

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

**Company Appeal (AT) (Insolvency) No. 1550 of 2023**

[Arising out of Order dated 21.11.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi in IA No.2294 of 2023 in CP (IB) No.639(PB) of 2018]

**In the matter of:**

**Jubilee Metal Pvt. Ltd.**

**....Appellant**

**Vs.**

**Mr. Surendra Raj Gang**

**...Respondents**

**Resolution Professional of Metenere Ltd. & Anr.**

<b>For Appellant:</b>	<b>Mr. Anand Chhiber, Ms. Nishita Khurana, Mr. Aashya Sharda, Mr. Gaurav Mitra and Mr. Lavanya Pathak, Advocates</b>
<b>For Respondents:</b>	<b>Mr. Sunil Fernandes, Mr. Vijayant Paliwal, Mr. Nikhil Mathur and Ms. Diksha Dadu, Advocates. Mr. Ankur Mittal, Ms. Yashika Sharma, Advocates for CoC</b>

**Company Appeal (AT) (Insolvency) No. 1551 of 2023**

[Arising out of Order dated 21.11.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi in IA No.985 of 2023 in CP (IB) No.639(PB) of 2018]

**In the matter of:**

**Jubilee Metal Pvt. Ltd**

**....Appellant**

**Vs.**

**Mr. Surendra Raj Gang**

**...Respondents**

**Resolution Professional of Metenere Ltd. & Anr.**

<b>For Appellant:</b>	<b>Mr. Gaurav Mitra, Mr. Sujoy Datta, Ms. Nishita Khurana, Mr. Aashya Sharda and Ms. Lavanya Pathak, Advocates</b>
<b>For Respondents:</b>	<b>Mr. Sunil Fernandes, Mr. Vijayant Paliwal, Mr. Nikhil Mathur and Ms. Diksha Dadu, Advocates Mr. Ankur Mittal, Ms. Yashika Sharma, Advocates for CoC.</b>

**Company Appeal (AT) (Insolvency) No. 1552 of 2023**

[Arising out of Order dated 21.11.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi in IA No.4041 of 2021 in CP (IB) No.639(PB) of 2018]

**In the matter of:**

**Jubilee Metal Pvt. Ltd.**

**....Appellant**

**Vs.**

**Mr. Surendra Raj Gang**

**...Respondents**

**Resolution Professional of Metenere Ltd. & Anr.**

**For Appellant:**

**Mr. Sujoy Datta, Ms. Nishita Khurana, Mr. Aaksheya Sharda, Mr. Gaurav Mitra and Mr. Lavanya Pathak, Advocates**

**For Respondents:**

**Mr. Sunil Fernandes, Mr. Vijayant Paliwal, Mr. Nikhil Mathur and Ms. Diksha Dadu, Advocates  
Mr. Ankur Mittal, Ms. Yashika Sharma, Advocates  
for CoC.**

**JUDGMENT**  
**(22<sup>nd</sup> December, 2023)**

**Ashok Bhushan, J.**

These three Appeals have been filed against the common order dated 21.11.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi. The Adjudicating Authority by impugned order allowed IA No. 985 of 2023 filed by the Resolution Professional for withdrawal of the application for approval of the Resolution Plan. IA No.2294 of 2023 filed by the Appellant- Successful Resolution Applicant has been dismissed and IA No.4041 of 2021 filed by the Resolution Professional seeking extension of Corporate Insolvency Resolution Process (CIRP) has been dismissed as having become infructuous.

2. Company Appeal (AT) (Insolvency) No.1550 of 2023 has been filed challenging the order passed by the Adjudicating Authority in IA No.2294 of 2023 which IA was filed by the Appellant- Successful Resolution Applicant. Company Appeal (AT) (Insolvency) No.1551 of 2023 has been filed against the impugned order dated 21.11.2023 passed in IA. No.985 of 2023 praying for withdrawal of IA No.4041 of 2021 seeking approval of the Resolution Plan. Company Appeal (AT) (Insolvency) No.1552 of 2023 has been filed by the Appellant challenging the order of the Adjudicating Authority dated 21.11.2023 in IA No.4041 of 2021.

3. Brief facts of the case necessary to be noticed for deciding these Appeals are:-

3.1. CIRP commenced against the Corporate Debtor- 'Metenere Limited' by order dated 25.09.2020. After publication of Form-G, RFRP was issued on 23.02.2021. Appellant submitted a Resolution Plan revised on 09.06.2021. The Resolution Plan contained relevant clauses regarding background of Resolution Applicant and rationale for proposed acquisition and creditworthiness of Resolution Applicant. Addendum dated 18.06.2021 was submitted by the Resolution Applicant. The plan of the Appellant was approved by 92.45% votes on 27.07.2021 after conclusion of the voting. Letter of Intent (LoI) dated 28.07.2021 was issued to the Appellant. LoI was unconditionally accepted by the Appellant. On 02.09.2021, the Appellant deposited a sum of Rs.20 Crores into trust and retention account opened with SBI towards performance security. On 06.09.2021, Resolution professional filed IA No.4041 of 2021 before the Adjudicating Authority

praying for approval of the Resolution Plan of the Appellant. On 25.10.2021, Mr. Gaurav Gupta, CEO of Shoora Capital FZE informed Resolution Professional vide email dated 25.10.2021 that there have been some changes in the directorship and constitutional pattern of Resolution Applicant. On 26.10.2022, Shoora Capital informed Resolution Professional vide email that Mr. Gaurav Gupta has ceased to be a director or stakeholder in the entities namely— ‘Shoora Minerals Pvt. Ltd.’, ‘Jubilee Metal Pvt. Ltd.’ and ‘Jubilee Metal Holding Pvt. Ltd.’. The Appellant- ‘Jubilee Metals Pvt. Ltd.’ is a company whose 100% share are owned by ‘Shoora Minerals Pvt. Ltd.’. ‘Shoora Minerals Pvt. Ltd.’ is 100% owned by ‘Shoora Capital FZE’. ‘Shoora Capital FZE’ is 100% owned by Mr. Gaurav Gupta. Resolution Professional vide e-mails dated 26.10.2022 and 30.10.2022 wrote to Mr. Gaurav Gupta that there appears to be a major deviation from the terms of the approved Resolution Plan. Mr. Gaurav Gupta was requested to give details of change in the directorship/constitutional pattern of the Appellant. On 01.11.2022, Appellant responded to the emails sent by the Respondent No.1 attaching the Affidavit under Section 29A of the Code. The Resolution Professional apprised the CoC about the emails received from Mr. Gaurav Gupta and ‘Shoora Capital FZE’. Resolution Professional issued emails dated 03.11.2022, 07.11.2022 and 17.11.2022 addressed to Mr. Gaurav Gupta reiterating the contents of the addendum and the LOI and requesting him to refrain from any actions contrary to resolution plan and also requesting to provide the information regarding the shareholding structure of the Shoora Group entities and any changes carried out in respect of the same. Appellant responded to the Resolution Professional stating that the

