IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

MA 557, 530, 529 & 590/2017,
IA 72/2017 in C.P 01/I&BP/2016

Under section 60(5) & 33 of the IBC, 2016

In the matter of
ICICI Bank Ltd. .... Petitioner
v/s.
Innoventive Industries Ltd. ...Corporate Debtor

1. MA 557/2017 in CP 01/2016
Suyash Outsourcing Pvt. Ltd. ... Applicant
v/s.
Bank of India & Ors. ... Respondents

2. MA 530/2017 in CP 01/2016
Chandu Laxman Chavan ... Applicant
v/s.
Union of India & Ors. ... Respondents

3. MA 529/2017 in CP 529/2017
Innoventive Industries Kamgar Sanghatana
... Applicant
v/s.
Union of India through Secretary, Ministry of Finance (Govt. of India) - R1
Bank of India - R2
Bank of Baroda - R3
UCO Bank - R4
Canbank Factors Ltd. - R5
IFCI Factors - R6
The Saraswat Co-op Bank Ltd.- R7
Central Bank of India - R8
Allahabad Bank - R9
Axis Bank Ltd. - R10
Bank of Maharashtra - R11
Export Import Bank of India -R12
State Bank of India -R13
IDBI Bank Ltd. -R14
Indian Overseas Bank -R15
United Bank of India -R16
Ratnakar Bank Ltd. -R17
Bajaj Finance Ltd. -R18
ACRE -R19
ICICI Bank Ltd. -R20
Innoventive Inds. Ltd. -R21

4. MA 590/2017 in CP 529/2017

Innoventive Industries Kamgar Sanghatana
.... Applicant

v/s.

Union of India through Secretary, Ministry of Finance (Govt. of India) - R1
Bank of India - R2
Bank of Baroda - R3
UCO Bank - R4
Canbank Factors Ltd. - R5
IFCI Factors - R6
The Saraswat Co-op Bank Ltd.- R7
Central Bank of India - R8
Allahabad Bank - R9
Axis Bank Ltd. - R10
Bank of Maharashtra - R11
Export Import Bank of India -R12
State Bank of India -R13
IDBI Bank Ltd. -R14
Indian Overseas Bank -R15
United Bank of India -R16
Ratnakar Bank Ltd. -R17
Bajaj Finance Ltd. -R18
ACRE -R19
ICICI Bank Ltd. -R20
Innoventive Industries Ltd. -R21

5. IA 72/2017 in CP 01/2016

Dinal Shah/Resolution Professional of Innoventive Industries Ltd. ... Applicant

Order delivered on 08.12.2017

Coram: Hon'ble Mr. B.S.V. Prakash Kumar, Member (Judicial)
Hon'ble Mr. V. Nallasenapathy, Member (Technical)

For the Applicants : Mr. Ameya Gokhale, Adv. a/w Pulkitesh Dutt, Adv., Avni Merchant, Adv. i/b Shardul Amarchand Mangaldas (for Applicant in IA 72).
Mr. Ayush Agarwal, Adv. i/b Crawford Bayley & Co. (for Applicant in MA 530)

For the Respondents: Ms. Saloni Kapadia, Adv. i/b Cyril Amarchand Mangaldas, Adv. (for original Applicant)

Per B. S. V. Prakash Kumar, Member (Judicial)

ORDER

Order pronounced in the Court on 23.11.2017

MA 557/2017

It is a miscellaneous application filed by Resolution Applicant namely Suyash Outsourcing Pvt. Ltd. against Bank of India (R1), Bank of Baroda (R2), UCO Bank (R3), Canbank Factors Ltd. (R4), IFCI Factors (R5), ICICI Bank Ltd. (R6 – the Financial Creditor who moved this CP 01/2016 u/s 7 of IBC), Innoventive Industries Ltd. (R7 - It is the Corporate Debtor against which R6 filed this CP) seeking this Bench to grant reliefs:

a. To declare that the position of law clarified by the Ministry of Corporate Affairs by general Circular No. IBC/01/2017 – Notification No. 30/14/2017 – Insolvency dated October 25, 2017 would be applicable to the corporate insolvency resolution process of the Corporate Debtor;

b. To declare that the in view of General Circular No. IBC/01/2017 – Notification No. 30/14/2017 – Insolvency dated October 25, 2017, approval of shareholders of the Original Respondent for actions under the resolution plan for its implementation which would have been required under the Companies Act, 2013 or any other law would not be required and would be deemed to have been given upon approval of a resolution plan by this Bench;

c. To allow this Applicant to submit revised Resolution Plan after reducing the time earlier envisaged for obtaining shareholders' approval from the period for making cash payments for fresh vote thereon;

d. To direct the Resolution Professional to present to the Committee of Creditors, modified Resolution Plan after

reducing the time earlier envisaged for obtaining shareholders' approval from the period for making cash payments under the Resolution Plan for fresh vote thereon;

e. To direct the financial creditors comprised in the Committee of Creditors to cast votes on such modified Resolution Plan;

