IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI

CP (IB) No.1260/MB/2022

WITH

IA No.18/2023, IA No.29/2023 & IA No.4417/2024

[Under Section 7 and Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

IN THE MATTER OF

AXIS TRUSTEE SERVICES LIMITED

[CIN: U74999MH2008PLC182264]

Axis House, Bombay Dyeing Mills Compound

Pandurang Budhkar Marg

Worli, Mumbai-400025.

Maharashtra.

...Financial Creditor

V/s.

FUTURE IDEAS COMPANY LIMITED

[CIN: U65900MH2006PLC159526]

Plot No.14, Sagaon Taluka, Alibag

District Raigad-402201

Maharashtra.

…Corporate Debtor

ALONG WITH

IA.No.18/2023, IA.No.29/2023 & IA.No.4417/2024

FUTURE IDEAS COMPANY LIMITED

.....Applicant

V/s.

AXIS TRUSTEE SERVICES LIMITED

....Respondent

Pronounced: 09.04.2025

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)
HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances: Hybrid

Financial Creditor/Respondent: Sr. Adv. Janak Dwarkadas, Adv. Ankit Lohia, Adv. Varun Nathani a/w Adv. Suchitra Valjee, Adv. Riya Vasa, Adv. Smruti Pandya Adv. Palak Damani, i/b Manilal Kher Ambalal & Co.

Corporate Debtor/Applicant: Sr. Adv. Navroz Seervai, a/w Sr. Adv. Gaurav Joshi, Adv. Nupur Jalan, Adv. Harsh Moorjani, Adv. Petrushka Dasgupta & Adv. Krishna Baruah i/b Link Legal.

ORDER

[PER: SANJIV DUTT, MEMBER (TECHNICAL)]

1. BACKGROUND

1.1 This C.P. (IB) No.1260/MB/2022 (Main Application) is filed by Axis Trustee Services Limited [acting in its capacity as Debenture Trustee for and on behalf of Franklin Templeton Asset Management (India) Private Limited], the Financial Creditor, on 21.10.2022, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "the AAA Rules") for initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") in respect of Future Ideas Company Limited, the

Corporate Debtor**.** Franklin Templeton Asset Management (India) Private Limited is the investment manager of Templeton Mutual Fund, which is the ultimate Debenture Holder.

1.2 The Debenture Holders, namely, 'Franklin India Short Term Income Plan' and 'Franklin India Opportunities Fund' subscribed to 1,000 rated, unlisted, secured, redeemable non-convertible debentures, each with a face value of Rs.10,00,000/-, across 4 series: Series A, B, C and D, totalling Rs.100,00,00,000/- (One Hundred Crore Rupees), issued by the Corporate Debtor, in accordance with the terms and conditions of Debenture Trust-cum-Mortgage Deed (hereinafter referred to as "the DTMD") dated 15.10.2018, for different tenures ranging from 764 days to 1828 days. The Corporate Debtor was required to redeem the debentures and pay interest as specified in the Transaction Documents. The redemption process by way of quarterly instalments was to start from 31.01.2020. However, due to a default in redemption of debentures on 30.04.2021, an Event of Default was allegedly triggered. It is alleged that despite a Notice dated 01.07.2022 demanding payment, the Corporate Debtor failed to comply. Consequently, the Financial Creditor has preferred the present Application under Section 7 of the Code seeking initiation of CIRP in respect of the Corporate Debtor.

1.3 In Part-IV of the Application, the total amount claimed to be in default is stated to be Rs.122,83,28,079 /- (One Hundred Twenty-Two Crore Eighty-Three Lakh Twenty-Eight Thousand and Seventy-Nine Rupees) as on 27.09.2022. The date of default is mentioned as 30.04.2021, when certain debentures were to be redeemed but the Corporate Debtor failed to do so.

1.4 During pendency of the Main Application, the Corporate Debtor on 29.12.2022, furnished its reply to the Main Application and also simultaneously filed two Interlocutory Applications (IAs) Nos.18/2023 and 29/2023, on the same date, challenging maintainability of the Main Application. The Corporate Debtor in the said IAs prayed for setting aside of the Main Application on the grounds that the debt of the Financial Creditor was hit by Section 10A of the Code and further that the Financial Creditor was no longer a creditor of the Corporate Debtor and had no right to enforce any debt/liabilities against the Corporate Debtor as the liabilities had been acquired by Rivaaz Trade Ventures Pvt. Ltd. (hereinafter referred to as "RTVPL") and, thus, the Financial Creditor could exercise its rights only against RTVPL. Thereafter, on 05.09.2024, the Corporate Debtor filed another IA No.4417/2024, for the limited purpose of objecting to the tendering of a document styled as 'Report on the Audit of the Financial Statements of Franklin Templeton for Financial Year 2023-24' (hereinafter referred to as "the Auditor's Report") by the Financial Creditor in another connected matter, namely, *Axis Trustee Services Private Limited Vs. Rivaaz Trade Ventures Private Limited* bearing C.P. No.1286 of 2023.

1.5 All the aforementioned IAs are inter-connected with the Main Application and were heard together and are being disposed of by this common order. It is observed that the reply filed by the Corporate Debtor to the Main Application raises similar contentions and defences as those in the aforementioned IAs. Further, on 20.01.2023, the Financial Creditor filed a rejoinder in response to the Corporate Debtor's reply along with detailed responses to the IAs. For the sake of convenience,

the consolidated pleadings of both parties in the above IAs are summarised in succeeding paragraphs.

IA No.18/2023

2. AVERMENTS OF THE APPLICANT/CORPORATE DEBTOR

2.1 The alleged debt claimed in the Main Application is barred under Section 10A of the Code. The Respondent/Financial Creditor by its notice dated 22.10.2020, sought full repayment under the Mandatory Prepayment clause of the previous Debenture Trust-cum-Mortgage Deed dated 16.09.2015, due to a default caused by the downgrading of debenture ratings between March and August, 2020. The default date mentioned in this notice falls under Section 10A of the Code barring initiation of proceedings under the Code. However, the Respondent later claimed a default date of 30.04.2021, in Part-IV of the Main Application, contradicting its earlier notice.

2.2 The Respondent/Financial Creditor cannot assert that payments became due in April, 2021 after invoking Mandatory Prepayment clause in October, 2020. Placing reliance on judgment of ***ITC Ltd. Vs. Debts Recovery Appellate Tribunal (1998) 2 SCC 70*****,** the Applicant submits that courts should pierce through pleadings where a party attempts to create a cause of action. Further, in ***Jagdish Prasad Sarada Vs. Allahabad Bank [(2020) SCC Online NCLAT 621]***, it was held that the date of default will be the date of declaration of account as NPA and as such, the date of default would not shift. Thus, the claim of the Respondent/Financial Creditor is barred under Section 10A of the Code and the Section 7 Application should accordingly be dismissed. Further, referring to the judgment of Hon'ble Bombay

High Court in the matter of ***Deserve Exim Private Limited Vs. Yes Bank Limited*** *[WP No.4560 of 2022]*, it is submitted that an IA raising the issue of jurisdiction ought to be decided first before dealing with any other issues at hand.

3. CONTENTIONS OF RESPONDENT/FINANCIAL CREDITOR

3.1 The present Application pertains to a default occurring on 30.04.2021, which is outside the period covered by Section 10A. The notice dated 22.10.2020 referred only to a coupon rate revision due to the downgrading of NCDs and sought payment of old outstanding amounts, while reserving the rights of the Financial Creditor to exercise the Mandatory Prepayment Option and to accelerate the redemption of debentures. Thus, the Financial Creditor *vide* Notice dated 22.10.2020, had not exercised any rights in respect of accelerated payment and/or Mandatory Prepayment.

3.2 Section 7 Application filed by the Respondent/Financial Creditor is based solely on the default committed by the Corporate Debtor on 30.04.2021, as per Schedule 4 of the DTMD. The Corporate Debtor has committed defaults within the period falling under Section 10A of the Code as well as outside such period. The default forming the basis of the Main Application is separate and distinct from the default committed during the period covered under Section 10A of the Code. The Applicant's reliance on the notice dated 22.10.2020, is misconstrued and is intended to mislead the Tribunal. The defaults during the Section 10A period do not preclude the Financial Creditor from filing a Section 7 Application for subsequent defaults.

3.3 The judicial decisions cited by the Applicant/Corporate Debtor were rendered in factually different circumstances and are inapplicable to the facts of the present case.

IA No.29/2023

4. AVERMENTS OF APPLICANT/CORPORATE DEBTOR ALONG WITH ITS WRITTEN SUBMISSIONS

4.1 The Respondent/Financial Creditor no longer qualifies as a creditor under Sections 3 and 5(8) of the Code, as the liabilities related to the NCDs have been acquired by RTVPL under an Acquisition Agreement dated 29.08.2020. The Respondent is no more a creditor also in the books of account of the Corporate Debtor. The Acquisition Agreement was communicated to the Debenture Holders by the Corporate Debtor *vide* email dated 31.08.2020, without any contemporaneous dispute being raised. The following correspondences and notices exchanged between the parties further substantiate the transfer of liabilities under the NCDs:-

a. *Emails dated 05.10.2021 titled "Future Group- NCDs" and 31.03.2022 titled "Rivaaz- outstanding as of Jan 31, 2022" from the Debenture Holders to the Corporate Debtor confirmed the consolidation of NCDs under RTVPL, amounting to Rs.1004,24,16,661/-. In email dated 06.10.2021, a confirmation of the consolidation of NCDs with RTVPL was provided to the Debenture Holders.*

b. *Email dated 31.03.2022, titled "Rivaaz - Outstanding as of Jan 31, 2022": The Debenture Holders acknowledged that the debt underlying the NCDs had vested in RTVPL as of 31.01.2022. An internal email dated 29.12.2021 from the Debenture Holders acknowledged their exposure to RTVPL regarding the NCDs in place of the Applicant.*

c. *In the Notice dated 20.04.2022 addressed by the Financial Creditor to Mr. Kishore Biyani regarding invocation of Deed of Guarantee cum Undertaking dated 27.09.2018, the Debenture Holders, through paragraph 5 of the notice, admitted having knowledge of the Acquisition Agreement as far back as 31.08.2020.*

d. *Additionally, the Applicant's balance sheet as on 31.03.2021 evidences the transfer of long-term borrowings amounting to Rs.1,27,50,00,000/-, as the value under long-term borrowings became nil between 31.03.2020 and 31.03.2021. Correspondingly, RTVPL's balance sheet reflects the acquisition of the debt underlying the NCDs as on 31.03.2021.*

e. *On 22.04.2022, the Debenture Holders after confirming the principal outstanding of Rs.1004,24,16,661/- voted on the Scheme regarding the transferred NCDs.*

4.2 These correspondences and records demonstrate that the Debenture Holders ratified the Acquisition Agreement through their conduct. By an affidavit dated 31.08.2023, the Respondent belatedly disputed the voting on the Scheme, nearly 1.5 years after it occurred. The Debenture Holders thus acquiesced to the Acquisition Agreement and waived strict adherence to the provisions of the DTMD. The above email correspondence shows that the Acquisition Agreement has been subsequently ratified by the conduct of the Debenture Holders and, therefore, constitutes waiver and acquiescence on the part of the Debenture Holders. The Respondent is now estopped from questioning the validity of the Acquisition Agreement or stating that the Acquisition Agreement is devoid of prior consent. The Acquisition Agreement is a concluded contract with no contingency clauses. The Respondent’s claim that the consent was contingent upon the Scheme's success is

incorrect. The public announcement and information memorandum issued by Future Group do not link the Acquisition Agreement's enforceability to the Scheme.

4.3 The Acquisition Agreement was executed independently of the Composite Scheme of Arrangement (hereinafter referred to as “the Scheme”) between Future Group and Reliance entities. Under the Scheme, 19 Future Group Companies [excluding the Applicant and NuFuture Digital (India) Ltd.] were to merge with Future Enterprises Limited (hereinafter referred to as “FEL”) followed by the transfer and vesting of the business undertakings comprising wholesale and retail business and logistics and warehouse business on a slump sale basis. While the Acquisition Agreement could be said to have been executed with the Composite Scheme in mind, the Acquisition Agreement itself did not in any manner form a part of the Scheme. The life of the Acquisition Agreement and the validity of the Debenture Holders’ consent is not contingent upon the success or failure of the Scheme. The correspondence exchanged between the Debenture Holders or Debenture Trustee with the Corporate Debtor neither mentions the Acquisition Agreement being contingent to the Scheme being approved by this Tribunal nor does it show that, if the Scheme fails, the Acquisition Agreement would be rendered void. The argument of contingency of the Acquisition Agreement raised by the Debenture Trustee/Respondent is thus a mere afterthought. Moreover, Debenture Holders themselves had a large role to play in the failure of the Scheme as they, upon becoming creditors of RTVPL, voted against the Scheme and ensured its failure. A valid agreement cannot be disregarded as illegal or void unless annulled by a competent court or tribunal. The Respondent has neither impugned nor challenged

the legality of the Acquisition Agreement. Until invalidated by due process, the Debenture Holders and the Trustee cannot ignore its legal effect.

