



IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH - BENGALURU
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(through physical hearing/web based video-conferencing platform)

Restoration I.A No. 08/2024
In
CP (IB) No.37/BB/2022
Under Sections 60 (5) of IBC, 2016
R/w Rule 11 of NCLT Rules, 2016

IN THE MATTER OF

Indian Renewable Energy Development Agency Limited

India Habitat Centre, 1st Floor,
East Court Core 4A, Lodhi Road,
New Delhi- 110003
Email: anudeepyadav@ireda.in

... Applicant

Versus

M/s Shree Basaveshwara Sugars Limited

No.6, Mallikarjun Badavane,
Managuli Road, Ganesh Nagar,
Bijapur, Karnataka- 586109

... Respondents

Order delivered on: 14/11/2024

Coram: 1. Hon'ble Shri K. Biswal, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For Applicants	:	Shri Sagar Arora,
For Respondents	:	Shri Sharath Chandran, Shri Susheel Shankar, Shri Abhikrisna Lal



ORDER

Per: Shri Manoj Kumar Dubey, Member (Technical)

The Present Application is filed on 12/08/2024 under sub-section 5 of Section 60 of the Insolvency and Bankruptcy Code of 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 *inter alia* praying for revival of Section 7 Petition filed by the Applicant in CP(IB) 37/2022.

2) Brief Facts as submitted by the Applicant are as follows:

- i) In 2010, the Respondent had approached the Applicant and requested for the grant of financial assistance to the tune of Rs 89,95,00,000/- (Rupees Eighty-Nine Crores and Ninety Five Lakhs Only) for integrated sugar complex with an installed sugar plant capacity and multi-product distillation unit. The Applicant agreed to extend the financial assistance to the Respondent/Corporate Debtor and the said parties executed Loan Agreement dated 10/11/2010.
- ii) However, Respondent failed to effectively service the financial assistance provided by way of the Loan Agreement and committed a default in repayment, the Applicant was constrained to issue a recall notice upon the Respondent whereby the entire financial assistance granted to the Respondent was recalled.
- iii) Subsequently, the Applicant herein filed a Petition under Section 7 of the Code, in CP(IB) 37/2022 wherein it sought, *inter alia*, the passing of an order for initiating the corporate insolvency resolution process against the Respondent i.e M/s Basaveshwara Sugars Limited.
- iv) This Ld. Adjudicating Authority was pleased to issue notice in the said petition vide Order dated 28/03/2022. Thereafter, the Ld. Adjudicating Authority was informed by the Respondent that they wished to settle the matter and accordingly the captioned petition was adjourned on multiple occasions and subsequently, the Respondent's right to file reply was forfeited by way of an Order dated 21/09/2022



- v) A bare perusal of the orders in the captioned petition will reveal that the Respondent time and again sought an opportunity to settle the matter with the Applicant, however the Applicant opposed the said request.
- vi) It is pertinent to mention that the Respondent proposed a One-time settlement (OTS) for an amount of Rs 117,35,25,151/- which was approved by the Applicant vide Sanction Letter dated 17/11/2023, subject to certain terms and conditions as envisaged under the Sanction Letter. However, the Respondent failed to adhere to the rest of the necessary compliances as provided under the Sanction Letter dated 17/11/2023.
- vii) By way of the order dated 15/12/2023, this Hon'ble Adjudicating Authority had reserved the Petition for final hearing. Thereafter the subject petition was listed on 11/01/2024, wherein this Hon'ble Adjudicating Authority was pleased to dispose of the Petition filed by the Applicant in view of the order passed on 10/01/2024 by this Hon'ble Adjudicating Authority in another Company Petition (I.B) No. 117/2023 filed by the Canara Bank under Section 7 of the Code, wherein the Corporate Insolvency Resolution Process was initiated against the Respondent.
- viii) Pertinently, this Hon'ble Adjudicating Authority, while disposing of the subject petition, granted the Applicant liberty to the Petitioner to file its claim before the Interim Resolution Professional appointed in Canara Bank's Section 7 Petition.
- ix) However, to the utmost dismay of the Applicant, by way of an order dated 16/02/2024 in I.A No. 122 of 2024 in Canara Bank's Section 7 Petition, this Hon'ble Adjudicating Authority allowed the withdrawal of Canara Bank's Section 7 Petition i.e CP(IB) 117/2023, as the parties therein had entered into a one-time settlement agreement for settling the claim of the Applicant therein. Pertinently, by way of the aforementioned order dated 16/02/2024, this Hon'ble Adjudicating Authority, inter alia, released the Respondent/ Corporate Debtor from the Corporate Insolvency resolution process and re-instated the board of directors of the Respondent.



