COMPARATIVE TABLE OF CASES REPORTED IN THIS VOLUME

Asterisks indicate cases which have not been reported in other journals.

Page	Court	Other Journals		
		PART 1 — 1-5-2020		
1	NCLAT	*	*	*
4	NCLT	*	*	*
9	NCLT	*	*	*
20	NCLT	*	*	*
28	NCLAT	*	*	*
36	NCLT	*	*	*
43	NCLAT	*	*	*
48	Sikkim	*	*	*
54	NCLT	*	*	*
59	NCLAT	*	*	*
69	NCLT	[2019] 105 taxmann.com 305		
76	NCLT	[2019] 106 taxmann.com 79		
89	NCLAT	*	*	*
		PART 2 — 8-5-2020		
101	NCLAT	*	*	*
110	NCLAT	*	*	*
116	NCLT	*	*	*
120	NCLAT	*	*	*
128	NCLAT	*	*	*
139	NCLAT	*	*	*
147	Delhi	*	*	*
		PART 3 — 15-5-2020		
224	Delhi	[2019] 152 CLA 271		
247	Delhi	*	*	*

262	Delhi	*	*	*
280	NCLT	*	*	*
		PART 4 — 22-5-2020		
290	NCLT	*	*	*
295	SC	*	*	*
300	NCLT	*	*	*
313	NCLT	*	*	*
327	NCLT	*	*	*
335	NCLT	*	*	*
		PART 5 — 29-5-2020		
346	NCLT	*	*	*
357	NCLT	*	*	*
366	NCLT	[2018] 100 taxmann.com 87 ; 150 SCL 670 ; [2019] 149 CLA 69		
		PART 6 — 5-6-2020		
379	NCLT	*	*	*
391	NCLAT	*	*	*
397	NCLT	*	*	*
410	Mad	*	*	*
420	Delhi	[2019] 156 SCL 79 ; 108 taxmann.com 256 ; 153 CLA 187		
447	SC	*	*	*
		PART 7 — 12-6-2020		
449	NCLAT	*	*	*
451	NCLAT	*	*	*
452	NCLAT	*	*	*
454	SC	*	*	*
456	NCLT	*	*	*
470	NCLT	*	*	*
482	NCLT	*	*	*
490	NCLAT	*	*	*

495	Karn	*	*	*
505	SC	*	*	*
		PART 8 — 19-6-2020		
518	NCLT	*	*	*
528	NCLAT	*	*	*
535	NCLT	*	*	*
546	NCLAT	*	*	*
554	NCLT	*	*	*
562	NCLAT	*	*	*

CONTENTS OF THIS PART

SUBJECT INDEX TO CASES REPORTED IN THIS PART

NATIONAL COMPANY LAW APPELLATE TRIBUNAL ORDERS

NATIONAL COMPANY LAW TRIBUNAL ORDERS

CASES JUDICIALLY NOTICED IN THIS PART

B. K. Educational Services P. Ltd. *v.* Parag Gupta and Associates [2019] 212 Comp Cas 1 (SC) **relied on** in Bimalkumar Manubhai Savalia *v.* Bank of India [2020] 220 Comp Cas 546 (NCLAT)

Bank of India *v.* Radheshyam Agro Products P. Ltd. [2020] 220 Comp Cas 535 (NCLT) **set aside** in Bimalkumar Manubhai Savalia *v.* Bank of India [2020] 220 Comp Cas 546 (NCLAT)

Bank of India *v.* TD Toll Road P. Ltd. [2020] 220 Comp Cas 554 (NCLT) **affirmed** in Amitabh Kumar Jha *v.* Bank of India [2020] 220 Comp Cas 562 (NCLAT)

Committee of Creditors of Essar Steel India Ltd. *v.* Satish Kumar Gupta [2020] 219 Comp Cas 97 (SC) **relied on** in IMR Metallurgical Resources AG *v.* Ferro Alloys Corporation Ltd. [2020] 220 Comp Cas 528 (NCLAT)

Committee of Creditors of Essar Steel India Ltd. *v.* Satish Kumar Gupta [2020] 219 Comp Cas 97 (SC) **relied on** in Rural Electrification Corporation *v.* Ferro Alloys Corporation Ltd. [2020] 220 Comp Cas 518 (NCLT)

Rural Electrification Corporation *v.* Ferro Alloys Corporation Ltd. [2020] 220 Comp Cas 518 (NCLT) **affirmed** in IMR Metallurgical Resources AG *v.* Ferro Alloys Corporation Ltd. [2020] 220 Comp Cas 528 (NCLAT)

Sashidhar (K.) *v.* Indian Overseas Bank [2019] 213 Comp Cas 356 (SC) **relied on** in IMR Metallurgical Resources AG *v.* Ferro Alloys Corporation Ltd. [2020] 220 Comp Cas 528 (NCLAT)

CUMULATIVE TABLE OF CASES REPORTED

PARTS 1 to 8

(Cases reported in this part are marked with asterisks)

(Contd. on Cover page 3)

the custodian of public money is taking steps to recover its dues by auctioning the property through e-auction and the action of the respondent-bank cannot be flawed. The respondent-bank has adopted one of the courses suggested by the hon'ble apex court in United India Assurance *case referred to supra, namely, 'public auction' by which process there would be larger participation. If at all the auction is to be set aside for any reason whatsoever, the petitioner can take recourse to the remedy available under the SARFAESI Act and get the sale set aside.* However, the petitioner cannot be permitted to stall the auction itself under extraordinary jurisdiction of this court." (emphasis[1] supplied)

12 While arriving at such conclusion the learned single judge had kept in view the provisions as contained in the SARFAESI Act, as also the decisions of this court, more particularly in the case of *United Bank of India* v. *Satyawati Tondon* [2009] 1 SCC 168[2]. In that view though the learned single judge did not accept the contentions as put forth had also indicated that if at all the auction is to be set aside for any reason whatsoever, the complainant who was the petitioner therein can take recourse to the remedy under the SARFAESI Act and get the sale set aside. In that view the learned single judge was of the opinion that the complainant cannot be permitted to stall the auction itself through the prayer made in the writ petition. The complainant had assailed the said order in an intra court appeal bearing W. A. No. 100349 of 2014. The Division Bench by its order dated August 19, 2014 had taken note of the consideration made by the learned single judge with reference to the case of *United Bank of India* v. *Satyawati Tondon* [2009] 1 SCC 168[2] and had accordingly dismissed the writ appeal.

13 Having taken note of the nature of consideration made by the High Court in the said writ proceedings and keeping in view the proceedings on hand, in order to come to a conclusion as to whether in a matter of the present nature the appellants should be exposed to the ignominy of going through the process of criminal proceedings, it is also appropriate to take note of the provisions as contained in the SARFAESI Act. The fact that the issue relates to the exercise of remedy relating to a secured asset as defined under the Act cannot be in dispute. The fact that the account of the complainant was classified as NPA is also the admitted position. In that regard when a right accrues to the secured creditor to enforce the security interest, the procedure as contemplated under sections 13 and 14 of the SARFAESI

1. Here printed in italics.
2. See [2010] 158 Comp Cas 251 (SC).

Act is to be resorted to. Further the Security Interest (Enforcement) Rules, 2002 provides the procedure to be adopted with regard to the valuation and sale of the secured asset. If the complainant, as a borrower had any grievance with regard to any of the measures taken by the secured creditor invoking the provisions of section 13 of the SARFAESI Act, the remedy as provided under section 17 of the SARFAESI Act was to be availed of. It is in that light the High Court in the writ proceedings had arrived at such conclusion. At that point in time the complainant availed of the remedy under the Act by filing the application under section 17 in I. R. No. 3044 of 2014. Since there was delay in filing, an application in I. A. No. 4482 of 2015 was filed under section 5 of the Limitation Act, 1963 seeking condonation of delay. The same was rejected on the ground of delay against which an appeal is said to have been filed before the DRAT and it was pending though it is now stated to be dismissed. It is at that stage when it was still pending the impugned complaint in P. C. No. 389 of 2016 was filed, wherein through the order dated May 20, 2016 it had been referred to an investigation under section 156(3) of the Cr. P. C.

14 Learned senior counsel for the complainant no doubt referred to Criminal Petition No. 101162 of 2016 and Criminal Petition No. 101258 of 2016 filed by accused Nos. 1 and 12 being dismissed by the High Court and the same not being carried further and attaining finality. Though that be the position, in the instant case the appellants are before this court to exercise the remedy available and as such the dismissal of the said petitions cannot prejudice their case when this court is required to take a view on the matter though it has not been availed of in the earlier cases. Further learned senior counsel has also referred to the statements of two former officers of the Canara Bank, namely, Gurupadayya and Bapu which was recorded during the course of the investigation and a reference was made by learned senior counsel to the detailed report regarding investigation wherein the Investigating Officer, namely, the Assistant Police Sub-Inspector, Sub-Urban Police Station, Hubballi had concluded that as per the investigation it is found that all the accused persons with conspiracy and in collusion with each other have cheated the complainant by releasing only Rs. 90 lakhs out of the sanctioned amount of Rs. 2.68 crores and by later not releasing the remaining amount had caused economic stumbling block and sold the property mortgaged to one of the accused.

15 The issue however is, as to whether such proceedings by the police in the present facts and circumstances could be permitted. At the outset the sanction of loan, creation of mortgage and the manner in which the sanctioned loan was to be released are all contractual matters between the

parties. The complainant is an industrialist who had obtained the loan in the name of his company and the loan account was maintained by the Canara Bank in that regard. The loan admittedly was sanctioned on March 16, 2009. When at that stage the amount was released and if any amount was withheld, the complainant was required to take appropriate action at that point in time and avail of his remedy. On the other hand, the complainant had proceeded with the transaction, maintained the loan account until the account was classified as NPA on January 15, 2013. Initially the issue raised was only with regard to the under valuation of the property when it was brought to sale. On that aspect, as taken note the writ proceedings were filed and the learned single judge having examined, though did not find merit had reserved liberty to raise it before the DRT, which option is also availed. It is only thereafter the impugned complaint was filed on May 20, 2016.

The SARFAESI Act is a complete code in itself which provides the pro- **16**
cedure to be followed by the secured creditor and also the remedy to the aggrieved parties including the borrower. In such circumstance as already taken note by the High Court in writ proceedings if there is any discrepancy in the manner of classifying the account of the appellants as NPA or in the manner in which the property was valued or was auctioned, the DRT is vested with the power to set aside such auction at the stage after the secured creditor invokes the power under section 13 of the SARFAESI Act. This view is fortified by the decision of this court in the case of *Authorised Officer, Indian Overseas Bank* v. *Ashok Saw Mill* [2009] 8 SCC 366[1] wherein it is held as hereunder :

> "The provisions of section 13 enable the secured creditors, such as banks and financial institutions, not only to take possession of the secured assets of the borrower, but also to take over the management of the business of the borrower, including the right to transfer by way of lease, assignment or sale for realising secured assets, subject to the conditions indicated in the two provisos to clause (b) of sub-section (4) of section 13.
>
> *In order to prevent misuse of such wide powers and to prevent prejudice being caused to a borrower on account of an error on the part of the banks or financial institutions, certain checks and balances have been introduced in section 17 which allow any person, including the borrower, aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor, to make an application to the DRT having jurisdiction in the matter within 45 days from the*

1. See [2011] 162 Comp Cas 324, 335 (SC).

date of such measures having been taken for the reliefs indicated in sub-section (3) thereof.

The intention of the Legislature is, therefore, clear that while the banks and financial institutions have been vested with stringent powers for recovery of their dues, safeguards have also been provided for rectifying any error or wrongful use of such powers by vesting the DRT with authority after conducting an adjudication into the matter to declare any such action invalid and also to restore possession even though the possession may have been made over to the transferee.

The consequences of the authority vested in the DRT under sub-section (3) of section 17 necessarily implies that the DRT is entitled to question the action taken by the secured creditor and the transactions entered into by virtue of section 13(4) of the Act. The Legislature by including sub-section (3) in section 17 has gone to the extent of vesting the DRT with authority to even set aside a transaction including sale and to restore possession to the borrower in appropriate cases. Resultantly, the submissions advanced by Mr. Gopalan and Mr. Altaf Ahmed that the DRT has no jurisdiction to deal with a post-section 13(4) situation, cannot be accepted." (emphasis[1] supplied)

17 We reiterate, the action taken by the banks under the SARFAESI Act is neither unquestionable nor treated as sacrosanct under all circumstances but if there is discrepancy in the manner the bank has proceeded it will always be open to assail it in the forum provided. Though in the instant case the application filed by the complainant before the DRT has been dismissed and Appeal No. 523 of 2015 filed before the DRAT is also stated to be dismissed the appellants ought to have availed of the remedy diligently. In that direction the further remedy by approaching the High Court to assail the order of the DRT and DRAT is also available in appropriate cases. Instead the petitioner after dismissal of the application before the DRT filed the impugned complaint which appears to be an intimidatory tactic and an afterthought which is an abuse of the process of law. In the matter of present nature if the grievance as put forth is taken note and if the same is allowed to be agitated through a complaint filed at this point in time and if the investigation is allowed to continue it would amount to permitting the jurisdictional police to redo the process which would be in the nature of reviewing the order passed by the learned single judge and the Division Bench in the writ proceedings by the High Court and the orders passed by the competent court under the SARFAESI Act which is neither desirable nor permissible and the banking system cannot be allowed to be held to

1. Here printed in italics.

ransom by such intimidation. Therefore, the present case is a fit case wherein the extraordinary power is necessary to be invoked and exercised.

18 The appellants herein had also referred to the provision as contained in section 32 of the SARFAESI Act which provides for the immunity from prosecution since protection is provided thereunder for the action taken in good faith. Learned senior counsel for the complainant has in that regard referred to the decision of this court in the case of *General Officer Commanding, Rashtriya Rifles* v. *Central Bureau of Investigation* [2012] 6 SCC 228 to contend that the defence relating to good faith and public good are questions of fact and they are required to be proved by adducing evidence. Though on the proposition of law as enunciated therein there could be no cavil, that aspect of the matter is also an aspect which can be examined in the proceedings provided under the SARFAESI Act. In a circumstance where we have already indicated that a criminal proceeding would not be sustainable in a matter of the present nature, exposing the appellants even on that count to the proceedings before the Investigating Officer or the criminal court would not be justified.

19 In that view, for all the reasons stated above we pass the following :

Order

(i) The complaint bearing P. C. No. 389 of 2016 and the order dated May 20, 2016 passed therein as also FIR No. 0152 of 2016 in so far as the appellants herein are concerned stand quashed.

(ii) In so far as the grievance of the complainant, he is at liberty to avail of his remedies in accordance with law if he chooses to assail the order dated June 12, 2015 passed in I. R. No. 3044 of 2014 and the order dated May 31, 2017 passed in Appeal No. 523 of 2015 by the DRT and DRAT respectively in accordance with law.

(iii) The appeal is accordingly allowed with no order as to costs.

(iv) Pending applications if any, shall also stand disposed of.

[2020] 220 Comp Cas 518 (NCLT)

[BEFORE THE NATIONAL COMPANY LAW TRIBUNAL — CUTTACK BENCH]

RURAL ELECTRIFICATION CORPORATION[1]

v.

FERRO ALLOYS CORPORATION LTD.

MS. SUCHARITHA (R.) ***(Judicial Member)*** and
SATYA RANJAN PRASAD ***(Technical Member)***

January 30, 2020.

HF ▶ Respondent

INSOLVENCY RESOLUTION—RESOLUTION PLAN—COMMITTEE OF CREDITORS GIVING EQUAL OPPORTUNITIES TO ALL PARTICIPANTS AND APPROVING ONE RESOLUTION PLAN AFTER EVALUATION—ADJUDICATING AUTHORITY HAS NO POWER TO INTERVENE—INSOLVENCY AND BANKRUPTCY CODE, 2016, ss. 30, 60(5).

On an application filed under section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with rule 11 of the National Company Law Tribunal Rules, 2016 by one of the resolution applicants challenging the decision of the committee of creditors approving the resolution plan submitted by S :

Held, *that the scoring of the successful applicant was more than that of the applicant. The evaluation matrix applied was the same for both the parties. The opportunities to submit a revised resolution plan was given to both parties. Both resolution applicants had participated in the meeting. Hence, there was no discrimination apparently on the face of it. The decision of the committee of creditors in the approval of the resolution plan was paramount and the Adjudicating Authority had no power to go into the evaluation aspects of the resolution plan. The decision of the committee of creditors to approve the resolution plan of S was to be upheld.*

COMMITTEE OF CREDITORS OF ESSAR STEEL INDIA LTD. *v.* SATISH KUMAR GUPTA [2020] 219 Comp Cas 97 (SC) *relied on*.

Cases referred to :

ArcelorMittal India P. Ltd. *v.* Satish Kumar Gupta [2018] 211 Comp Cas 369 (SC) (paras 2, 3)

Committee of Creditors of Essar Steel India Ltd. *v.* Satish Kumar Gupta [2020] 219 Comp Cas 97 (SC) (paras 2, 5)

1. This order has been affirmed by the National Company Law Appellate Tribunal : see [2020] 220 Comp Cas 528 (NCLAT) *infra*.—Ed.

Sashidhar (K.) *v.* Indian Overseas Bank [2019] 213 Comp Cas 356 (SC) (paras 2, 4, 5)

C. A. (I. B.) No. 160/CTB/2019 connected with T. P. No. 42/CTB/2019 arising out of C. P. (I. B.) No. 251/KB/2017.

D. Basu, for REC Ltd.

Saurav Panda, *Ms. Charu Bansal* and *Raj Mohanty*, for the resolution professional.

Prasenjeet Mohapatra and Junior Standing Counsel, GST for C. A. No. 162 and I. A. No. 176 of 2019.

A. N. Das, *N. Sarkar* and *Aamir Khan* for the intervenor in C. A. (I. B.) No. 160/CTB/2019.

K. C. Satapathy for financial creditor, BOI.

Jishnu Saha, Senior Advocate, *Rajarshi Dutta*, *N. S. Auluwalia*, *Saswat Acharya*, *Adhish Sharma*, *A. Mohanty* and *A. K. Dey* for the erstwhile promoters.

Lalatendu Mohanty for C. A. No. 92/CTB/2019.

Diwakar Maheshwari, *Amit Patnaik* and *Ms. Pratiksha Mishra* for the Sterlite Power.