4.4 The Respondent has filed the captioned Application allegedly on behalf of the Debenture Holders, relying on authority under the DTMD executed between the parties. The Respondent was appointed as the Debenture Trustee for the Debenture Holders. The expression "Debenture Holder(s)" refers to the initial subscribers listed in *Schedule I* as on the Deemed Date of Allotment and subsequent holders who are either registered as beneficial owners in the records of NSDL/CDSL following a valid transfer under this Deed or as debenture holders in the Register of Debenture Holder(s). *Schedule I* of the DTMD provides the names of the initial Debenture Holders as under:

S. No.	Name	Amount (Rs.)	No. of Debentures	Series
1.	Franklin India Short Term Income Plan	10 Cr	100	A
2.	Franklin India Short Term Income Plan	20 Cr	200	B
3.	Franklin India Short Term Income Plan	30 Cr	300	C
4.	Franklin India Opportunities Fund	40 Cr	400	D
Total		**100 Cr**	**1000**	

4.5 The DTMD establishes Respondent's dual role as trustee and agent regarding mortgaged property. Contrary to the Respondent's claims, the DTMD limits the Respondent's authority to act independently as a trustee. Even if any debt related to the NCDs existed, it pertains to RTVPL and not the Applicant. The debt and the Respondent's obligations as trustee were discharged upon execution and

ratification of the Acquisition Agreement. The Respondent was an agent of Debenture Holders and was to act on the instructions of the Debenture Holders. If the Debenture Holders have acquiesced to, ratified and agreed to the acquisition of the liability under the NCDs by RTVPL, the Respondent cannot act contrary to the positive acts of its principal (i.e., the Debenture Holders) by filing the present Application before this Tribunal. Thus, the Respondent/Financial Creditor lacks locus to maintain this Application on behalf of the Debenture Holders.

4.6 The Companies Act, 2013 (Companies Act), itself provides that the redemption of debentures must be in accordance with the terms and conditions of their respective issue. In this case, the terms include provisions outlined in the DTMD dated 15.10.2018. Clause 15 of Schedule II of the DTMD provides for variation, modification or abrogation of the rights, privileges and conditions attached to each series of NCDs with the written consent of the Majority Debenture Holders. Therefore, any exercise of this provision does not violate the principles governing statutory contracts, contrary to the Respondent's claims. The Respondent's plea that the DTMD constitutes a statutory contract and cannot be varied, contradicts its position that consent was given for the execution of the Acquisition Agreement, contingent upon the Scheme being sanctioned. The fact that the Debenture Holders had through subsequent conduct and correspondence ratified and consented to the Acquisition Agreement at the relevant time estop the Debenture Holders now from contending otherwise. Consequently, the Debenture Trustee is similarly estopped from challenging the validity of the Acquisition Agreement.

4.7 Section 71(8) of the Companies Act requires companies to pay interest and redeem debentures according to their terms. Similarly, clause 1(c) of Form SH-12 under

Section 71(13) of the Companies Act and Rule 11 of the Companies (Share Capital and Debentures) Rules, 2014, require that the debenture trust deed must include an undertaking by the company to pay interest and principal as per the terms of the offer. Thus, the statute explicitly provides for the redemption of debentures to be subject to the terms set out in the DTMD. A debenture trust deed, while being a statutory contract, is not in the form and manner of a typical statutory contract where there is no reference to the realm of private contract between parties and the terms and conditions are strictly provided for and governed exclusively by the statute. Non-compliance with statutory norms does not invalidate the contract. However, the Applicant has complied with all applicable laws in issuing NCDs and executing the Acquisition Agreement. The judgments cited by Respondent/Financial Creditor regarding statutory contracts are inapplicable, as the DTMD read with Companies Act allows for derogation, supported by the mutual consent demonstrated through correspondence.

4.8 The Financial Creditor or Debenture Holders cannot simply choose to ignore the Acquisition Agreement or its legal effect until the Agreement is set aside by a competent court. However, neither the Financial Creditor nor the Debenture Holders have instituted any proceedings to cancel or set aside the Acquisition Agreement at any point of time. The Main Application filed by the Respondent, purportedly in its capacity as Debenture Trustee of the Debenture Holders, raises several triable issues involving the interpretation of both written and oral contracts. Specifically, the confirmation by the Debenture Holder regarding the transfer of NCDs of NFDIL and the Applicant to RTVPL introduces disputes that cannot be resolved without leading evidence. This Tribunal, operating under the Code, exercises both summary and

limited jurisdiction and is not empowered to delve into contractual disputes or disputed questions of fact and law.

4.9 Since the subject NCDs are on the books of RTVPL and not the Applicant, the debt and by extension, the Debenture Trustee/Financial Creditor stands discharged in so far as the Corporate Debtor is concerned. The Acquisition Agreement has varied/modified the rights of the Debenture Holders in accordance with Schedule II Clause 15 of the DTMD. The subsequent ratification and acquiescence to the said acquisition *vide* emails etc., constitutes ample consent by Debenture Holders to the said acquisition. In such circumstances, the Financial Creditor/Debenture Trustee stood discharged upon the execution of the Acquisition Agreement dated 29.08.2020 and ratification of such acquisition by the aforesaid confirmatory emails to Debenture Holders. As a discharged Debenture Trustee, the Financial Creditor has no locus to maintain the Main Application.

4.10 An ISIN change in NSDL records is a ministerial act and at best, assuming without admitting any violation under the Companies Act or associated rules/regulations, cannot invalidate the transfer/assignment of debentures under the Assignment/Acquisition Agreement, especially when the parties have acted upon it. Therefore, the Section 7 Application is liable to be dismissed on the aforementioned grounds.

4.11 The Applicant/Corporate Debtor has placed reliance on a number of judicial decisions in support of its submissions.

5. CONTENTIONS OF RESPONDENT/FINANCIAL CREDITOR ALONG WITH ITS WRITTEN SUBMISSIONS

5.1 The Respondent/Financial Creditor and the Debenture Holders are neither parties nor signatories to the purported Acquisition Agreement and any liability under the DTMD cannot be transferred solely by an agreement between the Applicant/Corporate Debtor and RTVPL. Clause 2.2 of the Acquisition Agreement specifies that any transfer of liability is contingent upon approval or a no-objection certificate from the Debenture Trustee, which has not been obtained. The Respondent/Financial Creditor has relied upon Section 130 of the Transfer of Property Act, 1882, asserting that only actionable claims may be transferred without the consent of the other party in an agreement. The transfer of an actionable claim does not equate to assigning a debtor's obligation to pay.

5.2 Further, the Applicant's reliance on the email dated 31.08.2020 is misplaced. This email, at the most indicates approval from debenture holders for FEL to assume liability for redeeming debentures under a sanctioned Scheme of Arrangement. It was never contemplated that the Applicant's obligation would be transferred to RTVPL without the Scheme being sanctioned. The offer mentioned in the email merely envisioned FEL discharging liabilities, not RTVPL. Further, the Applicant/Corporate Debtor has not produced any document proving consent from the Respondent or Debenture Holders to an independent transfer of liability to RTVPL.

5.3 The Debenture Holders' vote against the Scheme, as creditors of RTVPL, does not imply any waiver or acquiescence on their part. Instead, it implies that they regarded the assignment of obligations from the Applicant to RTVPL as an intermediate step within the broader scheme of arrangement. The Applicant's reliance on the voting in RTVPL is, therefore, irrelevant and misleading, as this voting was merely a step

in the Scheme, which ultimately failed. The Debenture Holders noted that the Scheme filed before this Tribunal was at variance with what was informed in the email dated 31.08.2020. Since there was change in the Scheme, the Debenture Holders were compelled to vote against the proposed Scheme. The Debenture Holders treated the assignment of the obligation from the Corporate Debtor to RTVPL as only an intermediate step under the Scheme, and this does not represent any waiver or acquiescence on the part of the Debenture Holders. In any case, there cannot be estoppel against a statutory provision. Further, it is trite law that schemes of arrangement are under a single window clearance system and have statutory force. Being statutory in nature, such schemes require court sanction. The modification, if any, of the obligation of the Issuer under the NCDs could only be made if the proposed Scheme was sanctioned by this Tribunal. Without such approval/sanction, the purported Acquisition Agreement is contrary to statute and hence void.

5.4 The Applicant's reliance on emails dated 20.01.2021; 05.10.2021; and 31.03.2022, to claim that Debenture Holders agreed to a consolidation of liability in respect of debenture issued by the Corporate Debtor, NFDIL and RTVPL in the hands of RTVPL, is unfounded and misplaced. These emails do not amount to any admission but merely indicate consolidation for the purpose of voting of the Scheme, as clarified in an email dated 15.05.2023 by Mr. Akhilesh Kalra of the Future Group. It is also submitted that under Order 12 Rule 6 of the CPC, an admission must be unambiguous, unconditional and absolute. The alleged admissions fail to meet these criteria and do not support the Applicant's claims.

5.5 The offer in the email dated 31.08.2020, was part of the Scheme that contemplated FEL, and not RTVPL, ultimately discharging debenture liabilities. The consent purportedly granted by Debenture Holders was conditional upon the Scheme being fully implemented. It was never envisaged or in the contemplation of the parties that in the absence of the entire scheme of arrangement being sanctioned under the orders of this Tribunal, the obligation of the Corporate Debtor as the Issuer of the NCDs would get assigned/transferred to RTVPL such that the Corporate Debtor would no longer be liable to redeem the NCDs. The failure of the Scheme negates any consent or agreement. Assuming while denying that the Debenture Holders are said to have given their consent to the Acquisition Agreement, it was a contingent conditional consent dependent upon fulfilment of all steps in the email dated 31.08.2020 coming to fruition. Even according to the email dated 31.08.2020, the ultimate repayment obligation was that of FEL and not RTVPL. The transfer/ assignment of liability under the debentures from the Corporate Debtor to RTVPL was only the first step in the offer contained in the email dated 31.08.2020. Therefore, it is not open for the Corporate Debtor to contend that even if the remaining steps have failed, RTVPL becomes a substituted obligor to discharge the debt. The entirety of contingency contemplated in the offer had to materialise in order for the contract to be said to be subsisting and binding and for the Corporate Debtor to claim discharge. However, none of the contingencies has been fulfilled and on the contrary, there is a complete failure of the proposal contained in the email dated 31.08.2020.

5.6 Debentures are statutory instruments governed by the Companies Act, 1956/the Companies Act, 2013 and the Rules framed thereunder. Section 71(8) of the

Companies Act. 2013 read with Rule 18(1)(c) and sub-rule (5) of the Companies (Share Capital and Debentures) Rules, 2014 and Form SH-12 mandate that the Issuer of debentures is liable to redeem them. The Issuer of debentures cannot contract out of a statutory obligation/liability by way of a private contract and any such contract, contrary to the statutory mandate, is void. The model form/agreement by way of Form SH-12 prescribed under the Companies Act, 2013, constitutes a statutory contract. Clause 1(c) of Form SH-12 mandates an undertaking by the issuer company to pay interest and principal as per the terms of the offer. In the present case, the DTMD reflects this statutory requirement through the following clauses:

a. Clause 3.1, which incorporates the covenant for repayment of interest and principal as and when it becomes due;
b. Clause 12.3, which bars the Corporate Debtor from assigning any of the rights, duties, or obligations under the DTMD or under the Transaction Documents or in relation to the Debentures; and
c. Clause 10.2, a negative covenant, prevents the Applicant from entering into agreements conflicting with the DTMD without prior consent of the Financial Creditor.

Thus, the DTMD cannot be modified and the liability under the debenture cannot be assigned or transferred to a third party.

5.7 During the course of hearing, the Ld. Sr. Counsel for the Respondent/Financial Creditor drew the attention of this Tribunal to the 24 different requirements which are to be complied with by an Issuer of debentures. It was submitted that RTVPL

could not acquire liability under the debentures without complying with these mandatory requirements. Since the debentures have been issued by the Applicant/Corporate Debtor and continue to remain as debentures of the Applicant, the contention that the liability under the debentures has been transferred to RTVPL, without transferring the debentures is unfounded. As statutory contracts, the liability to discharge the debentures remains with the Issuer. The Applicant/Corporate Debtor's claim that it is not the debentures but only the liability under the debentures that has been transferred to RTVPL is ex-facie untenable and contravenes the settled principle that what cannot be done directly cannot be done indirectly.

5.8 It is not the Debenture Holders but only the Debenture Trustee who is a party and signatory along with the Corporate Debtor as the Issuer of debentures under the DTMD, while the Acquisition Agreement is executed between the Corporate Debtor and RTVPL. Under Section 62 of the Indian Contract Act, 1872, novation can take place only between parties to the original contract. The Applicant’s claim of modification under Section 71(8) of the Companies Act, 2013 read with Clause 6A of Form SH-12, is based on a complete misreading of the provisions of law.