- x) Hence, the Petitioner is constrained to file the instant Application seeking revival of the Company Petition bearing CP(IB) 37/2022, on account of non-payment of outstanding dues by the Respondent herein.
- 3) Ld Counsel for the Respondents has filed the objections vide Diary No: 5989 dated 22/10/2024 where the following contentions have been raised by the Respondents:
- a) The Application filed by the Financial Creditor is prima facie defective and not maintainable and deserved to be rejected in limine as it does not qualify for the grounds of recall of an order. It is settled position of law that a Court or this Hon'ble Tribunal has the inherent power to recall their order, however, such power of recall must be exercised sparingly, on specified limited grounds which warrant a recall of such orders as categorically stated by the Hon'ble Supreme Court of India in *Greater Noida v. Prabhjit Singh Sone*, (2024) 6 SCC 767.
- b) In the Present case, the order passed on 11/01/2023 whereby this Hon'ble Tribunal had granted liberty to the Financial Creditor to file their claim with the IRP can consequently disposed of the Section 7 Petition filed in the present Company Petition does not fall under any of the aforementioned grounds warranting recall of an order. In the instant matter, this Hon'ble Tribunal has the jurisdiction to pass such an order and the order had been passed adhering to all procedural formalities and no fraud or misrepresentation of facts were made before this Hon'ble Tribunal.
- c) Further, the Financial Creditor has not pleaded any of the aforementioned grounds in their instant Recall Application dated 06/08/2024 to substantiate the necessity for recall of the order passed on 11/01/2024 nor is it the case of the Financial Creditor that any of the grounds or circumstances envisaged in the Judgement of the Hon'ble Supreme Court of India in *Greater Noida* (supra) has occurred for the purpose of filing the instant application.



- d) The Respondent has countered the reliance of *M/s ESS Investment Pvt Ltd v. M/s Lokhandwala Infrastructure Pvt Ltd and Anr in Civial Appeal No 324/2020* decided on 31/01/2020. That in the above case the Hon'ble Supreme Court has only granted liberty to file for recall of the order and file revival of the Petition upon an Appeal being filed against the order of NCLAT, however, has not stated anything pertaining to the grounds of recall or restoration.
- e) It is submitted that the Financial Creditor had alternative remedies available, which were not earnestly pursued or availed and hence this application of recall under Rule 11 of NCLT Rules 2016 is erroneously filed as an afterthought of Financial Creditor. It is a settled position in law, that the power of Recall cannot be exercised when an alternative remedy is available but was not availed. Reliance is placed on the matter of *Budhia Swain & Ors v. Gopinath Deb & Ors. (1999) SCC 4 396*.
- f) In the present case, the Financial Creditor had the proper remedy of filing an Appeal under Section 61 of IBC, 2016 against the order dated 11/01/2024 passed by this Hon'ble Tribunal, or even against the order dated 16/02/2024 for withdrawal of CIRP on account of the Settlement arrived between Canara Bank and the Corporate Debtor herein, in CP(IB) 117/2023 as an aggrieved party. However, without availing such remedy of appeal within the statutory period of thirty days, the Financial Creditor has incorrectly and erroneously approached this Hon'ble Tribunal for the relief of recall of the order dated 11/01/2024.
- g) The Financial Creditor was granted liberty to place its claim before the Interim Resolution Professional appointed after the Corporate Debtor was admitted into CIRP in the Section 7 proceedings initiated by Canara Bank against the Corporate Debtor. The Financial Creditor was made aware of the settlement between Canara Bank and the Corporate Debtor herein when this Hon'ble Tribunal was pleased to allow the withdrawal of the said proceedings against the Corporate Debtor under



