THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH-I

IA 2561 OF 2024

Under Rule 11 of NCLT Rules, 2016

IndusInd International Holdings Limited

…**Applicant**

Vs.

Nageswara Rao Y, Administrator, Reliance Capital Limited & Ors.

…Respondents

In the matter of

C.P. (IB)1231/MB/2021,

Under Section 7 of Insolvency and Bankruptcy Code, 2016

Reserve Bank of India

…Financial Creditor

Vs.

Reliance Capital Limited

… Corporate Debtor

Order delivered on: 23.07.2024

Coram*:*

Shri Prabhat Kumar	**Justice V.G. Bisht (Retd.)**
Hon'ble Member (Technical)	Hon'ble Member (Judicial)

Appearances:

For the Applicant	:	Mr. Venkatesh Dhoond, Sr. Advocate a/w Mr. Kunal Mehta

		and Ms. Bhumika Batra, Advocates
For the Respondent No.1	:	Mr. Gaurav Joshi, Ld. Sr. Adv. a/w Mr. Piyush Raheja, Advocates
For the Respondent No.3	:	Ms. Pooja Dhar, Advocate

ORDER

Per: Prabhat Kumar, Member (Technical)

1. The present Petition CP No. 1231 of 2021 is filed by the IndusInd International Holdings Limited (IIHL), who is Successful Resolution Professional of Reliance Capital Limited (RCL) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 the matter of Reliance Communication Limited seeking following relief;
    a) *That this Hon'ble Tribunal be pleased to pass a necessary order and direction permitting the Applicant an extension of time of 90 days after 27.05.2024 within which the Applicant may be permitted to complete its obligations under the Implementation Schedule set out in Clause 8.4.1 of the Resolution Plan; and*
    b) *Such other and further relief as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*
2. The Successful Resolution Professional of the Corporate Debtor seeks direction permitting the Applicant an extension of time of 90 days beyond 27.05.2024 within which the Applicant may be permitted to complete its obligations under the Implementation Schedule set out in Clause 8.4.1 of the Resolution Plan.

3. The CIRP of RCL commenced on December 6, 2021 at which time, the RBI appointed Administrator was appointed as the Administrator under the Code to perform all the functions of a resolution professional.

4. The Applicant, IndusInd International Holdings Limited ("IIHL"), submitted its resolution plan on June 6, 2023 (read with the clarifications dated June 8, 2023 and June 23, 2023) ("Resolution Plan"). The Resolution Plan was put to vote before the Committee of Creditors of RCL ("CoC") during the voting window of June 09, 2023 and June 29, 2023; and the CoC approved the Resolution Plan with a 99.60% majority vote. Thus, IIHL emerged as the Successful Resolution Applicant in the CIRP of RCL. IIHL is today seeking a unilateral extension in a manner that is contrary to the Resolution Plan and without the lender's consent, as will be detailed hereinbelow.

1. The salient features of the Resolution Plan relevant to the present issue are as follows:

   i. Clause 1.1 - Corporate Debtor's cash balances after June 6, 2023 shall be for the benefit of IIHL net of any such recovery that forms part of the CoC Entitlement Amount.
   ii. Clause 5.9 – Extension of timeline beyond 90 days after approval of the Resolution Plan by the National Company Law Tribunal ("NCLT") for payment to creditors in the event of non-fulfilment of conditions set out in Clause 8.1.
   iii. Clause 8.1– Conditions Precedent ("CPs")for the implementation of the Resolution Plan. All CPs stand satisfied as on date. The status of satisfaction along with their dates are set out in paragraph 7 below.
   iv. Clause 8.1.1.5– CPs include inter alia making applications to the Insurance Regulatory and Development Authority of India ("IRDAI") for approvals for certain entities. The appropriate applications have been made; and the CP is satisfied.
   v. Clause 8.3.2– Row No. 6 of the specified approvals identified approval from the Government of India for investment by IIHL

in RCL in terms of the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019.

vi. Clause 8.3.4–This clause specifically provides that IIHL will obtain the approvals within a period of 1 year from the date of the NCLT approval. The specified approvals identified in Clause 8.3.2 are not CPs for implementation.

vii. Clause 8.4.1– The implementation schedule was set out which inter alia provided that the Upfront Cash Amount was to be paid by IIHL within 90 days from the date of receipt of certified copy of the order of the NCLT approving the Resolution Plan.

2. The Resolution Plan was approved by this Tribunal on February 27, 2024 (“Plan Approval Order”) ("Plan Approval Date"). The Monitoring Committee (“MC”) was constituted on February 29, 2024. A certified true copy of the Plan Approval Order was received on February 28, 2024.

3. Various meetings were held between IIHL and the Respondents (CoC, MC and Administrator) and much correspondence was exchanged inter se regarding the implementation of the plan including completion of the CPs, payment of the Upfront Cash Amount, and timelines for complete implementation thereof.

4. The CPs came to be satisfied by May 15, 2024. Accordingly, as per Clause 8.4 of the Resolution Plan [Volume I, Pg 103 of the IA], IIHL was required to make payment of the Upfront Cash Amount of INR 9,861 crores on or prior to the expiry of 90 days i.e. by May 27, 2024. The details of the satisfaction of the CPs is summarized in the table below:

S. No.	Condition	Date of Satisfaction
a.	Clause 8.1.1.2. Upon the implementation of the Resolution	RCL has custody of all shares of RGIC

S. No.	Condition	Date of Satisfaction
	Plan, clear title of shares of Reliance General Insurance Company Limited ("RGIC"), other than the shares held under employee stock option plan shall be handed over to the Resolution Applicant.	
b.	Clause 8.1.1.4. Receipt of approval from RBI in respect of: (i) the change in control of the Corporate Debtor; (ii) the change in sponsor of Reliance Asset Construction Company Limited ("RARC"); and (iii) any other requirement under Applicable Laws, including the FSP Rules and the RBI Directions/Circulars in relation to CICs, NBFC ND-SIs, and ARCs.	(i) Approval for change in control of the Corporate Debtor was received on November 17, 2023; (ii) Approval for change in sponsor of RARC was received on March 21, 2024; and (iii) Approval for change in control of Reliance Financial Limited was received on May 06, 2024.
c.	Clause 8.1.1.5 Sending an application to Insurance Regulatory and Development Authority of India ("IRDAI") for Reliance General	Filed on October 28, 2023, October 27, 2023, and October 30, 2023 respectively and

S. No.	Condition	Date of Satisfaction
	Insurance Company Limited ("RGIC"), Reliance Nippon Life Insurance Company Limited ("RNLIC") and Reliance Health Insurance Limited ("RHICL") for the purposes of implementation of the Resolution Plan and in connection with the said implementation, any approvals required from IRDAI upon acceptance of Letter of Intent in respect of: (i) the change in control of RGIC, RNLIC, and RHICL; and (ii) any other requirement under Applicable Laws.	therefore this condition precedent was satisfied on October 30, 2023.
d.	Clause 8.1.1.6 Receipt of approval from the Securities and Exchange Board of India ("SEBI") in respect of: (i) the change in control of Corporate Debtor, Reliance Securities Limited ("RSL") and other entities (wherever applicable); and (ii) any other requirement under Applicable Laws.	The approvals from the SEBI for RSL (investment advisor, research analyst and stock broker) were received on August 31, 2023, February 23, 2024 and May 15, 2024; for RWML (investment advisor and portfolio manager) on March 21, 2024.
e.	Clause 8.1.1.7 Receipt of approval from CCI: (i) for the acquisition of the Corporate Debtor; and	Approval of the CCI was received on December 27, 2023.