5.9 The Applicant/Corporate Debtor's claim that the Respondent/Financial Creditor should be relegated to a civil suit is a frivolous defence. Raising a question of fact does not justify redirecting the case to a civil suit, which is a lengthy, dilatory and expensive process. This Tribunal is fully empowered to address and resolve such issues within its jurisdiction. If at all liability was referred and assigned from the Corporate Debtor to RTVPL, as claimed, it is the Corporate Debtor who should

have filed proceedings under Section 31 of the Specific Relief Act, 1963, to cancel the debentures which has not been done.

5.10 The NCDs in this case are issued in dematerialised form and are governed by the Depositories Act, 1996. Each NCD is assigned a unique ISIN at the time of issuance. As on 01.06.2023—well after the purported Acquisition Agreement—the NCDs issued by the Corporate Debtor continued to remain 'active' in the NSDL records and continued to appear in the demat holding of the Respondent. The Applicant's contention that rectification of NSDL records is a ministerial act is incorrect. Under Section 95 of the Companies Act, 2013, the register of debenture holders is a statutory register and public document, serving as prima facie evidence of its contents. No evidence has been provided by the Applicant to substantiate any changes in the NSDL records which has bear testimony to liability and obligation of the Corporate Debtor. Further, the charge created over the Applicant's assets under the DTD remains subsisting, as confirmed by records available with the Ministry of Corporate Affairs. The Debenture issued by the Corporate Debtor thus continue to remain in force. The Respondent/Financial Creditor has distinguished all the judicial decisions cited by the Applicant/Corporate Debtor and also referred to a few authorities in support of its case. Thus, in view of the above submissions, it is prayed that the Main Application deserves to be admitted.

IA No.4417/2024

6. AVERMENTS OF APPLICANT/CORPORATE DEBTOR ALONG WITH ITS WRITTEN SUBMISSIONS

6.1 This IA was filed by the Applicant/Corporate Debtor on 05.09.2024 for the limited purpose of objecting to the admission of a document titled *"Report on the Audit of*

the Financial Statements of Franklin Templeton for FY 2023-2024"/ the Auditor's Report (hereinafter referred to as the "Report") tendered by the Financial Creditor, without any supporting affidavit or in the alternative, providing the Applicant with a reasonable opportunity to deal with the said Report including filing of written submissions regarding the same.

6.2 The Debenture Holders have been liquidated as per the Liquidation Order of the Hon'ble Supreme Court. However, the Respondent has suppressed this fact and failed to provide any explanation. On 02.09.2024, during the hearing of I.A. No.2236 of 2023 in C.P.No.286 of 2023 and I.A. No.2374 of 2023 in C.P. No.19 of 2023 ("RTVPL Applications") before this Tribunal, the Respondent abruptly produced a document titled *"Report on the Audit of the Financial Statements of Franklin Templeton for FY 2023-2024",* purporting to represent the financial statements of 'Franklin India Short Term Income Plan.' This Report was tendered across the bar without any supporting affidavit from FT AMC or the Respondent. It is well-established law that documents submitted without an accompanying affidavit cannot be considered evidence in legal proceedings. Further, the Report was produced after arguments had concluded. Consequently, the Applicant filed I.A. No. 4417 of 2024 objecting to the reliance on or admission of the Auditor's Report.

6.3 The Respondent suppressed key facts which were later discovered from documents submitted during written submissions for the RTVPL Applications in post-final hearing on 02.09.2024:

a. Notice dated 23.04.2020 given by Franklin Templeton Mutual Fund announcing Franklin Templeton India's voluntary winding-up of six mutual fund schemes.

b. Hon'ble Supreme Court' order dated 12.02.2021, affirming the winding-up decision, appointing SBI Funds Management Pvt. Ltd. as liquidator.

Franklin Templeton Mutual Fund (FT MF) announced the winding-up of six mutual fund schemes on 23.04.2020. The Hon'ble Supreme Court upheld this on 12.02.2021, appointing 'SBI Funds Management Private Limited' (hereinafter referred to as "SBI Funds") as the liquidator. A news item in the 'Economic Times' on 22.08.2023, confirmed complete liquidation and distribution of proceeds, thereby extinguishing the NCDs.

6.4 In addition to the initial Holders of NCDs issued by the Applicant, four mutual fund schemes which were the initial Debenture Holders for NuFuture Digital (India) Ltd. ("NFDIL") and RTVPL were also wound up/liquidated on 22.08.2023. The Auditor reports and financial statements of FT MF as at 31.03.2023, confirm the winding-up of FT Funds viz., 'Franklin India Short Term Income Plan', 'Franklin India Income Opportunities Fund', 'Franklin India Credit Risk Fund', 'Franklin India Dynamic Accrual Fund', etc., under the SEBI (Mutual Funds) Regulations. The Respondents Convenience Compilation (11.06.2024) lists "SBIMF A/C FRANKLIN INDIA INCOME OPPORTUNITIES FUND SECURITIES A/C" as a holder of the above Funds. Further, the Hon'ble Supreme Court, by order dated 24.07.2024 in Civil Appeal Nos.498-501/2021, accepted SBI Funds' closure report for the six FT mutual fund schemes. All these documents and public records indicate that the initial Debenture Holders no longer hold the NCDs, as these were fully liquidated by 22.08.2023. Proceeds were distributed and the units were extinguished. Consequently, in view of provisions of Sections 77 and 83 of the Indian Trusts Act,

1882, the said trust stands extinguished and the trust property would accrue of the trust i.e., the Applicant/Corporate Debtor.

6.5 The Respondent falsely alleged that 'SBI Funds' was not appointed as the liquidator. The Hon'ble Supreme Court's order dated 12.02.2021, categorically states that *"SBI Funds Management is appointed to oversee the winding-up process, including liquidation and distribution to unitholders."* The Respondent failed to provide any authorisation from Debenture Holders, 'SBI Funds', or 'FT AMC'. Despite this, the Respondent claimed to act as an agent of SBI Funds/FT AMC by virtue of para 23(e) of the Interim Application No.35939/2021 dated 08.03.2021, filed by SBI Funds before the Hon'ble Supreme Court for placing on record the Standard Operating Procedure (SOP) to be followed for winding up of the schemes. Further, the orders of Hon'ble Supreme Court make it clear that SBI Funds was vested with the authority for recovery and liquidation, superseding any provisions in the DTMD. The IA for the Final Closure Report reveals that the NCDs had changed hands from FT Funds to SBI Funds (by order of Hon'ble Supreme Court dated 12.02.2021), and thereafter, possibly back to FTMF (by order of the Hon'ble Supreme Court dated 18.03.2021). However, no letter of authority from SBI Funds or FTMF has been produced by the Debenture Trustee/Financial Creditor to act on behalf of FTMF in the present proceedings. In these circumstances, the Application has been filed without authority and ought to be dismissed on this ground alone.

6.6 While the Auditor's Report produced by the Respondent shows the NCDs to be remaining due from the Corporate Debtor and NFDIL, the balance sheets of the Corporate Debtor and RTVPL show that the debt underlying the said debentures had been transferred by the Corporate Debtor to RTVPL. In order to determine the

truthfulness and genuineness of the contradictory documents produced by both sides, evidence must be led and trial be conducted by a competent Court of law. This Tribunal, while exercising summary jurisdiction under Section 7 of the Code, cannot hold trial and adjudicate complicated questions of fact and law. The Applicant/Corporate Debtor has cited a few case laws in support of its case. Therefore, it is submitted that the instant Application deserves to be dismissed on this ground also.

7. CONTENTIONS OF RESPONDENT/ FINANCIAL CREDITOR ALONG WITH ITS WRITTEN SUBMISSIONS

7.1 The Applicant's claim that the Respondent has suppressed financial statements of debenture holders, allegedly reflecting RTVPL as the obligor, is unfounded. The financial statements are public documents. In the absence of a prayer for their production, no adverse inference can be drawn. In fact, the Respondent has produced books of account showing that the liability has not been transferred to RTVPL. The submission of Corporate Debtor that the Debenture Holders have accepted RTVPL as a debtor is completely belied by the balance sheet of the Debenture Holders. Consequently, the Corporate Debtor's submission that there is no debt due to the Debenture Holders and/or the Respondent does not survive. The argument that the Respondent should have initiated civil proceedings to set aside the Acquisition Agreement is misplaced. Being a void document, the Acquisition Agreement can be declared void even in collateral proceedings. If the Applicant believed its liability under the NCDs was transferred and assigned to RTVPL, it should have initiated proceedings under Section 31 of the Specific Relief Act, 1963

to cancel the debentures. However, no such action has been taken by the Applicant to date.

7.2 The Applicant referred to the Hon'ble Supreme Court orders dated 12.02.2021 and 24.07.2024, contending that six debt schemes of FTMF had been wound up with SBI Funds acting as the liquidator of holdings/assets/portfolio. Thus, it was argued that the Respondent lacked the locus to maintain the present Application. However, the orders passed by the Hon'ble Supreme Court did not in any manner affect the Respondent's right to file an Application under Section 7 of the Code or displace the Respondent as the trustee of the debenture holders. The said orders pertained only to winding up of six specific schemes, with unit holders approving the decision by over 98%. SBI Funds was appointed to liquidate holdings for these schemes, akin to a receiver, not a liquidator of FTMF as a whole. It was empowered to liquidate the holdings/assets/portfolio in the 6 schemes. The allegation that the Respondent had suppressed appointment of SBI Funds as liquidator of certain holdings/ assets/ portfolio is completely unfounded as it was in public domain since 2020. It was also a part of the audited financial statements of FTMF which were placed on record by the Respondent. Further, SBI Funds filed applications before the Hon'ble Supreme Court on 08.03.2021 and 17.01.2024, *inter-alia,* stating its liquidation responsibilities. The SOP approved by the Hon'ble Supreme Court *vide* order dated 18.03.2021, clarified that non-performing assets (NPAs) like the Applicant's NCDs remained FT's responsibility. FTMF was accordingly required to pay the respective unit holders of the winding up schemes as and when any amount was received or recovered from the NPAs. Thus, the liquidation of six schemes does not absolve the Applicant of its liability to redeem the NCDs.

7.3 The contractual relationship between the Respondent (Debenture Trustee) and the Applicant remains unchanged. The Respondent continues to act in a fiduciary capacity on behalf of debenture holders under the DTMD and the Debenture Trustee Regulations. The Respondent is fully authorised to represent the debenture holders until valid discharge of principal and interest is granted. The allegation of suppression has been made in a desperate attempt given the fact that the audited balance sheets of the Debenture Holders clearly establish that the Debenture Holders have not accepted RTVPL as the obligor of the NCDs. The liability of the Corporate Debtor and right of the Debenture Trustee/Financial Creditor to take steps under the DTMD remain intact. The contention that winding up certain schemes leaves no beneficiaries under the DTMD is also incorrect. The application dated 17.01.2024, accepted by the Hon'ble Supreme Court on 24.07.2024, confirms that FTMF retains responsibility for non-performing assets, including the Applicant's NCDs. The Respondent, as the trustee under the DTMD, has statutory and contractual authority to protect the debenture holders' interests. Further, despite the public knowledge of SBI Funds' appointment, the Applicant dealt with debenture holders and relied on their conduct, including their participation in the composite scheme voting in April, 2022. The Applicant cannot now question debenture holder's or Respondent's authority to maintain the instant Application. The mere fact that the process of liquidation of certain schemes of Franklin Templeton is underway neither in any manner extinguishes the beneficiaries nor absolves the Applicant from its liability to redeem and repay the debentures.

7.4 To contend that there are no beneficiaries and the trust vests in the Corporate Debtor is a dishonest attempt to defraud the Debenture Holders. Until the

debentures are redeemed, the statutory contract under the DTMD remains valid and the debt owed by the Applicant remains outstanding. The Application is, therefore, maintainable. There being a default on the part of the Corporate Debtor in discharging the debt, the Main Application deserves to be admitted. Judgements cited by the Corporate Debtor in this regard are not applicable to the facts of the present case. Proceedings before Hon'ble Supreme Court and appointment of SBI Funds to liquidate certain holdings/assets/portfolio of six debt schemes of FTMF is not a material fact and, therefore, question of suppression does not arise. Moreover, the details of six schemes of FTMF under winding up and appointment of SBI Funds were in public domain since 2020, and were also part of audited financial statements of FTMF which were placed on record by the Respondent/Financial Creditor. The audited financial statements of FTMF are public documents filed as per Regulation 56(4) and 59 of SEBI (Mutual Funds) Regulations, 1996. These remain uncontested and provide a true and fair view, supporting the Respondent's case.

