**Shree Rajasthan Syntex Ltd.**
**REG. & H. O. OFFICE:** Plot No. 106, Opposite Fire Brigade Station, Syntex Chauraha, Bhicchiwara Road, Dungarpur, Rajasthan, India, 314001
**CIN** L24302RJ1979PLC001948
**EMAIL** cs@srsl.in / **website** https://www.srsl.in
**Mobile no.** 9314879380

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Date: February 11th, 2025

To,
The Manager,
Listing & Compliance Department,
Bombay Stock Exchange Limited
Floor 25, P. J. Towers,
Dalal Street,
Mumbai – 400 001.

Dear Sir/Madam,

**Sub: Disclosure pursuant to Regulation 30 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.**

**REF: SCRIP CODE: 503837**

This is with reference to the above subject and SEBI Circular No. SEBI/HO/CFD/CFD-PoD-1/P/CIR/2023/123 dated July 13, 2023, in respect of action(s) taken or orders passed by any regulatory, statutory, enforcement authority or judicial body against the listed entity or its directors, key managerial personnel, senior management, promoter or subsidiary, in relation to the listed entity.

The National Company Law Appellate Tribunal (NCLAT), Principal Bench, New Delhi, passed an order on 10th February 2025 in relation to the appeal filed by Bank of Baroda (the Appellant) against the order dated 19th April 2023, issued by the Adjudicating Authority (National Company Law Tribunal), Jaipur Bench, in the case CP No. (IB)-28/7/JPR/2022.

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| **NAME OF AUTHORITY** | National Company Law Appellate Tribunal,<br>Principal Bench, New Delhi |
| **NATURE AND DETAILS OF THE ACTION(S) TAKEN OR ORDER(S) PASSED** | The company was admitted under the Pre-Packaged Insolvency Resolution Process (PPIRP) pursuant to Section 54 of the Insolvency and Bankruptcy Code, 2016, as per the order of the Hon'ble National Company Law Tribunal (NCLT) dated April 19, 2023. Subsequently, a minority Secured Financial Creditor filed an appeal against the said order before the Hon'ble National Company Law Appellate Tribunal (NCLAT), New Delhi.<br><br>The Hon'ble NCLAT, in its order dated February 10, 2025, issued the following directions:<br><br>• Since the Corporate Debtor has been successfully resolved, with payments made to all lenders, setting aside the entire process initiated under Section 54C would not be in the interest of the stakeholders or the Corporate Debtor. |

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| | • The appellant, being a dissenting Financial Creditor, is entitled to payment as per the approved resolution plan under Section 30 of the Code. Accordingly, the Hon'ble NCLAT has directed the Successful Resolution Applicant (SRA) to make the payment of the differential amount, if any. The Resolution Professional (RP) has been granted two weeks to compute the amount and communicate it to the SRA, with the payment to be made within four weeks from the date of the order, if any. |
| **DATE OF RECEIPT OF DIRECTION OR ORDER FROM THE AUTHORITY** | 10th February 2025, however company is yet to receive the copy of the order. |
| **DETAILS OF THE VIOLATION/CONTRAVENTION COMMITTED OR ALLEGED TO BE COMMITTED** | NA |
| **IMPACT ON FINANCIAL, OPERATION, OR OTHER ACTIVITIES OF THE LISTED ENTITY, QUANTIFIABLE IN MONETARY FORM TO THE EXTENT POSSIBLE** | As two weeks' time has been provided to RP to compute the amount as per Section 30, sub-section (2)(b) in reference to Section 53(1)(b). Therefore, the impact on financial, operations and other activities is not quantifiable in monetary form as of now. |

Kindly take the same in your records.

Thanking you,
**For, SHREE RAJASTHAN SYNTEX LIMITED**

ANUBHAV LADIA
Digitally signed by ANUBHAV LADIA
Date: 2025.02.11 18:01:23 +05'30'

**ANUBHAV LADIA**
**WHOLE-TIME DIRECTOR & CFO**
**DIN: 00168312**

**Encl: Copy of Order of NCLAT**

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

**Company Appeal (AT) (Insolvency) No. 888 of 2023**

(Arising out of Order dated 19.04.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Jaipur Bench, in CP No.(IB)-28/7/JPR/2022)

**IN THE MATTER OF:**

Bank of Baroda …Appellant

Versus

Shree Rajashthan Syntex Ltd. …Respondent

**Present:**

**For Appellant : Mr. Ashish Verma, Mr. Saksham Thareja, Mr. Kartik B. and Mr. Nikhil Thakur, Advocates.**

**For Respondents : Mr. Krishnendu Datta Sr. Advocate with Mr.Prakul Khurana, Mr. Yash Tandon and Mr. Ankit Sareen, Advocates for R-1.**

**Mr. Abhijeet Sinha, Sr. Advocate with Ms. Suruchi Kasliwal Multani, Mr. Naresh Batra, Advocates for R-2.**

**Ms. Suruchi Kasliwal Multan and Mr. Naresh Batra, Advocates for R-3.**

**With**

**Company Appeal (AT) (Insolvency) No.890 of 2023**

(Arising out of Order dated 19.04.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Jaipur Bench, New Delhi in CP No. (IBPP)-01/54C/JPR/2022)

**IN THE MATTER OF:**

Bank of Baroda …Appellant

Versus

Shree Rajashthan Syntex Ltd. …Respondent

**Present:**

**For Appellant : Mr. Ashish Verma, Mr. Saksham Thareja, Mr. Kartik B. and Mr. Nikhil Thakur, Advocates.**

**For Respondents : Mr. Krishnendu Datta Sr. Advocate with Mr.Prakul Khurana, Mr. Yash Tandon and Mr. Ankit Sareen, Advocates for R-1.**

**Mr. Abhijeet Sinha, Sr. Advocate with Ms. Suruchi Kasliwal Multani, Mr. Naresh Batra,**

**Advocates for R-2.**

**Ms. Suruchi Kasliwal Multan and Mr. Naresh Batra, Advocates for R-3.**

**With**
**Comp. App. (AT) (Ins) No. 1492 of 2023 &**
**I.A. No. 5310 of 2023**

(Arising out of Order dated 22.08.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Jaipur Bench, New Delhi in IA No.451/JPR/2023 in CP No. (IBPP)-01/54C/JPR/2022)

Bank of Baroda …Appellant

Versus

Shree Rajashthan Syntex Ltd. …Respondent

**Present:**

**For Appellant : Mr. Ashish Verma, Mr. Saksham Thareja, Mr. Kartik B. and Mr. Nikhil Thakur, Advocates.**

**For Respondents : Mr. Krishnendu Datta Sr. Advocate with Mr.Prakul Khurana, Mr. Yash Tandon and Mr. Ankit Sareen, Advocates for R-1.**

**Mr. Abhijeet Sinha, Sr. Advocate with Ms. Suruchi Kasliwal Multani, Mr. Naresh Batra, Advocates for R-2.**

**Ms. Suruchi Kasliwal Multan and Mr. Naresh Batra, Advocates for R-3.**

## J U D G M E N T

**ASHOK BHUSHAN, J.**

These Appeal(s) by Bank of Baroda, Financial Creditor of the Corporate Debtor – M/s Shree Rajasthan Syntex Ltd. have been filed challenging three different orders passed by National Company Law Tribunal, Jaipur Bench. Company Appeal (AT) (Ins.) No.888 of 2023 has been filed challenging order dated 19.04.2023 passed in CP No.(IB)-28/7/JPR/2022, by which order Section 7 Application filed by Bank of Baroda has been disposed of noticing admission of Pre-Packed Insolvency

Resolution Process ("**PPIRP**") against the CD initiated vide order dated 19.04.2023, giving liberty to the Bank of Baroda to file claim before the IRP. Company Appeal (AT) (Ins.) No.890 of 2023 has been filed challenging order 19.04.2023 passed in CP No. (IBPP)-01/54C/JPR/ 2022, by which order Adjudicating Authority admitted Application filed under Section 54C by the Corporate Debtor ("**CD**") for initiation of PPIRP. Company Appeal (AT) (Ins.) No.1492 of 2023 has been filed against the order dated 22.08.2023 passed in IA No.451/JPR/2023 in CP No. (IBPP)-01/54C/JPR/2022 by which order Adjudicating Authority approved the Resolution Plan in the PPIRP of the CD. These three Appeal(s) have been filed challenging aforesaid three orders.

