

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

**Company Appeal (AT) (Insolvency) No. 1080 of 2022**

[Arising out of order dated 26.07.2022 passed by the Adjudicating Authority  
(National Company Law Tribunal, Mumbai Bench, Court – III), in I.A. 1370  
of 2021 in CP/IB/3622/MB/2018]

**IN THE MATTER OF:**

**Globomet Engineering Private Limited,**

A Company incorporated under the provisions of  
the laws of India and having its Registered Office  
at Office No. 102, Sampadan Apartment,  
C.T.S. No. 104/10, Erandvane,  
Pune 411 004.

**...Appellant**

**Versus**

**1. Shri Tejas J Parikh,**

Resolution Professional  
Unimetal Casting Limited  
C/o Gokhale & Sathe –  
Chartered Accountants 7 C,  
Bhagoji Keer Marg,  
Mahim, Mumbai - 400 016

**...Respondent No. 1**

**2. Committee of Creditors**

(i) TJSB Sahakari Bank Ltd.  
Plot No. B5 Road No. 2  
Wagle Industrial Estate,  
Thane (West) 400604.

(ii) Reliance Asset Reconstruction Co. Ltd.  
Reliance Centre, 11th Floor,  
North Side, R-Tech Park,  
Western Express Highway,  
Near HUB Mall,  
Mumbai-400063.

(iii) Mahindra and Mahindra Financial Services  
Ltd.,  
Mahindra Tower, Dr. GM Bhosale Marg,  
Worli, Mumbai 400018.

**...Respondent No. 2**

**3. Shri. Madhav Vishwanath Deodhar**

Residing at Plot No. 17, Parvati Hsg. Society,  
R.K. Nagar, Yadrav- 416121,  
Promoter, Chairman and Managing Director of  
(suspended board) Unimetal Castings Ltd. and  
Joshi Deodhar Engineering Company Ltd.

**...Respondent No. 3**

**4. Shri. Ajit Madhav Deodhar**

Plot No.17, Parvati Hsg. Society,  
R.K. Nagar, Yadrav - 416121,  
Promoter and Executive Director  
(suspended board) of Unimetal Castings Ltd.  
and Joshi Deodhar Engineering Company Ltd.

**...Respondent No. 4**

**5. Mrs. Sumitra Madhav Deodhar**

Residing at Plot No.17, Parvati Hsg. Society,  
R.K. Nagar, Yadrav - 416121,  
Promoter and Director  
(suspended board) of Unimetal Castings Ltd.  
and Joshi Deodhar Engineering Company Ltd.

**...Respondent No. 5**

**6. Shri. Anand Madhav Deodhar**

Residing at C-59,  
Aditya Chintamani Apartments,  
Bibwewadi, Pune - 411037,  
Promoter and Director  
(suspended board) of Unimetal Castings Ltd.

**...Respondent No. 6**

**Present:**

**For Appellant : Mr. Shlok Chandra and Mr. Sankalp Sharma,  
Advocates.**

**For Respondent : Mr. Abhishek Anand, Mr. Karan Kohli, Ms. Palak  
Kalra, Mr. Harsh N. Gokhale, Mr. Rohit Pandit and  
Mr. Lakshaya Raj, Advocates for CoC.**

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

**ASHOK BHUSHAN, J.**

This Appeal has been filed challenging the Order dated 26.07.2022 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Mumbai Bench Court – III) in I.A.1370/2021 filed by the Appellant

in C.P. (IB) No. 3622(MB)/2018. By the Impugned Order, Adjudicating Authority has dismissed the I.A.1370/2021, aggrieved by which Order, this Appeal has been filed.