S. No.	Condition	Date of Satisfaction
	(ii) in respect of any other steps contemplated as part of this Resolution Plan (wherever required on application by the Resolution Applicant to the CCI prior to the NCLT Approval Date.)	
f.	Clause 8.1.1.12 In the event that the CoC, RBI, NCLT or the NCLAT or any court determines that the distribution of the Resolution Consideration Amount under the Resolution Plan is not in accordance with Applicable Law, the Resolution Consideration Amount payable by the RA shall stand re-allocated to such extent as is necessary for compliance with Applicable Law provided that there is no change in the total Resolution Consideration Amount payable by Resolution Applicant. The total liability of the Resolution Applicant shall not exceed the total Resolution Consideration Amount in any event.	No such determination has occurred yet.

Submissions of Applicant i.e. IIHL

5. At the outset, it needs to be appreciated that an application of this nature fundamentally gives rise to three questions:
    a. Firstly, whether the SRA has the financial capability of fulfills financial obligations under the resolution plan, if the extension to be granted?

b. Secondly, whether the factual circumstances of the case establish the existence of legitimate and bona-fide reasons which precluded the SRA from fulfilling its financial obligations under the resolution plan?

c. Thirdly, whether the Resolution Applicant should pay interest to the creditors of the Corporate Debtor for the extension of time?

6. It was conceded that the creditors were not questioning the financial capability of the Resolution Applicant and that the lenders had faith in the financial capacity and capability of the Resolution Applicant. It was in fact, plainly conceded that the COC / Monitoring Committee were not opposing the extension of the timeline sought but were only pressing for payment of interest for the extended period.

7. With the above two concessions, in the Applicant's respectful submission. the first two questions which arise i.e. financial capability/capacity of the Resolution Applicant and whether bona fide reasons exist which precluded the Applicant from fulfilling its financial obligations under the Resolution Plan by 27th May 2024, already stand answered in the Applicant's favor. This is simply because the creditors of the Corporate Debtor appreciate the regulatory framework and the commercial realities which together have contributed the present situation.

8. In regard to the interest on delay in payment of Resolution money, the IA is premised on the existence of factual circumstances (beyond its control) which precluded the Applicant from fulfilling its financial obligation of paying Rs.9861 Crores by 27th May 2024.

9. As per its entitlement under the Resolution Plan, the Resolution Applicant opted to fulfill its financial obligation of paying a total sum of Rs. 9861 Crores in the following manner;

a. A sum of Rs.2,500 Crores would be infused into the Corporate Debtor directly through a 100% subsidiary of the Applicant, namely, IIHL BFSI Ltd. from Mauritius, as and by way of equity. This would therefore be a foreign direct investment ("FDI") and would be utilized to pay off the creditors as per the Resolution Plan.
b. A sum of Rs.7,300 Crores would be paid directly to the Financial Creditors of the Corporate Debtor, as per the Resolution Plan, by raising finance/debt from domestic and international lenders.
c. A sum of Rs.250 Crores would be infused into the Corporate Debtor as and by way of equity through an Indian entity namely, Cyqure India Private Limited whose equity shares are 30% owned by Mr. A.P. Hinduja, 40% is held by Mr. Shom Hinduja and the remaining 30% is held by Mrs. Harsha A. Hinduja i.e. Mr. A.P. Hinduja's wife and son.

10. Hence, a total sum of Rs. 10,050 Crores will be brought in by the Resolution Applicant as against a requirement of 9,861 Crores. The remaining sum of Rs.189 Crores will remain in the Corporate Debtor for its business purposes. The equity component of Rs.2,500 crores was to be brought in by a 100% subsidiary of the Resolution Applicant which is a company incorporated in Mauritius. It would therefore be FDI. There was an ambiguity in the regulations in relation to this issue, whether this investment is permissible under automatic route or require specific government approval, which got clarified on 29th April 2024 in a Meeting between RBI officials and the Applicant at which time, the RBI indicated to the Resolution Applicant that for the equity component, the Resolution Applicant should obtain approval under the FDI Policy. This discussion happened at a time when the Resolution Applicant was interacting with the RBI for the lending portion of the transaction (Rs.7,300 Crores). Accordingly, the Applicant filed an Application on 14th May 2024 with the Ministry of Commerce and Industry, DPIIT seeking approval for the FDI of Rs.2,500 Crores. Prior to this, R1's Reply

Email communications dated 4th July 2023 between the Resolution Applicant and the Ld. Administrator indicate that the Resolution Applicant had, on the basis of legal advice taken the stand that it would not be requiring approval from the Government of India for the equity infusion. When the email from the Ld. Administrator is read, it becomes apparent that even he wanted this confirmation.

11. It is submitted that the fundamental contention of the Ld. Administrator and the Committee of Creditors is that since the Resolution Applicant had, in July 2023 confirmed that it did not need to apply for the approval from the Government of India, the belated seeking of approval in May 2024 is not bona fide. When all the stakeholders were informed that for the FDI infusion, the Resolution Applicant would not need the approval from the RBI and the Ministry of the Commerce and Industry. not only the Applicant but even the COC and the Ld Administrator were understanding of this position since it was based on legal advice and a view that had been taken on account certain contradictory provisions in the regulatory framework namely the FDI Policy.
12. For the approval under Clause 8.1.1.4 to be obtained, the RBI's approval would be necessary. The non-receipt of this approval would be a Material Adverse Event as defined in Clause of the Resolution Plan, owing to which, Clause 5.9 of the Resolution Plan would apply. As such, it would be unfair to the Resolution Applicant if it was directed to pay interest for the delay in infusing the equity component. Moreover, the Resolution Plan itself absolves the Resolution Applicant of any penalty in such an eventuality.
13. 10.12 As regards financial capability/capacity, in any event, to satisfy the conscience of the Tribunal, the Applicant has placed on record a certificate of its Chartered Accountant which confirms that funds to the tune of USD 300 million i.e. Rs. 2,500 crores have been earmarked for equity participation for the purpose of acquisition of the Corporate Debtor. In any event, the Applicant is an entity which holds a bulk of

shares of IndusInd Bank Ltd. and the net asset value of the Applicant is USD 2,048,887 (United States Dollars two billion forty eight thousand eight hundred and eighty seven) as at 31st March 2024.

14. A large funding of Rs.7,300 Crores is to be raised, as and by way of debt from domestic and International lenders. This funding was to be secured inter-alia by security which included guarantees to be furnished by overseas entities. This necessitated the approval of the RBI. The RBI thus considered a guarantee to be in the form of put option backed by Indemnity. Since the RBI disapproved the cross-guarantee proposal (as is evident from apparent from a communication vide email dated 22 May 2024 from the Ld. Administrator to inter alia the Resolution Applicant and all other stakeholders involved), which was envisaged by the Applicant which led to the Applicant to rework the entire financial arrangement requiring additional approvals. After all the discussions and rework, the Applicant arrived at the put option structure backed with Indemnity which not only required the entire commercial arrangement to be reworked but also required a full compliance from all applicable laws, rules, regulations not only in India but also in other jurisdiction as well. This being an essential ingredient to the transaction required additional time. It is nobody's case that the RBI approval was not sought well in advance. The application for the RBI Approval was made with the consent of the Monitoring Committee. The RBI approval was not forthcoming and therefore, the raising of the finance could not be achieved by 27th May 2024.
15. However, the Applicant had obtained term sheets from two reputed lenders i.e. 360 One Asset Management Limited and Barclays Bank PLC, Mumbai Branch. These term sheets confirmed that two lenders were highly confident of their ability to arrange funds aggregating to Rs.7,300 Crores. During the hearings on 20th June 2024 and 25th June 2024, the Applicant had placed on record, emails dated 22nd June 2024 along with accompanying term sheets from the two lenders i.e. 360 One

Asset Management Limited and Barclays Bank PLC, Mumbai Branch. These emails contained written confirmation that on the basis of the term sheets, the lenders had instructed their lawyers to finalize the documentation. In order to explain the complexity of this lending transaction from merely the perspective of documentation, at Exhibit H / Pg. 32 of the Applicant's Affidavit dated 12th June 2024, the Applicant was set out an indicative list of lending documents which are being prepared for the purpose of the lending of Rs. 7,300 Crores. It is reasonable that the process of finalization of this documentation would take some time.

