

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 1018 of 2024
& I.A. No. 3838, 4793 of 2024**

[Arising out of Order dated 13.05.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad in IA 357 OF 2023 in CP (IB) NO. 268/ 2020]

IN THE MATTER OF:

Dr. Vichitra Narayan Pathak

...Appellant

Versus

Suraksha Realty Ltd. & Anr.

...Respondents

Present:

For Appellant: Shri Sunil Fernandes, Sr. Advocate with Ms. Shankari Mishra, Advocate

**For Respondents: Mr. Krishnendu Dutta, Sr. Advocate with Mr. Pranaya Goyal, Ms. Rati Patni, Mr. Chiranjivi Sharma, Ms. Kathleen Lobo, Ms. Nehal Gupta, Ms. Alina Mathew, Ms. Sanchi Jain, Mr. Sagar Bansal and Mr. Dhruv Parwal, Advocates for R-1.
Mr. Narender L. Jain, Advocate for new RP.**

**Company Appeal (AT) (Insolvency) No. 1017 of 2024
& I.A. No. 4685, 4792 of 2024**

[Arising out of Order dated 13.05.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad in IA 358 OF 2023 IN CP (IB) NO. 268/ 2020]

IN THE MATTER OF:

Dr. Vichitra Narayan Pathak

...Appellant

Versus

Suraksha Realty Ltd. & Anr.

...Respondents

Present:

For Appellant: Shri Sunil Fernandes, Sr. Advocate with Ms. Shankari Mishra, Advocate

For Respondents: Mr. Abhijeet Sinha, Sr. Advocate with Ms. Sudeshna Roy, Mr. Syamantak Sen, Mr. Treenok Guha, Mr. Ayush Chaturvedi, Mr. Hemant Mistry, Mr. Pranav Parikh and Mr. Yunus Vakharia, Advocates for R-1.
Mr. Narender L. Jain, Advocate for new RP.

Company Appeal (AT) (Insolvency) No. 1060 of 2024

[Arising out of Order dated 13.05.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad in IA No. 357 (AHM) 2023 in Company Petition (IB) 268 Of 2020]

IN THE MATTER OF:

Central Bank of India

...Appellant

Versus

Suraksha Realty Ltd. & Ors.

...Respondents

Present:

For Appellant: Mr. PB Suresh, Sr. Advocate with Mr. Tushar Singh, Ms. Akshra Arshi, Mr. Pratyaksh, Advocates.

For Respondents: Mr. Krishnendu Dutta, Sr. Advocate with Ms. Rati Patni, Mr. Pranaya Goyal, Mr. Chiranjivi Sharma, Ms. Kathleen Lobo, Ms. Nehal Gupta, Ms. Alina Mathew, Ms. Sanchi Jain, Mr. Sagar Bansal and Mr. Dhruv Parwal, Advocates for R-1.
Ms. Shankari Mishra, Advocate for R-2.
Mr. Narender L. Jain, Advocate for new RP.

Company Appeal (AT) (Insolvency) No. 1061 of 2024

[Arising out of Order dated 13.05.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad in I.A. No. 358 (AHM) 2023 in Company Petition (IB) 268 Of 2020]

IN THE MATTER OF:

Central Bank of India

...Appellant

Versus

Sheth Developers Pvt. Ltd. & Ors.

...Respondents

Present:

For Appellant: Mr. PB Suresh, Sr. Advocate with Mr. Tushar Singh, Ms. Akshra Arshi, Mr. Pratyaksh, Advocates

**For Respondents: Mr. Abhijeet Sinha, Sr. Advocate with Sudeshna Guha Roy, Mr. Syamantak Sen, Mr. Treenok Guha, Mr. Hemant Mistry, Mr. Pranav Parikh and Mr. Yunus Vakharia, Advocates for R-1.
Ms. Shankari Mishra, Advocate for R-2.
Mr. Narender L. Jain, Advocate for new RP**

Company Appeal (AT) (Insolvency) No. 1085 of 2024

[Arising out of Order dated 13.05.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad in I.A No. 358/2023]

IN THE MATTER OF:

Shree Ram Vessel Scrap Pvt. Ltd.