ORDER

The order of the Bench was delivered by

Ms. SUCHARITHA (R.) ***(Judicial Member)***.—This application has been filed under section 60(5) read with rule 11 of the National Company Law Tribunal Rules, 2016 by the M/s. IMR Metallurgical Resources AG. M/s. Ferro Alloys Corporation Ltd., is under corporate insolvency resolution process and the applicant herein is one of the resolution applicant who submitted the resolution plan. However, the committee of creditors have approved the resolution plan of M/s. Sterlite Power Transmission Ltd. Hence, the applicant is aggrieved by the decision of the committee of creditors and has filed this application before us as an intervening application. 1

The applicant submits that the resolution plan was submitted on November 7, 2019. The committee of creditors sought for revisions and modified version of the resolution plan, meeting the requirements were submitted. The resolution professional by e-mail dated November 13, 2019 at 2.38 a.m. sent an e-mail stating that the resolution plan submitted by this applicant has been rejected by the committee of creditors. The applicant submits that financial bid of this applicant was superior to the other, the committee of creditors has unfairly evaluated the resolution plan, of the other party, contrary to the well accepted objective of maximisation of the 2

value of the corporate debtor. The applicant further states that, they have built a successful ferro chrome plant which was subsequently acquired by Tata Steel Ltd. Moreover, the applicant plays a very significant role in the supply of chain in this industry. The applicant seeks a direction from this Adjudicating Authority to the committee of creditors to reconsider and re-evaluate of the resolution plan. In support of its claims, the applicant has stated the first resolution plan was submitted on November 4, 2019. Thereafter, second revised plan was submitted on November 9, 2019. Thereafter, on November 11, there was a meeting and again on November 12, also there were meetings between the parties. The fifth and the final revised version of the resolution plan were submitted on November 12, 2019. The applicant further submits that objective evaluation of the plan shall be absolute discretion of the committee of creditors. However, the Adjudicating Authority has powers of judicial review to look at the subjective content of the plan. Hence, the subjective reality ought to be looked by the Adjudicating Authority and it is beyond the scope of the committee of creditors. The applicant further states that, resolution plan submitted by the applicant is far superior to that of M/s. Sterlite Power Transmission Ltd. This applicant has shown considerable weightage for payment of operational creditor's dues. However, in the plan of M/s. Sterlite Power Transmission Ltd., there is no such allocation of fund. In support of the claim, the applicant cites *Committee of Creditors of Essar Steel India Ltd.* v. *Satish Kumar Gupta* [2020] 219 Comp Cas 97 (SC), Civil Appeal Nos. 8766-67 of 2019 also known as *Committee of Creditors of Essar Steel India Ltd.* v. *Satish Kumar Gupta* [2020] 219 Comp Cas 97 (SC), sets out the principle of decision of the committee of creditors in approving the resolution plan is paramount is misconstrued. While recognizing that it is the committee of creditors which has to decide, does not set out the principle that this would mean that the committee of creditors can do whatever it prefers. On the contrary, the decision itself shall clarifies the same. Further, the judicial precedent is very clear on the point that the approved resolution plan must take into account the interest of all stakeholders. In another case by the hon'ble apex court in *ArcelorMittal India P. Ltd.* v. *Satish Kumar Gupta* [2018] 211 Comp Cas 369 (SC) ; [2019] 2 SCC 1, the hon'ble Supreme Court held that the resolution applicant has no vested right to insist that his resolution plan must be considered. The applicant has further narrated, how their resolution plan is superior in many aspects compared to that of the approved resolution plan of M/s. Sterlite Power Transmission Ltd. The applicant has also cited the judgment of the hon'ble Supreme Court in

K. Sashidhar v. *Indian Overseas Bank* [2019] 213 Comp Cas 356 (SC) ; [2019] SCC Online SC 257 read as follows (page 398) :

> "On a bare reading of the provisions of the I and B Code, it would appear that the remedy of appeal under section 61(1) is against an 'order passed by the Adjudicating Authority (National Company Law Tribunal)'—which we will assume may also pertain to recording of the fact that the proposed resolution plan has been rejected or not approved by a vote of not less than 75 per cent. of voting share of the financial creditors. Indubitably, the remedy of appeal including the width of jurisdiction of the Appellate Authority and the grounds of appeal, is a creature of statute. The provisions investing jurisdiction and authority in the National Company Law Tribunal or National Company Law Appellate Tribunal as noticed earlier, has not made the commercial decision exercised by the CoC of not approving the resolution plan or rejecting the same, justiciable. This position is reinforced from the limited grounds specified for instituting an appeal that too against an order 'approving a resolution plan' under section 31. First, that the approved resolution plan is in contravention of the provisions of any law for the time being in force. Second, there has been material irregularity in exercise of the powers 'by the resolution professional' during the corporate insolvency resolution period. Third, the debts owed to operational creditors have not been provided for in the resolution plan in the prescribed manner. Fourth, the insolvency resolution plan in the prescribed manner. Fourth. the insolvency resolution plan costs have not been provided for repayment in priority to all other debts. Fifth, the resolution plan does not comply with any other criteria specified by the Board. Significantly, the matters or grounds, be it under section 30(2) or under section 61(3) of the I and B Code—are regarding testing the validity of the 'approved' resolution plan by the CoC ; and not for approving the resolution plan which has been disapproved or deemed to have been rejected by the CoC in exercise of its business decision."

The hon'ble Supreme Court of India in its judgment in the matter of *Committee of Creditors of Essar Steel India Ltd.* v. *Satish Kumar Gupta* [2020] 219 Comp Cas 97 (SC) held as follows (page 157) :

> "This is the reason why regulation 38(1A) speaks of a resolution plan including a statement as to how it has dealt with the interests of all stakeholders, including operational creditors of the corporate debtor. Regulation 38(1) also states that the amount due to operational creditors under a resolution plan shall be given priority in

payment over financial creditors. If nothing is to be paid to operational creditors, the minimum, being liquidation value—which in most cases would amount to nil after secured creditors have been paid—would certainly not balance the interest of all stakeholders or maximise the value of assets of a corporate debtor if it becomes impossible to continue running its business as a going concern. Thus, it is clear that when the committee of creditors exercises its commercial wisdom to arrive at a business decision to revive the corporate debtor, it must necessarily take into account these key features of the Code before it arrives at a commercial decision to pay off the dues of financial and operational creditors. There is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or sub-class of creditors is with the committee of creditors, but, the decision of such Committee must reflect the fact that it has taken into account maximising the value of the assets of the corporate debtor and the fact that it has adequately balanced the interests of all stakeholders including operational creditors. This being the case, judicial review of the Adjudicating Authority that the resolution plan as approved by the committee of creditors has met the requirements referred to in section 30(2) would include judicial review that is mentioned in section 30(2)(e), as the provisions of the Code are also provisions of law for the time being in force. Thus, while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the committee of creditors, the limited judicial review available is to see that the committee of creditors has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process ; that it needs to maximise the value of its assets ; and that the interests of all stakeholders including operational creditors has been taken care of. If the Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the committee of creditors to resubmit such plan after satisfying the aforesaid parameters. The reasons given by the committee of creditors while approving a resolution plan may thus be looked at by the Adjudicating Authority only from this point of view, and once it is satisfied that the committee of creditors has paid attention to these key features, it must then pass the resolution plan, other things being equal."

3 The respondent states that this application is only an attempt of an unsuccessful resolution applicant to thwart the corporate insolvency

resolution process. The committee of creditors has admitted the resolution plan of Sterlite Power Transmission Ltd. (SPTL) with 95.15 per cent. majority voting share in the committee of creditors 31st meeting. Thereafter, the resolution professional has also presented the said plan for approval under section 31 of the Code before this Adjudicating Authority. The respondent further states that decision of *ArcelorMittal India P. Ltd.* v. *Satish Kumar Gupta* [2018] 211 Comp Cas 369 (SC) ; [2019] 2 SCC 1. The resolution applicant does not have any vested right that his resolution plan must be considered. The relevant paragraphs of the hon'ble Supreme Court decisions are as under (page 460 of 211 Comp Cas) :

> "Given the timeline referred to above, and given the fact that a resolution applicant has not vested right that his resolution plan be considered, it is clear that no challenge can be preferred to the Adjudicating Authority at this stage."

The respondent further submits that before taking the decision, the viability and feasibility of the resolution plan has been deliberated. Thereafter, the plan has been approved in the 31st committee of creditors meeting. Further, in the case of *K. Sashidhar* v. *Indian Overseas Bank* [2019] 213 Comp Cas 356 (SC) ; [2019] SCC Online SC 257, the hon'ble apex court has clearly held that the Adjudicating Authority is not empowered to evaluate or interfere with the commercial decision of the committee of creditors, to accept/reject a resolution plan. The relevant paragraphs of the said decision are extracted hereunder (page 394 of 213 Comp Cas) : 4

> "As aforesaid, upon receipt of a 'rejected' resolution plan the Adjudicating Authority (National Company Law Tribunal) is not expected to do anything more ; but is obligated to initiate liquidation process under section 33(1) of the I and B Code. The Legislature has not endowed the Adjudicating Authority (National Company Law Tribunal) with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors . . . Besides, the commercial wisdom of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I and B Code. There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject-matter expressed by them after due deliberations in the CoC meetings

through voting, as per voting shares, is a collective business decision. The Legislature, consciously, has not provided any ground to challenge the 'commercial wisdom' of the individual financial creditors or their collective decision before the Adjudicating Authority. That is made non-justiciable . . .

Whereas, the discretion of the Adjudicating Authority (National Company Law Tribunal) is circumscribed by section 31 limited to scrutiny of the resolution plan 'as approved' by the requisite per cent. of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the resolution plan is in reference to matters specified in section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to section 30(2), the enquiry to be done is in respect of whether the resolution plan provides : (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under section 188 of the I and B Code. The powers and functions of the Board have been delineated in section 196 of the I and B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under section 30(4) of the I and B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under section 30(4) of the I and B Code . . .

The provisions investing jurisdiction and authority in the National Company Law Tribunal or National Company Law Appellate

Tribunal as noticed earlier, has not made the commercial decision exercised by the CoC of not approving the resolution plan or rejecting the same justiciable. This position is reinforced from the limited grounds specified for instituting an appeal that too against an order 'approving a resolution plan' under section 31 . . .

Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under section 30(2) of the I and B Code or, at best, by the Adjudicating Authority (National Company Law Tribunal) under section 31(2) read with 31(1) of the I and B Code. No other inquiry would be permissible. Further, the jurisdiction bestowed upon the Appellate Authority (National Company Law Appellate Tribunal) is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in section 61(3) of the I and B Code, which is limited to matters 'other than' enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. Thus, the prescribed Authorities (National Company Law Tribunal/National Company Law Appellate Tribunal) have been endowed with limited jurisdiction as specified in the I and B Code and not to act as a court of equity or exercise plenary powers.

In our view, neither the Adjudicating Authority (National Company Law Tribunal) nor the Appellate Authority (National Company Law Appellate Tribunal) has been endowed with the jurisdiction to reverse the commercial wisdom of the dissenting financial creditors and that too on the specious ground that it is only an opinion of the minority-financial creditors. The fact that substantial or majority per cent. of the financial creditors have accorded approval to the resolution plan would be of no avail, unless the approval is by a vote of not less than 75 per cent. (after amendment of 2018 with effect from June 6, 2018, 66 per cent.) of voting share of the financial creditors. To put it differently, the action of liquidation process postulated in Chapter III of the I and B Code, is avoidable, only if approval of the resolution plan is by a vote of not less than 75 per cent. (as in October, 2017) of voting share of the financial creditors. Conversely, the legislative intent is to uphold the opinion or hypothesis of the minority dissenting financial creditors. That must prevail, if it is not less than the specified per cent. (25 per cent. in October, 2017 ; and now after the amendment with effect from June 6, 2018, 44 per cent.). The inevitable outcome of voting by not less than requisite per cent. of voting

share of financial creditors to disapprove the proposed resolution plan, de jure, entails in its deemed rejection . . .

Suffice it to observe that in the I and B Code and the Regulations framed thereunder as applicable in October, 2017, there was no need for the dissenting financial creditors to record reasons for disapproving or rejecting a resolution plan. Further, as aforementioned, there is no provision in the I and B Code which empowers the Adjudicating Authority (National Company Law Tribunal) to oversee the justness of the approach of the dissenting financial creditors in rejecting the proposed resolution plan or to engage in judicial review thereof. Concededly, the inquiry by the resolution professional precedes the consideration of the resolution plan by the CoC. The resolution professional is not required to express his opinion on matters within the domain of the financial creditor(s), to approve or reject the resolution plan, under section 30(4) of the I and B Code. At best, the Adjudicating Authority (National Company Law Tribunal) may cause an enquiry into the 'approved' resolution plan on limited grounds referred to in section 30(2) read with section 31(1) of the I and B Code. It cannot make any other inquiry nor is competent to issue any direction in relation to the exercise of commercial wisdom of the financial creditors—be it for approving, rejecting or abstaining, as the case may be."

5 Further, the legal position to the effect that the commercial decision of the committee of creditors is paramount and the Adjudicating Authority cannot trespass upon the same, has been further upheld and reiterated by the hon'ble apex court in the decision of *Committee of Creditors of Essar Steel India Ltd.* v. *Satish Kumar Gupta* [2020] 219 Comp Cas 97 (SC), passed on November 15, 2019. The relevant paragraphs of the said decision are extracted hereunder (page 147) :

"After a resolution plan is approved by the requisite majority of the committee of creditors, the aforesaid plan must then pass muster of the Adjudicating Authority under section 31(1) of the Code. The Adjudicating Authority's jurisdiction is circumscribed by section 30(2) of the Code. In this context, the decision of this court in *K. Sashidhar* v. *Indian Overseas Bank* [2019] 213 Comp Cas 356 (SC) ; [2019] SCC Online SC 257 is of great relevance.

In *K. Sashidhar* v. *Indian Overseas Bank* [2019] 213 Comp Cas 356 (SC) ; [2019] SCC Online SC 257 this court was called upon to decide upon the scope of judicial review by the Adjudicating Authority. This court set out the questions to be determined as follows :

'Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the committee of creditors, has to be within the four corners of section 30(2) of the Code, in so far as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, in so far as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in *K. Sashidhar* v. *Indian Overseas Bank* [2019] 213 Comp Cas 356 (SC) ; [2019] SCC Online SC 257'."

6 Further, the respondent submits that the unsuccessful resolution applicant has no locus standi to file intervening application and this application ought to be dismissed. The corporate insolvency resolution process was conducted as per the Insolvency and Bankruptcy Code, 2016 and Regulations therein. The respondent further states that opportunity was given to both the resolution applicants to revise and modify the plan and submit for final approval. Thereafter, the committee of creditors in its prudent commercial wisdom has voted in favour of SPTL with 95.15 per cent. of voting shares.

7 We have heard the parties and has gone through affidavit and documents filed in support of their stand. The unsuccessful resolution applicant has filed this application. There is no merit in the stand of the applicant, the applicant was given opportunities to revise and submit better plan. Both the resolution applicant were treated at par. In fact, this resolution applicant wanted to participate and submit its resolution plan after the deadline. The committee of creditors has allowed the same and has accepted the plan of the applicant for evaluation. Hence, from the records it is clear that the scoring of the successful applicant is more than that of the applicant. Hence, the allegation of this applicant that there is error in marking of score by the committee of creditors is not correct and not acceptable. The evaluation matrix applied was same for both the parties. The opportunities to submit revised resolution plan was given to both the parties. Both the resolution applicants participated in the meeting. Hence, no discrimination apparently on the face of it. The hon'ble Supreme Court have held time and again that the decision of the committee of creditors in the approval of the resolution plan is paramount and the Adjudicating Authority does not have power to go into the evaluation aspects of the resolution plan. We are satisfied that both the resolution applicants were treated at par and equal opportunities were given to submit the plan/revised the plan and to participate in the meetings. There is no discrimination per se.

The decision of the committee of creditors to approve the resolution plan of the M/s. Sterlite Power Transmission Ltd., is upheld.

8 Accordingly, C. A. (IB) No. 160/CTB/2019 is dismissed.

[2020] 220 Comp Cas 528 (NCLAT)

[BEFORE THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL — NEW DELHI]

IMR METALLURGICAL RESOURCES AG

v.

FERRO ALLOYS CORPORATION LTD. AND OTHERS

BANSI LAL BHAT J. ***(Vice-Chairperson),*** **V. P. SINGH** and **SHREESHA MERLA** ***(Technical Members)***

June 8, 2020.

HF ▸ Respondent

INSOLVENCY RESOLUTION—RESOLUTION PLAN—APPROVAL OR REJECTION OF RESOLUTION PLAN DEPENDS UPON COMMERCIAL WISDOM OF COMMITTEE OF CREDITORS—ADJUDICATING AUTHORITY NOT TO INTERVENE—INSOLVENCY AND BANKRUPTCY CODE, 2016, SS. 30, 31.

The Adjudicating Authority dismissed the application filed by the appellant seeking directions for reconsideration of its resolution plan before accepting the resolution plan submitted by the successful resolution applicant. On appeal :

Held, *dismissing the appeal, that the evaluation matrix applied by the committee of creditors fell within the commercial wisdom of the committee of creditors. The approval or rejection of resolution plan depended upon the commercial wisdom of the committee of creditors, which involved evaluation of the resolution plan based on its feasibility. Such commercial wisdom of the committee of creditors with the requisite voting majority was not justiciable. The powers of the Adjudicating Authority under section 31 of the Code were limited to the matters covered under section 30(2) of the Insolvency and Bankruptcy Code, 2016, when the resolution plan did not conform to the stated condition. Therefore, the appellant could not question the commercial wisdom of the committee of creditors in rejecting the resolution plan, with the requisite majority and in approving the resolution plan of the successful resolution applicant.*

Committee of Creditors of Essar Steel India Ltd. *v.* Satish Kumar Gupta [2020] 219 Comp Cas 97 (SC) *and* Sashidhar (K.) *v.* Indian Overseas Bank [2019] 213 Comp Cas 356 (SC) *relied on*.

Order of the National Company Law Tribunal in Rural Electrification Corporation *v.* Ferro Alloys Corporation Ltd. [2020] 220 Comp Cas 518 (NCLT) *affirmed*.

Cases referred to :

ArcelorMittal India P. Ltd. *v.* Satish Kumar Gupta [2018] 211 Comp Cas 369 (SC) (para 5)

Committee of Creditors of Essar Steel India Ltd. *v.* Satish Kumar Gupta [2020] 219 Comp Cas 97 (SC) (paras 11, 13)

Maharashtra Seamless Ltd. *v.* Padmanabhan Venkatesh [2020] 9 Comp Cas-OL 683 (SC) (para 11)

Rai Bahadur Shree Ram and Co. P. Ltd. *v.* Bhuvan Madan, Resolution Professional of Ferro Alloys Corporation Ltd. [2020] 220 Comp Cas 110 (NCLAT) (para 11)

Rural Electrification Corporation *v.* Ferro Alloys Corporation Ltd. [2020] 220 Comp Cas 518 (NCLT) (para 1)

Sashidhar (K.) *v.* Indian Overseas Bank [2019] 213 Comp Cas 356 (SC) (paras 11, 13)

Company Appeal (AT) (Insolvency No. 272 of 2020.

Pinaki Mishra, *Abhimanyu Bhandari*, *Aditya Shankar*, *Ms. Nattasha Garg* and *Ms. Aashima Singhal*, Advocates for the appellant.

Ramji Srinivasan, Senior Advocate, *Karan Kanwar*, *Sikhar Singh*, Advocates for respondent No. 2.

Sudiptu Sarkar, Senior Advocate, *Diwakar Maheshwari*, *Ms. Pratiksha Mishra*, Advocates for respondent No. 4.

Krishnan Venugopal, Senior Advocate, *Ms. Misha*, *Saurav Panda* and *Ms. Charu Bansal*, Advocates for the resolution professional.

JUDGMENT

The judgment of the Appellate Tribunal was delivered by

V. P. Singh ***(Technical Member)***.—This appeal has been filed against the impugned judgment dated January 30, 2020—(*Rural Electrification Corporation* v. *Ferro Alloys Corporation Ltd.* [2020] 220 Comp Cas 518 (NCLT)) passed by the National Company Law Tribunal, Cuttack Bench in C. A. (IB) No. 160/CTB/2019 whereby the learned Adjudicating Authority has dismissed the application filed by the appellant for seeking intervention 1

and directions for reconsideration of its resolution plan before accepting the resolution plan submitted by the successful resolution applicant, mechanically without appreciating the submissions of the appellant.

2 The appellant contends that the Adjudicating Authority has failed to exercise its power under section 31 of the Code which mandates that the Adjudicating Authority has to apply its mind before approving or rejecting a resolution plan especially when the averments challenging the resolution plan are regarding the irregularities committed by the resolution professional and the committee of creditors (in short "CoC") in applying the evaluation matrix under the guise of using the commercial wisdom to the plan submitted by the applicant and the successful resolution applicant. The appellant further contends that the impugned judgment is passed mechanically without application of mind to the fact that specific amounts had been considered by the RP and CoC for the successful resolution applicant as the "cash in hand" in considering the total upfront cash amount. The same amount has not been considered while calculating the upfront cash amount for the appellant. Thus, the evaluation matrix has unfairly given undue advantage to the successful resolution applicant over the appellant. In contrast, on the face of it, the upfront amount offered by the appellant was six times higher than the successful resolution applicant.