2. The applicant says that this application has been filed by it and on behalf of other resolution applicants namely Kitara International Ltd. and Lighthouse Partners. It says that the Corporate Debtor (R7) is a multi-product company catering to applications in diverse sectors such as automobile, boiler and heat exchangers, energy, oil and general engineering. It specializes in processing various types of steels, faster development cycles, flexible production systems, effective supply chain management for efficient delivery and capability to make tubular transformations and it always comes out with continuous innovations.

3. The resolution applicant on September 3, 2017 submitted a term sheet along with proposed Resolution Plan for ₹284.3crores (in present value terms) @13% discounting rate with a compulsory change in management of the company to make a cash payment of around ₹180crores within a period of one year subject to all approvals and for conversion of residual debt (₹1191.9crores) into Cumulative Convertible Optionally Redeemable Preferential Shares (CCORPS), redemption @ 0.01% of which would be guaranteed by the promoter by way of personal guarantee payable in instalment at the end of 20 years, the coupons on CCORPS shall be paid annually to the Financial Creditor, the payment towards coupon on the proposed CCORPS shall not start before dissenting lenders are settled. Unsecured lenders having dues of ₹41.6crores will be paid by converting ₹36.1crores due to Canbank Factors Ltd. and IFCI Factors Ltd. shall be converted into 0.01% CCORPS payable in one instalment at the end of 20 years. The applicant has further stated that the Resolution Plan estimated total recovery of ₹284.3crores as against proposed recovery of ₹135.4crores through liquidation.

4. The sum and substance of this application is that in Committee of Creditors (CoC) meeting, the Resolution Plan given by this applicant has not been approved with 75% vote sharing of the Committee of Creditors (CoC) but since 66.57% of the CoC voted in favour of the Resolution Plan, the applicant shall be permitted to submit revised Resolution Plan after reducing the time earlier envisaged for obtaining shareholders' approval for change of period for making cash payments, consequently to direct Resolution Professional to present the modified Resolution Plan before CoC, basing on which, CoC be directed to cast votes on such modified Resolution Plan.

The justification this applicant has given for seeking such reliefs is –

i) That the Corporate Debtor provides employment to 1200 workmen.

ii) That the turn-over of the Corporate Debtor for the years ended 31-03-2015, 31-03-2016 and 31-03-2017 is ₹372crores, ₹368crores, and ₹337crores respectively, besides this, the Corporate Debtor has contributed approximately ₹70crores towards taxes for the years ended 2015-16 and 2016-17.

iii) That the Resolution applicant is aggrieved of the wrongful rejection of the plan by CoC without giving an opportunity to the applicant to give revised Resolution Plan after considering the effect of the circular given by Ministry of Corporate Affairs on 25.10.2017.

iv) That the salient features of the proposed Resolution Plan are as follows:

(a) There would be compulsory change in the management of the original Respondent.

(b) Immediate cash payment (within 12 months) of ₹180 crores.

(c) Conversion of loan into CCORPS, redemption of which would be guaranteed by the promoters of the Corporate Debtor.

(d) The proposed Resolution Plan contemplated funds through Rights Issue/Preferential allotment of shares, which requires shareholders' approval under the provisions of Companies Act, 2013.

v) For the value of the Resolution Plan being more than double to the net liquidation value of ₹135.40crores, it is the only viable alternative for liquidation.

vi) The requirement of 75% vote in favour of a resolution plan is directory and not mandatory, for saying this, the applicant relied upon judgments in between ***Dalchand v. Municipal Corporation, Bhopal and Anr. (1984) 2SCC p486, State of Haryana v. Raghubir Dayal (1995) 1SCC p133,*** to say that the word "shall" in section 33(1) of the Code does not leave any discretion with this Bench is flawed. To support the contention of the applicant, it has also relied upon a decision given by NCLT (Bench-II) Mumbai in the case of ***Raj Oil Mills Ltd. v. Edelweiss Asset Reconstruction Co. Ltd. on 15.09.2017*** giving approval for replacement of Interim Resolution Professional with Resolution Professional though 61.8% CoC voted in favour of change, which is in contravention to section 22(2) of the Code.

vii) The rejection of the proposed Resolution Plan amounts to arm twisting tactics by the dissenting financial creditors and holding up the Corporate Insolvency process of the Corporate Debtor.

viii) The rejection of the proposed plan would result in loss-loss situation for all stakeholders of the corporate debtor including the workmen and employees of the company.

ix) The dissenting financial creditors have not given any reason for rejection of the proposed resolution plan despite the fact that implementation of this plan would lead to higher recovery as against to recovery through liquidation.

x) The argument that this Bench cannot enter into the area of decision making of CoC as the Code is creditor-driven legislation is not justified, as no person can claim liquidation of a company as a matter of right.