information could not be disclosed regarding change in directorship/constitutional pattern of the Successful Resolution Applicant due to the existing confidentiality clause. Appellant however, assured the Resolution Professional that it remains fully committed to the submitted resolution plan. On 25.11.2022, meeting of the CoC was convened where CoC was apprised of the development including the e-mail received from Mr. Gaurav Gupta and 'Shoora Capital FZE'. The Resolution Professional communicated by e-mail dated 27.11.2022 and 16.12.2022 informing the Appellant that the Resolution Professional will be constrained to treat the event as violation of terms of the resolution plan and LOI and will pursue all remedies available to it including forfeiture of the performance security deposit. The meeting of the CoC was convened on 21.12.2022, Successful Resolution Applicant was also informed about the scheduled meeting dated 21.12.2022. Successful Resolution Applicant sent an e-mail on 21.12.2022 at 3.18 P.M that due to some unavoidable circumstances, Appellant shall not be able to attend the meeting. CoC in its 16<sup>th</sup> meeting dated 21.12.2022 resolved that in pursuance of Clause 13.2 of the RFRP dated 12.02.2021 to forfeit the performance guarantee of Rs.20 Crores deposited by the Appellant along with the interest. Resolution Professional was also authorised to approach the Adjudicating Authority for inviting fresh Resolution Plan of the company and seeking exclusion and extension of time. Pursuant to the resolution dated 21.12.2022, the Resolution Professional filed IA No. 985 of 2023. In IA No.985 of 2023 following prayers were made:-

*“a. Pass an order allowing the withdrawal of Plan Approval Application bearing IA (IB) No. 4041 of 2021.*

*b. UBL Pass an order permitting the Resolution Professional to conduct expedited process inviting fresh resolution plans for resolution of the Corporate Debtor*

*c. Pass an order for exclusion of time period from 05.02.2021 (the date on which first Form G inviting EOI and Resolution Plan was issued) till the date of passing of the order in the present IA by this Hon'ble Tribunal for the purpose of CIRP of the Corporate Debtor.*

*d. Pass such other order/orders as it may deem fit and proper in the facts and circumstances of the case.”*

3.2. In IA No.985 of 2023, Appellant appeared and filed its reply. Appellant filed an IA No.2294 of 2023 dated 21.03.2023 praying for following reliefs:-

*“a. Pass an order directing the Respondent to not take any coercive action against the Applicant including withdrawal of Resolution Plan;*

*b. Pass an order setting aside or quashing the resolution passed by the Committee of Creditors in its meeting dated 21.12.2022 qua withdrawal of resolution plan pending for approval before this Hon'ble Tribunal;*

*c. Pass an order directing the COC to consider the submissions of the Applicant before passing any resolution towards withdrawal of Resolution plan of the Applicant;*

*d. Pass an order directing the Respondent not forfeit the Performance Bank Guarantee deposited by the Applicant herein;*

*e. Pass such other order/orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.”*

3.3. Reply to IA No.2294 of 2023 was filed by the Resolution Professional. Rejoinder Affidavits were also filed by the respective parties. Adjudicating Authority after hearing the parties on applications IA Nos. 985 of 2023, 4041 of 2021 and 2294 of 2023, allowed the IA No.985 of 2023 permitting the Resolution Professional to withdraw the plan approval application. Adjudicating Authority also directed the Resolution Professional to invite fresh Resolution Plans by issuing fresh Form-G. Exclusion of time was also allowed from 05.02.2021 till the date of passing the order. IA No. 2294 of 2023 filed by the Appellant was rejected. In view of the order passed in IA No. 985 of 2023, IA No.4041 of 2021 was dismissed as infructuous. Aggrieved by the orders passed by the Adjudicating Authority in the aforesaid three IAs, these three Appeals have been filed as noted above.

4. We have heard Shri Gaurav Mitra, Shri Anand Chhiber and Shri Sujoy Datta, Learned Counsel for the Appellants and Shri Sunil Fernandes, Learned Counsel for the Resolution Professional and Shri Ankur Mittal, Learned Counsel for the CoC.

5. Submissions advanced by Counsel for the Appellant in these Appeals are noted together.

6. It is submitted that the Resolution Plan having been approved by the CoC is binding on the CoC and the Successful Resolution Applicant. The CoC after full consideration has approved the Resolution Plan. The CoC cannot withdraw the Resolution Plan when the Successful Resolution Applicant is willing and competent to implement the approved Resolution

Plan as per the terms of the Resolution Plan. The Adjudicating Authority by the impugned order has allowed the fresh start of the CIRP which course would lead to enormous delay which is not in the interests of the CIRP nor in the interest of the Corporate Debtor or any of its stakeholders. The Adjudicating Authority exceeded its jurisdiction in allowing withdrawal of the plan approval application and issuing direction to issue fresh Form G by excluding the period from 05.02.2021 till the passing of the order. Withdrawal of the plan approval application cannot be granted as such the approved Resolution Plan is binding on the CoC and the Successful Resolution Applicant. There is no breach of the Resolution Plan by the Appellant and the CoC arbitrarily conducted itself in resolving to withdraw the Resolution Plan and to issue fresh Form G. Change of shareholding pattern of the Successful Resolution Applicant was due to prior infusion of funds by Mr. Sandeep Parwal in the Resolution Plan and such infusion of funds was always contemplated in the Source of Fund clause of the approved Resolution Plan. Mr. Sandeep Parwal has given a letter of comfort to Successful Resolution Applicant and he was connected with the Resolution Plan due to the said reason. Net worth certificate of Mr. Sandeep Parwal who has now taken 100% shareholding of the Appellant has also been submitted to fulfil the eligibility. Restriction placed upon the Successful Resolution Applicant that it shall not dilute its shareholding was not absolute. Adjudicating Authority cannot interfere with the commercial wisdom of the CoC in approving the Resolution Plan. Resolution Plan itself contemplated that the source of funds to be infused by the Successful Resolution Applicant by way of induction of 'Quasi Equity' funds into the



Successful Resolution Applicant entity. There is no ground for exclusion or extension of time. It is further submitted that the forfeiture of the performance security by resolution dated 21.12.2022 of amount of Rs.20 Crores deposited by Successful Resolution Applicant in terms of the LOI is not in accordance with law. Reliance has been placed in Regulation 36B (4A) of the IBBI (CIRP) Regulations, 2016. It is contended that the performance guarantee can be forfeited only when Successful Resolution Applicant fails to implement the Resolution Plan after its approval by the Adjudicating Authority. It is submitted that the Appellant with its new investors is fully eligible and competent to implement the Resolution Plan.