**2.** Brief facts of the case necessary to be noticed for deciding the Appeal are:

- i. The TJSB Sahakari Bank Ltd. filed an Application under Section 7 against Corporate Debtor M/s. Unimetal Castings Limited, (UCL) in C.P. (IB) No.3622/I&B/MB/2018.
- ii. Vide Order dated 25.01.2019, for debt and default of ₹6,38,78,417/-, Section 7 Application was admitted and Tejas Jatin Parikh, Respondent No. 1 herein was appointed as Interim Resolution Professional (IRP) who was subsequently confirmed as Resolution Professional (RP).
- iii. Public announcement was made by the IRP. Committee of Creditors (CoC) was constituted with TJSB Sahakari Bank Ltd., Reliance Asset Reconstruction Company Ltd. and Mahindra & Mahindra Financial Services Ltd.
- iv. On 15.07.2019, CoC unanimously, voted for Liquidation of the Corporate Debtor.
- v. Respondent No. 4, the Promoter & Executive Director of the Corporate Debtor, UCL as well as Joshi Deodhar Engineering Company Limited (JDECL) (sister concern) sent a communication to the RP intimating his intention of submitting a Resolution Plan.

- vi. Appellant, M/s. Globmet Engineering Private Limited is an investment vehicle set up to support the revival of Corporate Debtor, UCL and JDECL.
- vii. IAs were filed by Respondent No. 4, the Tribunal on 11.02.2020, directed the CoC to consider the Settlement Proposal submitted by Respondent No. 4 for the revival of the Corporate Debtor.
- viii. On 16.03.2020, a Memorandum of Understanding (MoU) was executed between the Appellants and CoC.
- ix. A revised MoU dated 07.08.2020 was entered between the Appellant and the CoC for resolution of Financial Debts of the Corporate Debtor as well as related entity, JDECL.
- x. As per the revised MoU, Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor as well as related entity was to be closed by 30.09.2020, with regard to closure of CIRP of related entity, Section 12A Application was to be filed and with regard to CIRP of the Corporate Debtor, Resolution Plan was required to be approved.
- xi. In the MoU, total amount which was noted for closure of CIRP of the JDECL was ₹3 Crores, and with regard to the Corporate Debtor, the amount was ₹9.75 Crores as full and final settlement and ₹25 Lakhs would be paid upon signing of MoU and the balance was to be paid as per the terms and conditions mentioned therein.

- xii. With regard to CIRP against the related entity, i.e., JDECL, Section 12A Application was filed and payment of ₹3 Crores was made. The Adjudicating Authority passed an Order allowing the 12A Application. By Order dated 02.11.2020, consequently, the CIRP of JDECL came to be closed.
- xiii. Insofar as the CIRP of the Corporate Debtor, on 12.09.2020, Respondent No. 4 who is one of the Promoters of the Corporate Debtor submitted a Resolution Plan for Corporate Debtor. Resolution Plan was submitted without Performance Security Deposit. The CoC approved the Resolution Plan of the Corporate Debtor on 22.12.2020, subject to Resolution Applicant submitting ₹25 Lakhs as Performance Security Deposit.
- xiv. Adjudicating Authority also approved the extension of CIRP by Order dated 04.02.2021.
- xv. Appellant sent a letter to the CoC withdrawing from the settlement proposed under the revised MoU and thereafter filed an Application before the Adjudicating Authority. I.A. No. 1370/2021, praying for refund of amount of ₹3,25,00,000/-.
- xvi. On 25.01.2022, Adjudicating Authority directed the RP to proceed for Liquidation of the Corporate Debtor. Adjudicating Authority heard the I.A. No. 1370/2021 which was opposed by the CoC by filing a Reply. Adjudicating Authority heard the I.A. No. 1370/2021 and by Impugned Order dated 26.07.2022, rejected the Application. Adjudicating

Authority by rejecting the Application also imposed a cost of ₹1 Lakh on the Appellant. Adjudicating Authority also returned a finding that I.A. is nothing but a collusive Application filed by the Appellant at the behest of Respondent No. 3 to 6, who were the Promoters of the Corporate Debtor. It was held that withdrawal of CIRP under 12A with regard to JDECL cannot be legally reversed.