...Appellant

Versus

Sanjay Borad RP of Golden Tobacco Ltd. & Ors.

...Respondents

Present:

For Appellant: Mr. Ankit Sharma, Advocate.

For Respondents: Mr. Krishnendu Dutta, Sr. Advocate with Ms. Rati Patni, Mr. Pranaya Goyal, Mr. Chiranjivi Sharma, Ms. Kathleen Lobo, Ms. Nehal Gupta, Ms. Alina Mathew, Ms. Sanchi Jain, Mr. Sagar Bansal and Mr. Dhruv Parwal, Advocates for R-4.

Mr. Abhijeet Sinha, Sr. Advocate with Mr. Syamantak Sen, Mr. Treenok Guha, Mr. Hemant Mistry, Mr. Pranav Parikh and Mr. Yunus Vakharia, Advocates for R-5.

Mr. Narender L. Jain, Advocate for new RP

Company Appeal (AT) (Insolvency) No. 1096 of 2024

[Arising out of Order dated 13.05.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad in I.A. 357(AHM) 2023 & I.A. 358(AHM) 2023 IN CP(IB) 268 OF 2020]

IN THE MATTER OF:

Arrow Engineering Ltd.

...Appellant

Versus

Suraksha Realty Ltd. &Ors.

...Respondents

Present:

For Appellant:

Mr. Robin Jaisinghani, Ms. Jacinta D' Silva and Mr. Bhaskar Nayak, Advocates.

For Respondents:

Mr. Krishnendu Dutta, Sr. Advocate with Ms. Rati Patni, Mr. Pranaya Goyal, Mr. Chiranjivi Sharma, Ms. Kathleen Lobo, Ms. Nehal Gupta, Ms. Alina Mathew, Ms. Sanchi Jain, Mr. Sagar Bansal and Mr. Dhruv Parwal, Advocates for R-1.

Mr. Abhijeet Sinha, Sr. Advocate with Mr. Syamantak Sen, Mr. Treenok Guha, Mr. Hemant Mistry, Mr. Pranav Parikh and Mr. Yunus Vakharia, Advocates for R2.

Ms. Shankari Mishra, Advocate for R-3.

Mr. Narender L. Jain, Advocate for new RP.

Company Appeal (AT) (Insolvency) No. 1309 of 2024
& I.A. No. 4750 of 2024

[Arising out of Order dated 13.05.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad in I.A No.357 of 2023 in C.P. (IB) No.268 of 2020]

IN THE MATTER OF:

Suraksha Realty Ltd.

...Appellant

Versus

**AVM Resolution Professional LLP
(Mr. Vichitra Narayan Pathak) &Anr.**

...Respondents

Present:

For Appellant: Mr. Krishnendu Dutta, Sr. Advocate with Ms. Rati Patni, Mr. Pranaya Goyal, Mr. Chiranjivi Sharma, Ms. Kathleen Lobo, Ms. Nehal Gupta, Ms. Alina Mathew, Ms. Sanchi Jain, Mr. Sagar Bansal and Mr. Dhruv Parwal, Advocates.

For Respondents: Ms. Shankari Mishra, Advocate for R-1.
Mr. Narender L. Jain, Advocate for new RP

**Company Appeal (AT) (Insolvency) No. 1310 of 2024
& I.A. No. 4751 of 2024**

[Arising out of Order dated 13.05.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad in I.A No.358 of 2023 in C.P. (IB) No.268 of 2020]

IN THE MATTER OF:

Sheth Developers Ltd.

...Appellant

Versus

**AVM Resolution Professional LLP
(Mr. Vichitra Narayan Pathak) &Anr.**

...Respondents

Present:

For Appellant: Mr. Abhijeet Sinha, Sr. Advocate with Sudeshna Guha Roy, Mr. Syamantak Sen, Mr. Treenok Guha, Mr. Hemant Mistry, Mr. Pranav Parikh and Mr. Yunus Vakharia, Advocates.