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

i. The CD – M/s Shree Rajasthan Syntex Ltd. had been extended Financial Facilities by Consortium of Lenders, which included – State Bank of India, IDBI Bank and the Bank of Baroda. There being default committed in repayment of Financial Facilities to Consortium of Bank, the accounts of the CD were classified as NPA in 2017.

ii. The CD gave One Time Settlement ("**OTS**") proposal to the Consortium of Lenders in the year 2020. OTS proposal was again given in February 2022 by the CD to the Lenders Bank for an amount of Rs.30 crores, which was pending consideration by all the three Banks.

iii. On 21.07.2020, the CD was registered as MSME and MSME Certificate was issued by Ministry of Micro, Small and Medium Enterprises to the CD.

iv. On 29.03.2022, the State Bank of India ("**SBI**") vide its letter consented to the proposed offer of OTS of Rs.30 crores. The IDBI Bank also vide letter dated 13.04.2022 has consented to the proposed offer of OTS of Rs.30 crores of the CD. The Bank of Baroda, who was also Member of the Consortium, however, did not communicate its acceptance and filed an Application on 18.04.2022 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "**IBC**") against the CD, praying for initiation of Corporate Insolvency Resolution Process ("**CIRP**") against the CD. On 04.05.2022, Section 7 Application came to be listed.

v. The Board of Directors of the CD Resolved to file an Application of PPIRP and a declaration was made by the Directors on 07.05.2022 to initiate steps for PPIRP. An IA No.236/2022 was filed by the CD on 17.05.2022 seeking condonation of delay in filing the Application under Section 54C of the IBC. In Section 7 Application, the CD also filed its reply. On 10.06.2022, a Special Resolution was passed by shareholders of the Company approving to initiate PPIRP. Request letter was also sent to the Banks for approval of BRP/PPIRP. On 21.07.2022, a Meeting of the Consortium Bank took place for considering the proposal of the CD for

PPIRP. The SBI and IDBI Bank having 79.12% vote shares, approved the proposal for PPIRP, whereas Bank of Baroda, who had vote share of 26.09% dissented. After receiving of the approval of majority 79.12% of the Financial Creditors for initiating PPIRP, an Application was filed by the CD under Section 54C of the IBC on 25.07.2022. A preliminary objection was filed by the Bank of Baroda in the Application for PPIRP filed by the CD, objecting to the maintainability of the Application.

vi. On 19.04.2023, the Adjudicating Authority passed an order admitting Application filed under Section 54C by the CD. The RP – Shri Lekhraj Bajaj was appointed, who was directed to make public announcement and take all other steps with respect to PPIRP. By an order of the same date, i.e. 19.04.2023, Section 7 Application filed by the Bank of Baroda was disposed of, relying on the admission of PPIRP. The Adjudicating Authority observed that Bank of Baroda may file a claim before the IRP.

vii. The RP in the PPIRP of the CD, placed a Base Resolution Plan before the Committee of Creditors ("**CoC**"), where the State Bank of India had vote share of 47.21 vote share; IDBI Bank has 26.70% vote share and Bank of Baroda has 26.09% vote share. The Base Resolution Plan was placed before the CoC, which came to be approved with 73.91% vote shares. In the Base Resolution Plan approved by the CoC, which was placed

before the Adjudicating Authority, the SBI and Bank of Baroda were proposed 30.02% payment of their outstanding dues.

viii. The RP filed an Application seeking approval of Base Resolution Plan – being IA No.451/JPR/2023, which Application came to be heard and decided by the Adjudicating Authority vide order dated 22.08.2023.

ix. Aggrieved by which order Company Appeal (AT) (Ins.) No.1492 of 2023 has been filed.

3. We have heard Shri Ashish Verma, learned Counsel appearing for the Appellant; Shri Krishnendu Datta, learned Senior Counsel appearing for Shree Rajasthan Syntex Ltd.; Shri Abhijeet Sinha, learned Senior Counsel appearing for SBI; and learned Counsel for IDBI Bank and RP. In the Appeal(s), additional affidavit and reply affidavit has been filed by the CD. Reply affidavit has also been filed by SBI and IDBI Bank. All the Appeals have been heard together and are being decided by this common judgment.

4. Shri Ashish Verma, learned Counsel appearing for the Appellant submits that Section 54C Application was filed by the CD, after 14 days from the filing of the Application under Section 7 by the Bank of Baroda, hence, the Application under Section 7 was to be heard and decided on merits first and Application under Section 54C was not required to be considered. It is submitted that Adjudicating Authority by passing the order dated 19.04.2023, admitting Application under Section 54C,

committed error and acted contrary to the legislative intent of the IBC. Reliance is placed on Section 11A of the IBC. It is submitted that Section 11A provides for a sequence of disposal of an Application. In the present case, Section 7 Application was filed by the Bank of Baroda on 18.04.2022, and Application under Section 54C was filed by the CD on 25.07.2022, Section 7 Application, ought to have been heard and decided first. Section 54C Application, which was filed 14 days after filing of Section 7 Application, could not have been considered or admitted. Both the orders passed by Adjudicating Authority on 19.04.2023, are contrary to express intendment of Section 11A of the IBC and deserve to be set aside. It is submitted that admission of Section 54C Application itself being contrary to Section 11A, subsequent proceedings taken thereunder also falls on this ground. It is submitted that the Resolution Plan, which has been approved on 22.08.2023, is also not in accordance with law. It is submitted that Appellant, who was a dissenting Financial Creditor, has been paid equal amount to those of assenting Financial Creditor. It is submitted that Resolution Plan itself contemplate paying the same amount to the assenting Financial Creditor and dissenting Financial Creditor, which is not in accordance with statutory scheme as delineated by Section 30, sub-section (2) of the IBC. Hence, the Resolution Plan, which is not in accordance with Section 30, sub-section (2) deserves to be set aside on this ground alone. It is submitted that payments received by the Bank of Baroda in pursuance of the Resolution Plan were subject to interim orders passed in Company Appeal (AT) (Ins.) No.888 and 890 of 2023, i.e. "*In the meantime, proceedings of implementation of the*

*Resolution Plan may go on which shall abide by the result of the Appeal.* It is submitted that orders passed by Adjudicating Authority questioned in these Appeal(s) are unsustainable and deserve to be set aside. It is submitted that Bank of Baroda, which was one of the Consortium Member of the Lenders had every right to initiate proceedings under Section 7 and did not require consent of other Members of the Consortium. The Bank of Baroda had every right to initiate proceeding under Section 7. The Learned Counsel for the Appellant submits that CD is not a MSME. It is submitted that as per Notification dated 26.06.2020 issued by Ministry of MSME, an enterprise can be classified as MSME as a medium enterprise where the investment in plant and machinery or equipment does not exceed fifty crore rupees and turnover does not exceed two hundred fifty crore rupees. As per 41st Annual Report (2021-22) of the CD, investment in plant and machinery is more than Rs.50 crores. When the investment in plant and machinery is more than Rs.50 crores, the CD is not eligible for registration as medium enterprise. The CD not being eligible as MSME had no authority or jurisdiction to file Section 54C Application and Application under Section 54C filed by the CD, deserved to be rejected on this ground alone.

