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BEFORE THE AJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD

Inv. P 3/2018 in IA 419/2017 In C.P. (LB) No. 40/7/NCLT/AHM/2017

Coram: **Hon'ble Mr. BIKKI RAVEENDRA BABU, MEMBER JUDICIAL**
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 07.02.2018

Name of the Company: Edelweiss Asset Reconstruction Co. Ltd.
V/s.
Essar Steel Ltd.

Section of the Companies Act: Section 60(5) of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Grishma Ahuja, Adv. / Shalin Jani, Adv.		I/b Saurabh Amadhan Mangaldas and co. For Edelweiss (Applicant)	
2.	Saurabh Amin, Adv		R-1	
3)	Gaurav Mathur, Adv		R-2	
4)	Sahil Shah / Parth Shah	Adv.	P.P. Essar Steel	

ORDER

Learned Advocate Mr. Sahil Shah with Learned Advocate Mr. Parth Shah present for Applicant. Learned Advocate Mr. Saurabh Amin present for Respondent No. 1. Learned Advocate Mr. Gaurav Mathur present for Respondent No.2.

Learned Advocate Ms. Grishma Ahuja with Learned Advocate Mr. Shalin Jani present for IDBI and Edelweiss Intervener.

Common order pronounced in open court. Vide separate sheets.

MANORAMA KUMARI
MEMBER JUDICIAL
Dated this the 7th day of February, 2018.

BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

BEFORE ADJUDICATING AUTHORITY (NCLT)
AMEDABAD BENCH
AHMEDABAD

IA 419/17 in CP (IB) 40/07/NCLT/AHM of 2017

In the matter of :

Essar Steel India Limited. being represented by
Mr. Satish Kumar Gupta, Insolvency Professional

: Applicant
Corporate Debtor

VERSUS

1. Odisha Slurry Infrastructure Limited
Near IFFCO Paradeep Unit
Udaybatta,
Paradeep District
Jagatsinghpur,
Odisha 754 142 — Respondent No. 1

2. SREI Infrastructure Limited
Vishwakarma
BBC Topsala Road
P.O. Topsala
KOLKATA 700 046 — Respondent No. 2

Intervening Petition No. 2 of 2018 In IA 419 OF 2017

1. IDBI Bank Ltd. : Applicant

Intervening Petition No. 3 of 2018 in IA 419 OF 2017

1. EDEL WEISS ASSET RECONSTRUCTION COMPANY LIMITED. : Applicant

Order delivered on 7th February, 2018

CORAM: Hon'ble Mr. Bikki Raveendra Babu, Member Judicial
Hon'ble Ms. Manorama Kumari, Member Judicial

Appearance:

For the Applicant : Learned Senior Advocate Mr. Saurabh Soparkar with Learned Advocate Mr. Abhishek Mukherjee with Learned Advocate Mr. Sahil Shah with Learned Advocate Mr. Parth Shah for Applicant in IA 419/2017.

For the Respondent No. 1 : Learned Senior Advocate Mr. Percy Kavina with Learned Advocate Mr. Saurabh Amin for Respondent no. 1.

For the Respondent No. 2 : Learned Senior Advocate Mr. Mihir Thakore with Learned Advocate Mr. Unmesh Shukla with Learned Advocate Mr. Gaurav Mathur for Respondent no. 2.

For the Intervening Applicant: Learned Advocate Mr. Ameya Gokhale with Learned Advocate Mr. Shalin Jani for Inv. P 2 of 2018 and Inv. P 3/2018.

COMMON ORDER

[per: Hon'ble Mr. Bikki Raveendra Babu, Member Judicial]

01. Essar Steel Limited (hereinafter referred to as Applicant filed this petition through Mr. Satish Kumar Gupta, Resolution Professional under section 60 (5) of Insolvency and Bankruptcy Code, 2016 seeking the following reliefs.

(a) to admit the application under Section 60 (5) (a) & (c) of the IB Code;

(b) to declare pipeline asset as asset of the Corporate Debtor (Essar Steel India Limited/Applicant)

(c) direct Calcutta High Court for disposal of the Appeal against Odisha Slurry Pipeline Infrastructure Limited (hereinafter referred to as Respondent No. 1 and Shree SREI Infrastructure Limited (hereinafter referred to as Respondent No. 2).

02. This adjudicating Authority by its order dated 02.08.2017 in the matter of Standard Chartered Bank vs. Essar Steel (India) Limited (CP/IB No. 39 of 2017) and SBI vs. Essar Steel (India) Ltd. (CP(IB) 40 of 2017) admitted the application for commencement of Corporate Insolvency Resolution Process in respect of Essar Steel India Ltd. (Corporate Debtor/Applicant) under the provisions of Insolvency and Bankruptcy Code, 2016 (IB Code). This Adjudicating Authority appointed Mr. Satish Kumar Gupta as Interim Resolution Professional (IRP) and imposed moratorium in terms of Section 14 of the IB Code. Committee of Creditors in its first meeting held on 01.09.2017 resolved to appoint Mr. Satish Kumar Gupta by majority of votes as Resolution Professional for the Corporate Debtor.

03. The following facts are necessary for disposal of these applications.

04. Applicant entered into Business Transport Agreement (BTA) dated 27.02.2015 with Respondent No. 1 for transport of slurry

pipeline transportation business between Dabuna and Paradeep locations passing through the State of Odisha for a distance of 253 kilo meters long, all movable assets and contracts thereto, along with liabilities in relation to the same for a consideration of Rs. 4000.00 crores. The relevant clauses in BTA are as follows: -

Clause 2.3 : Purchase consideration

> The Buyer shall pay an amount of Rs. 4000,00,00,000/- (Rupees Four thousand crores only) inclusive of all Taxes to the Seller towards complete consideration against the sale, transfer and delivery of the Business Undertaking by the Seller (Purchase Consideration"). The Parties acknowledge that the Purchase consideration is a lump-sum consideration and no specific part of the Purchase consideration is allocated to any specific right, asset, title or the like of the Seller comprised in, or to, the Business Undertaking.
>
> The Buyer is planning to raise funds needed for payment of Purchase Consideration for the acquisition of the Business Undertaking through raising equity capital contributions to the extent of Rs. 800 crores (Rupee Eight Hundred Crores) and Rs. 3200 Crores (Rupee Three Thousands and Two Hundred Crores) by way of debt from Banks and financial Institutions.
>
> The payment of Purchase Consideration shall be tendered by the Buyer to the Seller in the following manner;

(a) The Buyer shall pay to the Seller not less than Rs. 30 Crores (Rupee Thirty Crores) before the Closing;

(b) The Buyer shall pay to the Seller an amount of Rs. 770 Crores (Rupee Six Hundred and Fifteen Cores) within 45 days from the closing date or within such extended time as may be agreed in writing by the Seller.