3 It is further contended that the Adjudicating Authority has not given any reasons for rejecting the application of the appellant.

4 The appellant also argues that the CoC did not accept the resolution plan of the appellant, which was intimated to the appellant by e-mail dated November 13, 2019. After that, the RP filed an application being C. A. No. 157/CTB/2019 under section 31 of the IBC for approval of the resolution plan. The appellant immediately applied rule 11 of the National Company Law Tribunal Rules read with section 60(5) of the IBC seeking intervention in the matter and further directions to the CoC to reconsider the resolution plan of the appellant on merits and approve the resolution plan being the most viable on quantitative and qualitative parameters. But the Adjudicating Authority vide the impugned order rejected the application which is under challenge in this appeal.

5 It is essential to mention that the resolution applicant has no vested right that his resolution plan must be considered. It is settled position of law as laid down by the hon'ble Supreme Court in case of *ArcelorMittal India P. Ltd.* v. *Satish Kumar Gupta* [2018] 211 Comp Cas 369 (SC) ; [2019] 2 SCC 1 that the resolution applicant does not have any vested right that his resolution plan must be considered.

The commercial wisdom of the CoC is paramount, and it has the absolute prerogative to decide the viability and feasibility of the resolution plans presented before them and the same is not to be interfered even by the Adjudicating Authority. 6

In the present case, the CoC after evaluating both the resolution plan being that of STPL and IMR based on pre-disclosed evaluation criteria approved the resolution plan of STPL by a voting share of 95.15 per cent. and the same is duly reflected in e-voting result of 31st CoC meeting held on November 11 and 12, 2019. 7

It is pertinent to mention that in the present case, the resolution professional received only one resolution plan of STPL within the stipulated timeline which was duly recorded in the minutes of 29th CoC meeting held on October 30, 2019. After that, on November 7, 2019 unsuccessful resolution applicant IMR approached the RP expressing its interest to submit a resolution plan, though the period of submission was already expired on October 30, 2019. The RP with the consent of the CoC decided to entertain the resolution plan of the unsuccessful resolution applicant to maximize the value of the assets of the corporate debtor. 8

It is also contended by the respondent that there is no requirement to furnish the reason for selection or rejection of any resolution plan. The only need for CoC is to record their deliberation on the feasibility and viability of the resolution plan which has duly been done in the 31st meeting of the CoC and is reflected in the minutes of the meeting. It is also contended by the respondent that the evaluation criteria for evaluating the resolution plan taken into consideration various financial and non-financial criteria including the equity infusion to continue to manage the corporate debtor as a going concern. After assessing both the resolution plans on the evaluation matrix, the CoC has scored STPL plan higher and approved the same. 9

The respondent further contends that the CoC has duly considered the payments being made to operational creditors before exercise of its commercial decision to vote in favour of STPL's resolution plan which is, non-justiciable as per the law laid down by the hon'ble Supreme Court. 10

It is pertinent to mention that the evaluation matrix was also under challenge before the Appellate Tribunal in Company Appeal Nos. 207-208 of 2020. Still, the appeal was rejected by order of this Appellate Tribunal dated March 12, 2020—(*Rai Bahadur Shree Ram and Co. P. Ltd.* v. *Bhuvan Madan, Resolution Professional of Ferro Alloys Corporation Ltd.* [2020] 220 Comp Cas 110 (NCLAT)) wherein it was held (page 112) : 11

"Having heard learned counsel for the parties, we are of the considered opinion that the committee of creditors, acting on the basis of evaluation of proposed resolution plan and assessment made by their team of experts, expressed their opinion after due deliberations in CoC Meetings through voting as per voting share which is a collective business decision. The commercial wisdom of the financial creditors individually or their collective decision is beyond the pale of challenge before the Adjudicating Authority and the same has been made non-justiciable. This is the dictum of the hon'ble apex court in *K. Sashidhar* v. *Indian Overseas Bank* [2019] 213 Comp Cas 356 (SC) ; [2019] 12 SCC 150 ; [2019] 4 SCC (Civ) 222 ; [2019] SCC Online SC 257. Dealing with the scope of an appeal under section 61(1) of the I and B Code, the hon'ble apex court noticed that apart from other grounds the appeal could be instituted against an order approving a resolution plan limited to six grounds noticed therein including that the approved resolution plan is in the contravention in the provisions of any law for the time being in force or that there has been any material irregularity in exercise of powers by the resolution professional during the corporate insolvency resolution process. Thus, it is clear that the jurisdiction bestowed upon this Appellate Tribunal too is expressly circumscribed. The examination in challenge to the approved resolution plan by this Tribunal is limited to matters other than enquiry into the business decision based on commercial wisdom of the committee of creditors. The limited judicial review in appeal does not extend to oversee and question the business decision of the majority of committee of creditors and the committee of creditors cannot be directed to reverse its business decision or reconsider a settlement proposal that has been rejected with requisite majority.

In *Maharashtra Seamless Ltd.* v. *Padmanabhan Venkatesh* [2020] 9 Comp Cas-OL 683 (SC), Civil Appeal No. 4242 of 2019 vide judgment dated January 22, 2020, the hon'ble apex court held that the Appellate Tribunal ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan on the basis of quantitative analysis.

The dictum of law laid down in *K. Sashidhar* v. *Indian Overseas Bank* [2019] 213 Comp Cas 356 (SC) stands reiterated in *Committee of Creditors of Essar Steel India Ltd.* v. *Satish Kumar Gupta* [2019] SCC Online SC 1478 ; [2020] 219 Comp Cas 97 (SC) wherein the hon'ble apex court observed as under :

'Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the committee of creditors, has to be within the four corners of section 30(2) of the Code, in so far as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, in so far as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in *K. Sashidhar* v. *Indian Overseas Bank* [2019] 213 Comp Cas 356 (SC).

The argument, though attractive at the first blush, but if accepted, would require us to rewrite the provisions of the I and B Code. It would also result in doing violence to the legislative intent of having consciously not stipulated that as a ground to challenge the commercial wisdom of the minority (dissenting) financial creditors. Concededly, the process of resolution plan is necessitated in respect of corporate debtors in whom their financial creditors have lost hope of recovery and who have turned into non-performer or a chronic defaulter. The fact that the concerned corporate debtor was still able to carry on its business activities does not obligate the financial creditors to postpone the recovery of the debt due or to prolong their losses indefinitely. Be that as it may, the scope of enquiry and the grounds on which the decision of "approval" of the resolution plan by the CoC can be interfered with by the Adjudicating Authority (National Company Law Tribunal), has been set out in section 31(1) read with section 30(2) and by the Appellate Tribunal (National Company Law Appellate Tribunal) under section 32 read with section 61(3) of the I and B Code. No corresponding provision has been envisaged by the Legislature to empower the resolution professional, the Adjudicating Authority (National Company Law Appellate Tribunal) or for that matter the Appellate Authority (National Company Law Appellate Tribunal), to reverse the "commercial decision" of the CoC much less of the dissenting financial creditors for not supporting the proposed resolution plan. Whereas, from the legislative history, there is contraindication that the commercial or business decisions of the financial creditors are not open to any judicial review by the Adjudicating Authority or the Appellate Authority . . .

Suffice it to observe that in the I and B Code and the regulations framed thereunder as applicable in October, 2017, there was no need for the dissenting financial creditors to record reasons for disapproving or rejecting a resolution plan. Further, as aforementioned, there is no provision in the I and B Code which empowers the Adjudicating

Authority (National Company Law Tribunal) to oversee the justness of the approach of the dissenting financial creditors in rejecting the proposed resolution plan or to engage in judicial review thereof. Concededly, the inquiry by the resolution professional precedes the consideration of the resolution plan by the CoC. The resolution professional is not required to express his opinion on matters within the domain of the financial creditor(s), to approve or reject the resolution plan, under section 30(4) of the I and B Code. At best, the Adjudicating Authority (National Company Law Tribunal) may cause an enquiry into the 'approved' resolution plan on limited grounds referred to in section 30(2) read with section 31(1) of the I and B Code. It cannot make any other inquiry nor is competent to issue any direction in relation to the exercise of commercial wisdom of the financial creditors be it for approving, rejecting or abstaining, as the case may be. Even the inquiry before the Appellate Authority (National Company Law Appellate Tribunal) is limited to the grounds under section 61(3) of the I and B Code. It does not postulate jurisdiction to undertake scrutiny of the justness of the opinion expressed by financial creditors at the time of voting. To take any other view would enable even the minority dissenting financial creditors to question the logic or justness of the commercial opinion expressed by the majority of the financial creditors albeit by requisite per cent. of voting share to approve the resolution plan ; and in the process authorize the Adjudicating Authority to reject the approved resolution plan upon accepting such a challenge. That is not the scope of jurisdiction vested in the Adjudicating Authority under section 31 of the I and B Code dealing with approval of the resolution plan'."

12 In this appeal, the appellant had challenged the evaluation matrix applied by the CoC which falls within the commercial wisdom of the CoC. It is settled position of law that approval or rejection of resolution plan depends upon the commercial wisdom of the CoC, which involves evaluation of the resolution plan based on its feasibility. Such commercial wisdom of the CoC with the requisite voting majority is non-justiciable. The powers of the Adjudicating Authority under section 31 of the Code is limited to the matters covered under section 30(2) of the Code when the resolution plan does not conform to the stated condition. Therefore, the appellant cannot question the commercial wisdom of the CoC in rejecting the resolution plan, with the requisite majority and in approving the resolution plan of SPTL. No material irregularity in corporate insolvency resolution process before the RP has been demonstrated.

Thus, we find that the impugned order has been passed on proper application of mind in conformity with the law laid down by the hon'ble apex court in *K. Sashidhar* v. *Indian Overseas Bank* [2019] 213 Comp Cas 356 (SC) and *Committee of Creditors of Essar Steel India Ltd.* v. *Satish Kumar Gupta* [2019] SCC Online SC 1478 ; [2020] 219 Comp Cas 97 (SC). Therefore, we are not inclined to interfere with the impugned order regarding approval of resolution plan. Thus, appeal fails. No order as to costs. 13

[2020] 220 Comp Cas 535 (NCLT)

[BEFORE THE NATIONAL COMPANY LAW TRIBUNAL — AHMEDABAD BENCH]

BANK OF INDIA[1]

v.

RADHESHYAM AGRO PRODUCTS P. LTD.

HARIHAR PRAKASH CHATURVEDI *(Judicial Member)* and **PRASANTA KUMAR MOHANTY *(Technical Member)***

September 20, 2019.

HF ▸ Petitioner

INSOLVENCY RESOLUTION—PETITION BY FINANCIAL CREDITOR—PENDENCY OF PROCEEDING UNDER SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITIES INTEREST ACT, 2002 OR OTHER DISPUTE WOULD NOT BAR INITIATION OF CORPORATE INSOLVENCY RESOLUTION PROCESS—EXISTENCE OF DEBTS AND DEFAULT SHOWN—PETITION COMPLETE IN ALL RESPECT AND FILED WITHIN LIMITATION—PETITION ADMITTED—INSOLVENCY AND BANKRUPTCY CODE, 2016, S. 7.

INSOLVENCY RESOLUTION—PETITION BY FINANCIAL CREDITOR—LIMITATION—INITIATION OF PROCEEDINGS UNDER SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITIES INTEREST ACT, 2002 WITHIN LIMITATION—PETITION UNDER ALSO FILED WITHIN LIMITATION PERIOD FROM DATE OF REVISED ONE-TIME SETTLEMENT OFFER—PETITION WITHIN LIMITATION—LIMITATION ACT, 1963, S. 18—INSOLVENCY AND BANKRUPTCY CODE, 2016, S. 7.

1. This order has been set aside by the National Company Law Appellate Tribunal : see [2020] 220 Comp Cas 546 (NCLAT) *infra*.—Ed.

It is a settled legal position that the pendency of a proceeding under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 or other dispute does not prohibit a financial creditor to initiate the corporate insolvency resolution process because the nature of remedy being sought for under the provisions of the Insolvency and Bankruptcy Code, 2016 is a "remedy in rem" in respect of the corporate debtor.

The financial creditor filed a petition under section 7 of the Code seeking to initiate the corporate insolvency resolution process as against the corporate debtor on the ground that it had failed to repay its debt :

Held, *allowing the petition, (i) that the loans were sanctioned and released by the creditor and availed of by the corporate debtor. The charges had been filed by the debtor with the Registrar of Companies in favour of the creditor on January 8, 2014. The debtor had defaulted in making repayment of loan to the creditor and the date of default was January 5, 2014. The statement of accounts and the credit information reports submitted by the creditor confirmed the default committed by the debtor.*

(ii) That the creditor had filed the petition within the period of limitation, as the date of mortgage of the property was November 18, 2010, the proceedings under the 2002 Act were initiated in 2014, the Debts Recovery Tribunal proceedings started in 2017, and the one-time settlement revised offer letter dated June 1, 2016 was submitted by the corporate debtor to the creditor.

(iii) That the petition was filed by a duly authorised official of the creditor bank in a prescribed format under section 7 of the Code annexing copies of the loan documents confirming the existence of debt and default. The corporate debtor had availed of the loan from the creditor. The debt was above Rs. 1 lakh and was due. The petition had been filed within the limitation period. The petition was complete for the purpose of initiation of the corporate insolvency resolution process against the corporate debtor-company. The petition was to be admitted.

Per PRASANTA KUMAR MOHANTY ***(Technical Member)*** *: The committee of creditors could explore, while finalising the resolution plan for the corporate-debtor, the possibility of loading the maximum interest at the petitioner-bank's base rate + 1 per cent. from the date of default to the date of implementation of the minimum cost of funds-based lending rate and further from the date of implementation of the minimum till the date of approval of the resolution plan interest at the rate of the petitioner-bank's one year*

minimum cost of funds-based lending rate or one year minimum cost of funds-based lending rate + 1 per cent. without any penal/overdue interest.

Per HARIHAR PRAKASH CHATURVEDI ***(Judicial Member)*** *: The Adjudicating Authority had limited scope to suggest or recommend to the committee of creditors. It did not have jurisdiction to make a judicial review of a commercial decision that may be taken by the committee or probe the commercial wisdom. The suggestion made by the Technical Member could considered by the committee in the light of the decision of the Supreme Court in* Sashidhar (K.) *v.* Indian Overseas Bank [2019] 213 Comp Cas 356 (SC).

SASHIDHAR (K.) *v.* INDIAN OVERSEAS BANK [2019] 213 Comp Cas 356 (SC) (paras 27, 28) *referred to.*

C. P. (IB) No. 459/7/NCLT/AHM/2018.

Ketan M. Parikh for the applicant/financial creditor.

Mohit Gupta along with *Tarun H. Rawat* for the respondent/corporate debtor.

ORDER

PRASANTA KUMAR MOHANTY ***(Technical Member)***.—The present IB petition is filed by the financial creditor-Bank of India under section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as a "Code"), seeking initiation of the corporate insolvency resolution process ("CIRP" in short) against the corporate debtor-company namely, Radheshyam Agro Products P. Ltd. for the default committed by the corporate debtor in making repayment of the loan/CC facility availed of from the bank. The applicant (FC), Bank of India (BOI) is a bank, incorporated under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. The application has been filed by the duly authorised officer Shri Brij Mohan Meena, the Chief Manager, Rajkot, Zonal Office, Bank of India. 1

The respondent-corporate debtor (CD) company, namely Radheshyam Agro Products P. Ltd. was incorporated on January 5, 2010 with CIN : UO1112GJ2010PTC059080. 2

The share capital of the respondent (CD) company is Rs. 6,75,00,000 (rupees six crores seventy-five lakhs only) divided into 67,50,000 (sixty seven lakhs fifty thousand) equity shares of Rs. 10 (ten) each and the paid-up share capital of the company is Rs. 6,75,00,000 (rupees six crores seventy-five lakhs only) divided into 67,50,000 (sixty-seven lakhs fifty thousand) equity shares of Rs. 10 (ten) each. The Registered Office of the corporate debtor-company is situated at : Chakkargadh Road, By Pass, Nr. Kanani's Farm, Survey No. 484/3, Amreli-365 601. 3

4 The main objects of the company, by which the respondent (CD) company is incorporated, are mentioned in the memorandum of association which are briefly mentioned as :

> "To carry on the business of manufactures, importing, exporting, buying, selling or otherwise dealing in cotton, cotton seeds, linter, delinter, dehul, oil seed, oil cake and solvent extraction of all types of agro products, etc."

5 It is submitted that the respondent-company applied for various loan facilities and the same were sanctioned by the petitioner-bank. The corporate debtor availed of the loans executing various documents and some documents executed by the guarantors in favour of the bank binding themselves as liable to pay the loan facilities availed of by the corporate debtor. Various loans/credit facilities granted by the applicant-bank are narrated as under :

(I) A term loan and CC to the tune of Rs. 21 crores (rupees twenty one crores only), i. e., (a) term loan of Rs. 14 crores (rupees fourteen crores only) and (b) working capital—cash credit of Rs. 7 crores (rupees seven crores) were sanctioned by the applicant-bank vide sanction letter dated July 3, 2010 with certain terms and conditions including mortgage of land and building which was duly accepted/acknowledged by the "corporate debtor (pages 82 to 88, paper book). Mortgage of the property has been created on November 18, 2010 a (pages 141 to 165 of the paper book). The same was disbursed on July 3, 2010.

(II) Further, the loan/CC was enhanced to Rs. 26.76 crores (rupees twenty-six crores seventy six lakhs only) with certain terms and conditions which were duly accepted/acknowledged by the corporate debtor (pages 89 to 97 paper book) and the same was disbursed on September 5, 2011.

(III) Further, the petitioner-bank at the request of the CD, the loan/CC was enhanced/restructured to Rs. 34.69 crores (rupees thirty-four crores and sixty-nine lakhs only) vide their sanction letter dated December 23, 2013 and the same was accepted/acknowledged by the corporate-debtor (pages 98 to 112 of paper book). The same was disbursed on December 23, 2013.

6 The charges for the enhancement have been created by the CD also in favour of the petitioner-bank with the Registrar of Companies for Rs. 34.69 crores by filing Form 8 on January 8, 2014 (pages 295-304 of paper book). The Registrar of Companies search report dated January 9, 2018 has been submitted by the petitioner-bank confirming the existence of the charge in favour of the petitioner-bank (page 428 of paper book).

The corporate debtor has defaulted payment and the date of default is November 5, 2014 as stated by the petitioner-bank (page 4 of paper book). CIBIL report (pages 972 to 981 of the paper book) has been filed by the bank which confirms that the account is in default. 7

The statements of accounts of the corporate debtor have been filed and the petitioner-bank has submitted a certificate to this effect under the Banker's Books of Evidence Act, 1891, (pages 135-136 of paper book). The petitioner-bank has claimed their dues of Rs. 56,41,402,627.03 as on July 27, 2018 as computed in pages 10 and 11 of the paper book which is given below : 8

Sl. No.	*Details*	*Amount (Rs.)*
1.	Outstanding balance in respect of principal amount as on May 30, 2015	31,87,23,036.00
2.	Plus : Other debits	2,36,23,551.50
3.	Interest up to July 27, 2018	19,14,32,135.06
4.	Penalty up to July 27, 2018	3,09,74,393.15
5.	Less : Recovery made after NPA	6,13,034.68
	Total outstanding payable as on July 27, 2018	56,41,40,627.03

The petitioner-bank, in support of its contentions has annexed the details of financial debt, records and evidences of default from annexure I/6 to annexure I/30 along with the present IB petition which also includes copies of the Registrar of Companies search report and valuation reports. 9

The petitioner-bank also has served a notice to the CD under 13(2) of the SARFAESI Act on December 31, 2014. The bank has also filed Original Application No. 137 of 2017 against the corporate debtor and others, which is pending before the Debts Recovery Tribunal-I, Ahmedabad. 10

The petitioner-bank has placed on record that the corporate debtor had submitted a revised one time settlement ("OTS") proposal increasing the offer from Rs. 12 crores to Rs. 14.56 crores to the bank on June 1, 2016 which is stated to have not been accepted by the petitioner-bank.