5. Shri Krishnendu Datta, learned Senior Counsel appearing for the CD refuting the submissions of Learned Counsel for the Appellant submits that the present is a case where CD, much before initiation of filing of an Section 7 Application has submitted proposal for settlement with all the three Lenders, including Bank of Baroda. The SBI and IDBI on 29.03.2022 has agreed and accepted the offer of negotiated settlement,

whereas Bank of Baroda did not give its consent. The Bank of Baroda was very well aware that other two Lenders have given their consent and the CD was contemplating steps for Resolution of the CD. It is submitted that the Bank of Baroda, without even informing the other Lenders, rushed and filed Section 7 Application on 18.04.2022, which proceeding was nothing but proceeding for recovery of dues. Application under Section 7 was listed for the first time on 04.05.2022, on which date the CD, came to know about filing of Section 7 Application. The Board of Directors Resolved to proceed with PPIRP on 07.05.2022. Notice for Resolution was given to the Members of the Company. Declaration as required by law, was passed on 17.05.2022. Special Resolution of shareholders of the Company was passed on 21.07.2022 The Report was prepared by the RP and thereafter an Application was filed on 25.07.2022. It is submitted that necessary statutory compliances, which are required to be made by the CD, before filing of Application under Section 54C, has taken time, which time was required to be excluded while computing 14 days period, as referred to in Section 11A. It is submitted that the said period was beyond the control of the CD, as mandatory approvals were pending. The CD, thus, filed Section 54C Application within 14 days as prescribed under Section 11A, after the period for fulfilling the mandatory requirement are excluded. Hence, the Application filed by the CD, cannot be said to be beyond 14 days. It is submitted that the period of 14 days as referred to in Section sub-section (3) of Section 11A has to be read as 'directory'. The Application under Section 54C, can be filed by the CD, only after completing the mandatory

procedures as prescribed in Section 54A and 54B of the IBC. It is submitted that period, which was taken for necessary statutory compliances, under Section 54A and 54B, if excluded, the Application under Section 54C was well within 14 days. The Adjudicating Authority did not commit error in admitting Section 54C Application filed by the CD and disposing of Section 7 Application filed by the Appellant. It is submitted that the Appellant and other Consortium Lenders, i.e., SBI and IDBI Bank have given their consent for negotiated settlement, much before filing of the Application by Bank of Baroda under Section 7. Other Consortium Members having agreed for negotiated settlement, i.e. Resolution of the CD, it was not open for the Bank of Baroda to initiate Section 7 proceedings. Initiation of Section 7 proceedings is nothing but proceedings initiated for recovery and not for Resolution of the CD. Process of Resolution of CD had already commenced much before filing of Section 7 Application by Bank of Baroda. Hence, Section 7 Application filed by Bank of Baroda deserves to be rejected. The object of IBC is not recovery of dues by the Financial Creditor, rather object is the resolution of the CD. Shri Datta further submits that the CD is a MSME, who was registered by Ministry of Micro, Small and Medium Enterprises on 21.07.2020 as per the Notification dated 26.06.2020. It is submitted by Shri Datta that calculation of investment in plant, machinery and equipment is linked with the income tax return of the previous year filed under the Income Tax Act, 1961. Shri Datta also relied on clarification issued by Ministry of MSME dated 06.08.2020. It is submitted that the submission of the Appellant that CD is not a MSME is wholly incorrect

and false. The CD is MSME and it is entitled for statutory protection and the Bank of Baroda denying the status of MSME, itself indicate that the Bank of Baroda is acting against spirit and object of the IBC. Shri Datta submits that SBI and IDBI Bank have accepted the Base Resolution Plan submitted by the CD. In the PPIRP, the Bank of Baroda is also bound, even though it is a dissenting Financial Creditor. It is submitted that the action taken by the Bank of Baroda in filing Section 7 Application is wholly malafide and is not for Resolution of the CD. The Bank of Baroda is taking steps, which is prejudicial to the rights and interest of a MSME. In pursuance of the Base Resolution Plan approved by Adjudicating Authority on 22.08.2023, payments to all Financial Creditors, including Bank of Baroda has already been made. The Resolution Plan has been fully implemented. The CD has been resolved as per PPIRP. The object of IBC has been fulfilled, the Appeal(s) filed by Bank of Baroda, deserve to be rejected.

6. Shri Abhijeet Sinha, learned Senior Counsel appearing for SBI submits that SBI has filed its reply in Section 7 Application, which was filed by the Bank of Baroda, objecting to Section 7 Application. The SBI has stated in the reply that Bank of Baroda has filed Section 7 Application without even informing the other Consortium Lenders including SBI and IDBI Bank. The reply was filed by the SBI in Section 7 Application, vehemently opposing the Application filed by the Bank of Baroda under Section 7. The SBI has further pleaded that in event Section 7 Application is admitted, it will cause great harm and injury to majority stakeholders, which is never the intent of legislature while

enacting IBC. The stand taken by minority stakeholder, cannot be allowed to defeat the interest of majority stakeholders. The Bank of Baroda also participated in the Meeting dated 21.07.2022, where Base Resolution Plan came for consideration. The Base Resolution Plan having been approved by majority of vote shares, the Bank of Baroda is also bound by approval and cannot wriggle out from the decision on the pretext that it has filed Section 7 Application on 18.04.2022. It is further submitted that OTS proposal was given by the CD in February 2021 and Bank of Baroda without communicating any final decision, has proceeded to file Section 7 Application, which did not have approval of other Consortium Members of the Bank. Learned Counsel for the SBI submits that Section 7 Application deserve to be rejected.

7. We have considered the submissions of learned Counsel for the parties and have perused the record.

8. From the submission of Learned Counsel for the parties, following issues arise for consideration:

(1) Whether the CD on the strength of registration dated 21.07.2020 issued by Ministry of Micro, Small and Medium Enterprises, can be treated to be a MSME?

(2) Whether value of its plant, machinery and equipment is more than Rs.50 crores as submitted by the Appellant in the year 2021-22?

(3) Whether period of 14 days as referred to in sub-section (3) of Section 11A of the IBC is a 'directory', i.e. whether an Application under Section 54C is filed even after 14 days of

filing of Section 7 Application, the Adjudicating Authority can proceed to decide Section 54C Application first?; & What is the intent and purpose of 14 days provided in sub-section (3) of Section 11A?

(4) In event it is held that period of 14 days as mentioned in sub-section (3) of Section 11A is 'mandatory', what is the consequence on the order dated 19.04.2023 passed by Adjudicating Authority, which has been challenged in these two Appeal(s)?

(5) Whether in the facts of the present case, when Resolution Plan has been approved in the PPIRP of the CD, which Plan also stand implemented, the Appellant has made out a case to set aside the orders dated 19.04.2023, admitting Application under Section 54C and order dated 22.08.2023 approving the Base Resolution Plan?

(6) Whether in the facts of the present case, the Appellant has made out a case for directing Section 7 Application (filed by the Appellant on 18.04.2022) to be heard and decided on merits, by setting aside all actions taken in Application under Section 54C?

(7) Whether the payment to the Appellant, i.e. dissenting Financial Creditor in the Resolution Plan is in accordance with Section 30, sub-section (2) (b) of the IBC?

(8) To what relief, the Appellant is entitled in these Appeal(s)?

**Question Nos.(1) and (2)**

Question Nos.(1) and (2) being connected, are being taken up together.

