IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
COURT-I
KOLKATA

I.A.(IB) No. 389/KB/2023
and
I.A.(IB) No. 535/KB/2023
and
IVN.P.(IB) No. 8/KB/2023
and
I.A. (IB) No. 428/KB/2023
in
C.P.(IB) No. 294/KB/2021
along with

I.A.(IB) No. 1692/KB/2022
and
I.A.(IB) No. 391/KB/2023
and
I.A.(IB) No. 532/KB/2023
and
IVN.P. (IB) No. 2/KB/2023
and
IVN.P. (IB) No. 9/KB/2023
and
I.A.(IB) No. 413/KB/2023
and
I.A. (IB) No. 464/KB/2023
and
I.A. (IB) No.557/KB/2023
and
I.A. (IB) No. 434/KB/2023
and
I.A. (IB) No. 392/BK/2023
in
C.P. (IB) No. 295/KB/2021

CP (IB) No. 294/KB/2021
In the matter of:

Reserve Bank of India

… Appropriate Regulator

versus

SREI Insfrastrucute Finance Limited

… Financial Service Provider

And

CP (IB) No. 295/KB/2021

In the matter of:

Reserve Bank of India

… Appropriate Regulator

versus

SREI Equipment Finance Limited

… Financial Service Provider

And

In the matter of:

Applications under Section 420(1) and (2) of the Companies Act, 2013 read with Rule 11 and Rule 154 of the National Company Law Tribunal Rules, 2016 for Recalling the admission order.

And

Applications under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 for intervention in the applications for recalling the admission order.

I.A. (IB) No. 389/KB/2023

In the matter of:

Adisri Commercial Private Limited

… Applicant

-Versus-

1. Reserve Bank of India
2. Mr. Rajneesh Sharma, Administrator of SREI Equipment Finance Limited

… Respondents

And

I.A. (IB) No. 535/KB/2023

In the matter of:

Adisri Commercial Private Limited

… Applicant

-Versus-

1. Reserve Bank of India
2. Mr. Rajneesh Sharma, Administrator of SREI Infrastructure Finance Limited

3. SREI Infrastructure Finance Limited

… Respondents

And

IVN.P. (IB) No. 8/KB/2023

In the matter of:

Consolidated Committee of Creditors of SIFL & SEFL through UCO Bank

… Intervenor

-Versus-

Adisri Commercial Private Limited

… Respondents

And

I.A. (IB) No. 1692/KB/2022

In the matter of:

Manoj Kumar Gupta

…Applicant

-Versus-

1. Reserve Bank of India

2. Mr. Rajneesh Sharma, Administrator of SREI Infrastructure Finance Limited

… Respondents

And

I.A. (IB) No. 391/KB/2023

In the matter of:

Adisri Commercial Private Limited

… Applicant

-Versus-

1. Reserve Bank of India

2. Mr. Rajneesh Sharma, Administrator of SREI Infrastructure Finance Limited

… Respondents

And

I.A. (IB) No. 532/KB/2023

In the matter of:

Adisri Commercial Private Limited

… Applicant

-Versus-

1. Reserve Bank of India

2. Mr. Rajneesh Sharma, Administrator of SREI Infrastructure Finance Limited

3. SREI Infrastructure Finance Limited

… Respondents

And

IVN.P. (IB) No. 2/KB/2023

In the matter of:

Consolidated Committee of Creditors of SIFL & SEFL through UCO Bank

… Intervenor

-Versus-

Manoj Kumar Gupta

… Respondent

And

IVN.P. (IB) No. 9/KB/2023

In the matter of:

Consolidated Committee of Creditors of SIFL & SEFL through UCO Bank

… Intervenor

-Versus-

Adisri Commercial Private Limited

… Respondent

And

In the matter of:

An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016

And

I.A.(IB) No. 413/KB/2023

In the matter of:

Authum Investment and Infrastructure Limited

... Applicant

-versus-

Rajneesh Sharma, Administrator of SREI Infrastructure Limited

... Respondent

I.A. (IB) No. 464/KB/2023

1. Abhilasha Bothra
2. Manoj Kumar Bothra

...Applicants

Versus

1. Rajneesh Sharma, Administrator of SREI Equipment Finance Limited and SREI Infrastructure Finance Limited
2. National Asset Reconstruction Company Limited
3. VFSI Holdings Pte, Ltd.
4. Arena Investors
5. Authum Investment & Infrastructure Ltd.
6. Canara Bank
7. Union Bank of India
8. Punjab National Bank
9. State Bank of India
10. Bank of Baroda
11. Indian Bank
12. Punjab and Sind Bank
13. Central Bank of India
14. UCO Bank
15. Bank of India
16. Indian Overseas Bank

17. DBS Bank India Limited

18. Small Industries Development Bank of India (SIDBI)

19. Standard Chartered Bank

20. Aozora Bank

21. Axis Bank Limited

22. Axis Trustee Services Limited

23. Bank of Ceylon

24. Bank of Maharashtra

25. Belgian Investment Company for developing countries SA/NA-Bio Boulevard Bischoffsheimlaan

26. Catalyst Trusteeship Limited

27. DEG – Deutsche Investitions und Entwicklungsgesellchaft mbH Kammergasse

28. Dhanlaxmi Bank Ltd,

29. Export Import Bank of United States

30. Finnish Fund for Industrial Cooperation Ltd. (FINNFUND)

31. Global Climate Partnership Fund, S.A. SICAV-SIF.

32. HDFC Bank

33. ICICI Bank

34. IDBI Bank.

35. IDBI Trusteeship Services Limited

36. IFCI Ltd.

37. Karnataka Bank Limited

38. Karur Vyasa Bank

39. Lakshmi Vilas Bank

40. NABARD

41. Nicco Engineering Services Infinium Digispace

42. Oesterreichische Entwicklungs Bank

43. People's Bank

44. Societe de Promotion et de Participation pour la Cooperation Economique S.A. ("PROPARCO")

45. South Indian Bank

46. SREI Equipment Finance Limited

47. Sumitomo Mitsui Finance and Leasing Co., Ltd.

48. Toyota Financial Services Limited

49. Axis Trustee Services Limited

...Respondents

I.A. (IB) No.557/KB/2023

In the matter of:

Authum Investment & Infrastructure Limited

... Applicant

-versus-

1. Rajneesh Sharma, Administrator of SREI Equipment Finance Limited and SREI Infrastructure Finance Limited
2. National Asset Reconstruction Company Limited
3. VFSI Holdings Pte, Ltd.
4. Arena Investors
5. Canara Bank
6. Union Bank of India
7. Punjab National Bank

8. State Bank of India
9. Bank of Baroda
10. Indian Bank
11. Punjab and Sind Bank
12. Central Bank of India
13. UCO Bank
14. Bank of India
15. Indian Overseas Bank
16. DBS Bank India Limited
17. Small Industries Development Bank of India (SIDBI)
18. Standard Chartered Bank
19. Aozora Bank
20. Axis Bank Limited
21. Axis Trustee Services Limited
22. Bank of Ceylon
23. Bank of Maharashtra
24. Belgian Investment Company for developing countries SA/NA-Bio Boulevard Bischoffsheimlaan
25. Catalyst Trusteeship Limited
26. DEG – Deutsche Investitions und Entwicklungsgesellchaft mbH Kammergasse
27. Dhanlaxmi Bank Ltd,
28. Export Import Bank of United States
29. Finnish Fund for Industrial Cooperation Ltd. (FINNFUND)

30. Global Climate Partnership Fund, S.A. SICAV-SIF.

31. HDFC Bank

32. ICICI Bank

33. IDBI Bank.

34. IDBI Trusteeship Services Limited

35. IFCI Ltd.

36. Karnataka Bank Limited

37. Karur Vyasa Bank

38. Lakshmi Vilas Bank

39. NABARD

40. Nicco Engineering Services Infinium Digispace

41. Oesterreichische Entwicklungs Bank

42. People's Bank

43. Societe de Promotion et de Participation pour la Cooperation Economique S.A. ("PROPARCO")

44. South Indian Bank

45. SREI Equipment Finance Limited

46. Sumitomo Mitsui Finance and Leasing Co., Ltd.

47. Toyota Financial Services Limited

48. Axis Trustee Services Limited

In the matter of:

Applications under section 30(6) and section 31(1) of the Insolvency & Bankruptcy Code, 2016 read with regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 read with rule 11 of the National Company Law Tribunal Rules, 2016 read with the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 for approval of Resolution Plan.

I.A. (IB) No. 428/KB/2023

and

I.A. (IB) No. 434/KB/2023

In the matter of:

Rajneesh Sharma, Administrator of
SREI Equipment Finance Limited and SREI Infrastructure Finance Limited

… Applicant

-Versus-

1. Consolidated Committee of Creditors of SREI Equipment Finance Limited and SREI Infrastructure Finance Limited
2. National Asset Reconstruction Company Limited

Date of pronouncement: 11 August 2023

Coram:

Rohit Kapoor, Member (Judicial)
Balraj Joshi, Member (Technical)

Appearances (via hybrid mode):

For the Administrator : 1. Mr. Sudipto Sarkar, Senior Advocate
2. Mr. Jishnu Saha, Senior Advocate
3. Mr. Debnath Ghosh, Advocate
4. Mr. Soumyajit Mishra, Advocate

For the Consolidated CoC of SEFL & SIFL	:	1. Mr. Arun Kathpalia, Senior Advocate 2. Mr. Saurav Panda, Advocate 3. Mr. Vaijant Paliwal, Advocate 4. Mr. Deepanjan Dutta Roy, Advocate 5. Ms. Arushi Chandra, Advocate 6. Mr. Daksh Kadian, Advocate 7. Ms. Sanjana Jha, Advocate 8. Ms. Rashi Sharma, Advocate 9. Ms. Charu Bansal, Advocate
For Applicant in I.A (IB) No. 389/KB/2023, I.A (IB) No. 535/KB/2023, I.A (IB) No. 391/KB/2023 and I.A (IB) No. 532/KB/2023	:	1. Mr. Ratnanko Banerji, Senior Advocate 2. Mr. Jishnu Chowdhury, Advocate 3. Mr. Rishav Banerjee, Advocate 4. Mr. Rajarshi Banerjee, Advocate
For Applicant in I.A (IB) No. 1692/KB/2023	:	1. Mr. Abhrajit Mitra, Senior Advocate 2. Mr. Shaunak Mitra, Advocate 3. Mr. Patita Paban Bishwal, Advocate
For Reserve Bank of India	:	1. Mr. Tushar Mehta, Solicitor General of India 2. Mr. Shwetank Ginodia, Advocate
For NARCl	:	1. Mr. Ravindra Kadam, Senior Advocate 2. Mr. Joy Saha, Seniro Advocate 3. Mr. Dhananjay Kumar, Advocate 4. Mr. Rohan Kadam, Advocate 5. Ms. Annie Jain, Advocate 6. Mr. Anush Mathkar, Advocate 7. Mr. Jayesh Karnawat, Advocate 8. Mr. Souvik Mazumdar, Advocate
For the Applicant in I.A. (IB) No. 413/KB/2023 & I.A. (IB)	:	1. Mr. Prateek Seksaria, Senior Advocate

No. 557/KB/2023		2. Ms. Manju Bhuteria, Advocate 3. Ms. Iram Hasan, advocate 4. Mr. Sanket Sawawgi, Advocate
For the Applicant in I.A. (IB) No. 464/KB/2023	:	1. Mr. Vikram Nankani, Senior Advocate 2. Mr. Shadab S Jan, Advocate 3. Mr. R. Upadhyay, Advocate
In I.A.(IB) No. 428/KB/2023 and I.A. (IB) No. 434/KB/2023	:	1. Mr. Krishnendu Datta, Advocate 2. Mr. Saurav Panda, Advocate 3. Mr. Deepanjan Dutta Roy, Advocate 4. Ms. Arushi Chandra, Advocate 5. Ms. Rashi Sharma, Advocate 6. Ms. Sanjana Jha, Advocate

COMMON O R D E R

Per: Rohit Kapoor, Member (Judicial) and Balraj Joshi, Member (Technical)

Preliminary

1. This Court convened through hybrid mode.
2. I.A.(IB) No. 389/KB/2023, I.A.(IB) No. 535/KB/2023, IVN.P.(IB) No. 8/KB/2023, I.A. (IB) No. 428/KB/2023 in C.P.(IB) No. 294/KB/2021 along with I.A.(IB) No. 1692/KB/2022, I.A.(IB) No. 391/KB/2023, I.A.(IB) No. 532/KB/2023, IVN.P. (IB) No. 2/KB/2023, IVN.P. (IB) No. 9/KB/2023, I.A.(IB) No. 413/KB/2023, I.A. (IB) No. 464/KB/2023, I.A. (IB) No.557/KB/2023, I.A. (IB) No. 434/KB/2023 and I.A. (IB) No. 392/BK/2023 in C.P. (IB) No. 295/KB/2021 are being decided *vide* a common order.

I.A.(I.B.C.) No.1692/KB/2022

3. The averments contained in this IA are summarized hereinafter;-

i. The Applicant i.e. Manoj Kumar Gupta is the shareholder holding approximately 1080 paid up equity shares of SREI Infrastructure Finance Limited *(hereinafter referred to as SIFL)*. The instant application has been filed as there are mistakes apparent from the records in the order dated 8th of October, 2021 passed by this Adjudicating Authority.

ii. Reserve Bank of India misled the Adjudicating Authority to initiate CIRP process as against SIFL, a non-banking financial company.

iii. It was in usual course of business when the applicant received notice dated 6th September, 2022 of the Annual General Meeting (AGM) of SIFL scheduled to be held on 30th of September, 2022. Applicant from the Annual Report for the Financial year 2021-2022 came to know about the deliberate suppression of jurisdictional fact as in non existence of debt.

iv. The applicant prior to such date was only aware of the facts that the Hon'ble Adjudicating Authority had, on an application filed by the Respondent No.1 (RBI) under Section 227 of IBC, 2016 passed an order dated 8th October, 2021 for initiation of CIRP as against SIFL and had appointed the Respondent No.2 as the administrator.

v. This Adjudicating Authority did not have jurisdiction to entertain application under Section 7 of IBC as the default arose between 25th of March, 2020 till 24th of March, 2021 and in view of bar under Section 10A of IBC, 2016, no application for initiation of CIRP of Corporate Debtor could have been filed. This is apparent from the application filed by RBI, a copy of which was for the first time disclosed in Civil Appeal filed by the Administrator before the Supreme Court of India. There was a deliberate

omission on the part of RBI in not informing this Adjudicating Authority that this application was barred under Section 10A of IBC, 2016. No opportunity of hearing was granted to the Corporate Debtor.

vi. In Annual Report of Financial Year 2021-2022, which has been prepared by respondent No. 2 himself as an Administrator of SIFL, he duly admits that there are no liabilities/borrowing of SIFL which makes it abundantly clear that SIFL could not be under CIRP. Applicant in the facts and circumstances as mentioned in this IA seeks recalling and /or setting aside of order of CIRP of Corporate Debtor namely SIFL.

vi. On the following grounds, there is no debt of SIFL, as the entire debt and / or borrowing of SIFL was transferred to SEFL w.e.f. 1st October, 2019. The essential ingredients of admission of application under Section 7 "existence of debt" is not present in the instant case.

viii. The date of default is within the period of moratorium imposed under Section 10A of IBC, therefore, this Adjudicating Authority had no jurisdiction to admit the petition of RBI. There was no debt and there could not have been any default. There is a jurisdictional error committed by Adjudicating Authority in admitting this petition.

ix. This Adjudicating Authority is not required to travel beyond the record to see whether order dated 8th of October, 2021 is correct or not. Applicant has not preferred any appeal against order dated 8th of October, 2021 passed by this Adjudicating Authority and is filing this instant petition in pursuant to order dated 12th of December, 2022 passed by Hon'ble Supreme Court of India. Applicant being a shareholder of Corporate Debtor will be

prejudiced, if SIFL is taken into insolvency despite there being no debt or default.

x. The reliefs claimed by the Applicant in the present IA are as follows:

a. An order and/or orders recalling the order dated 8th October, 2021 passed by this Hon'ble Tribunal in C.P.(I.B.) No. 295/2021 (Reserve Bank of India -vs- SREI Infrastructure Finance Ltd.) and thereby quashing the Corporate Insolvency Resolution Process initiated in respect of SREI Infrastructure Finance Limited;

b. Stay of Corporate Insolvency Resolution Process of SREI Infrastrucuire Finance Ltd till the adjudication of this instant application;

c. Stay of process of approval of the Resolution Plan and/or finalisation by the Committee of Creditors of SREI Infrastructure Finance Ltd. and/or stay of approval and/or finalisation of the Resolution Plan by this Adjudicating Authority till the disposal instant application;

d. Ad interim orders in terms of prayers (b) and (c) above;

e. Such further or other order or orders be passed and/or direction or directions be given as this Hon'ble Adjudicating Authority may deem fit and proper;

I.A.(I.B.C) No. 389/KB/2023

4. The averments contained in this IA are summarized hereinafter: -

i. The Applicant is a majority shareholder of SREI Infrastructure Finance Limited. The instant petition has been filed as there are mistakes and/or errors on the face of record in order dated 8th of October 2021 passed by the Adjudicating Authority in C.P.(IB) No. 295/KB/2021. This Tribunal has jurisdiction to rectify such mistakes which are apparent from record of the proceedings.

ii. Upon admission of C.P (IB) 294/KB/2021 by this Adjudicating Authority, applicant in its capacity as contributory of SREI Infrastructure Finance Limited *(hereinafter referred to as SIFL),* which in turn is the holding company of SREI Equipment Finance Limited *(hereinafter referred to as SEFL)* has the locus to file the instant application. Error described hereinafter is apparent and no arguments would be required. This is a jurisdictional error as there was a bar under Section 10A of IBC, 2016 therefore no application could have been filed by respondent No. 1 for initiation of CIRP or could have been entertained by the Adjudicating Authority.

iii. In terms of Rule 5 of Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 ('FSP Rules), an application under Section 5(a)(i) of the FSP Rules is required to be dealt with in the same manner as an application for Financial Creditor under Section 7 of IBC, 2016. The Applicant also submitted that as has been held by the Supreme Court of India in *Swiss Ribbons -vs- Union of India,*[1] an opportunity was required to be given to the Corporate Debtor to file a reply to Company Petition under Section 7. In view of order passed by the Hon'ble High Court at Calcutta, RBI could not have initiated CIRP against SIFL and SEFL. Applicant had

[1] *(2019) 4 SCC 17 at para 58*

filed an appeal under Section 61 of IBC in November, 2021 from the order of admission dated 8th October, 2021. There were defects in filing and delay in refiling the same. The delay was not condoned and the appeal was not considered on merits by the Appellate Tribunal.

iv. Applicant aggrieved thereafter filed an appeal before the Hon'ble Supreme Court of India which came to be dismissed on 30th of January, 2023.[2]

v. In the present application, the following reliefs have been sought by the Applicant:

a) An order be passed rectifying the mistake apparent from the records in the order dated 8th October 2021 passed by this Hon'ble Tribunal in C. P. (IB) No. 294/KB/2021and thereby recalling the same and quashing the Corporate Insolvency Resolution Process initiated in respect of the SREI Equipment Finance Ltd.;

b)Stay of Corporate Insolvency Resolution Process of SREI Equipment Finance Ltd till the adjudication of this instant application;

c)Stay of process of approval of the Resolution Plan and/or finalisation by the Committee of Creditors of SREI Equipment Finance Ltd. and/or stay of approval and/or finalisation of the Resolution Plan by this Hon'ble Adjudicating Authority till the disposal of this instant application;

[2] *Annexure-D, Pg. 75-91; Annexure E, Pg. 92-93 in I.A(I.B) 389/KB/2023*

d)Ad interim orders in terms of prayers (b) and (c) above;

e) Such further or other order or orders be passed and/or direction or directions be given as this Hon'ble Adjudicating Authority may deem fit and proper;

I.A. (I.B.C) No. 535/KB/2023

5. The averments contained in this IA are summarized as hereinafter:

i. The applicant is a shareholder of SREI Infrastructure Finance Limited (hereinafter referred to as the 'SIFL'). The applicant came to know from the Press Release dated 4th October, 2021[3] that there has been supersession of the Board of Directors of SEFL and an Administrator has been appointed in their place.

ii. Applicant thereafter filed a writ petition before the Hon'ble High Court of Bombay challenging the notice dated 1st of October, 2021. The writ petition was dismissed by an order dated 7th of October, 2021[4] in view of the fact that Hon'ble Court came to the conclusion that the same was not fit where extraordinary jurisdiction under Article 226 of the Constitution of India could be invoked. It was also held that the writ petition concerns matters of financial, economic and corporate decision making, therefore it would be hazardous and risky for courts to enter into such domain, since the same should be dealt by expert bodies.

iii. Order of admission passed in CP (IB) 294/KB/2021 could not have been passed in view of bar under Section 10A of IBC.

[3] Annexure-B at Pg.25 in I.A(I.B)No./535/KB/2023
[4] Pg.26 to 33 in I.A(I.B)No./535/KB/2023

Administrator did not choose to represent the Corporate Debtor or object to the proceedings under Section 7 of IBC.

iv. There was a collusion between Respondent No. 1 and 2. There was no contest from SEFL in view of collusion between the Administrator and RBI. The administrator appointed by RBI did not contest the petition. The order of admission is bad on the face of it. Applicant seeks recalling and/or setting aside of order dated 8th of October, 2021 and all proceedings till the disposal of this application.

I.A. (I.B.C) No. 391/KB/2023

6. This IA has been filed by Adisri Commercial Private Limited on identical grounds as in IA (I.B.C) 389/KB/of 2023 referred hereinabove seeking an order to rectify the mistake apparent from records in order dated 8th October 2021 passed by this Tribunal in C.P (IB) 295/KB/2021 (Reserve Bank of India v. SREI Infrastructure Finance Limited). The following reliefs are sought for by the Applicant:

   a. *"An order be passed rectifying the mistake apparent from the records in the order dated 8th October 2021 passed by this Hon'ble Tribunal in C. P. (IB) No. 294/KB/2021 and thereby recalling the same and quashing the Corporate Insolvency Resolution Process initiated in respect of the SREI Infrastructure Finance Ltd*

   b. *Stay of Corporate Insolvency Resolution Process of SREI Infrastructure Finance Ltd till the adjudication of this instant application;*

c. *Stay of process of approval of the Resolution Plan and/or finalisation by the Committee of Creditors of SREI Infrastructure Finance Ltd. and/or stay of approval and/or finalisation of the Resolution Plan by this Hon'ble Adjudicating Authority till the disposal of this instant application;*

d. *Ad interim orders in terms of prayers (b) and (c) above;*

e. *Such further or other order or orders be passed and/or direction or directions be given as this Hon'ble Adjudicating Authority may deem fit and proper;"*

I.A. (I.B.C) No. 532/KB/2023

7. This IA has been filed on the similar grounds as in IA (I.B.C.)535/2023 seeking setting aside of order dated 8th of October, 2021 passed in CP (I.B) 295/KB/2021.

8. In the above IAs, reply affidavit has been filed by Reserve Bank of India and Mr. Rajneesh Sharma, the Administrator.

9. Contents of the Reply Affidavit filed by the Reserve Bank of India (RBI) are summarized hereinbelow:

9.1. It is contended on behalf of the Reserve Bank of India that the Applicants in the above IA as shareholders have no locus to seek the relief as asked in their IAs. IAs have been filed with *mala-fide* intent at a belated stage. In view of serious governance concerns and defaults in meeting its payment obligations by SIFL and SEFL (collectively **"**SREI**"),** RBI appointed Mr. Rajneesh Sharma as the Administrator on October 4, 2021 by superseding the Board of Directors of SIFL and SEFL, under Section 45-IE of the Reserve Bank of India Act, 1934, ("RBI Act**").**

9.2. By admission order dated 8th of October, 2021, Mr. Rajneesh Sharma was appointed as Administrator of Corporate Debtor. Admission order sets out the continuing defaults committed by the Corporate Debtor. The last date of completion of CIRP of SIFL and SEFL was 18th of February, 2023.

9.3. Per Annual Returns for FY 2021-22, the Administrator has noted the following regarding the Business Transfer Agreement dated August 16, 2019 entered into between SEFL and SIFL **(**"BTA") as follows:

i. The consent of lenders of SIFL and SEFL was still awaited at the time of executing of BTA;

ii. SEFL had proposed a scheme with its creditors in relation to the BTA and an application to that effect had been filed with the NCLT in CP (IB) No. 294/KB/ 2021). This Hon'ble Tribunal vide Order dated October 21, 2020 directed SEFL to hold a meeting of creditors to vote on the scheme and restrained creditors and all governmental or regulatory authorities from taking any coercive steps having the potential to prejudice the status of account of the Company;

iii. The scheme was rejected and the sale under the BTA did not fructify;

iv. Pending the final decision, status quo has been maintained qua the BTA by both SIFL and SEFL;

v. Once CIRP of SIFL commenced, the Administrator's application for withdrawal of the scheme was allowed by this Hon'ble Tribunal in the Company Petition on February 11, 2022.

9.4. As noted in the Annual Returns for FY 2021-22, the Administrator had mentioned that-

"In accordance with the obligations imposed on the Administrator under Section 18 (f) of the Code, the Administrator has taken custody and control of the Company with the financial position as recorded in the balance sheet as on insolvency commencement date on an "as-is where-is" basis. The accounts for the quarter and year ended March 31, 2022 have been taken on record by the Administrator in the manner and form in which it existed on the insolvency commencement date in view of the initiation of the CIRP and this fact has also been informed by the Administrator to the stakeholders. Further, in line with the provisions of Section 14 of the Code, the Company cannot alienate any of the assets appearing on the insolvency commencement date"

9.5. There is no mistake or error apparent on the face of record in admission order and also this Tribunal does not have the power to review. No such review of admission order whether permitted as recall or rectification can be permitted in this application. The applicant seeks to review on merits of the substantial issues already decided by this Tribunal on 8th of October, 2021. A remedy by way of an appeal under Section 61 of IBC was statutorily available to the applicant.

9.6. Applicant (Manoj Kumar Gupta) is trying to bypass the 30 days limitation period prescribed under Section 61 of IBC by using the nomenclature as recall and rectification. Applicant was at all times aware of his right to file an appeal and after the period of expiry he is now trying to raise the issues which could have been dealt only in appeal. The appeal filed against the admission order by majority shareholder i.e. Adisri Commercial Private Limited has already been dismissed by the Hon'ble NCLAT on 21.12.2022 and subsequently by the Hon'ble Supreme Court on 30th of January, 2023.

9.7. There is no such error as contended by the applicant. There are findings of facts which cannot be interfered in review or recalling

jurisdiction even if this NCLT may have had such power to review or recall. There is no violation of any Principles of Natural Justice as alleged. Administrator appointment has not been challenged and application for initiation of CIRP was filed in accordance with law.

9.8. There were continuous defaults of the Corporate Debtor. The debt existed as per the books of banks, as continuing defaults, and order of admission records this position. Therefore, bar under Section 10A is not attracted in the present case. The allegation of collusion is baseless and hence denied.

10. <u>Contents of the Reply Affidavit filed by the Administrator i.e., Mr. Rajneesh Sharma:</u>

10.1. The Administrator contends that the admission order records there were continuing defaults and an order of admission is legal and valid in every respect.

10.2. Significantly, the aforesaid Applicant i.e., Manoj Kumar Gupta had sent two emails to the Administrator, on November 30, 2021 and May 14, 2022, after the commencement of CIRP. These emails have been suppressed by the Applicant with mala fide intention, in all proceedings and pleadings across fora. In the email dated November 30, 2021 the Applicant has attached an unsigned letter wherein he inter alia objected to the appointment of Ernst and Young as the process advisors to SIFL and SEFL in November 2021. The aforementioned letter also references a news article dated November 3, 2021, published on the website of the Economic Times, which clearly highlights the commencement of CIRP in SIFL and SEFL. By way of the email dated May 14, 2022, the Applicant has attached an unsigned letter wherein he inter alia requests for a copy of a letter from RBI to the lenders of SIFL and SEFL. Here again, he references a news article dated May 3, 2022, published on the website of the Economic Times, which clearly highlights the commencement of CIRP in SIFL and SEFL. This clearly

demonstrates that the Applicant was aware of CIRP being initiated in SIFL as far back as November 2021. Not only has the Applicant suppressed this information, but also has made blatantly dishonest statements on affidavit regarding the date of his knowledge of the CIRP.

10.3. Applicant has suppressed this and made dishonest statement of fact regarding the date of his knowledge of the CIRP. List of prospective resolution applicants of Corporate Debtor with 13 Expressions of Interest *(hereinafter refererd to as EoIs)* was issued by Administrator on 6th of April, 2022. CIRP of SIFL and SEFL is required to be completed by 18th of February, 2023.

10.4. Per the Annual Returns for FY 21-22, the Administrator has noted the following regarding the Business Transfer Agreement dated August 16, 2019 entered into between SEFL and SIFL ("BTA"), as follows:

i. The consent of lenders of SIFL and of SEFL was still awaited at the time of executing the BTA;

ii. SEFL had proposed a scheme with its creditors in relation to the BTA and an application to that effect had been filed with the NCLT (in CP (IB) No. 294/KB/ 2021). The NCLT Kolkata *vide* an Order dated October 21, 2020 directed SEFL to hold a meeting of creditors to vote on the scheme;

iii. The scheme was rejected and the sale under the BTA did not fructify;

iv. Pending the final decision, status quo has been maintained qua the BTA by both SIFL and SEFL;

v. Once CIRP of SIFL commenced, the Administrator's application for withdrawal of the scheme was allowed by the NCLT Kolkata in the Company Petition on February 11, 2022.

10.5. Applicants do not have any right to file these review petitions. This Adjudicating Authority does not have any power to review. Applicants are seeking reconsideration of order of admission

of CIRP and reappreciation of evidence on merits which is impermissible under law.

10.6. Writ petition filed before the Hon'ble High Court at Calcutta challenging the bar of 10A was withdrawn by the applicant (Manoj Kumar Gupta). The remedy, if any, for the applicant was appeal under Section 61 of IBC. In the guise of recalling and / or rectification of admission order, applicants in the present case are in fact challenging the order of admission passed by this Adjudicating Authority on 8th of October, 2021. I.A.(I.B.C.) No. 1692/KB/2022 is an attempt to overcome the limitation period prescribed in filing appeal. Where a remedy to such an appeal was available but not availed, power to recall a judgment should not be exercised *(1999) 4SCC 396.* It is noteworthy to mention that the Appeal filed by majority shareholder i.e. Adisri Commercial Private Limited was dismissed by the Hon'ble NCLAT on 21.12.2022 and subsequently by the Hon'ble Supreme Court on 30th of January, 2023. The Applicant i.e. Manoj Kumar Gupta is trying to circumvent thirty days limitation period in the guise of this application seeking recalling and / rectification.

10.7. The Applicants have not come with clean hands and there is an inordinate delay in challenging admission order which otherwise is not permissible in the present proceedings. A person cannot be permitted to approach at his own leisure or pleasure. Applicants are engaged in forum shopping and are only interested in derailing the CIRP process of Corporate Debtor. They do not have any *bona fide* interest except to derail the entire process of CIRP.

10.8. There is no mistake or error apparent on the face of record as contended by the applicant and, therefore, this Tribunal does not have any reason or power to correct the same. Order of admission has been passed strictly in conformity with law and there is no violation as alleged. There is no violation of principles of natural justice as contended by the applicants. The defaults are continuous defaults and this aspect has been captured in the order of admission.

This is a question of fact based on books of the Banks. This cannot be looked into at this stage and in the present proceedings sought to be initiated by the applicants. The contention of applicants that *vide* annual returns of financial year 2021 and 2022 the administrator admitted that there are no liabilities/borrowing of the Corporate Debtor of SIFL is vehemently denied.

10.9. The Administrator has maintained status quo as on ICD with regards to the liabilities of SIFL qua the BTA. All contentions to the contrary are denied. The contents of the said paragraphs are repeated and reiterated (and not reproduced) for the sake of brevity. It is denied that (a) there is no debt of SIFL in view of the BTA; (b) the Petition is barred under Section 10A of the IBC; and (c) the Petition could not have been filed. From the record of the Corporate Debtor, it cannot be denied that there was a debt and a default, contrary to the baseless submissions of the Applicant.

10.10. The allegations of any collusion or malice are denied. The allegation that SIFL did not have any debt since October, 2019 is contrary to the records and the same is denied.

10.11. The submission of the applicant (Manoj Kumar Gupta) that they are filing the present application in pursuance to the order dated 12th of December, 2022 passed by Hon'ble Supreme Court of India is misleading and incorrect.

10.12. The CIRP of SREI entities in fact involves dealing with admitted liability of Rs. 33,000 Crores and cannot be derailed by frivolous applications raised by shareholders.

10.13. The Administrator in its reply affidavit has referred to an appeal filed by one Adisri Commercial Private Limited i.e, the Applicant in I.A. (I.B.C) /389/KB/2023 before the Hon'ble NCLAT against the admission order dated 08.10.2021. In this appeal, the plea of bar under Section 10A of IBC, 2016 was taken by the Appellant specifically in para 3 followed by other paragraphs which are reproduced hereinbelow:

"3. The Impugned Order has been passed in breach of the provisions of Section 10A of the IBC. Section 10A of the IBC expressly states that no application for initiation of corporate insolvency resolution process shall be filed for any default arising on or after 25 March 2020 for a minimum period of six months which may be extended to a year by notification The Central Government has vide notifications S.O. 3265(E) and S.O. 4638(E) dated 24 September 2020 and 22 December 2020 respectively extended the application of the provision contained in Section 10A of the IBC for a further period of 6 months from 25 September 2020, till 24 March 2021. Therefore, no application for initiation of corporate insolvency resolution process against any default arising between the period 25 March 2020 and 24 March 2021 could have been filed.

4. As it appears from a bare perusal of the Impugned Order, the Impugned Order has been passed on the basis of the recorded dates of default being, the purported date of delay of interest payment in respect of the working capital facility being 1 February 2021 and the purported date of default in respect of the principal amount being 9 January 2021 In accordance with the provisions of Section 10A of the IBC. no application under the IBC could have been admitted on the basis of any default arising on the admitted purported dates of default and therefore, the Impugned Order deserves to be set aside.