7. Learned Counsel for the Resolution Professional refuting the submission of the Appellant contends that at the time of submission of the Resolution Plan, ownership structure of the Appellant company was that 'Shoora Capital FZE' was 100% owned by Mr. Gaurav Gupta and 'Shoora Minerals Pvt. Ltd. was 100% owned by Shoora Capital FZE and Appellant was 100% owned by 'Shoora Minerals Pvt. Ltd.'. It is submitted that considering the eligibility and the capability of the Appellant Company to make good its commitments under the Resolution Plan and that of Mr. Gaurav Gupta's Resolution Plan was approved. It is submitted that by addendum to the Resolution Plan dated 18.06.2021 a specific undertaking was taken from Mr. Gaurav Gupta to provide an undertaking that 'Shoora Capital will not dilute its investment in all the subsequent chain entities i.e., 'M/s. Shoora Minerals Pvt. Ltd.', 'Jubilee Metal Pvt. Ltd.' including the 'SPV Jubilee Metal Holding Pvt. Ltd.' until the implementation of the plan i.e. 5

years from effective date, without the consent of top 2 financial creditors. It is stated that the Letter of Intent dated 28.07.2021 also contain same undertaking from the Appellant which was unconditionally given. Plan approval application is filed on the basis the above mentioned facts and undertaking given by the Appellant. It was on 25.10.2022, Resolution Professional was intimated about the change in the directorship and constitutional pattern of the Appellant by Mr. Gaurav Gupta. In spite of several e-mails sent to Gaurav Gupta, information was not provided. Appellant was informed about a major deviation from the terms of the Resolution Plan by change in the directorship and constitutional pattern of the Appellant. The meeting of the CoC was convened on 25.11.2022 and thereafter on 21.12.2022, CoC after taking note of breach and violation of the addendum of the Resolution Plan and breach of conditions of LoI resolved to issue fresh Form G and forfeit the performance guarantee given by the Appellant as per clause 13.2 of the RFRP. The submission of the Appellant that the plan once approved is irrevocable cannot be applicable in the facts of the present case when the Appellant completely altered its shareholding structure in contravention of material provisions of the Resolution Plan, addendum and LoI. Appellant being the Successful Resolution Applicant cannot be allowed to object the decision of the CoC which was taken on account of the extraordinary situation created by the Appellant himself. Appellant has not obtained consent of two Financial Creditors for carrying out any change in the shareholding and directorship. It is submitted that the Adjudicating Authority gave ample opportunities to the Appellant during pendency of the proceeding before the Adjudicating

Authority to satisfy the CoC that the Appellant can carry out the implementation of the plan. No material or reasons were submitted by the Appellant before the CoC to pursue the CoC to alter its decision taken on 21.12.2021. The submission of the Appellant that the performance security cannot be forfeited is not correct. The CoC is fully empowered under clause 13.2 of the RFRP to take such decision if any of the conditions under the LoI or the Resolution Plan are breached by the Appellant.

8. Learned Counsel for the CoC supported the submissions of the Resolution Professional. It is submitted that the change of Successful Resolution Applicant shareholding amounts to breach of the terms of the Resolution Plan. The Adjudicating Authority has returned a finding that the Appellant did not seek consent from top two Financial Creditors prior to changing the shareholding structure of Successful Resolution Applicant as contemplated in the plan. There is a clear breach of addendum dated 18.02.2021 as well as letter of intent. Appellant himself is to be blamed for breaching the undertaking given by the Appellant before the CoC. There being breach by the Appellant, CoC was fully justified in taking a decision to withdraw the application filed for approval of the Resolution Plan. Valuable time having been lost in the process, Adjudicating Authority has rightly directed for issue of fresh Form G and granted exclusion of the period. It is submitted that the present is a case where Successful Resolution Applicant has virtually sold the Resolution Plan to a third party, contrary to the undertaking given by the CoC; The resolution plan was approved looking to the facts brought before the CoC by the Successful Resolution Applicant.

Looking to the credentials and capability of the Successful Resolution Applicant and when the Successful Resolution Applicant itself has changed its constitution by transferring 100% its shareholding to third party. CoC was fully entitled to pray for withdrawal of such Resolution Plan.

9. Learned Counsel for the parties have relied the judgments of the Hon'ble Supreme Court as well as this Tribunal in support of their submissions which shall be considered while considering the submission in detail. We have considered the submissions of the Counsel for the parties and perused the record.

10. From the submissions of the Counsel for the parties and materials on record, following are questions which arise for consideration in these Appeals are:-

- (i) Whether after approval of the Resolution Plan by the CoC, the Appellant- Successful Resolution Applicant has committed breach of addendum dated 18.06.2021 and the conditions of LoI?
- (ii) Whether in the facts of the present case, CoC was precluded from taking any decision to issue fresh Form G and to withdraw the Resolution Plan which was earlier approved?
- (iii) Whether the decision of the CoC dated 21.12.2022 forfeiting the performance guarantee of Rs.20 Crores given by the Appellant is not in accordance with law?
- (iv) Whether the Adjudicating Authority was not entitled to grant exclusion of the period in the CIRP?