For Respondents: Ms. Shankari Mishra, Advocate for R-1.
Mr. Narender L. Jain, Advocate for new RP.

**J U D G M E N T
(30th May, 2025)**

Ashok Bhushan, J.

These Appeals arise out of the Corporate Insolvency Resolution Process (CIRP) of Corporate Debtor- 'M/s Golden Tobacco Limited'. Company

Appeal (AT) (Insolvency) No.1017 of 2024 and Company Appeal (AT) (Insolvency) No.1018 of 2024 have been filed by Dr. Vichitra Narayan Pathak, the Resolution Professional of the Corporate Debtor. Company Appeal (AT) (Insolvency) No. 1060 of 2024 and Company Appeal (AT) (Insolvency) No. 1061 of 2024 have been filed by the Central Bank of India, a Financial Creditor of the Corporate Debtor. Company Appeal (AT) (Insolvency) No.1096 of 2024 has been filed by Arrow Engineering Ltd., another Financial Creditor of the Corporate Debtor and Company Appeal (AT) (Insolvency) No.1309 of 2024 and Company Appeal (AT) (Insolvency) No.1310 of 2024 have been filed by Suraksha Realty Ltd. and Sheth Developers Ltd. Respectively, the Financial Creditors of the Corporate Debtor. Company Appeal (AT) (Insolvency) No.1085 of 2024 has been filed by Shree Ram Vessel Scrap Pvt. Ltd. who could not submit a Resolution Plan by 02.03.2024 which was last date for submitting Resolution Plan. On 19.03.2024, Company Appeal (AT) (Insolvency) No.1085 of 2024 has been filed by Shree Ram Vessel Scrap Pvt. Ltd. seeking direction to submit Resolution Plan as a Resolution Applicant in the CIRP of the Corporate Debtor. Order passed by the Adjudicating Authority (National Company Law Tribunal) Ahmedabad Bench, Court II dated 13.05.2024 passed in IA No.357 of 2023 and IA No.358 of 2023 are under challenge in these Appeals.

2. Brief facts of the case giving rise to these Appeals need to be noticed are:-

2.1. Arrow Engineering Ltd. filed an application under Section 7 against the Corporate Debtor- 'M/s Golden Tobacco Limited' praying for initiation of

the CIRP against the Corporate Debtor. The application under Section 7 was rejected by order dated 25.01.2021 passed by the Adjudicating Authority against which Company Appeal (AT) (Insolvency) No.183 of 2024 was filed which was allowed by this Tribunal on 02.12.2021 directing Adjudicating Authority to pass consequential order including the order of Moratorium. In pursuance of the order dated 02.12.2021, an order was passed on 07.06.2022 admitting Section 7 application commencing the CIRP process. Dr. Vichitra Narayan Pathak was appointed as Interim Resolution Professional (IRP). IRP in pursuance of the CIRP made public announcement on 09.06.2022. The Financial Creditor- Arrow Engineering Ltd. who has initiated the CIRP process filed claim and the Resolution Professional admitted the claim to the extent of Rs.265,97,10,569/- on 17.06.2022. Suraksha Realty Limited and Sheth Developers Limited filed their claims in Form C as Financial Creditors on 21.06.2022. Resolution Professional expressed its inability to consider the claims of Suraksha Realty Limited and Sheth Developers Limited. IA No.690 of 2022 was filed by Sheth Developers Limited and Suraksha Realty Limited seeking a direction to set aside the communication sent by the IRP and further direction to accept the claims of Applicants as Secured Financial Creditors. Central Bank of India also filed its claim as Financial Creditor on 30.09.2022. Name of Central Bank was reflected in the list of creditors as Unsecured Financial Creditors. Central Bank's claim was admitted to the extent of Rs.592.67 Crores. The application filed by Sheth Developers Limited and Suraksha Realty Limited came to be decided by order dated 16.03.2023. Adjudicating Authority held that the claim of Applicants is as a financial debt within the meaning of IBC.