(c) The Buyer shall pay to the Seller an amount of Rs. 3150 Crores (Rupee Three Thousand One Hundred and Fifty Crores) within 90 days from the Closing Date or within such extended time as may be agreed in writing by the Seller; and

(d) The Buyer shall pay to the Seller the balance of Rs. 50 Crore (Rupee Fifty Crores) on the Seller completing the actions, as may be required by the Seller for effecting or perfecting the vesting of the right, title and interest in any of the assets of the Business Undertaking in the Buyer or within 90 days whichever is earlier or within such extended time as the Seller may agree in writing (hereinafter referred to as "Buyer Withheld Amount")

Notwithstanding the agreement for payment of the Purchase Consideration in instalments in the aforesaid manner, the Purchase Consideration shall be deemed to accrue for the benefit of the Buyer on the Closing Date.

Clause: 4.3.2

The Seller shall transfer the Business Undertaking, free from all Encumbrances, in the following manner:

(i) The Movable Assets and the Books and Records, wherever located on the Closing Date, being entirely of a movable nature and capable of being transferred by actual and/or constructive delivery of possession, shall be transferred to the Buyer by way of actual and/or constructive delivery of possession on the Closing Date to the Buyer along with a delivery notice ("Delivery Notice") in the format provided in Schedule 9, and there shall be no further act or Deed required for this purpose by or between the Seller and the Buyer;

(ii) The pipeline shall be transferred to the Buyer by way of handing over of the physical possession (to be followed within a reasonable time by execution of Deed of conveyance and registration thereof);

(iii) Duly certified extract of the fixed asset register of the Business Undertaking in a form acceptable to the Parties;

(iv) The Transferred Contracts shall be assigned or novated in favour of the Buyer by execution of the requisite Deeds or other instruments and documents;

(v) The originals of all consents which pertain solely to the Business Undertaking and all the forms and applications executed by Seller in respect of such consents (as applicable) shall be delivered to the Buyer;

(vi) Any other Deeds, assignments and other instruments and documents of transfer necessary to transfer/assign all right, title and interest of Seller in, to and under the Business Undertaking, as may be reasonably requested by the Buyer to effect the Closing. Shall be duly executed by Seller in favour of the Buyer in form and substance acceptable to the Parties.

Clause : 4.4.1

In case the Buyer deems the Pipeline as immovable property and require the Seller to perfect the transfer of the same by way of execution of conveyance Deed purporting to transferring the right, title and interest therein in favour of the Buyer, the Seller shall cooperate by execution of the conveyance Deed, lodging the same for registration with the concerned Registrar/Sub-registrar of Assurances and for completion of the registration of the same, the cost of which shall be borne by the Seller.

Clause 8.4 : Payment of the Instalments of the Purchase Consideration on or before due dates

The Buyer undertakes to pay the Seller the instalment of the Purchase Consideration on the respective due dates as provided in Clause 2.3 of this Agreement. In case the Buyer fails or delays in making the payment on due dates, the seller has the right to exercise an option for transfer of the Business Undertaking back to it or its nominee, and cost of such re-transfer and perfection/effectuation thereof shall be solely borne by the Buyer.

Based on a representation given by the Buyer and the same being found acceptable by the seller, the Seller may not exercise the aforesaid right and accept delayed payment of the purchase consideration from the buyer together with an interest rate of 13.5% p.a. on the delayed amount for the period of delay.

05. Applicant by its letter dated 28.03.2015 handed over possession of the pipeline asset to the first Respondent.

06. In order to part finance purchase consideration, Respondent No. 1 executed loan agreements on 28.03.2015 and

20.06.2015 with Respondent No. 2 pursuant to which Respondents agreed to provide loan up to Rs. 136.50 crores and Rs. 290.00 crores respectively.

07. On 30.03.2015 Applicant entered into Right to Use Agreement (RTUA) with Respondent No. 1 wherein Respondent No. 1 allowed the Applicant to use the allocated capacity of the pipeline asset i.e. 10 million tonnes per annum for a period of 20 years. In consideration of the same, Applicant to pay usage charges to Respondent No. 1 amounting to Rs. 450.00 crores in financial year 2016-17 and Rs. 600.00 crores per annum from financial year 2017 onwards.

08. Clause 4.3.4 of the RTUA provides that Respondent No. 1 is entitled in its sole discretion, to set off any amounts which it owes to the Applicant from any cause whatsoever against any amount due by Applicant to the Respondent No. 1 under the RTUA. By virtue of said clause, Respondent No. 1 has right to set off unpaid charges under the RTUA against the purchase consideration payable under BTA.

09. On 31.08.2015 Applicant and first Respondent entered into addendum to RTUA. As per the addendum to RTUA pipeline usage charges would be payable in proportion of purchase consideration paid by Respondent No. 1 and the definite

timeline of three months for payment of purchase consideration contained in BTA was deleted

10. The Applicant and first Respondent entered into a Deed of Cancellation dated 24.06.2016 wherein the parties agreed to cancel BTA, RTUA and addendum to RTUA with effect from 30.06.2016. According to the Applicant, majority of the lenders of the Applicant as well as lenders of the first Respondent company had granted in-principal approval to the unwinding of the transaction and Cancellation of the pipeline agreement which is recorded in the minutes of the meeting of the Joint Lenders Forum of the Applicant dated 28.04.2016 and the Joint Lenders Forum of the first Respondent dated 28.04.2016 and 16.06.2016. According to the Applicant, pipeline asset also appears in the fixed asset register of the Corporate Debtor/ Applicant.

11. Respondent No. 2 vide letter dated 10.05.2016 and by notice dated 31.05.2016 objected to the execution of the Deed of Cancellation on the basis that pursuant to the Loan agreements Respondent No. 1 was required to obtain prior consent of the Respondent No. 2 before modifying or terminating the BTA.