9. Under Section 8 of Micro, Small and Medium Enterprises Development Act, 2006, a Notification dated 26.06.2020 was issued by Ministry of Micro, Small and Medium Enterprises, providing for classification of enterprises. It is useful to extract Notification's Clauses 1 and 4, which are as follows:

> "**1. Classification of enterprises.**-An enterprise shall be classified as a micro, small or medium enterprise on the basis of the following criteria, namely:--
>
> (i) a micro enterprise, where the investment in plant and machinery or equipment does not exceed one crore rupees and turnover does not exceed five crore rupees;
>
> (ii) a small enterprise, where the investment in plant and machinery or equipment does not exceed ten crore rupees and turnover does not exceed fifty crore rupees; and
>
> (iii) a medium enterprise, where the investment in plant and machinery or equipment does not exceed fifty crore rupees and turnover does not exceed two hundred and fifty crore rupees.
>
> **4. Calculation of investment in plant and machinery or equipment.--** (1) The calculation of investment in plant and machinery or equipment will be linked to the
>
> (2) In case of a new enterprise, where no prior ITR is available, the investment will be based on self-declaration of the promoter of the enterprise and such relaxation shall end after the 31st March of the financial year in which it files its first ITR.
>
> (3) The expression ―plant and machinery or equipment‖ of the enterprise, shall have the same meaning as assigned to the plant and machinery in the Income Tax Rules, 1962 framed under the Income Tax Act, 1961 and shall include all tangible assets (other than land and building, furniture and fittings).

(4) The purchase (invoice) value of a plant and machinery or equipment, whether purchased first hand or second hand, shall be taken into account excluding Goods and Services Tax (GST), on self-disclosure basis, if the enterprise is a new one without any ITR.

(5) The cost of certain items specified in the Explanation I to sub-section (1) of section 7 of the Act shall be excluded from the calculation of the amount of investment in plant and machinery."

10. The CD has brought on record the Registration Certificate, which was granted to the CD on 21.07.2020 as Annexure-1 to the affidavit dated 31.01.2023 filed by the CD, which indicates that the CD was classified as Small Enterprise Type based on Financial Year 2020-21. The learned Counsel for the Respondent has also relied on the Office Memorandum dated 06.08.2020 issued by Ministry of MSME. Paragraph 5 of the OM dated 06.08.2020 is as follows:

"5. **Value of Plant and Machinery or Equipment;**

(i) There are clarifications sought by the entrepreneurs regarding valuation of plant and machinery or equipments on cost or purchase price while filing the Udyam Registration.

(ii) Para 3 of clause 4 Notification No. S.O. 2119(E) dated 26.6.2020 reads as follows:

**"The expression plant and machinery or equipment of the enterprise, shall have the same meaning as assigned to the plant and machinery in the Income Tax Rules, 1962 framed under the Income Tax Act, 1961 and shall include all tangible assets (other than land and building, furniture and fittings)".**

(iii) It is clarified that online Form for Udyam Registration captures depreciated cost as on 31 st March each year of the relevant previous year. Therefore, the value of Plant arid Machinery or Equipments for all purposes of the Notification No. S.O. 2119(E) dated 26.6.2020 and for all the enterprises shall mean the Written Down Value (WDV) as at the end of the Financial Year as defined in the Income Tax Act and not the cost of acquisition or original price,

which was applicable in the context of the earlier classification criteria.

11. The Appellant's case in the Appeal is that in the 41st Annual Report of the CD as on 31.03.2021, investment in plant and machinery is more than Rs.50 crores. We have noted the submission of the learned Counsel for the Respondent that for the purposes of computing the investment in plant and machinery has to be on the basis of Income Tax Return filed by the CD. The Notification dated 26.06.2020 as extracted above in Clause 4 clearly provides that "The calculation of investment in plant and machinery or equipment will be linked to the Income Tax Return (ITR) of the previous years filed under the Income Tax Act, 1961. In the reply, which was filed by the CD to Company Appeal (AT) (Ins.) No.888 of 2023, the CD has given the details of the ITR of the CD based on which the classification of MSME was changed automatically from year to year. It is useful to notice paragraph 8 of the reply of the CD, which gives all relevant facts and explain the process. Paragraph 8 of the reply is as follows:

> "8. That the said contention is in teeth with criteria 4 of the said Notification dated 26.06.2020 which in unequivocal terms lays down that the calculation of investment in plant, machinery or equipment will be linked with the Income Tax Return (hereinafter referred to as the "ITR") of the previous year filed under the Income Tax Act, 1961. The same has been further clarified vide Office Memorandum dated 06.08.2020 of Ministry of MSME as under:
>
> > "Para 5 (iii): It is clarified that online Form for Udyam Registration captures depreciated cost as on 31st March each year of the relevant previous year. Therefore, the value of Plant and Machinery or Equipment's for all purposes of

the Notification No. S.O. 2119(E) dated 26.6.2020 and for all the enterprises shall mean the Written Down Value (WDV) as at the end of the Financial Year as defined in the Income Tax Act".

The copy of the office memorandum dated 06.08.2020 is annexed herewith and marked as Annexure-2.

Hence, it is not the Annual Report or the Financial Statements of the Company, but the ITR of an enterprise for the previous years filed with the Income Tax Department that has to be seen for the purpose of determining the classification (Pg. 31 of the First Additional Affidavit). Such reasoning also gains strength from the fact that the status of the Company in the FY 2022-23 was automatically changed from MEDIUM to SMALL and back to MEDIUM in the F.Y. 2023-24, without any role/indication of/from the Company, as the data of the ITR was obtained automatically by the MSME Department based upon which the classification was changed year by year. The table hereinbelow indicates the status/ classification of the Company based upon its ITR by the MSME Department:

| MSME Certificate Year | Enterprise Type | Written Down Value (WDV) (Rs.) (A) | Exclusion of cost of Pollution Control Research & Development and Industrial Safety Devices (B) | Net Investment in Plant and Machinery OR Equipment (A) - (B) | Net Turnover | Financial Year when ITR was filed |
|---|---|---|---|---|---|---|
| 2023-24 | Medium | 8,03,29,411 | 0.00 | 8,03,29,411 | 50,77,44,571 | 2021-22 |
| 2022-23 | Small | 9,45,18,123 | 0.00 | 9,45,18,123 | 36,62,52,964 | 2020-21 |
| 2021- | Medium | 11,12,60,249 | 0.00 | 11,12,60,249 | 69,32,69,000 | 2019- |

| | | | | | | |
|---|---|---|---|---|---|---|
| 22 | | | | | | 20 |
| 2020-21 | Medium | 13,25,26,394 | 5,96,182 | 13,19,30,212 | 17,19,981908 | 2018-19 |

In F.Y. 2020-21, the net Investment in plant and machinery or equipment as per the ITR of the th Company went below Rs 10 crores (Rs 9.45 crores) whereas the turnover went below Rs 50 crores (Rs 36.62 crores) and therefore the Company was re-classified to SMALL category. Similarly, taking data of FY 2021-22, the turnover again crossed Rs 50 crores (Rs 50.77 crores) and the Net Investment in Plant and Machinery OR Equipment as per the ITR was 8.03 Crores, and the company was again automatically classified to MEDIUM category. The application and issue of MSME certificate or classification is an online process where the Company only needs to enter the PAN Card number and GSTIN details. The figures related to investments and turnover are automatically picked from respective database which clarifies that the Respondent Company had no role in declaring these crucial figures while applying to MSME Ministry through their online portal. Similarly, the renewal and review of the MSME status year on year basis is done by the MSME ministry by default and the Respondent Company has no role to submit any data or figures related to investments and turnover. The copy of the investment in plant and machinery or equipment, turnover and ITR is annexed herewith and marked as Annexure-3."