Section 12A , 2016 vide Order dated 16/02/2024 in I.A No 122 of 2024 in CP(IB) 117/2023. However, the Financial Creditor failed to exercise any of the alternative remedies available to it and has incorrectly chosen to file an application for recall and restoration on 06/08/2024, which is approximately 6 months (delay of more than 180 days) after the withdrawal of CIRP order dated 16/02/2024 and 8 months (delay of more than 240 days) from the order dated 11/01/2024. Reliance is placed on the judgement of *Padam Sen v. State of U.P* AIR 1961 SC 218, *My Palace Mutually Aided Coop. Society v. B. Mahesh*, 2022 SCC OnLine SC 1063

- h) Further, the Financial Creditor cannot as a matter of right approach this Hon'ble Tribunal to restore the instant Company Petition by surpassing the requirement of seeking prior liberty from this Hon'ble Tribunal to restore the present Company Petition.
- 4) The Ld. Counsel for the Applicant has filed Written Submission after reserving for Order on 23/10/2024, vide Dairy No 6072 dated 28/10/2024 wherein it is argued that the Respondent has failed to substantiate as to how the Applicant is not entitled for restoration as the Petition was disposed solely on account of admission in CP(IB) 117/2023 and subsequent withdrawal of the same, were wholly out of control of the Applicant. Further, it is settled law that this Hon'ble Adjudicating Authority, in exercise of its inherent jurisdiction, can entertain an application for recall of judgement on sufficient grounds. A beneficial reliance in this regard is placed on the judgment of 5 judges bench in Hon'ble NCLAT in *Union Bank of India v. Dinkar T. Venkatasubramanian and Ors* [2023 SCC OnLine NCLAT 283], which was further upheld by the Hon'ble Supreme Court in *Union Bank of India v. Financial Creditor of M/S Amtek Auto Limited & Ors* [Civil Appeal No. 4620/2023]. The Respondent has raised irrelevant issue of liberty not being granted to the Applicant by this Hon'ble Tribunal at the time of disposal of the subject petition vide order dated 11/01/2024. The respondent has failed to appreciate that even in the absence of a specific liberty for restoration, a Financial



Creditor in the present factual matrix is entitled to avail the most efficacious remedy available to it. Reliance is placed upon the order dated 20/01/2023 passed by the Hon'ble NCLT, Mumbai Bench, Court V, in Restoration Application No.13/2023 in CP(IB) 172/2022, wherein the Hon'ble NCLT allowed restoration in entirety. Moreover, that the Respondent has wrongly alleged that the judgment of the Hon'ble Supreme Court titled *M/s Investments Private Limited v Lokhandwala Infrastructure Private* being relied upon by the Applicant, is not relevant for the present application seeking restoration/revival of the subject petition. It is submitted that the Hon'ble Supreme Court is the said Judgement has permitted the Financial Creditor, whose Petition under Section 7 was dismissed on the ground of admission of the said Corporate Debtor before the Hon'ble NCLT seeking recall of the dismissal order and revival of its Company Petition.

- 5) The Ld Counsel for the Respondent has filed Written Submission vide Diary No 6223 dated 05/11/2023 and the same is taken on record.
- 6) We have heard Ld Counsels of both the parties and perused the material on record.
 - 6.1) Before proceeding with the matter at hand, we find it appropriate to consider the history of the Insolvency proceedings filed against this Corporate Debtor and its conduct, which has been with a view to resist the smooth progress of the process under the IBC, 2016. It is to be recorded that there were three Petitions under Section 7 filed against the present Respondent by Canara Bank in CP (IB) 117/2023, by Punjab National Bank in CP(IB) 107/2023 and the present Applicant in CP(IB) 37/2022.
 - 6.2) In the present Petition, three opportunities were granted to file reply, which were not filed, therefore, their right to file reply was forfeited. However, the Corporate Debtor proposed an OTS and both parties sought time for examining the OTS proposal. Vide Order dated 29/11/2023, it was recorded that the competent authority of the Petitioner company had approved the proposal subject to payment of



Rs.117.35 crore as per letter dated 29/11/2023, and the Respondent stated that an upfront payment of 10% were already made by them. The acceptance of this OTS by the Respondent was communicated vide Diary No. 5963 dated 28/11/2023. However, the Petitioner filed an Affidavit on 12/12/2023 conveying that the Corporate Debtor has failed to comply with the OTS, and accordingly, the OTS had failed. Subsequently, however, vide Order dated 11/01/2024, the Petition was disposed of by this Adjudicating Authority since another C.P. (IB) No. 117/2023 filed by Canara Bank under Section 7 against the same Corporate Debtor was admitted on 10/01/2024 by this Adjudicating Authority, and the Petitioner herein was directed to place its claim before the IRP appointed in that case.