5. Basing on the above proposition, the Counsel for this applicant submits that this Code is meant for maximization of value of assets and balance the interest of all stakeholders, that being so, since the object of the Code contemplates ease of doing business facilitating more investment leading to higher economic growth and development, if this plan is not approved, all the objects behind enactment would get defeated.

6. As to the Notification given on 25.10.2017 by Ministry of Corporate Affairs clarifying that shareholders' approval not required for actions to be taken under the resolution process, the Counsel says, is directly repugnant to section 35 of Companies Act, 2013 mandating the company to pass an ordinary resolution for increase of share capital of the company.

7. The Counsel further submits that the time period of 270 days as contemplated u/s 12 of the Code is to be conceived as directory because the insolvency resolution process is a complex process that required assessment of business viability, preparation of Resolution Plan, discussions and negotiations with various stakeholders, he

therefore says, strict adherence to the period would result in value destruction of the business of the corporate Debtor.

8. The Counsel appearing on behalf of the applicant has further tried to justify that the inherent power conferred upon NCLT under Rule 11 of the NCLT Rules is equally applicable to this Adjudicating Authority to prevent abuse of process because the ultimate object of the Court is not liquidation of asset but to save the business of the company. If at all this proposed Resolution Plan is rejected, the object of the Code will get defeated.

9. On hearing the submissions of this applicant, the moot point to be adjudicated is as to ***whether this Adjudicating Authority has jurisdiction to exercise over a decision taken by CoC as contemplated in the Code.***

10. The Code in clear terms has stated that any decision that has been taken by CoC in the Corporate Insolvency Resolution period shall be a resolution with 75% voting shares of CoC. Since this being the conspectus of law, to conceive why any approval of CoC shall be an approval with 75% of the voting shares of the creditors, it is imperative to go through various provisions of this Code, which has dealt with the approval of CoC and the resolution plan.

The provisions are as follows:

Section 12: Time limit for completion of Insolvency Resolution process

1. .....

2. *The resolution professional shall file an application to the Adjudicating Authority to extend the period of the Corporate Insolvency Resolution Process beyond 180 days, if instructed to do so,* ***by a resolution at a meeting of the CoC by a vote of 75% of the voting shares.***

3. .....

Provided .....

Section 21: <u>All decisions of the CoC shall be taken by a vote of not less than 75% of voting shares of the Financial Creditors.</u>

Provided that where a Corporate Debtor does not have any financial creditors, the CoC shall be constituted and comprised of such persons to exercise such function in such manner as may be specified by the Board.

Section 22: Appointment of Resolution Professional.

1. .....
2. *The CoC, may, in the first meeting,* ***by a majority vote of not less than 75% of the voting share of the Financial Creditors****, either resolve to a point the interim resolution professional as a Resolution Professional or to replace the Interim Resolution Professional by another Resolution Professional.*
3. .....
4. .....
5. .....

Section 27: Replacement of Resolution Professional by CoC.

1. .....
2. *The CoC may, at a meeting,* ***by a vote of 75% of voting shares****, propose to replace the Resolution professional appointed under section 22 with another resolution professional.*
3. .....

Section 28: Approval of Committee of Creditors for certain actions*.*

1. .....
2. .....
3. *No action under sub-section (1) shall be approved* ***by the CoC unless approved by a vote of 75% of the voting shares.***
4. .....

Section 30: Submission of Resolution Plan.

1. .....
2. .....
3. .....
4. *The CoC may approve a resolution plan* ***by a vote of not less than 75% of voting share of the financial creditors.***
5. .....
6. .....

11. When it has been replete in the provisions of the Code mandating resolution approved by CoC means a resolution with vote not less than 75% of the voting share of CoC, and when for

passing a resolution, a cap is set out as an inbuilt measure in a statute without leaving any ambiguity to the judiciary, will it be open to this Bench to question or to alter the cap given by the legislation? I strongly believe that at least this Adjudicating Authority has no such jurisdiction to venture into. It is also to be kept in mind of us as to whether interpretation of a statute is open to this Authority when legislation in clear terms said what the mandate is. By reading the above provisions, it is ex facie understandable to any layman that a resolution by CoC with less than 75% voting share of CoC is non est in law.