5. Moreover, for the period commencing from 21 October 2020 till 7 September 2021 there was no scope of any default since by virtue of the interim order dated 21 October 2020 passed by the Hon'ble National Company Law Tribunal, Kolkata Bench in an application filed by the Respondent No 2 under section 230 of the Companies Act, 2013, the Respondent No 2 and the Respondent No 3, the Hon'ble NCLT had directed all lenders and regulatory authorities of both the companies to maintain

status quo with respect to the contractual terms and lending status. This position was continued till 7 September 2021 when the Hon'ble NCLAT set aside the sand order dated 21 October 2020. As such the purported date of default of interest payment in respect of the working capital facility being 1 February 2021 and the purported date of default in respect of the principal amount being 9 January 2021 could not have arisen by virtue of the continuance o the status quo order dated 21 October 2020 passed by the Hon'ble NCLT.

6.It is submitted that Respondent No. 1 has overlooked the orders of the Hon'ble Calcutta High Court in the matter of Hire Purchase & Lease Association & Anr. Vs. Reserve Bank of India & Ors. (W.P.A 9255 of 2020) whereby the Hon'ble Calcutta High Court has recognised the plight of the NBFCs caused due to the discriminatory approach of the circulars issued by the Respondent No. 1 and by an interim order dated 10 December 2020 has been pleased to restrain Respondent No. 1 from taking any coercive steps against NBFCs (who are the members of the Association) such s Respondent No. 2 Company. The Appellant states that the interim order dated 10 December 2020 was subsisting on the day the Respondent No. 1 moved an application under the FSP Rules 2019 before the Hon'ble Adjudicating Authority, In light of a subsisting interim order dated 10 December 2020 passed by the Hon'ble Calcutta High Court, judicial propriety would have called for the Respondent No. 1 to refrain from filing the application under FSP Rules 2019 against the Respondent No. 2 in breach of a valid subsisting interim order of the Hon'ble High Court having constitutional supervisory jurisdiction and which was in scission of an issue of law.

7.The Impugned Order has been passed by the Hon'ble Adjudicating Authority in breach of principles of natural justice and in violation of the mandatory directions given by the Hon'ble Supreme Court of India in M/s. Innoventive Industries Limited vs. ICICI Bank and Anr. (Civil Appeal No. 8337-8338 of 2017) [2018 1 SCC 407] as well as by this Hon'ble Appellate Tribunal in M/s. Innoventive Industries Limited vs. ICICI Bank Limited (Company Appeal (AT) (Insolvency) No. 1-2 of 2017) [2017 SCC OnLine NCLAT 70], In Company Appeal (AT) (Insolvency) No. 1-2 of 2017 this. Hon'ble Appellate Tribunal was pleased to hold that the National Company Law Tribunal being the Adjudicating Authority is bound to issue only a limited notice to the corporate debtor before admitting a case under Section 7 uf the IBC. It is an admitted position in the instant case at hand as would be evident from the Impugned Order that no notice whatsoever was issued by the Hon'ble Adjudicating Authority upon the Corporate Debtor before filing the Application under Section 7 of IBC by the Respondent No. 1.

8. The Supreme Court in its decision of Babulal Vardharji Gurjar Vs. Veer Gurjar Aluminium Industries Private Limited & Anr (Civil Appeal No. 6347 of 2019) at Para 19:2 held that after completion of all other requirements, for admitting such an application of the financial creditor, the Adjudicating Authority has to be satisfied, as per sub section (5) of Section 7 of the Code, that "default" has occurred ami in this process of consideration by the Adjudicating Authority, the Corporate Debtor is entitled to point out that default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact.

9. In Sree Metaliks Ltd. v. Union of India & Anr 12017 SCC Online Cal 21455], the constitutionality of Section 7 was

challenged on the ground that the said provision does not provide the corporate debtor an opportunity to be heard before an application to initiate CIRP is admitted. The High Court of Calcutta at Para 15 relying on Section 424 of the Companies Act, 2013, held that even though the Code is silent on the right of hearing of the corporate debtor, "where a statute is silent on the right of hearing and it does not in express terms, oust the principles of natural justice, the same can and should be read into in." Accordingly, the Court held that the Adjudicating Authority is obliged to give reasonable opportunity to be heard to the corporate debtor.

"In an application under Section 7 of the Code of 2016, the financial creditor is the applicant while the corporate debtor is the respondent. A proceeding for declaration of insolvency of a company has drastic consequences for a company. Such proceeding may end up in its liquidation. A person cannot be condemned unheard. Where a statute is silent on the right of hearing and it does not in express terms, oust the principles of natural justice, the same can and should be read into in. When the NCLT receives an application under Section 7 of the Code of 2016, therefore, it must afford a reasonable opportunity of hearing to the corporate debtor as Section 424 of the Companies Act. 2013 mandates it to ascertain the existence of default as claimed by the financial creditor in the application".

10. The Appellant states that the Application under Section 7 read with Section 227 of the IBC was filed on 8 October 2021 and was mentioned by the Respondent No. 1 before the Hon'ble Adjudicating Authority without any notice on the same day itself. The Appellant further states that the application was taken up by the Hon'ble Adjudicating Authority on the same day in the afternoon and the Impugned Order was passed in breach of the principles of natural justice as well as without complying with

the directive and/or observations laid down in the judgment passed by the Hon'ble Appellate Tribunal in Innoventive Industries Limited vs. ICICI Bank Limited as the Hon bi Adjudicating Authority admittedly failed to issue a limited notice to the Corporate Debtor before admitting the application under Section 7 of IBC.

11. The Respondent No. 2 Company is a non-banking financial company and is a financial service provider falling within the ambit of Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 (hereinafter referred to as the "FSP Rules 2019"). As the per the PSP Rules 2019, any application filed by Reserve Bank of India would be treated as an application under Section 7 of IBC and thus principles laid down in the judgment passed by the Hon'ble Appellate Tribunal in Innoventive Industries Limited us. ICICI Bank Limited of giving a limited notice to the Corporate Debtor before admission of any application under Section 7 of IBC, 2016 shall also be applicable Admittedly, the Hon'ble Adjudicating Authority did not give any limited notice before passing the Impugned Order and admitted the application under Section 7 of IBC, 2016, for which the Impugned Order deserves to be set aside.

12. As per Rule 6(5) of the FSP Rules 2019, the Respondent No.! should have dispatched forthwith a copy of the application filed with the Hon'ble Adjudicating Authority by registered post or speed post to the registered office of the Respondent No. 2 Company. In the instant case at hand, as it appears from the Impugned Order, the application was filed in the morning of 8 October 2021 and was moved on the same date without serving a copy upon the Respondent No. 2 Company The Appellant till date does not have a copy of the Application filed by the

Respondent No. I in which the Impugned Order has been passed by the Hon'ble Adjudicating Authority. This shows that the entire proceeding before the Hon'ble Adjudicating Authority has been carried out by the Respondent No. 1 in complete breach of principles of natural justice.

13. In absence of any default, the Impugned Order cannot sustained and deserves to be set aside in its entirety. The entire exercise has been carried out by the Responden: No. in breach of principles of natural justice and as would appear from the Impugned Order, there was nobody to defend the application filed by the Respondent No. 1 before the Hon'ble Adjudicating Authority and as such the Impugned Order deserves to be set aside. The corporate insolvency resolution process in respect of the Corporate Debtor deserves to be quashed.

14.The Impugned Order thus is bad in law and unless the Impugned Order is set aside, the Appellant shall suffer irreparable prejudice, loss and injury as without giving any notice to the Corporate Debtor, the Impugned Order has been passed without hearing the Corporate Debtor and without giving the Corporate Debtor a chance to reply to the application filed by the Respondent No. 1 which violates the principles of natural justice and which is in breach of the guidelines laid down by the Hon'ble Appellate Tribunal in the judgment passed in Innoventive Industries Limited us. ICICI Bank Limited. If the Corporate Debtor would have been given a chance to file a reply to the Application filed by the Respondent No. 1, it would have been demonstrated to the Hon'ble Adjudicating Authority that there exists no default to trigger any corporate insolvency resolution process against the Respondent No. 2 Company.

15. Hence this present appeal."[5]

10.14. The Administrator has also referred to the Civil Appeal preferred by Adisri Commercial Private Limited which was filed against the judgment passed by the Hon'ble NCLAT on 21.12.2022. It is also contended that the issue raised and the grounds taken in the Civil Appeal are identical to those taken in appeal before the Hon'ble NCLAT. The prayers in the said Civil Appeal are stated as hereunder:

> " *In the aforesaid circumstances it is most respectfully prayed that the Hon'ble Court may graciously pleased to:*
>
> *a. Allow and admit the present Civil Appeal and set aside the Impugned final Judgmant and Order dated 21st December, 2022 passed by the Hon'ble National Company Law Appellate Tribunal, Principal Bench at New Delhi in Company Appeal (AT) 9Insolvency) No. 1293 of 2022;*
>
> *b. Pass any further order or order(s) as this Hon'ble Court may deem fit and proper and in the facts and circumstances of the present case."*[6]

11. ***Intervention Applications filed by the UCO Bank***

11.1. **IVN.P. No.2/KB/2023** has been filed on behalf of UCO Bank acting on behalf of the Consolidated Committee of Creditors to intervene in I.A.(I.B.C)No. 1692/KB/2022 which was filed by the Applicant namely Manoj Kumar Gupta.

11.2. **IVN.P. No. 8 of 2023** has been filed on behalf of UCO Bank acting on behalf of the Consolidated Committee of Creditors seeking intervention in the I.A. (I.B.C.) No. 389/KB/2023 filed by Adisri

[5] *Pg.33-40 of the Administrator's Reply in I.A.(I.B.C.) No.389/KB/2023*
[6] *Pg.61-62 of the Appeal filed by Adisri Commercial Private Limited before the Hon'ble Supreme Court of India*

Commercial Private Limited in C.P.(I.B) No. 294/KB/2021 and praying dismissal of the same. The stand taken by UCO Bank on behalf of the CoC in IVN Petition No. 8 of 2023 with respect to bar of filing the IA is summarized hereinbelow:-

> "23. It is submitted that in *Vistar Financers Pvt. Ltd. v. Datre Corporation Limited, 2018 SCC Online NCLT 22294* , this Hon'ble Tribunal held that "*We do not find any provision in IBC. No doubt Section 60(5) of IBC states that this Tribunal can entertain and dispose of any question of priorities or any question of law or facts, arising out of or in relation to the Insolvency Resolution or liquidation proceeding of the Corporate Debtor or Corporate person under this Code. If above provision of law is considered, we feel that the prayer to recall and cancel our own Order of Admission of CIRP would not come within the purview of the above Section. Moreover, the Order of Admission of CIRP is appealable order u/s. 32 of IBC.*"
>
> *The appeals filed by the Applicant i.e., Adisri Commercial Private Limited have already been dismissed and the Applicant is barred from filing the IA for the same cause of action*
>
> *24. Notwithstanding the fact that the present IA is not maintainable, even in terms of Section 61 of the IBC an aggrieved party is required to file an appeal before the Hon'ble NCLAT within 30 (thirty) days.*
>
> *25. Pertinently, Adisri, being a shareholder and promoter of SIFL challenged the order initiating CIRP of SIFL before the Hon'ble NCLAT, which appeal was dismissed by the Hon'ble NCLAT on December 21, 2022. The said order of the Hon'ble NCLAT was also upheld by the Hon'ble Supreme Court in Civil Appeal No. 473 of 2023 ("SC Appeal") by way of order dated 30 January 2023.*

26. It is pertinent to highlight that the submissions made in SC Appeal make it abundantly clear that the Applicant has already raised the same issues in respect of the Admission Order before the Hon'ble Supreme Court and despite that, the Hon'ble Supreme Court has rightly dismissed the appeal filed by the Applicant against the dismissal order of the Hon'ble NCLAT in respect of the Admission Order. With the dismissal of the challenge by the Hon'ble Supreme Court, the Admission Order has already attained finality and the Applicant is barred from now raising the same issues before this Hon'ble Tribunal.

Issue (II) at Page No. 18 of the SC Appeal: "Whether the Ld. NCLT could have passed the order dated 8 October 2021 for initiation of CIRP against a purported default which has occurred within the period of time specified in Section 10A of the IBC in view of the decisions of this Hon'ble Court in Ramesh Kymal vs Siemens Gamesa Renewable Power Private Limited (2021)3SCC 224"

Grounds at O, P and Q at Page No. 50 of the SC Appeal:

INITIATION OF CORPORATE INSOLVENCY RESOLUTION PROCESS IS IN VIOLATION OF SECTION 10A OF THE IBC AS THE ALLEGED DEFAULT OCCURRED DURING THE PROHIBITED PERIOD AS STIPULATED UNDER SECTION 10A OF THE IBC

O. FOR THAT the Ld. NCLT failed to appreciate that the purported dates of default with respect to the interest on the working capital facility and the principal amount fell under the period of time specified under Sectior 10A of the IBC and that no application for initiation of corporate insolvency resolution process against the Corporate Debtor could have been filed within the said specified period of time.

P. FOR THAT as per Rule 4(1) of the FSP Rules 2019 the expression "corporate debtor" shall also mean "financial service provider", therefore Section 10A is also applicable to applications filed against financial service providers as well. Admittedly, the order dated 08th October 2021 at Paragraph 4(c) states that the date of default with respect to the principal amount occurred on 13th February 2021 and with respect to default in interest occurred on 01st November 2020, therefore, initiation of CIRP against the Respondent No. 2 Company is in violation of Section 10A of the IBC, since the date of default is during the prohibited period stipulated under Section I0A of the IBC, and consequently no application for CIRP can ever be filed for a default which has taken place during said period, as Section 10A is prefaced with a non-obstante provision.

Q. FOR THAT the order dated 08th October 2021 passed by the Ld. NCLT is patently illegal and without jurisdiction. The Ld. NCLT does not have jurisdiction to admit the application filed by the Respondent No. 1 and initiate CIRP against the Respondent No. 2 Company for any default arising between 25th March 2020 and 24th March 2020. Rellance is placed on this Hon'ble Court's judgment in Ramesh Kymal v Siemens Gamesa Renewable Power Private Limited (2021) 3 SCC 224."[7]

It is also pleaded by UCO Bank that the present IA is not maintainable as NCLT does not have any jurisdiction review or recall its own order. Relevant paragraphs regarding the same are reproduced as hereinbelow:

"20. It is submitted that the IAis not maintainable and deserves to be dismissed in limine, as the Hon'ble Tribunal has not been vested with the jurisdiction to recall its own order. It is submitted

[7] *Pg.28-30 of IVN.P. No.8/KB/2023*

that the proceedings before the Hon'ble Tribunal are summary in nature and no power of 'review' or 'recall' is vested with this Hon'ble Tribunal.

21. It is submitted that there is no express provision in the Code that allows the Hon'ble Tribunal to recall its own order. It is submitted that in Anant Kajare v. Eknath Aher and Anr., 2017 SCC Online 434, the Hon'ble NCLAT held that in the absence of any power of review or recall vested in the Hon'ble NCLT, the Hon'ble NCLT had rightly refused to recall its own order.

22. It is further submitted that in Agarwal Coal Corporation Pvt. Ltd. v. Sun Paper Mill Ltd., I.A. 265/2019 in Company Appeal (AT) (Ins) 412/2019, the Hon'ble NCLAT has upheld that:

> *"27. It is the well laid down proposition of law that 'in the absence of any power of 'Review' or 'Recall' vested with the 'Adjudicating Authority' – 'Appellate Authority', an order/ judgment passed by it cannot be either Reviewed or Recall as opined by this Tribunal.*
>
> *31. It cannot be gainsaid that there is no express provision for 'Review' under the National Company Law Appellate Tribunal Rules, 2016. Moreover, the Applicant/Appellant cannot fall back upon Rule 11 of the NCLAT Rules, 2016 which provides for "inherent powers''. In fact, Rule 11 of NCLAT Rules 2016 is not a substantive Rule which showers any power or jurisdiction upon the 'Tribunal'. Undoubtedly, the 'Tribunal' has no power to perform an act which is prohibited by Law.*
>
> *32. In view of the upshot, this Tribunal taking note of the prime fact that the Applicant/Appellant has sought for "recalling" the judgement dated 16.10.2019 passed by this Appellate Tribunal in Comp App (AT)(Ins) No.412/2019*

etc., which is impermissible in Law and that this 'Tribunal' is of the earnest opinion that the appropriate course of action open to the Applicant / Appellant is to approach the Hon'ble Supreme Court of India as against the judgement in Comp App (AT)(Ins) No.412/2019 dated 16.10.2019 passed by this "Tribunal" if it so desires/advised."

UCO Bank has also taken the objection to the locus standi of the applicant and the same is being reproduced hereinbelow:-

"28. Having already once approached the Hon'ble NCLAT and thereafter the Hon'ble Supreme Court against the order initiating the CIRP of one of the Consolidated CoC members, i.e. SIFL, and having failed therein, it is evident that Adisri is indulging in forum shopping with the mala fide intent to somehow stall the insolvency resolution process of SEFL and SIFL at a belated stage, almost 1.5 years after the Admission Order has been passed.

29. The Applicant has approached this Hon'ble Tribunal after a prolonged delay at the cusp of approval of the resolution plan by this Hon'ble Tribunal and immediately after his appeals against the order of admission of the SIFL into CIRP have been dismissed by the Hon'ble Supreme Court. The circumstances in which this Application has been preferred by a shareholder clearly indicate that this is nothing but a motivated attempt to cause delay in the insolvency resolution process, likely at the behest of the erstwhile management. The RBI vide its press release dated 4 October 2021 categorically stated that the board of directors of SIFL was being superseded due to 'governance concerns' and therefore, supersession of the board of directors of SIFL being in the best interest of all stakeholders should have rather been supported by the Applicant, being a

shareholder. It is evident by the conduct of the Applicant that he is approaching the Hon'ble NCLT with unclean hands and has no locus standi to pursue this application."[8]

11.3. **IVN.P. No. 9/KB/2023** has been filed on behalf of UCO Bank acting on behalf of the Consolidated Committee of Creditors to intervene in I.A.(I.B.C)No. 391/KB/2023 which was filed by the Applicant namely Adisri Commercial Private Limited in C.P.(I.B.) No. 295/KB/2021.

12. ***Submissions by the Ld. Senior Counsel appearing on behalf of the Applicant in I.A.(I.B.C) No. 1692/KB/2022 are summarized as hereunder:***

12.1. The Ld .Senior Counsel appearing for the Applicant i.e., Manoj Kumar Gupta submitted that there is no delay in filing the application as the limitation to file an application under Section 420(2) of the Companies Act is two years from the date of the impugned order. The contention of the respondents that the applicant is now approaching this Hon'ble Tribunal after a delay of one year is thus not tenable in view of section 420(2) of the Companies Act. The Applicant came across the petition filed by RBI before the NCLT, Kolkata Bench in the first week of December, 2022 when the Administrator disclosed such application in the SLP filed by him before the Hon'ble Supreme Court of India. Thus, there cannot be any question of delay in approaching the Tribunal as the Applicant immediately has filed this application in December, 2022 before this Hon'ble Adjudicating Authority immediately after getting access to a copy of the application filed by RBI.

12.2. The Respondents' plea that there is a delay on the part of the Applicant in approaching this Hon'ble Tribunal is also not sustainable as the Hon'ble Supreme Court in ***Madras Port Trust vs Hymanshu International reported in (1979) 4 SCC 176*** at para 2 held that the Government (in our case RBI) cannot take the argument of delay to defeat just claims. In

[8] *Pg.31-32 of IVN.P. No.8/KB/2023*

Urban Improvement Trust, Bikaner vs Mohan Lal (2010) 1 SCC 512, the Hon'ble Supreme Court of India in Paragraph 6 has held that Government Authorities should not put forth technical contentions to obstruct the path of justice.

12.3. He submitted that there is an error apparent on the face of the record as evident from the admission order dated 08.10.2021. In para 10 of the said order the Adjudicating Authority was pleased to note that the date of default of interest payment in respect of working capital facilities is 1st November, 2020, and in respect of the principal sum is 13th February, 2021. Observing the above mentioned dates as date of default, this Hon'ble Adjudicating Authority could not have then initiated any CIRP against SIFL for defaults committed on the abovementioned dates, which is covered under the moratorium period as prescribed under Section 10A of IBC, 2016 as no application can ever be filed for default arising out of the period prescribed under Section 10A of IBC, 2016 as also now been laid down in the judgement of the Hon'ble Supreme Court of India in ***Ramesh Kymal v. Siemens Gamesa Renewable Power (P) Ltd.*** reported in ***(2021) 3 SCC 224***.

12.4. In the instant case, error/mistake is patent, manifest and self evident error and in the instant case no elaborate discussion of evidence or argument is required to establish the error/mistake. In ***ACIT, Rajkot v. Saurashtra Kutch Stock Exchange Ltd.*** *reported in* ***(2008)14 SCC 171*** *at page 173*, the Hon'ble Supreme Court has held that "*a patent, manifest and self evident error which does not require elaborate discussion of evidence or argument to establish it, can be said to be an error apparent on the fact of record and can be corrected*".

12.5. Further, a judgment was referred wherein the Hon'ble National Company Law Appellate Tribunal ["NCLAT"] also in catena of judgements, more particularly in ***Santosh Basant Yalocar v. Vijay Kumar Aiyar*** *(being* ***Company Appeal (AT) (Insolvency) No. 871-872 of 2019*** *– judgement dated 24.01.2020)* has also acknowledged and affirmed the powers of this Hon'ble Adjudicating Authority under section 420(2) to recall or rectify its orders when there is an error apparent on the face of record.

12.6. The Applicant places reliance on the judgment of the Hon'ble NCLAT in ***Radius Infratel Private Limited versus Union Bank of India*** **[Company Appeal (AT) (Insolvency) No. 535 of 2018**, Order dated 13.11.2018, para 6] ; In this judgement, liberty was given by Hon'ble NCLAT to a shareholder/director of the Corporate Debtor to move an appeal challenging the order of admission.

12.7. It also stated that, a shareholder of a Corporate Debtor is a stakeholder and is entitled to distribution under a resolution plan as provided for under Section 30 read with Section 53 of IBC, 2016.Any resolution plan approved in respect of the Corporate Debtor under Section 31 of IBC, 2016 would also be binding on the shareholder and as such shareholders have locus standi to challenge the order of admission.

12.8. It is submitted that NCLT is competent and empowered to recall its own order. The judgment of the Hon'ble NCLAT in ***Kushal Limited v. CoC of Rainbow Papers Limited*** [***Company Appeal (AT) (Insolvency) No. 678 – 681 of 2022*** (3 member bench of NCLAT) and judgment dated 21.07.2022 – Page 32, 33 and 36 of the judgment] has expressly held that NCLT is competent to recall its own order. In the said judgment, the Hon'ble NCLAT also distinguishes judgment of the NCLAT passed in Agarwal Coal Corporation versus Sun Paper Mill Limited**,** a judgment relied upon by the Administrator in the present proceedings.

12.9. In the judgment of the Hon'ble NCLAT in ***Santosh Wasantrao Walokar versus Vijay Kumar v. Iyer, Resolution Professional, Murli Industries Limited and another [C.A. (AT) (Insolvency) No. 871 – 872 of 2019***, judgment dated 24.01.2020, paragraph 41, page 7, read with paragraph 30 iv., At pages 25 to 26] it was held that the Adjudicating Authority has power to recall its own order under Section 420 (2) of the Companies Act, 2013.

12.10. The Applicant stated that this Adjudicating Authority cannot consider anything beyond the pleading of RBI when noticing the date of alleged default. In the application, there are no pleadings as regards to any continuous default in RBI's application, the only dates of default

mentioned are 01.11.2020 and 13.02.2021 which is a bar under Section 10A of IBC, 2016.

12.11. It was submitted that in ***Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Private Limited &Anr. – (2020) 15 SCC 1*** - Para 35.1, the Hon'ble Supreme Court has stated that "the date of default" should be construed as "the date of default mentioned in the relevant Form-1 itself and nothing except that." RBI cannot go beyond its pleadings and argue anything contrary. Having stated that the date of defaults to be 1st November, 2020 and 13th February, 2021, the application filed by the RBI is absolutely barred under Section 10A of the IBC, 2016.

12.12. The Applicant also places reliance on the judgment of the Hon'ble Supreme Court in ***Ramesh Kymal v. Siemens Gamesa Renewable Power Private Limited*** **(2021) 3 SCC 224** (Paragraphs 8, 9, 11, 18, 19, 21, 22, 24, 25, 27 and 28). The Supreme Court in *Paragraphs 18, 19, 24, 27 and 28* of *Ramesh Kymal* has held that : "*no application shall ever be filed*" for the initiation of the CIRP of a corporate debtor for a default occurring during the prohibited period mentioned under Section 10A of IBC, 2016. The Hon'ble Supreme Court has further held that "*The expression "shall ever be filed" is a clear indicator that the intent of the legislature is to bar the institution of any application for the commencement of the CIRP in respect of a default which has occurred on or after 25-3-2020 for a period of six months, extendable up to one year as notified. The Explanation which has been introduced to remove doubts places the matter beyond doubt by clarifying that the statutory provision shall not apply to any default before 25-3-2020.*"

12.13. In ***Electroparts (India) Private Limited v. Videocon Infinity Infrastructure Private Limited (IA No. 907/KB/2021 in CP No 140/KB/2021*** *– Judgment dated 18.07.2022)* **–** this Hon'ble Adjudicating Authority presided by J. Rohit Kapoor (Member)(Judicial) and J. Harish Chunder Suri (Member)(Technical) terminated the CIRP Proceedings initiated invoking the provisions of Section 65 of IBC, 2016 as well as due to bar contained under Section 10 A of IBC, 2016 which was not pointed out to the Tribunal at the time of admission.

12.14. In the instant case at hand, the Adjudicating Authority did not have jurisdiction to admit the application filed by RBI for initiation of CIRP in respect of SIFL due to the prohibition stipulated by Section 10A of IBC, 2016. The Hon'ble Supreme Court in *Kiran Singh and others versus Chaman Paswan and others*, AIR 1954 SC 340, paragraph 6 had laid down the principle that an order passed by a Court without jurisdiction is a nullity and the invalidity of the order could be set up whatever and wherever it is sought to be relied upon. A defect of jurisdiction in respect of the subject matter of the action strikes at the very authority of the court to pass any order and such orders cannot be cured even by consent of parties. This principle has also been applied in ***Nirmal Kumar Agarwal v. State Bank of India and others***, NCLAT judgment dated 19.12.2022 – [***Company Appeal (AT) (Insolvency) No. 983 of 2019***, Paragraph 12] where the following is stated/excerpted:

> "*Indisputably it is a settled legal proposition that conferment of jurisdiction is a legislative function and* ***it can neither be conferred with the consent of the parties*** *nor by a superior Court, and* ***if the Court passes a decree having no jurisdiction over the matter , it would amount to nullity*** *as the matter goes to the very roots of the cause.* ***Such an issue can be raised at any stage of the proceedings****. The finding of a Court or Tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction*." [9]

12.15. The Applicants contended that there is no debt/borrowing of SIFL since 01.10.2019, so there could not have been a default. This is evident from the Balance Sheet of SIFL as has been prepared by the Respondent No. 2 i.e., the Administrator himself. The entire debt of SIFL was transferred to SEFL with effect from 1st October, 2019. Thus, UCO Bank at whose behest RBI filed the application to initiate insolvency could not have maintained the insolvency proceedings against SIFL as debt of

[9] *[Company Appeal (AT) (Insolvency) No. 983 of 2019, Paragraph 12]*

public financial institutions/banks were transferred to SREI Equipment Finance Limited. Thus, despite having no debt, UCO Bank in collusion and connivance with RBI and in collusion and connivance with the Administrator and the erstwhile promoters of SIFL has initiated the insolvency proceedings fraudulently and with malicious intent for any purpose other than resolution of insolvency as in the present case SIFL did not have any debt towards UCO Bank or any other public sector banks since October, 2019, a fact which has also now been affirmed and acknowledged by the Respondent No. 2 Administrator. The Respondent No. 2 i.e., the Administrator as well as RBI is thus estopped from contending that there is debt and thus insolvency proceedings should continue.

12.16. The said admission order dated 8th October, 2021, was obtained through misrepresentation of facts and/or collusion and/or fraud, in making such order a nullity and non-est. The Administrator appointed by RBI had superseded the presently suspended Board of Directors of SIFL even before the application filed by RBI for commencement of CIRP against SIFL was filed. The Administrator was in management and control of SIFL on 8th October, 2021. However he failed to bring to the notice of this Adjudicating Authority on 8th October, 2021, that the said application by RBI was squarely barred under section 10A of the IBC on account of the date of alleged default explicitly stated therein.

12.17. The Hon'ble Supreme Court of India in umpteen number of cases has held that a judgement/order obtained by playing fraud on Court is a nullity and non-est in the eyes of law. In this connection the Applicant relies on the ratio of the following decisions:

I. ***S. P. Chengalvaraya Naidu –vs- Jagannath (1994) 1 SCC 1.(Para 5, 6)***

II. ***Devendra Kumar –vs- State of Uttaranchal (2013) 9 SCC 363 (Para 13)***

III. ***Om Prakash Ram –vs – State of Bihar (2019) 14 SCC 281. (Para 9)***

IV. ***Welcome Hotel – vs- State of A.P. (1983) 4 SCC 575. (Para 7)***

V. ***Ashok Leyland Ltd. –vs- State of Tamil Nadu (2004) 3 SCC 1. (Para 112)***

12.18. While dealing with the point of doctrine of merger, it was submitted that the said doctrine cannot apply as in the instant case, the appeal preferred by one shareholder was dismissed on the ground of delay. Thereafter, when an appeal against the order of the Hon'ble NCLAT was preferred before the Hon'ble Supreme Court, the same was once again dismissed on the ground of delay. It is a settled law as settled by the Hon'ble Supreme Court of India that the doctrine of merger is not applicable if appeal was dismissed on the ground that delay in filing appeal was not condoned and if the higher court does not enter the merits of the appeal.[10]

12.19. Lastly, it was submitted that the judgments referred by the Administrator are not applicable and has distinguished the same as below:

i. *Agarwal Coal Corporation versus Sun Paper Mill Limited*-The judgment relied upon by the Administrator has itself been referred to a larger bench of the NCLAT, a fact which has been suppressed by the Administrator during his submissions. By an order dated 9 February 2023, passed in I.A. No. 3961 of 2022 in Company Appeal (AT) (Insolvency) No. 729 of 2020 in the matter of *Union Bank of India (erstwhile Corporation Bank) versus Dinkar T. Venkatasubramanian and others* (3 member bench) (paragraph 19, 20) as referred, the decision cited by the administrator to larger bench as there was a subsequent judgment of NCLAT holding that NCLT has power to recall its orders.

[10] *Raja Mechanical Company Pvt. Ltd v. Commissioner of Central Excise, Delhi (2008) 8 SCC 65 [Paragraphs 13, 14, 16, 17, 18]*

ii. *Rajendra Mulchand Varma and others versus K.L.J. Resources Limited and another* – NCLAT judgment cited by the Administrator has also been referred to a larger bench along with *Agarwal Coal Corporation* and the same does not hold good anymore. Judgment relied upon by the administrator of NCLT Ahmedabad in *Alliance Industries Limited versus People General Hospital Private Limited* also does not hold the field any more because of the subsequent and recent 3-member bench decision of NCLAT in Kushal Limited. Further, the judgment also speaks about patent error which is manifest and self-evident in paragraph 16. Thus the reliance of the Administrator on the *Adish Jain* NCLAT judgment is also misconceived.

iii. The judgment relied upon by the Administrator in *Kunhayammed and others versus State of Kerala,* Supreme Court, on the issue of doctrine of merger is not applicable on the facts of this case as in this case the appeal filed before the NCLAT and before the Hon'ble Supreme Court of India by separate shareholder was dismissed on the ground of delay and as stated hereinabove, as has been laid down by the Hon'ble Supreme Court, doctrine of merger is not applicable if appeal is dismissed on the ground of delay.

iv. ***Niraj Vadakkedathu Paul and others v. Sunstar Hotels and Estates Private Limited and others***, NCLAT Chennai bench, this judgment relied upon by the Administrator is also not applicable as in this judgment, a shareholder intervened at the time of admission of the application filed under Section 7 of IBC which was not permissible and NCLT held that a shareholder cannot intervene at the stage of admission. In our case, an order of admission has been erroneously passed without the Adjudicating Authority having jurisdiction to do so, the Applicant is seeking to recall the admission order on the ground that there are mistakes and/or error

apparent from face of the record and the Adjudicating Authority did not have jurisdiction to entertain the application filed by RBI due to bar contained under Section 10A of IBC.

13. ***Submissions by the Ld. Senior Counsel appearing on behalf of the Applicant in I.A.(I.B.C) No. 389/KB/2022, I.A.(I.B.C) No. 535/KB/2022, I.A.(I.B.C) No. 391/KB/2022 & I.A.(I.B.C) No. 532/KB/2022 are summarized as hereunder:***

13.1. **I.A.(I.B.C) No. 389/KB/2023** and **I.A.(I.B.C) No. 535/KB/2023** have been filed by the Applicant i.e., Adisri Commercial Private Limited in **C.P.(I.B) No. 294/KB/2021** whereas **I.A.(I.B.C) No. 391/KB/2023** and **I.A.(I.B.C) No. 532/KB/202**3 have been filed by the Applicant i.e., Adisri Commercial Private Limited in **C.P.(I.B) No. 295/KB/2021.** The submissions made by the Ld. Senior Counsel for the Applicants in all the abovementioned IAs are contained in the subsequent paragraphs.

13.2. It is submitted that the Applicants have the locus to file these IAs . They relied upon the judgment in ***Radius Infratel Private Limited v. Union Bank of India (Company Appeal (At) (Insolvency) No. 535 of 2018)*** – judgment dated 13.11.2018, para 6 in which the Appellate Tribunal gave liberty to a shareholder/director of the Corporate Debtor to move an appeal challenging the order of admission.

13.3. The Applicants further submitted that after superseding of the power of directors of the Corporate Debtor, Reserve Bank of India ("RBI") appointed an Administrator who was responsible for running the Corporate Debtor and defending the Corporate Debtor in all litigations. In the instant case, RBI moved an application for initiation of CIRP on 8 October 2021 and the administrator appointed by the RBI did not contest the said application and the entire process was RBI v. RBI which led to violation of principles of natural justice.