7.5 The Debenture Trustee acts in a fiduciary capacity under the DTMD, not as an agent of debenture holders. The recital 'D' of the DTMD specifically provides that the Respondent is appointed as, Debenture Trustee *'on behalf of'* and *'for benefit of'* the Debenture Holders. The Notification dated 27.02.2019 under Section 7 of the Code indicates that the Debenture Trustee is an agent of the Debenture Holders. However, the contention of the Corporate Debtor is misplaced in as much as the said Notification reaffirms the trustee's *locus standi* to act and file the Main Application for and on behalf of debenture holders. It does not mean that when a trustee files application on behalf of debenture holders, it is not for *'the benefit'* of the holders or that because a Debenture Holder can file application, the Debenture

Trustee cannot do so. Further, the Respondent is registered with SEBI as a Debenture Trustee under the SEBI (Debenture Trustee) Regulations, 1993. These Regulations including Regulation 15(1)(f) and 15(1)(n) provide that the Debenture Trustee is, *inter alia,* duty-bound to take such steps as may be necessary for protection of the interests of the Debenture Holders. Reliance is placed on certain judicial decisions relating to the issues involved in the IA, while distinguishing the case laws cited by the Applicant. Thus, it is submitted that the Respondent/ Debenture Trustee has the locus to file and maintain the present Application.

8. ANALYSIS AND FINDINGS

8.1 We have considered the pleadings as well as the documents placed on record along with written submissions, and heard at length both the Ld. Sr. Counsel for both the Financial Creditor and the Corporate Debtor on the Main Application as well as in all the aforementioned IAs. It is first proposed to deal with the objections raised by the Corporate Debtor/Applicant in each IA and determine whether the Main Application filed by the Financial Creditor/Respondent is maintainable or not under Section 7 of the Code.

8.2 **IA No.18/2023:** The sole issue for adjudication in this IA is whether the alleged debt claimed to be in default is barred under Section 10A of the Code in view of the date of default falling within the CIRP suspension period. It is observed from the record that the Applicant/Corporate Debtor issued 1500 rated, unlisted, secured, redeemable, non-convertible debentures each having a face value of Rs.10,00,000/- aggregating to Rs.150 Crore on a private placement basis in favour of the Debenture Holders in June, 2015. The Applicant/Corporate Debtor appointed the Respondent as the Debenture Trustee *vide* Debenture Trustee Agreement

(DTA) dated 26.06.2015. A Debenture Trust cum Mortgage Deed (DTD) dated 16.09.2015, was executed between the Applicant/Corporate Debtor and the Respondent/Financial Creditor, setting out the respective obligations of the parties along with other detailed terms and conditions including but not limited to redemption of the debentures, payment of interest, creation of security, etc.

8.3 Thereafter, it is observed that the Applicant/Corporate Debtor issued 1000 secured, rated, redeemable, non-convertible debentures (NCDs) each having a face value of Rs.10,00,000/- aggregating to Rs.100 Crore on a private placement basis in four series being Series A, Series B, Series C and Series D on 28.09.2018 to new Debenture Holders, clearly substantiating a disbursement of financial debt. Subsequently, a new DTA was executed between the Applicant/Corporate Debtor and the Respondent on 27.09.2018, whereby the Respondent agreed to be appointed as Debenture Trustee for the benefit of the new Debenture Holders. A fresh DTMD dated 15.10.2018 was executed between the Respondent/Financial Creditor and the Applicant/Corporate Debtor in compliance with SEBI (Issue and Listing of Debt Securities) Regulations, 2008 and SEBI (Debenture Trustees) Regulations, 1993.

8.4 The case of the Applicant hinges on the notice dated 22.10.2020, addressed by the Advocates for the Respondent to the Applicant/Corporate Debtor pointing out the occurrence of events of default under Clause 13 of the DTD dated 16.09.2015. A perusal of the said notice reveals that it was meant to convey to the Applicant/Corporate Debtor, certain breaches under the Transaction Documents (as defined in the DTD), viz., downgrading of rating of debentures and default in payment of the scheduled amounts on the due date, which constituted events of

default under Clause 13 of the DTD. There is nothing in the said notice to show that the Respondent/Financial Creditor sought full repayment under the Mandatory Prepayment Clause of the DTD dated 16.09.2015. As a matter of fact, it is categorically and unequivocally stated in the said notice that in view of the breaches/default committed by the Applicant/Corporate Debtor, the Respondent/Financial Creditor reserves its rights to exercise the Mandatory Prepayment Option and to accelerate the redemption of the debentures. It is also observed, on perusal of the said notice, that instead of seeking full repayment under the Mandatory Prepayment Clause, the Respondent had called upon the Applicant to confirm full repayment of all dues pertaining to the debentures issued in June, 2015 "*from the proceeds of any transaction between Future Group and Reliance Retail Ventures Ltd. and/or any other prospective investor, or by January 31, 2021 whichever is earlier*". In this background, it is noticed that the Respondent/Financial Creditor did not proceed further in the matter till the occurrence of the next default.

8.5 It is pertinent to note that the Main Application is based on the default committed on 30.04.2021, as per Schedule-IV of the DTMD dated 15.10.2018, after the expiry of the prohibited period under Section 10A of the Code. This date of default is in line with the date mentioned in Part-IV of the Application. Subsequently, it is noticed from the record that the Respondent issued a notice dated 01.07.2022 calling upon the Applicant/Corporate Debtor to make immediate repayment of dues under the NCDs failing which appropriate legal action would be taken.

8.6 It is pertinent to mention that Section 10A was inserted in the Code in order to prevent corporate persons, which were experiencing distress on account of unprecedented situation of COVID-19 Pandemic, from being pushed into insolvency

proceedings under the Code. The Pandemic had impacted businesses, financial markets and economies all over the world including India and created uncertainty and stress for businesses for reasons beyond their control. In view of this extraordinary situation, Section 10A of the Code was inserted by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2020 dated 23.09.2020, which barred filing applications under Sections 7, 9 and 10 of the Code for defaults occurring during the period from 25.03.2020 to 24.03.2021. In this connection, it will not be out of place to mention that the Applicant/Corporate Debtor *vide* letter dated 13.04.2020, addressed to the Debenture Holders (attached to the Additional Affidavit dated 17.03.2023), had requested for moratorium due to temporary cash flow mismatches in the wake of COVID-19 Pandemic. It is also observed that the Respondent/Financial Creditor *vide* letter dated 27.04.2020, has granted a three-month moratorium (from 01.04.2020 to 30.06.2020) on payment obligations, effectively shifting the repayment schedule by three months.

8.7 Be that as it may, it is now well-settled that Section 10A will have no bearing on defaults occurring after the expiry of the prohibited period. We find merit in the Respondent's contention that since the Applicant/Corporate Debtor has committed multiple defaults not only during the suspension period covered by Section 10A but also beyond such period, there is no bar on the Respondent/Financial Creditor to prefer application under Section 7 based on the subsequent defaults not covered by the prohibited period. Merely because the Applicant/Corporate Debtor committed default during the Section 10A period, it cannot be said that the Respondent/ Financial Creditor is now barred from filing application under Section 7 on the basis of default subsequent to Section 10A period. There is no embargo under Section 7

of the Code, which prevents the Respondent/ Financial Creditor from approaching the Adjudicating Authority on the occurrence of a default subsequent to the prohibited period. Section 10A has no application when an action is initiated for default which occurred subsequent to Section 10A period, as held by the Hon'ble NCLAT in its judgment on more or less similar facts in the matter of a related entity of the Applicant/ Corporate Debtor, namely, ***NuFuture Digital (I) Ltd. Vs. Axis Trustee Services Ltd.*** *[(2023) SCC OnLine NCLAT 242].* Therefore, when a subsequent default takes place in the post-suspension period, the Applicant/Corporate Debtor cannot claim that the Respondent is attempting to shift the date of default or that the subsequent notice dated 01.07.2022 is contradictory to the previous notice dated 22.10.2020, because both these notices are in relation to two separate issues of the debentures as well as separate events of default giving rise to separate causes of action. In view of this position, reliance of the Applicant/Corporate Debtor on the decisions in ***ITC Ltd*** (supra) and ***Jagdish Prasad Sarada*** (supra) is misconceived and is accordingly of no avail.

8.8 In the present case, it is noticed from the record that the Applicant/Corporate Debtor committed another default on 30.04.202,1 in redemption of NCDs amounting to Rs.5 Crore as per the redemption terms contained in Schedule-IV of the DTMD. Since the aforesaid default took place on 30.04.2021 after the prohibited period ended on 24.03.2021, it cannot by any stretch of imagination be said that the present Application is barred under Section 10A of the Code.

8.9 In view of above discussion, we hold that the Applicant/Corporate Debtor has failed to make out a case for dismissing the Main Application on the ground that the claim of the Respondent/ Financial Creditor is hit by Section 10A of the Code. On the

contrary, we find that the date of default is stated to be 30.04.2021 in Part-IV of the Application falls outside the suspension period contemplated by Section 10A. To contend that the date of default is referable to the notice dated 22.10.2020 falling within the suspension period is nothing but a figment of imagination of the Applicant/Corporate Debtor. Hence, **IA No.18/2023** is found to be devoid of merit and is accordingly **dismissed.**

IA No.29/2023

9. The Applicant/Corporate Debtor in this IA has sought dismissal of the Main Application as being non-maintainable for want of cause of action and for suppression of material facts/records. The questions which arise for consideration are (i) whether, pursuant to the transfer of liabilities under the NCDs *vide* the Acquisition Agreement, the Respondent has ceased to be a creditor of the Applicant and (ii) whether there was suppression of material facts/records by the Respondent/Financial Creditor.

9.1 It is observed from the record that the Respondent/Financial Creditor was appointed as the Debenture Trustee by the Corporate Debtor under the Debenture Trustee Agreement (DTA) dated 27.09.2018 for the debenture holders of the debentures aggregating to Rs.100 Crore to be issued by the Corporate Debtor from time to time on private placement basis in accordance with the provisions of the Companies Act, Companies (Share Capital and Debentures) Rules, 2014 and SEBI (Debenture Trustees) Regulations, 1993. As per Clause 8 of the DTA, this Agreement *"shall be in force till the monies in respect of the debentures have been fully paid off and the requisite formalities for satisfaction of charge in all respects have been complied*

with". Likewise, Recital D of the DTMD dated 15.10.2018, specifically provides that the Respondent/Financial Creditor is appointed as Debenture Trustee in trust for, on behalf of and for benefit of the debenture holders. Under Clause 3.2 of the DTMD, the Corporate Debtor undertook with the Respondent/Financial Creditor, the *"covenant to pay principal and interest"* due and payable in respect of the relevant series of debentures on each of the dates when such interest or principal repayment fell due. Clause 13.1 of the DTMD deals with as well as specifies *"events of default and remedies"* including default in payment of the principal amount and/or interest or coupon on the respective due dates. As per Clauses 13.2 and 13.3 of the DTMD, upon occurrence of default, the Respondent/Financial Creditor is entitled to exercise singly or jointly any rights available to it *"in terms of the Transaction Documents or under Applicable Law",* which includes provisions of the Code.

9.2 It is noticed that the contractual rights of the Respondent/Financial Creditor as Debenture Trustee under the DTMD are in line with the statutory powers under the SEBI (Debenture Trustees) Regulations. For instance, Regulation 15(1) mandates the Debenture Trustee to ensure that the issuer company does not commit any breach of the terms of issue of debentures or covenants of the debenture trust deed and, consequently, to perform such acts as are necessary for remedying such breach and for protection of the interests of the debenture holders. Similarly, Section 71(10) of the Companies Act, 2013, empowers the debenture trustee to approach the Tribunal when a company fails to redeem debentures or pay interest when it is due. In the instant case, since the Corporate Debtor has committed default in its payment obligations under the DTMD as well as Transaction Documents, we find that the Respondent/Financial Creditor in its capacity as Debenture Trustee is well

within its rights to approach this Tribunal seeking initiation of CIRP in respect of the Corporate Debtor under Section 7 of the Code.

9.3 Now, it is proposed to examine the merits of the Corporate Debtor's contentions that the outstanding debt or liability under the debentures no longer lies with the Corporate Debtor as the same has been transferred to RTVPL through an Acquisition Agreement dated 29.08.2020 and that the debenture holders had allegedly acquiesced to the said agreement and purportedly waived strict adherence to the provisions of the DTMD. As regards the validity of the Acquisition Agreement and the question whether it supersedes the provisions of the Companies Act, 2013, and the DTMD, it is necessary to examine the statutory provisions relating to the transfer of liability and the nature of the DTMD as a statutory contract. There is no doubt that Debentures are statutory instruments governed by the Companies Act, 2013, and related rules. Section 71(8) of the Companies Act, 2013, read with Rule 18(1)(c) and sub-rule (5) of the Companies (Share Capital and Debentures) Rules, 2014, mandates that the issuer of debentures remains liable to redeem the debentures. Form SH-12 requires an undertaking to pay interest and principal as per the terms of the offer, as reflected in Clause 3.2 of the DTMD, which contains a covenant to pay principal and interest. We find merit in the Financial Creditor's submission that the issuer of the debentures cannot contract out of a statutory obligation or liability by way of a private contract and any such contract being contrary to the statutory mandate will be void. Further, Clause 10.2 of the DTMD prohibits the Corporate Debtor from entering into agreements that conflict with its provisions without prior written approval from the Financial Creditor. The DTMD also contains clauses such as Clause 12.3 of Schedule II expressly prohibiting the

Corporate Debtor from assignment of any of the rights, duties or obligations under the Transaction Documents or in relation to the debentures. Clause 15 of Schedule II permits variation, modification or abrogation of rights, privileges and conditions attached to each Series of the Debentures only with the written consent of the Majority Debenture Holders of such Series. The Corporate Debtor's reliance on these clauses of the DTMD is misplaced as no such prior written consent or approval was obtained while executing the Acquisition Agreement.