Adjudicating Authority directed the IRP to consider the claims of Applicants towards interest and their prayer to be treated as Secured Creditors. After the order dated 16.03.2023, Resolution Professional accepted the claims as a Financial Creditor and communicated its decision on 20.03.2023 that the claim of the Applicants for interest cannot be admitted and notional value of Rs.1/- is accepted as contingent liability of the Corporate Debtor. With regard to claim of security interest, it was opined by the Resolution Professional that the Applicants are not Secured Creditors. Aggrieved by the decision of the Resolution Professional dated 20.03.2023, IA No.357 of 2023 was filed by Suraksha Realty Limited seeking a direction to accept the claim of interest as well as Applicants be declared as Secured Financial Creditors. To the similar effect, IA No.358 of 2023 was filed by Sheth Developers Limited. In IA No. 357 of 2023 and IA No.358 of 2023, the Adjudicating Authority passed an order on 28.03.2023 directing filing of the reply by RP. Adjudicating Authority passed an interim order directing that voting on the Resolution Plan as and when submitted before the CoC shall not be undertaken till the disposal of the IAs.

2.2. Arrow Engineering Limited filed an IA No.1058 of 2023 in IA No.357 of 2023 praying for impleadment in IA No.357 of 2023. Adjudicating Authority heard IA No.1058 of 2023 and vide order dated 22.03.2024 rejected the application IA No.1058 of 2023. It was observed that in IA No.357 of 2023, no prayers have been made against the Arrow Engineering Limited and it was only for the Resolution Professional to reply IA No.357 of 2023. Suraksha Realty Limited and Sheth Developers Limited have filed IA No.703

of 2023 and IA No.697 of 2023 seeking direction to remove and reject the claims filed by Central Bank of India, Arrow Engineering Ltd. and other Financial Creditors. Adjudicating Authority vide order dated 10.10.2023 has extended the CIRP period till 21.12.2023. In IA No.357 of 2023 and IA No.358 of 2023, Resolution Professional filed a reply. On 18.12.2023, fresh invitation for EoI under Form G was published. In the 11th CoC meeting held on 29.01.2024, CoC passed a Resolution with majority of 88.58% continuing Vichitra Narayan Pathak as the Resolution Professional. A complaint was also filed by Suraksha Realty Limited against the Resolution Professional which was disposed of by the IBBI on 27.02.2024 by way of advisory. In 12th CoC meeting held on 05.03.2024, seven Resolution Plans received in the CIRP were opened and plans were circulated to the members of the CoC. In 13th CoC meeting held on 15.03.2024, CoC rejected request for further extension of time for submission of the Resolution Plan. IA No. 357 of 2023 and IA No.358 of 2023 were heard. In IA No.614 of 2024 filed by Suraksha Realty Limited, Adjudicating Authority directed that no further meeting of the CoC be held and no decision to be taken till the orders reserved in IA No.357 of 2023 are pronounced. By order dated 13.05.2024, IA No.357 of 2023 has been partly allowed and certain directions have been issued by the Adjudicating Authority including discharge of Resolution Professional- Dr. Vichitra Narayan Pathak and appointing another Resolution Professional. Adjudicating Authority also directed for conduct of Forensic Audit. By order of the same date, IA No.358 of 2023 filed by Sheth Developers Limited has also been partly allowed. By order dated 13.05.2024, the claims of Suraksha Realty Limited and Sheth Developers Limited have been accepted insofar as

claim of interest @18% is concerned, Adjudicating Authority, however, rejected the claims of Suraksha Realty Limited and Sheth Developers Limited to declare them as Secured Financial Creditors.