**3.** Learned Counsel for the Appellant challenging the Order submits that first & second MoU, both contemplated closure of the CIRP of JDECL by 12A Application and approval of Resolution Plan in the CIRP of Corporate Debtor by 30.09.2020 which fact having not accomplished, the Appellant was entitled to refund of the amount which was submitted towards the closure of CIRP of JDECL and approval of the Plan of the Corporate Debtor. Adjudicating Authority did not approve the Resolution Plan of the Corporate Debtor, the Appellant was entitled for refund of the amount. It is further submitted that Adjudicating Authority committed an error in holding that Application filed by the Appellant was not maintainable, the Applicant altogether third-party who was nothing to do with the CIRP of the Corporate Debtor. It is submitted that reliance on the Judgment of '**Gujarat Urja Vikas Nigam' Vs. 'Amit Gupta & Ors.'**' reported in **(2021) 7 SCC 209**, and '**M/s. Embassy Property Developments Private Limited' Vs. 'State of Karnataka & Ors.'**' Reported in **(2020) 13 SCC 308**, is misplaced. It is submitted that Application was fully maintainable since the amount was deposited by the Appellant towards in pursuance of the MoU entered between the Appellant and the CoC.

**4.** Learned Counsel for the Respondent refuting the submission of the Appellant contents that MoU was entered for closure of CIRP of JDECL and for approval of the Plan of the Corporate Debtor. The amount of ₹3 Crores was towards full and final settlement of dues of JDECL and out of amount which was for full Settlement of the Corporate Debtor, an amount of ₹25 Lakhs was paid and on account of non-approval of the Plan further amounts were not paid, the Resolution Plan for Corporate Debtor could not be approved. Since Resolution Applicant did not deposit the Performance Security Deposit. The CoC of the Corporate Debtor on 20.11.2021 has approved the Liquidation of the Corporate Debtor and the Adjudicating Authority also passed Liquidation Order on 25.01.2020 against the Corporate Debtor. It was due to lapse of the Resolution Applicant who is none other than Promoters of the Corporate Debtor that Resolution Plan of the Corporate Debtor could not be approved. Application filed by Appellant, who was incorporated for investment, in collusion with the Promoters of the Corporate Debtor have filed the dishonest Application, the CIRP of JDECL was already closed by Order of the Adjudicating Authority, which was for total payment of ₹3 Crores and with regard to Resolution Plan with regard to Corporate Debtor, amount of only ₹25 Lakhs was paid and it was lapse on the Resolution Applicant that Plan could not be approved, hence Appellant in no manner is entitled for any refund. It is submitted that Appellant is third party to the CIRP and under the MoU, there was Clause XII, which was regarding the dispute resolution, Appellant could have taken recourse of the Clause XII of

the MoU for its claim, if any, and the Application filed before the Adjudicating Authority for refund of the amount was not maintainable.

**5.** We have considered the submission of Counsel for the Parties and perused the record.

**6.** We have noted above that CIRP of the Corporate Debtor commenced by Order dated 25.01.2019. The CIRP against the JDECL was also initiated on an Application filed by the TJSB Sahakari Bank Ltd. The MoU dated 07.08.2020 which was termed as a revised MoU between the Financial Creditor of the Corporate Debtor, UCL and Financial Creditors of JDECL and Promoter Directors is filed as an (Annexure A-6) contains the terms and conditions. The MoU itself contains a statement that Promoter/Directors of the UCL and JDECL and the professionals and investors have formed a company, i.e., Globemet Engineering Private Limited for investment in the process of Resolution of debt of UCL and JDECL. The MoU 07.08.2020 refers to earlier MoU dated 16.03.2020 in Para 11 of the revised MoU. Para 11 of the revised MoU is as follows:

*“11) Finally, the Memorandum of Understanding (MOU) was executed between the parties on 16th March 2020 by which it was agreed as follows –*

*a) In case of UCL, in full and final settlement of all the dues of the Financial Creditors No. 1 2 and 3, GEPL will pay Rs 9.75 crores (Nine Crores Seventy Five Lacs only) out of which Rs 25 lakhs shall be paid immediately upon signing this MOU and Rs 75 lakhs shall be paid within 60 days of the affective date i.e. date of approval of the Resolution Plan by NCLT for UCL and balance Rs 8.75 crores will be paid within 36 months from the effective date as per the schedule of*



*payment agreed in the said Memorandum of Understanding.*

*b) In case of JDECL, GEPL will make payment of Rs 3 crores (Rs.Three crores) to the Financial Creditors No. 1 and 2 on or before 31st March, 2020 towards one-time full and final settlement of all dues of JDECL.*