- 6.3) Further, in CP(IB) 117/2023 filed under Section 7 of IBC by Canara Bank, for a default of Rs 1,61,55,37,601.82/- (Rupees One Hundred and Sixty One Crores Fifty Five Lakhs Thirty Seven Thousand Six Hundred and One and Eighty Two Paise Only). On 10/01/2024, this Tribunal admitted CP(IB) 117/2024 and initiated CIRP against the present Corporate Debtor. Against this order, Company Appeal (AT) (CH) (Ins) No.21/2024 was preferred before the Hon'ble National Company Law Appellate Tribunal (NCLAT) and the same was disposed of by Hon'ble NCLAT vide order dated 31.01.2024 directing the Applicant to file an application under Section 12A for withdrawal of the petition within one week as the parties had settled the matter under One Time Settlement(OTS). Subsequently, IA 122/2024 was filed for Withdrawal of CP(IB) 117/2023 under Section 12A of IBC, which was allowed vide order dated 16/02/2024.
- 6.4) However, the above settlement resulting in the approval under section 12A failed as the Corporate Debtor did not meet its obligations. The Canara Bank in C.P. (IB).No.117/BB/2023, therefore approached this Tribunal for revival/restoration of the Petition since the Corporate Debtor had failed to make the payment as per the terms of the settlement. This Tribunal allowed the restoration of C.P. (IB).No.117/BB/2023 vide Order dated 10.07.2024. However, the Corporate Debtor approached the Hon'ble High Court of Karnataka vide

WP No: 21240/2024. The Hon'ble High Court granted a stay vide order dated 08/08/2024; which is still continuing.

- 6.5) The third matter under C.P.(IB).No.107 of 2023 was filed by the Punjab National Bank under Section 7 of the IBC, 2016, for a total amount of default of Rs. 43 crore. In that also an OTS was submitted by the Corporate Debtor but the same was rejected by the Punjab National as recorded vide Order dated 01.12.2023. However, this C.P. was also disposed of on 12.01.2024 by this Adjudicating Authority, since the CIRP was already initiated against this Corporate Debtor in the Petition filed by Canara Bank in C.P.(IB).No.117/BB/2023 dated 10/01/2024.
- 6.6) Now, in this matter the Petitioner has been objecting to the revival/restoration of the C.P. sought for vide I.A. No. 8 of 2024. This restoration request is a natural consequence of the withdrawal under section 12A approved by the Adjudicating Authority in the Canara Bank's case in C.P.(IB).No.117/BB/2023. It is pointed out that this C.P. filed by the Petitioner herein was disposed on 11/01/2024 merely on the basis of CIRP being initiated against the same Corporate Debtor in C.P.(IB).No.117/BB/2023, since legally only one insolvency proceedings can exist against the same Corporate Debtor at a particular point of time. In this Petition filed by IREDA vide C.P. (IB). No. 37 of 2022 also, the OTS was duly proposed by the Corporate Debtor. It has been judicially held in various judgments starting from the judgment of the Hon'ble Apex Court in the matter of **Dena Bank v. C. Shivakumar Reddy-(2021) 10 SCC 330** that an OTS proposal is an acknowledgement of the existence of the 'Debt' and 'Default' for the purposes of IBC, 2016.

It is a fact that even after the OTS proposal was approved by the Financial Creditors, the Corporate Debtor herein failed to comply with the terms of the same. However, since CIRP was already initiated against this particular Corporate Debtor in the Canara Bank's case, this Petition was disposed of and the Petitioner was directed to put forth its claim before the IRP in that case. This doesn't mean that the matter was disposed of after going into the merits and examining the issues at hand. It was not disposed of at the instance of the Petitioner,



but directed to be done by this Adjudicating Authority on account of legally established principles. **The Hon'ble Apex Court in the matter of Mars Remedies Pvt Ltd v. BDH Industries Limited Civil Appeal No. 5170/2022 dated 02/05/2023 has held it to be a valid and well founded legal principle that there cannot be two CIRP's simultaneously going on against the same Corporate Debtor.**