12. In section 21 (8) of the Code, ***it has been mandated that all decisions of the CoC shall be taken by a vote of not less than 75% of voting shares of the Financial Creditors.*** Neither a proviso, nor is any exception carved out to this section saying this mandate is exempted in so and so situations. Can there be any thing clearer than this?

13. It goes without saying, if anybody wants to venture into interpretation of a statute, first it has to be ascertained that reading of a section is not giving any meaning or the meaning that comes out of such section is absurd and inconsistent with the remaining part of the legislation. After having come to such conclusion that section is unable to reflect any meaning, then heading of the meaning is to be seen, if the heading of the section is also of no meaning, then to see the heading of the respective chapter, after doing all these exercises, even then also, if one is unable to construct the meaning of the section, then to go to the statement and objects of the statute and then to see Committee reports to find out as to what the intention of the enactment in respect to the section that is unable to give right meaning.

In law, "right meaning" means not the meaning we feel right, it is the meaning contemplated in the statute. Here it is out and out visible that approval of the resolution by CoC means,

approval with 75% voting by CoC, not otherwise. Therefore, this Adjudicating Authority cannot put its neck into, to say that approval of CoC with less than 75% amounts to approval of resolution by CoC.

14. In section 21(8) of the Code, in addition to all other sections wherever 75% voting aspect has been mentioned to be given to the resolutions of CoC, it has been categorically mentioned that ***all decisions of CoC shall be passed with vote not less than 75% of voting share of the Financial Creditors.***

15. For the sake of clarity, as against the contentions of the applicant Counsel saying that the primary objects of this enactment is not liquidation of assets but to save business, let us examine the statements and objects of this Code, which are as follows:

"An Act to consolidate and amend the laws relating to re-organization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and bankruptcy board of India, and for matters connected therewith or incidental thereto".

16. In this statement, what appears to us is, this is an Act come into force for consolidation of various laws such as repeal of Provincial Insolvency Act and Presidency – Towns Insolvency Act in addition to amendments to Sick Industrial Companies (special provisions) Repeal Act, 2003; Indian Partnership Act, Central Excise Act 1944, the Income Tax Act, the Customs Act, Recovery of Debts due to banks and Financial Institutions Act, the Finance Act, SARFAESI Act, Payment and Settlement Systems Act, 2007, the Limited Liability Partnership Act 2008 and Companies Act 2013, because until before this Act came into force, we did not have single law dealing with insolvency and bankruptcy. Why all these

repeals and amendments were taken place is to consolidate the law in respect to insolvency and bankruptcy spread in various enactments and to provide an effective legal framework for timely resolution of insolvency and bankruptcy to support development of credit markets and encourage entrepreneurship. The reason for consolidation is to make insolvency and bankruptcy resolution in a time bound manner for maximization of value of assets of various persons mentioned above to promote entrepreneurship, availability of credit and balance of interests of all stakeholders. The basic idea to bring all at one place is, to avoid answering every time legal issues such as overlapping issues, repugnancy issues, jurisdictional issues, obtaining stays on the ground some other Act is in play, multiplicity of proceedings to achieve the object, like wise plethora of issues. And it was not working also. One answer for all this is single window approach. Had it been the intendment that reorganisation or restructuring is the primacy of this Code, there were many for it, SICA, JLF etc. All failed. The only object in leaving everything to the domain of creditors is, because their stake is stuck in the company, so far in our experience, we have seldom come across a company that has assets more than liabilities, means what, what is left in the company is less than the stake of the creditors, therefore they are the right persons to take a decision on their stake. One good thing and warning to the creditors is to attain super majority to take any decision in respect to sacrifice of their rights. It is applied to all decisions, because every decision in one or other way, directly or indirectly is related to the rights of the creditor. So in order to avoid abrasion of the rights of creditors to minimum, it has been asked, not asked indeed, but mandated to take all decisions with super majority, for which, we cannot jump to tweak it by using the interpretations about "may" and "shall" or "and" "or", yes it is true, constitutional courts with power under constitution have decided umpteen times vice-a'-versa, it all depends upon the context involved in that particular case. First, we don't have such constitutional powers, second – we have to examine it as to whether any such necessity is there for us to go to

such an extent, when mandate is clear and language of statute is as clear as sunlight.