*c) The amount of Rs 3.25 crores is to be deposited in the no lien account by GEPL to be opened In TJSB Sahakari Bank Ltd. in the name of all the three Financial Creditors and the said amount shall not be withdrawn or appropriated by them till the Resolution Plan for UCL and withdrawal of the CIRP proceedings under Section 12(A) of the Code in case of JDECL have been approved by the NCLT as the said amount is not payable to them without the aforesaid approvals from the NCLT. It was also agreed that if the aforesaid approval from NCLT are not received before 30<sup>th</sup> June 2020, the aforesaid amount of Rs 325 lacs shall be refunded to GEPL.”*

**7.** By the revised MoU, the time for approval from NCLT, which was fixed as 30.06.2020 was extended till 30.09.2020. The understanding as entered between the Parties, as noted in the revised MoU with regard to UCL is contained in Para 13 II which contemplated full and final settlement of all dues of Financial Creditor of Corporate Debtor as ₹9.75 Crores, out of which ₹25 Lakhs was to be paid on execution of MoU and balance ₹9.50 Crores as per the schedule given in Para II. Para II is as follows:

*“II. The dues of the Financial Creditors in case of **"UCL"** will be settled by GEPL as follows:*

*a) In full and final settlement of all the dues of the Financial Creditors No. 1, 2 and 3, GEPL will pay Rs 9.75 Crore (Rupees Nine Crore Seventy Five Lakh Only) out of which Rs.25 Lakh shall be paid on execution of this MOU and the balance Rs.9.50 Crore will be paid as under:*

<i>Sr. No.</i>	<i>Due Date</i>	<i>Amount of Instalment (Rs. In Lakhs)</i>
1	9 months from effective date of NCLT order approving the Resolution Plan	25
2	Last week of the subsequent quarter after previous instalment	25
3	Last week of the subsequent quarter after previous instalment	50
4	Last week of the subsequent quarter after previous instalment	50
5	Last week of the subsequent quarter after previous instalment	50
6	Last week of the subsequent quarter after previous instalment	75
7	Last week of the subsequent quarter after previous instalment	75
8	Last week of the subsequent quarter after previous instalment	75
9	Last week of the subsequent quarter after previous instalment	75
10	Last week of the subsequent quarter	75

	<i>after instalment</i>	<i>previous</i>	
11	<i>Last week of the subsequent quarter after instalment</i>	<i>of the quarter previous</i>	75
12	<i>Last week of the subsequent quarter after instalment</i>	<i>of the quarter previous</i>	100
13	<i>Last week of the subsequent quarter after instalment</i>	<i>of the quarter previous</i>	100
14	<i>Last week of the subsequent quarter after instalment</i>	<i>of the quarter previous</i>	100
	<i>Total</i>		950

*b) On payment of Rs.9.75 Crores as stated in para (a) above, all the secured assets mortgaged for the credit facilities of "UCL" along with personal guarantees therein will be released by the Financial Creditors No.1, 2 and 3.*

*c) On payment of Rs.9.75 Crore, as stated in para (a) above, all the legal proceedings initiated by the Financial Creditors No.1, 2, and 3 against UCL and the Promoter Directors of UCL will be withdrawn. Simultaneously, UCL and its promoters/directors/guarantors shall withdraw all the pending litigations filed against or related to the said financial creditors.*

*d) Any statutory, workmen, electricity, tax related dues/ arrears and other incidental expenses, charges shall be borne by GEPL / Promoters/ Directors only. The Financial Creditors No. 1, 2, and 3 will provide required cooperation and assistance to the new management of UCL. Similarly, for the purpose of recovering any deposits, subsidies from the Government, other statutory receivables or any Government grants,*

*the Financial Creditors will provide the necessary cooperation and assistance to the new management of UCL.*

*e) The resolution plan for UCL including the settlement with the Financial Creditors No. 1, 2, and 3 will be finalized and submitted by the Promoter/Directors of UCL through the Resolution Professional for consideration of the Committee of Creditors. The resolution plan after the approval of the Committee of Creditors will be submitted by the Resolution Professional to the NCLT for its approval as required under the provisions of the Code and the CIRP Regulations.*