12. We, thus, do not find any error in classification of the CD as MSME. Learned Counsel for the Respondent has also placed reliance of the judgment of this tribunal in ***Amit Guptaq vs. Yogesh Gupta, RP (Company Appeal (AT) (Ins) No.903 of 2019) decided on 20.12.2019*** wherein it is held that in the summary procedure under IBC, the Adjudicating Authority is not expected to go into account and investigate if and in which category an application falls under Section 7 examining

Notifications under the MSME Act. This Tribunal in ***Company Appeal (AT) (Insolvency) No. 1672-1673 of 2023 in Ramesh Shah vs. Central Bank of India & Ors.*** had occasion to consider the issue and this Tribunal had clearly laid down that the Adjudicating Authority is not expected to go into accounts and examination of certificates issued by the competent authority under MSME Act and notification issued thereunder or modify/ revise/ revoke or interfere in any manner with the MSME registration granted etc. In paragraph 24 of the judgment, following has been laid down:

> "**24.** The MSME Act as it stands clearly does not provide any supervisory role on the Adjudicating Authority to revise/modify/revoke/interfere with MSME registration at its level. Clearly the notification framed thereunder also does not bestow upon the Adjudicating Authority with any such authority to hold an MSME registration certificate to be null and void on its own. Even if Adjudicating Authority was suo motu convinced or persuaded to believe that there were errors in the calculation of the WDV in the grant of MSME status, to our minds, before embarking on any exercise of unilaterally undertaking calculation of the WDV at its own level, the Adjudicating Authority ought to have asked itself the question as whether the Parliament while framing the MSME Act intended to bestow any such authority on it. In the exercise of summary jurisdiction by the Adjudicating Authority under IBC, the Adjudicating Authority is not expected to go into details of accounts and examination of certificates issued by the competent authority under MSME Act and notification issued thereunder. The MSME registration can only be revoked by the competent authority and the Adjudicating Authority cannot arrogate this jurisdiction upon itself to modify/revise/revoke or interfere in any manner with the MSME registration granted by the competent authority. We are of the considered opinion that the MSME status of the Corporate Debtor as granted by the competent

authority continues to subsist and could not have been disregarded by the Adjudicating Authority unilaterally."

13. In view of the aforesaid discussion, we are satisfied that CD had valid MSME registration certificate dated 21.07.2020 and CD as MSME was eligible to file Application under Section 54C. Question Nos.(1) and (2) are answered accordingly.

**Question Nos.(3) and (4)**

Both the Questions being interrelated are being taken up together.

14. Section 11A, which fell for consideration in this Appeal provides as follows:

> "**11A. Disposal of applications under section 54C and under section 7 or section 9 or section 10.** (1) Where an application filed under section 54C is pending, the Adjudicating Authority shall pass an order to admit or reject such application, before considering any application filed under section 7 or section 9 or section 10 during the pendency of such application under section 54C, in respect of the same corporate debtor.
>
> (2) Where an application under section 54C is filed within fourteen days of filing of any application under section 7 or section 9 or section 10, which is pending, in respect of the same corporate debtor, then, notwithstanding anything contained in sections 7, 9 and 10, the Adjudicating Authority shall first dispose of the application under section 54C.
>
> (3) Where an application under section 54C is filed after fourteen days of the filing of any application under section 7 or section 9 or section 10, in respect of the same corporate debtor, the Adjudicating Authority shall first dispose of the application under section 7, section 9 or section 10.
>
> (4) The provisions of this section shall not apply where an application under section 7 or section 9 or section 10 is filed and

pending as on the date of the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2021."

15. The learned Counsel for the Appellant relied on Report of the Insolvency Law Committee dated July 2021 on 'Pre-Packaged Insolvency Resolution Process'. The learned Counsel for the Appellant has relied on paragraph 3.16 of the Report, where the Committee noted mechanism for determining the priority for disposing pre-pack and CIRP applications that are simultaneously pending. Paragraph 3.16 of the Report is as follows:

"**3.16.** Thus, the Committee noted that the mechanism for determining the priority for disposing pre-pack and CIRP applications that are simultaneously pending should be laid down in the Code. In this regard, the Committee decided that the following principles may be reflected in the Code -

a. Where an application for initiating a pre-pack process is filed first, the Adjudicating Authority should first decide whether to admit or reject such application, before considering any CIRP application that is filed subsequently. This approach provides an objective manner of dealing with simultaneous applications as it considers the application that has been filed first before any subsequent applications.

b. Where an application for initiating CIRP is filed and subsequently a pre-pack application is filed within 14 days of the former, the Adjudicating Authority should first dispose of the application for initiating the pre-pack process. Although under this approach the application that has been filed subsequently is to be disposed first, such a provision may be necessary to allow effective access to pre-packs in practice. The filing of a pre-pack application requires more preparation while CIRP applications can often be filed (and are indeed filed)

immediately on default. Further, certain creditors may rush to file a CIRP application if they discover that the corporate debtor is attempting to negotiate a base resolution plan with its creditors. This may make accessibility to pre-packs limited, hindering quicker and cost-effective resolution of the stress faced by MSME corporate debtors. Therefore, the Committee thought that it would be suitable to allow corporate debtors a small window, after the filing of a CIRP application, to file a pre-pack application that would be considered first. In practice, this will only help debtors that are at an advanced stage of preparation for filing the pre-pack application.

C. Where an application for initiating CIRP is filed and subsequently a pre-pack application is filed after 14 days of former, the Adjudicating Authority should first dispose of the application for initiating CIRP. As with (a), this approach provides an objective manner of dealing with simultaneous applications as it considers the application that has been filed first before any subsequent applications.

d. In order for this mechanism outlined in paragraph b and c. to work as intended, the Committee noted that it was critical that the 14-day time-limit be strictly adhered to (see para 4.9.). The filing systems of the NCLTs will need to monitor this closely to prevent abuse of the process."

16. The learned Counsel for the Appellant has referred to the decision of the Committee as reflected in Clauses (c) and (d).

17. The statutory scheme delineated by Section 11A provides the same priorities as recommended by the Insolvency Law Committee. In the present case, the relevant dates for filing of the Application under Section 7 or Section 54C are not disputed. Section 7 Application was filed by the

Bank of Baroda on 18.04.2022, whereas Application under Section 54C was filed by the CD on 25.07.2022. The submission, which has been pressed by the Appellant is that Application under Section 7 having been filed on 18.04.2022 and the Application under Section 54C having been filed much beyond 14 days period, Application under Section 7 ought to have been first disposed of, which is mandatory requirement under Section 11A (3) and the Adjudicating Authority erred in first considering Section 54C Application and admitted the same.

18. We have noted the submission of learned Counsel for the Respondent that period of 14 days as provided in Section 54C(3) is 'directory'. The submission is that for filing an Application under Section 54C, certain mandatory requirements ought to be completed by the CD, which are provided in Section 54A and 54B. Section 54A and 54B of the IBC is as follows:

> "**54A. Corporate debtors eligible for pre-packaged insolvency resolution process.** (1) An application for initiating pre-packaged insolvency resolution process may be made in respect of a corporate debtor classified as a micro, small or medium enterprise under sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006.
>
> (2) Without prejudice to sub-section (1), an application for initiating pre-packaged insolvency resolution process may be made in respect of a corporate debtor, who commits a default referred to in section 4, subject to the following conditions, that—
>
> (a) it has not undergone pre-packaged insolvency resolution process or completed corporate insolvency resolution process, as the case may be, during the period of three years preceding the initiation date;
>
> (b) it is not undergoing a corporate insolvency resolution process;
>
> (c) no order requiring it to be liquidated is passed under section 33;
>
> (d) it is eligible to submit a resolution plan under section 29A;

(e) the financial creditors of the corporate debtor, not being its related parties, representing such number and in such manner as may be specified, have proposed the name of the insolvency professional to be appointed as resolution professional for conducting the pre-packaged insolvency resolution process of the corporate debtor, and the financial creditors of the corporate debtor, not being its related parties, representing not less than sixty-six per cent. in value of the financial debt due to such creditors, have approved such proposal in such form as may be specified:

Provided that where a corporate debtor does not have any financial creditors, not being its related parties, the proposal and approval under this clause shall be provided by such persons as may be specified;

(f) the majority of the directors or partners of the corporate debtor, as the case may be, have made a declaration, in such form as may be specified, stating, inter alia, that—

(i) the corporate debtor shall file an application for initiating pre-packaged insolvency resolution process within a definite time period not exceeding ninety days;

(i) the pre-packaged insolvency resolution process is not being initiated to defraud any person; and

(ii) the name of the insolvency professional proposed and approved to be appointed as resolution professional under clause (e);

(g) the members of the corporate debtor have passed a special resolution, or at least three-fourth of the total number of partners, as the case may be, of the corporate debtor have passed a resolution, approving the filing of an application for initiating prepackaged insolvency resolution process.