17. Before going into the proposition raised by the applicant counsel, it is also necessary to note the Code name itself is Insolvency and Bankruptcy Code applying insolvency to the company and bankruptcy to individuals. That being the case, can it be conceived that insolvency in respect to corporate persons is limited to resolution plan alone ignoring the liquidation process i.e. part and parcel of Part-II of this Code? To our sense, the phrase "insolvency resolution of corporate persons" mentioned in the statement is inclusive of liquidation process, therefore, it is inconceivable to understand that the Code has come into existence for restructuring of the companies alone and not for liquidation. If we see the objects closely, it is also clear a word " reorganisation" is included before the phrase "and insolvency resolution of corporate persons", so as to say that the phrase "and insolvency resolution of corporate persons" is not to indicate CIRP alone, strictly speaking the word "reorganisation" denotes some arrangement before proposing for liquidation. Had it been for only reconstruction to provide hair cut to save the company notwithstanding the fact about repayment capacity to pay to the creditors, for that purpose SICA was there, CDR mechanism, JLF mechanism were there. We don't think insolvency resolution shall be given priority ignoring the mandate given in law, it is absurd thought. Moreover that wisdom is not in the realm of this Authority, that Wisdom was already applied by the Parliament - apex policy making body in respect to governance of this Country. Supplementation or tweaking the law is not possible. Here also, no timeline is given to what extent resolution period will continue, the only difference is a "calm period" is set out to enter into a resolution plan with 75% of voting share of CoC. Resolution or no resolution, it is a business decision by CoC with complete authority, this Bench cannot go into the decision of CoC.

18. In report of the bankruptcy law reforms committee, it has been said as follows in respect to primacy of the Code:

The Joint Committee is of the opinion that freedom should be permitted to the overall market to propose solutions for keeping the entity as a going concern. Since the manner and the type of possible solutions are specific to the time and environment in which the insolvency becomes visible, it is expected to evolve over time, and with the development of the market. The Code will be open to all forms of solutions for keeping the entity going without prejudice, within the rest of the constraints of the IRP. ***Therefore, how the insolvency is to be resolved will not be prescribed in the Code. There will be no restriction in the Code on possible ways in which the business model of the entity, or its financial model, or both, can be changed so as to keep the entity as a going concern. The Code will not state that the entity is to be revived, or the debt is to be restructured, or the entity is to be liquidated. This decision will come from the deliberations of the creditors committee in response to the solutions proposed by the market.***

19. As to super majority, the report has categorically mentioned that majority vote requires more than or equal to 75% of the committee by weight of the total financial liability. It has also been said this subject squarely falls in the responsibility of the Creditors' Committee, not in the realm of Adjudicating Authority powers.

20. The creditors committee will have power to decide the final solution by majority vote in the negotiations. **The majority vote means more than or equal to 75 percent of the creditors committee by weight of the total financial liabilities**. The majority vote will also involve a cram down option on any dissenting creditors once the majority vote is obtained. This is inevitable to arrive to a decision. The Adjudicator enables the RP to clarify matters of business from the creditors committee during the course of the IRP. For example, if the RP needs to raise fresh

financing during the IRP, he/she may seek approval from the creditors committee rather than the Adjudicator. The list of these matters, which fall in the responsibility of the creditors committee, are specified in the Code.

21. In view of the statute mandate and the statements and objects of the enactment and the report of the Committee who drafted the legislation have not minced words in saying that the pre-requisite for approval of the resolution by CoC is 75% majority of the vote shares of the CoC, as against this, I wonder how this Bench could interfere into the wisdom of the CoC to say that less than 75% majority is also a possibility to pass a resolution.

22. This issue has already come before this Bench in the past, it was already held that there could not be any occasion to this Bench to look into a resolution plan that has not been approved by the Committee of Creditors with 75% majority as set out in the Code, because under section 31 of the Code, the Adjudicating Authority is given power to examine as to whether the plan approved by the Committee has complied with section 30(2) of the Code or not, if complied with, it has to be approved by this Authority, if not complied with, to reject the resolution plan approved by the committee with not less than 75% voting share of the company.

By reading this, to invoke the jurisdiction of this Authority, there must be a resolution plan approved by the Committee with 75%. So, there is total prohibition upon this Bench to go into as to whether approval of 75% is required or not and as to whether resolution plan approved by the committee is otherwise correct or not, except as mentioned in section 31 of the Code.

23. Though it has not been mentioned in the application that this application falls under section 60(5) of the Code, it has been asserted in the written submission filed by the Counsel that this application falls within the realm of section 60(5) of the Code. Before we have light upon sub-section 60(5) of the Code, it has to

be kept in mind when a special procedure has been carved out giving dos and don'ts, no authority can bring in some general provisions of law to circumvent the special procedure laid out under the respective Chapter. It could be said in other way that what is directly not permitted cannot be allowed indirectly.

24. We have already seen under Chapter-II Corporate Insolvency Resolution Process, Adjudicating Authority power is given to examine the resolution plan approved with 75% voting share of the CoC, on which, appeal has been provided for examining the order passed by Adjudicating Authority. That being the design of the law, how can section 60(5) can be used as a wedge in Chapter-II to say that this Adjudicating Authority has a right to examine the resolution plan not approved by the Committee as set out under the Code. Now let us examine what is said in section 60(5) of the Code–

60. Adjudicating Authority for corporate persons

(1)....