*f) Financial Creditors No. 1, 2, and 3 will permit GEPL to restart the operations of UCL immediately after payment of Rs.25 lakhs by GEPL to Financial Creditors before 31<sup>st</sup> August 2020. The financial creditor will give necessary instructions to the Resolution Professional.*

*g) It was agreed that the finally approved resolution plan by the Committee of Creditors will be submitted through the Resolution Professional of the NCLT.”*

**8.** Para 13 III contained regarding Resolution of debts of Financial Creditor. TJSB Sahakari Bank Limited and Reliance Asset Reconstruction Company Limited, which contemplated that Appellant will make payment of ₹3 Crores to the Financial Creditor on execution of the MoU towards the full and final settlement against all dues of JDECL. Para III is as follows:

*“III. It was agreed that the resolution of debts of Financial Creditors No. 1 and 2 in respect of **"JDECL"** will be settled by GEPL as follows –*

*a) GEPL will make payment of Rs.3 Crore (Rupees Three Crore Only) to the Financial Creditors No. 1 and 2 on execution of this MOU towards one time full and final settlement against all dues of JDECL.*

*b) The parties noted that UCL is a holding company of JDECL in which UCL holds more than*

*80% of equity shares and since UCL is undergoing CIRP under the Code, it will not be possible to resolve the debts of JDECL till the resolution plan for UCL is approved by the NCLT. It is, therefore, a pre-requisite for the settlement of the dues of JDECL that the resolution plan for UCL is approved by the NCLT so that the management control of JDECL will vest with the new management. It was, therefore, agreed that the effective date for the settlement of JDECL dues to the Financial Creditors No. 1 and 2 will be the date of approval of resolution plan by the NCLT.*

*c) On payment of Rs.3 Crore as stated above, the Financial Creditors No. 1 and 2 will release all mortgages, charges, hypothecation, lien etc. on all properties and assets of JDECL excluding that are collateral for UCL and Promoter/ Directors. The personal guarantees and promises given by the Promoter Directors of JDECL will also be discharged by Financial Creditors No. 1 and 2 on the payment of the settlement amount. Simultaneously, all the legal proceedings initiated against JDECL and Promoter Directors of JDECL under SARFASEI Act or any other law will be immediately withdrawn on payment of the said settlement amount.*

*d) As the CIRP in case of JDECL is in the initial stage, it was agreed that an application under Section 12A of the Code will be filed by Financial Creditor No.1 in the NCLT after approval of the settlement in the Committee of Creditors through the Resolution Professional for withdrawal of the application filed for initiating the CIRP against JDECL under section 7 of the Code.*

*e) On payment of the said settlement amount, the management of JDECL will vest with the new investors who will take full control of the assets of JDECL.”*

- 9.** Undertaking of the Financial Creditors are contained in Para (vi) which is as follows:

**“VI. UNDERTAKING**

*The Financial Creditors do hereby undertake as under:*

*a) The amount of Rs.325 Lakhs to be deposited in the No-Lien Account to be opened in T JSB Sahakari Bank Ltd. in the name of the all three Financial Creditors, will be deposited by Globomet Engineering Private Ltd (GEPL).*

*b) The Financial Creditors undertake that the said amount of Rs.325 lakhs shall not be withdrawn or appropriated by them till the resolution plan for UCL and the withdrawal of CIRP proceedings under Section 12 A of the Code in case of JDECL have been approved by NCL T as the said amount is not payable to them without the aforesaid approvals from NCL T. The Financial Creditors shall not exercise lien, attachment etc on the amount deposited in the aforesaid No Lien Account under any circumstances.*

*c) The aforesaid amount of Rs.325 lakhs shall be refunded to GEPL if the resolution plan for UCL is not approved and withdrawal of the CIRP proceedings under Section 12A is not allowed by NCL T before 30th September 2020.*

*d) On deposit of the aforesaid amount of Rs.325 lakhs in No Lien Account, the Promoter Directors of UCL and JDECL and their Investment Partners through GEPL shall not be required to pay any Earnest Money Deposit or Bank Guarantee, as required under the RFRP issued in case of UCL and the conditions of the RFRP of UCL shall stand modified accordingly.”*