3. We now proceed to notice the prayers made in the Appeals by the Appellants as above.

Company Appeal (AT) (Insolvency) No.1018 of 2024

3.1. This Appeal has been filed by Dr. Vichitra Narayan Pathak challenging the order dated 13.05.2024 passed by the Adjudicating Authority in IA No.357 of 2023 by which order Resolution Professional has been discharged from his duties and another Resolution Professional has been appointed. In Company Appeal (AT) (Insolvency) No.1018 of 2024, following reliefs have been sought by the Appellant:-

- “a. Pass an Order to admit and allow the instant appeal;*
- b. Pass an Order to set aside the order dated 13.05.2024 passed in IA 357/2023;*
- c. Pass any other further order as this Appellate Tribunal may deem appropriate in the facts and circumstances of the instant case.”*

Company Appeal (AT) (Insolvency) No.1017 of 2024

3.2. This Appeal has been filed by Dr. Vichitra Narayan Pathak challenging the order dated 13.05.2024 passed by the Adjudicating Authority in IA No.358 of 2023 which was filed by Sheth Developers Pvt. Ltd. Adjudicating Authority by impugned order directed for accepting the claim of interest of

Sheth Developers Pvt. Ltd. @ 18% per annum and directed discharge of Vichitra Narayan Pathak as Resolution Professional and issued certain further direction. In the Appeal, Appellant has prayed for following prayers:-

- “a. Pass an Order to admit and allow the instant appeal;*
- b. Pass an Order to set aside the order dated 13.05.2024 passed in IA 358/2023;*
- c. Pass any other further order as this Appellate Tribunal may deem appropriate in the facts and circumstances of the instant case.”*

Company Appeal (AT) (Insolvency) Nos.1060 of 2024 & 1061 of 2024

3.3. These two Appeals have been filed by the Central Bank of India challenging the order dated 13.05.2024 passed in IA No.357 of 2023 and IA No.358 of 2023 respectively. Appellant in the Appeal prayed for setting aside the order dated 13.05.2024 passed by the Adjudicating Authority in IA No.357 of 2023 and IA No.358 of 2023.

Company Appeal (AT) (Insolvency) No.1096 of 2024

3.4. This Appeal has been filed by Arrow Engineering Ltd. challenging the order dated 13.05.2024 passed in IA No.357 of 2023 & IA No.358 of 2023. In the Appeal, following prayers have been made:-

- “a) Allow the instant Appeal; and/or;*
- b) Set aside the order dated 13.05.2024 passed by the Ld. Adjudicating Authority, National Company Law Tribunal, Ahmedabad Bench, Court - II in I.A.*

357(AHM) 2023 AND I.A. 358(AHM) 2023 IN CP(IB) 268 OF 2020. And/or;

c) Pass ad-interim stay on the effect and operation of the orders dated 13.05.2024 passed by the Ld. Adjudicating Authority, National Company Law Tribunal, Ahmedabad Bench, Court - II in I.A. 357(AHM) 2023 and I.A. 358(AHM) 2023 in CP(IB) 268 of 2020 and/or;

d) Pass any other order or direction in the facts and circumstances of the present appeal and in the interest of justice.”

Company Appeal (AT) (Insolvency) No.1309 of 2024

3.5. This Appeal has been filed by Suraksha Realty Ltd. challenging the order dated 13.05.2024 passed in IA No.357 of 2023. In the Appeal, following prayers have been made:-

“(a) allow the present Appeal;
 (b) to set aside the finding in the Judgment dated 13th May 2024 that the Appellant is not granted the status of a ‘secured’ Financial Creditor of the Corporate Debtor and consequently to allow the claim of the Appellant as a ‘secured’ Financial Creditor of the Corporate Debtor and to add the Appellant as a ‘secured’ Financial Creditor in the list of financial creditors of the Corporate Debtor;
 (c) pass such other orders / directions, which this Hon’ble Appellate Tribunal may deem fit and proper in the facts and circumstances of the present case.”