13.4. The Applicant also submitted that this Adjudicating Authority has the power to recall its order. They placed reliance on judgments in ***Kushal***

Limited v. CoC of Rainbow Papers Limited (Company Appeal (AT) (Insolvency) No. 678 – 681 of 2022 (3 member bench of NCLAT) and judgement dated 21.07.2022 – Page 32, 33 and 36 of the judgment), ***Santosh Wasantrao Walokar v. Vijay Kumar V. Iyer, Resolution Professional, Murli Industries Limited and another C.A. (AT) (Insolvency) No. 871 – 872 of 2019*** judgment dated 24.01.2020 paragraph 41, page 7, read with paragraph 30 iv. At page 25 to 26. Another important judgment referred is ***Union Bank of India (erstwhile Corporation Bank) v. Dinkar T. Venkatasubramanian & Others [Company Appeal (AT) (Insolvency) No. 729 of 2020],*** in which a five judge bench of the Hon'ble National Company Law Appellate Tribunal, New Delhi has held that this Tribunal can entertain an application for recall of a judgment on sufficient grounds in exercise of its inherent jurisdiction.

13.5. It was submitted that the applications filed by RBI for initiation of CIRP against SREI entities were barred under section 10A of IBC, 2016 as the dates of default as mentioned in the order dated 8 October 2021 are 9 January 2021 and 1 February 2021.

13.6. The Applicant further submitted that there are no pleadings as regards to continuous default in RBI's application. Section 10A was in force and Section 10A of IBC covered any default occurring between 25 March 2020 and 25 March 2021. No application for commencement of CIRP could have ever been filed on the basis of any default arising between 25 March 2020 and 25 March 2021.

13.7. While proceeding with the above arguments, the judgment of the Hon'ble Supreme Court in ***Ramesh Kymal v. Siemens Gamesa Renewable Power Private Limited***,[11] was referred in which the Hon'ble Supreme Court has set aside the argument made regarding predating the date of default in order to avoid the reverse of Section 10A of IBC, 2016. As has been held by the Hon'ble Supreme Court, the date of default remains crystallized in the respective forms filed under IBC, 2016 and

[11] *(2021) 3 SCC 224*

its correspondent regulations and the Adjudicating Authority who only consider the date of default mentioned in the statutory font and no other date.

13.8. Further reliance was placed on judgments in ***Kiran Singh and others v. Chaman Paswan and others***,[12] ***Nirmal Kumar Agarwal v. State Bank of India and other***s, NCLAT judgment dated 19.12.2022 – (Company Appeal (AT) (Insolvency) No. 983 of 2019) Paragraph 12 on the point that order dated 8 October 2021 is a nullity and adjudicating authority had no jurisdiction to entertain the application filed by RBI as the same was barred under section 10A of IBC.

13.9. The Applicants submit that the doctrine of merger as argued by the administrator is not applicable and the order dated 8 October 2021 is not merged with the order dated 30 January 2023 passed by the Hon'ble Supreme Court of India as the same was dismissed without going into the merits of the same.

13.10. They also submitted that date of default mentioned in RBI's application could not have been the date of default as there could not have been a default in light of subsisting interim orders passed by NCLT, Kolkata Bench as well as by the Hon'ble Calcutta High Court. While placing the above arguments they have placed reliance on the order dated 21 October 2020[13] passed in CA (CAA) No. 1106/KB/2020 wherein NCLT Kolkata Bench directed the creditors of Srei Infrastructure Finance Limited ("SIFL") and Srei Equipment Finance Limited ("SEFL") to maintain status quo from the said date and not to classify loan account as NPA and were estopped from taking any coercive steps including reporting any form and/or changing in the status of SEFL. They further relied upon the interim order passed on 10 December 2020 by the Hon'ble High Court at Calcutta restraining RBI from taking any coercive action against NBFC's.

[12] *AIR 1954 SC 340*
[13] *Page 32 of I.A.(IBC) 389 of 2023*

13.11. The Applicant submitted that the Adjudicating Authority can only consider the pleading of the RBI and nothing beyond it. They placed reliance on the judgment in Babulal Vardharji Gurjar versus Veer Gurjar Aluminium Industries Private Limited and another passed by the Hon'ble Supreme Court.[14]

14. ***<u>Submissions made by the Ld. Senior Counsel appearing on behalf of the Administrator namely Mr. Rajneesh Sharma are summarized as hereunder:</u>***

14.1. Ld. Senior Counsel for the Administrator or Respondent No.2 submitted that the IAs are not maintainable as the Applicants are attempting to seek a review of the order passed by this Adjudicating Authority which is styled as a recall application.

14.2. He further submitted that Applicants cannot rely upon section 420(2) of the Companies Act as the *proviso* to the aforesaid section sets out that application for rectification cannot be filed if an appeal is preferred from the order.

14.3. It was also submitted that neither the Company Petitions were barred under Section 10A of the IBC nor the applicants have any locus in its capacity as shareholder to approach this Adjudicating Authority;

14.4. It was submitted that SIFL (SREI Infrastructure Finance Limited) and SEFL(SREI Equipment Finance Limited) were given a reasonable opportunity of being heard, and the Administrator was not required to oppose the Company Petitions. Upon perusal of the Petition filed by Reserve Bank of India the debt and default can be established for both SEFL and SIFL.

14.5. Ld. Counsel submitted that inherent powers cannot be exercised when the remedy of an appeal is provided for under the statute itself, and that mere baseless allegations of fraud and collusion against the Financial Sector Regulator cannot be a basis for Courts to exercise inherent powers & rectify/ review or recall its orders.

[14] *(2020) 15 SCC 1 (Paragraph 35, 35.1)*

14.6. The Respondent No.2 stated that the IAs are not maintainable on the ground that the remedy under Section 420 of the Companies Act, 2013 is no longer available because as per the Proviso to Section 420 of the Companies Act, 2013, once an appeal to an order has been preferred, such as the Appeals which have been preferred in the instance case by Adisri Commercial Private Limited, no application is maintainable under Section 420 of the Companies Act, 2013. While placing reliance on the above ground they cited various judgments as laid down in:

- ***a.*** *Adish Jain vs. Sumit Bansal & Anr;*[15]
- ***b.*** *Agarwal Coal Corporation Pvt. Ltd. v. Sun Paper Mill Ltd.*;[16]
- ***c.*** *Alliance Industries Limited vs. Peoples General Hospital Pvt. Ltd;*[17]
- ***d.*** *Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji;*[18]
- ***e.*** *Printland Digital (India) (P) Ltd. v. Nirmal Trading Co;*[19]
- ***f.*** *Budhia Swain v. Gopinath Deb;*[20]
- ***g.*** *K.L.J. Resources Ltd. v. Rajendra Mulchand Varma;*[21]
- ***h.*** *Kapra Mazdoor Ekta Union v. Birla Cotton Spg. and Wvg. Mills Ltd.*[22]

14.7. The inherent power of this Adjudicating Authority under Rule 11 of the NCLT Rules is limited to pass such orders as may be necessary *for meeting the ends of justice or to prevent abuse of the process of Tribunal*. In the present case the Applicants have engaged in forum shopping and they were at all times aware of the admission orders and also about the key events in respect of CIRP of SIFL and SEFL which in itself is an abuse of the process of law.

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[15] *2021 SCC Online NCLAT 52, Para 15-18.*
[16] *Order dt. October 25, 2021 (NCLAT), IA No. 265 of 2019 in CA (AT)(Ins.) No.412/2019, Para 25-32.*
[17] *Order dt. February 16, 2018 (NCLT Ahmedabad), IA 259 of 2017 in IA 16 of 2016 in CP No. TP 120 of 2016, Para 14-16, 24, 29.*
[18] *(1971) 3 SCC 844, Para 4.*
[19] *2022 SCC OnLine NCLAT 297, Para 7.*
[20] *(1999) 4 SCC 396, Para 8-9.*
[21] *2022 SCC OnLine NCLAT 402, Para 13.*
[22] *(2005) 13 SCC 777, Para 17, 19-20.*

14.8. It was submitted that filing of the recall application at this belated stage of CIRP are prejudicial to the CIRP and the Hon'ble Tribunal ought not to interfere and adjudicate the very same issues which have been considered by the Hon'ble Appellate Tribunal and affirmed by the Hon'ble Supreme Court, therefore no review is maintainable before this Hon'ble Tribunal in view of the Doctrine of Merger.

14.9. The Resolution Plan has been approved by the CoC and the same has received approval from the Competition Commission of India and a 'no objection' has also been received from the RBI as mandated under the FSP Rules [Rule 5 (d)] on March 23, 2023.

14.10. They submit that the Applicant's reliance on the judgment in ***Kushal Ltd. v. Kartik Baldwa***[23] to contend that the Tribunal has a power of recall and that the doctrine of merger will not apply where the challenge in appeal was on a different ground does not help the Applicant inasmuch as the Appeals under Section 61 of the Code were on the same grounds as the present IAs for recall.[24] In any event, in the case of *Kushal (supra),* the recall application was dismissed since the applicant approached the court with inordinate delay. In the present case there is a delay of nearly 15 months for Manoj Kumar Gupta and 17 months for Adisri Commercial Private Limited. The decision in ***State of Kerala v. Kondottyparambanmoosa***[25] would not assist the Applicants as that judgment was rendered in the context of the Kerala Land Reforms Act, 1963 where the Taluk Land Board has the specific power to set aside its own order or reopen a case if specific grounds are shown under the Act itself; which powers are absent from the IBC. For the same reason, ***Chandi Prasad v. Jagdish Prasad***[26] also cannot assist the Applicant.

14.11. The Applicant's reliance on ***Union Bank v. Dinkar T. Venkatasubramanian*** *(NCLAT – Order dt. 09.02.2023),* to contend that the judgment in *Agarwal Coal Corporation (supra)* has been referred to

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[23] *NCLAT – Order dt. 21.07.2022*
[24] *Pg. 91-97 of Reply of Respondent No. 2 in IA 391 / 2023*
[25] *(2008) 8 SCC 65*
[26] *(2004) 8 SCC 724*

a larger bench of the NCLAT, and that the question of power of recall of the Tribunal also does not hold good as the Hon'ble Appellate Tribunal in this judgment clearly holds that where the application is styled as recall but in essence is review application, the said application cannot be entertained.

14.12. The submissions of the Applicants clearly show that what is sought in these IAs is, in fact, a review. In any event, none of the parameters set out for recall of a judgment i.e. any procedural infirmity or fraud, as specified in *Union Bank v. Dinkar (supra)* dated February 9, 2023 have been satisfied in the present IAs. Also it is pertinent to note that the aforesaid judgment is only concerned with the power of recall of the NCLAT and not the NCLT.

14.13. Also the judgment in *Kiran Singh & Ors. Vs. Chaman Prasad & Ors.*[27] would not assist the Applicants as in the said judgment it is the appellate court and not the original court that declared the order a nullity. Therefore their contention that the Admission Orders were fundamentally without jurisdiction, and therefore, are a nullity; and that therefore this Hon'ble Tribunal has the power to recall the Admission Orders is not maintainable.

14.14. It was submitted that even if the Hon'ble Appellate Tribunal and Hon'ble Supreme Court dismissed the Appeals on limitation, the same would still operate as *res judicata* against the Applicants, in view of Explanation V of Section 11 of the CPC. This is because, the result of the dismissal of the Appeals by the Hon'ble NCLAT and Hon'ble Supreme Court is that the Admission Orders stand confirmed.

14.15. It was submitted that the Applicant's contentions that the company petition was barred under Section 10A of IBC is not maintainable as the RBI explicitly pleaded that the first date of default with respect to payment of interest amounts for SIFL was November 1, 2020[28] and for SEFL was January 9, 2021. This obviously means that there were

[27] *(1955) 1 SCR 117*
[28] *IA 1692 / 2022, pg. 943-944.*

continuing defaults even beyond the date specified in the Company Petitions. The Admission Orders dated 08.10.2021 also record the submission that there were continuing defaults in SIFL and SEFL.

14.16. It was also submitted that due to repeated defaults, non-compliance with RBI regulations and supervisory instructions, and governance concerns[29]; the RBI superseded the board of directors of SIFL and SEFL on October 4, 2021, and appointed Mr. Rajneesh Sharma as the Administrator, under Section 45-IE of the Reserve Bank of India Act, 1934, as seen above.[30]Adisri challenged the Order dated October 1, 2021 by which Reserve Bank of India superseded the board of SEFL and SIFL and appointed Mr. Rajneesh Sharma as Administrator. The aforesaid challenge to the RBI order/action superseding the board of SEFL & SIFL and appointing Administrator was dismissed by the Hon'ble Bombay Court on October 7, 2021, which Order has now attained finality. Thus, it is only the Corporate Debtors, through the Administrator, who can maintain any such IAs; and not the Applicants.

14.17. It was submitted that the Applicants have no locus to maintain these applications as shareholders cannot be aggrieved by an order admitting CIRP, neither they can maintain an application in a derivative capacity as shareholders. This principle has been clearly laid down in ***Nirej Vadakkedathu Paul & Ors. v. Sunstar Hotels and Estates Private Limited and Anr***., decided on February 27, 2023[31] and also in ***Bacha F. Guzdar v. CIT***,[32] where the Hon'ble Supreme Court has settled the principle that a company is a separate juristic entity from its shareholders; in ***ICP Investments (Mauritius) Ltd. v. Uppal Housing Pvt. Ltd.,***[33] where the Hon'ble Delhi High Court has held that once a

[29] See Order of Supersession of SEFL of the Reserve Bank of India dt. October 1, 2021 – tendered on March 31, 2023; and RBI Press Release dated October 4, 2021, IA 391 / 2023, pg. 28; IA 1692 / 2022, pg. 39; IA 389 / 2022, pg. 23.

[30] Affidavit in Reply of Respondent No. 2 in 1692 / 2022, pg. 39; in 391 / 2023, pg. 28; and in 389 / 2023, pg. 28.

[31] Order dt. February 27, 2023 (NCLAT), IA Nos. 328, 329, 217, and 518 of 2022 in CA (AT)(CH)(Ins.) 142 of 2022, pg. 57-61.

[32] (1955) 1 SCR 876, Para 7.

[33] 2019 SCC OnLine Del 10604, Para 18-26.

company is admitted into CIRP, shareholders may no longer maintain a derivative action in the company's name; in *Darius Rutton Kavasmaneck v. Gharda Chemicals Ltd.*,[34] where the Hon'ble Bombay High Court has held that a shareholder filing a derivative action must have clean hands, must not be competing with the interests of the company, or have an alternate remedy.

14.18. He further submitted that a shareholder cannot be considered as a stakeholder for the purpose of admission of CIRP. Sections 31 and 59 of the IBC only deal with resolution plan and liquidation. The stakeholders' right is not applicable at the admission stage; else, every shareholder would be knocking this Adjudicating Authority's door filing frivolous applications hindering the CIRP process.

14.19. It was submitted that the applicants have approached this Adjudicating Authority with unclean hands and are therefore not entitled to any reliefs.

14.20. The contentions of the Applicants that the Corporate Debtors SIFL and SEFL were not given a reasonable opportunity of being heard and the administrator was required to oppose the company petitions, does not hold any good as there are no rules under IBC that an administrator has to oppose the admission of CIRP of an FSP when facts do not justify the opposition; the procedure followed in initiating CIRP was in strict compliance with the IBC and FSP Rules.

14.21. The Applicant's contention that SIFL and SEFL entered into the BTA(Business Transfer Agreement) under which the entire fund based business of SIFL comprising of the lending business, interest earning business and Leasing Business (as defined under the BTA) together with, inter alia, associated employees, assets & liabilities (including financial debt and liabilities towards issued & outstanding non – convertible debentures), was proposed to be transferred from SIFL to SEFL through a slump exchange for a lump sum consideration by way of issue and allotment of equity shares of SEFL to SIFL. Despite not

[34] *2014 SCC OnLine Bom 1851, Para 25.*

receiving consent from lenders as required under the Scheme, SIFL and SEFL appear to have internally recognized and effected the slump exchange under the BTA. As per the Annual Returns of SIFL for FY 21-22, the Administrator has explained that, the status quo in relation to this BTA, has been maintained since October 8, 2021, since he is in the process of consolidated resolution of SIFL and SEFL, and hence no further action is being contemplated regarding establishing the validity of the BTA or otherwise, consequent upon the withdrawal of schemes.[35] Therefore, the debt would in fact continue to reflect in the books of the banks and would continue to apply to SIFL as well.

14.22. Besides the above contentions, the applicant namely Adisri Commercial Private Limited has falsely alleged that the Hon'ble NCLT has previously allowed the said reliefs as claimed by them in some previous orders such as the order dated Ocober 21, 2020 passed in CA (CAA) No. 1106/KB/2020 ("SIFL Order") as well as order dated December 30, 2020 passed in CA (CAA) No. 1492/KB/2020("SEFL Order")[36] which were set aside by the NCLAT in an appeal by way of orders dated September 7, 2021 and February 11, 2022, respectively.

14.23. The Applicant namely Adisri Commercial Pvt Ltd has also stated that the Hon'ble High Court of Calcutta has by way of an order dated December 10, 2020, granted a similar prayer to the petitioner in the matter of ***Hire Purchase & Lease Association and Anr. v. Reserve Bank of India and Ors.*** **(W.P.A 9255 of 2020)**.[37] In the said Writ Petition, the Hon'ble Court having acknowledged the plight of the NBFCs caused due to the discriminatory approach of the RBI's circulars dated June 7, 2019 read with RBI circular dated August 6, 2018, was pleased to restrain the RBI from taking any coercive steps against the petitioner NBFCs in that case. SIFL and SEFL do not appear to be a party to that case, and so the interim order would not apply to them. It is

[35] IA1692 / 2022, pg. 61, 70-71; IA 391 / 2023, pg. 39, 48-49
[36] IA 391 / 2023 - Para 11(a)-(b) @ Pg. 9 r/w Annexure D @ Pg. 251 – 282; r/w IA 389 / 2023, Para 9(a)-(b), Pg. 9 r/w Annexure C @ Pg. 32 - 63
[37] IA 391 / 2023 - Para 11(c) @ Pg. 10 r/w Annexure D @ Pg. Nos. 283 – 293; and IA 391 / 2023 - Para 9(c) @ Pg. 10 r/w Annexure C @ Pg. Nos. 64 - 74

also pertinent to mention that the said order was only to extend till April 8, 2021.[38] Merely because the orders cited by Adisri prevent coercive steps being taken; would not mean that SIFL's and SEFL's defaults won't be recorded. The Applicants by saying so had cited another example in misleading this Adjudicating Authority.

15. ***Submissions made by the Ld. Senior Counsel appearing for the Reserve Bank of India (RBI) are summarized below:***

15.1. Due to governance concerns and default by the aforesaid companies in meeting their various payment obligations RBI superseded the board of directors of SEFL and SIFL on October 4, 2021, and appointed Mr. Rajneesh Sharma as the Administrator under Section 45-IE of the RBI Act, 1934 and filed petitions bearing CP Nos. 294 of 2021 & CP No. 295 of 2021 for initiation of Corporate Insolvency Resolution Process of SEFL and SIFL respectively under Section 227 read with Section 239(2)(zk) of the insolvency and Bankruptcy Code, 2016 which was heard and admitted by this Adjudicating Authority on October 8, 2021. The Administrator was present before this Adjudicating Authority at the time of hearing, and his presence was noted in the Admission Order.

15.2. The Ld. Senior Counsel submitted that the IAs are not maintainable as this Hon'ble Tribunal does not have the power to review its judgment. This Hon'ble Tribunal cannot review its judgment under its inherent powers under Rule 11 of the NCLT Rules, 2016. The power for review must be specifically provided in the statute. The Applicants' prayer for recall clearly shows that he is seeking an appeal / review of the Admission Order.[39]

15.3. The inherent power of NCLT under Rule 11 of the NCLT Rules is limited to pass such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of Tribunal. The Applicants are engaged in forum shopping and were at all times aware of the admission

[38] *IA 391 / 2023, pg. 292; and IA 389 / 2023, pg. 73*
[39] *IA 1692/2022 at pg. 50*

order. The Applicant namely Adisri Commercial Private Limited also preferred an appeal before the Hon'ble NCLAT which was dismissed via order dated 21st November, 2022. Being aggrieved by the same they also preferred an appeal before the Hon'ble Supreme Court of India which also came to be dismissed on 30.01.2023. Therefore, in view of the Doctrine of Merger, no review is maintainable as it has already been heard and decided by the appellate courts.

15.4. As per the proviso to Section 420 of the Companies Act, 2013 ("CA 2013"), once the appeals have been preferred, no application is maintainable under Section 420 of the CA 2013. Since the Admission Order is *in rem*, and limitation has expired, the bars on maintainability would apply even to the Applicants herein.

15.5. It was submitted that the Applicants have approached the Tribunal with unclean hands as they were aware of the ongoing CIRP of SEFL and SIFL, hence they cannot approach this Tribunal at this belated stage. The Applicants have engaged in forum shopping and have always attempted the gross abuse of the process of law. The Appeals were dismissed and the Applicant namely Adisri Commercial Private Limited took the same grounds in the Appeals as taken in the present IAs, *res judicata* would apply in view of Explanation V to Section 11 of the Code of Civil Procedure, 1908.

15.6. The Company Petition was not barred under Section 10A IBC as the dates of default mentioned in the petition are the first date of default. The default committed by SEFL and SIFL is a continuing one which is recorded in the order of admission as well.[40] Where there are defaults during the Section 10A period, and the defaults continue after the Section 10A period, a petition for CIRP will be maintainable. In view of such continuous default, the contention that the debt falls under the 10A period is not sustainable. In any event, Section 10A of the IBC does not create a jurisdictional bar.

[40] *Pg. 48 in IA 1692/2022*

15.7. The procedure followed in initiating insolvency proceedings by AA against SEFL & SIFL was in strict compliance with the IBC and the FSP Rules.

15.8. It was further submitted that there were debts and defaults in the books of SIFL. SIFL and SEFL entered into the BTA under which the entire fund based business of SIFL comprising of the lending business, interest earning business and Leasing Business (as defined under the BTA) together with, inter alia, associated employees, assets & liabilities (including financial debt and liabilities towards issued & outstanding non – convertible debentures), was proposed to be transferred from SIFL to SEFL through a slump exchange for a lump sum consideration by way of issue and allotment of equity shares of SEFL to SIFL. Despite not receiving consent from lenders as required under the Scheme, SIFL and SEFL appear to have internally recognized and effected the slump exchange under the BTA. As per the Annual Returns of SIFL for FY 21-22, the Administrator has explained that the status quo in relation to this BTA, has been maintained since October 8, 2021, since he is in the process of consolidated resolution of SIFL and SEFL, and hence no further action is being contemplated regarding establishing the validity of the BTA or otherwise, consequent upon the withdrawal of schemes.

15.9. The averments by the applicant namely Adisri Commercial Private Limited that in the light of the orders dated October 21, 2020 passed in CA (CAA) No. 1106/KB/2020 & order dated December 30, 2020 passed in CA (CAA) No. 1492/KB/2020, there could not have been any assertion of debt or default cannot be maintainable as the Applicants have supressed the fact that both the aforesaid orders were set aside by the Appellate Tribunal by way of orders dated September 7, 2021 and February 11, 2022, respectively.[41]

15.10. The Ld. Counsel also submitted that the Applicants have also stated that by order dated December 10, 2020, the Hon'ble High Court of Calcutta granted a similar prayer to the petitioner in the matter of *Hire*

[41] *Pg. 40, 50 of Affidavit in Reply of Respondent No. 1 to IA 391/2022*

Purchase & Lease Association and Anr. v. Reserve Bank of India and Ors. (W.P.A 9255 of 2020). The Applicants have stated that in the said Writ Petition, the Hon'ble Court having acknowledged the plight of the NBFCs caused due to the discriminatory approach of the RBI's circulars dated June 7, 2019, read with RBI circular dated August 6, 2018, was pleased to restrain RBI from taking any coercive steps against the petitioner NBFCs in that case. But SIFL and SEFL do not appear to be a party to that case, and so the interim order would not apply to them. Also, upon perusal of the orders it is clear that the aforesaid orders were only extended till April 8, 2021 and did not remain in effect as wrongfully alleged by Adisri until October 4, 2021. All the orders cited by the Applicants are only restrictive of coercive steps. CIRP is not a coercive step, it is for the benefit of a corporate debtor. These orders were limited only to classification and recovery actions and cannot be so over broadly extended to apply to restricting CIRP.

15.11. It is also argued while opposing these applications, order of admission was passed way back on 08.10.2021 whereas these IAs have been filed only on 27.12.2022, 15.02.2023, and 14.03.2023. Applicants claiming themselves to be shareholders cannot feign ignorance of admission order of admission and coming now after approval of resolution plan by CoC. Timelines in the Code have a definite purpose. Entertaining such IAs at the behest of shareholder and that too at such belted stage in challenging order of admission surely frustrating for the very object of the Code.

16. <u>Submissions made by the Ld. Senior Counsel appearing for the COC are summarised herein after:</u>

16.1. IAs filed by the Applicants namely Manoj Kumar Gupta and Adisri Commercial Private Limited are not maintainable as the Adjudicating Authority does not have the jurisdiction to recall its own order, therefore it should be dismissed *in limine.*

16.2. IAs deserve to be rejected on the ground of delay and laches in approaching this Adjudicating Authority. It is trite law that delay defeats equities or, equity aids the vigilant and not those who sleep i.e. *indolo*

vigilantibus, non dormientibus, jura subveniunt. In ***Prabhakar v. Sericulture Dept.***, *2015 15 SCC 1*, the Hon'ble Supreme Court has unequivocally held that a litigant sleeping over its rights and remedies for a long duration should not be allowed to knock the doors of justice at his convenience. The relevant extract from the judgment has been reproduced below:

> "*41. Thus, in those cases where period of limitation is prescribed within which the action is to be brought before the court, if the action is not brought within that prescribed period the aggrieved party loses remedy and cannot enforce his legal right after the period of limitation is over. Likewise, in other cases even where no limitation is prescribed, but for a long period the aggrieved party does not approach the machinery provided under the law for redressal of his grievance, it can be presumed that relief can be denied on the ground of unexplained delay and laches and/or on the presumption that such person has waived his right or acquiesced into the act of other. As mentioned above, these principles as part of equity are based on principles relatable to sound public policy that if a person does not exercise his right for a long time then such a right is non-existent.*"

16.3. Therefore, the above IAs should be preliminarily dismissed at the threshold basis the doctrine of laches.

16.4. Applicants' reliance on Section 420 of the Companies Act is inapplicable. Section 420(1) of the Companies Act only the "*parties to any proceedings*" have to be provided with a "*reasonable opportunity of being heard*". In an application filed under Section 7 of the Code read with Section 227 and Rule 5 of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 ("FSP Rules"), the relevant parties are only the corporate debtor and the financial sector regulator. The Applicant is a mere shareholder of SIFL and accordingly, was neither a necessary nor proper party for the said proceedings.

Therefore, the Applicant had no locus of being heard before this Adjudicating Authority passed the Admission Order.

16.5. Proviso to Section 420(2) stipulates that amendments cannot be made in respect of an order against which an appeal has been preferred. In the instant factual matrix, on 19 November 2021, the Applicant had filed appeals under Section 61 of the Code against the Admission Order bearing CA(AT)(Ins.) No. 1293 of 2022 and and CA(AT)(Ins.) No. 1294 of 2022 before the Appellate Authority which included grounds relating to Section 10A of the Code. the Applicant adopted an outrightly lackadaisical attitude and failed to cure the defects which were notified by the office of the Appellate Authority on 24 November 2021. The delay of 321 days in curing the defects is itself testimony of the casual and the de-railing approach adopted by the Applicant in the CIR Process of the Corporate Debtors. The same came to be dismissed on 21.12.2022 and the appeal preferred against the order of the Hon'ble NCLAT before the Supreme Court of India was also dismissed on 30.01.2023 with a finding that there existed no error in the NCLAT Order.

16.6. After having availed and failed in appellate remedies, the Applicants cannot seek refuge of Section 420 of the Companies Act to disturb the Admission Order which has attained finality, especially when the proviso to Section 420(2) expressly bars an application under Section 420(2).

16.7. The Ld. Senior Counsel further submitted that there exists no error in the admission order dated 08.10.2021. The Applicant had failed to bring on record the relevant paragraphs of the Admission Order which categorically record that the dates of default mentioned in the Admission Order is only one date of default and the defaults have continued thereafter.[42]

16.8. It was also submitted that the Applicants have supressed the fact that the defaults of SIFL and SEFL had occurred prior and continued well beyond the period specified in Section 10A of the Code. The CRILC

[42] (Para. 4(c) @ Pg. 27, Para. 5 @ Pg. 27, Para. 7 @ Pg. 28 and Para. 11 @ Pg. 29 of I.A. 389/2023)

Report distinctly demonstrates the defaults prior to 25 March 2020 and after 24 March 2021.[43] The same was also recorded in the letter dated 01.10.2021 issued by RBI for supersession of the Board of Directors of SEFL.

16.9. Because of the above legal and factual submissions, there is no merit in the submissions of the Applicant and therefore, the captioned applications deserve to be dismissed.

Analysis and Findings

17. Heard the Learned Counsel appearing for all the parties and perused the records.

18. These IAs were heard on a number of dates and finally reserved for orders on **11.04.2023.**

19. ***While considering first and primary issue*** of right/locus of applicants, shareholders of Companies under CIRP to file these IAs, we refer to plea of the applicants herein after:

    (a) A shareholder of a Corporate Debtor is a stakeholder and is entitled to distribution under a resolution plan as provided for under Section 30 read with Section 53 of IBC, 2016, any resolution plan approved in respect of the Corporate Debtor under Section 31 of IBC, 2016 would also be binding on the shareholder and as such shareholders have locus standi to challenge the order of admission,

    (b) Thus, applicants are vitally interested the affairs of the companies under CIRP and are affected by order of admission passed by this AA;

we seek aid of law laid down by the Hon'ble Supreme Court of India in ***Bacha F. Guzdar, Bombay v. Commissioner of Income Tax, Bombay***[44]:

[43] (Pg. 76-81 of COC Intervention App in I.A. 389/2023)

[44] *Civil Appeal No. 104 of 1954, decided on October 28, 1954 (1955) 1 SCR 876 : AIR 1955 SC 74*

" It was argued by Mr Kolah on the strength of an observation madeby Lord Anderson in Commissioners of Inland Revenue v. Forrest that an investor buys in the first place a share of the assets of the industrial concern proportionate to the number of shares he has purchased andalso buys the right to participate in any profits which the company may make in the future. That a shareholder acquires a right to participate in the profits of the company may be readily conceded but it is not possible to accept the contention that the shareholder acquires any interest in the assets of the company. The use of the word 'assets' inthe passage quoted above cannot be exploited to warrant the inference that a shareholder, on investing money in the purchase of shares, becomes entitled to the assets of the company and has any share in the property of the company. A shareholder has got no interest in theproperty of the company though he has undoubtedly a right to participate in the profits if and when the company decides to dividethem. The interest of a shareholder vis-a-vis the company was explained in the Sholapur Mills Case[2]. That judgment negatives the position taken up on behalf of the appellant that a shareholder has got a right in the property of the company. It is true that the shareholdersof the company have the, sole determining voice in administering the affairs of the company and are entitled, as provided by the Articles of Association to declare that dividends should be distributed out of the profits of the company to the shareholders but the interest of the shareholder either individually or collectively does not amount to more than a right to participate in the profits of the company. The company is a juristic person and is distinct from the shareholders. It is the company which owns the property and not the shareholders. The dividend is a share of the profits declared by the company as liable to be distributed among the shareholders. Reliance is placed on behalf of the appellant on a passage in Buckley's Companies Act (12th Edn.), p. 894 where the etymological meaning of dividend is given as dividendum, the total divisible

sum but in its ordinary sense it meansthe sum paid and received as the quotient forming the share of the divisible sum payable to the recipient. This statement does not justifythe contention that shareholders are owners of a divisible sum or that they are owners of the property of the company. The proper approachto the solution of the Question 1s to concentrate on the plain words ofthe definition of agricultural income which connects in no uncertain language revenue with the land from which it directly springs and astray observation in a case which has no bearing upon the presentquestion does not advance the solution of the question. There is nothing in the Indian law to warrant the assumption that a shareholder who buys shares buys any interest in the property of the company which is a juristic person entirely distinct from the shareholders. Thetrue position of a shareholder is that on buying shares an investorbecomes entitled to participate in the profits of the company in whichhe holds the shares if and when the company declares, subject to the Articles of Association, that the profits or any portion thereof should be distributed by way of dividends among the shareholders. He has undoubtedly a further right to participate in the assets of the company which would be left over after winding up but not in the assets as a whole as Lord Anderson puts it."

20. *Further*, while considering the issue of right/locus of applicants, we may also refer an order passed by the Hon'ble NCLAT in Company Appeal (AT) (CH) (Ins.) No. 142 of 2022, **Nirej Vadakkedathu Paul & amp; Ors Versus Sunstar Hotels and Estates Private Limited[45]:**

' As discussed, prima-facie there is no specific law which allows any shareholder of the 'Corporate Debtor' to challenge the admission of 'Corporate Insolvency Resolution Process' of the 'Corporate Debtor', once the debt due and default is established

[45] *Order dt. February 27, 2023 (NCLAT), IA Nos. 328, 329, 217, and 518 of 2022 in CA (AT)(CH)(Ins.) 142 of 2022, pg. 57-61.*

by the 'Adjudicating Authority', in an application made by the 'Financial Creditor' filed under Section 7 of the I & B Code, 2016 before the 'Adjudicating Authority'.

Moreover, there is no law which allows a third-party to settle the claims of the 'Financial Creditor' on behalf of the 'Corporate Debtor', more so without any consent of the 'Corporate Debtor' and in the teeth of opposition by the 'Financial Creditor'. The 'Appellants' couldnot produce any precedents in this regard.

Theoretically, even a 'person' aggrieved by the 'impugned order' challenges admission of 'Corporate Insolvency Resolution Process', it is not going to resolve the issues under any relevant law and the whole exercise with such appeal become futile, purposeless and will only cause delay in resolution, for which the 'Resolution Plan' has already been approved by the 'Committee of Creditors' and is under consideration of the 'Adjudicating Authority'.

We also take into account the judgment of this 'Appellate Tribunal' wherein, it was held that the no direction can be given to any third-party for the settlement between other parties as observed in I.A. No. 642 of 2019 in Company Appeal (AT) (Insolvency) Nos. 255-256 of 2018 in the matter of ***Punit Garg . Vs. Ericsson India Pvt. Ltd. & Anr.,*** *in I.A. No. 637 of 2019 in Company Appeal (AT) (Insolvency) Nos. 257-258 of 2018 in the matter of* ***Satish Seth Vs. Ericsson India Pvt. Ltd.*** *& Anr. and in I.A. No. 638 of 2019 in Company Appeal (AT) (Insolvency) Nos. 259-260 of 2018 in the matter of* ***Mr. Suresh Madihally Rangachar Vs. Ericsson India Pvt. Ltd. &amp****; Anr. wherein this 'Appellate Tribunal' observed as under :-*

"45. In view of the observations made above, in an appeal filed under Section 61 of the 'I&B Code', no direction can be given to any party to the settlement (particularly the third party) to perform certain duties to ensure settlement between other parties."