**Question No.(i)**

11. At the time of submission of the Resolution Plan, ownership structure of the Appellant i.e. Successful Resolution Applicant is not in dispute. Resolution Plan contains details of Resolution Applicant also. Clause 3.1 of the Resolution Plan contains a details of the Resolution Applicant. Clauses 3.1 and 3.2 of the Resolution Plan are as follows:-

***“3.Resolution Applicant******3.1. Background of the Resolution Applicant***

*The Resolution Applicant M/s Jubilee Metal (P) Ltd. has incorporated Special Purpose Vehicle (SPV)- "Jubilee Metal Holding Private Limited (JMHL)" for executing. this trasaction. Jubilee Metal (P) Ltd. is a 100% owned subsidiary M/s Shoora Minerals Private Limited India which is 100% owned subsidiary of M/s Shoora Capital FZE Ajman, UAE in India.*

*Brief profile of the Resolution Applicant is as under:*

***M/s Shoora Minerals Private Limited (Holding Company of Jubilee Metal (P) Ltd.)***

*Shoora Minerals Private Limited, promoted by Mr. Gaurav Gupta, was established on August 6, 2020 in New Delhi. It is 100% owned subsidiary of M/s Shoora Capital FZE Ajman, UAE*

- It is engaged in the trading of metals and alloys.*
- The Company has emerged as an international metals aggregator and commodity trader, specializing in trading of recyclable metals, alloys, engineering products, minerals & ores.*
- With associate entity in Hong Kong & a trading desk in UAE; Shoora Minerals Private Limited also has strategic global hubs located across Africa, UAE, Europe, Canada and South Korea, which are supported by an extended network of operations covering more than 8 countries.*

***M/s Shoora Capital FZE Ajman. UAE (Holding Company of Shoora Minerals Private Limited)***

- *The Company is promoted by Mr. Gaurav Gupta, it is 100% owned by Mr. Gaurav Gupta.*
- *Shoora Capital Group commenced its operations as a trading unit engaged in bulk trading of non-ferrous metals and its products (company procures materials at competitive prices from scrap collector and buying houses and supplies to its customers).*
- *Globally, the Group is focused on creating a non-cyclical, environmentally conscious, sustainable & balanced international business and has an integrated business model.*

*Resolution Applicant is in the process of establishing a recycling processing centre in India for segregation & aggregation of recyclable metals.*

***It plans to undertake backward integration through acquisition of Metenere manufacturing entity and its units, which in turn would enable it to control the value chain in a more efficient manner and also gain access to the entire distribution network. Its expertise will allow them to develop efficient, turn-key recycling programs that are specifically designed to complement existing manufacturing operation.***

***3.2. Transaction structure for proposed acquisition***

*The proposed transaction structure would be as under:*

*The Resolution Applicant M/s Jubilee Metal (P) Ltd., has incorporated M/s Jubilee Metal Holding Private Limited a Special Purpose Vehicle (SPV) for executing this transaction. M/s Jubilee Metal (P) Ltd. is a 100% owned subsidiary of M/s Shoora Minerals Private Limited India which is 100% owned subsidiary of M/s Shoora Capital FZE Ajman, UAE in India.*

***The Resolution Applicant would acquire Metenere and will hold 100% equity***

<b>Name</b>	<b>% Shareholding</b>
Jubilee Metal Holding Private Limited	100% in Metenere

Jubilee Metal (P) Limited	100% in Jubilee Metal Holding Private Limited
Shoora Minerals Private Limited	100% in Jubilee Metal (P) Ltd.
Shoora Capital FZE Ajman, UAE	100% in Shoora Minerals Private Limited
Gaurav Gupta	100% in Shoora Capital FZE Ajman, UAE
<b>Total</b>	<b>100%</b>

*Accordingly, the Resolution Applicant shall implement this Resolution Plan through a SPV namely Jubilee Metal Holding Private Limited and the term "Resolution Applicant" shall include such SPV (i.e. Jubilee Metal Holding Private Limited) for the purpose of this Resolution Plan."*

12. Thus, the Resolution Applicant who was permitted to participate in the Resolution Process was on account of its net worth, its background and experience. It is on record that while examining the eligibility of the Resolution Applicant, its net worth was examined with reference to 'Shoora Capital' and in the net worth of Resolution Applicant's, group was claimed in the Resolution Plan.

13. Now we come to the addendum to the Resolution Plan dated 09.06.2021 where undertaking was given that 'Shoora Capital FZE' will not dilute its investment in Companies i.e. 'Shoora Minerals Pvt. Ltd.' and 'Jubilee Metal Holding Pvt. Ltd.' (Appellant herein). Addendum reads as follows:-

*“In terms of the email communications received by us on 18.06.2021, following changes may be treated as an addendum to the Resolution Plan already submitted.*

**1. Since Shoora Capital FZE, Azman, UAE is the ultimate parent company whose net worth has been considered at Eol stage and also currently under Resolution Plan, reliance is placed on net worth of Shoora Capital FZE for source of funds to be infused by RA, an undertaking is required from Mr. Gaurav Gupta that Shoora Capital FZE will not dilute its investment in all the subsequent chain entities including the SPV Jubilee Metal Holding Pvt Ltd until the implementation (5 years from effective date) of the plan in full (without the consent of Top 2 Financial creditors)**

*Reply:*

*We undertake that Shoora Capital FZE will not dilute its investment in the companies viz. Shora Minerals (P) Ltd. (CIN: U28110DL2019PTC347808) and Jubilee Metal (P) Ltd. (CIN: U51909DL2020PTC370271) until the implementation of the resolution plan i.e. 5 years from the effective date of the resolution plan without the consent of Top 2 Financial Creditors of the Committee of Creditors in terms of their respective voting shares.”*

14. After approval of the Resolution Plan on result of e-voting held on 28.07.2021, Appellant was declared as Successful Resolution Applicant where Letter of Intent was issued. Clause (v) of Letter of Intent provides:-

*“Since Shoora Capital FZE, Azman, UAE is the ultimate parent company whose net worth has been considered at Eol stage and also currently under Resolution Plan, reliance is placed on net*



*worth of Shoora Capital FZE for source of funds to be infused by the Successful Resolution Applicant, you undertake that Shoora Capital FZE will not dilute its investment in all the subsequent chain entities (M/s Shoora Minerals Private Limited, Jubilee Metal Private Limited including the SPV Jubilee Metal Holding Private Limited) until the implementation (5 years from Effective Date (as defined in the Resolution Plan)) of the Resolution Plan in full (without the consent of Top 2 Financial creditors) Additionally, Mr. Gaurav Gupta shall not dilute his investment in Shoora Capital FZE until the implementation of Resolution Plan (5 years from Effective Date)."*

15. The Letter of Intent was received by the Appellant and Mr. Gaurav Gupta on behalf of the Appellant **'accepted unconditionally'** the Letter of Intent. After the aforesaid, application for approval of the Resolution Plan was filed by the Resolution Professional before the Adjudicating Authority being IA No.4041 of 2021 which remained pending for one year. An e-mail dated 26.10.2022 was received from 'Shoora Capital FZE' to the Resolution Professional which e-mail communicated to the Resolution Professional as follows:-