9.4 It is pertinent to note that the Acquisition Agreement dated 29.08.2020, was part of a composite scheme of arrangement. For this purpose, it will be worthwhile to refer to the public announcement issued by Future Group titled "Future Group re-organises its business; to sell retail, wholesale, logistics and warehouse businesses to Reliance Retail" relevant part of which is extracted below:-

> *"**29th August 2020 Mumbai**: Future Group today announced a major reorganisation of its businesses in which the key group companies including Future Retail, Future Lifestyle Fashion, Future Consumer, Future Supply Chains and Future Market Networks will merge into Future Enterprises Limited (FEL).*
>
> *Future Enterprises will subsequently sell by way of a slump sale the retail and wholesale business that incudes key formats such as Big Bazaar, fbb, Foodhall, Easyday, Nilgiris, Central and Brand Factory to Reliance Retail and Fashion Lifestyle Limited (RRFLL), a wholly owned subsidiary of Reliance Retail Venture Limited (RRVL). It will also sell the logistics and warehouse business to RRVL by way of a slump sale. **RRFLL and RRVL will take over certain borrowings***

*and current liabilities **related to the business** and discharge the balance consideration by way of cash…*

This will be achieved by way of a composite scheme and will require the requisite regulatory approvals and consent of shareholders and lenders…

This transaction takes into account the interest of all its stakeholders including lenders, shareholders, creditors …".

Since it was RTVPL and not the Applicant/Corporate Debtor which was among the "key group companies" to be merged into Future Enterprises Limited and RRFLL and RRVL were to "take over certain borrowings" related to the business as part of the composite Scheme of Arrangement, it appears probable that the Future Group proposed to transfer and consolidate the borrowings of the Applicant/Corporate Debtor by way of NCDs issued to the Debenture Holders in the hands of RTVPL. The Acquisition Agreement dated 29.08.2020 must, therefore, be viewed and understood in the backdrop of the proposed reorganisation of Future Group by way of the composite scheme.

9.5 In this connection, it is equally relevant to take note of the following extracts of the email dated 31.08.2020, addressed by the Applicant/Corporate Debtor to the debenture holders on the subject "Future Group Transaction Update and Franklin Templeton NCDs":-

"….As outlined in our previous communication, we have now successfully finalized the terms of the strategic transaction…...

Following are the brief details about the transaction and next steps vis a vis Franklin Templeton's NCD exposure to Future Group:

1. *Future Group has announced a major reorganisation of its business on August 29, 2020 in which the key group listed entities along with few other entities (including Rivaaz Trade Ventures Private Limited* ***("Rivaaz")*** *would get merged into Future Enterprises Limited* ***("FEL") ("Composite Scheme of Arrangement").***
2. *FEL will subsequently sell by way of a slump sale the retail and wholesale business to Reliance Retail and Fashion Lifestyle Limited* ***("RRFLL"****, a wholly owned subsidiary of Reliance Retail Ventures Limited ("RRVL"). FEL will also sell the logistics and warehouse business to RRVL by way of a slump sale. ……*
3. *……..*
4. *……..*
5. ***With regards to NCDs issued by each of Future Ideas Company Limited ("FICL") and nuFuture Digital (India) Limited ("NFDIL") to Franklin Templeton ("FT"), please note****:*

a. ***FICL has executed an Acquisition Agreement with Rivaaz wherein FICL has transferred its obligations toward repayment of NCD-1 and NCD-2 (current o/s Rs.127.5 Cr.) along with equivalent amount of identified assets to Rivaaz****….*

6. *Since the acquirer was desirous of* ***purchasing all the assets pertaining to the retail, wholesale, logistics and warehouse businesses (including those owned by Rivaaz, FICL and NFDIL)****, consequently, the equity shares of Rivaaz have been acquired by wholly owned subsidiary of FEL, Future Bazaar India Limited (FBIL), rendering Rivaaz a wholly owned subsidiary of FBIL.*

7. *As part of the Composite Scheme of Arrangement (subject to necessary regulatory and stakeholder approvals), FBIL and its wholly owned subsidiaries (including Rivaaz) would be merging with FEL. Thereby,* ***the assets and liabilities with regards to the FT NCDS would ultimately reside with FEL****.*
8. *Upon completion of the aforementioned Composite Scheme of Arrangement,* ***FEL would repay the obligations under the FT NCDs*** *through the proceeds received from the slump sale consideration…"*

9.6 A careful analysis of the aforesaid public announcement dated 29.08.2020, and email dated 31.08.2020, reveals that Future Group was undertaking "a major reorganisation of its business" by way of a "strategic transaction" in the following manner:-

(i) Future Group was to sell its retail, wholesale, logistics and warehouse businesses to Reliance Retail and Fashion Lifestyle Ltd. (RRFLL), a wholly owned subsidiary of Reliance Retail Venture Ltd. (RRVL).

(ii) As part of the major re-organisation, the key group listed entities along with a few other entities including RTVPL were to get merged with Future Enterprises Ltd. (FEL) under a composite Scheme of Arrangement (the Scheme).

(iii) FEL was to subsequently sell by way of a slump sale the retail and wholesale business to RRFLL.

(iv) The logistics and warehouse businesses were to be sold to RRVL by way of a slump sale.

(v) RRFLL and RRVL were to take over certain borrowings and current liabilities related to the business and discharge the balance consideration by way of cash.

(vi) With regard to the borrowings by way of NCDs issued by the Corporate Debtor herein and NFDIL to Franklin Templeton, both the Corporate Debtor and NFDIL had executed an Acquisition Agreement with RTVPL, whereby each had transferred its obligations towards repayment of NCDs along with equivalent amount of identified assets to RTVPL which was a part of the Scheme.

(vii) As per the details furnished by the Corporate Debtor, the principal amount outstanding towards FT NCDs by Future Group was Rs.1004.24 Crores comprising Rs.127.50 Crore in the Corporate Debtor, Rs.256.30 Crore in NFDIL and Rs.620.44 Crore in RTVPL.

(viii) Unlike RTVPL, neither the Corporate Debtor nor NFDIL was a part of the Scheme.

(ix) Since the acquirer desired to purchase all the assets pertaining to the retail, wholesale, logistics and warehouse businesses (including those owned by RTVPL, the Corporate Debtor and NFDIL) by way of slump sale, the equity shares of RTVPL had been acquired by wholly owned subsidiary of FEL, Future Bazaar India Ltd. (FBIL), rendering RTVPL a wholly owned subsidiary of FBIL.

(x) As part of the Scheme, FBIL and its wholly owned subsidiaries (including RTVPL but excluding the Corporate Debtor and NFDIL) would be merging with FEL. Consequently, the assets and liabilities with regard to the Franklin Templeton (FT) NCDs would ultimately reside with FEL.

(xi) Upon completion of the Scheme (pursuant to regulatory and stakeholders' approval), FEL would repay the obligations under the FT NCDs out of the proceeds received from the slump sale consideration.

9.7 Thus, it clearly emerges that the proposed business reorganisation of Future Group was not a case of simple merger or amalgamation of one corporate entity with another but involved a strategic transaction, encompassing multiple group entities (including RTVPL but excluding the Corporate Debtor and NFDIL) and having a carefully planned and designed structure. This process also included initial consolidation of all borrowings by way of NCDs in the hands of RTVPL, followed by acquisition of equity shares of RTVPL by FBIL (a wholly owned subsidiary of FEL) and ultimate merger of FBIL and all its wholly owned subsidiaries including RTVPL with FEL. In view of above position, we find that the Acquisition Agreement was an integral, indivisible and inextricable part of structuring of the transaction, whereby the assets and liabilities with regard to FT NCDs were to "ultimately reside" with FEL. Finally, all assets and liabilities related to concerned businesses were to be transferred by FEL to the acquirers by way of slump sale.

9.8 It is also relevant to note that the aforesaid Scheme of Arrangement which was subject to regulatory and stakeholders' approval finally did not materialise and admittedly failed on 21.04.2022. In this background, it is patently clear that the Acquisition Agreement was part of the Composite Scheme of Arrangement and that upon its approval, it was Future Enterprises Limited (FEL) rather than RTVPL, which was to discharge the liabilities under the debentures out of the proceeds of slump sale of business undertakings of Future Group, as evident from perusal of the

aforesaid email. Further, in view of the proposed Scheme, all the email correspondences between the debenture holders and the Corporate Debtor/Future Group exchanged during the period between 31.08.2020 and 21.04.2022 (when the Scheme failed) have, therefore, to be read, understood and appreciated in this context. This will include emails dated 20.01.2021 and 31.03.2022, wherein the Debenture Holders sought confirmation of the consolidation of NCDs issued by the Corporate Debtor and NFDIL in RTVPL. However, the said emails do not constitute any consent or admission to transfer the liability under the NCDs to RTVPL. This is also evident from the internal email dated 15.05.2023, addressed by Mr. Akhilesh Kalra of Future Group to Ms. Petrushka Dasgupta on the subject "Balance Confirmation related emails from Templeton" forwarding *"attached email from Templeton confirming the total o/s as on 31.01.2022* ***for scheme voting purpose****..."* This shows that the consolidation of NCDs of the Corporate Debtor and NFDIL in RTVPL was only for the "scheme voting purpose" and nothing else. There is not even an iota of evidence to show that the Financial Creditor/Debenture Holders ever agreed to a standalone transfer of liability under the NCDs from the Corporate Debtor and NFDIL to RTVPL. Thus, to contend that the Acquisition Agreement was executed independently of the Scheme or that it did not form a part of the Scheme is nothing but travesty of the facts and hence, the contention raised by the Applicant/Corporate Debtor on this point is found to be misconceived and bereft of merit and the same is accordingly dismissed.

9.9 At this juncture, it will be pertinent to consider the governing framework for issue of debentures. Debentures are referred to as 'securities' in Section 2(81) of the

Companies Act, 2013, and as defined in Section 2(h) of the Securities Contracts (Regulation) Act, 1956. Part I of Chapter III of the Companies Act, 2013, deals with issue of securities such as debentures by public and private companies. Further, Section 71(4) of the Companies Act read with Rule 18(7) of Companies (Share Capital and Debentures) Rules, 2014, lays down that where debentures are issued by a company under this section, the company shall create a Debenture Redemption Reserve (DRR) Account out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilised by the company except for the redemption of debentures. Section 71(8) provides that a company shall pay interest and redeem the debentures in accordance with the terms and conditions of their issue.

9.10 Rule 18 of Companies (Share Capital and Debentures) Rules, 2014*, inter alia,* deals with debentures, appointment of and the duties of debenture trustees, etc. Rule 18(3), *inter alia,* mandates that every debenture trustee shall ensure that the company that issues debentures does not commit any breach of the terms of issue of debentures in order to protect the interests of the debenture holders. Rule 18(5) lays down that for the purposes of Section 71(13) of the Companies Act and Rule 18(1) of Companies (Share Capital and Debentures) Rules, 2014, a trust deed in form No.SH.12 or as near thereto as possible shall be executed by the company issuing debenture in favour of the Debenture Trustee. Clause 1(c) of Form No. SH.12 (Debenture Trust Deed) mandates that the Debenture Trust Deed must contain "*an undertaking by the company to pay the interest and principal amount of such debentures to the Debenture holders as and when it becomes due, as per the*

terms of offer". In the light of above statutory framework, we find merit in the contention of the Respondent/Financial Creditor that debentures are statutory instruments or contracts and that the liability of a company issuing debentures is a statutory liability or obligation. There is no provision either in the Companies Act, 2013 or Companies (Share Capital and Debentures) Rules, 2014, permitting the issuer company to transfer or assign the liability under the debentures to another entity. The Applicant/Corporate Debtor has also not drawn attention to any express provision of the Companies Act, 2013 or Companies (Share Capital and Debentures) Rules, 2014 in this regard.