(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 or the corporate debtor or corporate person under this Code.*

25. Looking at this section, it is understandable that sub-section 1 of this section speaks that the Adjudicating Authority under this Code shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located, so, the thing visible is, the territorial

jurisdiction of the Adjudicating Authority is as is given to NCLT for trying matters.

26. In sub-section 2, if any application relating to insolvency resolution or bankruptcy of a personal guarantor of any corporate debtor is to be filed or initiated, if any corporate insolvency resolution process or liquidation of proceedings of the respective corporate debtor is already pending before NCLT, it has to be filed before the respective NCLT only.

27. As to sub-section 3, it is nothing but extension to sub-section 2 for transfer of pending insolvency and bankruptcy proceedings against personal guarantor shall be transferred to the Adjudicating Authority dealing with insolvency resolution process or liquidation proceedings of such corporate debtor.

28. Sub-section 4 says, if any such personal guarantor happens to be an individual falling within Part-III of this Code, respective Adjudicating Authority is vested with power to deal with that matter by exercising power given to the recovery tribunal under Part-III.

29. By looking at all these preceding four sub-sections, it can be understood that they only speak of subject matter jurisdiction and territorial jurisdiction, nothing else. So is the case, with sub-section 5 as well.

30. Sub-section 5 starts with non-obstante clause saying that notwithstanding any other law contrary to this Code, this Authority shall have jurisdiction to decide any application or proceeding by or against the Corporate Debtor or corporate person, any claim made or against by the Corporate debtor or corporate person including clients by or against any of its subsidiaries situated in India and also in respect to the priority of any question of law or facts in relation to insolvency resolution or liquidation proceeding of the corporate debtor or corporate person under this Code.

31. This is a non-obstante clause provision giving right to file any application or claim in respect to the corporate debtor or corporate person despite such issues are governed by some other law in conflict with this law. It has to be borne in mind, it is an overriding provisions in respect to other laws but not to the provision of this Code, therefore, if any law is laid down in this Code to do a particular thing in particular manner, this Authority cannot exercise this jurisdiction given under this sub-section to override a specification already given in this Code by giving an interpretation contrary to the mandate in that particular section. It has to be understood that this sub-section is not meant for exercising jurisdiction over the mandates already given in the Code. Therefore, asserting jurisdiction u/s 60(5) of the Code to tweak super majority is a misconceived idea, therefore, we have not found any merit to consider the plea of this applicant to direct the committee of creditors to take up something which has already been decided by them in compliance of the provision of this Code.

32. The applicant counsel has raised various contentions saying that workmen will suffer; the resolution plan value is double to the net liquidation value given by the valuers, likewise many other contentions. By seeing all these contentions, can all these assume jurisdiction to this Authority to go as if they were not in the mind of the legislators when this Code has been passed. To bring in this Code, thorough exercise has been done by studying the Indian law and various foreign laws, thereafter committee dedicated its time and then it went before parliament, referred to standing committee, soon after examination by the standing committee; bill has been approved by the Parliament after thorough discussion. Can such legislation be changed by this Authority applying its wisdom or ignorance, ignoring all the exercises that have been made by this country? We believe it is not.

As to Notification given by government on 25.10.2017, it has been given to say that requisite of shareholders' resolution or

approval is not an impediment to carry out the resolution plan, it need not be read into to say that this Bench has to give clarification before passing order of liquidation. The language is simple and clear saying shareholder approval is not required to the resolution plan or to any of its clauses.

MA 530/2017

33. This is an Application filed by the promoter reiterating what all the grounds the Resolution Applicant raised in MA 557/2017. Since this Bench has already decided MA 557/2017 adjudicating all the grounds which have been repeated in this Application, for the sake of avoiding repetition, this application is also dismissed with an observation to read the grounds and reasons given in MA 557/2017 which are equally applicable to this MA as well.

Accordingly, this application is hereby **dismissed**.

MA 529/2017

34. This is an Application filed by the Workmen stating that if this company has been liquidated, the workmen will suffer for it has been providing livelihood for more than 2000 families, in view of the same, these workmen also pray this Bench for a direction to CoC to reconsider their decision enabling this Company to continue as before with some kind of resolution so that the workmen depending on this company can survive.

35. Looking at the prayer sought by the Applicant i.e. workmen, the first and foremost thought that comes to this Bench is as to whether this Bench has any jurisdiction to exercise its powers to make an observation in respect to the decision come from CoC meeting.

36. The present factual situation is CoC failed to approve any resolution plan with 75% vote shares of the CoC, therefore, if no such approval is there, this Bench could not go into it.