*"From: Shoora Capital <[shoora.capital@gmail.com](mailto:shoora.capital@gmail.com)>  
Sent: 26 October 2022 07:39  
To: Surendra Raj <[Surendra.Raj@IN.GT.COM](mailto:Surendra.Raj@IN.GT.COM)>  
Cc: Gaurav Gupta <[phd.gupta@gmail.com](mailto:phd.gupta@gmail.com)>  
Subject: Important / Update*

*Dear Sir,*

*Please note that the whole process of resolution has taken an exceptionally long time & we are still not sure how much more time will be needed.*

*Kindly note that Mr. Gaurav Gupta has ceased to be a director or stakeholder in the below entities. He is neither a director nor a stakeholder in any of the below companies:*

- 1. Shoora Minerals Private Limited*
- 2. Jubilee Metal Private Limited*
- 3. Jubilee Metal Holding Private Limited*

*You are requested to kindly update your records accordingly.*

*Regards”*

16. On 25.10.2022, Mr. Gaurav Gupta has also sent an e-mail informing that there have been some changes in the directorship and constitutional pattern of the Resolution Applicant. E-mail of Mr. Gaurav Gupta does not give details, after receipt of the e-mail on 26.10.2022 the Resolution Professional wrote to Mr. Gaurav Gupta informing that there is major deviation from the conditions of the approved Resolution Plan. He asked to share the details of shareholding of all the change entities from the Resolution Applicant and effective date of change of shareholding structure. Mr. Gaurav Gupta did not give details despite several e-mails sent by the Resolution Professional to Mr. Gaurav Gupta. A detailed e-mail by Resolution Professional to Mr. Gaurav Gupta was sent on 03.11.2022 where Resolution Plan and addendum as well as LoI dated 28.07.2021 was referred. E-mail stated as follows:-

*“Therefore, against the above background, considering that both the Resolution Plan and the*

*letter of intent issued to the Resolution Applicant clearly contemplate the continued association of yourself, and of the Shoora group entities with the resolution process and revival of the Corporate Debtor, any attempt to renege from these obligations is in gross violation of the Resolution Plan, and accordingly may be brought to the attention of the committee of creditors of the Corporate Debtor, and the National Company Law Tribunal, for seeking necessary remedies against you and the Shoora group entities.*

*Accordingly, the undersigned requests you to refrain from any actions contrary to the Resolution Plan, and once again requests you to kindly provide the information sought with regard to the present shareholding structure of the Shoora group entities, and any changes carried out in respect of the same.*

*You are also requested to keep yourself available during mid next week for meeting with undersigned and CoC members.*

*Regards*

*Surendra +919717390678”*

17. In the minutes of the CoC meeting on 25.11.2022, all developments were brought into notice of the CoC which took note of all developments. After the meeting of the CoC detailed e-mail was sent on 27.11.2022 to the Resolution Applicant informing about non-compliance with Resolution Plan and LoI. Earlier e-mail sent by the Resolution Professional reads as follows:-

***“Sub: Non-compliance with resolution plan and letter of intent***

*Dear Sir*

*This is in relation to the email dated November 24, 2022 received by the undersigned from the Resolution Applicant vide which the Resolution*

*Applicant is not able to share the details sought by the undersigned regarding the change in the structure/directorships of the Resolution Applicant owing to restrictions imposed by a confidentiality clause.*

*As you are aware, ever since the receipt of the email dated October 25, 2022 from Mr. Gaurav Gupta and the subsequent email by Shoora Capital Limited indicating that Mr. Gaurav Gupta is no longer a director or stakeholder in Shoora Minerals Private Limited, Jubilee Metal Private Limited or Jubilee Metal Holding Private Limited, the undersigned has vide the Follow Up Emails continuously followed up with the Resolution Applicant to understand the impact of this development on the structure, shareholding and directorship of the Resolution Applicant. The undersigned draws specific reference to his email dated November 03, 2022 wherein the undersigned has particularly explained how such a development amounts to a breach of the resolution plan, as well as the letter of intent dated July 28, 2021.*

*However, despite being sensitized of the seriousness of this situation, the undersigned received a reply from the Resolution Applicant nearly a month after the first request for further information was made by the undersigned, and the fact that such reply refuses providing such information to the undersigned under the garb of confidentiality.*

*Against this background, in the absence of any clear information from your end suggesting otherwise and as per direction received from the CoC in the meeting dated 25 November 2022, please note that the undersigned shall be constrained to treat such event as a violation of the terms of the resolution plan and the letter of intent, and pursue all remedies available to it against the Resolution Applicant, including but not limited to the forfeiture of the performance security deposited with the undersigned.*

*Best regards*

*Surendra +919717390678”*

18. By another e-mail dated 16.12.2022 by the Resolution Professional, Resolution Applicant was requested to participate in the meeting of the CoC in 20.12.2022, to explain such changes in directorship/constitutional pattern to the CoC. E-mail clearly stipulated:-

*“In this regard, the undersigned provides you with a final opportunity to provide the details of change in directorship/constitutional pattern of the Resolution Applicant and the connected entities, and requests you to remain present at the meeting of the committee of creditors of the Company on December 20, 2022, to explain such changes in directorship/constitutional pattern, to the committee of creditors of the Company. Please note that in the event that you still fail to provide requisite details and/or explanations, to the satisfaction of the undersigned and/ or the committee of creditors of the Company, that such changes in directorship/constitutional pattern do not constitute a breach of the resolution plan/letter of intent, the undersigned shall pursue all remedies available to it against you, including but not limited to the forfeiture of the performance security deposited with the undersigned.”*

19. The CoC held its meeting on 21.12.2022 which also noted that the Resolution Applicant has sent its regret that due to some unavoidable circumstances, he could not attend the meeting. After considering all developments and circumstances, following resolution was passed on Resolution 4(D)(1):-

**“RESOLUTION 4(D)(1); TO FORFEIT INR 20 CRORES DEPOSITED WITH SBI BY SRA AS A PERFORMANCE GUARANTEE**

**"RESOLVED THAT** pursuant to **Clause 13.2** of the RFRP issued on 12 February 2021, approval of members of the Committee of Creditors is hereby accorded to forfeit the performance guarantee of INR 20 Crores deposited by Jubilee Metals Pvt Ltd (Successful Resolution Applicant) along with interest earned thereon kept as Term Deposit with State Bank of India and to approach Hon'ble NCLT, for inviting fresh resolution plans for resolution of the Company and seeking exclusion and/or extension of time spent in pursuing the current resolution plan process which was unsuccessful due to acts of the SRA"

**RESOLVED FURTHER THAT** Mr. Surendra Raj Gang, Resolution professional of the Company is hereby authorised to do all acts, deeds and things, including filling suitable applications at NCLT, to give effect to above mentioned Resolution."

