

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI, COURT-III**

Intervention P7/2024

In

IB-654(PB)/2023

**IN THE MATTER OF IB-654(PB)/2023:**

Under Section 95(1) of the Insolvency and Bankruptcy Code, 2016

**M/s. INDIAN BANK**

*Having its Branch Office at:*

SAM LARGE BRANCH,

17, FIRST FLOOR, PARLIAMENT STREET,

NEW DELHI-110001.

**..... Applicant/Financial Creditor**

**VERSUS**

**Mr. ANJANEE KUMAR LAKHOTIA**

H.NO. B-37, 1<sup>ST</sup> FLOOR,

SWAMI NAGAR, MALVIYA NAGAR,

NEW DELHI-110017

**..... Respondent/ Personal Guarantor**

**AND IN THE MATTER OF INTERVENTION P7/2024:**

Under Section 60 (5) of the Insolvency & Bankruptcy Code, 2016

**STATE BANK OF INDIA (LEAD BANK)**

Representing New Working Capital Consortium

*Having its Branch Office At: -*

STRESSED ASSETS MANAGEMENT BRANCH II

11TH FLOOR, JAWAHAR VYAPAR BHAWAN

S.T.C. BUILDING, JANPATH, 1, TOLSTOY MARG,

NEW DELHI- 110001

**..... Applicant**

**VERSUS**

**INDIAN BANK**

**.....Respondent No.1**

**Mr. ANJANEE KUMAR LAKHOTIA**

**.....Respondent No.2**

**Mr. ROSHAN LAL JAIN**

Resolution Professional

**.....Respondent No.3**

**Intervention P7/2024 In IB-654(PB)/2023**

**Date of Order: 26.07.2024**

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**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**  
**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For RP : Mr. Lalit Mohan, Mr. Videh Vaish, Ms. Aakansha Advs.  
For Respondent : Mr. Giriraj Subramaniam, Mr. Simarpal Singh Sawhney  
Advs.

**ORDER**

**PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

1. The present Interlocutory Application is filed by the State Bank of India, Lead Bank of New Working Capital Consortium ("Consortium") on behalf of Consortium formed on 03.05.2018 ("Applicant") pursuant to the approval of the Resolution Plan for MBL Infrastructure Limited ("Corporate Debtor") vide Order dated 18.04.2018 by the Hon'ble Adjudicating Authority, NCLT, Kolkata Bench in CA(IB) No. 288/KB/2018 in CP(IB) No. 170/KB/2017 seeking the following reliefs: -

- a. *"Allow the present application;*
- b. *Permit the Applicant to intervene and/or join as a party to the present proceedings, being Company Petition (IB) 654/(PB)/2023;*
- c. *Allow the Applicant to file a detailed reply bringing relevant facts for the proper adjudication of the captioned petition being Company Petition (IB) 654/(PB)/2023; and*
- d. *Pass such other order or grant further reliefs as deemed just and expedient be granted."*

**2. Brief Background of the Case: -**

- i. It is stated that M/s. MBL Infrastructure Ltd., the Corporate Debtor availed the Working Capital facilities by way of a working Capital Consortium Agreement dated 17.02.2016 executed between the Corporate Debtor and SBM Consortium, including Respondent No.1/Indian Bank.
- ii. The Director of the Borrower Company, Mr. Anjanee Kumar Lakhotia is a Personal Guarantor for M/s. MBL Infrastructure Ltd. by virtue of the Deed of Guarantee executed on 17.02.2016 in favour of State Bank of Mysore (now State Bank of India) as the Lead Bank for the consortium.