- 6.7) Coming to the conduct of the Corporate Debtor, the entire discussion above and the background shows that the Promoters are indulging in creating various obstacles by initiating multiple litigations to stall the CIRP under Section 7 of the Code; whereas, there is a clear cut Debt and Default on their part, which is duly acknowledged by the OTS proposals submitted by them. In this connection it is pertinent to point out that the principles underlining the enactment of the Code and the objectives behind it have been repeatedly explained by the Hon'ble Apex Court in various landmark decisions Reliance is placed on the judgement of Hon'ble Supreme Court in the case of ***Swiss Ribbons Pvt. Ltd. and Anr.v.Union of India and Ors (2019) ibclaw.in 03 SC, order dated 25/01/2019***, wherein it was held that,
- “12. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters / those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the*



resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends.....”

[Emphasis Supplied]

The same principle were reiterated in the judgment of **Arun Kumar Jagatramka v Jindal Steel & Power Ltd, 4 (2021) 7 SCC 474**. In which the Hon'ble Apex Court observed as under;

“40.....**Third**, the IBC attributes a primacy to the business decisions taken by creditors acting as a collective body, on the premise that **the timely resolution of corporate insolvency** is necessary to ensure the growth of credit markets and encourage investment. **Fourth**, in its diverse provisions, the IBC ensures **that the interests of corporate enterprises are not conflated with the interests of their promoters; the economic value of corporate structures is broader in content than the partisan interests of their managements....**”

[Emphasis Supplied]

- 6.8) Therefore, the underlined principles established in these judgments of the **Hon'ble Apex Court is that the basic principles and objective of enactment of Code is to ensure the revival of Corporate Debtor by protecting it from its own management and the interests of the Corporate Debtor have to be bifurcated from that of the promoters. It is also emphasized that the timeline provided for the resolution process to take place is to ensure that the Corporate Debtor's assets are not dissipated and further diluted so that the interests of the creditors and workers are protected**; ensuring the fast progression of the resolution process. In essence, the resolution process to be carried is not an adversial process for the Corporate Debtor, but in fact a beneficial legislation to protect the Corporate Debtor, its creditors, workers, etc; **however, simultaneously protecting the Corporate Debtor and its assets from its promoters/old management.**

- 6.9) The conduct of the Corporate Debtor in this case amply reflects the position that all efforts has been made to create obstacles in the




smooth progress of the Insolvency process and to thwart the process; first, by taking multiple adjournments on the pretext of settlement, next, proposing an OTS and going back on it by violating the terms after its approval by the Petitioners; and then filing multiple cases in various fora to stall the process. For the purpose of filing of the objections and proposing the settlement, multiple adjournments were taken by the Corporate Debtor in these Petitions. The same modus operandi was repeated in all these Petitions by this Corporate Debtor.

- 6.10) In the case of Canara Bank, the OTS was proposed before the Hon'ble NCLAT, which directed the Petitioners to approach this Tribunal under Section 12A of IBC, 2016. **However, on allowing of this Petition under Section 12A, the Corporate Debtor again went back on its OTS proposal and violated its terms and conditions leading to the revival of the Petition filed by the Canara Bank.** However, against the restoration granted by this Adjudicating Authority on 10/07/2024, on failure of fulfilment of the OTS conditions, they filed a Writ Petition before the Hon'ble High Court of Karnataka and obtained a stay on 08/08/2024 against the restoration of the C.P. This has resulted in the insolvency process to a standstill.
- 6.11) In this Petition also, now they are objecting to the restoration of the Petition which is automatic since the disposal of this Petition on 11/01/2024 was consequential to the admission of the Petition under Section 7 filed by the Canara Bank and it was inherently linked to it. The decision in this Petition was taken only on the basis of the decision in the case of Canara Bank, since no multiple insolvency proceedings can be carried out against the same Corporate Debtor at the same time. This principle of law has also been upheld in various judgments including Hon'ble Apex Court in the matter of *Mars Remedies Pvt Ltd v. BDH Industries Limited (Supra)*. The contents of the Petition filed under section 7 by IREDA was never examined on merits and therefore, the basic foundation of the Order dated 11/01/2024 disposing of this Petition does not survive once the Canara Bank's insolvency process was closed in view of the approval of Petition under Section 12A of the IBC, 2016. Thus, revival of this Petition is automatic and



consequential to the above decision in the Canara Bank matter in terms of Section 12A; since this Petition was not decided on the merits of this particular case. Accordingly, the objections raised by the Respondent in this IAs are liable to be dismissed *in limine*.