16. Far from there being any gain, the delay is in fact causing loss to the Resolution Applicant. Despite obtaining IRDAI approval which would have enabled the Resolution Applicant to take over and carry out the business of the subsidiaries of the Corporate Debtor and generate more revenue and income, the delay in funding is preventing it from doing so. If the Resolution Applicant is undertaking financial obligations exceeding Rs.10,000 Crores, it is commercially logical that it would be the one to lose with the passage of time. Ordering the Resolution Applicant to pay interest would be contrary to the provisions of Clauses 5.9 read with Clauses 8.1.1.1. and 8.1.1.4 and 8.3.2 (Serial No.6) of the Resolution Plan.

17. In case of ***Ashok Dattatrey Atre v SBI & Ors. [Company Appeal (AT) (Insolvency) No.221-222 of 2024]*** [Ashok Bhushan J, Arun Baroka], the Hon'ble NCLAT at Para 20 held that- "*for extension of timeline it is not necessary that COC should express its concurrence, only then the Adjudicating Authority can exercise its jurisdiction. The jurisdiction is there with the Adjudicating Authority in appropriate case. Granting extension of time in payment as per Resolution Plan for Implementation of the Resolution Plan, appropriate jurisdiction is always vested with the Adjudicating Authority to pass appropriate order*".

Submissions of Respondent No. 1 – Erstwhile Resolution Professional

18. Despite assuring the Respondents repeatedly about fulfilling its obligations under the Resolution Plan in a timely manner, and in any event, prior to May 27, 2024, at the 9th MC Meeting held on May 15, 2024, IIHL for the first time, sought an extension for the implementation of the Resolution Plan and the fulfilment of its payment obligations until June 30, 2024. The representatives of the financial creditors specified that any extension may be considered subject inter alia to payment of interest for every day of delay, and subject to the deposit of at least the equity component into an escrow account i.e. (INR 2750 crores).
19. IIHL on May 21, 2024 filed the present Application seeking a unilateral extension of the timelines mentioned in the Resolution Plan by a further period of 90 days from May 27, 2024 (which is beyond the June 30 deadline it sought from the MC 6 days before). At the final hearing on June 20, 2024 IIHL submitted that though it had prayed for an extension of 90 days, in light of the progress made, it was requesting for an extension only till the end of next month, i.e., July 31, 2024.
20. IIHL seeks an extension inter alia on the grounds of the pendency of: (a) their application dated May 16, 2024 seeking approval from the RBI for the creation of a pledge by IIHL over its shareholding in RCL ("Pledge Approval"); (b) their application dated May 16, 2024 seeking the RBI's approval for RCL providing a guarantee for the borrowing by Aasia Enterprises LLP ("Guarantee Approval"); (c) their application dated May 14, 2024 seeking approvals from the Government of India (Department of Industrial Policy and Promotion (DIPP)) for investment by IIHL in RCL ("GoI Approval"); and (d) other applications. Pertinently, these are not conditions precedent to the implementation of the Resolution Plan and therefore, not an impediment to the same. In any event these events do not entitle IIHL to seek extension of the deadline for payment.
21. IIHL refused the MC's condition offer of May 15, 2024 at the MC

Meeting held on May 23, 2024 (at the 10th MC Meeting), after filing this Application. IIHL cannot seek modifications of the Resolution Plan without the CoC's consent. Moreover, the Resolution Plan specifically contemplates the scenario wherein an extension may be granted, which is in Clause 5.9 of the Resolution Plan. Having specifically agreed to the conditions wherein an extension is permitted, IIHL cannot not be permitted to seek unconditional extension as the same would be tantamount to rewriting the plan.

22. IIHL has not shown its bonafides in seeking extension of time by paying interest and deposit the amount of equity contribution in escrow.
23. It may be noted that in terms of the Resolution Plan, all cash recovery in RCL from one day post the Revised Submission Plan Date (i.e. June 06, 2023) till the final implementation of the Resolution Plan shall be for the benefit of IIHL. IIHL, therefore, is the sole beneficiary from the non-implementation of the Resolution Plan till now on account of : (i) non-payment of interest on the amounts that were to be borrowed in a timely manner to implement the resolution plan on or prior to May 27, 2024; and (ii) entitlement to a higher amount of cash recovery in RCL, without actually having taken over or put effort into running the business of RCL. It cannot be, therefore, permitted an unconditional extension.
24. Payment of interest to the lenders on account of delays has been directed in the past by the National Company Law Appellate Tribunal ("NCLAT") [Ashok Dattatray v. State Bank of India, 2024 SCC OnLine NCLAT 468, paragraph 28].
25. IIHL, during its oral arguments, has contended that Clause 5.9 of the Resolution Plan provides that any delay in implementation of the Resolution Plan on account of a "Material Adverse Event" ought not to be seen as non-compliance. This is a manifestly wrong interpretation. It is the Applicant's case that because it was not aware or mistakenly believed that the GoI Approval was not needed, and only purportedly learnt of the requirement on April 29, 2024. This does not constitute a

'Material Adverse Event'.

26. Per Clause 8.1.1.5, only an application needed to be filed for IRDAI's approval, for satisfaction of the CP. The requisite applications were filed in October 2023 as seen in Paragraph 7 above. Obtaining the approval of IRDAI, was / is not a CP. In any event, IRDAI's approvals were obtained by May 10, 2024. IIHL contends, in its Affidavit in Rejoinder, that it could not have applied for IRDAI's approval until the Resolution Plan was approved by the NCLT. Such a contention is not only false to IIHL's own knowledge but is also contrary to the Resolution Plan and its own conduct. IIHL claims they were prompt in their responses to IRDAI's queries which contention is contrary to the record. IIHLs contention that it could not have applied before February 27, 2024 is clearly an afterthought to disguise the delay that it has caused in obtaining the approval. Despite IRDAI having raised its queries on December 12, 2023 and 11 follow ups and reminders from the Administrator, IIHL only provided the Administrator a draft response on February 13, 2024, which was forwarded to IRDAI. IIHL did not provide a final response until a follow up was received from IRDAI itself on March 20, 2024. Thereafter, the final response was submitted only on April 29, 2024.
27. It is settled law that once a resolution plan is approved by the CoC, it becomes binding on the Resolution Applicant and no modifications or withdrawal is permitted thereafter [Ebix Singapore (P) Ltd. v. Educomp Solutions Ltd. (CoC), (2022) 2 SCC 401, Paras 221-224, Deccan Value Investors v. Dinkar Venkatasubramanian, (2024) 244 Comp Cas 1, Paras 5, 6, 15]. Therefore, there is no reason as to why IIHL would have to wait for NCLT's approval to seek the approvals from various regulatory authorities.
28. IIHL is not precluded from complying with the Resolution Plan even now. It is trite law that a submitted resolution plan is binding on the successful resolution applicant and therefore, IIHL is bound by the terms of the Resolution Plan submitted by it and approved by the CoC [Ebix

Singapore (P) Ltd. v. Educomp Solutions Ltd. (CoC), (2022) 2 SCC 401, Para 164, 223]. IIHL is bound to comply with the terms thereof including its payment obligations. In order to obtain the discretionary relief of an extension of time, contrary to the terms of the Resolution Plan, IIHL should at least demonstrate (a) that it has been ready and willing to perform its part of the obligations and bring in the Upfront Cash Amount, at all relevant times (i.e. when the RBI approved the Resolution Plan, when the CCI approved the Resolution Plan, and when this Hon'ble Tribunal approved the Resolution Plan); and (b) how it was prevented by some special circumstances from doing so.