**10.** From the facts brought on the record, it is clear that insofar as dues of JDECL is concerned, 12A Application was filed which was allowed by the Adjudicating Authority approving the 12A and the CIRP of JDECL thus came to be closed. Entire debt of the Financial Creditor with JDECL was ₹3 Crores, which CIRP stood closed and entire debt also discharged. MoU also indicates that ₹25 Lakhs was to be paid with regard to debt of Corporate Debtor on execution of MoU and rest of the payments were made within 4 years as per the schedule given in revised MoU as noted above. No further payment with

regard to dues of Corporate Debtor could be paid since the Resolution Plan could not be approved by the Adjudicating Authority, although CoC has approved the Resolution Plan for the Corporate Debtor.

**11.** Now we come to the Application which was filed by the Appellant being I.A.1370/2021. Application filed by the Appellant was under Section 60(5) of the Insolvency and Bankruptcy Code (for short 'The Code' or 'The IBC') read with Rule 11 of the NCLT Rules, 2016. After relating the facts and details of both the MoU, Appellant has made following prayers:

*“a. Direct the members of CoC to forthwith refund and release the amount to the tune of INR 3,25,00,000 (Indian Rupees Three Crores Twenty Five Lakhs only) to the Applicant held by them in non-lien account, in the name of members of CoC, with the Financial Creditor;*

*b. Direct Respondent No. 1 to record the decision of the Applicant of withdrawing from the Resolution Plan and to facilitate the CoC for the refund and release of amount of INR 3,25,00,000 (Indian Rupees Three Crores Twenty Five Lakhs only) held by CoC in the said non-lien account.*

*c. Pending hearing and final disposal of the present application, this Hon'ble Tribunal be pleased to pass an order restraining Respondent Nos. 1 and 2 by themselves, their directors, servants and/or agents and/or any person/representative claiming through them from, in any manner, appropriating, withdrawing, adjusting, setting off, transferring or creating any further or third party rights or charge or encumbrance or in any manner dealing with the amount of INR 3,25,00,000/- (Indian Rupees Three Crores Twenty Five Lakhs only) held in no lien account of Financial Creditor the under the name of all the members of Respondent No. 2 (CoC).*

*d. Ad-interim/interim reliefs in terms of the above; and*

*e. Such further and other reliefs as this Hon'ble Tribunal may deem fit in the facts and circumstances of the present Application and in the interest of justice."*

**12.** Adjudicating Authority by the Impugned Order has dismissed the Application. Adjudicating Authority held that 12A Application of JDECL was allowed within the knowledge and without objection raised by the Applicant, which proceedings cannot be now reversed. It is useful to notice following findings of Adjudicating Authority in Paragraphs 2 to 5:

*"2. This Bench further observed that the 12 A application of JDECL was allowed within the knowledge and without any objection raised by the Applicant. As rightly contended by the Respondent No.2, the withdrawal of CIRP order under Section 12A by this Tribunal of M/ s Joshi Deodhar Engineering Company Ltd. cannot be legally reversed or undone by this Tribunal.*

*3. It is also noticed that the above application was filed on 30.06.2021 belatedly against the Respondents as an afterthought to cover up their own latches. The First communication received from Globomet with regard to return of the Settlement Amount and supposed non-adherence to obligations under the 1st MOU and 2nd MOU was only on 22.12.2020, by which time all processes and proceedings had already culminated and now cannot be reversed.*

*4. It is very surprising to observe that the applicant while arraying the promoters and directors of both the companies as Respondent Nos. 3 to 6 is praying refund only from COC i.e. Respondent No.2.*

*5. It is also observed that Respondent Nos. 3 to 6 are the people who are really responsible for failure of CIRP process of M/ s Unimetal Castings Ltd and the same Respondents are also part of the present Applicant M/ s Globomet Engineering Pvt. Ltd. Therefore, it is very clear from the above conduct of the Applicant that the applicant is trying to take advantage of their own wrong and demanding refund only from COC by exonerating its own people from their personal liability. Therefore, the above I.A. is nothing but a*



*collusive application filed by Applicant at the behest of Respondent Nos. 3 to 6.”*