(3) The corporate debtor shall obtain an approval from its financial creditors, not being its related parties, representing not less than sixty-six per cent. in value of the financial debt due to such creditors, for the filing of an application for initiating pre-packaged insolvency resolution process, in such form as may be specified:

Provided that where a corporate debtor does not have any financial creditors, not being its related parties, the approval under this sub-section shall be provided by such persons as may be specified.

(4) Prior to seeking approval from financial creditors under sub-section (3), the corporate debtor shall provide such financial creditors with —

(a) the declaration referred to in clause (f) of sub-section (2);

(b) the special resolution or resolution referred to in clause (g) of subsection (2);

(c) a base resolution plan which conforms to the requirements referred to in section 54K, and such other conditions as may be specified; and (d) such other information and documents as may be specified.

**54B. Duties of insolvency professional before initiation of pre-packaged insolvency resolution process.** (1) The insolvency professional, proposed to be appointed as the resolution professional, shall have the following duties commencing from the date of the approval under clause (e) of sub-section (2) of section 54A, namely:—

(a) prepare a report in such form as may be specified, confirming whether the corporate debtor meets the requirements of section 54A, and the base resolution plan conforms to the requirements referred to in clause (c) of subsection (4) of section 54A;

(b) file such reports and other documents, with the Board, as may be specified; and

(c) perform such other duties as may be specified.

(2) The duties of the insolvency professional under sub-section (1) shall cease, if, —

(a) the corporate debtor fails to file an application for initiating pre-packaged insolvency resolution process within the time period as stated under the declaration referred to in clause (f) of sub-section (2) of section 54A; or

(b) the application for initiating pre-packaged insolvency resolution process is admitted or rejected by the Adjudicating Authority, as the case may be.

(3) The fees payable to the insolvency professional in relation to the duties performed under sub-section (1) shall be determined and borne in such manner as may be specified and such fees shall form part of the pre-packaged insolvency resolution process costs, if the application for initiation of pre-packaged insolvency resolution process is admitted.

19. Shri Datta has contended that unless the CD is able to fulfill the mandatory requirements, no Application under Section 54C can be filed. Hence, the period, which is taken by the CD for completing the mandatory compliances under Section 54A and 54B need to be excluded from 14 days period as provided in Section 11A(3).

20. The issue which has arisen before us is interpretation of Section 11A and the object and purpose of Section 11A. Provision for PPIRP was inserted in IBC when amendment in Code was found necessary to provide for PPIRP. When Chapter III-A was inserted by Act No.26 of 2021, legislator was well aware that against the CD there might be Applications under Section 7, 9 and 10 pending or will be filed. Chapter III-A and Section 11A, after Chapter II was inserted by the same amending Act No.26 of 2021. Three different scenario have been contemplated by Section 11A in sub-sections (1), (2) and (3). The present is a case where Application under Section 7 was filed on 18.04.2022 and Application under Section 54C was filed on 25.07.2022. The facts of present case are covered by sub-section (3) of Section 11A. It is well settled principle of statutory interpretation that when the statute itself contemplate consequence the provision is always treated as mandatory. Sub-section (3) of Section 11A deals with time period and is a clear statutory prescription that where an application under Section 54C is filed after 14 days of the filing of any application under Section 7, the Adjudicating Authority **shall first dispose of** the application under Section 7. The mandate to first dispose of Application under Section 7 is clearly indicated in the provision. We are conscious that mere use of the expression 'shall' is not always be read as mandatory, but while forming an opinion as to whether expression 'shall' used in statute is 'mandatory' or 'directory', the object and purpose of the provision has to be looked into. The entire scheme delineated by Section 11A by sub-section (1), (2) and (3) provides for priority of disposal of different Applications under

Section 54C in respect of Application under Section 7, 9 and 10. Learned Counsel for the Appellant has relied on the judgment of the Hon'ble Supreme Court in ***Vidarbha Industries Power Ltd. vs. Axis Bank Ltd. – (2022) 8 SCC 352***, where the Hon'ble Supreme Court had laid down that first and foremost principle of interpretation of a statute is the rule of literal interpretation. In paragraphs 65 to 69, the Hon'ble Supreme Court laid down following:

> "**65.** It is well settled that the first and foremost principle of interpretation of a statute is the rule of literal interpretation, as held by this Court in Lalita Kumari v. State of U.P. [Lalita Kumari v. State of U.P., (2014) 2 SCC 1, para 14 : (2014) 1 SCC (Cri) 524] If Section 7(5)(a) IBC is construed literally the provision must be held to confer a discretion on the adjudicating authority (NCLT).
>
> **66.** In Hiralal Rattanlal v. State of U.P. [Hiralal Rattanlal v. State of U.P., (1973) 1 SCC 216 : 1973 SCC (Tax) 307] , this Court held : (SCC p. 224, para 22)
>
> > "22. … In construing a statutory provision, the first and the foremost rule of construction is the literary construction. All that we have to see at the very outset is what does that provision say? If the provision is unambiguous and if from that provision, the legislative intent is clear, we need not call into aid the other rules of construction of statutes. The other rules of construction of statutes are called into aid only when the legislative intention is not clear."
>
> **67.** In B. Premanand v. Mohan Koikal [B. Premanand v. Mohan Koikal, (2011) 4 SCC 266 : (2011) 1 SCC (L&S) 676] , this Court held : (SCC p. 270, para 9)
>
> > "9. It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in

every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g. the mischief rule, purposive interpretation, etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule, vide Swedish Match AB v. SEBI [Swedish Match AB v. SEBI, (2004) 11 SCC 641] ."

**68.** In Lalita Kumari v. State of U.P. [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] , this Court construed the use of the word "shall" in Section 154(1) of the Code of Criminal Procedure, 1973 and held that Section 154(1) postulates the mandatory registration of an FIR on receipt of information of a cognizable offence. If, however, the information given does not disclose a cognizance offence, a preliminary enquiry may be ordered, and if the enquiry discloses the commission of a cognizable offence, the FIR must be registered.

**69.** As argued by Mr Gupta, had it been the legislative intent that Section 7(5)(a) IBC should be a mandatory provision, legislature would have used the word "shall" and not the word "may". There is no ambiguity in Section 7(5)(a) IBC. Purposive interpretation can only be resorted to when the plain words of a statute are ambiguous or if construed literally, the provision would nullify the object of the statute or otherwise lead to an absurd result. In this case, there is no cogent reason to depart from the rule of literal construction."

21. In this reference, we may refer to recent judgment of the Hon'ble Supreme Court delivered on 29.01.2025 in ***Independent Sugar Corporate Ltd. vs. Girish Sriram Juneja – Civil Appeal No.6071 of 2023***, where the Hon'ble Supreme Court had occasion to interpret the

provisions of Section 31(4) of the IBC. The Hon'ble Supreme Court in paragraphs 83 and 84 has laid down following:

> "**83.** In Sharif-ud-Din v. Abdul Gani Lone, the Supreme Court held as follows:
>
> > "9… In order to find out the true character of the legislation, the court has to ascertain the object which the provision of law in question has to subserve and its design and the context in which it is enacted. If the object of a law is to be defeated by non-compliance with it, it has to be regarded as mandatory… Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow."
>
> **84.** The long-standing principle of the consequence of non-compliance being the determinative factor, was later reaffirmed in several judgments, such as Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.30, Mackinnon Mackenzie & Co. Ltd. v. Mackinnon Employees Union, as well as Indore Development Authority v. Manoharlal."