The corporate debtor and others have filed Securitization Application No. 28 of 2016 against the petitioner/financial creditor before the Debts Recovery Tribunal-I, Ahmedabad challenging the measures taken by the authorized officer of the financial creditor under the SARFAESI Act. 11

In the present matter, this Tribunal, vide its order dated September 25, 2018 had directed the petitioner-bank to serve the notice of date of hearing to the corporate debtor and file the proof of service of notice before this Tribunal. In compliance to the same, the petitioner-bank has furnished the 12

proof of sending notice to the corporate debtor on October 3, 2018 to remain present before this Tribunal on November 6, 2018.

It is also stated that petitioner-bank has served the copy of the application filed before this Tribunal to the corporate debtor as per rule 4(3) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

13 In response to the present IB petition filed by the petitioner-bank, the respondent has filed its objections on April 10, 2019, denying the debt and raised about not showing record of default with information utility, non-filing of certificate of the Banker's Books of Evidence Act, no resolution available for power of attorney to file the application by the authorised officer at this Tribunal. Furthermore, it is contended by the CD that the term loan-I was to be paid by March, 2015, FITL of Rs. 2.22 crores was to be paid by the end of March 2015 and the cash credit facility was regular till August, 2014, but the petitioner-bank illegally declared the account of the respondent-company as a NPA.

14 In response to the objections raised by the corporate debtor in its affidavit, the petitioner-bank filed a compliance affidavit stating and opposing the contentions raised therein by the CD. Learned counsel appearing for the petitioner-bank has filed the rebuttal documents which has been taken on record on July 17, 2019.

15 In response to the contentions raised by the corporate debtor that the application filed by the bank is beyond the period of limitation. In this regard, it was clarified by learned counsel of the petitioner-bank that the application under section 7 of the I and B Code, 2016 was filed by the petitioner-bank on August 30, 2018. The mortgage has been created in the favour of the bank on October 18, 2010 and the corporate debtor has lastly deposited the amount of Rs. 1,26,619 and Rs. 1,28,645 respectively in their accounts on March 31, 2017. Therefore, the application has been filed within the limitation as per the provision of the Insolvency and Bankruptcy Code, 2016.

16 The matter was taken up and heard both sides at this Bench on November 6, 2018, December 20, 2018, February 12, 2019, March 20, 2019, April 26, 2019, July 17, 2019, September 6, 2019. Counsels of the petitioner and the respondent were present and put forth their submissions before the Bench.

17 It is a settled legal position that the pendency of SARFAESI proceeding or other dispute does not prevent a financial creditor to trigger the CIRP because the nature of remedy being sought for under the provisions of the I and B Code is "remedy in rem" in respect of the CD.

The petitioner-bank has suggested the name of insolvency professional **18** to be appointed, if this petition is allowed and the proposed IRP has also given his affirmation/consent in writing, which is annexed with the present IB petition.

It is also found, that the petitioner-bank has submitted the documents **19** duly executed by the corporate debtors and guarantors along with a certificate under the Bankers' Books Evidence Act, 1891, in support of their IB petition for initiation of CIRP.

19.1 The loans/CC were sanctioned and released by the petitioner-bank and the same were availed of by the CD, Radheshyam Agro Products P. Ltd. The charges have been filed by the CD with the Registrar of Companies in favour of the petitioner-bank on January 8, 2014.

19.2 The CD has defaulted in making repayment of loan/CC to the petitioner-bank and the date of default is January 5, 2014. The statement of accounts and the CIBIL reports submitted by the applicant-bank confirm the default committed by the corporate debtor.

19.3 The petitioner-bank has filed the petition within the period of limitation, as the date of mortgage of the property is November 18, 2010, the SARFAESI proceeding initiated in 2014, the Debts Recovery Tribunal proceedings started in 2017, one-time settlement (OTS) revised offer (from Rs. 12 crores to Rs. 14.56 crores) letter dated June 1, 2016 was submitted by the corporate debtor to the applicant-bank and the credits have come into the loan accounts on March 31, 2017.

19.4 The present IB petition is filed by duly authorised official of the petitioner-bank in a prescribed format under section 7 of the I and B Code annexing copies of loan documents confirming the existence of debt default and proposed a name of resolution professional to act as an interim resolution professional (IRP).

Considering the material/papers filed by the petitioner-bank and the **20** facts mentioned in paragraph Nos. 19, 19.1, 19.2, 19.3, 19.4 this Adjudicating Authority is satisfied that,—

(a) the corporate debtor availed of the loan/cash credit from the petitioner ;

(b) existence of debt above rupees one lakh ;

(c) debt is due ;

(d) default has occurred on November 5, 2014 ;

(e) the petition had been filed within the limitation period ;

(f) copy of the application filed before the Tribunal has been sent to the corporate debtor and the application filed by the petitioner-bank under

section 7 of the IBC is found to be complete for the purpose of initiation of the corporate insolvency resolution process against the corporate debtor-company.

Hence, the present IB petition is admitted with the following directions/ observations. The date of admission of this petition is September 20, 2019.

21 This Adjudicating Authority hereby appoints, as proposed, Mr. Chandra Prakash Jain, having Insolvency Professional Registration No. IBBI/IPA-001/IP-P00147/2017-18/10311, e-mail ID : *jain-cp@yahoo.com*, Resi. Ph. (079) (NIL), Mobile No. 9824036127, Address : D-501, Ganesh Meridian, Opp. Gujarat High Court, Ahmedabad-380 060, Gujarat, India as an interim resolution professional. The interim resolution professional is further directed to make a public announcement of the moratorium in respect of the corporate debtor-company soon after receipt of an authenticated copy of this order and to act further as per the order/direction issued by this Adjudicating Authority and to follow the provisions under sections 13 and 14 and the other relevant provisions of the Insolvency and Bankruptcy Code.

22 As per the provisions of sections 13 and 14 of the I and B Code on the date of commencement of insolvency, this Adjudicating Authority declares moratorium with effect from today for prohibiting all of the following, namely :

I. (a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, Tribunal, arbitration panel or other authority.

(b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein.

(c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002).

(d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

II. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.

III. The provisions of sub-section (1) shall not apply to (a) such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

IV. The order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process.

The IRP is hereby advised to adhere the time limit as stipulated for com- **23**
pletion of the corporate insolvency resolution process (the "CIRP" in short) and perform the duties as specified under sections 18, 20 and 21 of the I and B Code. Further the personnels of the corporate debtor are advised to extend co-operation to the interim resolution professional as required under section 19 of the I and B Code.

It is also observed that the petitioner-bank has claimed total dues of Rs. **24**
56,41,40,627.03 which includes interest, panel/overdue interest and other debits (for thirty eight months) from May 30, 2015 to July 27, 2018 to the tune of Rs. 24.59 crores against the balance outstanding of Rs. 31.87 crores as on May 30, 2015.

In order to have a resolution plan viable, feasible and implementation successful, in the era of minimum cost of funds-based lending rate ("MCLR" in short) and competitive market condition, the resolution applicant/committee of creditors (CoC) may explore, while finalizing the resolution plan for the corporate-debtor, the possibility of loading maximum interest at the petitioner-bank's base rate (BR) + 1 per cent. from the date of default to the date of implementation of MCLR and further from the date of implementation of MCLR till the date of approval of the resolution plan interest at the rate of the petitioner-bank's one year MCLR or one year MCLR + 1 per cent. without any penal/overdue interest.

The petitioner-bank as well as the registry is hereby directed to com- **25**
municate a copy of this order to the corporate debtor-company parties as well as to the IRP and also to the Registrar of Companies at the earliest immediately through speed post/registered post.

Thus the present IB petition filed under section 7 of the IBC stands **26**
admitted.

HARIHAR PRAKASH CHATURVEDI ***(Judicial Member)***.—I have advan- **27**
tage to peruse the order pronounced by my Member brother (Technical). While agreeing to and concurring with the findings given for admission of the present IB petition and to initiate the CIRP in respect of the corporate debtor-company, I wish to observe and express my view as under :

With regard to the observation made in paragraph 24 of the judgment stating that,

> "In order to have a resolution plan viable, feasible and implementation successful, in the era of . . . without any penal/overdue interest."

I would like to place reliance in a previous decision of this Bench of I. A. No. 431 of 2018 in the matter of *Satish Kumar Gupta* v. *Essar Steel (India) Ltd*. and others decided on March 8, 2019 whereby the resolution plan was approved with certain direction and condition and the same came to be approved also by the hon'ble National Company Law Appellate Tribunal in its decision of *Standard Chartered Bank and Satish Kumar Gupta* v. *Essar Steel (India) Ltd*. while deciding the above stated I. A. No. 431 of 2018 that this Bench placed reliance on a recent decision of the hon'ble Supreme Court in the matter of *K. Sashidhar* v. *Indian Overseas Bank* [2019] 213 Comp Cas 356 (SC) (C. A. No. 10673 of 2018 with C. A. Nos. 10719 and 10971 of 2018 and S. L. P. (C) No. 29181 of 2018) and it was noted that, we being an Adjudicating Authority are having limited scope to suggest or recommend to the CoC but cannot have jurisdiction to make a judicial review of a commercial decision that may be taken by the CoC nor we can probe commercial wisdom. Hence, we are conscious enough that what is being suggested by the learned Member (Technical) in paragraph 24 of his judgment may be considered by the CoC in the light of the decision of the hon'ble Supreme Court in the matter of *K. Sashidhar* v. *Indian Overseas Bank* [2019] 213 Comp Cas 356 (SC). For the sake of convenience, the relevant portions of the apex court's decision are reproduced hereinbelow (page 398) :

> "Indubitably, the inquiry in such an appeal would be limited, to the power exercisable by the resolution professional under section 30(2) of the I and B Code or, at best, by the Adjudicating Authority (National Company Law Tribunal) under section 31(2) read with section 31(1) of the I and B Code. No other inquiry would be permissible. Further, the jurisdiction bestowed upon the Appellate Authority (National Company Law Appellate Tribunal) is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in section 61(3) of the I and B Code, which is limited to matters 'other than' enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. Thus, the prescribed authorities (National Company Law Tribunal/National Company Law Appellate Tribunal) have been endowed with limited jurisdiction as specified in the I and B Code and not to act as a court of equity or exercise plenary powers.
>
> In our view, neither the Adjudicating Authority (National Company Law Tribunal) nor the Appellate Authority (National Company Law Appellate Tribunal) has been endowed with the jurisdiction to reverse the commercial wisdom of the dissenting financial creditors

and that too on the specious ground that it is only an opinion of the minority financial creditors. The fact that substantial or majority per cent. of the financial creditors have accorded approval to the resolution plan would be of no avail, unless the approval is by a vote of not less than 75 per cent. (after amendment of 2018 with effect from June 6, 2018, 66 per cent.) of voting share of the financial creditors. To put it differently, the action of liquidation process postulated in Chapter III of the I and B Code, is avoidable, only if approval of the resolution plan is by a vote of not less than 75 per cent. (as in October, 2017) of voting share of the financial creditors. Conversely, the legislative intent is to uphold the opinion or hypothesis of the minority dissenting financial creditors. That must prevail, if it is not less than the specified per cent. (25 per cent. in October, 2017 and now after the amendment with effect from June 6, 2018, 44 per cent.). The inevitable outcome of voting by not less than requisite per cent. of voting share of financial creditors to disapprove the proposed resolution plan, de jure, entails in its deemed rejection.

Notably, the threshold of voting share of the dissenting financial creditors for rejecting the resolution plan is way below the simple majority mark, namely not less than 25 per cent. (and even after amendment with effect from June 6, 2018, 44 per cent.). Thus, the scrutiny of the resolution plan is required to pass through the litmus test of not less than requisite (75 per cent. or 66 per cent. as may be applicable) of voting share a strict regime. That means the resolution plan must appear, to not less than requisite voting share of the financial creditors, to be an overall credible plan, capable of achieving time lines specified in the Code generally, assuring successful revival of the corporate debtor and disavowing endless speculation."

28 Hence, it is suggested that paragraph 24 of the judgment may be considered by the CoC in the light of aforesaid observation of the hon'ble Supreme Court in the matter of *K. Sashidhar* v. *Indian Overseas Bank* [2019] 213 Comp Cas 356 (SC).

29 With the aforesaid observation, I concur with the decision of the learned Member (Technical) for admission of the present IB petition.

30 Thus, the present IB petition stands admitted to initiate the corporate insolvency resolution process (CIRP) in respect of the corporate debtor-company.

[2020] 220 Comp Cas 546 (NCLAT)

[BEFORE THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL — NEW DELHI]

BIMALKUMAR MANUBHAI SAVALIA

v.

BANK OF INDIA AND ANOTHER

VENUGOPAL (M.) J. ***(Judicial Member)*, KANTHI NARAHARI** and **V. P. SINGH** ***(Technical Members)***

March 5, 2020.

HF ▶ Respondent

INSOLVENCY RESOLUTION—PETITION BY FINANCIAL CREDITOR—LIMITATION—CODE HAS OVERRIDING EFFECT ON OTHER LAWS—PROCEEDINGS INITIATED OR PENDING IN DEBTS RECOVERY TRIBUNAL CANNOT BE TAKEN INTO ACCOUNT FOR PURPOSES OF LIMITATION—ONE-TIME SETTLEMENT OFFER NOT ACCEPTED BY FINANCIAL CREDITOR AND CANNOT BE TREATED AS ACKNOWLEDGMENT—APPROPRIATION OF AMOUNT BY CREDITOR FROM GUARANTOR NOT TO EXTEND PERIOD OF LIMITATION—NO ACKNOWLEDGMENT ISSUED BY CORPORATE DEBTOR PRIOR TO EXPIRY OF 3 YEARS OR FROM DATE OF DEFAULT—PETITION FILED BY CREDITOR BEFORE ADJUDICATING AUTHORITY BEYOND PERIOD OF LIMITATION AND TO BE DISMISSED—INSOLVENCY AND BANKRUPTCY CODE, 2016, SS. 7, 238—LIMITATION ACT, 1963, S. 18, ART. 137.

A petition filed by the financial creditor under section 7 of the Insolvency and Bankruptcy Code, 2016 was admitted by the Adjudicating Authority finding it to be within limitation. The Adjudicating Authority observed that the date of mortgage in respect of the loan was November 18, 2010 and the proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 before the Debts Recovery Tribunal were started in 2017. The Authority also took note of a one-time settlement revised offer from Rs. 12 crores to Rs. 14.56 crores, by letter dated June 1, 2016 submitted by the corporate debtor to the financial creditor and that the credits had come to the loan account on March 31, 2017. The Adjudicating Authority held that the petition was within limitation taking into account the one-time settlement proposal dated June 1, 2016 and the amounts which had come from the guarantor into the loan account of the financial creditor on March 31, 2017. On appeal :

Held, *allowing the appeal, (i) that the proceedings under the 2002 Act and before the Debts Recovery Tribunal would not extend the period of limitation*

since those proceedings were independent and in terms of section 238 of the Code, the Code would have overriding effect on other laws. Therefore, the proceedings initiated or pending in the Debts Recovery Tribunal, either initiated under the 2002 Act or under the Recovery of Debts and Due to Banks and Financial Institutions Act, 1993 could not be taken into account for the purposes of limitation. The one-time settlement offer having not been accepted by the financial creditor, it could not be treated as an acknowledgment in view of section 18 of the Limitation Act, 1963. From the records it was seen that the debtor also made a prior proposal for settlement on April 28, 2016 and had used the words "without prejudice". The fact that second proposal did not contain those words would not make it an acknowledge for the purpose of limitation.

(ii) That appropriation of the amount by the creditor from the guarantor would not extend the period of limitation as article 137 of the 1963 Act would apply to the applications filed under sections 7 and 9 of the Code.

(iii) That the application under section 17 of the 2002 Act could not be treated as an acknowledgment for the purposes of limitation as the debtor had taken the technical ground that the notices was not served on all the borrower in terms of section 13(2) of the 2002 Act and also taken various other objections. Therefore, it could not be presumed that there was an acknowledgment by the debtor to the creditor.

(iv) That there was no acknowledgment issued by the corporate debtor prior to expiry of 3 years or from the date of default. Therefore, the petition filed by the creditor before the Adjudicating Authority on August 30, 2018 was beyond the period of limitation. The order passed by the Adjudicating Authority was to be quashed and set aside. [The matter was remitted back to the Adjudicating Authority to decide the fee and costs of the corporate insolvency resolution process payable to the interim resolution professional which were to be borne by the financial creditor.]

B. K. Educational Services P. Ltd. *v.* Parag Gupta and Associates [2019] 212 Comp Cas 1 (SC) *relied on*.

Order of the National Company Law Tribunal in Bank of India *v.* Radheshyam Agro Products P. Ltd. [2020] 220 Comp Cas 535 (NCLT) *set aside.*

Cases referred to :

B. K. Educational Services P. Ltd. *v.* Parag Gupta and Associates [2019] 212 Comp Cas 1 (SC) (paras 7, 13, 14)

Bank of India *v.* Radheshyam Agro Products P. Ltd. [2020] 220 Comp Cas 535 (NCLT) (para 1)

Gaurav Hargovindbhai Dave *v.* Asset Reconstruction Co. (India) Ltd. [2019] 8 Comp Cas-OL 250 (SC) (para 14)

Jignesh Shah *v.* Union of India [2019] 217 Comp Cas 139 (SC) (para 14)

Shivkumar Reddy (C.) *v.* Dena Bank [2020] 9 Comp Cas-OL 339 (NCLAT) (para 14)

Company Appeal (AT) (Insolvency) No. 1166 of 2019.

Present but did not mark appearance for the appellant.

Ashish Rana and *Harshit Garg*, for respondent No. 1.

Ravi Raghunath, for respondent No. 2.

JUDGMENT

The judgment of the Appellate Tribunal was delivered by

1 KANTHI NARAHARI ***(Technical Member)***.—The appeal preferred by a shareholder and director of the corporate debtor i. e., M/s. Radheshyam Agro Products P. Ltd. challenging the order dated September 20, 2019—(*Bank of India* v. *Radheshyam Agro Products P. Ltd.* [2020] 220 Comp Cas 535 (NCLT)) passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad in C. P. (IB) No. 459/7/NCLT/AHM/2018.

2 The Adjudicating Authority admitted the application filed by respondent No. 1 herein in the capacity as financial creditor under section 7 of the Insolvency and Bankruptcy Code, 2016 (in short the "IBC") on the ground that the corporate debtor defaulted in payment of debt/loan facility availed of by the corporate debtor.

3 Learned counsel for the appellant submitted that the application filed by respondent No. 1 herein before the Adjudicating Authority was contested by filing objections to the said application and took a specific stand that the application filed by the financial creditor was time barred. He submits that the Adjudicating Authority admitted the application and initiated the corporate insolvency resolution process (in short the "CIRP") of the corporate debtor.

4 Learned counsel for the appellant submitted that the Adjudicating Authority did not consider the objections taken by the corporate debtor. Hence, the present appeal has been filed on the grounds as mentioned in appeal at paragraph 9.