**13.** We have noticed the revised MoU dated 07.08.2020, which contemplated payment of ₹9.75 Crores as full and final settlement of dues of Corporate Debtor and ₹3 Crores as full and final settlement of dues of JDECL. Amount of ₹3 Crores was received with regard to dues of JDECL, due to which the 12A Application was filed and allowed by the NCLT closing the CIRP of JDECL. The Application which was filed by the Appellant was for refund of ₹3.25 Crores the entire amount which has paid for closure of CIRP of JDECL and for approval of Resolution Plan of Corporate Debtor. It is admitted fact that CIRP of JDECL has been closed by payment of entire dues of ₹3 Crores. After obtaining the Order of closure of CIRP of JDECL, the prayer of Appellant to refund ₹3.25 Crores which also contains the payment of ₹3 Crores towards closure of CIRP of JDECL is both dishonest attempt and legally impermissible. When CIRP of JDECL is closed on payment of total debt of ₹3 Crores, there is no question of refund of the said amount of the Appellant.

**14.** It is also relevant to notice that Appellant was nothing but a Company for investment set up by the Promoters/Directors of the UCL and JDECL, which fact is contained the statement in Para 9 of the revised MoU dated 07.08.2020. Para 9 of the MoU is as follows:

*“9) The Promoter / Directors of UCL and JDECL and the Professionals and Investors have formed a company viz., Globomet Engineering P Ltd, which will be the vehicle for investment in the process of resolution of debts of UCL and JDECL.”*

**15.** The Resolution Plan which was submitted in the Resolution Process of Corporate Debtor was by the Promoters and we have noted above that CoC has resolved to Liquidate the Corporate Debtor on 15.07.2019, but thereafter on Meeting with the CoC by Promoter/Directors and Adjudicating Authority directed the CoC to consider the Settlement Proposal submitted by Respondent No. 4, the Promoter/Director for revival of the Corporate Debtor and thereafter the Resolution Plan was submitted by Respondent No. 4, which was also approved by the CoC subject to deposit of Performance Security by Resolution Applicant of ₹25 Lakhs. Performance Security having not been deposited by Resolution Applicant, the Plan was never placed before the Adjudicating Authority for approval. The fact remains that Plan submitted by Promoters could not be approved for the Corporate Debtor because it was as per the Respondent No. 1 it was not placed before the Adjudicating Authority on account of non-payment of Performance Security. As noted above, MoU dated 07.08.2020 also contains Clause XII with regard to dispute resolution which is as follows:

**“XII. GOVERNING LAW AND DISPUTE RESOLUTION**

*This Memorandum of Understanding shall be governed by and construed in accordance with the laws of India. All disputes and differences of opinion arising out of or in connection with this Agreement shall be referred to a sole arbitrator to be appointed by the parties with mutual agreement. The arbitration shall be in accordance with the provisions of the Indian Arbitration & Conciliation Act, 1996 as amended from time to time. The place of arbitration and sitting/ venue shall be in Mumbai. The language of arbitration proceeding shall be in English. This Clause shall*

*survive the termination of this Agreement. The cost of arbitration shall be shared equally by the parties.”*

**16.** Any dispute arising out of MoU between the Financial Creditors and Appellant thus was subject to dispute resolution Clause.

**17.** We have noticed above that Adjudicating Authority has returned a finding that Application was not maintainable under Section 60(5), which findings have been questioned before this Tribunal by the Counsel for the Appellant and are supported by submission of Counsel for the Respondent. In the facts of the present case, we are of the view that Application filed by Appellant was maintainable under Section 60(5)(c) since the questions arose *out of are in relation to the Insolvency Resolution* of the Corporate Debtors, UCL and JDECL.

**18.** Even if it is held that Application filed by the Appellant was maintainable, there has to be sufficient ground for allowing the prayers made by the Appellant in the Application which is for refund of amount of ₹3,25,00,000/- which was paid and kept in the no lien account in the name of Member of the CoC.

**19.** As noted above out of ₹3,25,00,000/-, amount of ₹3 Crores was paid to clear the debt dues of JDECL whose CIRP stood closed by allowing the Application under Section 12A. Thus, the CIRP was successfully closed of JDECL by payments of the entire debt, there is no question of refund of amount out of ₹3 Crore which culminated in the closure of the CIRP of JDECL. Promoter/Director who succeeded in closure of the CIRP on payment of entire

dues cannot be heard in saying that although CIRP is closed but amount paid to the CoC be refunded to them.