22. The Hon'ble Supreme Court observed that proviso of Section 31(4) is mandatory, which require approval of Competition Commission of India before approval of the Plan by the CoC. In paragraphs 150 to 154, the Hon'ble Supreme Court laid down following:

> "**150.** In the present case, for reasons discussed above, the statutory provision and legislative intent unequivocally affirm the mandatory nature of the proviso to Section 31(4) of the IBC. For a Resolution Plan containing a combination, the CCI's approval to the Resolution Plan, in our opinion, must be obtained before and consequently, the CoC's examination and approval should be only after the CCI's decision. This interpretation respects the original

legislative intent, and deviation from the same would not only undermine the statute but would also erode the faith posed by the stakeholders in the integrity of our legal and regulatory framework.

**151.** Where the provisions allow for dilution or departure from the intended scheme of the IBC or the Competition Act, it is the responsibility of the legislature to rectify such inconsistencies through appropriate legislative measures and the judiciary should not normally venture into the legislative domain.

**152.** Further, the indispensability of procedural safeguards as an integral component of a just legal order must be given its due weight, especially as procedural requirements are not mere formalities to be circumvented for expediency but substantive protections designed to ensure fairness and transparency. In that light, the procedural lapses with respect to objections to the proposed combination and the consequent divestiture modification proposed within the framework of the Competition Act, 2002, seriously vitiated the integrity of the process. It is therefore reiterated and reinforced that adherence to procedural propriety is non-negotiable and that the ends cannot justify the means.

**153.** By upholding the mandatory nature of the statutory provision and emphasising upon the critical importance of procedural safeguards, the principle of rule of law is upheld in alignment with global best practices which underscore fairness, predictability and transparency. Such an approach not only reinforces the integrity and credibility of the legal framework but also highlights India's commitment to fostering a regulatory environment, which is conducive to both business and innovation. Additionally, it also ensures the protection and enforcement of rights in an equitable manner, free from bias or favouritism

**154.** Therefore, a balance between the need for expeditious relief and adherence to the statutory framework must necessarily be maintained, in order to ensure that the objectives of both, the IBC and the Competition Act are met in a manner that supports India's long-term economic aspirations."

23. The submission of Shri Datta that the period, which is required for compliance of mandatory requirement under Section 54A and 54B before filing an Application under Section 54C, needs to be excluded while computing 14 days period, does not commend us. Legislature is well aware of requirement under Section 54A and 54B and when both the provisions under Section 54A and 54B and sub-section (3) of Section 11A inserted in the Act by amending Act No.26 of 2021. Hence, the legislature was well aware of the statutory scheme and the statutory scheme does not indicate that while computing 14 days period as referred to in Section 11A, any exclusion of period is provided. The submission of Shri Datta is against the clear intendment of statutory scheme delineated by the above provision. We, thus, are unable to accept the submission of Shri Datta that while computing 14 days period, the period taken in obtaining statutory compliances need to be excluded. Filing an Application under Section 7, 9, 10 and 54C is a well known concept. NCLT Rules 2016, defines the expression 'filed' in Rule 2, sub-rule (14), which means – '*filed in the office of the Registry of the Tribunal*'.

24. We, thus are of the view that Application under Section 54C was filed after 14 days from filing of Section 7 Application and as per Section 11A, sub-section (3), the Adjudicating Authority was obliged to consider the Application under Section 7 before proceeding to dispose of Section 54A Application. Question Nos.(3) and (4) are answered accordingly.

**Question Nos.(5) and (6)**

25. While interpreting the provisions of Section 11A, we have found that period of 14 days referred to in sub-section (3) of Section 11 is 'mandatory' and the said period of 14 days, cannot be read as 'directory'. Consequence of above interpretation is that when an Application under Section 54C is filed after 14 days of filing of Section 7 Application, the Adjudicating Authority was to proceed to decide Section 7 Application first.

26. The question to be considered is as to whether in view of above interpretation in the facts of the present case, we need to set aside order dated 19.04.2023, admitting Section 54C Application and direct for a fresh consideration of Section 7 Application filed by the Bank of Baroda.

27. The facts as noticed above, indicate that CD is a MSME. The IBC provide for special protection to the MSME and Chapter III-A, inserted by Act No.26 of 2021 was with purpose and object of quick resolution of MSME.

28. There is no dispute between the parties that Consortium of Lenders, including SBI, IDBI Bank and Bank of Baroda has extended Financial Facilities to the CD. After the accounts having been declared NPA, the CD had submitted the proposal for negotiated settlement to all the three Banks. In the affidavit, which has been filed by the CD dated 31.07.2023 in Company Appeal (AT) (Ins.) No.888 and 890 of 2023, the CD has brought on record a reply Application filed by the SBI to Section 54C Application filed by the CD. The SBI in its reply affidavit has given

detailed facts and sequence of events regarding OTS received from the CD, as well as approval of Resolution Plan on 21.07.2022. We need to notice paragraphs 3, 4, 5 and 6 of the reply filed by the SBI, which are as follows:

> "**3.** That as per the information available on the record of the Respondent No. 1, the OTS proposal submitted by the Corporate Applicant with the Resp. 3- Bank of Baroda on 04.02.2022 is still pending and that while negotiations were going on between the Corporate Applicant and the Resp. 3 Bank of Baroda regarding finalization of the stipulations of the OTS from 04.02.2022 till 17.04.2022, Resp. 3- Bank of Baroda, without either informing the Corporate Applicant and/or any of the other two consortium members proceeded to file Section 7 Application under the provisions of Insolvency and Bankruptcy Code, 2016 against the Corporate Applicant, while keeping the OTS proposal dated 04.02.2022 of the Corporate Applicant pending with it.
>
> **4.** That thereafter, despite having filed the said Section 7 Application, Resp. 3 Bank of Baroda has all along been participating in the meetings being held by the Corporate Applicant and consortium members to discuss the pre-package insolvency resolution proposal submitted by the Corporate Applicant, which gets duly substantiated from contents of the minutes of meeting of the consortium members held on 21.07.2022 (Copy of minutes of meeting enclosed as Annexure-II).
>
> **5.** That from the aforesaid events, it is manifestly clear that Resp. 3-Bank of Baroda has, for the reasons best known to it, been approbating and reprobating at the same time and have while keeping the OTS proposal dated 04.02.2022 pending, proceeded to submit Section 7 application under the Code before the Hon'ble NCLT and that during the pendency of Section 7 Application before the Hon'ble NCLT have still been regularly participating in all the meetings being convened for deciding the pre-package proposal.

> **6.** That it would also be relevant to state here that the Resp. 3 - Bank of Baroda participated in the said meeting held on 21.07.2022 by the consortium members along with the Corporate Applicant whereby with the full understanding therein that the decision taken therein by majority would prevail and when once, the majority stake holders have decided in the said meeting that the pre-package proposal offered by the Corporate Applicant be accepted then the Resp. 3- Bank of Baroda is bound by it and cannot now be allowed to wriggle-out of the decision so taken in the said meeting in the garb of having preferred the said Section 7 Application under the code before the Hon'ble NCLT on 18.04.2022 prior to approval of the pre-package insolvency resolution proposal vide the said meeting held on 21.07.2022."

29. The above facts indicate that OTS proposal, which was submitted by CD in February 2022 to all the Banks, the CD was making efforts since 2020 to 2022 for its resolution by acceptance of OTS proposal. We have already noticed that the OTS proposal, which was given by the CD was approved by the SBI by letter dated 29.03.2022 and by another Consortium Lender, IDBI Bank on 13.04.2022. The offer, which was given by the CD was of Rs.30 crores to all the Lenders, two Lenders, who constituted 79.12% have approved and accepted the OTS proposal. The Bank of Baroda did not accept the proposal and proceeded to file Section 7 Application on 18.04.2022. It is also relevant to notice that after admitting Section 54C Application filed by the CD, a Base Resolution Plan was submitted, which came for consideration before the Consortium Lenders of the Bank on 21.07.2022, which received approval by 79.12% of Lenders. The SBI and IDBI both accepted the Plan. Bank of Baroda having 26.09% voting share has dissented the Plan. The Adjudicating

Authority in its order dated 22.08.2023 has noticed the aforesaid facts in paragraph 2.11, which is as follows:

> "**2.11.** It is further submitted that out of 3 Financial Creditors, SBI with 47.21% voting shares, IDBI Bank with 26.70% voting shares thereby constituting 73.91% of the total voting shares ofCoC casted their votes on the Base Resolution Plan submitted by the Corporate Debtor and approved the plan with vote of more than 66% as provided under Section 54K (13) of the IBC, 2016. The Base Resolution Plan of the Corporate Debtor has been approved by vote of 73.91% and therefore, the said plan has been approved as per the provisions of the code."