5 Learned counsel for the first respondent filed reply affidavit to this appeal and vehemently opposed the grounds raised by the appellant that the application filed by them is time barred. He submits that though the

date of default was mentioned in statutory Form 1, as per the rules, shown as November 5, 2014. However, the application was filed before the Adjudicating Authority on August 30, 2018 is within limitation period for the reason that the corporate debtor issued a letter dated April 28, 2016 and the second letter on June 1, 2016 with regard to the settlement. He submitted that the letter dated April 28, 2016 was issued "without prejudice". However, in the second letter the word "without prejudice" was not used and therefore the letter dated June 1, 2016 can be treated as an acknowledgment of debt by the corporate debtor. Further the guarantor paid the amount of Rs. 1,26,619 and Rs. 1,28,645 by transferring the same to the account of the corporate debtor on April 1, 2017 in accordance with paragraph 6 of the deed of guarantee dated July 15, 2010 through the corporate debtor. In view of the deed of guarantee, executed by the guarantor on behalf of the corporate debtor, the transfer of amount can be treated as an acknowledgment for the purposes of limitation. In view of the aforesaid reasons, the application filed on August 30, 2018 is within limitation taking into account the settlement letter dated June 1, 2016 issued by the corporate debtor.

Heard learned counsel for the respective parties, perused the documents and pleadings filed in their support. The main ground taken by the appellant is with regard to the application filed by the first respondent under section 7 of the IBC is time barred. Since the point of limitation is a mixed question of law and fact, we deal with the same, apart from other, points raised by the appellant in the appeal. **6**

We have perused Form 1, a statutory form to be filed under section 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Part IV of the Form, the particulars of the financial debt has been given and the debt and default has been mentioned as on November 5, 2014. It is an admitted fact that the application under section 7 of the IBC filed by respondent No. 1 herein on August 30, 2018. We have to see whether the application filed on August 30, 2018 is within limitation period in view of article 137 of the Limitation Act, 1963 which is applicable to application under sections 7 and 9 of the IBC as held by the hon'ble Supreme Court in *B. K. Educational Services P. Ltd.* v. *Parag Gupta and Associates* (passed in Civil Appeal No. 23988 of 2017 reported in) [2019] 212 Comp Cas 1 (SC) ; [2019] 11 SCC 633. **7**

We have to go by the judgment of the hon'ble Supreme Court in strict sense and to see whether the application filed under section 7 of the IBC by the financial creditor is within limitation or not. The Adjudicating **8**

Authority, after hearing the parties observed as under (page 541 of 220 Comp Cas) :

"19.2 The CD has defaulted in making repayment of loan/CC to the petitioner-bank and the date of default is January 5, 2014. The statement of accounts and the CIBIL reports submitted by the applicant-bank confirm the default committed by the corporate debtor.

19.3 The petitioner-bank has filed the petition within the period of limitation, as the date of mortgage of the property is November 18, 2010, SARFAESI proceeding initiated in 2014, the Debts Recovery Tribunal proceedings started in 2017, one-time settlement (OTS) revised offer (from Rs. 12.00 crores to Rs. 14.56 crores) letter dated June 1, 2016 was submitted by the corporate debtor to the applicant-bank and the credits have come into the loan accounts on March 31, 2017.

19.4 The present IB petition is filed by duly authorised official of the petitioner-bank in a prescribed format under section 7 of the I and B Code annexing copies of loan documents confirming the existence of debt default and proposed a name of the resolution professional to act as an interim resolution professional (IRP).

20. Considering the material, papers filed by the petitioner-bank and the facts mentioned in paragraph Nos. 19, 19.1, 19.2, 19.3, 19.4 this Adjudicating Authority is satisfied that,—

(a) The corporate debtor availed of the loan/cash credit from the petitioner.

(b) existence of debt above rupees one lakh ;

(c) debt is due ;

(d) default has occurred on November 5, 2014 ;

(e) petition had been filed within the limitation period ;

(f) copy of the application filed before the Tribunal has been sent to the corporate debtor and the application filed by the petitioner-bank under section 7 of the IBC is found to be complete for the purpose of initiation of the corporate insolvency resolution process against the corporate debtor-company.

Hence, the present IB petition is admitted with the following directions/observations. The date of admission of this petition is September 20, 2019."

9 With regard to the limitation, the Adjudicating Authority observed that the date of mortgage is November 18, 2010. The Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (in short the "SARFAESI Act") and the Debts Recovery Tribunal (in

short "DRT") started in 2017, one-time settlement (in short "OTS") revised offer from Rs. 12 crores to Rs. 14.56 cores, vide letter dated June 1, 2016 was submitted by the corporate debtor to the financial creditor-bank and the credits have come to the loan account on March 31, 2017. The Adjudicating Authority, by observing above, held that the application is within limitation taking into account the OTS proposal dated June 1, 2016 and the amounts which have come from the guarantor into the loan account of the financial creditor on March 31, 2017. We are of the view that the SARFAESI and the Debts Recovery Tribunal proceeding will not extend the period of limitation since those proceedings are independent and as per section 238 of the IBC, the Insolvency and Bankruptcy Code is a complete code and will have overriding effect on other laws. Therefore, the proceedings initiated or pending in the Debts Recovery Tribunal, either initiated under the SARFAESI or under debts and due to banks and financial institutions cannot be taken into account for the purposes of limitation. The OTS was not accepted by the first respondent/the financial creditor, therefore, the same cannot be treated as an acknowledgment in view of section 18 of the Limitation Act, 1963. From the records it is seen that the appellant also made OTS proposal on April 28, 2016 prior to the OTS proposal, i. e., June 1, 2016. However, it is stated that first OTS offer was given by the appellant by using the words as "without prejudice". However, it is contended by respondent No. 1 herein, that in the OTS proposal dated June 1, 2016 there is no use of word "without prejudice". Therefore, the second OTS proposal dated June 1, 2016 can be treated as an acknowledgment for the purpose of limitation. However, we are not inclined to accept such submission made by learned counsel for respondent No. 1 herein.

Learned counsel for respondent No. 1 further submitted that the guarantors have transferred the amount of Rs. 1,26,619 and Rs. 1,28,654 to the account of the corporate debtor on April 1, 2017, therefore the period of limitation is to be counted from April 1, 2017. It is the argument of learned counsel for the appellant that the amounts have been appropriated by respondent No. 1 and therefore, appropriation of the amount by respondent No. 1 herein from the guarantor will not extend the period of limitation. In this regard, section 19 of the Limitation Act need to be referred : **10**

> "Section 19 in the Limitation Act, 1963
>
> 19. *Effect of payment on account of debt or of interest on legacy*.— Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this

behalf, a fresh period of limitation shall be computed from the time when the payment was made :

Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment :

Explanation.—For the purposes of this section,—

(a) where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment ;

(b) 'debt' does not include money payable under a decree or order of a court."

11 It is to be seen that article 19 of the Limitation Act will fall under the category of first division of Schedule which applies to the suits. However, section 7 of the IBC is not a suit and as held by the hon'ble Supreme Court, section 7 is an application under the IBC which falls under the category of application in paragraph II of third division. Therefore, the hon'ble Supreme Court held that article 137 will apply to the applications filed under sections 7 and 9 of the IBC. Therefore, the stand of respondent No. 1 that the period of limitation will get extended from the date of payment of amount by the guarantor on April 1, 2017 cannot be a ground and the limitation will not get extended. Therefore, the submission made by respondent No. 1 is negated.

12 Learned counsel for respondent No. 1 also taken a stand that the appellant filed an application under section 17 of the SARFAESI Act wherein the appellant admitted the fact of taking loan and failed to repay the same. Therefore, he submits that the same acts as an acknowledgment for the purposes of limitation.

13 We have perused the application filed by the appellant before the Debts Recovery Tribunal, Ahmedabad and at page 25 of the reply filed by respondent No. 1, sub-paragraph 2 of paragraph 5 that "the respondent-bank states that the principal company had availed of various facilities from the respondent-bank". Further respondent No. 2 sanctioned the said facilities towards hypothecation, mortgage of movable and immovable properties owned by the borrower guarantor, mortgager as per respondent No. 1. In the grounds of the application, the applicant (the appellant herein) has taken the technical grounds that the notices have not been served on all the borrower as per section 13(2) of the SARFAESI Act and also taken various other objections which cannot be presumed that there is

an acknowledgment by the appellant herein to the bank. Therefore, even on this count, respondent No. 1 failed to establish the application filed within the period of limitation. In view of the judgment of the hon'ble Supreme Court in the matter of *B. K. Educational Services P. Ltd.* v. *Parag Gupta and Associates* [2019] 212 Comp Cas 1 (SC) ; [2019] 11 SCC 633, we are of the view that the application is barred by limitation.

14 As a beneficial reference, this Tribunal in the matter of *C. Shivkumar Reddy* v. *Dena Bank* [2020] 9 Comp Cas-OL 339 (NCLAT) in Company Appeal (AT) (Insolvency) No. 407 of 2019 dated December 18, 2019, after considering the judgment of the hon'ble Supreme Court, in the matter of *Jignesh Shah* v. *Union of India* reported in [2019] 217 Comp Cas 139 (SC) ; MANU/SC/1319/2019 ; [2019] SCC Online SC 1254 and *Gaurav Hargovindbhai Dave* v. *Asset Reconstruction Co. (India) Ltd.* [2019] 8 Comp Cas-OL 250 (SC) in Civil Appeal No. 4952 of 2019 and *B. K. Educational Services P. Ltd.* v. *Parag Gupta and Associates* passed in Civil Appeal No. 23988 of 2017 reported in [2019] 212 Comp Cas 1 (SC) ; [2019] 11 SCC 633 held in paragraph 7 as under (page 343 of 9 Comp Cas-OL) :

> "There is nothing on record to suggest that the 'corporate debtor' or its authorised representative by its signature has accepted or acknowledged the debt within 3 years from the date of default or from the date when account was declared NPA i. e., on December 31, 2013."

15 In the present case as held supra, there is no acknowledgment issued by the appellant/corporate debtor prior to expiry of 3 years or from the date of default. Therefore, the application filed by the first respondent before the Adjudicating Authority on August 30, 2018 is beyond the period of limitation.

16 For the aforesaid reasons and relying on the judgment of the hon'ble Supreme Court, as stated above, the appeal is allowed and the impugned order passed by the Adjudicating Authority dated September 20, 2019 is quashed and set aside.

17 In the result, the corporate debtor is released from the rigor of the corporate insolvency resolution process and action taken by the IRP/RP and the committee of creditor, if any, in view of the impugned order set aside. The IRP/RP will hand back the records and management of the corporate debtor to the promoter's/directors of the corporate debtor.

18 The matter is remitted back to the Adjudicating Authority to decide the fee and costs of the "corporate insolvency resolution process" payable to the IRP/RP which shall be borne by the Bank of India.

No order as to costs.

[2020] 220 Comp Cas 554 (NCLT)

[BEFORE THE NATIONAL COMPANY LAW TRIBUNAL — MUMBAI BENCH]

BANK OF INDIA[1]

v.

TD TOLL ROAD P. LTD.

SUCHITRA KANUPARTHI *(Judicial Member)* and
V. NALLASENAPATHY *(Technical Member)*

November 25, 2019.

HF ▶ Petitioner

INSOLVENCY RESOLUTION—PETITION BY FINANCIAL CREDITOR—LOAN GRANTED BY CONSORTIUM OF BANKS—AGREEMENT ENVISAGING MECHANISM TO JOINTLY ENFORCE LOAN AS CONSORTIUM—NOT TO OVERRIDE PROVISIONS OF CODE—CREDITOR HAD NOT WAIVED ITS STATUTORY RIGHTS—PETITION BY ONE OF CREDITORS—CORPORATE DEBTOR CANNOT CHALLENGE PETITION ON THIS GROUND—DEBT AND DEFAULT ESTABLISHED—PETITION ADMITTED—INSOLVENCY AND BANKRUPTCY CODE, 2016, SS. 7, 238.

The financial creditor which had provided financial facilities to the corporate debtor along with a consortium of banks, filed a petition under section 7 of the Insolvency and Bankruptcy Code, 2016 on the ground that the debtor had failed to repay the amount due. The corporate debtor, inter alia, contended that the consortium members had entered into an inter-creditor agreement recognising the fact that one consortium member could by its unguided action, cause irreparable damage to the interest of entire consortium and that the transaction document permitted the member of the consortium to take any action pursuant to any alleged default collectively and not individually as had been done by the creditor :

Held, *admitting the petition, that the creditor had established debt and default beyond doubt as provided under section 7 of the Code. Under section 238 of the Code the provisions of the Code shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. In view of the overriding effect of the Code, the inter-creditor agreement that had been entered between the consortium members would not come in the way of admission of the petition under section 7 of the Code when the debt and default were proved beyond doubt. The creditor having consented and*

1. This order has been affirmed by the National Company Law Appellate Tribunal : see [2020] 220 Comp Cas 562 (NCLAT) *infra*.—Ed.

executed the inter-creditor agreement had not waived its statutory rights by a contractual agreement, but had only envisaged a mechanism to jointly enforce the loan as a consortium. The petition was to be admitted.

INNOVENTIVE INDUSTRIES LTD. *v.* ICICI BANK [2017] 205 Comp Cas 57 (SC) (paras 11, 12) *referred to.*

C. P. (IB) No. 2803/MB/2019.

Vijay Hinge, Ravi Chandran and *Deepti B. Mistry*, for the petitioner.

D. J. Kakalia, Sarosh Bharucha and *Raghavi Sharma*, for the respondent.

ORDER

The order of the Bench was delivered by

V. NALLASENAPATHY ***(Technical Member)***.—Bank of India (hereinafter called the "petitioner") has sought the corporate insolvency resolution process of TD Toll Road P. Ltd. (hereinafter called the "corporate debtor") on the ground, that the corporate debtor committed default on July 16, 2019 to the extent of Rs. 21,68,44,477 as provided under section 7 of the Insolvency and Bankruptcy Code, 2016 (hereafter called the "Code") read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. 1

The corporate debtor is a special purpose vehicle set up by Reliance Infrastructure Ltd., for the purpose of executing the project awarded to it by the National Highways Authority of India for four laning of Trichy-Dindigul Road in Tamil Nadu. 2

For execution of the said project, the corporate debtor approached the petitioner and other lenders for a rupee loan. The corporate debtor, on March 28, 2018, executed a common rupee loan agreement with the petitioner along with the Canara Bank, Corporation Bank, India Infrastructure Finance Co. Ltd. (IIFCL), Oriental Bank of Commerce and UCO Bank with Canara Bank acting as the lender's agent and security trustee. 3

The following is break-up of the rupee loan provided by various financial creditors including the petitioner for an aggregate sum of Rs. 322.40 crores : 4

Bank of India (petitioner)-Rs. 25 crores

Canara Bank-Rs. 5.40 crores

Corporation Bank-Rs. 65 crores

IIFCL-Rs. 75 crores

Oriental Bank of Commerce-Rs. 32 crores

UCO Bank-Rs. 40 crores

5 The petitioner enclosed the following documents in respect of the above said facilities granted by the rupee lenders :

(a) Common loan agreement dated March 28, 2008,

(b) Security trustee agreement dated March 28, 2008,

(c) Deed of hypothecation dated March 28, 2008,

(d) Consent and agreement dated March 28, 2008,

(e) Escrow agreement dated April 16, 2008,

(f) Recall notice dated November 12, 2018 issued on behalf of the applicant,

(g) Certificate under the Bankers' Books Evidence Act, 1891,

(h) Certificate under section 2A(a) and (b) of the Bankers' Books of Evidence Act, 1891 dated July 17, 2019.

6 The petitioner enclosed the statement of loan account of the corporate debtor which shows that a sum of Rs. 21,68,44,477 is due from the corporate debtor as claimed in the petition.

7 The petitioner issued a notice on November 12, 2018 recalling the financial assistance granted to the corporate debtor and requiring to make the payment of due of Rs. 20,96,46,823. The said notice specifies that the date of classifying the account as non-performing asset as October 29, 2018.

8 The above facts clearly reveal that the corporate debtor defaulted in making payment of the debt due to the petitioner and counsel for the corporate debtor fairly agreed that the corporate debtor committed default. However, counsel for the corporate debtor raised the following contentions :

(a) The corporate debtor faced many difficulties in implementing the project due to which there is serious cash flow mismatch against the ballooning repayments towards the debt advanced by the lenders under the consortium loan agreement (CLA).

(b) The corporate debtor as provided under the RBI Circulars dated February 12, 2018 and modification dated June 7, 2019 is entitled to restructure the loan and accordingly on August 13, 2018 proposed a resolution plan to the lenders, the lenders appointed Ernst and Young Merchant Banking Services to study the techno-economic viability of the project. The picture emerging from the meetings held by the corporate debtor with the lenders was that the party would jointly discuss and arrive at a resolution plan but all on a sudden, the petitioner belying hopes of the corporate debtor filed this petition.

(c) The consortium members have entered into an inter-creditor agreement recognising the fact that one consortium member, can by its

unguided action, cause irreparable damage to the interest of entire consortium. The transaction document permits the member of the consortium to take any action pursuant to any alleged default collectively and not individually as has been done by the petitioner herein.

(d) The corporate debtor cited the following provisions of the document in support of its contention that single member of the consortium cannot bring action against the corporate debtor independently :

(i) Clauses 7.2 and 7.3 of the common loan agreement provides for the actions that may be taken by the "rupee lenders" (as distinct from a rupee lender acting singly) upon the occurrence of an event of default.

(ii) Clause 2.4 of the inter-creditor agreement provides that all the rupee lenders will consult with one another with respect to any action taken or proposed to be taken which could affect, inter alia, the project, the corporate debtor or the security.

(iii) Clause 4.3(a) of the inter-creditor agreement provides that in the event of occurrence of an event of default, the rupee lenders shall have the right to proceed to enforce their claims against the corporate debtor but not before following the procedure prescribed in clause 4.3(b) of the inter-creditor agreement.

(iv) Clause 4.3(b) of the inter-creditor agreement provides for the procedure to be followed by a rupee lender intending to take any enforcement action against the corporate debtor. The procedure includes the issuance of a notice to all the other rupee lenders by the rupee lenders proposing to initiate the enforcement action, convening a meeting of all the rupee lenders and obtaining the approval of rupee lenders holding more than 75 per cent. of the then outstanding amounts. The procedure contemplated under clause 4.3(b) has admittedly not been followed.

(v) Clause 4.4 of the inter-creditor agreement (specifically sub-clauses (a), (b) and (g)) which specifically precludes a rupee lender from, inter alia, accelerating the facilities advanced and taking any action for the winding up, liquidation, insolvency, dissolution of the corporate debtor or any analogous action without following the procedure prescribed under the inter-creditor agreement.

(e) The filing of this draconian proceeding before the National Company Law Tribunal is expressly barred by the transaction document, the petitioner cannot contend that the petition under section 7 is outside the sweep of the classes cited supra, and it would be not only contrary to the express terms of the transaction document but would also illogical to the point of being legally absurd.

(f) Clause 4.4(g) of the transaction document specifically prohibits any action for the winding up, liquidation, official management, receivership, bankruptcy, insolvency or dissolution of the borrower or any analogous process by a single member of the consortium.

(g) The petitioner herein is a signatory to the transaction document and acted contrary to the express provisions therein.

(h) The petitioner has initiated the present proceedings without the consent of other members of the consortium and in the midst of formulating the resolution plan by the members of the consortium to recover their dues.

(i) Even though, the petitioner has statutory right to file petition under section 7, that right is subservient to the contractual clauses contained in the inter-creditor agreement despite the fact that the corporate debtor is not a party to the inter-creditor agreement.