29. The grounds for extension provided by the Applicant are misleading. In their Application as also its Affidavit in Rejoinder, the Applicant has sought for an extension claiming the GoI Approval, Pledge Approval and Guarantee Approval, and financiers mandated additional approvals – were all required for implementation. These contentions are misleading and denied. The applications for Pledge Approval and Guarantee Approval have arisen on account of the conditions set by the financiers of IIHL and are not CPs to the implementation of the Resolution Plan. This contention was raised earlier [Para 28, pg. 16 of Admin's Reply] and IIHL has not controverted this contention.

30. Though the Resolution Plan allows IIHL some flexibility to implement the Resolution Plan through its wholly owned subsidiary – IIHL BFSI (India) Ltd. and Aasia Enterprises LLP or such other entity as may be decided by IIHL with the approval of the CoC; it cannot be taken to mean that IIHL can keep changing the structure, keep adding on requirements of some additional requirements one after the other endlessly, and ignore all timelines under the Resolution Plan. As highlighted above, the liberty to seek an extension is provided in the limited situations mentioned in Clause 5.9 of the Resolution Plan. The grounds raised by IIHL do not feature or in any manner flow from the said Clause.

31. In relation to the debt component of its contribution, IIHL has annexed a

few letters to the Application from two entities, viz. Barclays Bank PLC and 360 One Asset Management Limited, which do not inspire any confidence in the Applicant's ability as:

a. Both letters are non-binding in nature;
b. Both letters are subject to further terms to be agreed to with IIHL as well as multiple conditions precedent and regulatory approvals;
c. Both letters are merely proposals and do not set out the terms for the financing in any manner.

32. Similar letters were submitted in June 2023 by the Applicant at the time of seeking the approval of the CoC. It appears that the Applicant has shown no movement in its financing over the last 12 months. Additionally, the Applicant shared term sheets with the Administrator on June 06, 2024, i.e. ten (10) days after the expiry of ninety (90) days time period for the implementation of the Resolution Plan via email. IIHL claimed these were the final agreed terms. However, these term sheets were not executed and non-binding term sheets. During the final hearing, IIHL tendered a term sheet dated June 10, 2024, however this was also neither a signed nor a binding term sheet. It was IIHL's case, during the final hearing on June 25, 2024, that the term sheets were sent under cover of the email dated June 18, 2024, which stated that the term sheets were final; and only the finer details which remained to be discussed between the legal counsel of IIHL and its financiers. However, the said emails do not in any manner demonstrate that the term sheets are binding against the said financiers who have shared the same. In any event, no binding or signed commitments from any financiers have been placed before the MC till date satisfying the MC of IIHL's ability to undertake its obligations forthwith.
33. Moreover, in relation to its equity contribution IIHL has only provided a statutory auditor's certificate, which was also provided in June 2023 at

the time of approval of the Resolution Plan by the CoC. IIHL, during oral arguments, stated that the funds were not in place and had been deployed. With the timeline for undertaking its payment obligations in accordance with the Plan Approval Order having already expired, it is expected that the equity contribution of INR 2750 crores is readily available in cash with IIHL to fulfil its obligations.

34. Further, as regards the equity contribution, by way of a compromise at this juncture and to do away with the obstacles IIHL claims it is facing, the CoC has offered to permit IIHL deposit the Indian equity component (i.e. INR 250 crores) into a domestic escrow account, and the foreign component (i.e. INR 2500 crores) into a foreign escrow account; both in the name of the CoC. None of the approvals which are purportedly required by IIHL would be an impediment to IIHL's ability to so deposit the equity component. Yet, IIHL has refused to deposit the equity contribution in any manner whatsoever on May 23, 2024. During oral arguments on June 20, 2024, IIHL, instead, offered to procure a letter from Mr. Hinduja, stating that he is committed to making payment of the amount.

35. IIHL had made a request seeking an extension of the timeline for implementation of the Resolution Plan, until June 30, 2024 from the MC at the 9th Meeting of the MC held on May 15, 2024. At this meeting, the representatives of the financial creditors had informed IIHL that:

    a. All CPs stand satisfied and there was no impediment to IIHL implementing the Resolution Plan – this was neither questioned nor denied by IIHL.
    b. Non-implementation of the Resolution Plan would amount to default and such default may be conditionally waived and an extension to the timelines for implementation would only be provided if:
        i. IIHL implements the Resolution Plan by June 30, 2024;

ii. IIHL places INR 2750 crores i.e. its equity contribution in an escrow account controlled by the lenders on or prior to May 27, 2024; and

iii. IIHL agrees to pay interest on an amount of INR 9861 crores at 12% p.a. until June 30, 2024 or till the date of implementation of the resolution plan.

36. Each of the above conditions were subject to approval by the larger committee of lenders that formed the erstwhile CoC which had approved the Resolution Plan. In any event, on May 23, 2024 (at the 10th MC Meeting), IIHL rejected the MC's proposal. It is respectfully submitted that the Application is not bona fide. IIHL had itself represented to the MC as late as May 15, 2024 that it required an extension and itself had proposed extension till June 30, 2024 to complete the process. Yet, 6 days later, IIHL filed the present Application and sought a larger extension of 90 days i.e beyond June 30, 2024. It is noted that the demand was limited to an extension until July 31, 2024 as orally stipulated by IIHL's counsel before this Hon'ble Tribunal on June 25, 2024. The MC has not approved any extension; and has, in good faith, offered to consider waiving IIHL's default and granting an extension subject to certain conditions.

37. IIHL (i) has not acted in a timely manner as far as the implementation of the Resolution Plan is concerned; (ii) has failed to respond to multiple requests for inputs, details, and information; (iii) is not taking responsibility for the delay caused in implementation of the Resolution Plan by actions within its sole control; and (iv) approached the NCLT with unclean hands for delaying the process without seeking the approval of the lenders. Considering the same, no relief as prayed for by IIHL should be granted.

38. In any event, the benefit of the Corporate Debtor's cash balances after June 6, 2023 onwards ensures to the benefit of IIHL. IIHL's delay therefore amounts to it taking advantage of its own wrong. The lenders cannot be expected to wait in perpetuity for IIHL to implement the Resolution Plan that was slated to be implemented by May 27, 2024. Since the delay is arising solely on account of actions attributable to and within the control of IIHL, the consequences of such delay have to be borne by IIHL and not by the lenders. Without prejudice to the contention that IIHL is disentitled to any reliefs, the Administrator submits that while the Bench has the power to grant an extension of time, the same is to be exercised with discretion, to protect the rights and interests of all stakeholders, by duly considering the request of the lenders for interest and deposit and strict timelines. More than IIHL's gains or loss due to the delay, the more relevant consideration should be the loss caused to the creditors of RCL. It is noted that IIHL has sought an extension only till July 31, 2024.

Written Submission of Financial Creditors comprising erstwhile members of CoC

39. The crux of the matter for the present application is that on May 27, 2024, default under the Resolution Plan has occurred. IIHL till date had more than 12 months from Resolution Plan submission date, more than 11 months from CoC approval date and four months from Adjudicating Authority approval date. Despite that IIHL has failed to demonstrate financial tie up both debt and equity, to the satisfaction of CoC.