30. Paragraph 3 also notice the payment of Resolution Plan proceeds to all the Financial Creditors. Paragraph 3A is as follows:

| "Sr. No. | Name of Bank | Principal O/s Amount | % of total Exposure | Payment proposed under plan | % payment of Outstanding |
|---|---|---|---|---|---|
| 1. | State Bank of India | 43.33 | 43.30 | 12.00 | 30.02 |
| 2. | IDBI Bank | 33.03 | 33.00 | 10.00 | 30.07 |
| 3. | Bank of Baroda | 13.62 | 13.61 | 4.09 | 30.02" |

31. It is also on the record that entire payment has been made to all the Financial Creditors. We have already noticed that while considering these Appeal(s), this Tribunal had passed an interim order on 20.11.2023, which provided that proceedings of implementation of Resolution Plan may go on which shall abide by the result of the Appeal.

32. The object of the IBC is Resolution of the CD. The present is a case, which consist of three Consortium Members of the Bank – SBI being

47.21% vote share; IDBI Bank 26.70% vote share and Bank of Baroda with 26.09% vote share. Both the Lenders, i.e., SBI and IDBI had also granted approval of negotiated settlement much prior to filing of Section 7 Application. Both the above Lenders have also approved the Resolution Plan and Resolution Plan now stand approved with 73.91% vote shares. Lenders are receiving the payouts under the Plan, which is more than 30% of their outstanding dues. Section 7 Application filed by the Bank of Baroda was for resolution of the CD and today when the CD stands resolved and payments have been received by all Financial Creditors, including the Bank of Baroda, we are of the view that at this stage, no useful purpose shall be served in setting aside order dated 19.04.2023 passed by Adjudicating Authority admitting Section 54C Application and directing for fresh consideration of Section 7 Application. We, thus, in the facts of the present case, are of the view that the CD having been resolved by making payments to all the Lenders, including the Appellant, it is not in the interest of all the stakeholders or the CD to set aside the entire action taken under Section 54C and direct for hearing of Section 7 Application filed by the Bank of Baroda, which was for the purpose of resolution of the CD. We answer Question Nos.(5) and (6) accordingly.

**Question Nos.(7) and (8)**

33. Learned Counsel for the Appellant has contended that payouts, which have been made in favour of the Appellant – Bank of Baroda is not in accordance with Section 30, sub-section (2) of the Resolution Plan approved by the Adjudicating Authority and it is not in accordance with

IBC, hence, the impugned order needs to be set aside. Learned Counsel for the Appellant referring to provision of Resolution Plan 4.11(d) contend that the said Resolution Plan, which provided same payment to assenting Financial Creditors and dissenting Financial Creditors, is not acceptable. Clause 4.11(d), has been quoted in paragraph 7.15 of the Company Appeal (AT) (Ins.) No.1492 of 2023 is as follows:

> "7.15. On the contrary the resolution plan in Clause 4.ll(d) provides as under:-
>
> > "d. Payment to dissenting Financial Creditors (FCs): The basis of PPIRP is relied on "Cramdown" mechanism (as mentioned under compliance table u!s 30(2)) and the offered amounts if approved by majority of FCs would be applicable and binding to all FCs including FCs in minority and dissenting FCs. In the case of present Liquidation Value of assets being higher than the offered resolution amount, and the PPIRP being a revival plan, provisions of Section 30(2)(b) would be limited to the amounts decided under the approved resolution plan by the CO C. Priority in release of payment under the provisions of the amounts in the plan shall be given to such dissenting creditors over the creditors voting in favour of the Resolution Plan. It is clarified that such priority would be limited to an earlier payment by one day without effecting the amount approved by COC."
> >
> > It is most respectfully submitted that clause 4.11 (d) is against the provisions of section 30(2) ofthe IBC, 2016 and thus liable to be set aside. A copy of Resolution Plan dated 26.04.2023 is annexed herewith and marked as Annexure A-7."

34. Section 30, sub-section (2), sub-clause (b), which has been inserted in the IBC by Act No.26 of 2019 provides for payment of debt of Financial

Creditors, who do not vote in favour of the Resolution Plan, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of Section 53. Section 53(1), is as follows:

> "**53. Distribution of assets. -** (1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period as may be specified, namely: -
>
> (a) the insolvency resolution process costs and the liquidation costs paid in full;
>
> (b) the following debts which shall rank equally between and among the following:
>
> (i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and
>
> (ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;
>
> (c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;
>
> (d) financial debts owed to unsecured creditors; (e) the following dues shall rank equally between and among the following: -
>
> (i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;

(ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;

(f) any remaining debts and dues;

(g) preference shareholders, if any; and

(h) equity shareholders or partners, as the case may be."

35. When we look into Section 54K, sub-section (3), the Resolution Plans and the Base Resolution Plans has to be in compliance of Section 30, sub-section (2). Section 54K, sub-section (3) is as follows:

> "**54K(3)** The resolution plans and the base resolution plan, submitted under this section shall conform to the requirements referred to in sub-sections (1) and (2) of section 30, and the provisions of sub-sections (1), (2) and (5) of section 30 shall, *mutatis mutandis* apply, to the proceedings under this Chapter.

36. We find substance in the submission of the Appellant that dissenting Financial Creditor has to be paid the amount not less than the amount, which would be payable to him in event liquidation under Section 53, sub-section (1). The Learned Counsel for the Appellant is right in his submission that the Resolution Plan provides for same payment to assenting and dissenting Financial Creditors. The Appellant was thus clearly entitled for payment in the Resolution Plan as per Section 30, sub-section (2) (b) in reference to Section 53(1) (b), i.e. whatever amount was payable to the dissenting Financial Creditor, in event of liquidation, the said amount would be required to be paid.

37. We have already noticed the amount, which has been already offered to the Appellant and other Financial Creditors. The Bank of Baroda, which has total exposure of 13.61 + 10.09 percentage i.e. 23.70% of outstanding debt of total exposure. The Appellant has already been 30.02 percent of outstanding amount. There may be little difference between amount, if computed as per amount payable to the dissenting Financial Creditor under Section 30, sub-section (2) (b). But whatever may be the difference, if the said amount is greater to the amount paid to the Appellant, the same is entitled to be paid.

38. At this stage, when Resolution Plan has been approved and implemented, we are of the view that ends of justice will be served in directing the SRA to make the payment of differential amount, if any, to the Appellant, as per Section 30, sub-section (2) (b), which payments be made within a period of 30 days from today. RP to compute the said amount and intimate the SRA within two weeks from today. Question Nos.(7) and (8) are answered accordingly.

39. In result of foregoing discussions, we dispose of all these Appeal(s) in following manner:

(1) Company Appeal (AT) (Ins.) Nos.888 and 890 of 2020 are disposed of as above.

(2) Company Appeal (AT) (Ins.) No.1492 of 2023 is partly allowed. The CD is directed to make payment of differential amount to the Appellant, which would have been available to the Appellant as per Section 30, sub-section (2) (b), which

payment may be made within a period of four weeks from today. The RP to compute the payment and intimate SRA.

(3) It is declared that period of 14 days as mentioned in Section 11A, sub-section (3), is 'mandatory'.

Parties shall bear their own costs.

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

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

**NEW DELHI**

**10th February, 2025**

Ashwani