Similarly, this 'Appellate Tribunal' also take note of its earlier order, where it has been held that an investor in a 'Corporate Debtor' cannot claim to be an 'aggrieved person' for preferring an appeal against an order against insolvency petition in Company Appeal as held in CA (AT) (Insolvency) No. 296 of 2017 in the matter of Anant Kajare Vs. Eknath Aher & Anr. wherein the relevant para reads as under :-

"4. Heard learned counsel for the Appellant. Admittedly, the Appellant is an Investor therefore, the Appellant cannot claim to be an 'aggrieved person' for preferring appeal against the order dated 2nd May, 2017 passed by Adjudicating Authority whereby the application under Section 9 of the 'I&B Code' was admitted. In fact, the Appellant being an investor is entitled to file its claim before the 'Insolvency Resolution Professional."

(emphasis applied)

The term 'investor' has not been defined in the I & B Code, 2016 as well as in the Companies Act, 2013. A reference, therefore, has been made to 'Investopedia' where investor has been defined as under :-

"What Is an Investor? An investor is any person or other entity (such as a firm or mutual fund) who commits capital with the expectation of receiving financial returns. Investors rely on different financial instruments to earn a rate of return and accomplish important financial objectives like building retirement savings, funding a college education, or merely accumulating additional wealth over time.

A wide variety of investment vehicles exist to accomplish goals, including (but not limited to) stocks, bonds, commodities, mutual funds, exchange-traded funds (ETFs), options, futures, foreign exchange, gold, silver, retirement plans, and real estate. Investors can analyze opportunities from different angles, and generally prefer to minimize risk while maximizing returns.

Investors typically generate returns by deploying capital as either equity or debt investments. Equity investments entail ownership stakes in the form of company stock that may pay dividends in addition to generating capital gains. Debt investments may be as loans extended to other individuals or firms, or in the form of purchasing bonds issued by governments or corporations which pay interest in the form of coupons."

Therefore, a shareholder is also technically speaking an "investor"/ "owner", who owns limited investment in the company to the extent of share capital subscribed by him. Therefore, the judgement of Anant Kajare (Supra) is applicable in the present appeal as discussed in preceding paragraphs.

This 'Appellate Tribunal' carefully examined the averments made on behalf of the 'Appellants' that this 'Appellate Tribunal', has already allowed such appeals in cases of ***P. Naveen Chakravarthy v. Punjab National Bank (WP No. 22780 of 2019)*** *where it has been held that the right of a shareholder of a 'Corporate Debtor' is not jeopardized in so much as a shareholder can espouse their cause qua the 'Corporate Debtor' while seeking to right a perceived wrong. This 'Appellate Tribunal' also examined citations quoted by the 'Appellants' in the case of Periasamy Palani Gounder v. Radhakrishnan Dharmarajan (2022 SCC OnLine NCLAT 86), wherein this 'Appellate Tribunal' has held that nothing prevents a shareholder from producing evidence to establish the illegality in the 'Corporate Insolvency Resolution Process'.*

However, this 'Appellate Tribunal' after careful considerations of these`Citations / Judgements', comes to the conclusion that these cases are not directly connected or similar to the present `Appeal', and therefore, it is not of any assistance to the `Appellants'.

Having considered all the averments made by the 'Appellants' as well as the 'Respondents', including various Written Submissions made available to this 'Appellate Tribunal' and after careful consideration of various judicial pronouncements of the Hon'ble Supreme Court of India as well as this 'Appellate Tribunal', comes to concrete conclusion without any hesitation that in the present `Appeals', the 'Appellants' do not have any `Locus', and therefore the present `Appeals', are `not maintainable'. This 'Appellate Tribunal', therefore, does not find any `Error'/`Legal Infirmity', in the 'impugned order', on this issue.

Having decided the non-maintainability of the `Appeals' itself, this 'Appellate Tribunal', has not traversed on any other issues, touching

upon the `Appeal', as it is unnecessary to go into the same and as such, they have not been discussed.

2. In fine, the `Appeals' fail and are dismissed. No costs. The connected`Pending Interlocutory Applications', if any, are closed."

21. Now, after having considered the facts of present case, arguments of Ld. Counsel and position of law as delineated herein above, we are of the considered view to hold that applicants have no right or locus to have filed these applications and/or to seek the reliefs as sought for in these IAs and accordingly these IAs are disallowed as not maintainable.
22. Now adverting to the other grounds, *including* plea of bar under Section 10A of IBC raised in these IAs seeking recalling of order dated 8-10-2021, it is significant to refer to the pleas/grounds raised in two appeals filed before NCLAT; one by Adisri Commercial Private Limited (Now applicant in IA 389/2023, 391/2023, 532/2023 and 535/2023) and the other one by SREI Infrastructure Finance Limited (Company under CIRP by virtue of order of admission dated 8-10-2012 passed by NCLT

Kolkata Bench). For facility of reference, extract of pleas/grounds raised while seeking setting aside of CIRP dated 8-10-2021 in these two appeals before NCLAT are reproduced herein after:

> *"3. The Impugned Order has been passed in breach of the provisions of Section 10A of the IBC. Section 10A of the IBC expressly states that no application for initiation of corporate insolvency resolution process shall be filed for any default arising on or after 25 March 2020 for a minimum period of six months which may be extended to a year by notification The Central Government has vide notifications S.O. 3265(E) and S.O. 4638(E) dated 24 September 2020 and 22 December 2020 respectively extended the application of the provision contained in Section 10A of the IBC for a further period of 6 months from 25 September 2020, till 24 March 2021. Therefore, no application for initiation of corporate insolvency resolution process against any default arising between the period 25 March 2020 and 24 March 2021 could have been filed.*
>
> *4. As it appears from a bare perusal of the Impugned Order, the Impugned Order has been passed on the basis of two recorded dates of default being, the purported date of default of interest payment in respect of the working capital facility being 1 February 2021 and the purported date of default in respect of the principal amount being 9 January 2021. In accordance with the provisions of Section 10A of the IBC. no application under the IBC could have been admitted on the basis of any default arising on the admitted purported dates of default and therefore, the Impugned Order deserves to be set aside.*
>
> *5. Moreover, for the period commencing from 21 October 2020 till 7 September 2021 there was no scope of any default since by virtue of the interim order dated 21 October 2020 passed by the Hon'ble National Company Law Tribunal, Kolkata Bench in an application*

filed by the Respondent No 2 under section 230 of the Companies Act, 2013, the Respondent No 2 and the Respondent No 3, the Hon'ble NCLT had directed all lenders and regulatory authorities of both the companies to maintain status quo with respect to the contractual terms and lending status. This position was continued till 7 September 2021 when the Hon'ble NCLAT set aside the said order dated 21 October 2020. As such the purported date of default of interest payment in respect of the working capital facility being 1 February 2021 and the purported date of default in respect of the principal amount being 9 January 2021 could not have arisen by virtue of the continuance of the status quo order dated 21 October 2020 passed by the Hon'ble NCLT.

6.It is submitted that Respondent No. 1 has overlooked the orders of the Hon'ble Calcutta High Court in the matter of Hire Purchase & Lease Association & Anr. Vs. Reserve Bank of India & Ors. (W.P.A 9255 of 2020) whereby the Hon'ble Calcutta High Court has recognised the plight of the NBFCs caused due to the discriminatory approach of the circulars issued by the Respondent No. 1 and by an interim order dated 10 December 2020 has been pleased to restrain Respondent No. 1 from taking any coercive steps against NBFCs (who are the members of the Association) such as Respondent No. 2 Company. The Appellant states that the interim order dated 10 December 2020 was subsisting on the day the Respondent No. 1 moved an application under the FSP Rules 2019 before the Hon'ble Adjudicating Authority, In light of a subsisting interim order dated 10 December 2020 passed by the Hon'ble Calcutta High Court, judicial propriety would have called for the Respondent No. 1 to refrain from filing the application under FSP Rules 2019 against the Respondent No. 2 in breach of a valid subsisting interim order of the Hon'ble High Court having constitutional supervisory jurisdiction and which was in scisin of an issue of law.

7.The Impugned Order has been passed by the Hon'ble Adjudicating Authority in breach of principles of natural justice and in violation of the mandatory directions given by the Hon'ble Supreme Court of India in ***M/s. Innoventive Industries Limited vs. ICICI Bank and Anr. (Civil Appeal No. 8337-8338 of 2017) [2018 1 SCC 407] a****s well as by this Hon'ble Appellate Tribunal in M/s. Innoventive Industries Limited vs. ICICI Bank Limited (Company Appeal (AT) (Insolvency) No. 1-2 of 2017) [2017 SCC OnLine NCLAT 70], In Company Appeal (AT) (Insolvency) No. 1-2 of 2017 this. Hon'ble Appellate Tribunal was pleased to hold that the National Company Law Tribunal being the Adjudicating Authority is bound to issue only a limited notice to the corporate debtor before admitting a case under Section 7 uf the IBC. It is an admitted position in the instant case at hand as would be evident from the Impugned Order that no notice whatsoever was issued by the Hon'ble Adjudicating Authority upon the Corporate Debtor before filing the Application under Section 7 of IBC by the Respondent No. 1.*

8. The Supreme Court in its decision of Babulal Vardharji Gurjar Vs. Veer Gurjar Aluminium Industries Private Limited & Anr (Civil Appeal No. 6347 of 2019) at Para 19:2 held that after completion of all other requirements, for admitting such an application of the financial creditor, the Adjudicating Authority has to be satisfied, as per sub section (5) of Section 7 of the Code, that "default" has occurred and in this process of consideration by the Adjudicating Authority, the Corporate Debtor is entitled to point out that default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact.

9. In Sree Metaliks Ltd. v. Union of India & Anr 12017 SCC Online Cal 21455], the constitutionality of Section 7 was challenged on the ground that the said provision does not provide the corporate

debtor an opportunity to be heard before an application to initiate CIRP is admitted. The High Court of Calcutta at Para 15 relying on Section 424 of the Companies Act, 2013, held that even though the Code is silent on the right of hearing of the corporate debtor, "where a statute is silent on the right of hearing and it does not in express terms, oust the principles of natural justice, the same can and should be read into in." Accordingly, the Court held that the Adjudicating Authority is obliged to give reasonable opportunity to be heard to the corporate debtor.

"In an application under Section 7 of the Code of 2016, the financial creditor is the applicant while the corporate debtor is the respondent. A proceeding for declaration of insolvency of a company has drastic consequences for a company. Such proceeding may end up in its liquidation. A person cannot be condemned unheard. Where a statute is silent on the right of hearing and it does not in express terms, oust the principles of natural justice, the same cun and should be read into in. When the NCLT receives an application under Section 7 of the Code of 2016, therefore, it must afford a reasonable opportunity of hearing to the corporate debtor as Section 424 of the Companies Act. 2013 mandates it to ascertain the existence of default as claimed by the financial creditor in the application".

10. The Appellant states that the Application under Section 7 read with Section 227 of the IBC was filed on 8 October 2021 and was mentioned by the Respondent No. 1 before the Hon'ble Adjudicating Authority without any notice on the same day itself. The Appellant further states that the application was taken up by the Hon'ble Adjudicating Authority on the same day in the afternoon and the Impugned Order was passed in breach of the principles of natural justice as well as without complying with the directive and/or observations laid down in the judgment passed by the Hon'ble Appellate Tribunal in Innoventive Industries Limited

vs. ICICI Bank Limited as the Hon bi Adjudicating Authority admittedly failed to issue a limited notice to the Corporate Debtor before admitting the application under Section 7 of IBC.

11. The Respondent No. 2 Company is a non-banking financial company and is a financial service provider falling within the ambit of Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 (hereinafter referred to as the "FSP Rules 2019"). As the per the PSP Rules 2019, any application filed by Reserve Bank of India would be treated as an application under Section 7 of IBC and thus principles laid down in the judgment passed by the Hon'ble Appellate Tribunal in Innoventive Industries Limited us. ICICI Bank Limited of giving a limited notice to the Corporate Debtor before admission of any application under Section 7 of IBC, 2016 shall also be applicable Admittedly, the Hon'ble Adjudicating Authority did not give any limited notice before passing the Impugned Order and admitted the application under Section 7 of IBC, 2016, for which the Impugned Order deserves to be set aside.

12. As per Rule 6(5) of the FSP Rules 2019, the Respondent No.! should have dispatched forthwith a copy of the application filed with the Hon'ble Adjudicating Authority by registered post or speed post to the registered office of the Respondent No. 2 Company. In the instant case at hand, as it appears from the Impugned Order, the application was filed in the morning of 8 October 2021 and was moved on the same date without serving a copy upon the Respondent No. 2 Company. The Appellant till date does not have a copy of the Application filed by the Respondent No. I in which the Impugned Order has been passed by the Hon'ble Adjudicating Authority. This shows that the entire proceeding before the Hon'ble Adjudicating Authority has been carried out by the Respondent No. 1 in complete breach of principles of natural justice.

13. In absence of any default, the Impugned Order cannot sustained and deserves to be set aside in its entirety. The entire exercise has been carried out by the Respondent: No. 1 in breach of principles of natural justice and as would appear from the Impugned Order, there was nobody to defend the application filed by the Respondent No. 1 before the Hon'ble Adjudicating Authority and as such the Impugned Order deserves to be set aside. The corporate insolvency resolution process in respect of the Corporate Debtor deserves to be quashed.

14.The Impugned Order thus is bad in law and unless the Impugned Order is set aside, the Appellant shall suffer irreparable prejudice, loss and injury as without giving any notice to the Corporate Debtor, the Impugned Order has been passed without hearing the Corporate Debtor and without giving the Corporate Debtor a chance to reply to the application filed by the Respondent No. 1 which violates the principles of natural justice and which is in breach of the guidelines laid down by the Hon'ble Appellate Tribunal in the judgment passed in Innoventive Industries Limited us. ICICI Bank Limited. If the Corporate Debtor would have been given a chance to file a reply to the Application filed by the Respondent No. 1, it would have been demonstrated to the Hon'ble Adjudicating Authority that there exists no default to trigger any corporate insolvency resolution process against the Respondent No. 2 Company.

15. Hence this present appeal."[46]

23. A bare perusal of the pleadings reproduced herein above clearly shows that plea relating to Section 10-A of IBC sought to be raised now along with other pleas in these IAs, were subject matter of Appeal before Hon'ble NCLAT by appellant i.e. Adsiri Commercial Private Limited, now applicant in IA(IB) 389/KB/2023, IA(IB) 391/KB/2023, IA(IB)

[46] Pg.33-40 of the Administrator's Reply in I.A.(I.B.C.) No.389/KB/2023

532/KB/2023 and IA(IB) 535/KB/2023 The appeal was dismissed by Hon'ble NCLAT on 21.12.2022.

24. Subsequently appeal filed by Adisiri Commercial Private Limited (Applicants in IA(IB) 389/KB/2023, IA(IB) 391/KB/2023, IA(IB) 532/KB/2023 and IA(IB) 535/KB/2023) before the Hon'ble Supreme Court of India was also dismissed on 30.01.2023, order of which is extracted herein below:

Annexure "E"

107

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No 473 of 2023

Adisri Commercial Private Limited .... Appellant(s)

Versus

Reserve Bank of India & Anr ....Respondent(s)

WITH

Civil Appeal No 486 of 2023

ORDER

1 We find no error in the order of the National Company Law Appellate Tribunal dated 21 December 2022 in Company Appeal (AT)(Insolvency) Nos 1293 and 1294 of 2022.

2 The appeals are accordingly dismissed.

3 Pending application, if any, stands disposed of.

.....CJI.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Pamidighantam Sri Narasimha]

.....J.
[J B Pardiwala]

New Delhi;
January 30, 2023
-S-

GOVT. OF WEST BENGAL
SUNITRA BHATTACHARYYA
Regd. No. 065 of 2022
Expiry date
1.4.2027
NOTARY, CALCUTTA

With the dismissal of the appeal by Hon'ble NCLAT on 21.12.2022 and subsequently by Hon'ble Supreme Court on 30-01-2023, issues sought to be raised, as noted above, in these IAs including plea of 10A was put

to rest and is thus beyond the scope of being raised in these IAs or in any proceedings.

25. Having held the applicants have no right/locus to have filed these IAs and hence are disallowed, now we deal with the plea of applicants regarding recalling of order of admission dated 8-10-2021 on the grounds of bar under Section 10-A of IBC.

26. After having considered in detail the submissions of applicants in these IAs, rebuttal thereto, case law cited including position of law as referred above in preceding paragraph, after analysis, we conclude:

A. Admittedly statutory appeal was filed by the Applicant i.e., Adisri Commercial Private Limited before the Hon'ble NCLAT in November 2021 and the Hon'ble Supreme Court. And after having availed the remedy of appeal and failed therein, applicant now cannot seek recalling of same order already appealed against. Allegation of collusion, fraud by Reserve Bank of India raised ***now,*** are in a casual way, without laying any foundation for same, and therefore deserves to be rejected outrightly as baseless. And other applicant i.e., Mr.Manoj Kumar Gupta, not having filed the appeal, cannot be now permitted to file application seeking recalling of an order that attained finality and subsequently resolution plan approved by Committee of Creditors and filed before this Adjudicating Authority. Such IAs, which are otherwise impermissible in law, cause unnecessary delay in time bound resolution process under the Code and have a deleterious effect in achieving the object of the Code i.e. maximisation of value of assets in time bound manner.

B. While disagreeing with the arguments on behalf of applicants with the plea to recall, we refer to and rely upon paragraph **16 & 20** of a recent order passed by NCLAT in Company Appeal (AT) (Ins.) No. 729 of 2020[47] comprising of Five Hon'ble

[47] *(2023) ibclaw.in 381 NCLAT*

members on 25-05-2023. This order of Hon'ble NCLAT refers to case of ***A.R. Antulay Vs R.S.Nayak***[48] wherein it was been held:-

> ***"The power to recall a judgment will not be exercised when the ground for re-opening the proceedings or vacating the judgment was available to be pleaded in the original action but was not done or where a proper remedy in some other proceeding such as by way of appeal or revision was available but was not availed.***
>
> ***The right to seek vacation of a judgment may be lost by waiver, estoppel or acquiescence."***

C. While disapproving arguments of applicants seeking recalling we also place reliance of a recent judgement passed by Division Bench of the Hon'ble Calcutta High Court in M/s. Odisha Slurry Pipeline Infrastructure Ltd. & Anr. Vs. Rakesh Sharma & Ors.in CPAN 922 of 2022 CAN 10 of 2023 CAN 11 of 2023, CAN 12 of 2023, CAN 13 of 2023 decided on 25.07.2023 wherein it has been held:

> "*There is a clear distinction between recall of an order/judgment and a review of the order/judgment. The review has to be entertained on a well-defined parameter enshrined under Order XLVII Rule 1 of the Code of Civil Procedure. On the other hand, the recall to a contested order has to be decided in a limited sphere and should not be permitted to expand the horizon of the consideration or the points which have been dealt with in a judgment and order passed in pursuit of dispensation of justice and adjudication of rights of the parties. Neither the review jurisdiction nor an application for recall should be permitted for re-visitation, re-writing and/or re-*

[48] (1998) 2 SCC 602

appreciation of the facts as its applicability is within the limited contour envisaged under the law."

The Hon'ble High Court of Calcutta in the above judgment further observed:

"It would not be incorrect, in our opinion, what we gather from the stand of the applicants that the instant application has been taken out to achieve a thing indirectly, which cannot be achieved directly. What is intended by filing the instant application is the re visitation of the judgment rendered in the contempt application and any findings incidentally or accidentally made in the instant judgment to take advantage thereof, which, in our opinion, should be deprecated."

Emphasis applied

D. Applicant through these IAs are in fact seeking rehearing and setting aside of an order, passed by this Adjudicating Authority, after having either failed in appeal or not availed statutory remedy and this is clearly impermissible in law as laid down in ***paragraph 41*** of the judgment passed by the Hon'ble Supreme Court in Prabhakar v. Sericulture Dept., *2015 15 SCC 1(Supra).*

E. In view of the position of law as brought out hereinabove, we find no reason/s for recalling the order as asked for in these IAs.

27. For the grounds and reasons thereof recorded above, we decline to grant any relief in these IAs being I.A(I.B.C) No. 1692/KB/2022, I.A(I.B.C) No. 389/KB/2023, I.A(I.B.C) No. 391/KB/2023, I.A(I.B.C) No. 532/KB/2023 and I.A(I.B.C) No. 535/KB/2023. These IAs are accordingly disallowed.
28. All connected Intervention applications being INV.P (I.B.) No. 2/KB/2023, INV.P (I.B.) No. 8/KB/2023 and INV.P (I.B.) No. 9/KB/2023 shall also stand disposed of in view of the above.
29. After disallowing these IAs, we now proceed to consider objection applications to Resolution plan filed before this Adjudicating authority.

30. Applicants by way of IA(IB)No. 413/KB/2023, IA(IB)No. 464/KB/2023, IA(IB) No.557/KB/2023 have raised their objections to resolution plan.

IA(IB)No. 413/KB/2023, IA(IB)No. 464/KB/2023, IA(IB) No.557/KB/2023

A. **Prologue**

31. This common order is being issued for dealing with and disposing of IA413, IA464 and IA557. These IAs which have been filed in CP (IB) No. 294/KB/2021 and CP (IB) No. 295/KB/2021 are primarily the IAs filed for raising objections to the resolution plan submitted by National Asset Reconstruction Company Limited (NARCL), a Government entity, has been incorporated on 7th July 2021 with majority stake held by Public Sector Banks and balance by Private Banks with Canara Bank being the Sponsor Bank. NARCL is registered with the Reserved Bank of India as an Asset Reconstruction Company under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, herein after referred as NARCL. The issues raised in these IAs, principally the objections to the Resolution Plan submitted by NARCL, being of common genre and identical in a large measure, can be best addressed holistically and hence the common order.

B. Issues raised:

A brief of the reliefs sought in these IAs in these IAs, is being reproduced herewith in entirety for the sake of completeness.

B-1. I.A(I.B.C)No 413) /KB/2023 has been filed by Authum Investment and Infrastructure Limited (Authum) in **C.P.(I.B.)No.295/KB/2021** on **16.02.2023** seeking the following reliefs:-

a. To pass an Order setting aside the Scored Evaluation Matrix (appearing at Exhibit-E) and any action taken pursuant thereto.

b. To pass an Order setting aside any letter of intent that may have been issued by the Administrator in connection with the corporate insolvency resolution process of the Corporate Debtors;

c. *To pass an Order directing the Administrator to place before the Committee of Creditors a revised evaluation matrix (along with scoring) after providing at least five marks to the Applicant for offering equity to the financial creditors;*

d. *To pass an Order directing the Administrator to place before the Committee of Creditors revised evaluation matrix (along with scoring) providing the true, fair and correct revised evaluation of the resolution plan;*

e. *To pass an Order directing the Administrator to extend the voting period for voting on the resolution plans received in the corporate insolvency resolution process of the Corporate Debtors, by a minimum of fourteen days;*

f. *To pass an Order extending the voting period for voting on the resolution plans received in the corporate insolvency resolution process of the Corporate Debtors, by a minimum of fourteen days;*

g. *To pass an Order extending the time period of the corporate insolvency resolution process of the Corporate Debtors in order to accommodate the additional time period for consideration of and voting on the resolutions plans received in the corporate insolvency resolution process of the Corporate Debtors,*

h. *in the event the results have been published not to take any steps or further steps, action or further actions pursuant thereto,*

i. *pending the hearing and final disposal of the present Application, to order, restrain and prohibit the Administrator from declaring the results of the voting process of the financial creditors and / or acting upon such results and / or taking any steps pursuant to the letter of intent that may have been issued by the Administrator in connection with the corporate insolvency resolution process of the Corporate Debtors;*

j. *ad-interim in terms of the prayers above;*

k. *for costs; and*

l. such other and further reliefs (including interim and ad-interim) as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.

B-2 **I.A(I.B.C)No. 464/KB/2023** has been filed by **Abhilasha Bothra & Anr.** (hereinafter referred to as **Bothras**) in **C.P.(I.B.)No.295/KB/2021** on **27.02.2023** seeking the following reliefs:-

a. To pass an order that the scoring awarded to the resolution plan submitted by Respondent No.2 is ultravires to the Evaluation Matrix, incorrect and hence invalid, null and void, and set aside the same accordingly;

b. To pass an order that the decision to declare Respondent No.2 as the Successful Resolution Applicant as void/illegal/bad in law, and set aside the same;

c. To pass an order remanding the resolution plan submitted by Respondent No.2 to the Committee of Creditors and conduct voting of resolution plans thereafter;

d. To keep the hearing of I.A. 428 of 2023 and I.A. 434 of 2023 in abeyance, pending hearing, adjudication and final disposal of the present application;

e. To pass an order directing reconduct scoring of resolution plans submitted by Respondent No.2 to 5 strictly in accordance with the Evaluation Matrix pending hearing, adjudication and final disposal of the present application.

f. To pass any order or grant any other relief in the interest of justice.

g. Cost

B-3 I.A(I.B.C)No. 557/KB/2023 has been filed by **Authum Investment and Infrastructure Limited** in C.P.(I.B.)No.295/KB/2021 on **17.03.2023** seeking the following reliefs:-

a. *This application be heard, adjudicated and decided prior to hearing, adjudication and disposal of I.A. Nos. 428 & 434 of 2023;*

b. *this Hon'ble Tribunal be pleased to pass an order declaring that resolution plan submitted by Respondent No. 2 is non-compliant with Section 30(2) of the Insolvency & Bankruptcy Code, 2016 read with Reg. 38 of IBBI (Resolution Process for Corporate Persons) Regulations, 2016;*

c. *this Hon'ble Tribunal be pleased to reject I.A. Nos. 428 & 434 of 2023 filed by Respondent No. 1 (under Section 31 of the Insolvency & Bankruptcy Code, 2016) for approval of resolution plan submitted by Respondent No. 2;*

d. *this Hon'ble Tribunal be pleased to declare that any concession/relaxation exemption granted by Committee of Creditors to Respondent No. 2 from application of discounting rates for Security Receipts under the Evaluation Matrix is void, illegal and bad in law;*

e. *this Hon'ble Tribunal be pleased to declare that the scores awarded by Respondent No. 1/Committee of Creditors to the resolution plans are illegal / ultra vires the Evaluation Matrix,*

f. *i. set aside the scores awarded by Respondent No. 1 to the resolution plans,:*

ii. *re-evaluate plans in terms of the Evaluation Matrix by Resolution No. 1 or any other independent professional as maybe appointed by this Hon'ble Tribunal;*

iii. *convene meeting of Committee of Creditors and put up respective resolution plans submitted by Applicant and Respondent Nos. 2 to 4 for voting;*

g. *this Hon'ble Tribunal be pleased to pass an Order directing Respondent No. 1 to place before the CoC the correct revaluation of NPV calculation and scoring of all resolution plans received in the CIRP of the Corporate Debtors;*

h. *pending the hearing and final disposal of the present Application, keep hearing, adjudication and disposal of I.A. Nos. 428 & 434 of 2023 in abeyance;*

i. *pending the hearing and final disposal of the present Application, this Hon'ble Tribunal be pleased to order, restrain and prohibit the Administrator from taking any further steps pursuant to the letter of intent that has been issued by the Administrator in favour of NARCL;*

j. *pending the hearing and final disposal of the present Application, this Hon'ble Tribunal be pleased to call for records and proceedings of the meetings held by Committee of creditors and to determine and verify the discussion/ deliberations/ decisions with respect to any concession/ relaxation/ exemption granted to Respondent No. 2 from application of discounting rate for security receipts under the Evaluation Matrix;*

k. *ad-interim in terms of the prayers above;*

l. *for costs; and*

m. *such other and further reliefs(including interim and ad-interim) as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.*

C- Background:

32. On October 4, 2021, the Reserve Bank of India ("RBI") superseded the erstwhile boards of SREI Infrastructure Finance Limited ("SIFL") and SREI Equipment Finance Limited ("SEFL") (both SEFL and SIFL shall be collectively referred to as "Corporate Debtors") and appointed Mr. Rajneesh Sharma as the Administrator of the Corporate Debtors ("Administrator") in terms of the Reserve Bank of India Act, 1934[49].

33. On October 8, 2021, RBI filed the Company Petition No. 295 and 294 of 2021 against SIFL and SEFL respectively[50], under Section 227 read with Section 239(2)(zk) of the Insolvency and Bankruptcy Code, 2016 ("Code"/"IBC") read with Rule 5 and Rule 6 of the Insolvency &

[49] RBI Press Release - Annexure A, Volume I of I.A. (IB) No. 428/KB/2023; Page 59
[50] Para 4 of Volume I of I.A. (IB) No. 428/KB/2023; Page 4

Bankruptcy (Insolvency & Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 ("FSP Rules").

34. By orders dated October 8, 2021[51] ("Admission Order"), this Hon'ble National Company Law Tribunal, Kolkata ("NCLT") initiated corporate insolvency resolution process ("CIRP") in respect of the Corporate Debtors and confirmed the appointment of **Mr. Rajneesh Sharma as the Administrator.**

35. The committee of creditors of both the Corporate Debtors in their commercial wisdom approved the consolidation of CIRP of the Corporate Debtors and subsequently an application for consolidation of CIRP was filed before this Adjudicating Authority. On February 14, 2022[52], this Adjudicating Authority approved the consolidation of the CIRP. Further, a consolidated committee of creditors ("CoC") was constituted.

36. On February 25, 2022, the Administrator invited expression of interest ("EOI") from potential resolution applicants ("PRAs"). Thereafter, the Administrator issued the Request for Resolution Plans to the PRAs, which was revised on September 24, 2022 ("RFRP"). Thereafter at the request of PRAs, the timeline for submission of resolution plans was extended from time to time. Meanwhile, the Administrator received various EOIs from various prospective resolution applicants.

37. In the CoC meeting dated January 20, 2023, the compliant resolution plans were put to vote. Initially, the voting timeline was till February 9, 2023, which was extended till February 14, 2023. On February 14, 2023, the Resolution Plan was approved by a majority of 89.25% voting share of the CoC. Further, financial creditors with 5.19% voting share voted

[51] Admission Order - Annexure C, Volume I of I.A. (IB) No. 428/KB/2023; Page 61 & Annexure D, Volume I of I.A. (IB) No. 428/KB/2023; Page 68
[52] Consolidation Order - Annexure G, Volume I of I.A. (IB) No. 428/KB/2023; Page 77

against the Resolution Plan and financial creditors with 5.56% voting share abstained from voting on the Resolution Plan[53].

38. The Administrator has issued a letter of intent dated February 15, 2023 to the Successful Resolution Applicant. Further, the Successful Resolution Applicant, on February 28, 2023 has submitted the performance security for an amount of INR 333,38,13,189/- (Rupees Three Hundred and Thirty-Three Crore, Thirty Eight Lakh, Thirteen Thousand One Hundred and Eighty Nine only) in due compliance with the terms of the RFRP and the LOI[54].
39. The Administrator has filed IA No. 428 of 2023 in Company Petition (IB) No. 294 of 2021 and IA No. 434 of 2023 in Company Petition (IB) No. 295 of 2021 ("Plan Approval Applications") for seeking approval of the Resolution Plan in respect of SIFL and SEFL respectively by this Hon'ble NCLT under Section 31 of the Code. The plans are essentially the same and it appears that they have been filed via two separate petitions to maintain the continuity.
40. The RBI on March 23, 2023[55] provided its no-objection to the proposed change in management and control of the Corporate Debtors as required in terms of Rule 5 (d) (ii) of the FSP Rules.
41. Further, the Competition Commission of India ("CCI"), on April 6, 2023 issued its acknowledgment cum approval letter[56] for the combination envisaged under the Resolution Plan, as required by the provisions of the Code.