40. Therefore, it is not just the DIPP approval that is holding up the implementation of the Resolution Plan. IIHL was even otherwise, not ready to implement the Resolution Plan on May 27, 2024 sans DIPP approval. Further, the delay in applying for DIPP approval was also based on a unilateral mistake of law by IIHL. In fact, it has also changed the implementation structure, which has resulted in additional approvals

and 13 additional approvals are being sought. It is to be noted that all Conditions Precedents under the Plan were fulfilled on 15.5.2024. The CoC is not seeking liquidation of the Corporate Debtor, it is only seeking recompense and certainty of Plan resolution within the extended time period.

41. The Plan value is below the liquidation value of the Corporate debtor and was locked in more than a year ago when the Resolution Plan was put to vote before the CoC. All cash and cash accruals of the Corporate Debtor, post June 06, 2023 i.e. date of submission of Resolution Plan will go to IIHL only, as per terms of the Resolution Plan itself. Hence all cash accruals, as also any increase in value of the Corporate Debtor is for the benefit of IIHL and CoC gets nothing from that. Hence IIHL suffers no loss if the company is not handed over to it during the extension, as CoC is holding the company for IIHL and not enjoying any profits, cash accruals or increase in value from it.

42. On account of the delay in plan implementation, IIHL is also saving on all in financing cost payable on the debt of INR 7,300 Crores (which it was required to bring on or before May 27, 2024) and also gaining returns on equity of INR 2,750 Crores (which is deployed/ invested in other business by IIHL and would be yielding greater returns). Therefore, the savings of IIHL are represented by the IRR noted in the term sheets. It is to be noted that IRR has not been disclosed by IIHL produced before the Adjudicating Authority. They represent the gain to IIHL on debt side besides the return on equity as noted earlier, whereas, the CoC is suffering huge losses to the extent of at least INR 400 crores for the period of 90 days, assuming return equivalent at least to the current rate of interest payable on LIC bonds for the Corporate Debtor i.e 16.65%, given that Corporate Debtor is under default. It is submitted that the IRR payable by IIHL on its debt is likely to be higher than the above rate. Therefore, the recompense to the CoC should be equivalent to the IRR and above bond rate of LIC should be the floor as stated above. Any

lower rate for eg 12% p.a., would mean a loss of atleast 100 crores for the period of 90 days and probably higher gain for IIHL because in effect CoC would be funding extension at a reduced rate.

43. Further, not applying for DIPP approval before May 14, 2024 cannot be said to be a common mistake of all parties. Under the Resolution Plan itself, clearly the obligation to obtain approvals is of the Resolution Applicant and not the COC. Most applications have been made directly by IIHL. Further regulators mostly deal with the acquirer for eg CCI approval and do not recognize any other party. The approvals are dependent on the implementation and financing structure chosen by IIHL.

44. All Conditions Precedent as set out under Clause 8.1.1.1 (Material Adverse Effect); 8.1.1.2 (Clear Title of RGIC Shares), 8.1.1.4 (RBI approval under FSP Rules and Change in Sponsor of RARC), 8.1.1.5 (Applications to IRDAI), 8.1.1.6 (SEBI approval) , 8.1.1.7 (CCI approval) and 8.1.1.12 (Change in Distribution of Total Resolution Consideration Amount) of the Resolution Plan were fulfilled on May 15, 2024 (@Pg 99 of the Application). The fulfillment of Conditions Precedent on May 15, 2024 was informed by the Administrator in the 9th meeting of the Monitoring Committee ("MC") and never objected to by IIHL.

45. Therefore, the Resolution Plan had to be implemented on or before May 27, 2024 as per its terms including payouts under the Resolution Plan. IIHL was obligated to make payments forthwith after May 15, 2024. Failure to make payment of Upfront Cash to stakeholders by May 27, 2024 is a clear default of the terms of the plan by IIHL.

46. The MC was informed by IIHL that some additional approval may be required only on April 02, 2024 recorded in the Minutes of the 4th MC meeting. The list of additional approvals was shared by IIHL only on April 10, 2024 without any reason for such changes and additional approvals. The proposed transaction structure changes including addition

of four new entities in the implementation structure was brought to attention of MC only on April 30, 2024. It is to be noted that IIHL has even on April 30, 2024 maintained that the plan implementation will take place on or before May 27, 2024. For the first time at the 9th meeting of the MC held on May 15, 2024, IIHL requested an extension be granted until June 30, 2024.

47. The change in implementation structure proposed by IIHL requires re-application for many approvals that have already been obtained based on earlier structure and some fresh approvals (altogether about 13 approvals). It has also suddenly and rather belatedly applied for (i) DIPP (Government of India) approval ("DIPP Approval") on May 14, 2024, after 10 months of plan approval by the CoC; (ii) RBI approval for pledge of shares of Corporate Debtor; and (iii) RBI approval for corporate guarantee of the Corporate Debtor for Aasia Enterprises LLP (which has now been changed to a debenture put option structure since RBI communicated that such approval may not be granted). There is no certainty whether regulators will grant such approvals and conditions attached thereto nor of the timeline for grant of such approvals.

48. The other members of MC, in its 9th meeting, clarified to IIHL that any such extension would tantamount to default, which may conditionally be waived subject to the internal approvals of lenders and IIHL undertaking the following: (a) interest at the rate of 12% p.a. would be applicable on an amount of INR 9861 crores post May 27, 2024 until June 30, 2024, the proposed date of extension; and (b) the equity portion under the Resolution Plan i.e. INR 2750 crores should be placed in an escrow account by IIHL. IIHL had informed the MC that they will discuss the matter internally, however, thereafter IIHL filed the instant application, without consent of lenders/ MC, seeking an extension of 90 days. Thereafter, in the 10th meeting of the MC held on May 23, 2024, IIHL rejected both the demands of the lenders for interest and parking equity component of the Resolution Plan in an escrow account.

49. Pertinently, the lenders will not gain anything for the period of delay in implementation of the Resolution Plan by IIHL. On the other hand, firstly, in terms of the Resolution Plan, all the cash recovery in the Corporate Debtor's account from one day post the Revised Submission Plan Date is for the benefit of IIHL. The relevant clauses of the Resolution Plan and RFRP in relation to cash recovery and cash balances of the Corporate Debtor are stated below:

Resolution Plan Clauses:

"RA Entitlement Amount" will include all the cash recovery in Corporate Debtor account from one day post the Revised Submission Plan Date till the final implementation of the Resolution Plan which shall be for the benefit of RA net of any such recovery that forms part of the COC Entitlement Amount."

"4.14. TREATMENT OF CASH BALANCE

The existing cash or bank balance available with the Corporate Debtor as on Revised Submission Plan Date shall be used to pay the unpaid Costs. Thereafter, on and from the Revised Submission Plan Date, the cash balances if any in the name of or otherwise available with the Corporate Debtor, shall continue to remain with the Corporate Debtor for running the operations and/or turnaround of the Corporate Debtor"

RFRP Clause:

"3.15 Distribution of Cash as per the Resolution Plan(s):

The cash balance available with the Company as on the Revised Submission Date shall be to the benefit of the CoC and shall not form part of the Resolution Plan and/or Resolution Bid submitted by the Resolution Applicant and/or the Resolution Bidder, as the case may be."

50. Therefore, in effect, on and from June 7, 2023 i.e. more than a year ago, all the cash recovery to the Corporate Debtor as well as all the cash balance of the Corporate Debtor, including during the period of delay in plan implementation, is for the benefit of IIHL in terms of the Resolution Plan, to the exclusion of the lenders.

51. A significant amount of public monies is involved in this case as a huge amount of debt of the Corporate Debtor is owed to pension and provident funds, banks, retail bond holders and national insurers including LIC, EPFO, Army Welfare Fund etc. The current interest cost on certain bonds issued by the Corporate Debtor is 16.65 percent per annum. Due to the delay in the CIRP, the lenders are incurring losses of approx. INR 40 crores per week.