9.11 As regards the Corporate Debtor's plea based on alleged waiver and acquiescence by the Debenture Holders, it is well-established that mere acts of indulgence without intention to relinquish a right will not amount to waiver. Moreover, leniency or concessions do not automatically constitute waiver of rights. Mere silence, or inaction, without an obligation to speak or act, does not constitute a waiver. If a party allows a delay in performance or accepts a reduced payment without intending to relinquish its right to full performance or full amount, or allows performance in some other manner not envisaged in a contract, cannot be said to be a waiver. A party claiming waiver would not be entitled to claim the benefit of waiver unless it has altered its position in reliance on it. On application of these settled legal propositions to the facts of the instant case, we find that the Corporate Debtor has not been able to establish that the Financial Creditor/Debenture Holders had ever given up or surrendered their rights to take recourse to the legal remedies. Further, the Corporate Debtor has also not been in a position to

establish that on account of any such waiver or acquiescence, the Corporate Debtor had altered its position to its detriment.

9.12 Let us now examine whether on account of the alleged waiver or acquiescence, the Corporate Debtor had altered its position solely to its own advantage and to the detriment of its creditors. The Applicant/Corporate Debtor relies on clause 15 of Schedule II of the DTMD, which provides that the rights, privileges and conditions attached to each series of the Debentures may be varied, modified or abrogated with the consent in writing of the Majority Debenture Holders of such Series or if applicable, with the sanction of a resolution passed by the Majority Debenture Holders of such Series, as the case may be, passed at a meeting of the Debenture Holders of such Series. However, it is noticed that the Applicant/Corporate Debtor has not placed on record the written consent of the Majority Debenture Holders of respective series of Debentures or the resolution passed by a Majority Debenture Holders at a meeting according sanction to the Acquisition Agreement. In other words, the claim of the Applicant/Corporate Debtor is not supported by any corroborating documentary evidence.

9.13 Further, assuming (for the sake of argument only) that the rights of the Debenture Holders under the DTMD had been varied or modified in terms of the Acquisition Agreement, the Debenture Holders would have acted accordingly and given effect to such variation/modification in their audited financial statements by recording the liability under the NCDs as owed by RTVPL rather than the Applicant/Corporate Debtor. However, it is noted in the record that in reality, it is not so and the liability on account of the subject NCDs continues to be reflected in the audited financial

statements of the Debenture Holders in the name of the Applicant/Corporate Debtor. The Applicant's reliance on certain email correspondences with Debenture Holders dated 05.10.2021; 06.10.2021; and 31.03.2022, will be of no avail because the aforesaid email exchanges took place when the proposed scheme was being given a final shape by the parties before being put for voting and regulatory approval. Any alleged acquiescence/ratification/waiver inferred by the Applicant/Corporate Debtor from the said emails cannot be a substitute for the written consent or sanction of the Majority Debenture Holders in terms of Clause 15 of Schedule II of DTMD. There is nothing in the Acquisition Agreement (to which neither the Respondent nor the Debenture Holders were a party), to show that it was executed on 29.08.2020, in pursuance of Clause 15 of Schedule II of DTMD. Further, the Applicant/Corporate Debtor is not entitled to assign any of its obligations or liabilities in relation to the Debentures under the DTMD, as clarified in Clause 12.3 of Schedule II of DTMD. In view of above, the Applicant's claim that the Acquisition Agreement has varied/modified the rights of Debenture Holders, and due to which the Respondent/Debenture Trustee stands discharged, is ill-founded and untenable and is accordingly rejected. In other words, the Acquisition Agreement affects neither the rights of the Debenture Holders under the NCDs in terms of the DTMD nor their status as Financial Creditors of the Applicant/Corporate Debtor.

9.14 The conduct of Debenture Holders cannot be viewed in isolation merely with reference to a few email exchanges between the parties during the period when the proposed scheme was under finalisation. The conduct of Debenture Holders both prior to the public announcement dated 29.08.2020, and subsequent to the failure of the Scheme on 21.04.2022, has also to be taken into account in order to have the

complete picture and a proper perspective. There is nothing on record to show that the Debenture Holders had acted upon or given effect to the terms of the Acquisition Agreement in their books of account or audited financial statements. Further, not being a party to the Acquisition Agreement, neither the Respondent nor the Debenture Holders were under any misconception or mistaken belief that the liabilities of the Applicant/Corporate Debtor under the NCDs stood acquired by RTVPL for all intents and purposes irrespective of whether the proposed scheme succeeds or not. This makes it clear that the Acquisition Agreement was contemplated only as an intermediate step towards the fructification of the proposed scheme and the Debenture Holders/Respondent never took cognizance of the same *dehors* the said scheme. It is noteworthy that while the proposed scheme was being given a final shape, the Debenture Holders/Respondent accommodated the Applicant/Corporate Debtor by not triggering any stringent action despite the fact that the latter had already committed default in repayment/redemption of the debentures on 30.04.2021. It was only after the proposed Scheme failed that the Respondent issued event of default notice dated 01.07.2022 to the Applicant/Corporate Debtor calling upon it to repay the amount of Rs.139.77 Crore outstanding under the NCDs.

9.15 The Applicant/Corporate Debtor and the Respondent/Financial Creditor are signatories to the DTMD. The Applicant/Corporate Debtor along with RTVPL cannot enter into an agreement to transfer liability under the DTMD to the exclusion of the Respondent/Financial Creditor. It is settled law that there can only be an assignment of rights arising under a contract and that burden of a contract cannot be shifted without the consent of the party to the contract ***[(2016) 10 SCC 813 and (1962)***

SCC Online SC 28]. Following the settled legal position, the Applicant/Corporate Debtor could not have transferred its liability under the NCDs to RTVPL by way of the Acquisition Agreement without the consent of the Respondent/Financial Creditor. Even clause 2.2 of the Acquisition Agreement categorically provided that the transfer of the identified assets and identified liabilities by the Applicant/Corporate Debtor to RTVPL *"shall be subject to receipt of approvals /no objection letters"* from the Respondent/Debenture Trustee, which was never done. The e-mail correspondences between the Applicant/Corporate Debtor and the Debenture Holders sought to be relied upon by the former can by no means be treated as approval of the Respondent/Debenture Trustee to the terms of the Acquisition Agreement. We find merit in the Respondent/Financial Creditor's plea that the Acquisition Agreement was only an intermediate step in the overall Scheme involving ultimate transfer of liability under the NCDs in the hands of FEL. All steps were required to be taken to achieve the end result and in case the desired end result of the Scheme was not achieved, no steps would be valid. As the Scheme in question did not sail through and ultimately failed, all the intermediate steps taken in this regard also came to a naught and were of no consequence. For instance, RTVPL was to merge with FBIL followed by merger of FBIL and all its wholly owned subsidiaries with FEL and the assets and liabilities with regard to the NCDs were to ultimately get transferred to FEL; however, none of which has materialised.

9.16 It is well settled that a scheme of amalgamation/arrangement is intended to be in the nature of a "single window clearance" system to ensure that all other formal requirements of the Companies Act, 2013, required for implementing the scheme are formalised in a single application and the parties are not put to avoidable,

unnecessary and cumbersome procedure of making repeated applications to the Court for various other alterations or changes, which might be needed effectively to implement the sanctioned scheme. [(***1991) SCC Online Bom 527*** and (***2012) SCC Online Guj 6126***]. As amalgamation/arrangement has its origin in the Companies Act, 2013, and is statutory in character, the transfer and vesting is by operation of law, and not an act of the transferrer company nor an assignment by it but is the result of a statutory instrument. A scheme sanctioned by the Court does not operate as a mere agreement between the parties but becomes binding on the company, the creditors and the shareholders and has statutory force [(***2009) SCC Online Bom 2182***]. In view of the aforesaid legal position, the obligation to redeem the NCDs could have been ultimately assigned or transferred to FEL in the proposed manner only if the Scheme had fructified and obtained sanction of this Tribunal. Therefore, we are of the considered view that the Acquisition Agreement between the Applicant/Corporate Debtor and RTVPL has no legs to stand on its own sans the Scheme duly sanctioned by this Tribunal. In this background, it cannot be said that the Respondent/Financial Creditor suppressed any material facts in the Main Application, because the twin criteria for admission of a Section 7 Application is the existence of debt and default which remain unaffected notwithstanding the Acquisition Agreement.

9.17 Even if the Acquisition Agreement is taken to be a valid and concluded contract as pleaded by the Corporate Debtor, we find that this Agreement had the effect of transferring the liability of the Corporate Debtor under the NCDs amounting to Rs.127.50 Crore in the hands of RTVPL, which was already a loss making

company having accumulated losses/negative net worth to the tune of over Rs.265 Crore and its own outstanding NCD obligations of Rs.620.44 Crore in F.Y.2020-21. We also find that although the Acquisition Agreement speaks of transfer of both Identified Assets and Identified Liabilities of Corporate Debtor to RTVPL, the audited financial statements of RTVPL make mention of only transfer of liability under the NCDs, without any reference to the transfer of identified assets in the Auditor's Notes to Accounts, forming part of the audited financial statements as on 31.03.2021. It is also noted that while the Applicant/Corporate Debtor had Debenture Redemption Reserve (DRR) of Rs.45.62 Crore as on 31.03.2020, there is no explanation as to why the said DRR could not be used towards redemption of debentures falling due as on 30.04.2021, and why the same DRR could not be transferred to RTVPL to be used for the purpose of which it was created. It is pertinent to note that if the Applicant/Corporate Debtor had not transferred the NCDs to RTVPL, the Debenture Holders would have been able to secure redemption of the debentures to the extent of Rs. 45.62 Crores lying by way of DRR. However, by transferring only the NCDs without the DRR to RTVPL, the Applicant/Corporate Debtor left the Debenture Holders with no hope of even recovering a penny. All these show that the Acquisition Agreement was an instrument created by the Applicant/Corporate Debtor with intent to defraud the creditors and to defeat the interests of the creditors. The management of the Applicant/Corporate Debtor knew or ought to have known that impending insolvency was staring at it in the face and still they acted in total disregard to the interests of creditors of the Applicant/Corporate Debtor, by

unilaterally executing the said Agreement to the utter detriment of the interests of the creditors.

9.18 It is now proposed to deal with the judicial decisions cited by the Corporate Debtor in support of its case. A perusal of the compilation of judgements furnished on behalf of the Corporate Debtor reveals that it has merely referred to a few page numbers and para numbers of each judgment without making any attempt to bring out the commonalty of facts and issues involved which is not the correct approach. It is well-established that judicial precedents must be understood and appreciated within the context of specific facts and legal issues presented in the case and that each judgment should be read as a whole in order to ascertain the principle laid down by the decision and one should not pick words or sentences from the judgment divorced from the context of the question under consideration by the Court. A small difference in facts or circumstances can lead to a different conclusion, even if the precedent appears similar.

9.19 With regard to its vehement plea based on alleged consent and acquiescence of the Debenture Holders to the Acquisition Agreement by way of certain emails, the Corporate Debtor has cited a number of judicial pronouncements such as **Jagad Bandhu Chatterjee v. Smt. Nilima Rani and Ors. (1969) 3 SCC 445; Union of India v. K.P. Mandal AIR 1958 Cal. 415; Kanchan Udyog v. United Spirits Ltd. (2017) 8 SCC 237; B.L Sreedhar & Ors. v. K.M Munireddy & Ors. (2003) 2 SCC 355** and **Union of India & Anr. v. N. Murugesan & Ors. (2022) 2 SCC 25** wherein the legal concepts of acquiescence, waiver and estoppel were discussed and explained at length and it was held that waiver must be clear and

voluntary and must involve an unequivocal and conscious abandonment of existing legal rights. However, in present case, it is pertinent to note that neither the Financial Creditor nor the Debenture Holders have expressly waived their rights or released the Corporate Debtor from its obligations. None of the email correspondences relied upon by the Corporate Debtor shows express consent of the Debenture Holders to the Acquisition Agreement or an unequivocal intention of abandonment of their rights. The Corporate Debtor has failed to demonstrate any intentional relinquishment of their rights by the Debenture Holders or the Debenture Trustee/Financial Creditor. As a matter of fact, the Hon'ble Apex Court in **Kalpraj Dharamshi & Anr. v. Kotak Investment Advisors Limited and Anr. (2021) 10 SCC 401** has clarified that mere indulgence does not amount to waiver. The Debenture Holders by their words or conduct never made any promise or assurance or conveyed any conscious intention to the Corporate Debtor not to insist upon their rights. It is notable that the balance sheet of the Debenture Holders still lists the Corporate Debtor as the NCD obligor, reaffirming the lack of waiver. There is not even an iota of evidence to suggest that the Debenture Holders accepted RTVPL as the new obligor of NCDs. Mere voting by the Debenture Holders on the Scheme does not equate to consent. If the Corporate Debtor claims the agreement to be unrelated to the Scheme, it cannot rely on Debenture Holders' actions under the Scheme.