Company Appeal (AT) (Insolvency) No.1310 of 2024

3.6. This Appeal has been filed by Sheth Developers Ltd. challenging the order dated 13.05.2024 passed in IA No.358 of 2023. In the Appeal, following prayers have been made:-

*“(a) Allow the present Appeal
(b) to set aside the finding in the Judgment dated 13th May 2024 that the Appellant is not granted the status of a secured Financial Creditor of the Corporate Debtor and consequently to allow the claim of the Appellant as a secured Financial Creditor of the Corporate Debtor and to add the Appellant as a secured Financial Creditor in the list of financial creditors of the Corporate Debtor;
(c) Pass such other orders / directions, which this Hon’ble Appellate Tribunal may deem fit and proper in the facts and circumstances of the present case.”*

Company Appeal (AT) (Insolvency) No.1085 of 2024

3.7. This Appeal has been filed by Shree Ram Vessel Scrap Private Limited challenging the order dated 13.05.2024 passed in IA No.358 of 2023. In the Appeal, following prayers have been made:-

*“a. To Set aside the Impugned Order dated 13.05.2024 passed by the Ld. NCLT in I.A No. 358/2023 in C.P. (IB) No. 268/2020 to the extent of Para 42 (vi) (k) and Para 43 (d) of the impugned order;
AND/OR;*

b. Pass any order or orders as this Hon'ble Appellate Tribunal may deem fit and proper in the facts and circumstances of the present case."

4. Company Appeal (AT) (Insolvency) Nos.1017 of 2024 & 1018 of 2024 were heard on 21.05.2024. On 21.05.2024, interim order was passed to the effect "*in the meantime, no further steps shall be taken in pursuance of the impugned order*". On 27.05.2024, this Tribunal issued a clarification "we further clarify that our interim order dated 21.05.2024 never intended that earlier RP/Appellant should come back". On an application filed by the newly appointed Resolution Professional being IA No.8546 of 2024 certain directions were issued on 24.01.2025. All the Appeals were heard and orders were reserved on 02.05.2025.

5. We have heard Shri Sunil Fernandes, Learned Senior Counsel appearing on behalf of Resolution Professional- Dr. Vichitra Narayan Pathak, Shri Krishnendu Datta, Learned Senior Counsel for Suraksha Realty Ltd., Shri Abhijeet Sinha, Learned Senior Counsel for Sheth Developers Pvt. Ltd., Shri Robin Jaisinghani, Learned Counsel for Arrow Engineering Ltd., Shri PB Suresh, Learned Senior Counsel for the Central Bank of India. We have also heard Shri Narender L. Jain, Learned Counsel appearing for new Resolution Professional. Learned Counsel for Shree Ram Vessel Scrap Pvt. Ltd. has also been heard.

6. Shri Sunil Fernandes, Learned Senior Counsel appearing for the Appellants in Company Appeal (AT) (Insolvency) Nos.1017 of 2024 & 1018 of 2024 submitted that the Resolution Professional has conducted the CIRP

Process in accordance with the provisions of the IBC and CIRP Regulations. On the basis of relevant materials brought by Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd., decision was taken with regard to their claims. In pursuance of the order of the Adjudicating Authority dated 16.03.2023 accepting the claims of Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. as Financial Creditors, the claims of Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. were admitted. However, the claim for interest could not be admitted. The MoU dated 26.12.2009 which was basis of claim having been declared void and unenforceable by order of the Hon'ble Supreme Court dated 12.05.2016 passed in Civil Appeal No.5038 of 2016, the claim of Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. could not be accepted as Secured Creditors. The letter dated 16.12.2009 which was letter to the escrow agent could not be treated as creating any mortgage. The said letter was also not a registered document. It is submitted that the Appellant/Resolution Professional is a 68-year-old professional who has a vast experience in Public and Corporate Sector. Appellant was employed in the Central Bank of India had retired as Deputy General Manager long ago and there is no reason to impute any motive with regard to accepting the claim of Central Bank. The claim of the Central Bank was based on decree passed by the Debt Recovery Tribunal and the observation of the Adjudicating Authority that Appellant has inflated the claim of Central Bank of India is without any basis and foundation. Counsel for the Appellant has also placed reliance on order dated 22.03.2024 passed in IA No.1058 of 2023 which IA was filed in IA No.357 of 2023. Adjudicating Authority had made observation *"neither stated collusion between the Resolution*