(j) The petitioner refused to co-operate with the other members of the consortium and the corporate debtor and has taken this extreme step of putting the company under CIRP, whereas the other members of the consortium acknowledged the difficulties of the corporate debtor and tried to work out the solution to resolve the problem in accordance with the inter-creditor agreement wherein the ways and means of solving the problem is carved in.

(k) Since, section 12A of the Code provides for the withdrawal of the petition with the approval of 90 per cent. voting share of CoC, this Tribunal can seek the views of the other consortium members before admission of this petition more particularly when the other consortium members have consented to evaluate and implement the resolution plan.

(l) Even the object of the Code is to bring about the resolution of stressed assets in a time bound manner for maximization of value of such assets and to promote entrepreneurship, availability of credit and to balance the interest of all stakeholders. The action of the petitioner in filing this petition is itself contrary to the Code when the other consortium members are ready to resolve this issue by a resolution known to the RBI Regulations.

(m) Relying on the newspaper report dated September 16, 2019 wherein the chairman of State Bank of India, Mr. Rajnish Kumar, who has cautioned the lenders against undertaking selfish steps without coordinating with other creditors involving a common borrower, counsel for the corporate debtor submits that the petitioner herein is doing the exact thing that is complained of by the chairman of the largest bank in India.

(n) Further relying on the newspaper report dated September 12, 2019, wherein the hon'ble Minister of State for Finance Mr. Anurag Thakur asked the banks not to use the IBC for every stressed asset but refer such matters to the National Company Law Tribunal only when the resolution mechanism fails, counsel for the corporate debtor submits that this should be considered by the National Company Law Tribunal in this case where the resolution plan under RBI norms is under the active consideration of other members of the consortium.

(o) In the abovesaid circumstances, it would be equitable to allow the CIRP to be commenced against the corporate debtor.

Heard both the sides. This Bench has gone through the reply and written submissions filed by the corporate debtor. **9**

It is not the case of the corporate debtor that there is no default, but they are submitting that right of the petitioner to bring action under the Code is subject to and controlled by inter-creditor agreement wherein the creditors has set out certain procedures before taking any action. In a nutshell, the corporate debtor is trying to say that the Code is subservient to the inter-creditor agreement, comply with the conditions in the inter-creditor agreement and ignore the Code at least for the time being. **10**

The above contentions of the corporate debtor cannot be taken into account while considering the petition for admission under section 7 of the Code, in view of the decision of the hon'ble Supreme Court of India in the case *Innoventive Industries Ltd.* v. *ICICI Bank* [2017] 205 Comp Cas 57 (SC) ; [2018] 1 SCC 407 wherein it was observed as below (page 87 of 205 Comp Cas) : **11**

> "When it comes to a financial creditor triggering the process, section 7 becomes relevant. Under the *Explanation* to section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor—it need not be a debt owed to the applicant financial creditor. Under section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 Parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under rule 4(3), the applicant is to dispatch a copy of the application filed

with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the 'debt', which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."

12 The issue raised by the corporate debtor in the reply as stated above cannot come in the way of admission of this petition in view of the fact that the petitioner has established debt and default beyond doubt as provided under section 7 of the Code and in the light of law laid down by the hon'ble Supreme Court in *Innoventive Industries Ltd.* v. *ICICI Bank* [2017] 205 Comp Cas 57 (SC) ; [2018] 1 SCC 407 case mentioned supra.

13 Further, section 238 of the Insolvency and Bankruptcy Code, 2016 provides that the provision of this code shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. In view of the overriding effect of the Code, the inter-creditor agreement that has been entered between the consortium members, at no stretch of imagination, will come in the way of admission of the petition under section 7 of the Code when debt and default is proved beyond doubt. The petitioner having consented and executed the inter-creditor agreement has not waived its statutory rights by a contractual agreement, but have only envisaged a mechanism/procedure to jointly enforce the loan as a consortium.

14 This Adjudicating Authority, on perusal of the documents filed by the petitioner, is of the view that the corporate debtor defaulted in repaying the loan availed of and also placed the name of the insolvency resolution professional to act as the interim resolution professional and there being no disciplinary proceedings pending against the proposed resolution

professional, therefore the application under sub-section (2) of section 7 is taken as complete, accordingly this Bench hereby admits this petition, prohibiting all of the following of item I, namely :

(I)(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, Tribunal, arbitration panel or other authority ;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein ;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) ;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(II) That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(III) That the provisions of sub-section (1) of section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(IV) That the order of moratorium shall have effect from November 25, 2019 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of the corporate debtor under section 33, as the case may be.

(V) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

(VI) That this Bench hereby appoints Mr. S. Rajendran, having office at No. 188/87, 2nd Floor, Evalappan Mansion, Habibullah Road, T. Nagar, Chennai-600 017, having e-mail id : *cs.srajendran.associates@gmail.com*, having Registration No. IBBI/IPA-002/IP-N00098/2017-2018/10241 as the interim resolution professional to carry the functions as mentioned under the Insolvency and Bankruptcy Code.

The registry is hereby directed to communicate this order to both the parties and the interim resolution professional immediately. **15**

[2020] 220 Comp Cas 562 (NCLAT)

[BEFORE THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL — NEW DELHI]

AMITABH KUMAR JHA

v.

BANK OF INDIA AND ANOTHER

BANSI LAL BHAT, VENUGOPAL (M.) JJ. ***(Judicial Members)*** and **V. P. SINGH *(Technical Member)***

May 22, 2020.

HF ▶ Respondent

INSOLVENCY RESOLUTION—PETITION BY FINANCIAL CREDITOR—LOAN GRANTED BY CONSORTIUM OF BANKS—AGREEMENT ENVISAGING MECHANISM TO JOINTLY ENFORCE LOAN AS CONSORTIUM—STATUTORY RIGHT UNDER SECTION 7 OF CODE CANNOT BE CURTAILED OR MADE SUBSERVIENT TO ANY INTER-CREDITOR AGREEMENT—PETITION BY ONE OF CREDITORS—OTHER BANKS IN CONSORTIUM NOT OBJECTING TO CREDITOR'S PETITION—DEBT AND DEFAULT ADMITTED—ADMISSION OF PETITION AFFIRMED—INSOLVENCY AND BANKRUPTCY CODE, 2016, S. 7.

The statutory right under section 7 of the Insolvency and Bankruptcy Code, 2016 cannot be curtailed or made subservient to any inter-creditor agreement. Contractual rights, unless recognised by the statute as a permissible mode, cannot override the statutory mechanism and right created and enforceable under the statute.

On an appeal against the order of the Adjudicating Authority admitting the petition filed by the financial creditor under section 7 of the Code :

Held, *dismissing the appeal, (i) that the existence of a financial debt and its default on the part of the corporate debtor were admitted. The debtor was merely relying upon the financing documents including the common rupee loan agreement, security trustee agreement and inter-creditor agreement to assail the admission order notwithstanding the fact that neither the claim was barred by law nor did such financing documents clothe the corporate debtor with a right to disentitle the financial creditor from enforcing its claim, in its individual capacity, despite being a member of the consortium of lenders. The debtor was making a vain bid to get out of the rigours of its liability in terms of the loan documents sanctioning the loan and giving rise to contractual liability as against it on the basis of an inter-creditor agreement, to which admittedly it was not a party. What transpired among the creditors in regard to the inter-creditor agreement was a matter exclusively inter se the creditors.*

The debtor had no locus to meddle with the internal arrangement and affairs of the creditors in regard to their joint or individual interests. The consortium of lenders had supported the action taken by the financial creditor to initiate the corporate insolvency resolution process. None of the members of the consortium of lenders had taken exception to enforcement of individual rights by the creditor in regard to the financial debt payable to it and to the extent of its interest.

(ii) That the language employed in clause 2.2 of the common rupee loan agreement was clear enough to hold that each lender who was a member of the consortium could separately enforce its rights and no rupee lender having separate and independent rights would be responsible for the obligations of any other rupee lender. The clauses in the inter-creditor agreement would not supersede the rights and obligations of rupee lenders in their independent capacity. This was further reinforced by clause 1.3 of the inter-creditor agreement which unambiguous terms stated that the inter-creditor agreement would not in any manner alter, modify or impair any of the rights vesting in the rupee lenders against the borrower under the finance documents. Therefore, the financing documents did not in any manner curtail or limit the rights of the financial creditor in its individual capacity to enforce its rights against the corporate debtor in regard to the financial debt which was payable in law and in fact and in respect whereof default as alleged was not disputed.

Order of the National Company Law Tribunal in BANK OF INDIA *v.* TD TOLL ROAD P. LTD. [2020] 220 Comp Cas 554 (NCLT) *affirmed*.

BANK OF INDIA *v.* TD TOLL ROAD P. LTD. [2020] 220 Comp Cas 554 (NCLT) (para 1) *and* INNOVENTIVE INDUSTRIES LTD. *v.* ICICI BANK [2017] 205 Comp Cas 57 (SC) (para 2) *referred to*.

Company Appeal (AT) (Insolvency) No. 1392 of 2019.

Krishnendu Datta, ***Nikhil Chawla***, ***Aditya Panda*** and ***Jaydeep Krol***, for the appellant.

Anant A. Pavgi and ***Siddhartha Nagpal***, Advocates for the IRP.

Abhishek Singh and ***J. Amal Anand*** for Banks.

I. P. S. Oberoi, Advocate for respondent No. 1.

D. Lalitha and ***Deepak***, Advocates.

JUDGMENT

The judgment of the Appellate Tribunal was delivered by

BANSI LAL BHAT J. ***(Judicial Member)***.—Through the medium of this appeal, Sh. Amitabh Kumar Jha, the director of "TD Toll Road P. Ltd."-(the "corporate debtor") seeks to assail the impugned order dated November 1

25, 2019—(*Bank of India* v. *TD Toll Road P. Ltd.* [2020] 220 Comp Cas 554 (NCLT)) passed in C. P. (IB) No. 2803/MB/2019 by virtue whereof the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai admitted the application under section 7 of the Insolvency and Bankruptcy Code, 2016 (the "I and B Code" for short) filed by the "Bank of India" (the "financial creditor") slapping moratorium on the "corporate debtor" besides appointing the "interim resolution professional". The impugned order is challenged primarily on the ground that the admission of application by the Adjudicating Authority has unjustly tilted the balance in favour of the "financial creditor" to the detriment of all other stakeholders which is designed to defeat the object of the "I and B Code".

2 For appreciating the issue raised in this appeal, a brief reference to the factual matrix of the case is inevitable. The "financial creditor"-"Bank of India" approached the Adjudicating Authority with an application under section 7 of the "I and B Code" seeking initiation of the "corporate insolvency resolution process" on the ground that the "corporate debtor" committed default on July 16, 2019 to the extent of Rs. 21,68,44,477. It was asserted in the application that the "corporate debtor" is a special purpose vehicle setup by "Reliance Infrastructure Ltd." for the purpose of executing the project awarded to it by the "National Highways Authority of India" for four laning of Trichy-Dindigul Road in Tamil Nadu. The "corporate debtor" approached the "financial creditor" besides other lenders for financial assistance. A common rupee loan agreement came to be executed by the "corporate debtor" along with "Canara Bank", "Corporation Bank", "India Infrastructure Finance Co. Ltd. (IIFCL)", "Oriental Bank of Commerce" and "UCO Bank" with "Canara Bank" acting as the lenders' agent and security trustee. The "financial creditor" i. e., "Bank of India" advanced loan of Rs. 25 crores to the "corporate debtor" with other lenders as members of consortium advancing different amounts. According to "Bank of India", the "corporate debtor" failed to clear the outstanding liability of Rs. 21,68,44,477, in respect whereof a demand notice was issued on November 12, 2018 specifying that the date of classifying the account as non-performing asset as October 29, 2018. It appears that the factum of default was not disputed by the "corporate debtor" before the Adjudicating Authority as emerges from paragraph 8 of the impugned order. However, the "corporate debtor" raised the contention before the Adjudicating Authority that since it had faced difficulties in implementing the project and was entitled to restructure the loan, it had proposed a resolution plan to the lenders who appointed "Ernst and Young Merchant Banking Service" to evaluate the same, but before the resolution plan could be

discussed, the "financial creditor"-"Bank of India" filed an application under section 7. It was contended that the consortium members have entered into an "inter-creditor agreement" in pursuance whereof no member of the consortium can take any action in respect of default individually and only a collective action is envisaged. The Adjudicating Authority, while brushing aside the argument that an "inter-creditor agreement" had an overriding effect and without its compliance no individual creditor could approach the Adjudicating Authority for triggering corporate insolvency resolution process, admitted the application in terms of the impugned order. The Adjudicating Authority appears to have been influenced by the decision of the hon'ble apex court in *Innoventive Industries Ltd.* v. *ICICI Bank* [2017] 205 Comp Cas 57 (SC) ; [2018] 1 SCC 407 in passing the impugned order. The Adjudicating Authority further observed that section 238 of the "I and B Code" provides overriding effect to the provisions of the Code and the "inter-creditor agreement" entered between the consortium members would not stand in the way of admission of the application under section 7 of the "I and B Code". It further observed that by consenting to and executing the "inter-creditor agreement" with other creditors, the "financial creditor" i. e., the "Bank of India" had not waived its statutory rights by a contractual agreement, but only envisaged a mechanism/procedure to jointly enforce the loan as a consortium. Thus, having been satisfied that there was a financial debt and the "corporate debtor" had committed default in respect of such debt payable under law, the Adjudicating Authority admitted the application in terms of the impugned order.

The limited issue arising for consideration is whether the "inter- creditor agreement" devising a mechanism for enforcement of rights qua the "corporate debtor" would bar an individual creditor from triggering corporate insolvency resolution process in the event of default qua outstanding liability in respect of its financial debt without the consent of other lenders forming the consortium of the same "corporate debtor". 3

It is contended on behalf of the appellant that the three contracts entered inter se the lenders including the "Bank of India" with the "corporate debtor" on March 28, 2008 were part of the same transaction. The consortium of six banks had advanced total amount of Rs. 322.40 crores to the "corporate debtor" in terms of financing documents, i. e., "common rupee loan agreement (CLA)", "security trustee agreement (STA)", "inter-creditor agreement (ICA)". It is submitted that the share of loan amount advanced by the "Bank of India" constituted only 7.75 per cent. of the consortium. It is further submitted that the CLA clearly specified that no 4

enforcement action will be taken without complying with the procedure laid down therein and since said procedure has not been complied with, "Bank of India" could not take enforcement action against the "corporate debtor".

5 Learned counsel for the appellant further submits that in view of the aforesaid, the debt was not due and payable in law or in fact. It is further submitted that the "corporate debtor" is a confirming party to the ICA and as CLA and ICA were entered into on the same day, these form part of the same transaction. Thus, the "corporate debtor" has a locus standi under the ICA. As regards the overriding effect of section 238 of the "I and B Code", it is submitted that the ICA only lays down a procedure to be followed before an application can be made by lender against the "corporate debtor" and does not in any manner take away the right of a single lender to approach the Adjudicating Authority. It is further submitted on behalf of the appellant that an arbitral award has been passed in favour of the "corporate debtor" as against NHAI and the same has been challenged. "Canara Bank", the lead bank of the consortium is said to have issued notice for a meeting of consortium and the "corporate debtor" is prepared to settle the dispute with all the lenders.

6 Per contra, it is submitted on behalf of the "financial creditor"- "Bank of India" that the "I and B Code" empowers a single "financial creditor" to initiate corporate insolvency resolution process, for which consent of other "financial creditors" is not required. It is submitted that since the factum of debt and default has not been disputed, the independent right of "Bank of India" as an individual lender to enforce its rights and seek triggering of corporate insolvency resolution process is not affected by the terms of the CLA.

7 It is further submitted by the "financial creditor" that the "corporate debtor" is not a party to the ICA and cannot derive any benefit therefrom.

8 The consortium of lenders has sought intervention. Written submissions have been filed to buttress the point that the "inter-creditor agreement" governs the inter se rights and duties of the consortium lenders and none of the consortium members have objected to filing of the section 7 petition against the "corporate debtor". The intervenors submit that the appellant has no locus to raise an objection in this regard.

9 Having heard learned counsel for the parties including the intervenors, we find that existence of financial debt and its default on the part of the "corporate debtor" is not the issue in controversy as the same has admitted. The factum of the "corporate debtor" having obtained financial facility from the consortium of lenders including the "Bank of India", the "financial

creditor" and default on the part of the "corporate debtor" in discharging its liability do not form issue for consideration. It is also not in controversy that the financial debt in respect whereof the "financial creditor" herein sought triggering of the corporate insolvency resolution process is payable both in law as also in fact. The "corporate debtor" is merely banking upon the financing documents including the CLA, STA and ICA to assail the impugned order notwithstanding the fact that neither the claim is barred by law nor do such financing documents clothe the "corporate debtor" with a right to disentitle the "financial creditor" from enforcing its claim, in its individual capacity, despite being a member of the consortium of lenders. It is queer that the "corporate debtor" is making a vain bid to get out of the rigours of its liability in terms of the loan documents sanctioning the loan and giving rise to contractual liability as against it on the basis of an "inter-creditor agreement", to which admittedly it is not a party. It would be a travesty of justice to raise a plea that since the creditors has an inter se agreement in regard to enforcement of the liability of the debtor qua the creditor, an individual creditor should not be permitted to enforce its right arising under a contract in regard to discharge of liability for loan advanced by the creditor which is otherwise payable in law and not barred by any legal framework including the law of limitation. What transpires among the creditors in regard to the "inter-creditor agreement" is a matter exclusively inter se the creditors. The debtor has no locus to meddle with the internal arrangement and affairs of the creditors in regard to their joint or individual interests, more so when in the instant case the intervenors who are the consortium of lenders have supported the action taken by the "Bank of India" in triggering the corporate insolvency resolution process. None of the members of the consortium of lenders has taken exception to enforcement of individual rights by the "Bank of India" in regard to the financial debt payable to it and to the extent of its interest.

The statutory right across the ambit of section 7 of the "I and B Code" **10**
cannot be curtailed or made subservient to any "inter-creditor agreement". The contractual rights, unless recognised by the statute as a permissible mode, would not override the statutory mechanism and right created and enforceable under statute. This legal proposition appears to have been recognised in clause 2.2 of the "common rupee loan agreement", which is reproduced under :

> "2.2. *Nature of rights and obligations of rupee lenders*—
>
> The rights of each rupee lender under the finance documents are separate and independent. Any rupee lender may separately enforce any of its rights arising out of any finance documents. This agreement

will govern the right and obligation of the rupee lenders and the borrower and not the inter se relationship among the rupee lenders.

The obligations of each of the rupee lenders hereunder are several. No rupee lender shall be responsible for the obligations of any other rupee lender."

11 The language employed in this clause is eloquent enough to hold that each lender who is a member of the consortium may separately enforce its rights and no rupee lender having separate and independent rights shall be responsible for the obligations of any other rupee lender. The clauses in the "inter-creditor agreement" would not supersede the rights and obligations of rupee lenders in their independent capacity and this is further reinforced by clause 1.3 of the "inter-creditor agreement", which reads as under :

"1.3 *Rights against the borrower not affected*

Nothing in this agreement is intended or meant to alter, modify or impair any of the rights of any of the rupee lenders against the borrower under the finance documents."

The aforesaid clause 1.3 speaks in unambiguous terms that the "inter-creditor agreement" would not in any manner alter, modify or impair any of the rights vesting in the rupee lenders against the borrower under the finance documents. This leaves no room for the "corporate debtor" to contend that these financing documents do in any manner enure to the benefit of the "corporate debtor" who has absolutely no locus to raise an issue in this regard.

12 In view of the foregoing discussion, we are of the considered opinion that the issue raised in this appeal is devoid of merit. The financing documents do not in any manner curtail or limit the rights of the "financial creditor"-"Bank of India" in its individual capacity to enforce its rights against the "corporate debtor" in regard to the financial debt which is payable in law and in fact and in respect whereof default as alleged is not disputed.