- iii. The working capital consortium agreement; inter-se agreement; joint-deed of hypothecation; Deed of Guarantee and other loan agreements dated 27.09.2010 were made supplemental to earlier consortium loan documents dated 27.07.2009 which were obtained by Allahabad Bank as the Lead Bank of Consortium (excluding Punjab & Sind Bank and IDBI Bank), for an amount of Rs. 90.50 Crores.
- iv. The Principal Borrower defaulted on the repayment of the Indian Bank (formerly Allahabad Bank), and the account became NPA on 31.12.2016.
- v. The National Company Law Tribunal, Kolkata Bench, vide Order dated 30.03.2017 passed in CP(IB)-170/KB/2017, initiated Corporate Insolvency Resolution Process against M/s. MBL Infrastructure Limited.
- vi. The NCLT Kolkata vide order dated 18.04.2018 passed in CA(IB) No. 288/KB/2018 in CP(IB) No. 170/KB/2017 approved the Resolution Plan dated 21.11.2017 submitted by Mr. Anjanee Kumar Lokhatia (Respondent No.2 herein) under the provisions of Section 31 (1) of Code which was approved by the Committee of Creditors ("CoC") of Corporate Debtor with a voting share of 78.50% was approved. The approved Resolution Plan provides restructuring of debt and modification of securities, including the personal guarantee dated 17.02.2016 executed by Respondent No.2. Pursuant to the approval of the Resolution Plan, the loan of Corporate Debtor effectively got restructured and security interest was also modified.
- vii. The Hon'ble Supreme Court vide order dated 18.01.2022 passed in Civil Appeal No. 8411 of 2019 approved the Resolution Plan submitted by Respondent No.2. The implementation of the Resolution Plan is underway, and the Court also noted that the successful resolution applicant has already infused Rs.63 Crores.
- viii. On 30.05.2022, Respondent No.1/Indian Bank issued a demand notice in respect of unpaid debt in default due from MBL Infrastructure Limited under Form B to Respondent No.2 and filed the present Petition being CP(IB)-654/(PB)/2023 under Section 95 of the Code seeking initiation of Personal Insolvency against the Successful Resolution Applicant on the erroneous ground that the Corporate Debtor has been liquidated.
- ix. This Adjudicating Authority vide Order 05.12.2023 declared an interim moratorium and appointed Mr. Roshan Lal as Resolution Professional (Respondent No.3) and directed the Resolution Professional to file a Report under Section 99 of the Code.

- x. A meeting of the consortium of Corporate Debtor was held on 28.12.2023 with the following Agenda: -
- a) *“To ascertain the status of revalidation approval for Implementation of Resolution Plan from Bank of Maharashtra, Union Bank of India, and Bank of Baroda.*
  - b) *Deliberation on C.P (IB) No 654/2023 filed by Indian Bank (Dissenting Creditor) in NCLT, New Delhi initiating Personal Insolvency under IBC-2016 against Successful Resolution Applicant (SRA)/ Personal Guarantor of M/s. MBL Infrastructure Ltd, i.e., Shri. Anjaneer Kumar Lakhota on the ground that M/s. MBL Infrastructure Ltd. has been liquidated.*
  - c) *Discussion on whether as a CoC or assenting lenders representing SBI, BoB, UBI, IoB, PNB and BoM who represent 78.50% should file an IA in support of IA filed by Anjaneer Kumar Lakhota to protect the larger interest of assenting creditors in implementing the Resolution Plan.*
  - d) *Any other agenda item with the permission of Chair.”*

Hence, the present Intervention Application.

3. The Ld. Counsel for the State Bank of India/Applicant in the Intervention Application has submitted that the consortium of the assenting Lender Banks is keen to implement the Resolution Plan to revive the Corporate Debtor. For such implementation, it is essential to comply with the provisions of the Resolution Plan, which includes modification of the existing security interest to the secured Financial Creditors. One of the said modified security interests is the new personal guarantee proposed to be issued by Respondent No.2. It is submitted that, admittedly, the Personal Guarantee dated 17.02.2016 in issue under the captioned petition was provided by Respondent No. 2 in favour of State Bank of Mysore (now SBI), which could have been invoked by SBI, and that too with requisite consortium majority, as a security created in favour of the consortium lenders for debt availed by the Corporate Debtor. There was no standalone personal guarantee in favour of Indian Bank.
4. The Ld. Counsel for the Indian Bank in its Reply Affidavit dated 09.02.2024 submitted that the provisions of Part III of the Insolvency and Bankruptcy Code, 2016 (the Code) does not have any provision of

impleadment or intervention by any other member of the Consortium of lenders in the matters of Insolvency proceedings against the Personal Guarantor of the Corporate Debtor. The presence of the Personal Guarantor in the meeting of Consortium held on 28.12.2023 and action of the Lead Bank at the instance of the Personal Guarantor suggests that there is a collusion of the Lead Bank and other members of the New Working Capital Consortium with the Personal Guarantor against the Petitioner Indian Bank.