12. In November, 2016 a Title Suit No. 177 of 2016 was filed before the Civil Judge (Senior Division) at Sealdah by Respondent No.

2 seeking the following multiple reliefs against Respondent No. 1 and Applicant: -

(a) Decree for declaration that Cancellation Deed dated 24.06.2016 is null and void;

(b) Perpetual injunction restraining the Respondents, their men, agents and servants from giving any effect or further effect to any instrument of unwinding of the sale of the pipe line contained in the BTA of 27.02.2015 including by way of Cancellation Deed dated 24.06.

(c) Perpetual injunction restraining the Applicant and Respondent No. 1, their agents and servants and particularly the defendant No. 2 from inducing breach of the agreement dated 28 March, 2015 and 20 June, 2015 between Respondents No. 1 and 2 herein.

(d) Perpetual injunction restraining the Applicant, first Respondent and their men, agents and servants from amending or modifying any of the project documents including the agreements dated 28.03.2015 and 20.06.2015 without consent of Respondent No. 2 herein.

13. In the said suit Respondent No. 2 failed to get interim order. Respondent No. 2 challenged the order of Trial Court dated

21.11.2016 wherein learned Trial Court declined to give ex-parte injunction order before the Hon'ble High Court of Calcutta. Hon'ble High Court of Calcutta on 22.12.2016 in CAN 11760 of 2016 passed the following order:

> "Status-quo with regard to the alienation, transfer in respect of 253 kilo meters pipeline which is the subject matter of the suit will be maintained till three weeks after the reopening of the Court after the Christmas vacation"

14. The said order was extended from time to time. The last extension was on 30.08.2017 i.e. post admission of Corporate Insolvency Resolution Process. Interim order was extended till disposal of the Appeal.

15. According to the Applicant this Adjudicating Authority has got jurisdiction to grant reliefs under section 60(5) (a) and (c) of the I B Code.

16. In the reply, Respondent No. 1 took the following pleas:

17. This Adjudicating Authority does not have jurisdiction to consider and decide the present application under section 60 (5) of the Code more so in respect of the rights of the third

parties who are not Corporate Debtor or lender to the Corporate Debtor. It is also pleaded that issue related to ownership of the pipeline assets is not an issue arising in relation to Insolvency Resolution Process. It is also pleaded that entertaining such application would tantamount to rendering Section 14 of the Act nugatory.

18. It is further pleaded that complicated civil disputes are not contemplated to be dealt with by NCLT under Section 60 (5) of the Code in the limited time span provided for Insolvency Resolution.

19. The present application would amount to overreaching the interim order dated 22.12.2016 passed by Calcutta High Court.

20. Respondent No. 1 took a plea that declaration so sought from this Tribunal is not within the ambit of the provisions of the Code. It is also pleaded that Section 2 of the Code mandates that the Code is applicable only to a company in relation to their insolvency, voluntary liquidation, or bankruptcy, as the case may be.

21. It is pleaded that Applicant and Respondent No. 1 has title to the slurry pipeline assets is not a question of fact or law arising out of or in relation to insolvency proceeding. Such question

of fact arises out of a previous commercial transaction between the Respondent No. 1 and the Applicant.

22. It is pleaded that if the interpretation of the Applicant regarding jurisdiction of this Tribunal is taken into consideration, then all proceedings initiated against the Corporate Debtor even prior to initiation of CIRP, the Adjudicating Authority would have jurisdiction to entertain and would be required to adjudicate the same in a time bound manner which is limited to the Insolvency Resolution Period. It is further pleaded that Insolvency Resolution Process or Liquidation Proceedings operates on "as is where is" basis. It is pleaded that Adjudicating Authority would exercise jurisdiction on questions of fact or law that directly arise out of or relate to the Insolvency Resolution Process.

23. It is also pleaded that Sections 280 of the Companies Act, 2013 and Section 446 of the Companies Act, 1956 are not in pari materia to Section 60 (5) of the Code.

24. 1st Respondent pleaded that State Bank of India entered into loan agreement dated 28.09.2015whereby State Bank of India agreed to provide Rs. 400.00 crores to Respondent No. 1 to part finance the purchase consideration. In the RTUA agreement State Bank of India had stipulated 'put option' on the Applicant as under: -

> "in the event consequent upon occurrence of event of default due to non-payment of dues by ESIL to the borrower, the lender decided to exercise put option on ESIL to purchase the pipeline asset from the borrower, it shall purchase the pipeline asset from the borrower at a consideration not less than the outstanding dues of the lender under the loan agreement in compliance with the applicable law and shall bear the cost in this regard"

25. Pursuant to the above, Deed of undertaking was executed by the Applicant on 28.09.2015 in favour of State Bank of India irrevocably agreeing and confirming the obligations as above.

26. Similarly, Respondent No. 1 had also availed term loans from 13 other lenders for payment of purchase consideration to the Applicant. Each loan agreement contains similar clause of 'put option'. Respondent No. 1 paid approximately 2450 crores i.e. over 60% of the purchase consideration in BTA to the Applicant. Thereafter, on 13.01.2016, Reserve Bank of India issued clarification which provided that a sale and lease back transaction or other transactions of similar nature will be treated as an event of restructuring for the purpose of asset classification and provisioning in the books of Banks with

regard to the residual debt of the seller as well as the debt of the buyer if all of the following conditions were met:

(a) The seller of the asset is in financial difficulty

(b) More than 50 of the revenues of the buyer is dependent upon the cash flows from the seller.

(c) 25% or more of the loans availed by the buyer is funded by the lenders who already have a credit exposure to the seller.

27. In view of the Reserve Bank of India clarification, lenders of Applicant who are also lenders of the first Respondent held meeting on 28.04.2016 to discuss about the possibility of unwinding of the transaction of sale of pipeline asset and simultaneous transfer of the loan liability to the Applicant by way of Deed of novation, subject to approval of sanctioning authorities. Respondent No. 2 objected to the unwinding of the transaction.