20. From the facts and sequence of the events as noted above, it is clear that the Resolution Applicant has undertaken in the addendum to the Resolution Plan dated 18.06.2021 as well as by LoI dated 28.07.2021 that it shall not change its shareholding in directorship and constitutional pattern of the Resolution Applicant for a period of 5 years from the effective date and for changes if any. Approval of two leading Financial Creditors shall be obtained. Replies to emails received from the Resolution Applicant indicate that no approval was taken from the Financial Creditor for effecting any change in constitutional pattern of the Resolution Applicant and directorship. Mr. Gaurav Gupta who had 100% holding company, 'Shoora Capital' has exited by transferring its 100% shareholding in holding

company and consequently the constitution of holding company and all group entities is completely changed.

21. Adjudicating Authority after considering the submissions has rightly come to the conclusion that the breach was committed by the Resolution Applicant of the addendum dated 18.06.2021 and the conditions as included in the LoI dated 28.07.2021. We, thus, affirm the finding of the Adjudicating Authority contained in paragraph 32 (ix), (x) & (xi). The findings and directions of the Adjudicating Authority contained in paragraph 32(ix), (x) & (xi) which are as follows:-

*“ix. Keeping the above key provisions of the Resolution Plan, Addendum to Resolution Plan and letter of intent we find that the SRA has contravened the material provisions of the Resolution Plan, addendum to the Resolution Plan dated 09.06.2021 and Letter of Intent dated 28.07.2021, and as per the new structure the SRA is not the original SRA whose plan was approved by the CoC. It is seen that the very sound assessment on which the CoC approved the Resolution Plan has been sought to be changed. The CoC find that the plan is not implementable in the manner it had approved and therefore have sought to restart the process as above. We are informed that the decision to go back on fresh Form G is best suited as the CD is viable and has better potential than liquidation. It has worth and CoC is confident of achieving a viable plan from a stable Resolution Applicant. We note the above plea made by CoC counsel in the course of the arguments.*

*x. In view of the above, we have no other option but to allow the RP/CoC to withdraw the plan and to invite fresh resolution plans of the CD. It is noteworthy that the CD Company is a going concern and there is buoyancy in the market for its products of non-ferrous metals. Thus invoking our powers under Rule 11 of the NCLT Rules, 2016 read with Section 60(5) of IBC, we permit the RP to withdraw the plan approval application. We also direct the RP to expedite the process of inviting fresh resolution plans by issuing fresh Form G inviting expression of interest within a period of not more than 15 days from the passing of the order. Prayers (a), (b), (c) of IA-985/2023 are accordingly allowed.*

*xi. Further, as prayed by the Applicant/RP in order to start the CIR Process afresh, we also allow exclusion of time from the date of issuance of invitation calling for EoI i.e. 05.02.2021 till today i.e. passing of this order in the CIR process of the Corporate Debtor.”*

22. We fully agree with the aforesaid findings. Question No.(i) is answered accordingly.

**Question No.(ii)**

23. The submission much pressed by the Counsel for the Appellant that the CoC was precluded from withdrawal of the Resolution Plan which has been approved by the CoC. It is submitted that in view of the law laid down by the Hon’ble Supreme Court in **“Ebix Singapore Pvt. Ltd. vs. CoC of Educomp Solutions- (2022) 2 SCC 401”**, Resolution Plan approved by the



CoC is binding both on the Resolution Applicant as well as CoC. It is submitted that the Resolution Plan which is binding on the CoC, no decision could have been taken by the CoC to withdraw the application for approval of the Resolution Plan.

24. Before proceeding further, we need to notice the judgment of the Hon'ble Supreme Court in '*Ebix Singapore Pvt. Ltd.*' (supra) which has been relied by the Appellant. '*Ebix Singapore Pvt. Ltd.*' was a case where after approval of the Resolution Plan by the CoC, the Resolution Applicant filed application before the Adjudicating Authority for withdrawal of the Resolution Plan. Two applications for withdrawal of the Resolution Plan were rejected twice by the Adjudicating Authority. However, the third application which was filed by the Successful Resolution Applicant was allowed by the Adjudicating Authority which order came to be challenged before the Appellate Tribunal.

25. In the above case, the CoC has resolved not to allow the application for withdrawal. Against the order of the Adjudicating Authority allowing withdrawal of third application, Appeal was filed, which appeal was ultimately allowed on 29.07.2020 and the order of the NCLT allowing third withdrawal was set aside. Appeal was filed before the Hon'ble Supreme Court challenging the order of the NCLAT. In the above background, the Hon'ble Supreme Court while examining the scheme of the IBC qua the Resolution Plan in paragraph 115, it was held that the Resolution Plan even prior to the approval before the Adjudicating Authority is binding inter se

between the CoC and the Successful Resolution Applicant. In paragraph 115 and 116, following was laid down:-

*“115. While the above observations were made in the context of a scheme that has been sanctioned by the court, the resolution plan even prior to the approval of the adjudicating authority is binding inter se the CoC and the successful resolution applicant. The resolution plan cannot be construed purely as a "contract" governed by the Contract Act, in the period intervening its acceptance by the CoC and the approval of the adjudicating authority. Even at that stage, its binding effects are produced by IBC framework. The BLRC Report mentions that "[w]hen 75% of the creditors agree on a revival plan, this plan would be binding on all the remaining creditors"98. The BLRC Report also mentions that, "the RP submits a binding agreement to the adjudicator before the default maximum date"99. We have further discussed the statutory scheme of IBC in Sections I and J of this judgment to establish that a resolution plan is binding inter se the CoC and the successful resolution applicant. Thus, the ability of the resolution plan to bind those who have not consented to it, by way of a statutory procedure, indicates that it is not a typical contract.*

*116. The BLRC Report, which furnished the first draft of IBC and elaborated on the aims behind the overhaul of the insolvency regime, refers to a CoC-approved resolution plan as a "binding contract" in one instance and refers to it as a "binding agreement" in other instances. The report also refers*