37. As to jurisdiction/s 60(5) of the Code, it has already been said in MA 557/2017 that non-obstante clause in this sub-section is to raise jurisdiction before this Bench in respect to the rights of the Applicants in conflict with other laws. Moreover, when special jurisdiction has been carved out under any provision of law in any enactment, general provision cannot pervade into special provision given for specific action under the statute. In this statute, dos and don'ts in respect to Resolution Plan has already been set out in the respective chapter. Section 60(5) of the Code cannot be invoked for a relief which has not been granted under those special provisions (sec 30 and sec 31). Moreover, it is already said that it is a general logic that when something is directly not permitted, it cannot be achieved indirectly by truncating the special jurisdiction given under the said statute.

38. As we said in the MA filed by the Resolution Applicant, the jurisdiction lies with this Bench to exercise its power u/s 31 of IBC only when a plan is approved by the CoC as stated in the Code, here, for no plan has been approved by the CoC, there cannot by any occasion to this Bench to make any observation in respect to a decision come from CoC meeting. In section 30 also, no discussion has made in respect to rejection of a Resolution Plan, it only talks about approval of a Plan with 75% super majority of vote share of the CoC. When there is no consensus to take any decision with 75% majority, it cannot be said that this Bench will interfere with the rights of the Committee of Creditors. When no decision has been taken by CoC, no jurisdiction will lie to this Bench to make any observation, that apart, the jurisdiction given u/s 30 is only limited to approve or reject the Resolution Plan approved by the CoC with super majority. When such is the case, how could it be expected that this Bench would be in a position to invoke its jurisdiction to go into the claim made by the workmen. Therefore, this Application is hereby **dismissed** making an observation that this Bench is devoid of jurisdiction to decide this application.

MA 590/2017

39. The same Workmen's Union filed another MA 590/2017 to seek orders that liquidation shall not be initiated because the object of the IBC is to balance interest among all the stakeholders, since these workers being a class of the stakeholders, their interest should be taken care of on the same footing as the interest of the creditors is taken care of. This union has further stated since lot of recoveries pending in various Courts to a tune of ₹150crores, this authority may direct for recovery of those and the proceeds from those recoveries be distributed among the CoC so that the CoC may rethink about the Resolution Plan and change their decision for about going for liquidation. The Workmen raised a point that they have stake in the company, therefore, they have right to protect their right to work which has been given to them under Article 41 of the Constitution of India r/w Article 14 of the Constitution. They are ready to contribute their gratuity and provident fund among the dissenting creditors i.e. 33.33 % along with the new investors so that dissenting creditors will get their respective recoveries which they are entitled to get in the event of liquidation as per the provisions of the Code. Along with the contentions mentioned above, these workmen have stated loan against gratuity and PF be taken. Likewise, many assurances have been laid by the workmen union so as to get a stay over the application filed for liquidation of the company.

40. On perusal of this Company Application, it appears that this Union has sought for an order for securing the right to work of Innoventive Kamgar Sanghatana by exercising rights under Article 14 of the Constitution of India. By reading this application, it appears that they have sought an Order from this Bench under Article 14 of the Constitution of India which is not within the reach of this Bench, lest any other Court except Constitutional Courts i.e. Hon'ble High Court and Hon'ble Supreme Court. It is a Code that has given complete powers to the CoC as to whether or not to approve the resolution plan with super majority as mentioned under the Code, therefore, this Bench cannot and will not interfere with

the rights of the CoC unless an approved plan has come before this Bench for examination under Section 31 of the Code. Since the approved plan has not been received by this Authority u/s 30(6) of the Code, this Bench has not even got the occasion to examine a plan under section 31 of the Code, therefore, the relief sought by this Workmen organization is beyond the reach and power given to this Adjudicating Authority, therefore this Application is hereby **dismissed**.

IA 72/2017

41. This Intervention (Misc.) Application is filed under Section 33 r/w Section 60(5) of the Code by the Applicant/RP with a prayer to pass an order requiring the Corporate Debtor to be liquidated in terms of the provisions of Chapter III of Insolvency & Bankruptcy Code, to issue a public announcement stating that the Corporate Debtor is in liquidation, to direct the copy of order to be sent to the RoC Mumbai and to permit the RP to continuing in its role as the RP pending hearing and final disposal of the present application in the interim period, till the pronouncement of the liquidation of the order. The moratorium to continue beyond October 14, 2017 and the RP to continue in its role as an RP and to be paid not less than the remuneration paid to him during the CIRP period.