52. IIHL has not disclosed the interest rate agreed upon with its financiers in any of the term sheets/ other court filings or even to this Hon'ble Adjudicating Authority. There can be no term sheets without interest rate and only if such information would have been available, lenders would have been in a position to calculate the actual gain to IIHL.

53. On account of the delay in plan implementation, IIHL is, in effect, saving interest payment on a debt of INR 7300 Crores (which it was required to bring in on or before May 27, 2024) and also gaining returns on equity of INR 2750 Crores (which would be deployed/ invested in business by IIHL and would be yielding greater returns).

54. Further, in terms of the Resolution Plan, all the cash and cash accruals in the Corporate Debtor’s account from one day post the Revised Submission Plan Date is to go to IIHL which will be taking over the Corporate Debtor, as well as any increase in value of the Corporate Debtor is for the benefit of IIHL. The lenders gain nothing by the delay,

and on the other hand are suffering huge losses to the extent of INR 400 crores for the period of 90 days, assuming returns equivalent to the LIC bond rate of loans to given to the Corporate Debtor. . In fact even if IIHL pays interest to CoC at 12% p.a., it would still mean a loss of about 100 crores per quarter. Therefore the minimum interest payable should be 16.65% p.a. to the lenders for this delay. The delay in implementation of the Resolution Plan is working to the benefit of IIHL as they would get the Corporate Debtor with an increased value.

55. In light of the above, it is imperative that any extension beyond May 27, 2024 should take into account (i) a recompense to the lenders otherwise it will lead to unjust enrichment of IIHL at the expense of public monies and (b) equity to be placed in an escrow under the control of lenders so that the equity is clearly earmarked for payments under the plan and not invested for IIHL's own gains.

56. It is submitted that, had IIHL made the payouts for Upfront Cash on May 27, 2024 under the Resolution Plan, it would have paid financing cost to its financers. Thus, any extension granted by this Hon'ble Adjudicating Authority should be subject to an interest rate not less than the all-in financing cost (effective yield) payable to the financiers by IIHL for this transaction, which would represent the true opportunity cost of the creditors, since it reflects the financing cost of the Successful Resolution Applicant for the Corporate Debtor. If the interest is less than the all-in financing cost (effective yield), it would result in unjust enrichment of IIHL at the cost of public money and will incentivize the delayed implementation of the Resolution Plan to the maximum extent permitted by the Adjudicating Authority

57. The Hon'ble Supreme Court, in the matter of Nagpur Golden Transport Co. (Regd.) v. Nath Traders, (2012) 1 SCC 555 quoted with approval,

Fibrosa Spolka Akcyjna v. Fairbairn Lawson Combe Barbour Ltd. [(1942) 2 All ER 122 (HL)] which held that "any civilised system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of or some benefit derived from another which it is against conscience that he should keep".

58. The Adjudicating Authority and the Appellate Authority have, on multiple occasions, ordered the resolution applicant to pay interest when it has granted extension. The Hon'ble NCLAT vide an order dated April 08, 2024 in Ashok Dattatray Atre vs. State Bank of India [Company Appeal (AT) (Insolvency) No. 221-22/2024] directed the payment of interest for the delayed payments to the creditors.

59. The role of the MC/ CoC/ lenders is only limited to facilitating and supervising the implementation of the Resolution Plan. In this regard, clause 6.2 of the Resolution Plan states the following:

"6.2 The Resolution Plan shall be implemented by the Resolution Applicant and the Monitoring Committee shall extend cooperation to the Resolution Applicant on best effort basis. The Monitoring Committee shall upon the instructions of the Resolution Applicant undertake the actions required under the Applicable Laws, including but not limited to, passing of necessary resolutions, authorizing persons to sign any agreement, deed, resolutions etc., filings and applications, and other necessary and corollary actions required for the implementation of this Resolution Plan."

60. Accordingly, the submissions made by IIHL before this Adjudicating Authority to the effect that non-application of DIPP Approval is a common mistake of all parties is without any legal basis whatsoever.

61. The CoC, as a body constituted under the provisions of the Code, is concerned with ascertaining the feasibility and viability of the Resolution Plan as well as payouts under, and implementation of the Resolution Plan.

62. Evidently, approvals required for implementation of the resolution plan, including in relation to structure of the transaction are in IIHL's domain. IIHL is stepping into equity and accordingly, approvals for implementation of the plan is IIHL's responsibility, to the exclusion of the lenders. This is more so evident from the fact that on account of change of structure, IIHL has itself come up with 13 new approvals. Furthermore, even the DIPP Approval itself, was applied for by IIHL with no prior knowledge of / intimation to the lenders. Critical approvals such as CCI approval required in terms of the resolution plan were applied for and obtained directly by IIHL and in fact, even the detailed structure for implementation sought by IRDAI was provided by IIHL directly to IRDAI in a sealed cover to the exclusion of the lenders. Clause 8.1.1.5 also specifies that IIHL shall file applications with the IRDAI.

63. As noted above, additional RBI approvals have been sought by IIHL that are not envisaged in the Resolution Plan. This has also resulted in re-application for various approvals, which had already been obtained basis prior transaction structure. This delay is squarely on account of IIHL as any transaction/implementation structure change is within their control. In 4th MC meeting dated April 02, 2024 where they suddenly introduced various add-on approvals in plan implementation steps without any clear rationale for such approvals, the legal advisor to financial creditors had clearly informed IIHL that additional approvals proposed by IIHL are beyond the Resolution Plan and implementation steps set out therein as approved by this Hon'ble Adjudicating Authority.

64. DIPP Approval is not even part of the Conditions Precedent for the implementation of the Resolution Plan and stated above, the list of Conditions Precedent under the Resolution Plan was extensively discussed and circulated for many months prior to and after approval of the Resolution Plan by this Adjudicating Authority however, IIHL never once mentioned that the DIPP Approval is a CP. There is no inconsistency whatsoever between the FDI Policy and the NDI Rules. In fact the NDI Rules clearly provide for the requirement of government approval. There has been no change in law since 2019 and the position is clear i.e. approval through government route is required for foreign investment in a CIC.

65. The Hon'ble Supreme Court, in the matter of Boothalinga Agencies Vs. V.T.C. Poriaswami Nadar [AIR 1969 SC 110] held that "We think the principle of this case applies to the Indian law and the provisions of Section 56 of the Indian Contract Act cannot apply to a case of "self-induced frustration". In other words, the doctrine of frustration of contract cannot apply where the event which is alleged to have frustrated the contract arises from the act or election of a party."

66. As stated above, the DIPP Approval was clearly provided for in the Resolution Plan and IIHL failed to apply for it. That being the case, IIHL is now necessarily estopped from claiming any defense on such grounds as IIHL, by its own volition and acts, had waived the requirement of the DIPP Approval.

67. As is evident from IIHL's own application and rejoinder filed before this Hon'ble Adjudicating Authority, no binding commitments on debt financing for the Resolution Plan have been provided by IIHL till date, despite repeated requests from the MC, Administrator as well as various

regulators including IRDAI & RBI. IIHL`s own Application demonstrate this clearly - these are legally non-binding 'Highly Confident Letters' that are conditional even on internal approvals of IIHL's financers as well as execution of mutually acceptable agreements, among others. Such letters have been submitted to CoC since November 2022.

68. However, demonstration of the ability to meet the pay-out requirement can only be done through legally binding loan and security agreements allowing IIHL to drawdown funds forthwith, not legally non- binding letters for funding in future subject to satisfactory documentation and approvals of such lenders. Further, IIHL's financers will also require equity infusion from IIHL. RBI has also sought proof of debt funding and details of financing structure, beyond such highly confident letters.