JUDICIAL PRECEDENTS CITED:

42. Mr. Vikram Nankani and Mr. Prateek Sakseria, Mr. Arun Kathpalia, Mr Ravi Kadam and Mr. Sudipto Sarkar Ld. Sr. Counsels appearing for Bothras, Authum, CoC, SRA and the Administrator respectively handed in the elaborate compilations of various judgements in various cases and

[53] Para 49 & 50, Volume I of I.A. (IB) No. 428/KB/2023; Page 22 & Voting Results, Annexure U, Volume X of I.A. (IB) No. 428/KB/2023; page 1680
[54] *Para 53, Volume I* of I.A. (IB) No. 428/KB/2023*; Page 23 & Letter of Intent - Annexure V, Volume X* of I.A. (IB) No. 428/KB/2023*; Page 1682*
[55] Annexure X of Supplementary Affidavit in I.A. (IB) No. 428/KB/2023*; Page 12*
[56] Annexure Y of Supplementary Affidavit in I.A. (IB) No. 428/KB/2023*; Page 13*

drew parallels to their case at hand. A list of the case laws referred during the hearing is given below for reference and for the sake of completeness:

LIST OF CASE LAWS CITED BY AUTHUM

Sl. No.	CASE	CITATION	Para No.
1.	Arcelor Mittal (India) (P) ltd. V. Satish KumarGupta	(2019) 2 SCC 1	
2.	K. Sashidhar v. Indian Overseas Bank &Ors.	(2019) 12 SCC 150	Para 52
3.	MK Rajagopalan vs Dr. Periasamy	2023 SCC Online SC 574	Para 68, 188, 189, 192 & 194

LIST OF CASES CITED BY BOTHRA'S

Sl. No.	CASE	CITATION	Para No.
1.	A.C. Jose vs. Sivan Pillai & Ors	[(1984) 2 SCC 565].	Para 38
2.	Anjali Rathi vs Today Homes & Infrastructure Limited	2021 SCC Online SC 729	Para 11, 13,& 14
3.	Hotel Shobha v. Hon'ble Minister (follows S.P. Gupta v. President of India AIR 1982 SC 149)	2012 6MHLJ 708	Para 44
4.	Jasbhai Motibhai v Roshan Kumar Haji & Ors	(1976) 1 SCC 67	
5.	MK Rajagopalan vs Dr.	2023 SCC Online	

Sl. No.	CASE	CITATION	Para No.
	Periasamy	SC 574	
6.	M.S. Jayaraj v Commr of Excise	2000 7 SCC 352	
7.	P.T. Tirtamas Comexindo v. DeltaInternational Limited & Anr	1988 SCC OnLine Cal 300	
8.	Sardar Associates & Ors. v. Punjab Sind Bank & Ors	[(2009) 8 SCC 257]	Para 42 & 43

LIST OF CASES CITED BY ADMINISTRATOR

Sl. No.	CASE	CITATION	Para No.
1.	Association of aggrieved Workmen of Jet Airways (India) Limited v. Jet Airways (India) Ltd.	[2022 SCC OnLine NCLAT 36]	paras – 19 to 25
2.	IMR Metallurgical Resources AG v. Ferro Alloys Corpn. Ltd	2020 SCC OnLine NCLAT 1213	Paras – 2, 11 and 12
3.	India Resurgence Arc Private Limited v. M/s Amit Metaliks	Civil Appeal No. 1700 of 2021	Para 13
4.	Jaypee Kensington Boulevard Apartments Welfare Assn. v. NBCC (India) Ltd	(2022) 1 SCC 401	Para 273.9, 210-214, 218, 226

Sl. No.	CASE	CITATION	Para No.
5.	PNC Infratech Limited vs Deepak Maini & Anr	CA (AT) (Ins) No. 143 of 2020	Paras - 35, 36, 38, 39
6.	S.P. Chengalvaraya Naidu v. Jagannat	(1994) 1 SCC 1	
7.	Shrawan Kumar Agrawal Consortium v. Rituraj Steel Private Limited	[2020 SCC Online NCLAT 380]	Paras. 14, 15, 18, 19, 21, 23, 24 and 25

LIST OF CASES CITED BY NARCL

Sl. No.	CASE	CITATION	Para No.
1.	Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Others	(2019) SCC OnLine SC 1478	
2.	Committee of Creditors of Meenakshi Energy Ltd v Consortium of Prudent Arc Limited	SCC Online NCLAT 614	Para 113
3.	IMR Metallurgical Resources AG v. Ferro Alloys Corpn. Ltd	2020 SCC OnLine NCLAT 1213	Paras 12
4.	IMR Metallurgical Resources AG v. Ferro Alloys Corpn. Ltd and Others	Civil Appeal No. 2720/2020	Paras 1

Sl. No.	CASE	CITATION	Para No.
5.	Jaypee Kensington Boulevard Apartments Welfare Assn. v. NBCC (India) Ltd	(2022) 1 SCC 401	Para 213-214
6.	Kalpraj Dharamshi v KIAL	2021 10 SCC 401	Paras 150-172
7.	K. Sashidhar v. Indian Overseas Bank &Ors.	(2019) 12 SCC 150	Para 64
8.	Maharashtra Seamless Limited v. Padmanabhan Venkatesh & Others	Civil Appeal No.4242 of 2019	Para 30
9.	Mahendra Jain v Indore Development Authority	2005 1 SCC 639	Para 40
10.	Mahesh Oza and Ors. v. Jindal Creations Private Limited	Company Petition 136 of 2020	Paras - 16, 18 and 19
11.	Pegasus Assets Reconstruction Pvt. Ltd. v. Kshitiz Chhawchharia and Others	Company Appeal (AT) (Insolvency) No. 988 of 2019	Relevant paras 189, 190, 191 and 192
12.	PNC Infratech Limited vs Deepak Maini & Anr	CA (AT) (Ins) No. 143 of 2020	Paras 38, 39 and 40
13.	Rai Bahadur Shree Ram and Company Pvt. Ltd. and Ors. v. Bhuvan Madan and Ors	Company Appeal (AT) (Insolvency) Nos. 207-208 of 2020	Para 3

Sl. No.	CASE	CITATION	Para No.
14.	Rajesh Kumar & Ors. v. Rabindra Kumar Mintri & Ors	2022 SCC Online NCLAT 1604	Paras 3 and 7
15.	Silppi Constructions v Union of India	2020 16 SCC 489	para 20
16.	Shrawan Kumar Agrawal Consortium v. Rituraj Steel Private Limited	[2020 SCC Online NCLAT 380]	Paras 19, 21, 23, 24 and 25
17.	Unicorn Buildtech PRA v. Aishwarya Mohan RP	Comp. App. (AT) (Ins) Nos. 517 of 2021	Para 6
18.	Union of India v Ibrahim Uddin	2012 8 SCC 149	para 19
19.	Union of India v. Dm Revri & Co	1976 4 SCC 147	Para – 7
20.	Uttam Galva Steels Limited v. DF Deutsche Forfait AG and Ors	Company Appeal (AT) (Insolvency) 39 of 2017	Para – 23

LIST OF CASES CITED BY CoC

Sl. No.	CASE	CITATION	Para No.
1.	Anand Construction Private Limited v. Ram Niwas	1994 Vol 31 DRJ 205	
2.	Committee of Creditors of	(2020) 8 SCC 531	Paras 165-278

Sl. No.	CASE	CITATION	Para No.
	Essar Steel India Limited v. Satish Kumar Gupta and Others		
3.	IMR Metallurgical Resources AG v. Ferro Alloys Corpn. Ltd	2020 SCC OnLine NCLAT 1213	Paras 12
4.	IMR Metallurgical Resources AG v. Ferro Alloys Corpn. Ltd and Others	2020 SCC OnLine NCLT 11478	Paras 2,7
5.	India Resurgence Arc Private Limited v. Amit Metaliks Limited	2021 SCC OnLine 409	Paras 12, 13
6.	Jaypee Kensington Boulevard Apartments Welfare Assn. v. NBCC (India) Ltd	(2022) 1 SCC 401	Paras 210, 218-219, 226
7.	Jindal Stainless Limited v. Shailendra Ajmera, RP of Mittal Corp Ltd. And Ors	2023 SCC OnLine SC 409	Paras 21, 25
8.	K. Sashidhar v. Indian Overseas Bank &Ors.	(2019) 12 SCC 150	Para 52
9.	Kalinga Allied Industries India v. Hindustan Coild Limited and Ors.	2021 SCC OnLine NCLAT 51	Paras 16, 17
10.	Kalpraj Dharamshi v KIAL	2021 10 SCC 401	Paras 158, 165,

Sl. No.	CASE	CITATION	Para No.
			170, 171
11.	Maharashtra Seamless Limited v. Padmanabhan Venkatesh & Others	(2020) 11 SCC 467	Paras 143-144
12.	Namburi Basava Subrahmanyam v. Alapati Hymavathi & Ors.	(1996) 9 SCC 388	Paras 3 & 5
13.	Ngaitlang Dhar v. Panna Pragati Infrastructure Private Limited & Ors.	(2022) 6 SCC 172	Paras 31,32
14.	PNC Infratech Limited vs Deepak Maini & Anr	CA (AT) (Ins) No. 143 of 2020	Paras 32, 33, 35, 38, 39
15.	Punjab National Bank v. Prithvi Ferro Alloys Private Limited	2021 SCC OnLine NCLT 11285	Paras 2.5, 2.32
16.	Pratap Technocrats (P) Ltd. V. Reliance Infratel Limited (Monitoring Committee)	(2021) 10 SCC 623	Paras 44-47
17.	Shrawan Kumar Agrawal Consortium v. Rituraj Steel Private Limited	[2020 SCC Online NCLAT 380]	Paras 114, 24
18.	Super Poly Fabriks Ltd. V. CCE	(2008) 11 SCC 398	Paragraphs 8-11
19.	UCO Bank v. PMT Machines Limited	I.A> (IB) No 1932/2021 in C.P. (IB) No.	Paras 3, 9, 12, 13

Sl. No.	CASE	CITATION	Para No.
		2469/MB/2018	
20.	Vistra ITCL India Limited vs Torrent Investments Private Limited	Company Appeal (AT) (Insolvency) No. 132, 133 & 134 of 2023	Paragraphs 49 to 51 and 53

43. **SUBMISSIONS ON BEHALF OF THE CONSOLIDATED CoC**

44.1. As already stated above that on February 14th, 2022, a consolidation of CIRP of both SEFL and SIFL was approved by this Adjudicating Authority following the laid down procedure being IA (IB) no. 1100/KB/2021 in CP(IB) no. 295/KB/2021 and IA (IB) no. 1099/KB/2021 in CP(IB) no. 294/KB/2021, Subsequently the committee of Creditors was consolidated on March 16, 2022. Mr. Arun Kathpalia Ld. Sr. Counsel appearing for the Consolidated CoC **(CoC)** argued the matter on behalf of the CoC.

44.2. Keeping in view the facts of the case, the Ld. Counsel appearing for the CoC replied to various points taken by the petitioners/applicants in all the objecting IAs viz. IA413, IA 464 and IA 557. Since most of the grounds of objections taken in these IAs were overlapping, the Ld. Counsel addressed this Adjudicating Authority comprehensively on all these issues.

44.3. In addition to the elaborate replies filed by the CoC, written notes of arguments were also submitted by the Ld. Counsel for Consolidated CoC. These have been annexed to this order for the sake of completeness, however the sum & substance of the reply of CoC is **extracted** below:

i. Lack of *locus standi* of the debenture holders and Authum.
ii. Commercial wisdom of the CoC is non justiciable.
iii. The instruments offered by NARCL are committed instruments.

iv. The Challenge by Authum to the scoring for equity allotment to financial creditors is erroneous.

v. Rejoinder does not constitute pleadings and allegations of fraud and conspiracy cannot be raised in rejoinder.

vi. The CoC has discussed and decided on the quantitative analysis of the resolution plan.

vii. Regulation 39(1a) of the CIRP Regulations were not contravened.

viii. The CoC has acted in a transparent and fair manner.

45. **SUBMISSIONS ON BEHALF OF THE ADMINISTRATOR OF SIFL & SEFL**

45.1. These submissions have been made in three parts and the points taken in the three IAs have been replied as argued :

1. IA No. 464 of 2023 ("**Bothra Application**"); Specific submissions
2. IA No. 413 of 2023 ("**First Authum Application**") & IA No. 557 of 2023 ("**Second Authum Application**"), Specific Submissions
3. Common submission to the collectively ("**Objection Applications**"), below.
4. Conclusion

The sum and substance of the submissions of the Ld. Counsel appearing for the Administrator is extracted below:

45.2. On February 14, 2023, the Consolidated Committee of Creditors of the SREI Companies ("**CoC**") approved the resolution plan of National Asset Reconstruction Company Limited, the successful resolution applicant ("**NARCL/SRA**") by a majority of **89.25%**, in accordance with Section 30(4) read with Regulation 39(3B) of the CIRP Regulations. In view thereof, per the instructions of the CoC, the Administrator issued a Letter of Intent to the SRA on February 15, 2023. On February 14, 2023, the Administrator filed applications before under Section 31 of the Code (being I.A 428 of 2023 in C.P(IB) No. 294 of 2021 and I.A 434 of 2023 in C.P(IB) No. 295 of 2021) (referred as "**Plan Approval Application(s)**"). The Reserve Bank of India has

granted its "No Objection" to NARCL's plan, as mandated under Rule 5 of the FSP Rules on March 23, 2023 (*Annexure-X at page 12 to the Additional Affidavit of the Administrator in the Plan Approval Applications*). Subsequently the Competition Commission of India has also granted its approval to NARCL's plan on April 6, 2023, under Section 6 of the Competition Act, 2002 read with Regulations 5 and 5A of the Competition Commission of India (Procedure in regard to the transactions of business relating to combinations) Regulations, 2011 (*Annexure-Y at page 13 to the Additional Affidavit of the Administrator in the Plan Approval Applications*).

45.3. For the sake of brevity, these written submissions are divided as follows:

a. **Part I** consists of specific submissions in relation to the Bothra Application

b. **Part II** consists of specific submissions in relation to the Authum Applications

c. **Part III** consists of common submissions in relation to the Objection Applications

d. Crux of submissions

45.4. The applicants are debenture holders duly represented by their authorized representative - Axis Trustee services limited.

45.5. The applicants had symmetrical access to all clarifications and information in relation to the CIRP and specifically NARCL's plan and its evaluation.

45.6. Authum's plan has been appropriately considered and evaluated by the CoC.

45.7. Addendums to the plans were submitted by all three PRAs (including Authum).

45.8. NARCL's resolution plan is compliant with the law.

45.9. Evaluation of the resolution plans is within the purview of the commercial wisdom of the CoC and not justiciable before this Adjudicating Authority.

45.10. The RFRP and challenge process documents (shared with all the PRAs) allude to the commercial wisdom of the CoC.

Conclusion

45.11. NARCL's Resolution Plan meets the requirements of Section 30(2) of the Code, Regulations 38 and 39 of the CIRP Regulations and the FSP Rules. NARCL's Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law.

45.12. In ***K. Sashidhar v. Indian Overseas Bank & Others (2019) 12 SCC 150)***, the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the NCLT. On receipt of such a proposal, the NCLT is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2) of the Act. The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the NCLT is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the NCLT can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.

46. **Submissions on behalf of NARCL - The Successful Resolution Applicant**

46.1. NARCL, the Successful Resolution Applicant has furnished an elaborate reply covering various objections raised by the objectors namely Authum and Bothras. They have also filed elaborate written submissions in the matter comprising inter-alia , a detailed chronology of events along with remarks thereon have been given in a tabular form The present written submissions ("**Written Submissions**") have been filed by and on behalf

of National Asset Reconstruction Company Limited, the successful resolution applicant ("**NARCL**"/"**Successful Resolution Applicant**")

46.2. The Bothras lack locus to challenge NARCL's resolution plan. Authum, being an unsuccessful resolution applicant does not have a right to challenge the scoring applied by the CoC to the successful resolution applicant's resolution plan as the same alongwith the evaluation matrix fall squarely within the commercial wisdom of the CoC

46.3. The jurisdiction of this hon'ble NCLT does not extend to adjudicating the commercial wisdom of the CoC which squarely includes within its ambit evaluation of resolution plans on the parameters of the evaluation matrix, the manner of scoring the resolution plans, as well as the approval of the resolution plans by the requisite majority.

46.4. The CoC was correct in treating NARCL's deferred financial payment proposal as one through 'committed instruments'.

46.5. NARCL was not granted any relaxation qua the evaluation matrix as falsely suggested.

46.6. The argument that the NCDs proposed under NARCL's resolution plan are conditional and void for uncertainty is misconceived and a disguised attempt to revisit the CoC's commercial wisdom.

46.7. The SEFL NCDs proposed to be issued under NARCL's resolution plan do not violate section 71 of the companies act, 2013.

46.8. Authum and the Bothras cannot be permitted to argue beyond their pleaded case stated in the application.

46.9. Bothras and Authum's arguments ignore the fact that scoring under the evaluation matrix does not bind the CoC's right to vote on plans in the manner it sees fit.

46.10. The debenture holder has unlawfully shared NARCL's resolution plan which is a confidential document with Authum.

Analysis and Findings

Gist of the matter:

47. IA 413, 464 & 557 of 2023 are primarily the IAs filed for raising objections to the resolution plan submitted by NARCL, which has been duly approved by the CoC and has been filed before this authority for approval under Section 31 of the IBC 2016.

48. IA 464/2023 in CP (IB) No. 295/KB/2021 has been filed by **Ms. Abhilasha Bothra** and **Mr. Manoj Kumar Bothra**, being debenture holders of SEFL, ("**Debenture Holder Application**"). This application was presented before this Adjudicating Authority by Ld. Sr. Advocate **Mr. Vikram Nankani.**

49. The applications bearing no. IA 413/KB/2023 in CP (IB) 295/KB/2021 and IA 557/KB/2023 in CP (IB) 295/KB/2021 have been filed by **Authum Investment and Infrastructure Limited ("Authum")** and have been presented by Ld. Sr. Advocate **Mr. Prateek Sakseria**. This application has been filed on March 17, 2023 under section 60(5) of the IBC read with Rule 11 and 32 of the NCLT Rules inter alia challenging the computation of net value of the financial proposals submitted by the applicant viz. NARCL.

50. The IAs have been heard by this tribunal from 16.2.2023 to 21.06.2023 spread over almost 20 hearings, whereby ample opportunity was given to all the sides for making up their respective cases. A brief snapshot of the elaborate hearings, is given in the ensuing text. We have tried to restrict ourselves to the actual submissions made by respective Counsel supported by the pleadings in the matter and confining ourselves to the crux of issues. Some overlapping however can not be ruled out.

51. Ld Sr. Counsel Mr.Vikram Nankani appearing on behalf of the applicant presented in IA 464 of 2023 led us to various dates of list of events and specifically mentioned the voting window for approving the plan, the window being opened on 21st January, 2023 and closed on 14th Feb.2023.

52. He averred that Clause 3.9 of the resolution plan RA has sought for an exemption which has been granted belatedly after plans were put to vote. Referring to a statement by the Administrator in reply affidavit at para 76 page 85, he stated that whereas it has been categorically mentioned that NARCL was not given any exemption whatsoever (either in term of Clause 3.9 or its plan or otherwise) from the discounting rates stipulated under the evaluation matrix. He built up his arguments to emphasize the point that the relaxation was indeed given to the SRA, which is very clear from the fact that whereas the voting was opened on 21st January 2023 and was to close on 9th February, 2023, the same was further extended till 14th Feb. 2023 without any request being made for the same.

53. He stated that the suspicions are naturally bound to come to mind because at a juncture, when the voting is just going to come to an end the day after, an Appendix in 32nd CoC minutes comes to be issued based upon the comments received from SBI capital markets who were the process advisor for CoC on 13th Feb.2023. Following is the facsimile of the said Appendix containing the alleged modifications:

" SREI Infrastructure Finance Limited (SIFL) and SREI Equipment Finance Limited (SEFL)

Appendix to 32nd CoC (29th consolidated CoC meeting) held on 03.01.2023 02:00 PM onwards through Virtual Platform (Zoom)

The following Appendix to the Minutes of the 32nd CoC (29th Consolidated CoC) meeting is issued based on certain comments received from SBI Capital Markets (CoC Process Advisors) on **13th February 2023.**

Appendix A

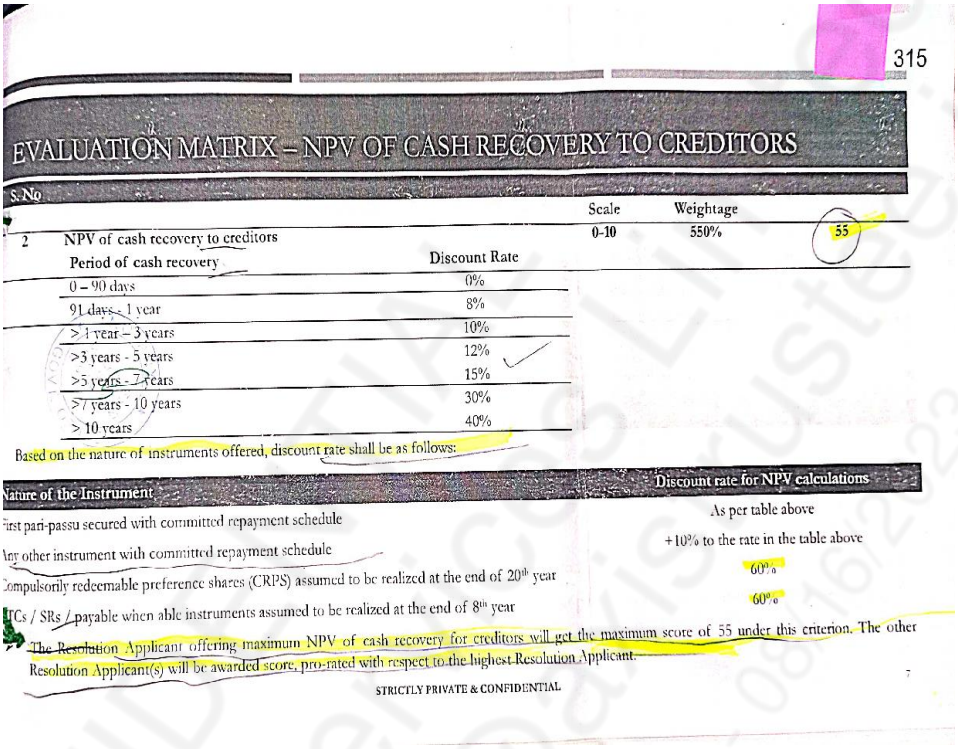
Comments by	**Clarification Sought**	**Modification**

SBI Capital Markets	Addition to Section 2 on Page No.2	**Addition:** The Administrator informed the CoC that a clarification has been received from NARCL before the Challenge Mechanism stating the following 1. Maturity Period for security Receipts may be read as 60 months instead of 57 months. 2. At the end of the respective tenure of NCDs (i.e. SEFL NCD-1 and SEFL NCD-2),the Trust shall transfer the outstanding NCDs to Security Receipt Holders without any further approval. SBI CAP, the CoC Advisor highlighted to the lenders that as per the Compliance Submission, there is no change in the Plan structure proposed by NARCL. NARCL will continue to offer security Receipts to the FCs and the redemption of the same (including the upside) will be based on the

		recovery from the SEFL NCDs which will be issued by SEFL to the ARC Trust. The above clarification was discussed in detail with the CoC members and the CoC Legal Counsel also gave their views on the same. Based on the discussion, considering that the outstanding NCDs are proposed to be transferred to the SR holders at the end of the respective tenure of NCDs, **it was decided that the for NARCL, the secured committed NCDs is be considered for the purpose of computation of NPV** under the Challenge Mechanism and accordingly the applicable discounting rate as per the Evaluation Matrix may be taken.

Referring to the last paragraph of the Appendix, he concluded this was essentially case of a 'Reverse Engineering' wherein being privy to the resolution plan of other bidders on behalf of the CoC, a post facto relaxation has been issued in favour of NARCL.

54. He elaborated as to how this Resolution Plan has been aided due to the above relaxation , giving a detailed treatise of the Evaluation Matrix which is placed below:



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EVALUATION MATRIX – NPV OF CASH RECOVERY TO CREDITORS

S.No		Scale	Weightage	
2	NPV of cash recovery to creditors	0-10	550%	55

Period of cash recovery	Discount Rate
0 – 90 days	0%
91 days - 1 year	8%
> 1 year – 3 years	10%
>3 years - 5 years	12%
>5 years - 7 years	15%
>7 years - 10 years	30%
> 10 years	40%

Based on the nature of instruments offered, discount rate shall be as follows:

Nature of the Instrument	Discount rate for NPV calculations
First pari-passu secured with committed repayment schedule	As per table above
Any other instrument with committed repayment schedule	+10% to the rate in the table above
Compulsorily redeemable preference shares (CRPS) assumed to be realized at the end of 20th year	60%
PTCs / SRs / payable when able instruments assumed to be realized at the end of 8th year	60%

The Resolution Applicant offering maximum NPV of cash recovery for creditors will get the maximum score of 55 under this criterion. The other Resolution Applicant(s) will be awarded score, pro-rated with respect to the highest Resolution Applicant.

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55. He narrated the methodology adopted/ to be adopted for determining NPV with reference to the Evaluation Matrix which gave certain discount rates against various types of cash recoveries for example discount rate for a period of cash recovery of 0 to 90 days would be Zero, whereas that for a cash recovery occurring between 7 to 10 years would be 30% which eventually would mean that cash recovery in future would not mean the same as cash recovery in the present time.

56. Extending this logic he went on to further explaining the inclusion of other instrument where Evaluation Matrix gives various types of discount rates for NPV calculations. The bone of contention here is that the PTCs/SRs/payable-when-able instruments assume to be realize at the end of 8th year would be discounted at a rate of 60%. However, any other instrument with committed repayment schedule would draw a discount rate of plus 10% to the table of the cash recovery. It is pertinent to mention here that the Security Receipts were supposed to be evaluated with the discount rate of 60%. However, a head start has been given to the NARCL

by using a discount rate of 40% based on the maturity period of the SRs as 8years.

57. He insisted that it is here that the Administrator and the CoC had departed from the Evaluation Matrix when it comes to a NARCL that while the SRs for other bidder were evaluated the discount rate of 60% in case of NARCL it was done at 40% thereby giving an inherent advantage which manifested with NARCL being rated the H1 bidder. He vehemently argued that everything under the Sun can not be covered under the shade of Commercial wisdom of CoC and prayed for a closer scrutiny of the matter.

58. **IA 557 of 2023** is an application filed by the Authum Investment Infrastructure Ltd. objecting the plan submitted by NARCL. We see that the premise of the objection lies in the assertion that the plan violates the section 30(2) and 36(b)(1) read with 39(3) and is contrary to the agreed evaluation matrix

59. It has been alleged that specific relaxation in the Evaluation Matrix has been advance to only one bidder namely NARCL and thereby this very evident that this approach has not resulted in the maximization of the value.

60. It is further asserted that the plan is neither feasible nor viable. This assertion has been further explained by the applicant during the hearing contending that the so-called committed debentures from the SRA whereby a larger discounter rate has been allowed to be applied in the evaluation matrix. Making a reference to the SARFAESI Act, he differentiated the security receipts as defined therein and submitted that as long as it is an SR, it should be treated as an SR -But there is an effort to slip in a clause which differentiates these SRs which are backed by CCD. The exception taken is that a higher discount rate has been allowed (i.e. +10%) , which is skillful deception.

61. It was averred that since the NCD's already non cashable but dependent upon the realization of proceeds from the debtors, It is a conditional plan and has brought out in a judgement of Hon'ble Supreme Court, wherein

it has been held that a conditional plan cannot be considered as viable and feasible.

62. Mr. Sudipto Sarkar Ld. Sr. Counsel appearing on behalf of the Administrator submitted that since Bothra's are a member of CoC by virtue of being owner of the debentures therefore they are possessing the resolution plan of NARCL, may not be viewed abnormally. Since this information is available to all the CoC members who get a copy of the resolution plan before start of the voting. He expressed surprise that whereas the Bothra's and other debentures holders represented by Axis trustee participated in the entire process and did not even raise a whisper about the integrity of the process but now suddenly they have come up and expressed reservation and protest on the resolution plan which already stands duly approved by the CoC.

63. This is so because now **Authum Investment & Infrastructure Limited** has turned out to be H2 and therefore they come out in his support and more surprising is that in their application they makes Authum Investment & Infrastructure Limited as a party and serve a copy of this application by virtue of which Authum Investment & Infrastructure Limited gets to know about the resolution plan which essentially remains a confidential documents until at least approved by CoC.

64. He averred that it is very clear that this circumvention by providing a copy of the resolution plan of NARCL to Authum Investment & Infrastructure Limited with a motive to enable him to take on the same and vitiate the process is nothing but an abuse of the whole process.

65. Ld Sr. Counsel cited para 210.5 of the Jaypee Kensington by Hon'ble Supreme Court to say that Bothras being represented by the Axis Trustee, would be deemed to have approved the plan , even if they had not voted.

> ***210.5***. *Having regard to the scheme of IBC and the law declared by this Court, it is more than clear that once a decision is taken, either to reject or to approve a particular plan, by a vote of more than 50% of the voting share of the financial creditors within a class, the minority of those who vote, as also all others within that class, are bound by that decision.* ***There is absolutely no scope for any***

particular person standing within that class to suggest any dissention as regards the vote over the resolution plan. *It is obvious that if this finality and binding force is not provided to the vote cast by the authorised representative over the resolution plan in accordance with the majority decision of the class he is authorised to represent, a plan of resolution involving large number of parties (like an excessively large number of homebuyers herein) may never fructify and the only result would be liquidation, which is not the prime target of the Code. In the larger benefit and for common good, the democratic principles of the determinative role of the opinion of majority have been duly incorporated in the scheme of the Code, particularly in the* ***provisions relating to voting on the resolution plan and binding nature of the vote of authorised representative on the entire class of the financial creditor(s) he represents*****."**

66. He placed page 72 of reply of Administrator in IA 557 /2023 to emphasize upon point that the Appendix to 32nd CoC is basically to intimate about the clarification by NARCL which is a part of the process and even Authum Investment & Infrastructure Limited also had got a clarification about which nothing has been mentioned in the hearing/pleadings.

67. On the issue of relaxation, Ld. Counsel submitted that there was no relaxation granted and the entire process of evaluation and voting was done as per agreed process documents which was approved by Coc beforehand and also that there was no modification on the plan, outside the scope of the Challenge mechanism.

68. On the issue of uncertainty introduced into the plan of NARCL by virtue of SR being backed up CCD's is stated that even the profit sharing as given by Authum Investment & Infrastructure Limited in their plan is also uncertain, but these matters being of commercial wisdom are best left to the CoC who is ably supported by the experts in the field.

69. Mr. Sakseria Ld. Senior Counsel appearing for Authum Investment & Infrastructure Limited (IA557) echoed the views of by Mr. Nankani (IA 464) and went on to explain painstakingly that SR could no way be called

NCDs just because of assumption that the SRs would be backed by a committed instrument like NCD. He averred that when there were clear cut classes of instruments provided for in the Evaluation matrix, inventing a new class of instruments, unauthorisedly need a much closer look and therefore concluded that the entire process has been vitiated, thereby giving an undue advantage to NARCL This has clearly jeopardized his chances of becoming a SRA as against ending up a Runners Up. He also asserted that section 71 of the Companies Act, 2013 were violated.

70. His next argument was to emphasise to persuade us that the plan was not viable since the repayment has to be done through the financial resources of the SEFL itself and that there was no recourse to the Debenture holder. He built up his case by defining the SRs as per the SARFAESI Act, and NCDs as per the Companies Act (Section 71) to drive on the point that debentures are instrumental with a binding jural relationship. However, this particular series of NCDs which is in any case supposed to be financed by SEFL, on the face of it is a contract which is void ab-initio, as the Second series NCDs are dependent upon encashment the first series and until and unless the first series is completely liquidated the second series cannot be paid and further the provision that in case NCDs if not paid by ISSUER, then shall revert back again to the financial creditor as a SR (Security receipt). This is actually the case that is most likely to happen thereby leading to a situation whereby the NCDs would ultimately be converted to SRs, which are anyway being masked now by giving a false cover of an assured payment that is promised to be made only to get a higher discount rate during the evaluation process. However, the truth is perceptible in the entire game plan that these instruments were actually SRs only and shall remain so in future, no wonder getting a shrouded avtar in the present for becoming an H1 bidder.

71. He also objected to the SBI caps being the CoC advisor on the premise that SBI caps is owned substantially by SBI who is a major financial creditor of the CoC and therefore that are the reason by SBI caps should not try to shy with CoC. Referring to the commercial wisdom of the CoC

while acknowledging that commercial wisdom has been acclaimed as supreme, but contended that the same has to be based on the data.

72. The Ld. Counsel for the Administrator while replying to the observations has naturally denied the objections. In regard to the minutes of 29th Meeting of the Consolidated CoC, he stated that the CoC's discussion on NARCL's Clarification was not recorded in the minutes of 29th Meeting of the Consolidated CoC held on January 3, 2023 inadvertently. However, the fact that this was indeed discussed by the CoC cannot be disputed as is also brought out in the reply of CoC wherein it has been categorically affirmed that, "After the receipt of the above clarification from NARCL, it was discussed in detail by the Consolidated CoC and on the basis of such discussion, considering that the outstanding NCDs are proposed to be transferred to the holders of the security receipts at the end of the respective tenure of non-convertible debentures, the Consolidated CoC deliberated and arrived at the view that these secured non-convertible debentures would be considered as committed (secured first pari passu) instruments for the purpose of computation of NPV under the Note on Challenge Process." (Emphasis supplied) (Para 23(c) at pg.12 of the CoC's Reply to the Bothra's Application).

73. **In the above conspectus following issues emerge for consideration:**

73.1. Questions about the locus of Debenture holders to object to the proceedings in which they participated. Are they not estopped now in challenging the same?

73.2. Whether the copy of the Resolution Plan of NARCL provided by the Debenture holders Authum , is in violation of the orders of Hon'ble NCLAT passed in the matter of **jet airways.**

73.3. Whether the conditions of the Evaluation Matrix were contravened in any way?

73.4. Whether any relaxation was given to NARCL in assigning discounting factors in contravention to the laid down procedure of conducting the CIRP ?

73.5. Whether the plan violates section 30(2)(e) of the Code and is in contravention of law.

73.6. Whether the plan violates Regulation 36(b)(1) read with regulation 39(3) in as much as it is contrary to the pre-determined matrix. The role of voting contained in Regulation 39(3).