5. The Ld. Counsel for the Personal Guarantor/Respondent No.2 submitted in its Reply Affidavit that the being a dissenting Financial Creditor, Indian Bank (Allahabad Bank) is entitled Liquidation value as per the approved Resolution Plan and full provision has been made for the payment of the liquidation value which will be paid after the execution of the new Working Capital Consortium documents and prior to any recovery by the assenting financial creditors. The Financial Creditors of the Borrower have implicitly decided not to pursue the enforcement of the Personal Guarantee dated 17.02.2016 and in any event are not legally entitled to enforce such Personal Guarantee. No standalone Personal Guarantee has been executed in favour of Indian Bank as per the terms of the Deed of Guarantee, apart from the Lead Member, the State Bank of Mysore (now State Bank of India), no member of the consortium, including Indian Bank, can unilaterally make a demand or invoke the Guarantee.
6. The Ld. Counsel for the Resolution Professional/Respondent No.3 submitted in its Reply Affidavit that as per the provisions of Section 99 of the Code, the Resolution Professional had already examined the application filed by the creditor under Section 95 along with the supporting documents and the report has already been filed by the answering respondent vide IA-632/2024 and have stated that there are various issues raised by the personal guarantor and the same may be adjudicated by this Adjudicating Authority. However, no document on record produced to show the earlier personal guarantee will be modified but there is discussion in the Resolution Plan that a Personal Guarantee will be executed to consortium working Capital Lenders, Equipment/ECB Lender.

7. We have heard the submissions made by the parties and perused the records.
8. The Ld. Counsel for the Applicant submits that Respondent No. I/Indian Bank neither issued any notice to the lead Bank, i.e., State Bank of India, regarding the initiation of proceedings under the Main Petition nor included the lead bank as a party to the main petition which is a necessary obligation as per **Clause 3(j)** of the **Inter-se Agreement** dated 17.02.2016 which categorically provides as under: -

*“In case any of the Member Bank desires to initiate any action for enforcement of the said Securities against the Borrower or for the recovery of any monies due to them, the said Member Bank shall provide a notice of such intent to the Lead Bank. In the event the Lead Bank does not, within a period of thirty days after the receipt of such notice, take steps to the satisfaction of such Members Bank to realise or enforce the said securities and/or recover the dues of the said Member Bank from the Borrower, the said Member Bank shall be at full liberty to enforce all its rights severally and take such proceedings against the said securities and/or the Borrower as it may deem fit. However, in all such proceedings, the Member Bank shall make the Lead Bank and other Member Banks as nominal defendants.”*

9. On the contrary, the Ld. Counsel for the Indian Bank submits that the contention of the Applicant that there is no standalone Personal Guarantee in favour of Petitioner Indian Bank, hence the petitioner has no locus is not tenable in the eyes of laws. The Personal Guarantee Deed has been executed by the Personal Guarantor jointly and in favour of all the members of consortium does not make it less applicable on any of the member of the consortium and is equally applicable on all the consortium banks and there was no need to have a standalone deed. The very purpose of having a Consolidated Deed of Guarantee is to reduce the paper work but this in no manner reduces the applicability of terms of the document on each member of the consortium.
10. The Inter-se Agreement executed between the participating Banks of the Consortium dated 17.02.2016 vide Clause 3(j) provides that in case any of

the Member Bank desires to initiate any action for enforcement of the said Securities against the Borrower or for the recovery of any monies due to them, the said Member Bank shall provide a notice of such intent to the Lead Bank. Since, it is an admitted fact that the State Bank of Mysore (now State Bank of India) is the Lead Bank and Respondent No. 1/Indian Bank neither issued any notice to the lead Bank, i.e., State Bank of India, regarding the initiation of proceedings under the main petition nor impleaded the lead bank as a party to the main petition. We are therefore, of the view that the Applicant/Indian Bank acted in violation of the Inter-se Agreement and could not have filed the present Application without giving notice to the Lead Bank.

11. The Resolution Plan submitted by Respondent No.2 has been approved by the Hon'ble Supreme Court vide Order dated 18.01.2022 passed in Civil Appeal No.8411 of 2019. The rights of the Applicant- Lead Bank and other assenting Lending Banks of the Consortium, as delineated within the Resolution Plan, are directly impacted by the proceedings of the main petition. Therefore, we hold the State Bank of India, being the Lead Bank of the New Working Capital Consortium a necessary party in the present petition.
12. Consequently, the plea of the Applicant to intervene in the Main petition **CP(IB)-654/PB/2023** is allowed. Therefore, in the above terms, the present Intervention Application stands **allowed**.
13. The Applicant/Indian Bank is directed to file an Amended Memo of Parties within 7 days.
14. The Applicant is permitted to file reply affidavit in the Main Petition CP(IB)-654/PB/2023 within 7 days.

**-Sd-**

**(ATUL CHATURVEDI)  
MEMBER (TECHNICAL)**

**-Sd-**

**(BACHU VENKAT BALARAM DAS)  
MEMBER (JUDICIAL)**