The appeal is dismissed as being frivolous. However, in the circumstances of the case, we do not intend to impose any cost on the appellant.

End of Volume 220

8th April, 2020, while they are transacting any item only by postal ballot, up to 30th June 2020, or till further orders, whichever is earlier, the requirements provided in rule 20 the rules as well as the framework provided in General Circular No. 14/2020, dated 8th April, 2020[1] and this Circular would be applicable mutatis mutandis. The company would send notice by e-mail to all its shareholders who have registered their e-mail addresses with the company or depository participant/depository. The company would also be duty bound to provide a process of registration of e-mail addresses of members and state so in its public notice. The communication of the assent or dissent of the members would only take place through the remote e-voting system, as no meeting will be required to be called.

(iv) *Sending of e-mails by member, where a poll on any item is required for companies covered in paragraph 3B of General Circular No. 14/2020, dated 8th April, 2020* :—

Clarification has been sought as to whether the members are required to take part in the poll on items considered during the meeting by sending e-mails in advance to the company before the meeting is actually held through VC or OAVM facility. The matter has been examined and it is hereby clarified that sub-paragraph B-XII of paragraph 3 of General Circular No. 14/2020, dated 8th April, 2020 does not provide for polling by members at any time before the general meeting. The poll will take place during the meeting, and the members may convey their assent or dissent only at such stage on items considered in the meeting by sending e-mails to the designated e-mail address of the company, which was circulated by the company in the notice sent to the members.

2. This issues with the approval of the competent authority.

Yours faithfully,
K. M. S. Narayanan,
Assistant Director.
[F. No. 2/1/2020-CL-V]

[*Source : Issued by the Ministry of Corporate Affairs, New Delhi, dated 13th April, 2020.*]

1. See [2020] 220 Comp Cas (St.) 197.

VII

Circular No. 18/2020, dated 21st April, 2020.

To

All Regional Directors

All Registrar of Companies

All Stakeholders

Subject: **Holding of annual general meetings by companies whose financial year has ended on 31st December, 2019**

Sir/Madam,

Several representations have been received from stakeholders with regard to difficulty in holding annual general meetings (AGMs) for companies whose financial year ended on 31st December, 2019 due to COVID-19 related social distancing norms and consequential restrictions linked thereto. These representations have been examined and it is noted that the Companies Act, 2013 (Act) allows a company to hold its AGM within a period of six months (nine months in case of first AGM) from the closure of the financial year and not later than a period of 15 months from the date of last AGM.

2. On account of the difficulties highlighted above, it is hereby clarified that if the companies whose financial year (other than first financial year) has ended on 31st December, 2019, hold their AGM for such financial year within a period of nine months from the closure of the financial year (i. e., by 30th September, 2020), the same shall not be viewed as a violation. The references to due date of AGM or the date by which the AGM should have been held under the Act or the rules made thereunder shall be construed accordingly.

3. This issues with the approval of the competent authority.

Yours faithfully,

K. M. S. Narayanan,

Assistant Director.

[F. No. 2/4/2020-CL-V]

[*Source : Issued by the Ministry of Corporate Affairs, New Delhi, dated 21st April, 2020.*]

VIII

Circular No. 19/2020, dated 30th April, 2020.

To

All Regional Directors

All Registrar of Companies

All Stakeholders

Subject: **Extension of the last date of filing of Form NFRA-2—Regarding**

Sir,

In continuation of the Ministry's General Circular No. 7/2020, dated 5th March, 2020 and after due examination, it has been decided that the time limit for filing of Form No. NFRA-2, for the reporting period financial year 2018-19, will be 210 days from the date of deployment of this form on the website of National Financial Reporting Authority (NFRA).

2. This issues with the approval of competent authority.

Yours faithfully,

K. M. S. Narayanan,

Assistant Director (Policy).

[F. No. 7/39/2020-CL-I]

[*Source : Issued by the Ministry of Corporate Affairs, New Delhi, dated 30th April, 2020.*]

IX

Circular No. 20/2020, dated 5th May, 2020.

To

All Regional Directors

All Registrar of Companies

All Stakeholders

Subject: **Clarification on holding of annual general meeting (AGM) through video conferencing (VC) or other audio visual means (OAVM)**

Sir/Madam,

Several representations have been received in the Ministry for providing relaxations in the provisions of the Companies Act, 2013 (the Act) or rules made thereunder to allow companies to hold annual general meeting (AGM) in a manner similar to the one provided in General Circular No. 14/

2020, dated 8th April, 2020[1] (EGM Circular-I) and General Circular No. 17/2020, dated 13th April, 2020[2] (EGM Circular-II), which deal with conduct of extraordinary general meeting (EGM).

2. In the meanwhile, by virtue of General Circular No. 18/2020, dated 21st April, 2020[3], the companies whose financial year ended on 31st December, 2019, have been allowed to hold their AGM by 30th September, 2020.

3. The matter has been further examined and it is stated that in view of the continuing restrictions on the movement of persons at several places in the country, it has been decided that the companies be allowed to conduct their AGM through video conferencing (VC) or other audio visual means (OAVM), during the calendar year 2020, subject to the fulfilment of the following requirements :

A. *For companies which are required to provide the facility of e-voting under the Act, or any other company which has opted for such facility—*

(I) The framework provided in paragraph 3A of EGM Circular-I and the manner and mode of issuing notices provided in sub-paragraph (i)-A of EGM Circular-II shall be applicable mutatis mutandis for conducting the AGM.

(II) In such meetings, other than ordinary business, only those items of special business, which are considered to be unavoidable by the Board, may be transacted.

(III) In view of the prevailing situation, owing to the difficulties involved in dispatching of physical copies of the financial statements (including board's report, auditor's report or other documents required to be attached therewith), such statements shall be sent only by e-mail to the members, trustees for the debenture holder of any debentures issued by the company, and to all other persons so entitled.

(IV) Before sending the notices and copies of the financial statements, etc., a public notice by way of advertisement be published at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, preferably both newspapers having electronic editions, and specifying in the advertisement the following information :—

1. See [2020] 220 Comp Cas (St.) 197.
2. See [2020] 220 Comp Cas (St.) 206.
3. See [2020] 220 Comp Cas (St.) 210.

(a) statement that the AGM will be convened through VC or OAVM in compliance with applicable provisions of the Act read with this Circular ;

(b) the date and time of the AGM through VC or OAVM ;

(c) availability of notice of the meeting on the website of the company and the stock exchange, in case of a listed company ;

(d) the manner in which the members who are holding shares in physical form or who have not registered their e-mail addresses with the company can cast their vote through remote e-voting or through the e-voting system during the meeting ;

(e) the manner in which the persons who have not registered their e-mail addresses with the company can get the same registered with the company ;

(f) the manner in which the members can give their mandate for receiving dividends directly in their bank accounts through the electronic clearing service (ECS) or any other means ;

(g) any other detail considered necessary by the company.

(V) In case, the company is unable to pay the dividend to any shareholder by the electronic mode, due to non-availability of the details of the bank account, the company shall upon normalization of the postal services, dispatch the dividend warrant/cheque to such shareholder by post.

(VI) In case, the company has received the permission from the relevant authorities to conduct its AGM at its registered office, or at any other place as provided under section 96 of the Act, after following any advisories issued from such authorities, the company may in addition to holding such meeting with physical presence of some members, also provide the facility of VC or OAVM, so as to allow other members of the company to participate in such meeting. All members who are physically present in the meeting as well as the members who attend the meeting through the facility of VC or OAVM shall be reckoned for the purpose of quorum under section 103 of the Act. All resolutions shall continue to be passed through the facility of e-voting system.

B. *For companies which are not required to provide the facility of e-voting under the Act—*

(I) AGM may be conducted through the facility of VC or OAVM only by a company which has in its records, the e-mail addresses of at least half of its total number of members, who—

(a) in case of a Nidhi, hold shares of more than one thousand rupees in face value or more than one per cent. of the total paid-up share capital, whichever is less ;

(b) in case of other companies having share capital, who represent not less than seventy-five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting ;

(c) in case of companies not having share capital, who have the right to exercise not less than seventy-five per cent. of the total voting power exercisable at the meeting.

(II) The company shall take all necessary steps to register the e-mail addresses of all persons who have not registered their e-mail addresses with the company.

(III) The framework provided in paragraph 3B of EGM Circular-I and the manner and mode of issuing notices provided in sub-paragraph (i)B of EGM Circular-II shall be applicable mutatis mutandis for conducting the AGM.

(IV) In such meetings, other than ordinary business, only those items of special business, which are considered to be unavoidable by the Board, may be transacted.

(V) Owing to the difficulties involved in dispatching of physical copies of the financial statements (including board's report, auditor's report or other documents required to be attached therewith), such statements shall be sent only by e-mail to the members, trustees for the debenture holder of any debentures issued by the company, and to all other persons so entitled.

(VI) The companies shall make adequate provisions for allowing the members to give their mandate for receiving dividends directly in their bank accounts through the electronic clearing service (ECS) or any other means. For shareholders, whose bank accounts are not available, company shall upon normalization of the postal services, dispatch the dividend warrant/cheque to such shareholder by post.

4. The companies referred to in paragraphs 3(A) and (B) above, shall ensure that all other compliances associated with the provisions relating to general meetings, viz., making of disclosures, inspection of related documents/registers by members, or authorizations for voting by bodies corporate, etc., as provided in the Act and the articles of association of the company are made through electronic mode.

5. The companies which are not covered by General Circular No. 18/2020, dated 21st April, 2020 and are unable to conduct their AGM in accordance with the framework provided in this Circular are advised to prefer applications for extension of AGM at a suitable point of time before the concerned Registrar of Companies under section 96 of the Act.

6. This issues with the approval of the competent authority.

Yours faithfully,
Sridhar Pamarthi,
Joint Director.
[F. No. 2/24/2020-CL-V]

[*Source : Issued by the Ministry of Corporate Affairs, New Delhi, dated 5th May, 2020.*]

X

Circular No. 21/2020, dated 11th May, 2020.

To

All Regional Directors
All Registrar of Companies
All Stakeholders

Subject: **Clarification on dispatch of notice under section 62(2) of the Companies Act, 2013 by listed companies for rights issue opening up to 31st July, 2020**

Sir/Madam,

Several representations have been received in the Ministry for providing clarification on the mode of issue of notice referred to in section 62(1)(a)(i) of the Companies Act (the "Act") read with section 62(2) of the Act for rights issue by listed companies, in view of the difficulties faced by companies in sending notices through postal or courier services on account of the threat posed by COVID-19. The issues raised in the said representations have been examined. The Circular (Number SEBI/HO/CFD/DIL2/CIR/P/2020/78) issued by SEBI on 6th May, 2020[1] has also been considered.

2. In view of above and on account of the overall situation, it is hereby clarified that for rights issues opening up to 31st July, 2020, in case of listed companies, which comply with the aforementioned SEBI Circular dated 6th May, 2020, inability to dispatch the notice referred in paragraph 1 of this Circular to their shareholders through registered post or speed post or courier would not be viewed as violation of section 62(2) of the Act.

1. See [2020] 220 Comp Cas (St.) 1.

3. This issues with the approval of the competent authority.

Yours faithfully,
Atma Sah,
Deputy Director.
[F. No. 2/4/2020-CL-V]

[*Source : Issued by the Ministry of Corporate Affairs, New Delhi, dated 11th May, 2020.*]

XI

Circular No. 22/2020, dated 15th June, 2020.

To

All Regional Directors
All Registrar of Companies
All Stakeholders

Subject: **Clarification on passing of ordinary and special resolutions by companies under the Companies Act, 2013 read with rules made thereunder on account of COVID-19—Extension of time—Regarding**

Sir/Madam,

This Ministry has issued General Circular No. 14/2020, on 8th April, 2020[1] and General Circular No. 17/2020, on 13th April, 2020[2] for providing clarifications on passing of ordinary and special resolutions by companies by holding extraordinary general meetings (EGMs) through video conferencing (VC) or other audio visual means (OAVM) or passing of certain items only through postal ballot without convening general meeting. The framework provided in the said Circulars allows companies to hold relevant EGMs or transact relevant business through postal ballots, as per procedure specified therein, up to 30th June, 2020 or till further orders, whichever is earlier. Requests have been received from the stakeholders for extending the period up to which the framework provided in the aforesaid Circulars may be utilized by the companies.

2. The matter has been examined and it has been decided to allow companies to conduct their EGMs through VC or OAVM or transact items through postal ballot in accordance with the framework provided in the

1. See [2020] 220 Comp Cas (St.) 197.
2. See [2020] 220 Comp Cas (St.) 206.

aforesaid Circulars up to 30th September, 2020. All other requirements provided in the said Circulars remain unchanged.

3. This issues with the approval of the competent authority.

Yours faithfully,
K. M. S. Narayanan,
Assistant Director (Policy).
[F. No. 02/01/2020 CL-V]

[*Source : Issued by the Ministry of Corporate Affairs, New Delhi, dated 15th June, 2020.*]

XII

Circular No. 23/2020, dated 17th June, 2020.

To

All Regional Directors
All Registrar of Companies
All Stakeholders

Subject: **Scheme for relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013**

Sir/Madam,

The companies are required to file forms related to creation or modification of charges within the timelines provided in section 77 of the Companies Act, 2013 (Act), i. e., a total 120 days of the creation or modification of charge. In case, the company fails to register the charge within the period of thirty days referred to in sub-section (1) of section 77, the charge holder may file the form related to creation or modification of charges under section 78 of the Act, within the overall timelines for filing of such form under section 77.

2. On account of the pandemic caused by the COVID-19, representations have been received in this Ministry, requesting that the timelines related to filing of certain charge related forms may be suitably relaxed so as to provide a window of compliance for the registration of charges. Under the Companies Fresh Start Scheme, 2020 as laid out in General Circular No. 12/2020, dated 30th March, 2020[1], the benefit of waiver of additional fees was not extended to the charge related documents. Therefore, it has been suggested that some dispensation may be provided for filing of charge related documents as well.

1. See [2020] 220 Comp Cas (St.) 187.

3. In view of the above, the Central Government in exercise of its powers under section 460 read with section 403 of the Act and the Companies (Registration Offices and Fees) Rules, 2014 (Fees Rules) has decided to introduce a Scheme, namely "Scheme for relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013" for the purpose of condoning the delay in filing certain forms related to creation/modification of charges.

4. *The details of the scheme are as under :—*

(i) The scheme shall come into effect from the date of issue of this Circular.

(ii) *Applicability*.—The scheme shall be applicable in respect of filing of Form No. CHG-1 and Form No. CHG-9 (both referred as "form" or "forms") by a company or a charge holder, where the date of creation/ modification of charge :

(a) is before 1st March, 2020, but the timeline for filing such form had not expired under section 77 of the Act as on 1st March, 2020, or

(b) falls on any date between 1st March, 2020 to 30th September, 2020 (both dates inclusive).

(iii) *Relaxation of time* :

(a) In case a form is filed in respect of a situation covered under sub-paragraph (ii)(a) above, the period beginning from 1st March, 2020 and ending on 30th September, 2020 shall not be reckoned for the purpose of counting the number of days under section 77 or section 78 of the Act. In case, the form is not filed within such period, the first day after 29th February, 2020 shall be reckoned as 1st October, 2020 for the purpose of counting the number of days within which the form is required to be filed under section 77 or section 78 of the Act.

(b) In case a form is filed in respect of a situation covered under sub-paragraph (ii)(b) above, the period beginning from the date of creation/ modification of charge to 30th September, 2020 shall not be reckoned for the purpose of counting of days under section 77 or section 78 of the Act. In case, the form is not filed within such period, the first day after the date of creation/modification of charge shall be reckoned as 1st October, 2020 for the purpose of counting the number of days within which the form is required to be filed under section 77 or section 78 of the Act.

(iv) *Applicable fees :*

(a) In regard to sub-paragraph (iii)(a) above, if the form is filed on or before 30th September, 2020, the fees payable as on 29th February, 2020 under the Fees Rules for the said form shall be charged. If the form is filed

thereafter, the applicable fees shall be charged under the Fees Rules after adding the number of days beginning from 1st October, 2020 and ending on the date of filing plus the time period lapsed from the date of the creation of charge till 29th February, 2020.

(b) In regard to sub-paragraph (iii)(b) above, if the form is filed before 30th September, 2020, normal fees shall be payable under the Fees Rules. If the form is filed thereafter, the first day after the date of creation/ modification of charge shall be reckoned as 1st October, 2020 and the number of days till the date of filing of the form shall be counted accordingly for the purposes of payment of fees under the Fees Rules.

(v) *The Scheme shall not apply, in case :*

(a) The forms, i. e., CHG-1 and CHG-9 had already been filed before the date of issue of this Circular.

(b) The timeline for filing the form has already expired under section 77 or section 78 of the Act prior to 1st March, 2020.

(c) The timeline for filing the form expires at a future date, despite exclusion of the time provided in sub-paragraph (iii) above.

(d) Filing of Form CHG-4 for satisfaction of charges.

5. This issues with the approval of the competent authority.

Yours faithfully,
K. M. S. Narayanan,
Assistant Director (Policy).
[F. No. 02/05/2020-CL-V]

[*Source : Issued by the Ministry of Corporate Affairs, New Delhi, dated 17th June, 2020.*]

XIII

Circular No. 24/2020, dated 19th June, 2020.

To

All Regional Directors
All Registrar of Companies
All Stakeholders

Subject: **Clarification with regard to creation of deposit repayment reserve of 20 per cent. under section 73(2)(c) of the Companies Act, 2013 and to invest or deposit 15 per cent. of amount of debentures under rule 18 of the Companies (Share Capital and Debentures) Rules, 2014—COVID-19—Extension of time—Regarding**

Sir/Madam,

In continuation to General Circular No. 11/2020, dated 24th March, 2020[1] and keeping in view the requests received from various stakeholders seeking extension of time for compliance of the subject requirements on account of COVID-19, it has been decided to further extend the time in respect of matters referred to in paragraphs V, VI of the aforesaid circular, from 30th June 2020 to 30th September 2020. All other requirements shall remain unchanged.

2. This issues with the approval of the competent authority.

Yours faithfully,
K. M. S. Narayanan,
Assistant Director (Policy).
[F. No. 02/08/2020-CL-V]

[*Source : Issued by the Ministry of Corporate Affairs, New Delhi, dated 19th June, 2020.*]

Securities and Exchange Board of India (Regulatory Sandbox) (Amendment) Regulations, 2020

Notification No. SEBI/LAD-NRO/GN/2020/10, dated 17th April, 2020[2].