73.7. Whether the entire gamut of evaluation matrix, assigning of discounting factors and the manner of servicing of the NCDs and SRs as proposed in the plan is **justiciable** on the ground that it falls within the **Commercial wisdom of the CoC.**

74. Let us now try to analyse the issues raised in these IAs and as crystallized above (not necessarily in that order), considering the pleadings submissions made by the parties and also in light of the arguments advanced supported by written notes:

74.1. **Locus of Applicants (Bothras) in filing IA 464**

i. Bothras have relied on ***Jasbhai Motibhai v Roshan Kumar Haji & Ors (1976 1 SCC 67)*** **and** ***M.S. Jayaraj v Commr of Excise (2000 7 SCC 352*****)** to urge that they have the locus to raise the issue even now as there cannot be an Estoppel against the law.

ii. The Bothras hold 200 non-convertible debenture issued by SEFL (SREI Equipment Finance Ltd- SR- VII 9.5LOA 08AG27 FVRS1000). With a face value of Rs. 1000 each, they both cumulatively hold non-convertible debenture for a debt of Rs. 200,000/-, which is a miniscule proportion of the total admitted debt.. In terms of **Section 21 (6A) of the IBC :**

Where a financial debt-

a. *is in form of securities or deposits and* ***the terms of financial debt provide for appointment of a trustee*** *or agent to act as authorized representative for all the financial creditors, such trustee or agent shall act on behalf of such financial creditors:"*

b. *is owed to a class of creditors exceeding the numbers as may be specified, other than the creditors covered under the clause (a) or sub-section (6) the interim resolution professional shall make an application to the Adjudicating Authority along with all the list of all the financial creditors, containing the name of an*

insolvency professional, other than the interim resolution professional, to act as their authorized representative who shall be appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors.

c. *is represented by a guardian, executor or administrator, such person shall act as authorised representative on behalf of such financial creditors.*

and such authorized representative under clause(a) or clause (b) or clause (c) shall attend the meetings of the committee of creditors, and vote on behalf of each financial creditor to the extent of his voting share."

iii. In this regard we refer to the regulation 2(aa) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP Regulations") which defines the term "Class of Creditors", which is reproduced hereunder for ease in reference: -

2(aa) "class of creditors" means a class with at least ten financial creditors under clause (b) of sub-section (6A) of Section 21 and the expression "creditors in a class" shall be construed accordingly.

iv. Thus, a bare perusal of the regulation 2(aa) of the CIRP Regulations as aforesaid, would showcase that only those creditors who fall within the ambit of section 21 (6A) (**b**) of the Code are 'Class of Creditors' who are entitled for appointment of their Authorised Representative. In the present case, the NCD holders are creditors that fall within the purview of section 21 (6A)(**a**) of the Code and thus, are represented by the Debenture Trustee in the meetings of the CoC.

v. A conjoint reading of Section 21(6)(b) and Regulation 2(aa) showcases that the group of financial creditors to whom a debt owed is in form of securities issued by the Corporate Debtor, would not fall under the definition of "Class of Creditors" or "Creditors in a Class". Thus, the provisions of section 25 A

dealing with the Rights and duties of the authorised representative of financial creditors would govern the present issue at hand. Section 25 A(2) inter-alia provides that:

It shall be the duty of authorised representative to circulate the agenda and minutes of the meeting og the committee of Creditors to the financial creditors he represents.

vi. It is not the case of the applicants that the AR namely the Axis bank Trustee did not inform them about the developments happening in the CoC . Infact the very fact that the resolution plan of the SRAs was also shared by the Trustee with the constituent members, which was though unauthorisedly disseminated by the applicants to H2 bidder, despite him not being a party to the application, speaks volumes about the level of communication that the Trustee had with its constituent members. Therefore in light of the judgement of the Hon'ble Supreme Court ***Jaypee Kensington's case, para 210.1 to 210.5 :***

Once a decision was taken by more than 50% of financial creditors in a class under Section 25-A of the Code to vote on a resolution plan, the minority ***was bound by that decision and could not suggest any dissension*** *as regards the vote thereto. It held that the statutory intent was to obviously impose finality and binding force to the vote cast by the Authorised Representative.*

vii. Even though the applicants on 24th February 2023 i.e. long after the Resolution Plans were under deliberation, scored, subsequently voted upon, and even after the voting lines were closed, that the Bothras purported to agitate the issue and raise their grievances for the first time with their Authorized Representative, Axis Trustee. It is pertinent to note that here too the grievance of Bothras was limited to the sole allegation that the Administrator misled the CoC.

viii. Nevertheless, relying on the ratio of Japee Kensignton (Supra), it is apparent that the Bothras have no locus to file IA 464 and the same is liable to be rejected on this accord alone.

74.2. **Providing a copy of SRA to H2 bidder by the applicants**

i. During the hearing it was discerned that the pleadings in IA 557 contained the resolution plan of NARCL, which is the SRA, with a confidential water mark and a question got raised as to how Authum could source a copy of the SRA's plan. At that time the Ld. Sr. Counsel appearing for the administrator of SREI informed that since the Bothras were a part of the CoC, they were privy to all the deliberations and documents of the CoC. However, handing it over to the most formidable competitor is in the teeth of judgment of Hon'ble NCLAT in the matter of **Jet Airways .**

ii. In this regard, even though the Ld. Sr. Counsel for the Administrator appeared to strike a conciliatory note, the issue still remains as to whether a confidential document be passed on to parties outside CoC, much less to the next competitor to the SRA, which has led to raising of the objections delaying the matter further without any benefit or credence to the applicant other than getting exposed on account of nexus between him and the H2 bidder. It was submitted by the applicants that the above objections is legally erroneous as the NARCL Resolution Plan has ceased to be confidential once the same has been approved by the COC. This position of law has been expounded by the Hon'ble Appellate Authority in the case of Workmen of **Jet Airways India Ltd. v. Jet Airways India Ltd. [2022 SCC Online NCLAT 36 paras 20-22].**

iii. However, we observe that the subject paragraphs and in fact the whole tone and tenor of the order is about providing of a copy of the resolution plan to the persons who might be affected by the plan. The question that whether the Resolution plan is a confidential document or not has been clarified by Hon'ble NCLAT in Meenakshi Energy wherein it has been held as under:

"111. In fact, the 'Resolution Plan' furnished by one or the other 'Resolution Applicant' is a ***'confidential'*** *one and it cannot be disclosed to any* ***'Competing' 'Resolution Applicant'*** *nor any view can be taken or objection can be asked for from other 'Resolution Applicants' in regard to one or the other 'Resolution Plan'. It cannot be lost sight of that the conduct of 'Resolution Professional' is important in deciding whether he is guilty of 'Misfeasance' or 'Fraud' or any other 'Serious Irregularity' in the preparation of 'Resolution Plan'.* ***As a matter of fact, the 'Resolution Plan' 'is confidential in nature'****. No wonder, the Resolution Professional is to act in an expeditious fashion. In short, an 'Insolvency Professional' is to perform his duties by facing challenges that he come across during CIRP."*

iv. **In the Jet airways** (supra) it has though been permitted for providing the relevant part of the plan to the likely affected party , but **only after** the same has been **filed with Adjudicating Authority** for approval. However in the instant case, a copy of the full resolution plan complete with the "Water mark – Confidential" has been made available to a competing applicant , which is clearly in the teeth of judgment of Hon'ble NCLAT . Though we do not find that this applicant is in authorised possession of the plan, we find that the pleas raised by **Authum**, the applicant in IA 557, are similar to those raised by Bothras, as such we deem it necessary and sufficient to allude to the objections to the plan taken by Bothras in IA 464, for the ends of justice.

74.3. **Whether the plan is violative of the provisions of IBC**

During the hearing primarily following objections were voiced:

a. The Plan violates section 30(2)(e) of the Code and is in contravention of law.

b. Violation of Regulation 36(b)(1) read with regulation 39(3) is as much as it is contrary to the pre-determined matrix.

c. The Plan is neither feasible nor viable and hence cannot receive the approval of the Court.

Section 30 *stipulates that:*

The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan –

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the 3 [payment] of other debts of the corporate debtor; 4

[(b) provides for the payment of debts of operational creditors in such manner which shall not be less than- (i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or (ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1. *— For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.*

Explanation 2. *— For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor- (i) where a resolution plan has not been approved or rejected by the Adjudicating Authority; (ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being*

in force; or (iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) The implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force

(f) conforms to such other requirements as may be specified by the Board. *[Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013(18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.*

Even though no specific objections have been raised in the pleadings and nor were raised during the hearing to show how the plans violate the provisions of IBC and particularly which law was being contravened so as bring out as to why the same should be rejected by this Adjudicating Authority. However, there are general averments in the petition as well during the hearing, regarding the process integrity and violation of the laid down process. While various other objections have been dealt with in the ensuing text, we take up the purported violations of the process and more specifically the regulations as contended:

74.4. **Whether the provisions of 36(B)(1) read Regulation 39 have been violated regarding the Evaluation Matrix?**

Regulation 36(b)(1) provides as under:

36B. Request for resolution plans.

(1) The resolution professional shall issue the information memorandum, evaluation matrix and a request for resolution plans,

within five days of the date of issue of the provisional list under sub-regulation (10) of regulation 36A to - (a) every prospective resolution applicant in the provisional list; and (b) every prospective resolution applicant who has contested the decision of the resolution professional against its non-inclusion in the provisional list.

Regulation 39(3) provides as under:

The committee shall –

a. Evaluate the resolution plans received under sub-regulation (2) as per evaluation matrix,
b. Record it deliberations on the feasibility and viability of each resolution plan; and
c. Vote on all such resolution plans simultaneously

It has been contended that Reg. 39(3)(a) read with Reg. 2(ha) of the said Regulations, makes it incumbent upon the COC to evaluate the plans strictly in terms of the Evaluation matrix which has been defined in Reg 2(ha) as:

> *"evaluation matrix" means such parameters to be applied and the manner of applying such parameters, as approved by the committee, for consideration of resolution plans for its approval"*

It has been vehemently argued by the said Applicants objecting the plan, that the said provision clearly does not permit any deviation or relaxation once the parameters as well as the manner of application of such parameters has been issued by the Administrator, however this has been expressly violated in the instant case.

To examine the alleged violation of the evaluation matrix, we extract the Evaluation Matrix as provided in the RFRP document. A snapshot thereof is given below:

EVALUATION MATRIX				
QUANTITATIVE PARAMETERS				
S. No.	**Parameter**	**Scoring**		
		Scale	Weightage	Max Score
a.	Upfront Cash Recovery to creditors payable within 90 days of approval of the Resolution Plan by the Adjudicating Authority	0-10	200%	20
	Minimum Upfront Cash (Rs. Crore)		500	
b.	Net Present Value of cash recovery to creditors	0-10	550%	55
c.	Equity allotment to financial creditors	0-10	50%	5
d.	Fresh capital infusion (directly/indirectly)	0-10	50%	5
	Minimum Fresh Capital Infusion (Rs.Crore)		250	
QUALITATIVE PARAMETERS				
e.	Track Record/Experience of the Resolution Applicant(s)	0-10	100%	10
f.	Key Management Personnel	0-10	50%	5

The Evaluation Matrix provided for computation of the Net Present Value (NPV) such that the PRA, who received the highest NPV would score 55 points, which was the maximum score and the other resolution applicants would be scored on pro-rata basis. The Evaluation Matrix stipulated different discount rates to be applied while computing the NPV, depending on the nature of the instrument offered by the PRA as follows (Pg. 192 of the Application)

As per the Evaluation matrix issued by the COC, the following parameters for determination of NPV were laid down which are based on the nature of instrument being offered:

A. NPV of Cash Recovery to creditors

Sr.	Period of cash recovery	Discount rate (%)
i.	0-90 days	0
ii.	91 days – 1 year	8
iii.	> 1 year – 3 years	10
iv.	>3years – 5 years	12
v.	>5 years – 7 years	15
vi.	>7 years – 10 years	30
vii.	> 10 years	40

B. Nature of instrument		
i.	First Pari Passu secured with committed repayment schedule	As per table above
ii.	**Any other instrument with committed repayment schedule**	**+10% to the rate in. the table above**
iii.	Compulsorily redeemable preference shares (CRPS) assumed to be realised at the end of 20th year	60%
iv.	PTCs/SRs/ payable when able instruments	60%

	assumed to be realised at the end of 8th year	

The heads were subsequently categorised in line with the Challenge process note. Read with Clause 2(iii) of the Note for Challenge Process dated December 27, 2022, the "Identified Criteria" for the scoring mechanism in the Challenge Process comprised of 2 parameters viz (i) Upfront Cash recovery and (ii) Committed instruments (any instrument (non-convertible debentures /term loan/any other instrument having a fixed committed repayment schedule). The consolidated CoC would use the Identified Criteria to determine the NPV of the financial proposals for payments to the creditors of the Corporate Debtors, which shall be the basis of Challenge process.

Evaluation Matrix enumerates various instruments with the discount rates given against them for working out the NPV. The case in point is that of the SRs which are to be realised at the end of the 8th year. Such SRs were supposed to be discounted @60% for working out the NPV, but it has been contended that the SRs have been erroneously evaluated at a **discount** rate given at S.N. (ii) above i.e. considering them to be 'Any other instrument with committed repayment schedule', only in case of NARCL , who thereby turns out to be H1 bidder in the evaluation matrix.

In this regard the definition of the SRs as given in Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI") has been relied upon by the applicants. SRs are defined in the said act as follows:

> ***"Security Receipt"*** *means a receipt or other security, issued by an asset reconstruction company to any qualified buyer pursuant to a scheme, evidencing the purchase or acquisition by the holder thereof, of an undivided right, title or interest in the financial asset involved in securitization"*

From the very definition it is apparent that the SRs are always associated with a financial asset involved in the securitization and therefore the contention of the NARCL that the SR being offered in the Resolution Plan is a hybrid one or combination instrument cannot be accepted as the Evaluation Matrix does not envisage such a category.

This view, in our considered opinion, is not sustainable as a separate category namely **'Any other instrument with committed repayment Schedule'**, has actually been provided in the Evaluation Matrix and despite the fact that SRs exist as a separate entry in the Evaluation Matrix, does not mean that it cannot be considered under **'Any other instrument with committed repayment schedule',** when these have been promised to be backed by the NCDs, with a committed repayment Schedule. This objection therefore must be rejected.

74.5. **Whether any relaxation was given to NARCL in assigning discounting factors in contravention to the laid down procedure of conducting the CIRP?**

In order to examine this aspect , a chronology of events has been captured in the table below:

DATE	EVENT
01.04.2022	RFRP and EM were uploaded on the VDR.
24.09.2022	RFRP was re-isued
26.09.022	RFRP was uploaded on VDR
02.12.2022	NARCL filed Resolution Plan
03.12.2022	Resolution Plans were opened before the CoC.
26.12.2022	CoC approved the challenge mechanism
27.12.2022	Note on Challenge mechanism was issued and PRAs were requested to update their Resolution Plans accordingly.

DATE	EVENT
31.12.2022	Revised Resolution Plan filed
03.01.23	COC Meeting held and results of Challenge Mechanism were presented. NPV of NARCL was found to be the highest on the basis of self-declaration.
06.01.23	R-1 presents Final Resolution Plans of all PRAs in the meeting of COC and representatives of respective PRAs were invited for discussion
11.01.23	COC extends further time for PRAs to submit Final Resolution Plan incorporating the comments/suggestions of COC by 14 January 23
14.01.2023	PRAs submit the plans
17.01.23	Process Advisor (SBI Caps) makes presentation on the Plans and awarded scores. All PRAs were directed to submit their further modified Resolution Plans by 18 January 2023
18.01.2023	Final revised Resolution Plan filed
20.01.2023	COC permits NARCL to make modification in the plans by way of addendum after the cut off date i.e., 18.01.23. CoC in its meeting resolved to put the plans to vote
21.01.23	Voting window is opened for all COC Members
24.01.2023	NARCL filed Addendum to the Resolution Plan
13.02.23	Administrator issues Appendix to COC meeting held on 3rd January 2023 with the comments of SBI Caps granting exemption to NARCL
14.02.2023	Voting ended

74.5.1 Mr. Sudipto Sarkar Ld. Sr.Counsel appearing for the Administrator categorically stated that no relaxation was given to the SRA and that the clarifications sought by the PRAs cannot be termed as a relaxation.

74.5.2 As seen above, the intricate process of formulation and evaluation and approval was well devised by the CoC with the help of their process advisors, which included a Challenge Mechanism (in terms of Regulation 39(1A) (b) of the CIRP Regulations). The meticulous detail with which the entire process was devised is discernible from the Challenge process mechanism given below:

*2.**Challenge Process:***

The process for selection of the Successful Resolution Applicant is provided below:

Process Explanation	*(i) The resolution plans submitted on December 02,2022 along with addendums, e-mail clarifications and the Compliance Submission (as defined in the Intimation for Compliance Submission) including the last submitted financial proposal for the non-committed instruments (as received pursuant to the Intimation for Compliance Submission by the due date set out herein) shall constitute the **"Plans for Evaluation**" submitted by the Eligible RAs.* *(ii) The serial numbers 1,2,and 3 of the NPV (as defined hereinabelow) scoring mechanism provided in Annexure A herewith; i.e., Upfront Cash Recovery and Committed Instruments (any instrument non convertible debentures/term loan/any other instrument) whether secured (first*

	*pari passu) or any other instrument having a fixed committed repayment schedule), shall be referred to as **"Identified Criteria"** for the purpose of this Challenge Process. The Identified Criteria shall be used by the Consolidated CoC and its advisors to determine the net present value **("NPV")** of the financial proposals for payment to the creditors of the Corporate Debtors, which shall be the basis for the Challenge Process. The determination of NPV of the financial proposals by the Consolidated CoC and is advisors shall be binding on the Eligible RAs which shall not be challenged/objected to by the Eligible RAs which shall not be challenged /objected to by the Eligible RAs. It is clarified that the Discount Rate set out in the EM shall be sued for the purpose of computation of NPV for the purpose of this Challenge Process and the details are set out in the Annexure-A.* *(iii) The Eligible RAs shall provide the calculated NPV for each financial proposal on a self-certification basis. Notwithstanding the aforesaid, the calculation of the NPV by the Consolidated CoC and its advisors will be based solely on the financial proposal(s) submitted by each of the Eligible RAs in the Excel/PDF format; i.e., the details of the values filled up for the Identified Criteria. For avoidance of doubt, it is clarified that in the event of any inconsistency between the values provided for the Identified Criteria by the Eligible RAs in the financial*

	proposal and the self-certified NPV provided by the Eligible RAs, the values provided for the Identified Criteria by the Eligible RAs shall be considered by the CoC and its advisors for the calculation of the NPV. *(iv) An amount of INR 3000 crores (Indian Rupees Three Thousand Crores only) shall be considered as the minimum threshold value of the financial proposals towards the Upfront Cash Recovery for the Eligible RAs for participating in the Challenge Process. Each financial proposal participating in the first round of the Challenge Process should at least meet the aforesaid threshold value. The utilisation of this amount will be in the manner set out for Upfront Cash Recovery under the RFRP. It is clarified that for the calculation of the Upfront Cash Recovery, any third party assets held with the Corporate Debtor shall not be considered.* *(v) If the aggregate of the cash and bank balance and cash equivalent of the Corporate Debtor as on the Transfer Date is more than the Upfront Cash Recovery as determined in accordance with this Challenge Process, then the entire amount of cash and bank balance and cash equivalent in excess of Upfront Cash Recovery offered by the Successful Resolution Applicant shall be deemed added in the Upfront Cash Recovery which shall be adjusted from the actual face value of the deferred instruments (in the order of*

	commitment; i.e., the committed instruments) and the principal value of such instruments will accordingly be adjusted. *(vi) The instruments provided by the Eligible RAs as part of the financial proposal, can only be redeemed/ prepaid at least at par value.* *(vii) Any interest accruing on the Upfront Cash Recovery shall be exclusively for the benefit of the Consolidated CoC and shall pass through to the Consolidated CoC on the date of implementation.* *(viii) No Financial proposal submitted as part of the Challenge Process in any round shall be less than the values for Upfront Cash Recovery and Committed Instruments submitted as part of the Plans for Evaluation and less than the values submitted in the previous round of the Challenge Process.* *In the Challenge Process, an opportunity shall be provided to the Eligible RAs in the manner set out hereunder to modify their resolution plans only to the extent of the parameters which consequentially result in any upward change in the Identified Criteria.*
	The financial proposal with the highest NPV shall be considered as the highest evaluated financial proposal.

Step 1	*On the designated date of the Challenge Process, the Eligible RAs shall be required to submit their bids for the first round, within the designated deadline intimated by the Administrator. Within 10(ten) minutes of such submission, the Eligible RAs shall share the password of the proposal document with the Administrator.* *The consolidated CoC and its advisors shall thereafter determine the NPV of the financial proposals. The Administrator shall intimate the Eligible RAs of the financial proposal with the highest NPV of the said round along with the name of the Eligible RA who has submitted the financial proposal with the highest NPV, as provided to him by the CoC/its Advisors, within 1(One) hour of receipt of all the financial proposals post which the next round shall commence immediately. The same process shall be followed for each round of the Challenge Process. It is hereby clarified that the details of the financial proposal submitted by the Eligible RAs and other terms of the resolution plans submitted by each of the Eligible RAs shall not be disclosed to the other Eligible RAs.* *In each round, each Eligible RA shall submit only 1(one) financial proposal. In the event that the Eligible RA submits more than 1(one) financial proposal in a round, then the financial proposal containing the higher value shall be considered by the Consolidated CoC.* *The financial proposal submitted by each Eligible RA in each round shall supersede the financial proposal submitted by the relevant Eligible RA in the immediately*

	preceding round.
Step 2	*Each Eligible RA should submit a financial proposal (comprising the Identified Criteria) whose NPV value shall not be less than the sum of the highest NPV declared in the immediately preceding round and INR 200 crores (Indian Rupees Two Hundred Crores only)* ***("Incremental Value 1****"), in the second and third round of this process.* *The Eligible RAs participating in the rounds thereafter (i.e. fourth round onwards) should submit a financial proposal (comprising the Identified Criteria) whose NPV value shall not be less than the sum of the highest NPV declared in the immediately preceding round and INR 100 crores (Indian Rupees One Hundred Crores only)* ***("Incremental Value 2")*** *Incremental Value 1 and Incremental Value 2 are collectively referred to as* ***"Incremental Value".*** *Any Eligible RA that submits a financial proposal (comprising the Identified Criteria) that does not meet the relevant Incremental Value in a given round shall not be considered for participation in the succeeding round of the Challenge Process, and the financial proposal last submitted shall be deemed to be its best financial proposal. The Eligible RAs shall not be permitted to make any modifications to such financial proposal.*
Step 3	*The Challenge Process shall conclude if , (i) none of the*

	Eligible RAs submit their financial proposal in a round or (ii) all Eligible RAs have communicated their inability to participate further in the Challenge Process; or (iii) five rounds of bidding in the Challenge Process have concluded. For each of the Eligible RAs, the highest of the financial proposal(s) submitted by them in the last participating round, shall be considered the final financial proposal submitted by such Eligible RA. *Upon conclusion of all rounds, the Eligible RA whose financial proposal is determined to have the highest NPV at the last round shall be intimated to all the Eligible RAs.* *All the Eligible RAs shall be required to submit the final resolution plan with their best financial proposal as determined in accordance with the Challenge Process and the terms of this document, within [24 hours] from the closure and declaration of the name of the Eligible RA with the highest NPV at the end of the Challenge Process.*

74.5.3. Further, for Challenge process for which an elaborate note was well circulated beforehand, comprised of 5 rounds of bidding. At the end of each round, the Eligible PRAs were informed of the highest NPV scored. In each successive round, the Eligible PRAs could revise their financial proposals such that their respective NPV values shall not be less than the sum of the highest NPV declared in the immediately preceding round and the stipulated amounts (INR 200 cr. in the 2nd and 3rd round and INR 100 cr. in the rounds thereafter). Following this elaborate process, which was circulated well in advance to all the participants including

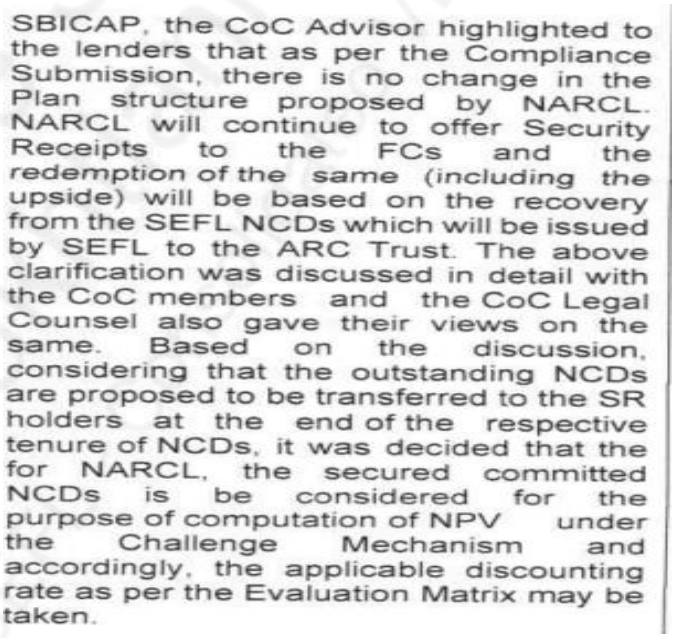
the CoC members and the PRAs, the challenge process was culminated and the final NPV obtained by various bidders was frozen. It is important to note here that NO Change was made to the Challenge mechanism as circulated to all the participants. The respective Ld. Sr. Counsel appearing for the CoC and the Administrator submitted that no relaxation was given to NARCL and even if they had sought one, as is discerned from the Final resolution plan (Clause 3.9.1), this is of no material significance as subsequently, modified resolution plans were submitted on 31.12.2022 considering these discounting factors, whereas the clarification was submitted by NARCL to the CoC on 3.01.2023, so to say that in the modified plan, the issue of adopting a discount rate for SRs backed by NCDs was already incorporated by NARCL i.e. without waiting for any relaxation. It was only to draw the attention of the CoC that a clarification was issued which was ultimately contained in the Addendum to the minutes of 32nd CoC meeting.

74.5.4. The objectors on the other hand had stated that this was done behind their back and have called it a violation of the Regulation 39. Both the Ld. Sr. Counsel for Bothras and Authum repeatedly emphasized this aspect that the relaxation was granted singularly to NARCL and then regularized by way of issue of Addendum to the minutes of CoC, which was issued belatedly and that too only selectively. It was submitted that the defendants i.e. CoC and Administrator were misleading the tribunal because the Administrator had in fact his own Affidavit has admitted that a relaxation was sought by NARCL and the same was clarified in the Addendum to the minutes of the meeting of 32nd(Consolidated 29th) CoC.

74.5.5. According to Ld Senior Counsel for objectors, the assertion that no relaxation was sought is negated at page 58 of the reply and it is clear that a relaxation was indeed sought by NARCL on the issue of a different discounting factor to be taken for evaluating

the SRs as these were now been proposed to be backed by Committed payment instruments namely NCDs.

74.5.6. Eventually when a PRA has categorically asked for a clarification then the RP has to take cognizance and have to appropriately reply. Here we find that the Administrator, CoC as well as SRA in their replies as also during the hearing have submitted that no relaxation was granted to NARCL. In this regard much reliance was placed to the Addendum to the minutes of meeting of 32nd CoC , which is placed at page 78 of the Administrator's reply in IA 464 and page 72 of IA 557. This is an Addendum to the Minutes of 32nd meeting based on the comments of SBI caps and deals with the clarification received from NARCL before the start of the Challenge Mechanism. The Addendum in the last para contains the following text, the last para of which was argued at length by both the sides i.e. for and against.:



SBICAP, the CoC Advisor highlighted to the lenders that as per the Compliance Submission, there is no change in the Plan structure proposed by NARCL. NARCL will continue to offer Security Receipts to the FCs and the redemption of the same (including the upside) will be based on the recovery from the SEFL NCDs which will be issued by SEFL to the ARC Trust. The above clarification was discussed in detail with the CoC members and the CoC Legal Counsel also gave their views on the same. Based on the discussion, considering that the outstanding NCDs are proposed to be transferred to the SR holders at the end of the respective tenure of NCDs, it was decided that the for NARCL, the secured committed NCDs is be considered for the purpose of computation of NPV under the Challenge Mechanism and accordingly, the applicable discounting rate as per the Evaluation Matrix may be taken.

"*…Based on the discussions, considering that the outstanding NCDs are proposed to be transferred to the SR holders at the end of the respective tenure of NCDs , it was decided that (the) for*

NARCL, the secured committed NCDs is be considered for the purpose of computation of NPV under the Challenge Mechanism and accordingly, the applicable discounting rate as per the Evaluation Matrix may be taken."

74.5.7. So the contention is that it is here that the decision to consider an "appropriate" discounting rate for NARCL has been taken on account of the fact that outstanding NCDs were proposed to be transferred to the SR holders and that the SECURED COMMITTED NCDs are to be assigned appropriate discounting rate.

74.5.8. Ld. Sr. Counsel Mr. Sarkar, appearing for the Administrator submitted that despite the fact that this Addendum was in the knowledge of the CoC members, which included Bothras, no exception was ever taken by them. Since this clarification was contained in the Resolution plan submitted by NARCL on 31.12.2022, it took some time for the SBI Caps, the process advisors to CoC, to evaluate the same and report the matter to CoC, who after deliberating the same decided to issue the Addendum to the minutes of CoC held on 3.01.2023.

74.5.9. The only reason for apprehension in the minds of the objector, to our understanding, is a perceived lack of transparency in the matter. During hearing also, this simmering discontent came to fore, when it was mentioned over and over again, as to why the minutes of the CoC are not attached to the plan. However, as far as the issue at hand is concerned, suffice it to say the no relaxation appears to have been given to NARCL, as the issue of the discount rate was already considered by NARCL even at the stage of draft resolution plan. The said clarifications are once again reiterated here for the sake of continuity :

1. Maturity Period for security Receipts may be read as 60 months instead of 57 months.
2. At the end of the respective tenure of NCDs (i.e. SEFL NCD-1 and SEFL NCD-2),the Trust shall transfer the

outstanding NCDs to Security Receipt Holders without any further approval.

74.5.10. These were the clarifications which were appraised by the process advisors along with other plans, the presentation of which is put up in the reply of the Administrator at pages 44 onwards including the addendum at page 72 , to IA 557. These issues were widely discussed in the CoC meetings and decision taken. It was these clarifications that formed a part of the addendum to the minutes of 32nd CoC , the proceedings of which were circulated to the members of CoC on the VDR. It may also be pertinent to mention here that after the hearing was over, a sealed envelope was received in the Registry of this Tribunal which with a forwarding letter purportedly by the CoC. This envelope contains one page transcript of the proceedings of 32rd CoC held on 03-01-2023 along with the minutes of proceedings of 33 rd CoC meeting of SIFL and SEFL(Being held as 30 th. consolidated CoC meeting) of SIFL & SEFL held through video conferencing. There was one pen drive purportedly containing video recording of 30 the meeting as per covering letter. This video recording was never asked for by us and thus we did not deem it necessary to see it. The documents and pen drive have been put in cover, sealed and made a pert of these proceedings.

74.5.11. Ld. Sr. Counsel for the SRA stated that the provision for voting on the plans in Regulation 39 of the IBBI (CIRP regulations), is to give a final opportunity to the CoC to exercise its wisdom on whether to agree or not to agree to the plan. The fact remains that the plans have been approved by the CoC with a whopping 89.25% vote is a testimony to the approval of the entire process of getting offers, evaluation and discussions on the viability and feasibility of the plan, as a final step towards value maximization. After all the members of CoC would not agree to something that acts adversely to their interests.

74.6. **Whether the whole gamut of evaluation matrix, adoption of discounting factors and the manner of servicing of the NCDs and SRs as proposed in the plan is justiciable on the ground that it falls within the Commercial wisdom of the CoC.**

74.6.1. Ld. Sr. Counsel appearing for the objectors had opened up their arguments with the statement that anything and everything cannot be covered by "Commercial Wisdom", a term that is a being extensively used to cover all the loop holes of a process and therefore while it is incumbent upon the Adjudicating Authority to examine whether the plan is compliant with various stipulations of the code and is not in violation of the regulations laid down, it has an intrinsic mandate to examine even the commercial aspects if they have any bearing on the examination of requisite compliances. On the other hand it has been argued by the respondents viz. CoC, the Administrator and the SRA that the commercial wisdom of the CoC is supreme and cannot be questioned, leave alone any adjudication in the commercial aspects. They have relied on following authorities:

a. ***India Resurgence ARC Private Limited v. Amit Metaliks Limited, 2021 SCC OnLine SC 409- Paragraphs 12 and 13***
b. ***Jaypee Kensington v. NBCC (2022) 1 SCC 401 – Paragraph 107***
c. ***PNC Infratech Ltd. v. Deepak Maini CA(AT)(Ins.) No. 143/2020-Paragraph 38***
d. ***Jaypee Kensington Boulevard Apartments Welfare Assn. v. NBCC (India) Ltd., (2022) 1 SCC 401 – Paragraph 107.1***
e. ***K. Sashidhar v. Indian Overseas Bank (2019) 12 SCC 150- Paragraph 52***
f. ***Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors. (2020) 8 SCC 531-***

74.6.2. It has been argued that it is an established principle and a well settled proposition of law, that the commercial wisdom of the CoC is non-justiciable. According to the Code, the Adjudicating Authority has limited jurisdiction in matters pertaining to the

exercise of commercial wisdom by the CoC. Such limited jurisdiction of the Adjudicating Authority extends only when a resolution plan approved by the CoC does not comply with the provisions of the law. However, the Adjudicating Authority cannot review the adequacy or rationale of the assessment made by the CoC.

74.6.3. While we do not have any qualms on the issue in the wake of this catena of judgements delivered by the higher courts including the Apex Court, we are further convinced that even if we want to peep in the skin of the matter we are confronted with issues like – Nature of these instruments , the discount rate applied and the manner of marking or allocation of scores, the projected veracity of the propositions like transfer of the unserviced NCDs to the creditors and their likely value as SRs in future and its effect on the NPV being worked out and their overall effect on the viability of the plan on a future date . These are the issues that are the products of financial expertise being also dependant on the future economic scenario of the country.

74.6.4. In this context it may be appropriate to refer to the comparative table attached with the IA 557 (and elsewhere too), which shows the qualitative and quantitative scores marks awarded to various PRAs based on the parameters of Evaluation Matrix.

SCORED EVALUATION MATRIX			
IM Scoring	**Arena Varde**	**NARCL**	**Authum**
Quantitative Parameters			
Score for Upfront Cash Recovery (a)	20.00	19.49	19.93
Score for NPV of Cash Recovery (b)	46.36	55.00	54.71
Score for Identified Criteria (C= a + b)	66.36	74.49	74.63
Score for Equity allotment to FCs (D)	-	5.00	-
Score for Fresh Capital Infusion (E)	-	-	-
Total Quantitative Score (F=C+D+E)	**66.36**	**79.49**	**74.63**
Qualitative Parameters			
Track Record/Experience of the RA (G)	10.00	5.00	7.00
Key Managerial Personnel (H)	5.00	5.00	5.00
Total Qualitative Score (I=G+H)	**15.00**	**10.00**	**12.00**
Total Score (F+I)	**81.36**	**89.49**	**86.63**

74.6.5. The Calculation of the NPV based on the categorization arrived at by CoC in the Challenge process document which was issued to all the bidders is given below after the final processing by the CoC, following the laid down process in the Challenge document.

Sr. No.	NPV Values (in crs.)	Arena-Varde	NARCL	Authum
1.	Upfront Cash Recovery	Not qualified to proceed from Round 2 as per the Challenge Process Document	3,180.00	3240.00
2.	**Committed Instruments**		-	
a.	Secured		2375.58	2,286.00
b.	Unsecured		-	-
	Total NPV computed		5555.58	5526.00
	Self-certified NPV by RA		5555.50	5526.00

74.6.6. It is beyond question that these tables would have been prepared by the CoC and/or their advisers, who are experts in their own right and have passed the muster of CoC, and challenging such an analysis would require views of counter experts, whose analysis again would be amenable to counter arguments, thus leading to an unending cycle of fruitless exercises. It is in this conspectus that the issue of justiciability of the Commercial wisdom has to be seen

74.6.7. We rely on **K. Sashidhar v. Indian Overseas Bank & Others** (2019) 12 SCC 150), wherein the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the NCLT. On receipt of such a proposal, the **NCLT is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2) of the Act.** The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the NCLT is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the NCLT can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.