- 6.12) It is reiterated that, considering the various judgments that the ultimate objective of the CIRP under the Code is the resolution and revival of the Corporate Debtor. The Promoters of the Corporate Debtor cannot be allowed to indulge in multiple web of litigation in various fora; only with a design and plan to stall the insolvency process in this manner; with the ultimate objective to keep maintain and the control over the assets of the Corporate Debtor. **On the other hand, all these three cases the Corporate Debtor have themselves submitted OTS proposals which is an admission of acceptance of existence of Debt and Default. Therefore, the Corporate Debtor is conscious of the fact that there is a Debt and Default;** however, they have planned to put there hindrances in the smooth process under IBC for the aforesaid objective which cannot be allowed.
- 6.13) Since the Hon'ble Apex Court has already upheld the legality of the proposition that multiple insolvency cannot be go on simultaneously against the same Corporate Debtor, therefore, the disposal of this Petition was in order considering the decision taken in the matter of Canara Bank as discussed above. However, the natural and logical corollary of this decision is that on settlement happening in the case of Canara Bank, the insolvency proceedings against the same Corporate Debtor filed by IREDA in this Petition would be automatically revived and no liberty was necessary for this in the disposal of the Petition on 11/01/2024. Since, CIRP consequent to the Canara Bank's Petition was no more in existence once the Petition under Section 12A was allowed in that case, the facts, circumstances, the basis and the foundation of the order dated 11.01.2024 disposing of this Petition filed by IREDA does not survive. Therefore, it automatically gives rise to the cause of action for its restoration or its revival. Since the disposal on 11.01.2024 was not at the instance of the Petitioner, but a conscious decision inherently linked to the decision taken in C.P(IB).No.117 of



2023 filed by Canara Bank, therefore, this restoration Petition is perfectly in order and is legally tenable.

- 6.14) In so far as absence of liberty granted in the original order is concerned, the principle of restoration/revival of a Petition even when no such liberty was mentioned in the original Order has been upheld in various judgments. The Hon'ble Apex Court in the matter of ***M/S ESS Investments Pvt Ltd v. Lokhandwala Infrastructure Pvt Ltd (Civil Appeal No.324/2020)*** dated 31/01/2020, has upheld the restoration of the Petition which was disposed at the initial stage due to the fact that CIRP was admitted against the same Corporate Debtor in another case; depending on the subsequent development including at the appellate level. It is noticed that in that particular case also, in C.P.(IB).No.4000/MB/2018, the NCLT Mumbai Bench did not grant any liberty while disposing of this Original Application on 04.09.2019; due to CIRP being initiated in another case against the same Corporate Debtor.

Similarly, the Hon'ble NCLAT, Principal Bench, New Delhi in Company Appeal No117/2-23 in the matter of *IDBI Trusteeship Services Limited vs. Nirmal Lifestyle Limited* vide order dated 15.05.2023 has also upheld this principle that non mentioning of the specific liberty in the original order is inconsequential; when the restoration/revival is warranted on a basis of the legally valid reasoning, while no such liberty had been mentioned in the original order when the application was disposed of as withdrawn in view of the settlement.

The same practice is being followed by various benches of NCLT in exactly similar matters. In the matter of *IDBI Trusteeship Services Limited v. Essel Infraprojects Limited* in CP(IB) 1036/2022, the NCLT, Mumbai Bench-II vide order dated 01/09/2023, has allowed restoration of application even when liberty was not mentioned in the original order in the same case; when the Petition was disposed of since the Corporate Debtor had already been admitted under CIRP in another case. Thus, it is in exactly the similar set of circumstances. Similar Order was passed in the NCLT, Mumbai Bench V, vide order dated



02/11/2023, in CP(IB) 361/2022, wherein restoration application was allowed under similar circumstances. Therefore, the objections of the Corporate Debtor in this regard is not tenable in law and therefore, liable to be rejected.

7. In the circumstances, and for the reasons mentioned by the Applicant, **C.P. (IB)No.37/BB/2022 is restored** to its Original file and matter be listed on 20/11/2024

8. **Accordingly, R.A. No.08 of 2024 is hereby disposed of.**

Sd/-

**MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)**

Sd/-

**K. BISWAL
MEMBER (JUDICIAL)**