28. Lenders of Respondent No. 1 also held a meeting on 28.04.2016 to decide on the way forward in light of the RBI circular. Minutes of the said meeting are as under: -

"It was noted that as a result of the unwinding transaction, the following consequences would occur

-

(1) The transaction document namely BTA and RTU would stand cancelled from the effective date which is not later than June 30, 2016;

(2) OSPIL's fixed assets together with its Bank's dues as also its obligations to its Investors would stand transferred to ESIL;

(3) OSPIL's obligations to its other investor, namely SREI Group, would be settled among the parties namely OSPIL, SREI and ESIL;

(4) OSPIL's lenders would have first pari passu charge on ESIL's fixed assets and second charge ESIL's current assets for their loan exposure transferred to ESIL from the effective date.

The Banks may, therefore, approach their respective authorities for obtaining approvals for –

(a) Unwinding of the acquisition of Odisha Pipeline

(b) Transfer of the OSPIL's loan to ESIL"

29. Thereafter, in the meeting of lenders of the first Respondent held on 16.06.2016, lenders deliberated and it was decided as under: -

"The decision taken at the meeting are as under –

(a) JLF has been formed and the corrective action plan by way of rectification envisaging clearance of entire overdue up to June, 30, 2016 and transfer of the term loan of OSPIL to ESIL (as agreed to earlier by OSPIL and ESIL lenders) has been agreed/finalised.

(b) Annulment of OSIPL transaction to be completed before June 30, 2016

(c) OSPIL lenders to take approval for transfer of the outstanding loans on existing interest rate and repayment schedule".

30. It is pleaded by the first Respondent that as recorded in the Deed of Cancellation, the parties to the Deed were under a mistaken belief that the lenders to the first Respondent have exercised 'put option' and, therefore, they executed the Deed of Cancellation. Subsequently when it came to the knowledge of first Respondent as well as the Applicant that till the day of execution of the Deed of Cancellation and even till date, none of the lenders have put forward 'put option'. It is pleaded that

the Cancellation Deed was a common mistake and, as a matter of fact, essential to the agreement and therefore the same is void, non-est and not binding upon the parties at all.

31. Respondent No. 1 pleaded that as per the terms of RTUA and addendum to RTUA, usage charges of Rs. 750.00 crores are due and payable by the Applicant to Respondent No. 1. Thus in all 80% of the purchase consideration has been paid by the first Respondent.

32. In the lenders' meeting dated 28.04.2016 Bankers were to approach their respective authorities for obtaining approval for unwinding. It is pleaded that 52% of the term loan lenders of Respondent No. 1 have not granted their approval for unwinding. Respondent No. 2 also did not grant approval. It is also pleaded that unwinding of the pipeline transaction require approval of shareholders of the first Respondent company by special Resolution which has not been obtained even till date. The Deed of Cancellation was signed in anticipation that all requisite approvals including shareholders' approval will be accorded on or before the effective date 30.06.2016.

33. It is stated by the first Respondent in the annual report for the year ended 31.03.2013 which is as follows: -

> "Principal shareholder, India Growth Opportunities Fund has not granted its consent to the annulment

of Odisha Slurry Pipeline transaction. 52% of the lenders (by value) of OSPIL have not granted their consent to the annulment of the Odisha Pipeline transaction. ESIL has accounted the annulment of the Odisha pipeline transaction in the books of accounts in anticipation of all the approvals. Matter is in dispute and a stay on the matter has been granted by the Hon'ble High Court of Kolkata based on the application by SREI Infrastructure Finance Ltd. (SREI), a lender, liabilities to Odisha Slurry Pipeline Infrastructure Ltd. (OSPIL) reflected in the books of ESIL is the purchase consideration so far received, which will become repayable upon the annulment of the sale".

34. It is pleaded by the first Respondent that until the interim injunction granted by the Kolkata High Court is vacated and a final judgement is rendered confirming the terms of the agreement dated 24.06.2016 executed between the Applicant and the Respondent No. 1 the reversal of the business transfer is not effective.

35. Respondent No. 2 took similar pleas as set out by the first Respondent. Respondent No. 2 in its pleadings referred to clause 6.1.8 (ii) which reads as follows: -

"6.1.8(ii) ...provided, however, that the borrower shall take SREI's prior written consent to exercise

any right to terminate, amend, or modify any of the financing documents and the project documents..'

36. It is stated by Respondent No. 2 that in the RTUA 'Lender' means any Bank or Financial Institution that provided credit facilities to OSPIL - the first Respondent company.

37. It is pleaded that Respondent No. 1 and 2 acted in accordance with BTA and RTUA.

38. Respondent No. 2 pleaded that in the joint lenders forum of the Corporate Debtor/Applicant held on 28.04.2016 the issue with respect to annulment of the pipeline asset was discussed. Relevant extract of the MoM dated 28.04.2016 is as follows: -

"7.....With respect to annulment/unwinding of Odisha Slurry Pipeline transaction, company said that some of the ESIL lenders are not agreeable to the reversal of the transactions. Lenders we4re advised to convey their point of view. Majority of the lenders advised that they are agreeable for the annulment/unwinding of the transaction and transfer of the liability back to ESIL subject to approval of their sanctioning Authority.

Lenders opined that the same would be viewed upon submission of the necessary details and prima facie, it would be difficult to segregate the OSPIL facilities

and have different securities for them. Lenders also opined that on unwinding/annulment, only the principal component if the term loans of OSPIL would be transferred to the ESIL and OSPIL would have to service interest till date of annulment.

SREI Infrastructure Finance Ltd. advised that they have objection to reversal of the transaction. Lenders advised SREI that the lender group was constrained to agree to the company's proposal for the reversal of the transaction as the promoters/equity holders have not been able to achieve financial closure for OSPIL."

39. Lenders of Respondent No. 1 met on 28.04.2016 and thereafter on 16.06.2016. From the minutes of both the meetings it is clearly recorded that many lenders have not taken approval and thus not granted consent for annulment/unwinding of the BTA.

40. The fact of execution of the Cancellation Deed was disclosed to the second Respondent only by way of minutes of the meeting dated 19.07.2016 of the Core Committee of lenders of Corporate Debtor and Respondent No. 2 received it around 20.07.2016. In the said minutes it is recorded that the lenders of the Corporate Debtor/Applicant were to obtain necessary approvals to give effect to the Deed of Cancellation.