42. In the admission order dated 17.01.2017 passed under section 14 of Insolvency and bankruptcy Code, the Applicant herein was appointed as Interim Resolution Professional for the Corporate Debtor, subsequently he was confirmed as RP by the CoC of the Corporate Debtor. In pursuance of the provisions of the Code, this Applicant prepared an information memorandum u/s 29 of IBC, whereupon, Kitara Capital Pvt. Ltd., Suyash Outsourcing Pvt. Ltd., Light House Partners and their Co-investors (collectively the Resolution Applicants) supported by the promoter namely Chandu Chavan submitted a term sheet dated 03.09.2017 along with a proposed Resolution Plan on 03.09.2017.

43. In the meanwhile, this applicant appointed M/s. Duff and Phelps and M/s. Vidyasagar Jadhav as registered valuers for determination of the liquidation value of the corporate debtor. The estimate provided by the M/s. Duff and Phelps was for ₹143crores and the estimate given by M/s. Vidyasagar Jadhav was for ₹256crores, this applicant, having seen the difference in the estimates given by the above two valuers, appointed M/s. Acumen Financial Consultant as third valuer, this valuer provided an estimate for ₹145crores.

44. After having made all these exercises for getting potential investors finally, this Applicant received three offers providing recovery to the Financial Creditor above liquidation value and five offers below liquidation value of the assets. All these offers were placed before the CoC in its meeting on 04.08.2017 apprising the above mentioned, out of which, the Resolution Applicant provided highest recovery in excess of liquidation value of ₹144crores. This was put to discussion in the CoC, consequently, the CoC asked this Applicants to improve their investment offer in terms of higher upfront payment to the lenders and also to link the redemption of convertible instrument with the operational performance of the corporate debtor.

45. In this proposed plan, it has been said ₹180 crores of cash payment will be made within 360 days and the remaining debt of ₹1228 crores would be converted into CCORPS payable over 20 years by rating the present value of those instruments as ₹107.4 @13% p.a. It has been said equity infusion would be ₹90 crores of rupees. As to role of promoter is concerned, it has been said he will remain in non-executive capacity on contractual basis. Again, this proposed resolution plan was placed during 11th CoC meeting dated 4.10.2017, wherein since all members of the CoC were physically present, it was agreed that the voting on the proposed plan would take place by electronic means in the period between 3.00 p.m. on 6.10.2017 to 3.00 on 7.10.2017 as contemplated under regulation 26(1) of CIR regulations. On conclusion of the electronic voting

process on 7.10.2017, 66.6% of the vote shares of the CoC voted in favour of the Resolution Plan whereas, 33.4% of the voted shares of the CoC voted against the Resolution Plan, since this Resolution Plan could not get approval of not less than 75% of the vote share of the CoC, on 10.10.2017 the CoC resolved that the Resolution Professional should continue conducting its role during the interim period until such time this Bench passes the liquidation order by agreeing about the liquidation fee and also for the retaining the key employees of the corporate debtor by providing a cumulative amount of ₹10 lakhs per month by the secured creditors for a period of 3 months from 04.10.2017.

46. Since the Resolution Plan has not been approved by the CoC, for having already provisions have been set out to continue the company with the funding from the secured creditors, the Applicant filed this Application for ordering the corporate debtor to be liquidated in terms of this Code.

47. As to super majority to be obtained for approving Resolution Plan has already been discussed in the MA 557/2017, it need not be repeated to say that when Resolution Plan has not been approved by not less than 75% of the vote shares of the CoC, when a report has been made by the Resolution Professional seeking prayer for the corporate debtor to be liquidated, it is imperative on the part of this Bench to pass a liquidation order as mentioned under 33(1) of IBC.

48. The Insolvency Resolution Process of 270 days is already over by 14.10.2017, since no resolution plan has been received by this Bench, as contemplated u/s 30(6) of the Code, this Bench hereby orders the Corporate Debtor to be liquidated in the manner as laid down in this Chapter, to issue a public announcement stating that corporate debtor is in liquidation and also to send this order to the RoC with which the corporate debtor is registered by appointing the Resolution Professional herein as the Liquidator u/s 34 of the Code for the purposes of this liquidation by holding that all powers

of the Board of Directors, key managerial personnel and the partners of the Corporate Debtor will cease to have effect and shall be vested in the liquidator with direction to the personnel of the corporate debtor and to extend cooperation to the liquidator as may be required by him in managing the affairs of the corporate debtor. RP appointed as liquidator is entitled to charge fees for the conduct of the liquidation process as agreed by the CoC in the 12th meeting held on 10.10.2017, in the alternative as prescribed in the IBBI (Liquidation Process) Regulations. It has been further directed that the company shall be liquidated as laid under Chapter III of IB Code r.w. IBBI (Liquidation Process) Regulations 2016.

49. Accordingly, this application is **allowed**.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

B.S.V. PRAKASH KUMAR
Member (Judicial)