Professional and present applicant have been established by any document produced by the Respondent either in this matter or in the IA 357 of 2023". In spite of the above observations, Adjudicating Authority by the impugned order has ordered stigmatic removal of the Appellant while making various unfounded and unproved observations. It is submitted that the Adjudicating Authority accepted the decision of the Resolution Professional declaring Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. as Unsecured Creditors and even affirming the said decision, direction has been passed on discharge of the Appellant. Insofar as the claim of the interest, Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. have already initiated the Arbitration Proceedings in Bombay High Court where the claim of interest has been raised, hence, the Resolution Professional has accepted the claim as a contingent claim. It is submitted that the Resolution Professional has no adjudicatory jurisdiction and he has to collate the claim on the basis of claims submitted and documents produced before the Resolution Professional. Resolution Professional has been meticulously following the CIRP process and in pursuance of Form G issued, several Resolution Plans have been submitted which are awaiting voting on the plan. It is submitted that even after the advisory issued by the IBBI, the CoC has passed the Resolution in 11th meeting held on 29.01.2024 reaffirming the continuance of the Appellant/Resolution Professional with 88.58% vote share. Direction of the Adjudicating Authority in the impugned order discharging the Appellant is wholly uncalled for and deserves to be set aside. Section 27 of the IBC contains detail provision for removal of Resolution Professional. No process under Section 27 of the IBC has been followed. Suraksha Realty

Ltd. and Sheth Developers Pvt. Ltd. have already filed an application IA No.703 of 2023 and IA No.697 of 2023 questioning the admitted claims of some of the Financial Creditors which are pending adjudication. The observation of the Adjudicating Authority that the claims of the Central Bank of India and Arrow Engineering Ltd. have been inflated by the Resolution Professional are premature observations without given any opportunity to the Appellant. Counsel for the Appellant submitted that the Adjudicating Authority has made adverse observations against the Appellant while recording the conclusion which were neither proved nor based on any relevant material. Counsel for the Appellant submitted that the impugned order passed by the Adjudicating Authority discharging the Appellant be set aside and adverse observations made in the order be deleted.

7. Shri Krishnendu Datta, Learned Senior Counsel has appeared for Suraksha Realty Ltd. and Shri Abhijeet Sinha, Learned Senior Counsel has appeared for Sheth Developers Pvt. Ltd. Submissions advanced by Learned Senior Counsel for Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. being common, they are being noted together as submission on behalf of Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd.

8. Counsel for the Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. submitted that the Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. aggrieved by the part of the order dated 13.05.2024 deciding IA No. 357 of 2023 and IA No.358 of 2023 by which Adjudicating Authority has rejected the claim of Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. to be declared as secured creditors. It is submitted that both Suraksha Realty

Ltd. and Sheth Developers Pvt. Ltd. are secured creditors of the Corporate Debtor. Mortgage was created in favour of Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. by deposit of title which is also clearly reflected in letter dated 16.12.2009 addressed to Escrow Agent who was the agent both of the Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. as well as the Corporate Debtor. It is submitted that the mortgage by deposit of title deeds is recognised under Section 58(f) of the Transfer of Property Act, 1882 and mortgage is complete by deposit of title. There was no requirement of registration of any document qua the mortgage by deposit of title. Mortgage has been come into existence by deposit of title. Both Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. have security interest in the assets of the Corporate Debtor and both the Resolution Professional and the Adjudicating Authority committed error in rejecting the claim of Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. to declare as Secured Creditors. Judgment of the Hon'ble Supreme Court in ***“Rachpal Mahraj vs. Bhagwandas Daruka and Others- 1950 SCC 195”*** as relied by Learned Counsel appearing for Arrow Engineering Ltd. is not applicable. The letter dated 16.12.2009 merely record the deposit of the title deed, hence, it did not require any registration. Definition of ‘security interest’ under IBC is wide enough to include any type of mortgage, charge, hypothecation etc. Adjudicating Authority held that Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. holds a negative lien on the subject land. Negative lien is also a security interest. There was no requirement of registration of charge under Section 77 of the Companies Act, 2013. It is submitted that after replacement of the Resolution Professional by the