41. 2nd Respondent by letter dated 16.09.2016 demanded payment of amount under loan agreement to Respondent No. 1 wherein it is stated that in the event no payment was made, Respondent No. 2 shall proceed against the security i.e. the pipeline. A copy of it is marked to Applicant also. Applicant did not dispute or claim that the pipeline did not form a part of the security. It is pleaded by 2nd Respondent that Respondent No. 1 in breach of agreement executed by it for availing financial assistance from Respondent No. 2 has executed the Cancellation Deed dated 24.06.2016 with the Applicant without intimation, much less, without consent of Respondent No. 2 is illegal and void.

42. Intervening Application No. 2 of 2018 and Intervening Application No. 3 of 2018 are filed by IDBI Bank Ltd. and Edelweiss Asset Reconstruction Company Limited respectively stating that they are the financial creditors to the Applicant Corporate Debtor and they are also lenders to the first Respondent in IA 419 of 2017. Intervening Applicants in their applications have stated about BTA dated 27.02.2015 and RTUA dated 30.03.2015 and Deed of Cancellation dated 24.06.2016. It is the plea of the intervening Applicants that majority of the lenders of Corporate Debtor and lenders of OSPIL in principle approved the unwinding of the acquisition transaction and Cancellation of BTA and RTUA. Plea of the intervening Applicants is that their respective loans to the Corporate Debtor remain to be secured exposure as envisaged by the Corporate Debtor, OSIPL and their respective lenders. Intervening Applicants prayed to clarity the exposure of the

lenders in respect of the loans continued to be secured exposure i.e. loans must be held to be in books of accounts either of the Corporate Debtor or OSIPL/ the first Respondent company.

43. Second Respondent filed reply stating that the intervening Applicants appears to have given their no objection for execution of the Cancellation Deed dated 24.06.2016 and they have to seek clarification about the validity of its charge prior to the execution of Deed of Cancellation. It is also stated that this Authority has no jurisdiction to give any clarification to the creditors of OSPIL on commercial issues. It is further stated that IDBI Bank Ltd. has withdrawn its consent to unwind the BTA on 31.07.2017.

44.. Section 60 of IB Code deals with Adjudicating Authority for corporate persons.

45. Section 60 (5) deals with Jurisdiction of National Company Law Tribunal -

Section-60 (5)

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of-

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

46. Learned Sr. Counsel appearing for the Applicant argued that section 60 (5) (a) (b) (c) gives jurisdiction to decide the claim of Corporate Debtor and any question of law or facts arising out of or in relation to the Insolvency Resolution or liquidation process. He relied upon the decision in Uttar Pradesh State Sugar and Cane Development Limited vs. Raza Buland Sugar Company Ltd. and others reported in (2009) 16 Supreme Court Cases 539, relevant para 50 reads as under: -

"the expression 'in relation to' (so also 'pertaining to') is a very broad expression which presupposes another subject matter."

47. In the instant case, subject matter is Business undertaking, more particularly pipeline. Subject matter in Civil Suit is Cancellation dated 24.06.2016. Ownership rights of Corporate Debtor in respect of the pipeline depends upon the validity or otherwise of Cancellation Deed, in respect of which Civil Suit is pending in Civil Court filed by Respondent No. 2 against Respondent No. 1 and Applicant.

48. In this scenario it is necessary to understand and Interpret Section 60 (5) of IB Code.

49. The words 'arising out of' or in relation to are followed by Insolvency Resolution or liquidation proceedings. That means, the claim of Corporate Debtor or any question of law or fact if arise out of insolvency Resolution or liquidation proceedings, then Section 60 (5) comes into picture. Here it is necessary to see what made Resolution Professional to file this application as representative of Corporate Debtor is clear from page 11 of the application, which reads as follows: -

> "Also, the potential Resolution Applicants have sought for certainty in relation to the status of the pipeline agreements and they also need to conduct their due diligence and site visits for determining the value of the pipeline assets to be provided in their Resolution plan. It is pertinent to bring to the notice of this Hon'ble Tribunal that the Resolution professional needs to conduct the Resolution process in a time bound manner including conducting the process for inviting Resolution plans. Any delay in determination of the existing disputes pertaining to the pipeline agreements and the pipeline assets will hamper the effective Resolution of the Corporate Debtor. Therefore, it is crucial that the disputes under the Appeal pertaining to the pipeline assets

are resolved at the earlier so as to achieve a time bound and comprehensive Resolution of the Corporate Debtor."

50. In this context it is necessary to refer to the Duties and Functions of Interim Resolution Professional/Resolution Professional as per sections 17 (2)(a) to (d), Section 18 (1) (f), section 20 (1) (6), Section 23, Section 25 and section 29:, Regulation 36 of Insolvency & Bankruptcy (Corporate Insolvency Resolution Process for corporate persons) Regulations 2016.

51. The relevant provisions are extracted below: -

Section 17 (2)

(2) The interim resolution professional vested with the management of the corporate debtor shall-

(a) act and execute in the name and on behalf of the corporate debtor all Deeds, receipts, and other documents, if any;

(b) take such actions, in the manner and subject to such restrictions, as may be specified by the board;

(c) have the authority to access the electronic records of corporate debtor from information utility having financial information of the corporate debtor;

(d) have the authority to access the books of accounts, records and other relevant documents of corporate debtor available with government authorities, statutory auditors, accountants and such other persons as may be specified.

Section 18 (1) (f)

The interim resolution professional shall perform the following duties namely: -

(a) .....

(b) .....

(c) .....

(d) .....

(e) .....

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including-

(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

(ii) assets that may or may not be in possession of the corporate debtor;

(iii) tangible assets, whether movable or immovable;

(iv) intangible assets including intellectual property;

(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;

(vi) assets subject to the determination of ownership by a court or authority;

Section-20 (1) and (2)

(1) The Interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern

(2) For the purpose of sub-section (1), the Interim resolution professional shall have the authority-

(a) To appoint accountants, legal or other professional as may be necessary;

(b) To enter into contracts on behalf of the corporate debtor or to amend or modify the contracts or transactions which were entered into before the commencement of corporate insolvency resolution process;

(c) .....

(d) .....

(e) .....

Section 23

(1) Subject to section 27, the resolution professional shall conduct the entire corporate Insolvency resolution process and manage the operations of the corporate debtor during the corporate Insolvency resolution process period.

(2) The resolution professional shall exercise powers and perform duties as are vested or conferred on the interim resolution professional under tis chapter.

