA sought to have explored the alternative source of fund, which submission was accepted by the Adjudicating Authority, we are of the view that SRA is fully entitled to take steps to sell Shirwal Factory to pay the dues under the Resolution Plan.

24 The learned Counsel for the Appellant has also relied on the judgment of this Tribunal in ***State Bank of India and Ors. vs. The Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch and Anr. in Company Appeal (AT) (Insolvency) No.129 & 130 of 2023***. The above judgment of this Tribunal was also a case where time was sought to be excluded/ extended as per the Resolution Plan. The Adjudicating Authority has allowed the Application filed by the SRA for implementation of the Resolution Plan and exclusion of time, which order was challenged by the SBI. The Appeal was dismissed upholding the order of the Adjudicating Authority, which allowed implementation of the Resolution Plan and exclusion of time. This Tribunal further held that Financial Creditors have to adopt positive approach to help the SRA to implement the Plan. In paragraph 126, 127 and 128 of the judgment, following was held:

126. The implementation of Resolution Plan is a collaborative process, which require positive action from all the parties, including the MC Lenders. The implementation of the Resolution Plan not only revives the Corporate Debtor, but it brings along with revival, new employment, generation of revenues etc. By non-implementation of the Plan, direct sufferers are the workers and employees, who have not received the payments. It is true that Lenders are entitled to take steps for protection of their amount, but that is not the only object of the IBC. The Lenders to protect their own financial interest cannot ignore the primary object of revival of the Corporate Debtor and payments to other stake holders, including workmen and employees, who are entitled for their payments along with Financial Creditors. The Lenders by not taking positive steps for implementation of the Plan have not only adversely affected the interest of the SRA, but have also created circumstances, so that workmen and employees be not paid.

127. Instead of taking positive steps for implementation of the Resolution Plan, the learned Counsel for the Lenders in their oral submission have always been pressing for directing the liquidation of Corporate Debtor, which is neither acceptable nor legal.

128. We hope and trust that Lenders shall now play a positive and collaborative role to take steps, so that different milestones under the Resolution Plan should be achieved and Corporate Debtor be revived, so that hopes of many, including the workmen and employees be not belied. The revival of the Corporate Debtor shall be in the interest of Aviation Industry as well as to all concern.

25. The judgment of this Tribunal in ***State Bank of India and Ors. vs. The Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch and Anr.*** (supra) has laid down that Financial Creditor has to take collaborative steps to ensure that Plan is implemented. The implementation of Plan as per Clauses of the Resolution Plan has to be ensured by all concerned including the SRA, Financial Creditors and Monitoring Committee. We, in the facts of the present case, are of the view that the proposal of the

Appellant dated 26.02.2024 for sale of Shirwal Factory ought to be accepted, which is in accordance with Clause 5.1.2.12 of the Resolution Plan. The SBI shall issue necessary Letter of Intent for sale of the assets as undertaken by the Appellant. The entire payment received from sale of Shirwal Factory shall be deposited in the Bank to cover payment of fourth and fifth tranches and the balance amount shall be earmarked for sixth tranche as per the proposal submitted by the Appellant.

26. As observed above, the Adjudicating Authority committed error in rejecting IA No.483 of 2023 filed by the Appellant seeking extension of time for payment, on the wrong premise that since the CoC has not approved the extension, the extension cannot be granted. The extension of time in payment is not the modification of the Plan. We, thus, are of the view that order passed by the Adjudicating Authority rejecting IA No.483 of 2023 filed by the Appellant is unsustainable and is set aside. In consequence to setting aside the order of the Adjudicating Authority dated 04.01.2024 in IA No.483 of 2023, the order of liquidation passed by the Adjudicating Authority allowing IA No.4034 of 2023 is also set aside.

27. After we had reserved the judgment on 27.03.2024, IA Nos.2366 and 2367 of 2024 were filed by the Appellant/ Applicant, which Applications have been taken on record after hearing both the parties by our order dated 05.04.2023. In the Application, the Appellant has prayed direction for sale of Factory and Machinery of the Corporate Debtor located at A-51 and 52, MIDC Industrial Area, Lonand, Dist. – Satara, Maharashtra. The learned Counsel for the Appellant submits that by sale of the aforesaid Factory, the



entire payment under the Plan shall be made at one go. Clause 5.1.2.12 of the Resolution Plan as extracted above under 'Alternative sources of fund' has referred to sale of factory at Shirwal. The sale of Shirwal Factory is as per the Resolution Plan, with regard to which sale, we have already observed that the said sale can take place in accordance with the provisions of the Resolution Plan. With regard to prayers made in the IAs regarding sale of Factory & Machinery located at y located at A-51 & 52, MIDC Industrial Area, Lonand, Dist. – Satara, Maharashtra, the said sale of Factory is not contemplated in Clause 5.1.2.12 of the Resolution Plan. All assets of the Corporate Debtor being mortgaged and in charge of the SBI, it is for the SBI to consider any such prayer, for which no direction can be issued in the IA Nos.2366 and 2367 of 2024 as prayed. IA Nos.2366 and 2367 are disposed of accordingly.

learned Counsel for the Appellant during his submissions has also submitted that the Appellant is ready to pay interest @ 8% for any payment, which are made subsequent to 15.04.2024.

28. We, further are of the view that the Appellant is entitled for extension of sometime under the Resolution Plan, so as to ensure that the Plan is fully implemented and complied with. We, however, are also of the view that any extension beyond 16.04.2023 granted to the Appellant shall be with liability to pay prevalent rate of interest fixed by the SBI. In result, we dispose of this Appeal in following manner:

- (I) The order of Adjudicating Authority dated 04.01.2024 passed in IA No.4034 is set aside.

(II) IA No.483 of 2023 is allowed in following manner:

- (a) The time for payment of fourth and fifth tranche is extended till 15.04.2024.
- (b) The Appellant is permitted to sale Shirwal Factory as per Clause 5.1.2.12 of the Resolution Plan. The State Bank of India will issue Letter of Intent for sale of the assets. Entire amount received from sale of Factory, shall be paid to SBI to cover the payments of fourth and fifth tranches and balance amount shall also be earmarked for payment of sixth tranche.
- (c) The time for payment of sixth tranche is extended upto 15.04.2025.
- (d) Any balance payment, which is made by the Appellant after 15.04.2024 for payment of amount towards Resolution Plan, shall carry interest at the rate prevalent by SBI and the Appellant for any payment made after 15.04.2024, shall also make the payment of interest with effect from 16.04.2024, till the date of payment of the amount, within the time as allowed above.

Parties shall bear their own costs.

**[Justice Ashok Bhushan]**  
**Chairperson**

**[Arun Baroka]**  
**Member (Technical)**

**NEW DELHI**

**8<sup>th</sup> April, 2024**

Ashwani