69. As for equity, it is submitted that firstly, the equity component coming from Aasia Enterprises LLP (a domestic entity), does not require DIPP Approval. IIHL has asserted that a sum of Rs 2500 crores has already been kept ready for capital infusion by IIHL and that the only issue is DIPP Approval, which, as already noted above, has been applied after 11 months of delay. If the monies are earmarked for equity infusion, given the delay, it is submitted that the funds be kept in an off-shore escrow account under the control of CoC lenders. This does not require DIPP approval and would ensure that at least part of the funds required for payouts are earmarked and available for pay out to the stakeholders in CIRP.

70. RBI has sought statement of accounts evidencing free availability of equity commitment specifically earmarked for the purpose of the transaction and deposit of the same in the Escrow account with lenders of the Corporate Debtor, as noted in 10th MC Meeting dated May 23, 2024. In fact, even this Adjudicating Authority in its earlier order dated

May 22, 2024 had also directed the applicant to demonstrate its bona fide and to respond to CoC contentions regarding interest and funding.

71. One of the key objectives of resolution under the Insolvency and Bankruptcy Code, 2016 ("Code") is that resolution of the Corporate Debtor is done in a time bound manner. Thus, any extension granted by this Hon'ble Adjudicating Authority would only be to facilitate implementation of the Resolution Plan within such extended time period as it may deem fit. It is therefore critical that availability of funds for pay out under the Resolution Plan is ascertained at this stage.

72. It is submitted that there have been about 30 meetings of CoC, MC and lenders of the Corporate Debtor to ensure timely plan implementation. However, based on documents available to it including the filings in this court the erstwhile CoC has, in its commercial wisdom decided that extension must be opposed unless the two conditions set out by it (i.e. interest payment for delay and parking equity amounts in escrow) are agreed to, by the applicant, for the grounds detailed herein below.

73. Given the progress of plan implementation so far, the erstwhile CoC not convinced that the Resolution Plan would even be implemented within the extended time period without the aforementioned safeguards. Moreover, the fact that liquidation should be the last resort for the Corporate Debtor cannot be a free pass for IIHL to default on plan implementation and thereafter obtain extension.

74. IIHL has submitted before this Adjudicating Authority that the non-receipt of DIPP Approval would lead to illegality and Material Adverse Event ("MAE") in terms of the Resolution Plan. In this regard, it is submitted that this is nothing but misreading of the MAE provisions of

the Resolution Plan and also, contrary to the settled position of law in this regard.

75. MAE, as defined under the plan includes events or circumstances "which prevents the Parties from fulfilling their obligations under this Resolution Plan or are beyond the reasonable control of the Parties and which the Parties could not have prevented by the exercise of reasonable care…". Mere perusal of this definition makes it evident that there is no applicability or occurrence of an MAE.

76. Delayed application for an approval, that too on account of mistake of law by IIHL can by no means be read as an illegality and cannot be stretched to be an brought under the ambit of MAE.

77. IIHL is attempting to read DIPP Approval into Conditions Precedent, however as stated above, the DIPP Approval is not even a Condition Precedent to the Resolution Plan, as the Conditions Precedent have been specifically and separately set out. The list of Conditions Precedent under the Resolution Plan was extensively discussed and circulated for many months prior to and after approval of the Resolution Plan by this Hon'ble Adjudicating Authority however, IIHL never once mentioned that the DIPP Approval is a Condition Precedent.

Findings and Decision

78. Heard Learned Counsel and perused the material available on record.

79. In terms of the approved Resolution plan, the Successful Resolution Applicant i.e. the Applicant herein is under obligation to pay the resolution money within 90 days of NCLT approval date subject to clause 8.1 having been fulfilled to the Resolution Applicant's satisfaction. Clause 8.1 provides for the term of the Plan. Clause 8.3 list out approval required for the plan and compliance with law. The Clause

8.3.1 lists out general approval i.e. approval by CoC and by the Adjudicating Authority. Clause 8.3.2 lists out specific approval. Clause 8.4.1 provides for implementation of the schedule requiring the Applicant herein to make payment of the Resolution money within 90 days from the Resolution Plan by Adjudicating Authority and receipt of the Certified copy of the order passed by the Adjudicating Authority. Clause 8.1.1 makes the plan valid and binding on the Resolution Applicant and other Stakeholders subject to Clause 8.1.1.1, Clause 8.1.1.2, Clause 8.1.1.4, Clause 8.1.1.5, Clause 8.1.1.6, Clause 8.1.1.7 and Clause 8.1.1.12. It is not in dispute that the conditions in Clause 8.1.1.2, Clause 8.1.1.5, Clause 8.1.1.6, Clause 8.1.1.7 and Clause 8.1.1.12 have been met prior to NCLT approval date.

80. Clause 8.1.1.4 provides for "*Receipt of approval from RBI I respect of (i) the change I control of the Corporate Debtor; (ii) the change in sponsor of RARC; and (iii) any other requirement under Applicable laws, including FSP Rules and the RBI Directions/Circulars in relation to CICs, NBFC ND-Sis and ARCs*". Clause 8.3.2 at serial no. 6 makes Resolution Applicant responsible to seek approval for foreign investment in the Corporate Debtor being a CIC in terms of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 from the Government of India. It is stated that this approval is still pending.

81. It is the case of Applicant that there have been certain changes in the financial structure arising on account of funding to be secured inter-alia by security which included guarantees to be furnished by overseas entities requiring the approval of the RBI, however, the RBI considered a guarantee to be in the form of put option backed by Indemnity and disapproved the cross-guarantee proposal (as is apparent from a communication vide email dated 22 May 2024 from the Ld. Administrator to inter alia the Resolution Applicant and all other stakeholders involved). This required the Applicant to rework the entire financial arrangement requiring additional approvals. It is further

submitted that the Applicant was advised by the Legal Counsel that the equity portion to fund the Resolution money can be brought under the automatic rule and no specific approval for Government of India is required. However, the Applicant considered it appropriate to seeks clarification from RBI in this relation to be on the right side of law and this clarification came across in a meeting between RBI officials and Applicant held on 29.04.2024. Accordingly, the Applicant states that since the approval for foreign investment in the Corporate Debtor is not in place, foreign equity component could not be brought in. Further since the equity component could not be brought in, the debt component disbursement also got delayed as the debt was to follow the foreign equity.

82. Per contra, the Administrator as well as Financial Lenders have submitted that the Resolution Plan specifically contemplated approval from Government of India in relation to foreign equity investment, it can not be said there was any doubt as to the specific approval required for bringing in foreign equity component and the Applicant's plea in this regard has no substance. It was further submitted by them that even the binding term sheet in relation to debt component has not been placed on record. It is was submitted by the Financial Lenders, that nonetheless, even if this Tribunal is to allow further extension to comply with Clause 8.4.1 in relation to payment of resolution money, the Financial Lenders ought to be compensated for the loss cost to them by deferring the payment resolution money by extended period.

83. Clause 5.9 provides that "*Since the implementation of the Resolution Bid is subject to the terms as per Clause 8.1 being fulfilled to the Resolution Applicant's satisfaction, the timeline of 90 days from the NCLT approval date in relation to payment to the creditors of the Corporate Debtor shall stand extended by such number of days equal to those required to fulfil these terms. Any delay in implementation of the Resolution Plan on account of the terms not being satisfied within the prescribed timelines*

due to Material Adverse Effect, shall not be construed as non-compliance of the RFRP non-compliance under IBC. Additionally, the Resolution Applicant shall not be penalised (including, by invoking the EMD/Performance Security or otherwise) for any delay in implementation of the Resolution Plan on account of Clause 8.1 not being satisfied within the prescribed timelines"

84. Material Adverse Event is defined to mean and include *"any event, or circumstances or a combination of acts, events and circumstances, referred to below, which prevents the Parties from fulfilling their obligations under this Resolution Plan or are beyond the reasonable control of the Parties and which the Parties could not have prevented by the exercise of reasonable care which (i) materially or adversely affects the financial condition of the Corporate Debtor and its subsidiaries taken as a whole, which is solely attributable to the Corporate Debtor and not external market/industry conditions, or any change in regulation/law; or (ii) any event or an order of any court or judicial body adversely impacting the operations of the Corporate Debtor or implementation of this Resolution Plan; or (iii) any act or vent that results in the illegality, invalidity or unenforceability of this Resolution Plan in its entirely or (iv) any change in law or policy or change in interpretation or enforcement of any law"*.