(3) In case of any appointment of a resolution professional under sub-section (4) of section 22,

the interim resolution professional shall provide all the information, documents and records pertaining to the corporate debtor in his possession and knowledge to the resolution professional.

Section 25

25.(1) it shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) for the purpose of sub-section(1) the resolution professional shall undertake the following actions, namely:-

(a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate bettor in judicial, quasi-judicial or arbitration proceedings;

(c) raise interim finances subject to the approval of the committee of creditors under section 28;

(d) appoint accountants, legal or other professionals in the manner as specified by Board;

(e) maintain an updated list of claims;

(f) convene and attend all meetings of the committee of creditors;

(g) prepare the information memorandum in accordance with section 29;

(h) invite prospective lenders, investors, and any other persons to out forward resolution plans;

(i) present all resolution plans at the meetings of the committee of creditors;

(j) file application for avoidance of transactions in accordance with chapter III, if any; and

(k) such other actions as may be specified by the Board.

Section 29

29.(1) The resolution professional shall prepare an information memorandum in such form and manner containing such relevant information as may be specified by the board for formulating a resolution plan.

(2) The resolution professional shall provide to the resolution applicant access to all relevant information in physical and electronic form, provided such resolution applicant undertakes-

(a) to comply with provisions of law for the time being in force relating to confidentiality and insider trading;

(b) to protect any intellectual property of the corporate debtor it may have access to; and

(c) not to share relevant information with third parties unless clauses (a) and (b) of this sub-section are complied with.

Regulation 36

1) Subject to sub-regulation (4), the interim resolution professional or the resolution professional, as the case may be, shall submit an information memorandum in electronic form to each member of the committee and any potential resolution applicant containing-

a) at least the matters listed in paragraphs (a) to (i) of sub-regulation (2), before its first meeting; and

b) matters listed in paragraphs (j) to (l) of sub-section (2), within fourteen days of the first meeting.

2) The information memorandum shall contain the following details of the corporate debtor-

(a) assets and liabilities as on the insolvency commencement date, classified into appropriate categories for easy identification, with estimated values assigned to each category;

(b) the latest annual financial statements;

(c) audited financial statements of the corporate debtor for the last two financial years and provisional financial statements for the current financial year made up to a date not earlier than fourteen days from the date of the application;

(d) a list of creditors containing the names of creditors, the amounts claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims;

(e) particulars of a debt due from or to the corporate debtor with respect to related parties;

(f) details of guarantees that have been given in relation to the debts of the corporate debtor by other persons, specifying which of the guarantors is a related party;

(g) the names and addresses of the members or partners holding at least one per cent stake in the corporate debtor along with the size of stake;

(h) details of all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities;

(i) the number of workers and employees and liabilities of the corporate debtor towards them;

(j) the liquidation value;

(k) the liquidation value due to operational creditors; and

(l) other information, which the resolution professional deems relevant to the committee.

(3) A member of the committee may request the resolution professional for further information of the nature described in this Regulation and the resolution professional shall provide such information to all members within reasonable time if such information has a bearing on the resolution plan.

(4) The interim resolution professional or the resolution professional, as the case may be, shall share the information memorandum after receiving an undertaking from a member of the committee or a potential resolution applicant to the effect that such member or resolution applicant shall maintain confidentiality of the information and shall not use such information to cause an undue gain or undue loss to itself or any other person and comply with the requirements under section 29(2).

52. The Resolution professional in order to discharge his duties and with a view to perform his functions, it appears that he filed this application before this Authority even without referring to Committee of Creditors, more particularly to attract potential Resolution Applicants.

53. Hence, for the purpose of Insolvency Resolution Process viz. to clarify to the Resolution Applicants and in view of section 60 (5), this Authority has got jurisdiction to decide the claims of Corporate Debtor in a summary manner and give its findings to enable the Resolution Professional to prepare information memorandum, to attract potential Resolution Applicants and to give correct picture to Resolution Applicants but not to grant declaratory reliefs to Corporate Debtor, more so when a civil suit is pending relating to Cancellation Deed and in view of interim order passed by Hon'ble High Court of Kolkata restraining rewinding of BTA and RTUA.

54. Respondents 1 and 2 in their replies/objections pleaded that this Authority has no jurisdiction in view of section 14 of the IB Code and in view of pendency of Civil Suit and Interim order passed by Hon'ble High Court of Kolkata.

55. Section 14 of the Code imposes moratorium in respect of the suits or proceedings against Corporate Debtor but not to suits or proceedings by Corporate Debtor. Corporate Debtor is entitled to file suit even during moratorium period for a declaration of title to property. Therefore, jurisdiction given to Adjudicating Authority under section 60 (5) is not in violation of Section 14 in respect of suits or proceedings filed by Corporate Debtor.

56. It is not the intention of the legislature to decide title of the properties of Corporate Debtor by this Adjudicating Authority in a summary manner that too during corporate insolvency process period viz. 180 days or 270 days. In case of Resolution plan approved by the Committee of Creditors is approved by this Authority, the Resolution Applicant shall represent CD in the pending Civil Suit.

57. Coming to liquidation process i.e. after liquidation order is passed, liquidator cannot institute a suit or other legal proceeding on behalf of Corporate Debtor without approval of Adjudicating Authority in view of section 33 (5) of IB Code. There is no provision in IB Code relating to suits or proceedings initiated by or against the Corporate Debtor prior to commencement of corporate insolvency process or during the period of corporate Insolvency Resolution process similar to section 446 of the Companies Act, 1956. However, what would be the effect of amended Section 280 of the Companies Act, 2013 and Section 2 (94A) of the Companies Act, 2013 (Amendment as per Section 255 of IB Code which came into force w.e.f. 15.11.2016) and section 60 (5) and 63 has to be examined in detail when such situation arises in liquidation proceedings with which we are not concerned now.

58. Learned Sr. Counsel appearing for the Applicant, Respondents No. 1 & 2 argued the case on merits also apart from the jurisdiction issue. Second Respondent although filed reply only on the Issue of jurisdiction, learned senior counsel for 2nd

Respondent also argued on merits. Therefore, it is necessary to express the views of this Authority on the contentions raised by Applicant, Respondent No. 1 and 2.

59. IA 419 of 2017 is an Application filed by Corporate Debtor through Resolution professional that is undergoing Corporate Insolvency Resolution Process. It is the claim of the Corporate Debtor that slurry pipeline belongs to Corporate Debtor on the basis that no registered document has been executed pursuant to BTA and the BTA, and RTUA were cancelled in view of Cancellation Deed dated 24.06.2016.