9.20 Moreover, it is a well-settled principle of law that there can be no estoppel against the law. The Corporate Debtor has placed reliance on judgments of Hon'ble Supreme Court in ***Subodh Kumar Gupta Vs. Shrikant Gupta & Ors. [(1993) 4***

SCC 1] and of Hon'ble Delhi High Court in ***S Chand & Co. Vs. Bharat Carpets Limited*** [(2011) SCC OnLine Del 4984], among others, to argue that a contract, such as the Acquisition Agreement in the present case, cannot be disregarded unless it is set aside by a court of competent jurisdiction, as it is not a void document. However, the facts of the cases relied upon by the Corporate Debtor differ significantly from those of the present case. In the judgments relied upon by the Corporate Debtor, the petitioners were parties to the agreements in question, whereas in the matter at hand, neither the Debenture Trustee/Financial Creditor nor the Debenture Holders are signatories to the purported Acquisition Agreement.

9.21 Apropos the contention that the DTMD being a written contract can be orally modified, the Corporate Debtor has relied on judgments in the cases of **Dominion of India Vs. M/s Ram Rakha Mall and Sons (Regular First Appeal No.23 of 1951); Rock Advertising Ltd Vs. MWB Business Exchange Centres Ltd., [2018] UK SC 24; Keytrade AG Vs. Nagarjuna Fertilizers and Chemicals Ltd. (2018) SCC Online Hyd 214** and **Brikom Investments Ltd. Vs. Carr [1979] QB 467.** On careful perusal of these judgments, it is noted that while these cases deal with oral modification of business contracts such as licence agreement/ lease agreement/ contract of sale of goods, the present case involves a statutory document viz., the DTMD which cannot be modified beyond its express terms. Hence, reliance of the Corporate Debtor on aforesaid judgments will be of no avail

9.22 The Corporate Debtor has placed reliance on its audited balance sheet as on 31.03.2021, which shows no long-term borrowings and instead, Note No.32 of the

Auditor's Notes to Financial Statements records that with effect from August, 2020, the NCDs amounting to Rs.127.50 Crore had been transferred to RTVPL. However, merely because the Corporate Debtor had unilaterally transferred the NCDs in its books of account to RTVPL, pursuant to the Acquisition Agreement dated 29.08.2020, this will not absolve the Corporate Debtor of its liability under the NCDs. What is crucial and relevant in this case is not the books of account/audited financial statements of RTVPL but the audited financial statements of the Debenture Holders, which would clarify whether the Debenture Holders had actually accepted RTVPL as the obligor of the subject NCDs in their books of account/audited financial statements. A perusal of audited financial statements of Debenture Holders/Franklin Templeton Mutual Fund along with the Auditor's report for the financial year 2023-2024, clearly indicates that the Debenture Holders had not accepted RTVPL as the obligor of the outstanding NCDs which continued to be reflected as outstanding in the name of the Corporate Debtor and NFDIL. The said Auditor's report discloses the default on the part of the Corporate Debtor with respect to the subject NCDs beyond the maturity date, with ISIN No. INE080T07094, having outstanding amount of Rs.876.77 Lakh, ISIN No.INE080T07102, having outstanding amount of Rs.2,684.54 Lakh and ISIN No.INE080T07110, having outstanding amount of Rs.4,558.66 Lakh as on 31.03.2024. When NCDs are issued, they are allotted a unique ISIN which is still active in the present case. Thus, the NSDL record (dated 01.06.2023, much after the Acquisition Agreement), which is a statutory record and a public document also shows that the debentures continue to stand in ISIN numbers of the Corporate Debtor.

9.23 If the Debenture Holders had accepted the Acquisition Agreement dated 29.08.2020 independent of the Composite Scheme of Arrangement, they would have given effect to this arrangement and made consequential changes in their own books of account and balance sheets from 31.03.2021 onwards, which is not so. Similarly, they would have got the ISINs of NCDs changed in NSDL from the Corporate Debtor to RTVPL, which has also not happened. The NCDs continue to be reflected in the books of account/balance sheets as well as de-mat account of the debenture holders in the name of the Corporate Debtor rather than RTVPL.

9.24 From the above discussions, it is clear that the Corporate Debtor continues to be the debtor of the Respondent/Financial Creditor notwithstanding the Acquisition Agreement and remains liable for the outstanding debt owed to the Debenture Holders. The arguments and documentation presented by the Corporate Debtor fail to substantiate the claim that liability was transferred to RTVPL, as the purported transfer contravenes statutory and contractual provisions**.** From the above, it is also clear that the Respondent/Debenture Trustee continues to be the Financial Creditor of the Corporate Debtor. In the result, both issues (i) and (ii) are decided against the Applicant/Corporate Debtor. **Accordingly, IA 29/2023 is found to be devoid of merit and stands rejected.**

IA No.4417/2024

10. The issues arising for consideration in this IA are (i) whether the audited financial statements of the Debenture Holder produced by the Respondent are admissible; (ii) whether certain schemes of the Debenture Holders had been liquidated as per order of Hon’ble Supreme Court and the Respondent suppressed this fact from the Tribunal

(iii) whether pursuant to the liquidation, the said trust/Debenture Trustee/Respondent stands extinguished in terms of provisions of the Indian Trust Act and (iv) whether pursuant to the liquidation, the Respondent/Financial Creditor has the authority or *locus standi* from SBI Funds or FTMF to file the Main Application.

10.1 The legal position with regard to submission of additional documents/amendment of pleadings in an application under the Code is well-settled. There is no bar in law to the amendment of pleadings in an application under Section 7 of the Code or to the filing of additional documents, apart from those initially filed along with application under Section 7 of the Code in Form-1 ***[Dena Bank (now Bank of Baroda) Vs. C. Shivakumar Reddy and Anr. (2021) 10 SCC 330].*** We are of the considered view that the balance sheets of the Debenture Holders are vital documents and are necessary for the purpose of enabling this Tribunal to pass orders in the Main Application. We find it strange that when these documents were not on record, the Corporate Debtor was repeatedly alleging suppression thereof and insisting on production of balance sheets of the Debenture Holders by the Financial Creditor and when these have finally been produced on record, it is now urging the Tribunal to disregard and ignore the said balance sheets in the adjudication of Main Application.

10.2 The Applicant/Corporate Debtor has not brought out as to what grave prejudice has been caused to it owing to alleged suppression of the fact that certain schemes of FTMF had been liquidated. It is not that pursuant to liquidation of said schemes, the liability of the Applicant/Corporate Debtor has been extinguished. Nor has the Hon’ble Supreme Court held in its orders that no action would be taken by SBI Funds or FTMF in respect of unrecoverable or litigated assets or non-performing assets

(NPAs) or that all six schemes of FTMF including the scheme of the Applicant/Corporate Debtor would be deemed to have been fully liquidated irrespective of whether SBI Funds had not been able to realise the NPAs like the NCDs issued by the Applicant/Corporate Debtor in the present case. In other words, even after taking into account the issue of winding up or liquidation of six schemes of FTMF, the liability of the Applicant/Corporate Debtor under the subject CDs remains intact, unaffected, unchanged and undisturbed. Nothing changes on the ground for the Applicant/Corporate Debtor even if the winding up or liquidation of schemes is taken into consideration.

10.3 Material fact would mean material for the purpose of determination of the *'lis'*. If the fact suppressed is not material for determination of the *'lis'* between the parties, the court may not refuse to exercise its discretionary jurisdiction. The suppressed fact must be a material one in the sense that had it not been suppressed, it would have had an effect on the merits of the case.

10.4 Since the six schemes have not yet been fully liquidated, it can by no stretch of imagination be said/claimed that the Debenture Trustee/Trust is extinguished. Under Section 77 of the Indian Trusts Act, 1882, one of the conditions for extinguishment of a trust is that the purpose of the trust is completely fulfilled. Hence, neither provisions of Section 77 or 83 of the said Act is relevant in the instant matter. Further, no separate authority is required to be taken by Respondent/Financial Creditor from SBI Funds or FTMF. The Supreme Court orders relied upon by the Applicant/Corporate Debtor did not have the effect of superseding the provisions of the DTD. Authority to sue is still vested in the Respondent/Financial Creditor by virtue of the provisions of DTD and the DT regulations/Companies Act, 2013.

10.5 In its Affidavit-in-Reply, the Financial Creditor pointed out that during submissions, the Corporate Debtor had made allegations that the Financial Creditor had suppressed balance sheets of the Debenture Holders. The Corporate Debtor alleged that the balance sheets of the Debenture Holders, if produced, would reflect that the Debenture Holders had accepted the acquisition of liability by RTVPL. Further, as per the provisions of the SEBI (Mutual Fund) Regulations, 1996, the Annual Report comprising of the balance sheets of these funds/Debenture Holders are public documents and are freely accessible on the website of the Debenture Holders. Therefore, the allegation of suppression is misplaced and ought to be rejected. Accordingly, the Financial Creditor has placed on record copies of balance sheets of all four funds, namely, 'Franklin India Income Opportunities Fund', 'Franklin India Dynamic Accrual Fund', 'Franklin Indian Credit Risk Fund', for the financial year 31.03.2023 and 'Franklin India Short Term Income Plan', for the financial year 31.03.2024. A perusal of the balance sheets shows that the debenture holders have not accepted RTVPL as the obligor in respect of NCDs issued by the Financial Creditor and that the NCDs stand in the name of the Corporate Debtor. These documents thus show that, the defence of the Corporate Debtor that the debenture holders have accepted the assignment/Acquisition of liability by RTVPL, is incorrect.

10.6 Regarding the allegation of suppression of material facts, the Corporate Debtor relied on several judgments *(Bhaskar Laxman Jadhav Vs. Karamveer Kakasaheb Wagh Education Society (2013) 11 SCC 531; (ii) Oswal Fats & Oils Ltd. Vs. Additional Commissioner (Administration) (2010) 4 SCC 728 & (iii) Citadel Fine Pharmaceuticals Vs. Ramaniyam Real Estates Private Limited (2011) 9 SCC 147),*

emphasising that suppression of material facts disentitles a party from relief. However, the Hon'ble Apex Court has itself held that what material fact, suppression whereof would disentitle a party from obtaining relief. The Hon'ble Court has unequivocally held that it would depend upon the facts and circumstances of each case. In view of the settled legal position, we find no suppression of facts in the Main Application, as all relevant documents tendered before the Tribunal were available in the public domain. The Applicant/Corporate Debtor failed to show as to how the orders of Hon'ble Supreme Court concerning the liquidation of FTMF's Schemes were relevant to the present proceedings under Section 7 of the Code, which focuses on twin requirements of existence of debt and default. There is nothing in the orders of Hon'ble Supreme Court to suggest that FTMF/Debenture Holders were barred from recovering the NPAs like the one owed by the Applicant/Corporate Debtor or that the liability of NPA accounts stood extinguished. The alleged suppression of winding up of certain Schemes as well as audited financial statements of the Debenture Holders is found to be not germane to the statutory requirements of filing application under Section 7 of the Code. The belated production of audited financial statements of the Debenture Holders along with latest orders of the Hon'ble Supreme Court in relation to the winding up of said schemes does not detract from or obliterate either the factum of existence of financial debt owed by the Applicant/Corporate Debtor or the default in payment thereof.

10.7 The Corporate Debtor has failed to show whether any grave prejudice was caused to it or whether any unfair advantage was derived by the Respondent/Financial Creditor due to non-production of the balance sheets of the Debenture Holders by the Debenture Trustee/Financial Creditor. It is also pertinent to note that the balance

sheets of FTMF, being a mutual fund, are public documents available on their website. It is not the case of the Corporate Debtor that the balance sheets produced by the Respondent/Financial Creditor are different from the actual balance sheets. The Corporate Debtor's vehement objection stems from the fact that the balance sheets of the Debenture Holders very clearly show that they have not treated RTVPL as the obligor of the NCDs issued by the Corporate Debtor and that the said NCDs continue to be reflected therein in the name of the Corporate Debtor (as the issuer as well as obligor). Notwithstanding the winding up of six schemes of FTMF, the liability of the Corporate Debtor remains intact. The Corporate Debtor thus seems to be catching at straws in its attempt to escape the rigours of the Code.

10.8 It is also seen from the record that SBI Funds filed SLP (C) No.14288 of 2020] dated 08.03.2021, setting out the Standard Operating Procedure (SOP) for liquidation of certain schemes of FTMF. The SLP clarified that unrecoverable or litigated assets would be transferred back to FTMF for necessary action *(at para 6)*. By an order dated 18.03.2021 in IA No.35939/2021 (C.A. No.498-501/2021), the Hon'ble Supreme Court accepted the same. Thereafter, on 17.01.2024, SBI MF filed an IA No.13934/2024 in Civil Appeal No.498-501 of 2021 in SLP(C) Nos. 14288-14291 of 2020, for placing on record the final closure report with respect to the FT winding-up schemes and handing over the further proceedings to FTMF for disbursal of the amount that shall be realised as and when from NPAs to unit holders of the six winding up schemes. Further, the Hon'ble Supreme Court *vide* order dated 24.07.2024 in IA. No.13934/2024, allowed the SLP and accepted the closure report with regard to winding up of 6(six) schemes of FTMF.