In exercise of the powers conferred by section 31 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) and section 25 of the Depositories Act, 1996 (22 of 1996), the Board hereby makes the following Regulations to further amend the Securities and Exchange Board of India (Stock Brokers) Regulations, 1992, the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992, the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, the Securities and Exchange Board of India (Underwriters) Regulations, 1993, the Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993, the Securities and Exchange Board of India (Bankers to an Issue) Regulations, 1994, the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, the Securities and Exchange Board of India (Custodian) Regulations, 1996, the Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999, the Securities and Exchange Board of India (Collective Investment Scheme) Regulations,

1. See [2020] 219 Comp Cas (St.) 61.
2. Gaz. of India, Extry. No. 152, dt. 17-4-2020, Pt. III, sec. 4, p. 16.

1999, the Securities and Exchange Board of India (Foreign Venture Capital Investor) Regulations, 2000, the Securities and Exchange Board of India (Issue of Sweat Equity) Regulations, 2002, the Securities and Exchange Board of India (Central Database of Market Participants) Regulations, 2003, the Securities and Exchange Board of India (Issue and Listing of Securitised Debt Instruments and Security Receipts) Regulations, 2008, the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008, the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009, the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, the Securities and Exchange Board of India (KYC (Know Your Client) Registration Agency) Regulations, 2011, the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012, the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013, the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013, the Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014, the Securities and Exchange Board of India (Research Analysts) Regulations, 2014, the Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014, the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014, the Securities and Exchange Board of India (Issue and Listing of Municipal Debt Securities) Regulations, 2015, the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018, the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, the Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018, the Securities and Exchange Board of India (Buy-back of Securities) Regulations, 2018, the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019 and the Securities and Exchange Board of India (Portfolio Managers) Regulations, 2020, namely :—

1. These regulations may be called the **Securities and Exchange Board of India (Regulatory Sandbox) (Amendment) Regulations, 2020.**

2. They shall come into force on the date of their publication in the Official Gazette.

3. Amendment to the Securities and Exchange Board of India (Stock Brokers) Regulations, 1992.—In the Securities and Exchange Board of India (Stock Brokers) Regulations, 1992, after Chapter VI, the following Chapter shall be inserted, namely,—

"CHAPTER VI-A

Power to relax strict enforcement of the regulations

28A. *Exemption from enforcement of the regulations in special cases.*—(1) The Board may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc., in live environment of regulatory sandbox in the securities markets.

(2) Any exemption granted by the Board under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis.

Explanation.—For the purposes of these regulations, 'regulatory sandbox' means a live testing environment where new products, processes, services, business models, etc., may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board."

4. Amendment to the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992.—In the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992, after Chapter V, following Chapter shall be inserted, namely,—

"CHAPTER VI

Power to relax strict enforcement of the regulations

44. *Exemption from enforcement of the regulations in special cases.*—(1) The Board may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc., in live environment of regulatory sandbox in the securities markets.

(2) Any exemption granted by the Board under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis.

Explanation.—For the purposes of these regulations, 'regulatory sandbox' means a live testing environment where new products, processes, services, business models, etc., may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board."

5. Amendment to the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993.—In the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, after Chapter V, following Chapter shall be inserted, namely,—

"Chapter VI

Power to relax strict enforcement of the regulations

33. *Exemption from enforcement of the regulations in special cases.*—(1) The Board may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc., in live environment of regulatory sandbox in the securities markets.

(2) Any exemption granted by the Board under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis.

Explanation.—For the purposes of these regulations, 'regulatory sandbox' means a live testing environment where new products, processes, services, business models, etc., may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board."

6. Amendment to the Securities and Exchange Board of India (Underwriters) Regulations, 1993.—In the Securities and Exchange Board of India (Underwriters) Regulations, 1993, after Chapter V, following Chapter shall be inserted, namely,—

"Chapter VI

Power to relax strict enforcement of the regulations

33. *Exemption from enforcement of the regulations in special cases.*—(1) The Board may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc., in live environment of regulatory sandbox in the securities markets.

(2) Any exemption granted by the Board under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis.

Explanation.—For the purposes of these regulations, 'regulatory sandbox' means a live testing environment where new products, processes,

services, business models, etc., may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board."

7. Amendment to the Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993.—In the Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993, after Chapter V, following Chapter shall be inserted, namely,—

"CHAPTER VI

Power to relax strict enforcement of the regulations

33. *Exemption from enforcement of the regulations in special cases.*—(1) The Board may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc., in live environment of regulatory sandbox in the securities markets.

(2) Any exemption granted by the Board under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis.

Explanation.—For the purposes of these regulations, 'regulatory sandbox' means a live testing environment where new products, processes, services, business models, etc., may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board."

8. Amendment to the Securities and Exchange Board of India (Bankers to an Issue) Regulations, 1994.—In the Securities and Exchange Board of India (Bankers to an Issue) Regulations, 1994, after Chapter V, following Chapter shall be inserted, namely,—

"CHAPTER VI

Power to relax strict enforcement of the regulations

32. *Exemption from enforcement of the regulations in special cases.*—(1) The Board may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc., in live environment of regulatory sandbox in the securities markets.

(2) Any exemption granted by the Board under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis.

Explanation.—For the purposes of these regulations, 'regulatory sandbox' means a live testing environment where new products, processes, services, business models, etc., may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board."

9. Amendment to the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996.—In the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, after Chapter IX, following Chapter shall be inserted, namely,—

"Chapter IX-A

Power to relax strict enforcement of the regulations

76A. *Exemption from enforcement of the regulations in special cases*.—(1) The Board may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc., in live environment of regulatory sandbox in the securities markets.

(2) Any exemption granted by the Board under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis.

Explanation.—For the purposes of these regulations, 'regulatory sandbox' means a live testing environment where new products, processes, services, business models, etc., may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board."

10. Amendment to the Securities and Exchange Board of India (Custodian) Regulations, 1996.—In the Securities and Exchange Board of India (Custodian) Regulations, 1996, after Chapter V, following Chapter shall be inserted, namely,—

"Chapter VI

Power to relax strict enforcement of the regulations

33. *Exemption from enforcement of the regulations in special cases*.—(1) The Board may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may

be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc., in live environment of regulatory sandbox in the securities markets.

(2) Any exemption granted by the Board under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis.

Explanation.—For the purposes of these regulations, 'regulatory sandbox' means a live testing environment where new products, processes, services, business models, etc., may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board."

11. Amendment to the Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999.—In the Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999, after Chapter VI, following Chapter shall be inserted, namely,—

"CHAPTER VII

Power to relax strict enforcement of the regulations

43. *Exemption from enforcement of the regulations in special cases.*—(1) The Board may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc., in live environment of regulatory sandbox in the securities markets.

(2) Any exemption granted by the Board under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis.

Explanation.—For the purposes of these regulations, 'regulatory sandbox' means a live testing environment where new products, processes, services, business models, etc., may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board."

12. Amendment to the Securities and Exchange Board of India (Collective Investment Scheme) Regulations, 1999.—In the Securities and Exchange Board of India (Collective Investment Scheme) Regulations, 1999, after Chapter IX-A, following Chapter shall be inserted, namely,—

"Chapter IX-B

Power to relax strict enforcement of the regulations

74B. *Exemption from enforcement of the regulations in special cases.*—(1) The Board may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc., in live environment of regulatory sandbox in the securities markets.

(2) Any exemption granted by the Board under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis.

Explanation.—For the purposes of these regulations, 'regulatory sandbox' means a live testing environment where new products, processes, services, business models, etc., may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board."

13. Amendment to the Securities and Exchange Board of India (Foreign Venture Capital Investor) Regulations, 2000.—In the Securities and Exchange Board of India (Foreign Venture Capital Investor) Regulations, 2000, after Chapter VI, following Chapter shall be inserted, namely,—

"Chapter VII

Power to relax strict enforcement of the regulations

30. *Exemption from enforcement of the regulations in special cases.*—(1) The Board may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc., in live environment of regulatory sandbox in the securities markets.

(2) Any exemption granted by the Board under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis.

Explanation.—For the purposes of these regulations, 'regulatory sandbox' means a live testing environment where new products, processes, services, business models, etc., may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board."

14. Amendment to the Securities and Exchange Board of India (Issue of Sweat Equity) Regulations, 2002.—In the Securities and Exchange Board of India (Issue of Sweat Equity) Regulations, 2002, after Chapter IV, following Chapter shall be inserted, namely,—

"CHAPTER V

Power to relax strict enforcement of the regulations

21. *Exemption from enforcement of the regulations in special cases.*—(1) The Board may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc., in live environment of regulatory sandbox in the securities markets.

(2) Any exemption granted by the Board under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis.

Explanation.—For the purposes of these regulations, 'regulatory sandbox' means a live testing environment where new products, processes, services, business models, etc., may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board."

15. Amendment to the Securities and Exchange Board of India (Central Database of Market Participants) Regulations, 2003.—In the Securities and Exchange Board of India (Central Database of Market Participants) Regulations, 2003, after Chapter V, following Chapter shall be inserted, namely,—

"CHAPTER VI

Power to relax strict enforcement of the regulations

23. *Exemption from enforcement of the regulations in special cases.*—(1) The Board may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc., in live environment of regulatory sandbox in the securities markets.

(2) Any exemption granted by the Board under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis.

Explanation.—For the purposes of these regulations, 'regulatory sandbox' means a live testing environment where new products, processes, services, business models, etc., may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board."

16. Amendment to the Securities and Exchange Board of India (Issue and Listing of Securitised Debt Instruments and Security Receipts) Regulations, 2008.—In the Securities and Exchange Board of India (Issue and Listing of Securitised Debt Instruments and Security Receipts) Regulations, 2008, after Chapter IX, following Chapter shall be inserted, namely,—

"Chapter IX-A

Power to relax strict enforcement of the regulations

47A. *Exemption from enforcement of the regulations in special cases*.—(1) The Board may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc., in live environment of regulatory sandbox in the securities markets.

(2) Any exemption granted by the Board under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis.

Explanation.—For the purposes of these regulations, 'regulatory sandbox' means a live testing environment where new products, processes, services, business models, etc., may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board."

17. Amendment to the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008.—In the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008, after Chapter VI, following Chapter shall be inserted, namely,—

"Chapter VI-A

Power to relax strict enforcement of the regulations

29A. *Exemption from enforcement of the regulations in special cases*.—(1) The Board may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as

may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc., in live environment of regulatory sandbox in the securities markets.

(2) Any exemption granted by the Board under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis.

Explanation.—For the purposes of these regulations, 'regulatory sandbox' means a live testing environment where new products, processes, services, business models, etc., may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board."

18. Amendment to Securities and Exchange Board of India (Intermediaries) Regulations, 2008.—In the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, after Chapter V-A, following Chapter shall be inserted, namely,—

"CHAPTER V-B

Power to relax strict enforcement of the regulations

33D. *Exemption from enforcement of the regulations in special cases.*—(1) The Board may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc., in live environment of regulatory sandbox in the securities markets.

(2) Any exemption granted by the Board under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis.

Explanation.—For the purposes of these regulations, 'regulatory sandbox' means a live testing environment where new products, processes, services, business models, etc., may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board."

19. Amendment to Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009.—In the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009, after Chapter VII, following Chapter shall be inserted, namely,—

"Chapter VII-A

Power to relax strict enforcement of the regulations

28A. *Exemption from enforcement of the regulations in special cases.*—(1) The Board may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc., in live environment of regulatory sandbox in the securities markets.

(2) Any exemption granted by the Board under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis.

Explanation.—For the purposes of these regulations, 'regulatory sandbox' means a live testing environment where new products, processes, services, business models, etc., may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board."

20. Amendment to Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.—In the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, after Chapter V, following Chapter shall be inserted, namely,—

"Chapter V-A

Power to relax strict enforcement of the regulations

31A. *Exemption from enforcement of the regulations in special cases.*—(1) The Board may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc., in live environment of regulatory sandbox in the securities markets.

(2) Any exemption granted by the Board under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis.

Explanation.—For the purposes of these regulations, 'regulatory sandbox' means a live testing environment where new products, processes, services, business models, etc., may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the

securities market, subject to such conditions as may be specified by the Board."

21. Amendment to Securities and Exchange Board of India (KYC (Know Your Client) Registration Agency) Regulations, 2011.—In the Securities and Exchange Board of India (KYC (Know Your Client) Registration Agency) Regulations, 2011, after Chapter V, following Chapter shall be inserted, namely,—

"CHAPTER VI

Power to relax strict enforcement of the regulations

26. *Exemption from enforcement of the regulations in special cases.*—(1) The Board may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc., in live environment of regulatory sandbox in the securities markets.

(2) Any exemption granted by the Board under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis.

Explanation.—For the purposes of these regulations, 'regulatory sandbox' means a live testing environment where new products, processes, services, business models, etc., may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board."

22. Amendment to Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012.—In the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012, after Chapter VI, following Chapter shall be inserted, namely,—

"CHAPTER VI-A

Power to relax strict enforcement of the regulations

35A. *Exemption from enforcement of the regulations in special cases.*—(1) The Board may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc., in live environment of regulatory sandbox in the securities markets.

(2) Any exemption granted by the Board under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be

specified by the Board including conditions to be complied with on a continuous basis.

Explanation.—For the purposes of these regulations, 'regulatory sandbox' means a live testing environment where new products, processes, services, business models, etc., may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board."

23. Amendment to Securities and Exchange Board of India (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013.—In the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013, after Chapter VI, following Chapter shall be inserted, namely,—

"Chapter VI-A

Power to relax strict enforcement of the regulations

23A. *Exemption from enforcement of the regulations in special cases.*—(1) The Board may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc., in live environment of regulatory sandbox in the securities markets.

(2) Any exemption granted by the Board under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis.

Explanation.—For the purposes of these regulations, 'regulatory sandbox' means a live testing environment where new products, processes, services, business models, etc., may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board."

24. Amendment to Securities and Exchange Board of India (Investment Advisers) Regulations, 2013.—In the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013, after Chapter V, following Chapter shall be inserted, namely,—

"Chapter V-A

Power to relax strict enforcement of the regulations

28A. *Exemption from enforcement of the regulations in special cases.*—(1) The Board may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as

may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc., in live environment of regulatory sandbox in the securities markets.

(2) Any exemption granted by the Board under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis.

Explanation.—For the purposes of these regulations, 'regulatory sandbox' means a live testing environment where new products, processes, services, business models, etc., may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board."

25. Amendment to Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014.—In the Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014, after Chapter III, following Chapter shall be inserted, namely,—

"CHAPTER III-A

Power to relax strict enforcement of the regulations

27A. *Exemption from enforcement of the regulations in special cases.*—(1) The Board may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc., in live environment of regulatory sandbox in the securities markets.

(2) Any exemption granted by the Board under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis.

Explanation.—For the purposes of these regulations, 'regulatory sandbox' means a live testing environment where new products, processes, services, business models, etc., may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board."

26. Amendment to Securities and Exchange Board of India (Research Analysts) Regulations, 2014.—In the Securities and Exchange Board of India (Research Analysts) Regulations, 2014, after Chapter V, following Chapter shall be inserted, namely,—

"Chapter V-A

Power to relax strict enforcement of the regulations

32A. *Exemption from enforcement of the regulations in special cases.*—(1) The Board may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc., in live environment of regulatory sandbox in the securities markets.

(2) Any exemption granted by the Board under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis.

Explanation.—For the purposes of these regulations, 'regulatory sandbox' means a live testing environment where new products, processes, services, business models, etc., may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board."

27. Amendment to Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014.—In the Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014, after Chapter VIII, following Chapter shall be inserted, namely,—

"Chapter VIII-A

Power to relax strict enforcement of the regulations

32A. *Exemption from enforcement of the regulations in special cases.*—(1) The Board may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc., in live environment of regulatory sandbox in the securities markets.

(2) Any exemption granted by the Board under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis.

Explanation.—For the purposes of these regulations, 'regulatory sandbox' means a live testing environment where new products, processes, services, business models, etc., may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board."

28. Amendment to Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014.—In the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014, after Chapter VIII, following Chapter shall be inserted, namely,—

"CHAPTER VIII-A

Power to relax strict enforcement of the regulations

32A. *Exemption from enforcement of the regulations in special cases.*—(1) The Board may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc., in live environment of regulatory sandbox in the securities markets.

(2) Any exemption granted by the Board under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis.

Explanation.—For the purposes of these regulations, 'regulatory sandbox' means a live testing environment where new products, processes, services, business models, etc., may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board."

29. Amendment to Securities and Exchange Board of India (Issue and Listing of Municipal Debt Securities) Regulations, 2015.—In the Securities and Exchange Board of India (Issue and Listing of Municipal Debt Securities) Regulations, 2015, after Chapter VII-A, following Chapter shall be inserted, namely,—

"CHAPTER VII-B

Power to relax strict enforcement of the regulations

27B. *Exemption from enforcement of the regulations in special cases.*—(1) The Board may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc., in live environment of regulatory sandbox in the securities markets.

(2) Any exemption granted by the Board under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis.

Explanation.—For the purposes of these regulations, 'regulatory sandbox' means a live testing environment where new products, processes,

services, business models, etc., may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board."

30. Amendment to Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.—In the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, after Chapter XI, following Chapter shall be inserted, namely,—

"Chapter XI-A

Power to relax strict enforcement of the regulations

99A. *Exemption from enforcement of the regulations in special cases.*—(1) The Board may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc., in live environment of regulatory sandbox in the securities markets.

(2) Any exemption granted by the Board under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis.

Explanation.—For the purposes of these regulations, 'regulatory sandbox' means a live testing environment where new products, processes, services, business models, etc., may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board."

31. Amendment to Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018.—In the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018, after Chapter VIII, following Chapter shall be inserted, namely,—

"Chapter VIII-A

Power to relax strict enforcement of the regulations

49A. *Exemption from enforcement of the regulations in special cases.*—(1) The Board may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc., in live environment of regulatory sandbox in the securities markets.

(2) Any exemption granted by the Board under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis.

Explanation.—For the purposes of these regulations, 'regulatory sandbox' means a live testing environment where new products, processes, services, business models, etc., may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board."

32. Amendment to Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018.—In the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, after Chapter XI, following Chapter shall be inserted, namely,—

"CHAPTER XI-A

Power to relax strict enforcement of the regulations

295A. *Exemption from enforcement of the regulations in special cases.*—(1) The Board may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc., in live environment of regulatory sandbox in the securities markets.

(2) Any exemption granted by the Board under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis.

Explanation.—For the purposes of these regulations, 'regulatory sandbox' means a live testing environment where new products, processes, services, business models, etc., may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board."

33. Amendment to Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018.—In the Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018, after Chapter X, following Chapter shall be inserted, namely,—

"CHAPTER X-A

Power to relax strict enforcement of the regulations

93A. *Exemption from enforcement of the regulations in special cases.*—(1) The Board may, exempt any person or class of persons from the

operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc., in live environment of regulatory sandbox in the securities markets.

(2) Any exemption granted by the Board under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis.

Explanation.—For the purposes of these regulations, 'regulatory sandbox' means a live testing environment where new products, processes, services, business models, etc., may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board."

34. Amendment to Securities and Exchange Board of India (Buy-back of Securities) Regulations, 2018.—In the Securities and Exchange Board of India (Buy-back of Securities) Regulations, 2018, after Chapter V, following Chapter shall be inserted, namely,—

"Chapter V-A

Power to relax strict enforcement of the regulations

25A. *Exemption from enforcement of the regulations in special cases.*—(1) The Board may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc., in live environment of regulatory sandbox in the securities markets.

(2) Any exemption granted by the Board under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis.

Explanation.—For the purposes of these regulations, 'regulatory sandbox' means a live testing environment where new products, processes, services, business models, etc., may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board."

35. Amendment to Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019.—In the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019, after Chapter VIII, following Chapter shall be inserted, namely,—

"CHAPTER VIII-A

Power to relax strict enforcement of the regulations

43A. *Exemption from enforcement of the regulations in special cases.*—(1) The Board may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc., in live environment of regulatory sandbox in the securities markets.

(2) Any exemption granted by the Board under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis.

Explanation.—For the purposes of these regulations, 'regulatory sandbox' means a live testing environment where new products, processes, services, business models, etc., may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board."

36. Amendment to Securities and Exchange Board of India (Portfolio Managers) Regulations, 2020.—In the Securities and Exchange Board of India (Portfolio Managers) Regulations, 2020, after Chapter VI, following Chapter shall be inserted, namely,—

"CHAPTER VI-A

Power to relax strict enforcement of the regulations

42A. *Exemption from enforcement of the regulations in special cases.*—(1) The Board may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc., in live environment of regulatory sandbox in the securities markets.

(2) Any exemption granted by the Board under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis.

Explanation.—For the purposes of these regulations, 'regulatory sandbox' means a live testing environment where new products, processes, services, business models, etc., may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board."

[ADVT.-III/4/Exty.08/2020]

End of Volume 220