74.6.8. The comparative roles of the CoC and NCLT have been duly circumscribed by Hon'ble Supreme court in terms of the stipulations of the Code and the issue of non-justiciability of the Commercial Wisdom of the CoC has been dealt in much detail in **K.Sashidhar**. This aspect has further been treated in **Jaypee Kensington Boulevard Apartments Welfare Assn. v. NBCC (India) Ltd., (2022) 1 SCC 401 : 2021 SCC OnLine SC 253 at page 549 as below:**

In *K. Sashidhar* [*K. Sashidhar* v. *Indian Overseas Bank*, (2019) 12 SCC 150 : (2019) 4 SCC (Civ) 222] , while setting out the relevant

extracts from the said Report, this Court exposited on the primacy of the commercial wisdom of the Committee of Creditors in the corporate insolvency resolution process in the following terms : (SCC pp. 183-84, paras 52-53)

"*52.* As aforesaid, upon receipt of a "rejected" resolution plan the adjudicating authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under Section 33(1) of the I&B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors. From the legislative history and the background in which the I&B Code has been enacted, it is noticed that a completely new approach has been adopted for speeding up the recovery of the debt due from the defaulting companies. In the new approach, there is a calm period followed by a swift resolution process to be completed within 270 days (outer limit) failing which, initiation of liquidation process has been made inevitable and mandatory. In the earlier regime, the corporate debtor could indefinitely continue to enjoy the protection given under Section 22 of the Sick Industrial Companies Act, 1985 or under other such enactments which has now been forsaken. Besides, the commercial wisdom of CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. *There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject-matter expressed by them after due deliberations in CoC meetings through voting, as per voting shares, is a collective business decision. The legislature, consciously, has not provided any ground to challenge the*

"commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority. That is made non-justiciable.

53. In the report of the **Bankruptcy Law Reforms Committee** of November 2015, primacy has been given to CoC to evaluate the various possibilities and make a decision. It has been observed thus:

"***The key economic question in the bankruptcy process***

When a firm (referred to as the corporate debtor in the draft law) defaults, the question arises about what is to be done . *Many possibilities can be envisioned. One possibility is to take the firm into liquidation. Another possibility is to negotiate a debt restructuring, where the creditors accept a reduction of debt on an NPV basis, and hope that the negotiated value exceeds the liquidation value. Another possibility is to sell the firm as a going concern and use the proceeds to pay creditors. Many hybrid structures of these broad categories can be envisioned.*

The Committee believes that there is only one correct forum for evaluating such possibilities, and making a decision: a ***creditors committee****, where all financial creditors have votes in proportion to the magnitude of debt that they hold. In the past, laws in India have brought arms of the Government (legislature, executive or judiciary) into this question. This has been strictly avoided by the Committee. The appropriate disposition of a defaulting firm is* ***a business decision,*** *and only the creditors should make it*."

(emphasis supplied)

74.6.9. Similarly in Para 103.7 in **Jaypee Kensington Boulevard Apartments Welfare Assn. v. NBCC (India) Ltd., (2022)** 1 SCC 401: 2021 SCC OnLine SC 253 at page 556,, while referring to **K. Sashidhar**, the Hon'ble Supreme court has observed as under:

"This Court analysed the entire scheme of the Code, particularly concerning the resolution plan and its approval by the Committee of Creditors and then by the adjudicating authority; and held that the

percentage of voting share was not directory and in the light of the provisions contained in the Code and the CIRP Regulations, the approving votes must fulfil the requisite percentage of voting share. The Court also held that the amendment to Section 30(4), prescribing new qualifying standard for approval of resolution plan was neither retrospective in operation nor was having retroactive effect. The Court also rejected the suggestion for different percentage of voting share in Kspipl. These aspects are not much relevant for the present purpose. The aspects relevant are the enunciations in relation to the respective roles of the Committee of Creditors and the adjudicating authority. As already noticed, this Court explained in detail the primacy given to the ***commercial wisdom*** *of the Committee of Creditors and such commercial wisdom being made* ***non-justiciable."***

75. In light of the above it emerges that two aspects are no longer *res-integra,(i)* Creditors are endowed with the power to make business decisions and (ii) the CoC is the appropriate forum for making such decisions and by virtue of the primacy accorded to CoC, its **commercial wisdom** is **non-justiciable.**

76. In the above conspectus, nothing *apparently* is found contravening as alleged. Further, in view of supremacy ascribed to **Commercial Wisdom of CoC**, we do not find any necessity of wading into the gamut of mechanics of the evaluation matrix, manner of servicing of the NCDs and SRs and other similar commercial ingredients. We are convinced that a decision reached by the CoC, comprising of more than 39 major banks and financial Institutions, after conducting a marathon exercise along with experts in the field of finance through approximately 38 meetings, and approving the same with a majority of 89.25 % votes, is **certainly its Commercial wisdom** which is non-justiciable in light of various judgements cited above.

77. In view of the foregoing discussion, we do not find any merit in the IAs 413, 464 and 557 in CP(IB) 295/KB/2021 and these are accordingly **rejected.**

I.A. (IB) No. 428/KB/2023 and I.A. (IB) No. 434/KB/2023 (RESOLUTION PLAN)

Preliminary

78. Now we proceed to consider the Resolution Plan which has been filed before this Adjudicating Authority through I.A. (IB) No. 428/KB/2023 and I.A. (IB) No. 434/KB/2023 which are applications filed under section 30(6) of the Insolvency and Bankruptcy Code, 2016, after approval of the resolution plan by the consolidated Committee of Creditors **("CoC")** of SREI Equipment Finance Limited and SREI Infrastructure Finance Limited.

79. These applications were filed by Mr. Rajneesh Sharma, Administrator of SREI Equipment Finance Limited **("SEFL")** and SREI Infrastructure Finance Limited **("SIFL"),** by invoking the provisions of section 30(6) of the Insolvency and Bankruptcy Code, 2016 **("the Code" or "IBC")** read with regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 **(CIRP Regulations)** for approval of a Resolution Plan in respect of SREI Equipment Finance Limited and SREI Infrastructure Finance Limited.

80. The underlying Company Petitions in C.P. (IB) No. 294/KB/2021 and C.P. (IB) No. 295/KB/2021 were filed by the Reserve Bank of India, the Appropriate Regulator, against SIFL and SEFL respectively, under the Insolvency and Bankruptcy Code 2016 read with the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 **("FSP Rules")** which were admitted *vide* order dated 08 October 2021.

81. Mr. Rajneesh Sharma was appointed as the Administrator of SEFL and SIFL. The Authorised Representative *vide* a press release dated 11 October 2021 advised that the Advisory Committee constituted on 04

October 2021 shall continue as the Advisory Committee constituted under rule 5(c) of the FSP Rules. The Advisory Committee was reconstituted from time to time in accordance with the directions from the Reserve Bank of India.

Constitution of CoC

82. The IRP made public announcement on 11 October 2021 in *the Times of India (English) (Kolkata Edition), Anadabazar Patrika (Bengali) (Kolkata Edition) Maharashtra Times (Marathi) (Mumbai edition) and Navbharat Times (Hindi) (Mumbai edition)* newspapers regarding initiation of Corporate Insolvency Resolution Process **(CIRP)** and called proof of claims from the financial and operational creditors, workers and employees of the corporate debtor in the specified forms till 22 October 2021.

83. The Administrator constituted the CoC for SEFL and SIFL. Two I.A.s, i.e. I.A. (IB) No. 1100/KB/2021 in C.P. (IB) No. 295/KB/2021 and I.A. (IB) No. 1090/KB/2021 in C.P. (IB) No. 294/KB/2021 were filed by the Administrator seeking consolidation of the CIRP and CoC of SEFL and SIFL. This Adjudicating Authority *vide* order dated 14 February 2022[57] approved the said I.A.s and allowed the consolidation of the CoC. The CoC of SIFL and SEFL were consolidated on 16 March 2022 which consists of 43 Financial Creditors which is given hereunder[58]:

Sl. No.	Members of the Consolidated Committee of Creditors ("CoC")
1.	Canara Bank
2.	Union Bank of India
3.	Punjab National Bank

[57] Annexure G at Pp. 77-88 in I.A. (IB) No. 434/KB/2023
[58] https://www.srei.com/storage/app/media/documents/2022/march/constitution-of-consolidated-coc-sifl-and-sefl-pursuant-to-honble-nclt-order160322.pdf

Sl. No.	Members of the Consolidated Committee of Creditors ("CoC")
4.	State Bank of India
5.	Bank of Baroda
6.	Indian Bank
7.	Punjab and Sind Bank
8.	Central Bank of India
9.	UCO Bank
10.	Bank of India
11.	Indian Overseas Bank
12.	Bank of Maharashtra
13.	IDBI Bank
14.	Lakshmi Vilas Bank
15.	Dhan Laxmi Bank
16.	Axis Bank
17.	South Indian Bank
18.	Karur Vysya Bank
19.	Karnataka Bank
20.	ICICI Bank
21.	HDFC Bank
22.	SIDBI

Sl. No.	Members of the Consolidated Committee of Creditors ("CoC")
23.	NABARD
24.	IFCI ltd.
25.	Bank of Ceylon
26.	People's Bank
27.	Standard Chartered Bank
28.	Aozora Bank Ltd.
29.	ING Bank, a branch of ING-DiBa AG
30.	DEG - Deutsche Investitions-und Entwicklungsgesellschaft mbH ("DEG")
31.	Sumitomo Mitsui Finance and Leasing Co., Ltd.
32.	Finnish Fund for Industrial Cooperation Ltd. (FINNFUND)
33.	Belgian Investment Company for Developing Countries SA/NA - BIO
34.	Société de Promotion et de Participation pour la Coopération Economique S.A ("PROPARCO")
35.	Export Import Bank of United States (represented by International Advisors)
36.	Global Climate Partnership Fund S.A, SICAV- SIF
37.	Oesterreichische Entwicklungsbank AG ("OeEB")
38.	SACE S.p.A. The Export credit Agency of Italy ("SACE")
39.	Axis Trustee Services Limited
40.	Catalyst Trusteeship Limited

Sl. No.	Members of the Consolidated Committee of Creditors ("CoC")
41.	IDBI Trusteeship Services Limited
42.	Nicco Engineering Services
43.	SREI Equipment Finance Limited*

**SEFL being a related party to SIFL, SEFL shall not have any right of representation, participation or voting in a meeting of the committee of creditors pursuant to section 21(2).*

84. The Applicant states that a total of 39 CoC meetings [three separate CoC Meetings and 36 Consolidated CoC meetings] have been held during CIRP period spreading over a period of 02 November 2021 to 15 February 2023.

Collation of claims

85. The amounts claimed and admitted are summarised below:

Amount in INR/Crore

Nature of creditor	**Amount claimed**	**Amount admitted**
Financial Creditors	45,372.44	32,749.26
Operational Creditor (Other than Workmen and Employee and Statutory Dues)	224.12	123.54
Operational Creditors (Government Dues)	190.23	0.07
Operational Creditor *(Workmen & Employee)*	3.42	3.39
Other Creditors	150.98	150.05
Total	**45,941.149**	**33,026.31**

CIRP and compliances

86. The Applicant submits that in terms of the provisions of section 25(2)(h) of the Code read with regulation 36A(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, invitations in Form 'G' for Expressions of Interest **(EoI)** from potential resolution applicants was issued on 25 February 2022. The last date for submission of EoI was 12 March 2022.

87. The notice was also published on the website of the Insolvency and Bankruptcy Board of India **(IBBI)**.

88. The Applicant submits that in response to the invitation for EoI published on 25 February 2022, fourteen EoIs were received. The provisional list of prospective Resolution Applicants was issued on 22 March 2022 and the Final list of eligible Resolution Applicants was issued on 06 April 2022[59] which was amended and four additional prospective Resolution Applicants were added. A revised Final list of eligible Resolution Applicants was issued on 17 November 2022[60]. The Administrator then shared the Information Memorandum, Evaluation Matrix and Request for Resolution Plan **(RFRP)** with the Prospective Resolution Applicants on 01 April 2022, the RFRP was re-issued on 24 September 2022.

89. In the interregnum the Administrator received several EoIs, which was informed to the Consolidated CoC. The Consolidated CoC resolved to issue a note to the interested parties that to submit EoI and Resolution Plans with the prior approval of the members. The said resolution was published between 05 October 2022 and 07 October 2022.

90. The last date for submissions of Resolution Plans was extended on nine occasions and the last date for submission of Resolution Plan was 02 December 2022.

[59] Annexure P at Pages 1390-1391 in I.A. (IB) No. 434/KB/2023
[60] Annexure R at Pages 1534-1535 in I.A. (IB) No. 434/KB/2023

91. As per regulation 35(2) of the CIRP Regulations, after receipt of the Resolution Plan, the Administrator informed the fair value and liquidation value of the Corporate Debtor to the CoC.

Evaluation and voting

92. The Resolution Plans received from National Asset Reconstruction Company Limited ("NARCL"), Consortium of VFSI Holdings Pte. Limited and Arena Investors LP and Authum Investment and Infrastructure Limited were opened by the Administrator in the presence of the CoC on its Consolidated CoC meeting held on 03 December 2022 and the Resolution Plans were considered. It is to be noted that the Resolution Plans submitted by the eligible Resolution Applicants were consolidated Resolution Plans with respect to SEFL and SIFL.

93. At the Consolidated CoC meeting held on 26 December 2022, the Consolidated CoC approved a challenge mechanism process to improve the financial proposals in the Resolution Plans in accordance with regulations 39(1A) (b) of the CIRP Regulations. The Administrator issued a note on the challenge process dated 27 December 2022[61]. The "Identified Criteria" for the scoring mechanism in the Challenge Process comprised of two parameters- (i) Upfront Cash Recovery and (ii) Committed Instruments (any instrument (non-convertible debentures/term loan/ any other instrument having a fixed committed repayment schedule).

94. The four prospective Resolution Applicants submitted their revised Resolution Plans on 31 December 2022. The revised Resolution Plans were discussed in the consolidated CoC meetings and after several rounds of negotiations between the prospective Resolution Applicants and the consolidated COC.

[61] Annecure R1 at Pages 1527-1533 in I.A. (IB) No. 434/KB/2023

95. The prospective Resolution Applicants filed the revised/modified consolidated Resolution Plans along with addendums 18 January 2023.

96. In the Consolidated CoC meeting held on 17 January 2023, Dun & Bradsteet, a techno viability agency appointed by the Consolidated CoC submitted it's report on the Resolution Plans dated 17 January 2023 and submitted that all the Final Resolution Plans are feasible, viable and in compliance with the provisions of the Code. The Consolidated CoC had appointed Kroll for the purpose of evaluating the Resolution Plans to check the eligibility under section 29A of the Code. Kroll submitted it's report dated 09 January 2023 stating that there were no adverse observations with respect to all the prospective Resolution Applicants under section 29A of the Code. The said report was submitted to the Consolidated CoC in its meeting held on 20 January 2023. SBI Caps also presented its observations on the revised Resolution Plans in terms of the qualitative and quantitative parameters of the Evaluation Matrix at the same meeting.

97. The Revised Resolution Plans was discussed in the Consolidated CoC meeting held on 20 January 2023. The feasibility and viability of the Resolution Plans have been recorded by the CoC[62]. After due discussions the Administrator placed the said Resolution Plans before the Consolidated CoC for e-voting on 09 February 2023 which was further extended to 14 February 2023. The Consolidated Resolution Plan submitted by NARCL **("Successful Resolution Applicant")** on 18 January 2023[63] along with addendum dated 24 January 2023 was approved with 89.25% voting share[64].

[62] Pahe 88C in I.A. (IB) No. 434/KB/2023
[63] Annexure S at Pages 1534-1672 in I.A. (IB) No. 434/KB/2023
[64] Annexure U at Pages 1680-1681 in I.A. (IB) No. 434/KB/2023

98. The Applicant issued the Letter of Intent on 15 February 2023 to the Successful Resolution Applicant[65] which was duly acknowledged by the Successful Resolution Applicant[66].

99. In accordance with regulation 36B(4A) of the CIRP Regulations, the Successful Resolution Applicant has deposited the Performance Bank Guarantee bearing no. 15037GPGE2305801 dated 28 February 2023 executed by Canara Bank of Rs.333,38,13,189/- (Ruppes Three Hundred and Thirty-Three Crore Thirty- Eight Lakh Thirteen Thousand One Hundred and Eighty-Nine only)[67].

Compliance of the approved Resolution Plan with various provisions

100. The Applicant has filed a Compliance Certificate in prescribed form, i.e., Form 'H' in compliance with regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.[68]

101. The Applicant has submitted details of various compliances as envisaged within the Code and the CIRP Regulations which a Resolution Plan should adhere to, which is reproduced hereunder:

I. Submission of Resolution Plan in terms of sub-section (2) of section 30 of the Code (as amended vide Amendment dated 16 August 2019):

Clause of s.30(2)	Requirement	How dealt with in the Plan
1.	Plan must provide for payment of CIRP cost in priority to payment of other debts of CD in the manner specified by the Board.	Section 3.1.1 in Part II at 24 respectively of the Consolidated Resolution Plan.

[65] Annexure V at Pages 1682-1685 of I.A. (IB) No. 434/KB/2023
[66] Annexure W at Pages 4-5 of the Supplementary Affidavit dated 10 April 2023
[67] Annexure W at Pages 6-11 of the Supplementary Affidavit dated 10 April 2023.
[68] Pages 88A-88EE in I.A. (IB) No. 434/KB/2023

Clause of s.30(2)	Requirement	How dealt with in the Plan
2.	(i) Plan must provide for payment of debts of OCs in such manner as may be specified by the Board which shall not be less than the amount payable to them in the event of liquidation u/s 53;	Section 3.2.4 and 3.2.5 in Part II at Page 25 of the Consolidated Resolution Plan.
	(ii) Plan must provide for payment of debts of OCs in such manner as may be specified by the Board which shall not be not less than amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher;	Section 3.2.4 and 3.2.5 in Part II at Page 25 of the Consolidated Resolution Plan.
	(iii) provides for payment of debts of financial creditors who do not vote in favour of the resolution plan, in such manner as may be specified by the Board.	Section 3.3.3 (a) in Part II at Pages 32-33 of the Consolidated Resolution Plan.
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Section 6 and 7 in Part V at Pages 85-89 respectively of the Consolidated Resolution Plan.
(d)	Implementation and Supervision	Section 7 of Part V at Pages 87-89 of the

Clause of s.30(2)	Requirement	How dealt with in the Plan
		Consolidated Resolution Plan.
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Section 1.2.5 and Section 1.6 at Pages 13, 14 respectively of the Consolidated Resolution Plan.
(f)	Conforms to such other requirements as may be specified by the Board.	Resolution Plan does not contravene to any other requirements as may be specified by the Board.

II. Measures required for implementation of the Resolution Plan in terms of regulation 37 of CIRP Regulations:

Particulars	Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation
A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximisation of value of its assets, including but not limited to the following: -	
(a) transfer of all or part of the assets of the corporate debtor to one or more persons;	Not proposed in the Consolidated Resolution Plan.

Particulars	**Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation**
(b) sale of all or part of the assets whether subject to any security interest or not;	
(ba) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	Step VIII Section IV in Part III at Pages 63 of the **Consolidated** Resolution Plan.
(c) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	Step VIII of Section 4 in Part III at Page 64 of the Consolidated Resolution Plan.
(ca) cancellation or delisting of any shares of the corporate debtor, if applicable;	Step IV Section IV in Part III at Page 58 of the Consolidated Resolution Plan.
(d) satisfaction or modification of any security interest;	Section 3.6.2 in Part II at Pages 40-41 of the Consolidated Resolution Plan.
(e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Not proposed in the Consolidated Resolution Plan
(f) reduction in the amount payable to the creditors;	Section 3 in Part II of the Consolidated Resolution Plan
(g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	Not proposed in the Consolidated Resolution Plan

Particulars	**Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation**
(h) amendment of the constitutional documents of the corporate debtor;	Section 7.3 (m) in Part V at Page 88 of the Consolidated Resolution Plan.
(i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	Not proposed in the Resolution Plan.
(j) change in portfolio of goods or services produced or rendered by the corporate debtor;	Not proposed in the Consolidated Resolution Plan
(k) change in technology used by the corporate debtor; and	Not proposed in the Consolidated Resolution Plan
(l) obtaining necessary approvals from the Central and State Governments and other authorities.	Section 8 in Part VI at Pages 91-95 of the Consolidated Resolution Plan.
(m) sale of one or more assets of corporate debtor to one or more successful resolution applicants submitting resolution plans for such assets; and manner of dealing with remaining assets.	

III. Mandatory contents of Resolution Plan in terms of regulation 38 of CIRP Regulations:

Ref to relevant Reg.	Requirement	How dealt with in the Plan
38(1a)	The amount payable to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.	Section 3.2.5 in Part II at Page 25 of the Consolidated Resolution Plan.
38(1b)	The amount payable to the financial creditors, who have right to vote and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.	Section 3.3.3 (a) in Part II at Page 32-33 of the Resolution Plan.
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors of the corporate debtor.	Part II at Pages 1558-1574 of the Resolution Plan.
38(1B)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved	Section 1.10.2 at Page 16 of the Resolution Plan.

Ref to relevant Reg.	Requirement	How dealt with in the Plan
	by the Adjudicating Authority at any time in the past.	
38(2)	A resolution plan shall provide:	
	(a) the term of the plan and its implementation schedule;	Section 8.9 in Part VI at Pages 95-99 of the Consolidated Resolution Plan.
	(b) the management and control of the business of the corporate debtor during its term; and	Section 6 in Part V at Pages 85-86 of the Resolution Plan.
	(c) adequate means for supervising its implementation.	Section 7 in Part V at Pages 87-89 of the Resolution Plan.
	(d) Provides for the manner in which proceedings in respect of avoidance transactions, if any, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed.	Section 1.9 as mentioned in the addendum dated 24 January 2023.
38(3)	A resolution plan shall demonstrate that –	

Ref to relevant Reg.	Requirement	How dealt with in the Plan
	(a) it addresses the cause of default;	Section 1.7 at Pages 14 of the Resolution Plan.
	(b) it is feasible and viable;	Part IV 1 at Page 83 respectively of the Resolution Plan.
	(c) it has provisions for its effective implementation;	Section 7 in Part V at Pages 87-89 of the Resolution Plan.
	(d) it has provisions for approvals required and the timeline for the same; and	Section 8 in Part VI at Pages 91-95 of the Resolution Plan.
	(e) the Resolution Applicant has the capability to implement the resolution plan.	Annexure 1 and Annexure 6 at of the Resolution Plan.

102. Under rule 5(d)(ii) of the FSP Rules, the Reserve Bank of India has issued it approval on 23 March 2023 for the proposed change in management of SEFL and SIFL[69].

103. As envisaged under the Code and the Competition Act, 2002, the Resolution Applicant has obtained approval from the Competition Commission of India[70].

104. The Resolution Applicant has submitted affidavit of eligibility under section 29A of the Code.

[69] Annexure X at Page 12 of the Supplementary Affidavit dated 10 April 2023
[70] Annexure Y at Page 13 of the Supplementary Affidavit dated 10 April 2023

Details of Resolution Plan/Payment Schedule

105. The Applicant submits that NARCL, the successful Resolution Applicant had filed a Resolution Plan dated 18 January 2023 along with an addendum dated 24 January 2023.

106. The Resolution Applicant and IDRCL will infuse funds into the Corporate Debtors and other funds towards Assignment Payments, and provide for Corporate Debtors to undertake repayment obligations in the manner set out in this Resolution Plan, aggregating to INR 14,867,50,00,000 (Indian Rupees Fourteen Thousand Eight Hundred and Sixty Seven Crores Fifty Lakhs Only) (the "Total Resolution Amount"), which amount shall be utilized for funding payments proposed to be made to the stakeholders of the Corporate Debtors, subject to the terms of this Resolution Plan. In addition, the CIRP Costs (to the extent unpaid as on Effective Date) and Interim Period Costs will be paid in the manner set out in Section 3.1 (*Payment of CIRP Costs and Interim Period Cost*) of this Resolution Plan. The components of the Total Resolution Amount are as follows:

Sr. No.	Particulars	Amount (in INR Crore)
1.	**AFCs Cash Portion (1A+1B)**	**3180**
A	Estimated Cash and Cash Equivalents of Corporate Debtor	2580
B	Cash Portion of the Assignment Payments	600#
2.	**Equity stake in SIFL to Financial Creditors (20%)***	200
3.	**Deferred Payment**	
A	Security receipts of upto INR 1800 Crores (i.e., 75% share) from ARC Trust** backed by committed NCDs redeemable from recoveries of underlying assets of SEFL	3487.50
B	Optionally Convertible Debentures (OCDs) from SEFL	8000
	Total	**14,867.50**
Approving Financial Creditors shall also be entitled to receive payments under the SEFL CCPS from amounts, if any, recovered beyond the amounts required to repay SEFL NCDs and SEFL OCDs.		

* Estimated fair value of equity post implementation

** Security receipts of upto INR 1800 Crores backed by committed NCDs.

\# As per this Section 2.4.1 of the Resolution Plan, the Resolution Applicant has committed an upfront cash recovery of INR 3180 Crores from sources of funds as identified therein (defined as the **AFCs Cash Portion** in the Resolution Plan). In the event Cash and Cash Equivalents of the Corporate Debtor on Effective Date is less than the estimate provided in (1A) above, the Resolution Applicant shall accordingly procure for such funds to be arranged to meet the threshold of INR 3180 Crores. Further, in the event the Cash and Cash Equivalents of the Corporate Debtor on Effective Date is more than the estimate provided in (1A) above, the Resolution Applicant shall adjust the same in the manner as provided in Section 2.7.2 of the Resolution Plan. However, the Cash Portion of Assignment Payment shall remain unchanged.

107. The relevant information with regard to the amount claimed, amount admitted and the amount proposed to be paid by the Successful Resolution Applicant, *i.e.,* NARCL along with Indian Debt Resolution Company Limited, as stated in Section 2.4.1 of Part I at Page 18 of the Resolution Plan under the said Resolution Plan is tabulated as under:

Sl. No.	**Name of Claimant**	Claim admitted ***(in Rs./crore)***	Amount proposed ***(in Rs./crore)***
1.	CIRP Costs (approx.) [Section 3.1]	---	2.00 (approx..)
2.	Financial Creditors [Section 9 of Addendum]	32,749.26	***

Sl. No.	**Name of Claimant**	Claim admitted ***(in Rs./crore)***	Amount proposed ***(in Rs./crore)***
3.	Operational Creditors (other than workmen, employees and statutory creditors) [Section 3.2]	123.54	NIL
4.	Employees/Workmen [Section 3.2.8]	3.39	3.39
5.	Statutory Creditors [Section 3.2.9]	0.07	NIL
6.	Other Creditors [Section 3.4]	150.05	NIL
	Total	**33,026.31**	**14,867.50**

***"3.3.2 The Resolution Applicant understands that the Admitted Financial Creditor Debt includes all bank guarantees and/ or letters of credit which have not been invoked by the beneficiaries of such bank guarantees as on the NCLT Approval Date of the Resolution Plan. Further any margin money, lien and related Encumbrances relating to invoked/uninvoked bank guarantees form part of the cash and bank balance and cash equivalents of the Corporate Debtors, which in turn form part of the AFC's Cash Portion as specified in Section 2.4.1 of the Resolution Plan. These uninvoked bank guarantees and all margin money, liens and related Encumbrances relating to any bank guarantees will be held and maintained till the relevant bank guarantee is valid and subsisting and till the date of its respective expiry. In the event that any bank guarantee expires until the occurrence of Closing Date, the same shall be automatically renewed and extended by the respective issuing banks, without treating such renewal as a new credit facility and without imposing any additional margins, till such time as the Corporate Debtors request the cancellation of such bank guarantees. It is clarified that since the Admitted Financial Creditor Debt includes such uninvoked bank guarantees and the

financial proposal herein is for the settlement of entire Admitted Financial Creditor Debt, in the event that any of these bank guarantees are invoked by its respective beneficiaries till or post the Closing Date (a) the relevant Financial Creditor shall not appropriate margin money, cash deposits, liens, Encumbrances or any other security by the Corporate Debtors or exercise any rights of the issuers or the sureties of such guarantees including any right of reimbursement, indemnity and/or subrogation, in relation to such bank guarantees; and (b) the Corporate Debtors or the Resolution Applicants shall not be liable to reimburse, indemnify or pay any amounts to such beneficiaries or the Financial Creditors whose bank guarantees have been invoked nor provide any assistance to the Financial Creditors to contest or defend any claims that are raised by the beneficiary(ies). Lack of or absence of such payment, fulfilling or maintaining requirements in respect of the margin money, cash deposits, liens, Encumbrances or any other security by the Corporate Debtors in relation to such bank guarantees upon the satisfaction or payment by the Financial Creditors on account of invocation or receipt of any claims in connection with the aforementioned bank guarantees shall not be construed as a default on part of the Corporate Debtors and/or the Resolution Applicant, and any modifications required in the bank guarantee documents to reflect such arrangement shall be made by the Financial Creditors prior to the Closing Date."

108. Section 3.1.2 in Part II at Page 24 of the Resolution Plan proposes that after the approval of the Resolution Plan by this Adjudicating Authority, the costs and expenses which may be incurred by the Implementation and Monitoring Committee in discharging their duties as set out in the Resolution Plan till the Closing Date shall be funded from the AFCs' Cash Portion excluding Cash Portion of Assignment Payments.

109. Further, Section 4 Step II and Step III at pages 57-58 of the Resolution Plan prescribes that the payments of CIRP cost and payments to the creditors at given in the Resolution Plan shall be done under the supervision and instructions issued by the Implementation and Monitoring Committee.

110. The Resolution Plan defines ***"Effective Date"*** as *"Upon receipt of all the approvals specified in Section 8.3.1 and Section 8.3.2 of this Resolution Plan herein or on 90th day from the NCLT Approval Date, whichever is earlier, the Resolution Applicant shall issue a notice ("**Implementation Notice**") to the erstwhile COC in writing confirming the date on which it proposes to commence the steps set out in Section 4 (Steps of Implementation) which date shall not be later than 7 (seven) days from the date of issuance of the Implementation Notice".*

Details on Management/Implementation and Reliefs as per the Resolution Plan – Salient Features

111. The Resolution Plan also provides for –

111.6. Management of company after resolution in Section 6 in Part V at pages 85-86 of the Resolution Plan.

111.7. Term of the resolution plan in Section 8.9 in Part VI at Pages 95-99 of the Resolution Plan.

111.8. Implementation and Supervision of the resolution plan in Section 7 in Part V at pages 87-89 of the Resolution Plan. Section 7.3 (g) states tat the Implementation and Monitoring Committee shall ensure utilisation of the Corporate Debtor's funds and payment of dues in accordance with the terms of this Resolution Plan, and supervision of the withdrawals of funds from the bank accounts of the Corporate Debtors.

<u>Relinquishment/Waiver of liabilities and Approvals</u>

112. The Reliefs, Exemptions and Waivers sought by the Resolution Applicant from the Adjudicating Authority are set out below for the successful implementation of the Resolution Plan.

Sl. No.	Relief, concessions and approvals sought
Relief with respect to Central Board of Direct Taxes (CBDT):	
1.	To provide relief that the Corporate Debtors/ Resolution Applicant shall be exempted from the applicability of income tax provisions including section 28, 41 ,45 etc of the Income Tax Act, 1961 ("**Income Tax Act**") and other applicable provisions of the Income Tax Act, for the purposes of implementation of this Resolution Plan and for any action undertaken pursuant to implementation of this Resolution Plan.
2.	To provide relief to the Corporate Debtors from all past litigations up to the date of implementation of this Resolution Plan pending at different levels and provide waiver from all tax dues including withholding tax, interest, penalty & prosecution for all historic disclosed tax dues and undisclosed tax dues. All pending notices, assessment order, pending summons and pending assessments (including but not limited to those set out in **Annexure 9** of the Resolution Plan) towards the Corporate Debtors would be treated as closed. Further no action would be taken for any action / transaction carried out before the Closing Date. It is clarified that no tax (including interest & penalty) would be paid for any liability or claim raised or non-compliance for period up to the Closing Date. Further, any re-assessment, revision or other proceedings under the provisions of the Income Tax Act would be deemed to be barred in relation to any period prior to the Closing Date, by virtue of the order of the NCLT approving this Resolution Plan and the Corporate Debtors or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto. Further, the Hon'ble NCLT to issue necessary orders / directions to the Tax department that no tax liability shall accrue or arise on Corporate Debtors in respect of any

Sl. No.	Relief, concessions and approvals sought
	claim arising between the CIRP Commencement Date and the Closing Date.
3.	The Corporate Debtors may carry forward and set-off the losses under section 79 of the Income Tax Act on approval of the Resolution Plan even if change in shareholding of the Corporate Debtors more than 51%. The Hon'ble NCLT be pleased to give or issue necessary directions, instructions to the jurisdictional Principal Commissioner to approve the carry forward and set-off the losses under section 79 of the Income Tax Act of Corporate Debtors immediately and unconditionally on sanction of the Resolution Plan.
4.	On approval of resolution plan, all expenses claimed and income earned by the Corporate Debtors in the preceding eight years and returns as submitted or not submitted to be treated as assessed and all carry forward losses and depreciation to be treated as allowed.
5.	To grant waiver to the Corporate Debtors/ Resolution Applicant from applicability of section 281 of the Income Tax Act, in respect of any transaction carried out before the Closing Date or contemplated under the Resolution Plan.
6.	The Corporate Debtors and Resolution Applicant shall be entitled to the benefit of carry forward losses, notwithstanding any default of the Corporate Debtors to file tax returns within the due date and in accordance with the provisions of the Income Tax Act.
7.	To provide relief from any tax liability arising out of the non-compliance of conditions specified in section 47(iv) of the Income Tax Act pertaining to transfer of fund-based business (comprising lending

Sl. No.	Relief, concessions and approvals sought
	business, interest-earning business and leasing business) of SIFL to SEFL pursuant to Business Transfer Agreement effective from October 1, 2019 ("**Business Transfer Agreement**"). The Hon'ble NCLT be pleased to give or issue necessary directions, instructions to the jurisdictional Principal Commissioner to approve the fair market value of the shares received as Cost of Acquisition with respect to equity shares of SEFL received by SIFL pursuant to Business Transfer Agreement in terms of section 49 of the Income Tax Act and indexed cost of acquisition shall be available from the date of acquisition of the equity shares by SIFL.
8.	The Corporate Debtors or the Resolution Applicant shall not, at any point of time, be held financially liable under the provisions in relation to the liability of the Corporate Debtors as per section 170 of the Income Tax Act in respect of any transaction carried out before the Closing Date or contemplated under the Resolution Plan.
9.	To provide relief from any tax liability arising on account of section 56 or 50CA of the Income Tax Act pursuant to implementation of the Resolution Plan.
10.	To provide waiver to the Corporate Debtors/ Resolution Applicant with respect to compliance with section 269SS and section 269T of the Income Tax Act for any steps pursuant to implementation under the Resolution Plan, and the Applicant shall not be held liable under Section 271D and Section 271E of the Income Tax Act.
11.	To issue orders to the Assessing Officer to delete all tax, interest, penalty, fine or any other sum in respect of which demand has been received by the Corporate Debtors under section 156A of the Income tax Act for the period prior to the Closing Date.