10.9 It is seen that the above order of Hon'ble Supreme Court confirms that that the responsibility for proceeding against NPAs remained with FTMF. The Corporate Debtor's reliance on news articles and press releases dated 22.08.2023, published in 'Economic Times', 'Times of India' and 'Business Standard' is found insufficient to substantiate its claims. The articles merely provided procedural updates on financial results and liquidation efforts without explicitly stating that all schemes were fully liquidated. Reliance on such newspaper articles is ill-founded and untenable. We find no merit in the repeated reliance by the Corporate Debtor on the newspaper articles/reports.

10.10 It is observed that the DTMD dated 15.10.2018 identified the initial subscribers to the NCDs issued by the Corporate Debtor as Franklin India Short Term Income Plan- Series A, B and C and Franklin India Income Opportunities Plan- Series D. The Respondent/Financial Creditor contends its role as the Debenture Trustee, appointed by Franklin Templeton Asset Management (India) Pvt. Limited (FT AMC), and claims authority to act on behalf of the current holders of the NCDs. On the other hand, the Corporate Debtor contends that the subject NCDs were liquidated by the Hon'ble Supreme Court order dated 12.02.2021, rendering the Financial Creditor incapable of filing the Main Application. However, on perusal of the Hon'ble Supreme Court's orders, it is observed that the issue before the Court pertained to obtaining the prior or post-facto consent of unit holders for winding up the schemes. The order records that an overwhelming majority of over 98% of unit holders approved the winding up of schemes and SBI Funds Management (SBI FM) was appointed to liquidate **the holdings/ assets/portfolio** of the schemes but was not designated as the liquidator of the FTMF. Pertinently, the Hon'ble Supreme Court's

order did not in any way indicate that SBI Funds' appointment displaced the Financial Creditor's role or authority as the Debenture Trustee.

10.11 Further, Section 3 of the Indian Trusts Act, 1882, establishes the fiduciary role of trustees in acting for the benefit of beneficiaries. Section 7(1) of the Code allows financial creditors or authorised persons, including debenture trustees, to file applications. The Notification of the Government of India in the Ministry of Corporate Affairs No. S.O. 1091(E) dated 27.02.2019 explicitly authorises debenture trustees to file applications for initiating corporate insolvency resolution process on behalf of financial creditors under Section 7(1) of the Code. Thus, we find that the locus standi of the Financial Creditor to file the Main Application is established and the Financial Creditor is not required to obtain any separate authorisation from the Debenture Holders or SBI MF to file the Main Application. The Corporate Debtor relied on the judgement of *Zubin Bharucha Vs. Reliance AIF Management Company Limited & Ors and IIFCL Asset Management Company Limited Vs. Mission Holdings Private Limited (NCLT Delhi),* to the proposition that a debenture trustee is an agent of the debenture holders. However, it is observed that both the judgments are distinguishable on facts. The aforesaid judgments pertained to a case wherein the debenture holder had initiated proceedings against the corporate debtor. None of the decisions holds that a debenture trustee cannot file and maintain an application under Section 7 of the Code. On the other hand, we find that the Financial Creditor has rightly relied on the ratio laid down in the judgment of the Hon'ble Supreme Court in ***W.O. Holdsworth & Ors vs State of UP, (1957) SCC online SC 94*** holding that Trustee is not an agent of beneficiary.

10.12 The Corporate Debtor's contention that pursuant to winding up of six schemes of FTMF including those of the Applicant/Corporate Debtor, the trust has been extinguished and the beneficiaries no longer exist, is also found to be unsupported. The Hon'ble Supreme Court's orders and SBI MF's applications confirm the ongoing responsibility of the Financial Creditor (herein this case) as a trustee of debenture holders to recover NPAs.The mere fact that the process of liquidation of certain schemes of FTMF is underway does not in any manner extinguish the very 'trust' or the 'beneficiaries' and absolve the Corporate Debtor from its liability to redeem and repay the debentures. We find that the liquidation process did not negate the beneficiaries' rights or the Corporate Debtor's obligation to redeem and repay the debentures. The reliance of the Applicant/Corporate Debtor on the judgments of ***Green Vs. Wright*** *(Court of Appeal, UK);* ***Ku.Chandan & Ors. Vs. Longa Bai & Anr.*** *(M.P. High Court)* and ***Commissioner of Income-tax Vs. Mehra Trust*** *(Allahabad High Court)* is misplaced owing to distinguishable facts and issues involved. Section 77 of the Indian Trusts Act, 1882, does not have any application at all in the present case, because neither the purpose of the trust is as yet completely fulfilled nor is there any extinguishment of beneficiaries. The Debenture Holders continue to be entitled for taking appropriate action in respect of non-performing assets viz., the NCDs issued by the Corporate Debtor. Even the Respondent/Financial Creditor, being the Debenture Trustee under the DTMD has the statutory obligation to act in the interest of the Debenture Holders. The present proceedings would ensure to benefit of the Debenture Holders and ultimately to the unit holders of the schemes of FTMF.

10.13 It is now proposed to deal with the judicial decisions cited by the Corporate Debtor in support of its case. With regard to the alleged suppression of facts by the Financial Creditor relating to winding-up of certain schemes of FT MF, the Corporate Debtor has placed reliance on judgments of Hon'ble Supreme Court in ***Oswal Fats & Oils Ltd. v. Additional Commissioner (Administration) (2010) 4 SCC 728; Citadel Fine Pharmaceuticals v. Ramaniyam Real Estates Private Limited (2011) 9 SCC 147*** and ***Bhaskar Laxman Jadhav v. Karamveer Kakasaheb Wagh Education Society (2013) 11 SCC 531***. A perusal of the judgments reveals that these were rendered on altogether different facts and are hence not applicable in the facts of the present case. While the above judicial precedents clearly establish that litigants must come to the Court with clean hands and disclose all material facts, it has also been held that the materiality of suppression depends on case-specific facts and circumstances. In the present case, it is noticed that the allegedly suppressed documents relating to winding-up of certain schemes of FT MF were always available in the public domain and accessible to all stakeholders. It is well-settled that while adjudicating an application under Section 7 of the Code, the Tribunal is primarily and essentially concerned with the existence of debt and default. It is noticed from the record that the Financial Creditor has disclosed all relevant facts required for the adjudication of the main Application. The orders of Hon'ble Supreme Court concerning liquidation of a few schemes of FTMF referred to in this IA had no bearing on the present proceedings under the Code, which focus solely on debt and default. None of these orders takes away or alters the basic fact that the Corporate Debtor had availed financial debt by way of NCDs issued to the Debenture Holders and had committed default in repayment or redemption thereof.

10.14 As regards the plea that pursuant to liquidation of schemes of FT MF, there is extinguishment of the trust, the Corporate Debtor has cited a few judicial decisions. For example, in the case of ***Commissioner of Income-tax Vs. Mehta Trust (2005) SCC OnLine All 1981*****,** the issue was whether a trust could be extinguished, while in the present case, no such case is made out. Even the Hon'ble Supreme Court has clarified in its orders relating to winding up of schemes of FT MF that certain NCDs like the ones issued by the Corporate Debtor to FT MF remain outstanding as these had turned NPAs. Similarly, reliance on the order of Court of Appeal, UK in ***Green v. Wright*** *(2017) EW CA CIV 111* and judgment of Hon'ble M.P High Court in ***Ku. Chandan & Ors. Vs. Longa Bai & Anr.*** *1998 (2) MPLJ* is also found to be misplaced, because in those case, it was held that trust validity is tied to the beneficiaries and that a trust ceases, if there are no beneficiaries whereas in the present case, FT MF/ Debenture Holders have not been wound up and remain operational.

10.15 We heard both the parties on the Main Application [(C.P.(IB)/1260/2022] along with IA(IBC)18/2023 and IA(IBC)/29/2023, on 02.07.2024; 25.07.2024; 08.08.2024; and 29.08.2024; and also IA(IBC)/4417/2014, on 09.10.2024; and 21.10.2024. Considering the submissions of both the parties, the Applicant/Corporate Debtor was provided a fair opportunity of hearing on IA(IBC)/4417/2014, challenging taking on record the Report on the Audit of the Financial Statements of FT for FY 2023-2024 (Report), produced by the Respondent/Financial Creditor. After hearing, the Report is accepted on record having found that the same is essential in the adjudication of the Main Application. We hold that no prejudice would be caused to either of the parties, especially the Applicant/Corporate Debtor in taking on record

the Report. The written submissions of the Applicant/Corporate Debtor and also the written submissions filed by the Respondent/Financial Creditor are duly considered by us. In the result, all four issues framed in para 10 above concerning admissibility of audited financial statements of the Debenture Holders, alleged suppression of facts relating to winding up of certain Schemes, extinguishment of the trust/Debenture Trustee pursuant to liquidation and lack of authority of the Respondent/Financial Creditor are found to be devoid of substance and are decided against the Applicant/Corporate Debtor. Accordingly, **IA No.4417/2024 is disposed of.**

CP(IB) No.1260/MB/2022 (Main Application)

11. In view of the above detailed discussions, it is now established, based on the aforesaid facts and findings, that there exists a financial debt and that the Corporate Debtor has a liability to pay the financial debt, which is best evident from the balance sheet forming the part of Annual Report for the year 2023 of the debenture holders. We have no hesitation in concluding that there exists a "financial debt" within the meaning of Section 5(8) of the Code far exceeding the monetary threshold of One Crore Rupees under Section 4 of the Code, which is due and payable by the Corporate Debtor to the Financial Creditor and that the Corporate Debtor has defaulted in payment of the debt. In other words, the existence of financial debt and the occurrence of default have been conclusively established by the Financial Creditor. We find that the Application is complete in all respects. The Corporate Debtor has not shown that the debt in question is interdicted by any other law. The Financial Creditor has also complied with Section 7(3)(b) of the Code by filing an

affidavit proposing the name of Mr. Ritesh Agarwal, a registered Insolvency Professional, as the Interim Resolution Professional (IRP). A declaration in Form-2 dated 09.04.2025, has been filed affirming that no disciplinary proceeding is pending against him. Upon verification from the IBBI website, we find that the IRP has a valid Authorisation for Assignment (AFA) until 30.06.2025. Therefore, all pre-requisites under Section 7(5)(a) of the Code have been met, and we are satisfied that the Application is fit for admission under Section 7 of the Code.

ORDER

In view of the aforesaid findings, this Application bearing C.P.(IB) No.1260/MB/2022 filed under Section 7 of the Code by Axis Trustee Services Limited, the Financial Creditor, for initiating CIRP in respect of Future Ideas Company Limited, the Corporate Debtor is **admitted**.

We further declare moratorium under Section 14 of the Code with consequential directions as mentioned below:-

1. We prohibit-

a) the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

b) transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

c) any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

2. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under Section 31(1) of the Code or passes an order for the liquidation of the Corporate Debtor under Section 33 thereof, as the case may be.

3. Notwithstanding the above, during the period of moratorium: -

(a) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

(b) That the provisions of sub-section (1) of section 14 of the Code shall not apply to -

i. such transactions as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

ii. A surety in a contract of guarantee to a corporate debtor.

4. That the public announcement of the CIRP shall be made in immediately as specified under Section 13 of the Code read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

5. That this Bench hereby appoints **Mr. Ritesh Agarwal, a registered Insolvency Professional** having **Registration Number IBBI/IPA-001/IP-P-02296/2021-**

2022/13557 and **e-mail address ritesagarwal@gmail.com** having valid Authorisation for Assignment up to 30.06.2025, as the IRP to carry out the functions under the Code.

6. That the fee payable to IRP/RP shall be in accordance with such Regulations/Circulars/ Directions as may be issued by the IBBI.

7. That during the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of the Code. The officers and managers of the Corporate Debtor are directed to provide effective assistance to the IRP as and when he takes charge of the assets and management of the Corporate Debtor. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP within a period of one week from the date of receipt of this Order and shall not commit any offence punishable under Chapter VII of Part II of the Code. Coercive steps will follow against them under the provisions of the Code read with Rule 11 of the NCLT Rules for any violation of law.

8. That the IRP/IP shall submit to this Tribunal periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.

9. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, the Financial Creditor is directed to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost arising out of issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the Financial Creditor on priority upon the funds becoming available with IRP/RP from the Committee of Creditors (CoC). The expenses incurred by IRP out of this fund are subject to approval by the CoC.

10. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the Corporate Debtor.

11. A copy of the Order shall also be forwarded to the IBBI for record and dissemination on their website.

12. The Registry is directed to immediately communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by way of Speed Post, e-mail and WhatsApp.

13. **Compliance report of the order by Designated Registrar is to be submitted today.**

14. To sum up, **IA No.18/2023** and **IA No.29/2023** are dismissed while **IA No.4417/2024** is disposed of in terms of this order. Consequently, the Main Application bearing **C.P. (IB) No.1260/MB/2022** is **admitted**.

Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)

Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)

//LRA-Deepa//