60. Main relief prayed by the Applicant is for declaration that the pipeline assets is asset of the Corporate Debtor.

61. BTA is in respect of 'Business undertaking'.

62. Business undertaking is narrated in page 64 of the application as follows" –

"Business Undertaking" means the undertaking of the seller in relation to the slurry pipeline transportation business, on a going concern basis as on the Execution date as follows: -

(I) The pipeline passing underneath the earth as set out in Schedule 1 (pipeline)

(ii) All the movable, tangible, fixed and current assets, other than the pipeline as set out in schedule 1, that are used in connection with or relate exclusively to,

the business undertaking as of the closing date including the storage tanks, pumps, furniture, fixtures, fittings, spares, accessories, inventories, pertaining to the operations and activities of the business undertaking, wherever located and more particularly set out in schedule 2 hereto (movable assets);

(iii) Existing consents as set out in schedule 3;

(iv) The books and records;

(v) All the benefits and obligations of the seller under all subsisting contracts, on the existing terms and conditions thereof and pertaining exclusively to the operations and activities of the business undertaking wherever registered or otherwise and more particularly set out in schedule 4 hereto (transferred contracts);

(vi) All liabilities pertaining to the business undertaking as set out in schedule 5 hereto (transferred liabilities); and

(vii) All of right title and interest of the seller associated with the business undertaking

It is hereby clarified that the term business undertaking shall not include (a) any insurance policies being used by the seller in relation to the business undertaking or any part thereof; and

(b) the inventories of iron ore slurry, in semi-solid form contained in the storage tanks as on the closing date;"

63. Mode of business undertaking as mentioned in clause 4.3.2 of BTA reads as follows: -

Clause: 4.3.2

The Seller shall transfer the Business Undertaking, free from all Encumbrances, in the following manner:

(i) The Movable Assets and the Books and Records, wherever located on the Closing Date, being entirely of a movable nature and capable of being transferred by actual and/or constructive delivery of possession, shall be transferred to the Buyer by way of actual and/or constructive delivery of possession on the Closing Date to the Buyer along with a delivery notice ("Delivery Notice") in the format provided in Schedule 9, and there shall be no further act or Deed required for this purpose by or between the Seller and the Buyer;

(ii) The pipeline shall be transferred to the Buyer by way of handing over of the physical possession (to be followed within a reasonable time by execution of Deed of conveyance and registration thereof);

(iii) Duly certified extract of the fixed asset register of the Business Undertaking in a form acceptable to the Parties;

(iv) The Transferred Contracts shall be assigned or novated in favour of the Buyer by execution of the requisite Deeds or other instruments and documents;

(v) The originals of all consents which pertain solely to the Business Undertaking and all the forms and applications executed by Seller in respect of such consents (as applicable) shall be delivered to the Buyer;

(vi) Any other Deeds, assignments and other instruments and documents of transfer necessary to transfer/assign all right, title and interest of Seller in, to and under the Business Undertaking, as may be reasonably requested by the Buyer to effect the Closing. Shall be duly executed by Seller in favour of the Buyer in form and substance acceptable to the Parties.

Clause : 4.4.1

In case the Buyer deems the Pipeline as immovable property and require the Seller to perfect the transfer of the same by way of execution of conveyance Deed purporting to transferring the right, title and interest therein in favour of the Buyer, the Seller shall cooperate by execution of the conveyance Deed, lodging the same for registration with the concerned Registrar/Sub-registrar of Assurances and for completion of the registration of the same, the cost of which shall be borne by the Seller.

64. Clause 4.41 of BTA gives option to the buyer to obtain register conveyance Deed in respect of pipeline if it feels the pipeline is an immovable property. Therefore, it is not open for the Applicant to contend the pipeline is the property of Corporate Debtor on the ground there is no registered Conveyance Deed.

65. Learned Sr. Counsel appearing for the Applicant relied upon the decision in Syndicate Bank vs. Estate Officer & Manager APIIC Ltd. and others reported in (2007) 8 Supreme Court Cases 361.

66. In that case the Divisional Bench of Hon'ble Supreme Court discussed about the interest in immovable property i.e. Allotment letters other than complete ownership by following section 58 (f) of Transfer of Property Act but ultimately referred the matter to larger bench of the Supreme Court. It appears from the website of Hon'ble Supreme Court the matter is still pending before larger bench of Supreme Court till third week of January, 2018.

67. Therefore, the above said decision is of no help to the case of the Applicant.

68. The next sting to the bow of Applicant is that Respondent No. 1 executed Cancellation Deed. The Cancellation Deed is challenged by the 1st Respondent on the following grounds: -

(1) Mistaken belief that lenders to Respondent No. 1 have exercised the "put Option". Agreement was executed under a common mistake.

(2) Respondent No. 1 paid Rs. 2450.00 crores (approx.) to Applicant and Rs. 750.00 crores is payable by Applicant to Respondent No. 1 towards usage charges under RTUA till 31.12.2017.

(3) As per loan agreements prior approval was required to be obtained for unwinding of pipeline transaction. 52% of term loan lenders of Respondent No. 1 have not granted approval for unwinding.

(4) Respondent No. 2 has also not granted approval.

69. Cancellation Deed is also challenged by the second Respondent almost on the same grounds not only before this Authority but in the Civil Suit which is pending.

70. It is pertinent to mention that Interim order has been passed by Hon'ble Kolkata High Court restraining unwinding of BTA on the basis of Cancellation Deed.