85. Undisputedly, clause 8.1.1.4 provides for *Receipt of approval from RBI in respect of any other requirement under Applicable laws, including FSP Rules and the RBI Directions/Circulars in relation to CICs, NBFC ND-Sis and ARCs* and Clause 8.3.2 at serial no. 6 makes Resolution Applicant responsible to seek approval for foreign investment in the Corporate Debtor being a CIC in terms of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 from the Government of India, the said approval is still pending, which made it impossible for the Applicant to bring the foreign equity portion in India and consequently could not have sought the expeditious disbursement of debt

components from the lenders even if there have been binding term sheet in relation to debt in place. Though, the specific requirement of obtaining Government approval for bringing in foreign equity component could not be said to be arising on account of any change in law or policy, but the Counsel for the Resolution Applicant contended that the Successful Resolution Applicant was under bona-fide belief arising from the legal opinion obtained by them in relation to route of approval applicable to the foreign equity component and the said could be clarified in a meeting with RBI officials as late as on 29.4.2024 that Government approval is required. We also note that the Resolution Plan itself contemplated Government approval for bringing in foreign equity component, but we can not lose sight of later contrary legal opinion tendered to the Successful Resolution Applicant that such equity could be brought in under automatic route. We do not consider it appropriate to delve into the issue in these circumstances whose conduct was responsible for the delay in getting approval of RBI at this juncture. It is a fact staring at this juncture that the foreign equity component could be brought in only after approval of Government is in place and an application seeking such approval has already been filed before appropriate authority. It is trite law that the every effort should be made to resolve the Corporate Debtor and any other order, except acceding to the request for grant of additional 90 days time, shall cause more delay in the process of resolution of the Corporate Debtor at this juncture as this would entail reinitiation of process of resolution and further time shall be consumed in seeking fresh approvals qua new bidder, if the Corporate Debtor is to continue as a going concern.

86. The Hon'ble NCLAT has held in various cases that the extension of timeline for payment of resolution money by the Adjudicating Authority does not result into modification of the Resolution Plan and this Tribunal is vested with the discretionary power to extend the said timelines. Accordingly, we do not consider that extension, if accorded by this

Tribunal, would result into contravening the Resolution plan, being a statutory contract, which binds the parties to discharge their part of obligations strictly in accordance with the said contract. We note that the Corporate Debtor has since then received the approval from IRDAI, which is valid till 10.8.2024. In view of this, we consider it appropriate to allow the Successful Resolution Applicant to comply with its obligations under clause 8.4.1 in relation to payment of resolution money by 10.08.2024.

87. The Counsel for Financial lenders vehemently argued for payment of interest on the Resolution Money by the Successful Resolution Applicant for the extended period, if this Tribunal consider it appropriate to allow further additional time, and relied upon the decision in case of ***Ashok Dattatrey Atre (Supra)***. We find that in that the control and possession of Corporate Debtor was handed over to the Successful Resolution Applicant and the facts of this case are distinguishable.

88. In the present case , Transfer Date is defined to mean "*the date on which Proposed Transaction is completed, in accordance with the terms of the RFRP and in accordance with the Applicable Law and in terms of our Resolution Plan*". Accordingly, presently the management and control of Corporate Debtor vests in the Monitoring Committee, which is to be exercised through the Administrator in charge of affairs of the Corporate Debtor. Though, the Successful Resolution Applicant also has some nominees on the restructured board of Corporate Debtor, but it is short of majority and the Successful Resolution Applicant's status is merely of watchdog to protect its interest during the implementation period, for which certain provisions mandating its concurrence on certain business is also stipulated.

89. We do not find any force in the arguments of Lenders that the Resolution Applicant stands benefitted by savings of interest costs, which otherwise would have been payable by it to its lenders for borrowing the money to fund the resolution plan. It is undisputed fact that, in such case, the

Resolution Applicant would have gained complete control and management of the Corporate Debtor and would be in a position to run the business of Corporate Debtor to optimise the returns therefrom so as to reap the optimum benefits of such control to its advantage. The Counsel for lender also argued in support of claim for interest that any extension would entail them denying the opportunity returns on the money they would get in case the money would have been paid in time. At this juncture, we note that the denying the extension at such crucial stage, when all the approvals in favour of corporate debtor for transfer of corporate debtor to the Successful Resolution Applicant are in place, shall be detrimental to the interest of financial lenders as such denial would further delay the process of realisation of money into the hands of the financial lenders.

90. We note that Clause 4.14 provides that "*The existing cash or bank balance available with the Corporate Debtor as on Revised Submission Plan Date shall be used to pay the unpaid costs. Thereafter, on and from the Revised Submission Plan Date, the cash balances if any in the name of or otherwise available with the Corporate Debtor, shall continue to remain with the Corporate Debtor for running the operations and or turnaround of the Corporate Debtor"*. Besides this, Applicant is entitled to RA Entitlement Amount, which include all the cash recovery in Corporate Debtor account from one day post the Revised Submission Plan Date till the final implementation of the Resolution Plan which shall be for the benefit of RA net of any such recovery that forms part of the CoC Entitlement Amount. In other words, the Resolution Applicant shall be entitled to cash recovery in Corporate Debtor account for the extended period as well. This unintended benefit of the extension in payment of resolution money certainly must not go to the Successful Resolution Applicant, as it would tantamount to putting the Successful Resolution Applicant at advantage at the cost of its creditors. Accordingly, we consider it appropriate to direct the Successful

Resolution Applicant to pay an additional amount equivalent to incremental cash recovery net of COC entitlement amount in the Corporate Debtor during such extended period.

91. Considering the above, we permit the applicant to implement the resolution plan by 10th August, 2024 on the following conditions :

i) The Applicant shall deposit Rs. 250 crores towards domestic equity in the escrow account in India designated by the Committee of Creditors;

ii) The Applicant shall deposit Rs. 2500 crores in an offshore escrow account designated by the Committee of Creditors as contribution towards the equity to be invested in the Corporate Debtor, and this amount shall forthwith be brought in India upon receipt of approval from Central Government for bringing in foreign equity;

iii) The Applicant shall submit to the Monitoring Committee copies of the binding executed Term Sheets for the loan amount of Rs. 7300 crore and such loan shall be disbursed to the credit of designated account before the extended date subject to foreign equity component approval in place;

iv) The Applicant shall place all the above on record under an affidavit on or before 31st July, 2024.

92. In addition to the COC entitlement amount, the COC shall also be entitled to any cash recovery arising during the extended period in Corporate Debtor net of CoC entitlement amount.

93. In the event the Applicant fails to implement the resolution plan within the extended period, the same shall be treated as an event of default and the Committee of Creditors shall be entitled to take all requisite steps against the Applicant. It is clarified that in the event of such a default, the amount deposited in escrow account as per clauses (i) & (ii) of

preceding para, shall be returned to the Applicant within a period of week therefrom.

94. On occurrence of event of default, the Committee of Creditors shall be entitled to take all steps for the resolution of the Corporate Debtor in terms of RFRP by inviting all the Resolution Applicants who had participated in the first challenge mechanism to participate in the fresh challenge mechanism.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)