*to a CoC-approved resolution plan as a "financial arrangement"<sup>100</sup>, "revival a plan"<sup>98</sup> or a "solution"<sup>101</sup>. The interchangeability of the terms - "agreement", "contract", "financial arrangement", "revival plan" and "solution" indicates that there is no clear intention of the BLRC in characterising the nature of the resolution plan as a contract. The binding effect of the resolution plan has the consequence of preventing the CoC or the resolution applicant to renege from its terms after the plan has been approved by the CoC through a voting mechanism. The fleeting mention of a "binding contract" on one occasion in the BLRC Report (which was a pre-legislative text that underwent subsequent modifications by the legislature) to indicate the binding nature of the resolution plan and the finality of negotiations once it is approved by the CoC, does not establish the legal nature of the document, especially when it is not complemented by the text and design of IBC."*

26. Under the heading **"J. withdrawal of the Resolution Plan by a Successful Resolution Applicant under the IBC"**, Hon'ble Supreme Court proceeded to discuss the entire law. In paragraphs 157, 158 and 159, following has been held:-

***"157.** These are binding precedents. Absent a clear legislative provision, this Court will not, by a process of interpretation, confer on the adjudicating authority a power to direct an unwilling CoC to renegotiate a submitted resolution plan or agree to its withdrawal,*

at the behest of the resolution applicant. The adjudicating authority can only direct the CoC to reconsider certain elements of the resolution plan to ensure compliance under Section 30(2) IBC, before exercising its powers of approval or rejection, as the case may be, under Section 31 [Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta, (2020) 8 SCC 531, para 73 : (2021) 2 SCC (Civ) 443] . In State of A.P. v. P. Laxmi Devi [State of A.P. v. P. Laxmi Devi, (2008) 4 SCC 720] , while determining the constitutionality of a statute, this Court observed that it should be wary of transgressing into the domain of the legislature, especially in matters relating to economic and regulatory legislation. This Court observed : (P. Laxmi Devi case [State of A.P. v. P. Laxmi Devi, (2008) 4 SCC 720] , SCC p. 751, para 80)

“80. ... As regards economic and other regulatory legislation judicial restraint must be observed by the court and greater latitude must be given to the legislature while adjudging the constitutionality of the statute because the court does not consist of economic or administrative experts. It has no expertise in these matters, and in this age of specialisation when policies have to be laid down with great care after consulting the specialists in the field, it will be wholly unwise for the court to encroach into the domain of the executive or legislative (sic legislature) and try to enforce its own views and perceptions.”

(emphasis supplied)

**158.** Judicial restraint must not only be exercised while adjudicating upon the constitutionality of the

*statute relating to economic policy but also in matters of interpretation of economic statutes, where the interpretative manoeuvres of the Court have an effect of transgressing into the law-making power of the legislature and disturbing the delicate balance of separation of powers between the legislature and the judiciary. Judicial restraint must be exercised in such cases as a matter of prudence, since the court neither has the necessary expertise nor the power to hold consultations with stakeholders or experts to decide the direction of economic policy. A court may be inept in laying down a detailed procedure for exercise of the power of withdrawal or modification by a successful resolution applicant without impacting the other procedural steps and the timelines under IBC which are sacrosanct. Thus, judicial restraint must be exercised while intervening in a law governing substantive outcomes through procedure, such as IBC. In this case, if resolution applicants are permitted to seek modifications after subsequent negotiations or a withdrawal after a submission of a resolution plan to the adjudicating authority as a matter of law, it would dictate the commercial wisdom and bargaining strategies of all prospective resolution applicants who are seeking to participate in the process and the successful resolution applicants who may wish to negotiate a better deal, owing to myriad factors that are peculiar to their own case. The broader legitimacy of this course of action can be decided by the legislature alone, since any other course of action would result in a flurry of litigation which would cause the delay that IBC seeks to disavow.*

*159. IBC is silent on whether a successful resolution applicant can withdraw its resolution plan. However, the statutory framework laid down under IBC and the CIRP Regulations provide a step-by-step procedure which is to be followed from the initiation of CIRP to the approval by the adjudicating authority. Regulation 40-A describes a model timeline for the CIRP that accounts for every eventuality that may arise between the commencement of the CIRP and approval of the resolution plan by the adjudicating authority, including the different stages for pressing a withdrawal of the CIRP under Section 12-A. Even a modification to the RFRP is envisaged by the CIRP Rules and is subject to a timeline. The absence of any exit routes being stipulated under the statute for a successful resolution applicant is indicative of IBC's proscription of any attempts at withdrawal at its behest. The rule of casus omissus is an established rule of interpretation, which provides that an omission in a statute cannot be supplied by judicial construction.”*

27. What has been held in paragraph 157 as above that the Adjudicating Authority is not conferred any power to direct an unwilling CoC to re-negotiate a submitted Resolution Plan and agree to its withdrawal at the behest of the Resolution Applicant.

28. The discussion of the Hon'ble Supreme Court from paragraphs 155 to 162 indicated the said discussions were under heading “J. withdrawal of the Resolution Plan by the Successful Resolution Applicant’ under the IBC”. Thus, Court has laid down the above proposition in reference to withdrawal

of the Resolution Plan by the Successful Resolution Applicant. However, what has been held in paragraph 115, as noted above also, has to be kept in mind where Hon'ble Supreme Court has laid down that the Resolution Plan even prior to the approval of the Adjudicating Authority is binding inter se between the CoC and the Successful Resolution Applicant. The law is well settled and clear that even CoC cannot go back and pray for withdrawal of the Resolution Plan since the plan is clearly binding on the CoC but the above legal position and situation may not apply in a case where after approval of the Resolution Plan by the CoC, the Resolution Applicant himself has breached the terms and conditions and undertaking which was given by him as in the present case. The very basis and substratum of the Resolution Applicant which led the CoC to approve the Resolution Plan has been knocked out by changing the shareholding and directorship of the Resolution Applicant. In the present case, Mr. Gaurav Gupta who was controlling 100% shareholding in 'Shoora Capital' has withdrawn and transferred its shareholding to third party i.e. Mr. Sandeep Parwal.

29. Present is a case where in essence we may say it is a case of sale of Resolution Plan approved by the CoC to third party. CoC approves the Resolution Plan looking to the credentials of the Resolution Applicant and its credibility and finances. When very basis of Resolution Applicant is knocked out and it changes its constitution substantially the CoC cannot be faulted in view of breach of the conditions by the Resolution Applicant, application for approval of the Resolution Plan be withdrawn. We, thus, conclude that the Resolution Applicant has violated the addendum of the

Resolution Plan as well as undertaking as given in the LoI and the Adjudicating Authority has rightly returned the finding as noted above.