**20.** Now the question is left regarding ₹25 Lakhs which was paid by the Appellant in reference to the Resolution Plan submitted in the Resolution Process of Corporate Debtor. As noted above only ₹25 Lakhs was paid which was on account of terms and conditions of the MoU dated 07.08.2020 that on signing of the MoU, the said amount shall be paid. The rest of the amount i.e., ₹9.50 Cores was to be paid within four years, which occasion did not arise since the Plan was never approved. Whether in the facts of the present case, Appellant was entitled to refund of the said amount since the Resolution Plan could not be approved is the question to be answered. As noted above the Resolution Plan, which could not be submitted before the NCLT on account of non-deposit of the Performance Security by the Resolution Applicant.

**21.** Now we come to the amount of ₹25 Lakhs which was paid on the signing of the MoU with regard to dues of Corporate Debtor. We have already noticed the undertaking contained in Clause VI, which contained the undertaking that with the Resolution Plan of UCL is not approved and withdrawal of CIRP proceeding under 12A is not allowed before 30.09.2020, the amount shall be refunded. Clause B further provided that deposit of the ₹3,25,00,000/- in no lien account Promoter/Directors of UCL shall not be required to pay any Earnest Money Deposit or Bank Guarantee as required under RFRP issued in case of UCL and the conditions of UCL shall stands modified accordingly. Clause VI (b) of MoU is as follows:

*“b) The Financial Creditors undertake that the said amount of Rs.325 lakhs shall not be withdrawn or appropriated by them till the resolution plan for UCL and the withdrawal of CIRP proceedings under Section 12 A of the Code in case of JDECL have been approved by NCL T as the said amount is not payable to them without the aforesaid approvals from NCL T. The Financial Creditors shall not exercise lien, attachment etc on the amount deposited in the aforesaid No Lien Account under any circumstances.”*

**22.** We find that in the MoU there was no Clause of forfeiting the amount of Rs. 25 Lakhs paid towards the resolution of Corporate Debtor, UCL and further Resolution Applicant was not required to pay any EMD or Performance Guarantee. The amount of Rs. 25 Lakhs paid did not form the asset of Corporate Debtor to take control of it in the Liquidation Proceeding of Corporate Debtor.

**23.** The amount of ₹3,25,00,000/- consist of two payments (i) ₹3 Crores for 12A Application under JDECL and ₹25 Lakhs for approval of the Plan of UCL. The CIRP of JDECL having been closed by allowing 12A Application, the said amount becomes non-refundable. The Appellant which is none else then entity brought into existence by Promoter/Directors and investors to resolve the debt of JDECL and Corporate Debtor cannot take double benefit, i.e., (i) closing of CIRP of JDECL by satisfaction of the entire debt and asking again the refund of the amount which was paid for closure of CIRP of JDEC. The prayer of the Appellant thus to refund amount of ₹3 Crores is dishonest, unjust and has rightly been rejected. However, the amount of ₹25 Lakhs which was paid on signing of the MoU and the approval of the Resolution Plan of Corporate Debtor could not take place, we are of the view that amount of

₹25 Lakhs needs to be refunded to the Appellant by the Financial Creditors, Respondent No. 2, herein.

**24.** We, thus are of the view that Impugned Order of the Adjudicating Authority dated 26.07.2022 need to be modified only to the extent that the amount of ₹25 Lakhs which was paid by the Appellant on signing of MoU dated 07.08.2020 towards Resolution Plan of Corporate Debtor need to be refunded to the Appellant. Rest of the Order of the Adjudicating Authority is affirmed.

**25.** In result, the Appeal is partly allowed Order dated 26.07.2022 is modified only to the extent that the Financial Creditor, Respondent No. 2 shall refund an amount of ₹25 Lakhs to the Appellant within a period of one month from today either by RTGS payment or by a Bank Draft. Rest of the Order is affirmed.

Parties shall bear their own cost.

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

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

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

**NEW DELHI**

**11<sup>th</sup> November, 2024**

*himanshu*