71. In the loan agreement dated 20.06.2015 the 'Project Document' is described as follows: -

> "project document shall mean the business transfer agreement executed by the borrower Essar Steel India Limited dated 27.02.2015"

72. In light of the above facts and in view of Interim order passed by Hon'ble High Court of Kolkata and pendency of Civil Suit, the Applicant cannot claim ownership of pipeline on the basis of Cancellation Deed which appears to be ineffective and it is without the approval of all Lenders as required by the loan agreements and the financial documents which is evident from

annual report of the Corporate Debtor for the year 2016-17 and note 11 of annexure – 7 at page 200 to 203 of reply of Respondent No. 1, which is as follows: -

Note : 11

"Certain financial creditors have submitted claim forms covering outstanding dues amounting to INR 16,712,547,966 of Orissa Slurry Pipeline Infrastructure Limited (OSPIL). Until the interim injunction granted by the Kolkata High Court is vacated and a final judgement is rendered confirming the terms of the Deed of Cancellation executed between ESIL and OSPIL, the reversal of the business transfer is not effective. As on the insolvency commencement date (ICD) to the extent lenders have submitted their Form Cs in relation to OSPIL in the insolvency of ESIL; such claims totalling INR 16,712,547,966 are not classified as 'amount admitted, 'amount rejected' or 'amount – verification ongoing' until the interim injunction granted by the Kolkata High Court is vacated and a final judgement is rendered. The claims listed under this note are as below:"

Minutes of the Meetings of the Lenders to Applicant and Respondent No. 1 also show that there is no approval for rewinding and transfer of Business undertaking (Pipeline) from all the lenders more so from Respondent no. 2. Therefore, pipeline remain the property of the Respondent No. 1.

73. Learned senior counsel appearing for Applicant argued that Respondent No. 2 is not a party to Cancellation Deed and therefore he cannot question the validity, binding nature and its effect on BTA and RTUA.

74. On this aspect learned counsel appearing for the Applicant relied upon the decision in 1969 (2) Supreme Court Cases 343 in M.C. Chacko vs. The State Bank of Travancore, Trivandrum. It is a case where Kottayam Bank not being a party to Deed of partition which is among family members invoked certain clauses in the Deed to enforce charge over property of M.C. Chacko.

75. In the case on hand the Cancellation Deed was entered into between the first Respondent and Applicant without approval of second Respondent despite the Applicant having knowledge of the clauses that require approval of Respondent No. 2 for rewinding BTA. Moreover, the first Respondent also attacked the Cancellation Deed as stated in para 68 above. Hence the decision relied upon by the learned Senior Counsel for the Applicant is not applicable to facts of this case.

76. Learned Senior counsel appearing for the Applicant relied upon another decision in K.P.M. Builders Private Limited vs. National Highways Authority of India and another reported in (2015) 15 Supreme Court Cases 394 on the aspect Right of person not party to contract to enforce terms of contract. The above said decision is also not applicable to this case since the Applicant has got knowledge of clauses in the Loan agreements that

require approval of Respondent No. 2 for revoking of BTA and RTUA.

77. In this context it is necessary to mention that the first Respondent paid substantial part of the sale consideration towards purchase of pipeline to the Applicant. Respondent No. 2 advanced huge amount to the first Respondent on the basis of BTA. Therefore, prejudice would cause to Respondent No. 1 & 2 if any finding is given against interests of Respondent No. 1 and Respondent No. 2 relating to pipeline, in this petition, in view of the pendency of Civil Suit and Interim order passed by Hon'ble Kolkata High Court.

78. Contention of the learned counsel for the Applicant is that the extension of interim order passed by Hon'ble High Court of Kolkata even after imposing of moratorium cannot be taken advantage by Respondents.

79. Hon'ble High Court of Kolkata passed interim order on 22.12.2016 i.e. prior to the commencement of corporate insolvency Resolution process and it has been extended from time to time and in that process interim order was extended even on 30.08.2017 i.e. after imposing moratorium by this Authority. It is not known whether moratorium order passed by this Authority was brought to the notice of Hon'ble High Court of Kolkata or not. Moreover, the Moratorium is applicable in respect of property of Corporate Debtor only. The title of pipe line is in dispute in Civil Court. Therefore, this Authority

cannot pass any order on the validity of extension of interim order after Imposing moratorium. The fact remain interim order is in force.

80. Coming to the case of intervening application i.e. IDBI Bank Ltd. and Edelweiss Asset Reconstruction Company Ltd. pleaded that they are secured creditors of Applicant and first Respondent. The Issue whether IDBI Bank Ltd. and Edelweiss Asset Reconstruction Company Ltd. are secured creditors or not has not been pleaded in IA No. 419 of 2017. The scope of Inquiry in IA 419 of 2017 do not cover the aspect raised by the intervening Applicants. Hence, there is no need for IDBI bank and Edelweiss Asset Reconstruction Company Ltd. to interfere in the matter. Section 52 (5) of IB Code comes to the rescue of secured creditors in case liquidation proceeding is commenced.

81. In view of the above discussion the following are the findings/views of the Adjudicating Authority: -

(1) Adjudicating Authority (NCLT) has got Jurisdiction under Section 60 (5) of IB Code to decide the claims of Corporate Debtor, questions of fact or Law provided if such claims, questions of fact or Law arise out of or in relation to Corporate Insolvency Resolution process of Corporate Debtor that too for the purposes of Resolution Process but not to grant declaratory reliefs to Corporate Debtor.

(2) The title of Corporate Debtor over pipeline is subject matter of Civil Suit No. 177 of 2016, on the file Civil Judge (Senior Division) at Sealdah filed by Respondent No. 2 against Respondent No. 1 and Applicant prior to commencement of Corporate Insolvency Resolution Process in which there is an Interim Order dated 22.12.2016 passed by the Hon'ble High Court of Kolkata in C.A. No. 11760 restraining rewinding of BTA and RTUA, which is inforce.

(3) However, for the purpose of Corporate Insolvency Resolution Process and to clarify Resolution Professional and Resolution Applicant, this Authority gave certain findings/views on the ownership of pipeline and effect of Cancellation Deed dated 24.06.2016 in paras 64 and 72 of this order, which are subject to result of Civil Court Suits.

(4) There is no hindrance for potential Resolution Applicant for filing resolution plans in view of right of Corporate Debtor to use pipeline under RTUA.

(5) The extension of Interim Order by the Hon'ble High Court of Kolkata after Imposing moratorium cannot be canvassed before this Authority.

(6) The Applicant is not entitled for reliefs (b) and (c) prayed by the Applicant.

(7) There is no need for Intervening Applicants to interfere in the proceedings in IA No. 419 of 2017.

82. IA No. 419 of 2017, Inv. P No. 2 of 2018 and Inv. P. No. 3 of 2018 are disposed of. No order as to costs.

Ms. Manorama Kumari,
Member Judicial
Adjudicating Authority

Bikki Raveendra Babu
Member Judicial
Adjudicating Authority

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