**Question No.(iii)**

30. We have already extracted the Resolution dated 21.12.2022 in which decision reference has been made to Clause 13.2 of the RFRP for forfeiting the performance guarantee. The Appellant has brought on record the RFRP as Annexure A-4. Clause 13.2 has been referred to in the Resolution of the CoC dated 21.12.2022, which is as follows:-

*“13.2. State Bank of India, being the designated lender shall have the right to invoke the Performance Bank Guarantee at any time, if (a) any of the conditions under the Letter of Intent or Resolution Plan or the Definitive Agreements are breached; or (b) there is a non-receipt of Required Approvals within the timelines specified in the Resolution Plan or if the Resolution Plan is not effective due to any approval required by the Successful Resolution Applicant to give effect to the Resolution Plan; or (c) non- payment or failure to make payment in accordance with the Resolution Plan; or (d) the Successful Resolution Applicant fails to renew/extend the Performance Bank Guarantee at least 15 days prior to the date of its expiry of the Performance Bank Guarantee Validity Period; or (e) the Successful Resolution Applicant is found to be ineligible to submit the Resolution Plan under Section 29A of the IBC or the Successful Resolution Applicant is found to have made a false or*



*misleading declaration of eligibility under Section 29A of the IBC, (f) the Successful Resolution Applicant conceals any material information, makes a wrong statement, misrepresents facts or makes a misleading statement in any undertaking submitted by it or Resolution Plan or any other document provided to the Resolution Professional or Committee of Creditors or it is discovered that another information provided by the Resolution Applicant is incorrect or untrue; (g) fails to implement or contributes to the failure of implementation of their resolution plan in accordance with the terms of the plan and its implementation schedule; or (h) if the Resolution Plan is withdrawn or unilaterally modified before CoC's approval. The Performance Bank Guarantee shall be returned within a period later of, date of change of control or date of creation of any new security under the Resolution Plan or the expiry of the Claim Period defined under RFRP (Claim Period is one year from the expiry of Performance Bank Guarantee submitted in this regard). The proceeds from the invocation/forfeiture/encashment of the Performance Bank Guarantee shall be appropriated in a manner as may be decided by the CoC / Financial Creditors. Any such invocation will not in any manner reduce the amounts payable or the actions/obligations of the Successful Resolution Applicant under the Resolution Plan.*

*It is clarified that the invocation of the Performance Bank Guarantee shall not limit any rights or remedies that the Corporate Debtor, the CoC and the*

*Resolution Professional may have under Applicable Law or otherwise, against any / Resolution Applicant or Successful Resolution Applicant, as the case may be.”*

31. We may also notice Clause 24 of the RFRP, which is as follows:-

**“24. Non-Compliance by Successful Resolution Applicant**

*In the event of non-compliance by the Successful Resolution Applicant for any reason whatsoever, with its obligations under this Request for Resolution Plans or the Letter of Intent or the Approved Resolution Plan, the Resolution Professional and the CoC reserve the right to pursue any of the following actions, in addition to other as may be available under the Applicable Laws:*

- i. the CoC may revoke the Lol;*
- ii. the CoC may reject the Resolution Plan submitted by the Successful Resolution Applicant;*
- iii. State Bank of India Designated Lender on behalf of the CoC members, may invoke the Earnest Money or the Performance Bank Guarantee, (as applicable), provided by the Applicant; and/ or*
- iv. the Resolution Professional and the CoC may annul the Resolution Plan Process or negotiate with the Resolution Applicant.”*

32. Reliance has been placed by the Appellant on Regulation 36 B of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Regulation 36B (4A) on which reliance has been placed is as follows:-

**“36-B. Request for resolution plans.- .....(4-A)**

*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 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.]”*

33. Regulation 36B (4A) provides that 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. Regulation (4-A) comes in operation after approval of the Resolution Plan and it provides that 'performance security shall stand forfeited'. Thus, statutory provisions itself provide for forfeiture of performance security if after approval of the plan, the Resolution Applicant fails to implement or contributes to the failure of implementation of that plan. Clauses 13.2 and 24 of the RFRP, as noted above, are the provisions which deals with a larger field where power to invoke the bank guarantee is conferred on several conditions. One of the conditions is any of the conditions under the LoI or Resolution Plan or the Definitive Agreements are breached. The breach of the above condition may arise even before approval of the Resolution Plan by the Adjudicating Authority.

34. Present is not a case where CoC has passed Resolution dated 21.12.2022 in reference to Regulation 36B (4-A). The minutes of the meeting specifically refers to clause 13.2 of the RFRP. The action of the CoC is fully covered by clause 13.2 of the RFRP and there is no occasion to resort to Regulation 36B (4-A) of the Regulation. Regulation 36B (4F) only contemplate one contingency that where performance security shall stand forfeited but the said provision does not exclude forfeiture of performance security in other conditions as contemplated in RFRP. We, thus, are of the view that the decision of the CoC for forfeiting the performance security is in

accordance with RFRP. It is to be noted that at no point of time, any provision of the RFRP was challenged and Resolution Applicant has undertaken to abide by all terms and conditions of the RFRP.

35. Question No.(iii) is answered accordingly.

**Question No.(iv)**

36. Coming to question no.(iv), we are of the view that the exclusion of the time granted by the Adjudicating Authority was consequent to decision taken to allow the application for withdrawal of the Resolution Plan. The order passed by the Adjudicating Authority granting exclusion of time is consequential to the order passed in IA No.985 of 2023. The Adjudicating Authority in its impugned order has made observations in paragraph 32(ix) and (x) as extracted above that the Corporate Debtor Company is a going concern and there is buoyancy in the market for its products of non-ferrous metals. It is well settled that the object and purpose of the IBC is to revive the Corporate Debtor and when the Adjudicating Authority has taken decision to issue fresh Form G by excluded the period from 05.02.2021 till passing of the order, no exception can be taken to said direction.

37. We, thus, do not find any error in the order of the Adjudicating Authority excluding the period from 05.02.2021 till passing of the order in the CIRP and issuing direction to issue fresh Form-G.

38. Question No.(iv) is answered accordingly.

39. In view of our forgoing discussions and conclusions, we do not find any error in the impugned order dated 21.11.2023. In result, all the appeals are dismissed.

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

**[Barun Mitra]**  
**Member (Technical)**

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

**New Delhi**  
Anjali