Sl. No.	Relief, concessions and approvals sought
12.	To issue orders to the Tax department to delete all the assessments, proceedings and demand in relation to wealth tax or fringe benefit tax for the period prior to the Closing Date.
13.	To allow write off of assets for giving effect to the resolution plan as business expenditure u/s 36 and 37 of Income Tax Act, 1961.
14.	The Corporate Debtors / Resolution Applicant shall be allowed to furnish return of income in accordance with section 170A of the Income Tax Act, 1961.
15.	The Corporate Debtors shall be entitled to receive refund of taxes dues as per the income returns filed for the period prior to the Closing Date.
16.	To issue order to the Tax department to refrain from a) treating any transaction contemplated in this Plan as being void or non-compliant with any provisions of the Income Tax Act, 1961 and b) applying provisions of Chapter X-A (GAAR) of Income Tax Act, 1961 in respect of transactions arising as a result of giving effect to the Resolution Plan
Relief with respect to Central Board of Indirect Taxes & Customs; Ministry of Finance of the relevant State Government and Union Territories:	
17.	To provide relief to the Corporate Debtors such that all pending litigation, notices, past and on-going assessments and audits, past and on-going investigations, tax demands under all Indirect Tax statutes (including, but not limited to those set out in **Annexure 10** of this Resolution Plan), towards the Corporate Debtors would be treated as closed and no further action would be taken for any action / transaction

Sl. No.	Relief, concessions and approvals sought
	carried out before the implementation of this resolution plan. It is clarified that no tax (including interest and penalty) would be paid for any liability or claim raised for period up to the Closing Date
18.	To provide relief to the Corporate Debtors from proceedings and interest/penalties basis any non-compliances under all the Indirect Tax statutes for the period prior to the Closing Date
19.	To give or issue necessary directions, instructions to the Indirect tax authorities whether Central or State to exempt receipt/profits/ gains, if any, arising as a result of giving effect to the Resolution Plan
20.	To provide relief against any tax dues, along with interest and penalty (including all historic disclosed tax dues and undisclosed tax dues, whether assessed or not, whether a demand has been raised or not, whether claimed or unclaimed, admitted or not, crystallized or not, known or unknown, disputed or undisputed, present or future) under any Indirect Tax statute up to the Closing Date. All such tax dues along with interest and penalty for the period up to the Closing Date, shall be written off in full and will be deemed to be permanently extinguished and the Corporate Debtors shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.
21.	The Corporate Debtors shall not be liable in any manner whatsoever or otherwise prosecuted (threatened, impleaded or otherwise) as a result of, arising from or in connection with, any transaction, act, omission, commission, default, (whether identified or unidentified) of the Corporate Debtors or erstwhile Promoters, subsidiary companies and/or group companies of the Corporate Debtors, for the period prior to and up to the Closing Date.

Sl. No.	Relief, concessions and approvals sought
22.	The Corporate Debtors shall not be liable in any manner whatsoever or otherwise prosecuted (threatened, impleaded or otherwise) as a result of any tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized, any contravention of any provisions of any Indirect Tax acts or the rules made thereunder as may be prescribed, by the Corporate Debtors or erstwhile Promoter, subsidiary companies and/or group companies of the Corporate Debtors for the period up to the Closing Date.
23.	The Corporate Debtors shall be entitled to carry forward the accumulated input tax credit balances under the Indirect Tax laws and to utilize such amounts to set off against tax liability arising in future in accordance with Applicable Laws.
24.	All benefits, exemptions, deductions, rebates, reliefs, credits etc. under any tax laws in India available to the Corporate Debtors shall not lapse pursuant to the Resolution Plan and shall be available post the Closing Date.
25.	To provide relief from non-compliance of any provision of Indirect Tax laws in relation to the Business Transfer Agreement effective October 1, 2019. To issue instructions or directions to the Indirect Tax authorities to approve transfer of input tax credit, if any, under the Business Transfer Agreement and treat the transaction as transfer of business as a going concern.
26.	The Resolution Applicant, or the Corporate Debtors shall not be liable to pay any indirect taxes whatsoever arising (directly or indirectly on such entity) as a result of the actions taken by the Corporate Debtors prior to the Closing Date or arising from the actions under this Resolution Plan. It may also be clarified that any Tax Liabilities

Sl. No.	Relief, concessions and approvals sought
	pertaining to any period or action prior to the Closing Date, whether assessed or unassessed, by the relevant Government and statutory authority shall be deemed to have been extinguished and written-off on the Closing Date.
Reliefs with respect to Regulatory Framework	
27.	RBI to waive all past non-compliances of the Corporate Debtors under the Reserve Bank of India Act, 1934 and the Regulations / Notifications / Directions / Guidelines / Circulars / Press Releases / Risk Mitigation Plans (hereinafter collectively referred to as the "**Regulatory Framework**") issued thereunder and/ or which may arise as a result of the implementation of the Resolution Plan and the Corporate Debtors or the Resolution Applicants shall not be liable for any non-compliances under the aforesaid Regulatory Framework for the period prior to the Closing Date
Reliefs sought under Companies Act, 2013	
28.	The Hon'ble NCLT be pleased to grant relief that the reconstitution of share capital and other actions set out in the Resolution Plan are approved and implemented pursuant to the provisions of the IBC, specifically, regulation 37 of the CIRP Regulations read with section 31 of the IBC. The compliance with the provisions of the Resolution Plan shall be deemed to be in accordance with and constitute compliance with any and all provisions of law that would have otherwise applied to modification of debt, an assignment of debt, issuance of equity shares, reduction of capital or amalgamation under the Companies Act, and/or under rules/circulars/regulations issued

Sl. No.	Relief, concessions and approvals sought
	thereunder. Accordingly, no further actions and requirements (including procedural requirements prescribed under the Companies Act), approval, application or consent shall be necessary on the part of the Corporate Debtors or from any other Person/ Government Authority in relation to either of these actions under any agreement, the constitution documents of the Corporate Debtors or under any Applicable Law for the Implementation of the Resolution Plan.
29.	With respect to the proposed reconstitution of the board of directors of the Corporate Debtors and its subsidiaries on and from the Effective Date, the Hon'ble NCLT be pleased to give or issue necessary directions, instructions to the Ministry of Corporate Affairs ("**MCA**") and the jurisdictional registrar of companies to take on record such appointments and resignations of directors of the Corporate Debtors and its subsidiaries (as may be identified by the Resolution Applicants), and all relevant forms and necessary actions in this regard to affect such reconstitution.
Other Reliefs	
30.	The Hon'ble NCLT be pleased to give or issue necessary directions that the Corporate Debtors or the Resolution Applicants shall not be liable for an offence committed between NCLT Approval Date and Closing Date, and neither the Corporate Debtors nor the Resolution Applicant shall be prosecuted for any such offence on and from the NCLT Approval Date to the Closing Date. If a prosecution has been instituted during this period against the Corporate Debtors or the Resolution Applicants, the same shall be extinguished and the Corporate Debtors and the Resolution Applicants shall stand discharged from the same.

Sl. No.	Relief, concessions and approvals sought
31.	The Hon'ble NCLT be pleased to give or issue necessary directions, instructions that the moratorium granted to Corporate Debtors under Section 14 of the Code, shall be deemed to be continued to be in effect during the period between NCLT Approval Date and Closing Date, and in any case till the implementation of this Resolution Plan in full.
32.	The Hon'ble NCLT be pleased to give or issue necessary directions, instructions to exempt Resolution Applicant, the Corporate Debtors and other stakeholders in the Resolution Plan from levy of stamp duty and other costs (including payment of registration fees) applicable on the value of assets transferred and the assignment of the debt in the manner contemplated under this Resolution Plan and on any of the steps considered in implementation of this Resolution Plan.
33.	The Hon'ble NCLT be pleased to give or issue necessary directions, instructions to all concerned revenue or stamp authorities to waive penalties for non-registration and inadequate or non-stamping of documents (including the underlying documents forming part of the securitization transactions entered into by the Corporate Debtors and loan documents executed by the Corporate Debtors with its borrowers, and sale deeds, title deeds and any security documents pursuant to which the Corporate Debtors holds any right, title or interest in any assets) executed by the Corporate Debtors up to the Closing Date.
34.	To conduct its current business as a going concern, the Hon'ble NCLT be pleased to give or issue necessary directions, instructions to direct that all non-compete provisions, if any, be deemed null and void with immediate effect and the rights of the counterparties pursuant to these provisions, whether exercised or not, shall automatically fall away and be extinguished with immediate effect.

Sl. No.	Relief, concessions and approvals sought
35.	In relation to the licenses, permits, consents and approvals held by the Corporate Debtors for undertaking the business of the Corporate Debtors, it is probable that some of such permits, consents and approvals may have lapsed, expired, suspended, cancelled, revoked or terminated or the Corporate Debtors has certain non-compliances in relation thereto. Accordingly, the Hon'ble NCLT be pleased to give or issue necessary directions, instructions to the relevant Government Authorities to provide reasonable time period after the Closing Date of not less than 12 (twelve) months in order for the Resolution Applicant to assess the status of these permits, approvals and consents and to ensure that the Corporate Debtors is compliant with them without initiating any investigations, actions or proceedings in relation to such non-compliances.
36.	The Hon'ble NCLT be pleased to give or issue necessary directions, instructions to all Government Authorities (including but not limited to RBI, SEBI, the IRDAI and the MCA of the Government of India) to waive all past non-compliances of the Corporate Debtors under Applicable Law and licenses/ registrations granted thereunder (including, but not limited to the certificate of registration dated March 31, 2011 issued to SIFL by RBI to carry on business as an 'infrastructure finance company' and the certificate of registration dated February 19, 2014 issued to SEFL by RBI to carry on business as an 'asset finance company'), and the Corporate Debtors and the Resolution Applicant shall not be liable for any non-compliances under Applicable Law and licenses/ registrations granted thereunder.
37.	Save and except as referred to in ***Section 3.2.8*** of ***Part A (Financial Proposal)***, the Hon'ble NCLT be pleased to give or issue necessary directions, instructions such that any and all claims or demands made

Sl. No.	Relief, concessions and approvals sought
	by, or liabilities or obligations owed or payable to (including any demand for any losses or damages, or interest, back wages, compensation, penal interest, liquidated damages already accrued/accruing or in connection with any claims) any present or past, direct or indirect, permanent or temporary employee and/or workman of the Corporate Debtors, whether claimed or unclaimed, admitted or not, due or contingent, asserted or unasserted, crystallised or not, known or unknown, secured or unsecured, disputed or undisputed, present or future, whether or not set out in the provisional balance sheet, the balance sheets of the Corporate Debtors or the profit and loss account statements of the Corporate Debtors or the List of Creditors, in relation to any period prior to the ClosingDate, shall be deemed to be permanently extinguished with effect from the NCLT Approval Date by virtue of the order of the NCLT approving this Resolution Plan and the Corporate Debtors or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable (whether in the capacity of a principal employer or otherwise) in relation thereto.
38.	The Hon'ble NCLT be pleased to give or issue necessary directions, instructions such that all monetary liabilities or obligations of the Corporate Debtors, in relation to: (a) any investigation, inquiry or show-cause, whether civil or criminal; (b) any non-compliance of provisions of any laws, rules, regulations, directions, notifications, circulars, guidelines, policies, licenses, approvals, consents or permits; (c) change of control, transfer charges, compensation, or any other such liability whatsoever under any contract, agreement, lease, license, approval, consent or permission to which the Corporate Debtors or its subsidiaries, joint ventures or associates are entitled; (d) any leasehold rights or freehold rights to movable or immovable properties in the possession of the Corporate Debtors; (e) any contracts, agreements or

Sl. No.	Relief, concessions and approvals sought
	commitments made by the Corporate Debtors, in each of the foregoing cases whether claimed or unclaimed, admitted or not, due or contingent, asserted or unasserted, crystallised or not, known or unknown, secured or unsecured, disputed or undisputed, present or future, whether or not set out in the provisional balance sheet, the balance sheets of the Corporate Debtors or the profit and loss account statements of the Corporate Debtors or the List of Creditors, in relation to any period prior to the Closing Date, will be written off in full and will be deemed to be permanently extinguished with effect from the NCLT Approval Date by virtue of the order of the NCLT approving this Resolution Plan, and all consequential liabilities, if any, that may arise in the future on account of the aforesaid *(including but not limited to any duties, penalties, interest, fines or fees)* shall stand extinguished and the Corporate Debtors or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.
39.	Any and all other dues including claims or demands which have been or could have been made by or liabilities or obligations owed or payable to (*including any demand for any losses or damages, principal, interest, compound interest, penal interest, liquidated damages and other charges already accrued/ accruing or in connection with any third party claims)* any actual or potential creditors of the Corporate Debtors or in connection with any debt of the Corporate Debtors, including those debts arising out of any letters of credit, letters of undertaking, guarantees, counter guarantees, bank guarantees, performance guarantees or indemnities provided by the Corporate Debtors, whether claimed or unclaimed, admitted or not, due or contingent, asserted or unasserted, crystallised or not, known or unknown, disputed or undisputed, present or future, whether or not set

Sl. No.	Relief, concessions and approvals sought
	out in the provisional balance sheet, the balance sheets of the Corporate Debtors or the profit and loss account statements of the Corporate Debtors or the List of Creditors, in relation to any period prior to the Closing Date, shall to the extent not assigned/ novated/ transferred/ converted in accordance with **Section 4 (*Steps of Implementation*) of this Resolution Plan** be deemed to be permanently extinguished with effect from the NCLT Approval Date by virtue of the order of the NCLT approving this Resolution Plan and the Corporate Debtors or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.
40.	The Hon'ble NCLT be pleased to give or issue necessary directions, instructions to any person such that any security, indemnity, pledge, charge, encumbrance, or any other form of collateral *(whether over movable assets, immovable assets, fixed deposits, margin money, cash collateral or any other rights (including but not limited to privileges and including, without limitation, any indemnity, security, letter of credit or pledge over the equity shares of the Corporate Debtors*) that was created / granted / arranged by the Corporate Debtors in connection with any debt or obligation of the Corporate Debtors, or which was created by the Corporate Debtors in connection with the debt or other obligations of any other entity (including any invocation or other enforcement action already undertaken against assets of the Corporate Debtors), in relation to any period prior to the Closing Date (*whether in favour of or for the benefit of a person appearing in the List of Creditors or not*), shall to the extent not assigned/ novated/ transferred/ converted in accordance with **Section 4 (*Steps of Implementation*) of this Resolution Plan** automatically fall away and be permanently extinguished. All title deeds and other documents held by the creditors of the Corporate Debtors or on their behalf relating to

Sl. No.	Relief, concessions and approvals sought
	any security, charge, encumbrance, or any other form of collateral *(over immovable assets or any other rights*) shall to the extent not assigned/ novated/ transferred/ converted in accordance with **Section 4 (*Steps of Implementation*) of this Resolution Plan** be immediately returned to the Corporate Debtors by the relevant persons and the relevant security trustee/agent.
41.	The Hon'ble NCLT be pleased to give or issue necessary directions and instructions such that on and from the NCLT Approval Date, any indemnity obligations of the Corporate Debtors which have occurred prior to the ClosingDate (whether in favour of or for the benefit of a person appearing in the List of Creditors or not) whether claimed or unclaimed, admitted or not, due or contingent, asserted or unasserted, known or unknown, disputed or undisputed, discovered prior to Closing Date or after the Closing Date, shall be deemed to be permanently extinguished with effect from the NCLT Approval Date by virtue of the order of the NCLT approving this Resolution Plan and the Corporate Debtors or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.
42.	The Hon'ble NCLT be pleased to give or issue necessary directions, instructions such that any liability or indemnity obligations of SEFL arising prior to Closing Date in relation to Servicer Agreements, whether general or specific, claimed or unclaimed, due or contingent, asserted or unasserted, crystallised or not, known or unknown, disputed or undisputed, shall be deemed to be permanently extinguished with effect from the Effective Date by virtue of the order of the NCLT approving this Resolution Plan and the Corporate Debtors

Sl. No.	Relief, concessions and approvals sought
	or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.
43.	The Hon'ble NCLT be pleased to give or issue necessary directions, instructions such that on and from the Effective Date, the Servicer Agreements and/or any other Third Party Assets Agreements shall stand terminated or renegotiated, at the option of the Resolution Applicant and any liability under the Servicer Agreements and/or the Third Party Assets Agreements,, whether general or specific, claimed or unclaimed, due or contingent, asserted or unasserted, crystallised or not, known or unknown, disputed or undisputed, shall be deemed to be permanently extinguished with effect from the Effective Date by virtue of the order of the NCLT approving this Resolution Plan and the Corporate Debtors or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.
44.	If any person has issued any guarantee, indemnity, letters of comfort, letters of support, credit comforts, sponsor supports or undertaken similar obligations in respect of any debt or other obligation of the Corporate Debtors ("**Guarantee Obligations**"), then the Hon'ble NCLT be pleased to give or issue necessary directions, instructions such that the right of such person ("**Third Party Security Provider**") relating to subrogation and/ or to claim any amounts in respect of such obligations against the Corporate Debtors, whether claimed or unclaimed, admitted or not, due or contingent, asserted or unasserted, crystallised or not, known or unknown, disputed or undisputed, present or future, in relation to any period prior to the Closing Date shall be deemed to be permanently extinguished with effect from the NCLT Approval Date, and all the contracts entered into by the Corporate

Sl. No.	Relief, concessions and approvals sought
	Debtors with such creditors will be deemed to be terminated without any liabilities, claims or obligations whatsoever arising out of or in relation to such contracts, by virtue of the order of the NCLT approving this Resolution Plan and the Corporate Debtors or the Resolution Applicant shall at no point of time, directly or indirectly, have any obligation, liability or duty in relation thereto. It is clarified that extinguishment of any subrogation or indemnity rights of any Third Party Security Provider shall be without prejudice to the rights of the beneficiaries of any Guarantee Obligations to make claims against such Third Party Security Providers (except that provided by Controlla Electrotech Private Limited in respect of any Debt owed by SIFL/SEFL) as per Applicable Law (including for any losses suffered by such beneficiaries in relation to such *Guarantee Obligations).* It is further clarified that the beneficiaries of any guarantees issued on behalf of the Corporate Debtors and the guarantor thereof shall be under an obligation to do all acts as may be necessary to give effect to the extinguishment of the subrogation rights of such guarantor of the Corporate Debtors upon approval of this Resolution Plan by the NCLT.
45.	The Hon'ble NCLT be pleased to give or issue necessary directions, instructions such that the erstwhile Promoters, shareholders, managers, directors, officers, employees, workmen or other personnel of the Corporate Debtors shall continue to be liable for all the liabilities, claims, demand, obligations, penalties etc. arising out of any proceedings, inquiries, investigations, orders, show cause, notices, suits, litigation etc. (including any orders that may be passed by the NCLT pursuant to Sections 43, 45, 49, 50, 66, 68, 70, 71, 72, 73, 74 of the IBC), whether civil or criminal, that may be initiated or instituted before any authority (including the Enforcement Directorate and the Serious Fraud Investigation Office) post the approval of the Resolution

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	Plan by the NCLT on account of any transactions entered into, or decisions or actions taken by, such erstwhile Promoters, shareholders, managers, directors, officers, employees, workmen or other personnel of the Corporate Debtors, and the Corporate Debtors or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.
46.	The Hon'ble NCLT be pleased to give or issue necessary directions, instructions such that any and all claims or demands in connection with or against the Corporate Debtors and all liabilities or obligations of the Corporate Debtors (including any demand for any losses or damages or in connection with any third party claims or any investigations by any Government Agencies) both present and future (accruing in relation to any event prior to the Closing Date) by or to any other stakeholder (who is entitled to receive any amounts under Section 53 of the IBC including those under Section 53(1)(f) of the IBC) or any other actual or potential creditor, any counterparty, any subsidiary, joint venture or associate Corporate Debtors or related party of the Corporate Debtors or a shareholder of the Corporate Debtors or the holder of any other securities of the Corporate Debtors prior to the Closing Date, whether under law, equity or contract, whether claimed or unclaimed, admitted or not, due or contingent, crystallised or not, known or unknown, secured or unsecured, disputed or undisputed, present or future, whether or not set out in the provisional balance sheet, the balance sheets of the Corporate Debtors or the profit and loss account statements of the Corporate Debtors or the List of Creditors, and all inquiries, investigations or proceedings in relation to the foregoing, whether civil or criminal in relation to any period prior to the Closing Date, shall to the extent not assigned/ novated/ transferred/ converted in accordance with ***Section 4 (Steps of Implementation) of***

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	the Resolution Plan be written off in full and will be deemed to be permanently extinguished with effect from the NCLT Approval Date by virtue of the order of the NCLT approving this Resolution Plan and all the investigations, inquiries or show-cause, whether civil or criminal in relation to the foregoing shall be disposed of and the Corporate Debtors or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.
47.	The Hon'ble NCLT be pleased to give or issue necessary directions, instructions such that all present and future, claims, dues, liabilities, amounts, arrears, dividends or obligations owed or payable by the Corporate Debtors to the erstwhile Promoters or any subsidiary, associate Corporate Debtors, related party, joint ventures, affiliate of the Corporate Debtors or any such entity or person controlled by the erstwhile Promoters (or any lenders or financial creditors of such persons) or any holder of any securities (whether convertible into equity shares or not) of the Corporate Debtors prior to the Closing whether claimed or unclaimed, admitted or not, due or contingent, asserted or unasserted, crystallised or not, known or unknown, secured or unsecured, disputed or undisputed, whether or not set out in the provisional balance sheet, the balance sheets of the Corporate Debtors or the profit and loss account statements of the Corporate Debtors or the List of Creditors, will be deemed to be written off in full and be permanently extinguished by virtue of the order of the NCLT approving this Resolution Plan and the Corporate Debtors (including its subsidiaries, associates, joint ventures or affiliates) or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.

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48.	The Hon'ble NCLT be pleased to give or issue necessary directions, instructions to any person that, other than as disclosed under the Information Memorandum and the List of Creditors, there are no persons having the benefit of "security interest" as defined under Section 3(31) of the IBC over the assets of the Corporate Debtors, and if any, all such 'security interest' over the assets of the Corporate Debtors to the extent not assigned/ novated/ transferred/ converted in accordance with ***Section 4 (Steps of Implementation) of the Resolution Plan*** are hereby waived and released unconditionally without any cost or liability of the Corporate Debtors.
49.	The Hon'ble NCLT be pleased to give or issue necessary directions, instructions to any person that other than the payments contemplated in this Resolution Plan, the Resolution Applicant and/or the Corporate Debtors shall not be liable to make any payments for any and all claims, demands, liabilities or obligations owed or payable as on the Effective Date to any Operational Creditor, Financial Creditor, workmen, employees, Government Authority or to any other stakeholder of the Corporate Debtors in relation to any period prior to the Closing Date, or any amounts that are due and payable on account of any ongoing litigation against the Corporate Debtors which relates to the period prior to the Closing Date and all such claims, demands, liabilities or obligations shall to the extent not assigned/ novated/ transferred/ converted in accordance with ***Section 4 (Steps of Implementation) of the Resolution Plan*** be deemed to be permanently extinguished/ waived, and neither the Corporate Debtors nor the Resolution Applicant shall have any liability to make any payments to such Person with respect to such liability. The Corporate Debtors shall not be liable to make any payments for any and all claims, demands, liabilities or obligations owed or payable by the Corporate Debtors,

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	which are pending adjudication or in appeal before any administrative or judicial authority, and on and from the NCLT Approval Date any related claims, demands, liabilities or obligations of the Corporate Debtors in connection thereto shall be permanently discharged or extinguished.
50.	The Hon'ble NCLT be pleased to give or issue necessary directions, instructions such that, in accordance with Section 238 of the IBC, any action undertaken pursuant to the Resolution Plan by the Resolution Applicants will not require compliance with requirements under any other laws. For the implementation of this Resolution Plan, and except as set out in the Resolution Plan, upon the Resolution Applicants ensuring compliance with the provisions of the IBC and the CIRP Regulations, no further compliances, actions or consents will be required under other laws or regulations for undertaking the individual actions contemplated under the Resolution Plan, including requirement of obtaining any approval/consent from any person under any agreement, the constitutional documents of the Corporate Debtors and under Applicable Law. The IBC is a complete code in itself and the NCLT acting under the IBC functions as a single window clearance for all actions proposed to be undertaken pursuant to a resolution plan approved by the NCLT. Accordingly, the process stipulated under the IBC for implementation of a resolution plan is a final and binding process on all stakeholders (including any Government Authorities).
51.	The Hon'ble NCLT be pleased to approve the implementation of this Resolution Plan (including ***Step VII (Capital Reduction at SEFL Level)*** *and* ***Step XII (Capital Reduction at SIFL Level))*** in the manner set out in ***Section 4 (Steps of Implementation)*** without any further act,

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	instrument or deed on the part of the Corporate Debtors or the Resolution Applicant.
52.	The Hon'ble NCLT be pleased to approve the amendment of the Balance Financial Debt, without any further action, instrument, deed or matter on the part of the Corporate Debtors, the Financial Creditors or the Resolution Applicant, by virtue of the NCLT approving the Resolution Plan.
53.	The Hon'ble NCLT be pleased to approve the assignment of the debt as proposed in **Section 4 (*Steps of Implementation*)** of the Resolution Plan without any further action, instrument, deed or matter on the part of the Corporate Debtors, the Financial Creditors or the Resolution Applicant, by virtue of the NCLT approving the Resolution Plan.
54.	The Hon'ble NCLT be pleased to give or issue necessary directions, instructions to direct that at any time after payment of the Total Resolution Amount, the Resolution Applicant shall not require any approval, application or consent from any Person/ Government Authority for any carve-out, sale, transfer, disposal of, or other dealings in the assets of the Corporate Debtors.
55.	The Hon'ble NCLT be pleased to give or issue necessary directions, instructions such that, no transfer of shares by a shareholder of the Corporate Debtors will be permitted between release of the pledge and the Capital Reduction as set out in ***Section 4 (Steps of Implementation).***
56.	All Government Authorities to grant any relief, concession or dispensation as may be required for implementation of the transactions contemplated under the Resolution Plan in accordance with its terms and conditions.

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57.	The Hon'ble NCLT be pleased to give or issue necessary directions and instructions such that, on and from the NCLT Approval Date, the Corporate Debtors shall be entitled to make/ file the financial claims and make an application to the relevant judicial authority for getting itself admitted to all the proceedings pending against any of its borrower where the time period of filing the financial claims has expired prior to the Closing Date.
58.	The Hon'ble NCLT be pleased to give or issue necessary directions and instructions such that, on and from the NCLT Approval Date, the Corporate Debtors shall, in case of default in repayment of the outstanding loan amount or occurrence of any event of default under the security / lending documents executed by it, be entitled to enforce its security against its borrower(s) for recovery of outstanding loan amount along with the interest, whether penal or otherwise, irrespective of any limitation of time to initiate such enforcement proceedings.
59.	The Hon'ble NCLT be pleased to give or issue necessary directions and instructions such that in the event of any decree passed in any legal proceedings relating to the Avoidance Transactions, such decreed claims shall continue to be secured by the security interests (of whatsoever nature, including any contractual comforts etc.) that were created to secure the rights and interests of SIFL/SEFL (as applicable) at the time of or pursuant to such Avoidance Transactions being entered into.
60.	The Hon'ble NCLT be pleased to give or issue necessary directions and instructions such that, on and from the NCLT Approval Date, the Corporate Debtors shall be entitled to take all such actions to create security and/ or perfect the security (including making filings before

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	Ministry of Corporate Affairs, Central Registry of Securitization, Asset Reconstruction and Security Interest of India or any other Government Authority, making disclosures with the relevant Real Estate Regulatory Authority and execute any agreement/ document as may be required in furtherance thereof) and be permitted to unilaterally register instruments which require compulsory registration under the Indian Registration Act, 1908 in all such states where the Corporate Debtors or the Resolution Applicant carries on business or where underlying securities are located.
61.	The Hon'ble NCLT be pleased to give or issue necessary directions and instructions such that, on and from the NCLT Approval Date, any Administrative Action or action by a Government Authority or any order pursuant to such action shall not adversely impact the recoverability of assets (including by way of enforcement of security) or the value of underlying security in relation to the assets secured by any borrower of the Corporate Debtors in its favour.

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113. On hearing the submissions made by the Administrator, and perusing the record, we find that the Resolution Plan filed by National Asset Reconstruction Company Limited has been approved with 89.25% voting share. As per the CoC, the plan meets the requirement of being viable and feasible for revival of the Corporate Debtor. It is pertinent to note that NARCL along with India Debt Resolution Company Limited have proposed to carry out the compliances envisaged in the Resolution Plan filed by NARCL. By and large, all the compliances have been done by the Administrator and the Resolution Applicant for making the plan effective after approval by this Bench.

114. On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Further, it is evident as recorded in Paragraphs 26 and 27 above that the Successful Resolution Applicant has received approval from the Reserve Bank of India and the Competition Commission of India.

115. We have perused the reliefs, waivers and concessions as sought and as given in Section 10 at Pages 105-115 of the Resolution Plan. While some of the reliefs, waivers and concessions sought by the Resolution Applicant come within the purview of the Code while many others fall under the power and jurisdiction of different government authorities/departments. This Adjudicating Authority has power to grant reliefs, waivers and concessions only in relation to the Code and the Companies Act 2013 (within the powers of the NCLT) for achieving the objective of the Code. No reliefs, waivers and concessions that fall within the domain of other government department/authorities are granted. The reliefs, waivers and concessions that pertain to other governmental authorities/departments shall be dealt with the respective competent authorities/forums/offices, Government or Semi Government of the State or Central Government with regard to the respective reliefs, waivers and concessions. The competent authorities including the Appellate authorities may consider grant such reliefs, waivers and concessions keeping in view the spirit of the Code.

116. The Resolution Applicant shall make necessary applications consistent with extant law to the concerned regulatory or statutory authorities for renewal of business permits and supply of essential services, if required, and all necessary forms along with filing fees etc. and such authority shall also consider the same keeping in mind the provisions and objectives of the Code, which is essentially the resolving of the insolvency of the Corporate Debtor.

117. The reliefs sought with respect to subsisting contracts/agreements can be granted, and no blanket orders can be granted in the absence of the parties to the contracts and agreements.

118. With respect to the waivers with regard to extinguishment of claims which arose Pre-CIRP and which have not been claimed are granted in terms of **Ghanashyam Mishra and Sons Pvt Ltd v Edelweiss Asset Reconstruction Company Ltd**,[71] wherein the Hon'ble Supreme Court has held that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt, any State Govt or any local authority, guarantors and other stakeholders. We place reliance on the recent judgement of Hon'ble High Court of Rajasthan in the matter of ***EMC v. State of Rajasthan*** wherein it has been *inter-alia* held that :

> *"Law is well-settled that with the finalization of insolvency resolution plan and the approval thereof by the NCLT, all dues of creditors, Corporate, Statutory and others stand extinguished and no demand can be raised for the period prior to the specified date."*

On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued.

[71] 2021 SCC OnLine SC 313 decided on 13.04.2021.

119. With respect to the waivers sought in relation to guarantors, the judgment of ***Lalit Kumar Jain v Union of India & ors,***[72] wherein the Hon'ble Supreme Court held in para 133 that sanction of a resolution plan and finality imparted to it by section 31 does not *per se* operate as a discharge of the guarantor's liability shall apply.

120. With respect to the reliefs and waivers sought for all inquiries, litigations, investigations and proceedings shall be granted strictly as per the section 32A of the Code and the provisions of the law as may be applicable.

121. As far as the question of granting time to comply with the statutory obligations or seeking approvals from authorities is concerned, the Resolution Applicant is directed to do so within one year from the date of this order, as prescribed under section 31(4) of the Code.

122. In case of non-compliance of this order or withdrawal of Resolution Plan, the payments already made by the Resolution Applicant shall be liable for forfeiture.

123. Subject to the observations made in this Order, the Resolution Plan dated 18 January 2023 along with an addendum dated 24 January 2023, is hereby **APPROVED** by this Adjudicating Authority. **The Resolution Plan shall form part of this Order and shall be read along with this order for implementation.** The Resolution Plan thus approved shall be binding on the Corporate Debtor and other stakeholders involved in terms of section 31 of the Code, so that revival of the Debtor Company shall come into force with immediate effect.

124. The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.

125. The Administrator shall submit copies of the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters.

[72] 2021 SCC OnLine SC 396 decided on 21.05.2021.

126. Liberty is hereby granted for moving any application if required in connection with implementation of this Resolution Plan.

127. A copy of this Order is to be submitted to the Registrar of Companies, West Bengal.

128. The Administrator shall stand discharged from his duties with effect from the date of this Order, save and except the duties envisaged in the Resolution Plan.

129. The Administrator is further directed to handover all records, premises/factories/documents to the Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records and premises of the corporate debtor through the Administrator to finalise the further line of action required for starting of the operation.

130. In view of the approval of the Resolution Plan, **I.A. (IB) No. 434/KB/2023 in C.P. (IB) No. 295/KB/2021 and I.A. (IB) No. 428/KB/2023 in C.P. (IB) No. 294/KB/2021 shall stand disposed of accordingly**.

131. In view of the approval of the Resolution Plan , **I.A. (IB) No. 392/KB/2023,** has been rendered infructuous and is disposed of accordingly.

132. C.P. (IB) No. 294/KB/2021 and C.P. (IB) No. 295/KB/2021 shall be listed on 06 September 2023 along with the pending connected I.A.s.

133. The Registry is directed to send e-mail copies of the order forthwith to all the parties for information and for taking necessary steps.

134. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi **Rohit Kapoor**

Member (Technical) **Member (Judicial)**

Order signed on the 11th day of August 2023.

PJ/ Zia//FA_LRA/ GGRB_LRA