impugned order, new Resolution Professional has already taken over who has also been permitted by this Tribunal to make certain payments towards statutory payments and CIRP costs. It is submitted that grant of interest to both Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. @ of 18% is in accordance with the transaction between the parties. Clause 9.1 of the MoU stipulates refund of money along with the interest @18%. The Corporate Debtor has acknowledged the debts of Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. in Balance Sheets of F.Y. 2011-12, 2012-13 & 2013-14. Reliance on the judgment of the Hon'ble Supreme Court dated 12.05.2016 insofar as entitlement of Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. for restitution is misplaced. The judgment of the Hon'ble Supreme Court is limited to the finding that no rights accrue out of the MoU. Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. both are entitled to claim restitution under Section 65 of the Contract Act. Neither the Hon'ble Supreme Court order nor any judicial proceedings have held that Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. deliberately entered into MoU knowing that the Hon'ble Supreme Court order would render it unenforceable. The MoU, thus, was subsequently declared as void. Counsel for Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. has further submitted that the classification of Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. as Financial Creditors has become final. It is submitted that the Adjudicating Authority vide its order dated 16.03.2023 has declared Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. as Financial Creditors and directed the Resolution Professional to consider the claim of interest as well as the claim of being declared as Secured

Creditors. The order passed by the Adjudicating Authority holding Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. as Financial Creditors was never challenged and had become final. None of the stakeholders including Arrow Engineering Ltd. has any right to challenge the order which have become final. The order dated 16.03.2023 having become final cannot be questioned either before the Adjudicating Authority or before this Tribunal. The application filed by Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. being IA Nos. 703 of 2023 and 697 of 2023 challenging the acceptance of claims of Central Bank of India and Arrow Engineering Ltd. being pending, this Tribunal may direct the said application to be decided without being influenced by observations and findings in the impugned order.

9. Shri Robin Jaisinghani, Learned Counsel appearing for Arrow Engineering Ltd. submitted that Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. are not Financial Creditors. It is submitted that the Adjudicating Authority had not referred to the pleadings in application filed under Section 9 of the Arbitration & Conciliation Act, 1996 by Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. which are pending in the Bombay High Court from which pleading, it is clear that the amount of Rs.132 Crores paid to the Corporate Debtor was claimed as earnest money. It is further submitted that in IA No.690 of 2022 which was filed by Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. questioning the decision of the Resolution Professional rejecting their claims, Arrow Engineering Ltd. has filed IA No.777 of 2022 seeking to be impleaded as

party which was rejected by the Adjudicating Authority. It is further submitted that Arrow Engineering Ltd. was necessary party in the applications filed by Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. which has been decided by impugned order. It is submitted that Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. are not entitled for interest 18% per annum. Hon'ble Supreme Court vide its judgment dated 12.05.2016 having held the MoU being void, no claim of interest can be raised by Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. The Hon'ble Supreme Court held that *"MoU loses its legal force and no right would accrue to these interveners on the basis of the said agreements"*. It is submitted that Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. are not Secured Creditors. No mortgage was created and deposit of title to the Escrow Agent was for the purposes of Escrow Agreement. There was no intention of creating any mortgage. It is submitted that the title deed was not deposited to creditor or its agent and deposit was made to the Escrow Agent. The question of debt being secured by mortgage does not arise. The terms of arrangement between the parties contained in the letter dated 16.12.2009. Alleged mortgage, if any, is created by document and not merely by depositing the title deed. The arrangement having been reduced in writing, require registration under the Registration Act, 1908. The MoU dated 26.12.2009 was compulsorily registrable and was also required to be attested by atleast two witnesses. No charge was created by the above transaction. Charge under Section 100 of the Transfer of Property Act requires registration. In letter dated 16.12.2009, it was stipulated that in the event would MoU was terminated by Suraksha Realty Ltd. and Sheth

Developers Pvt. Ltd. and it is intimated to the Escrow Agent that consequent upon termination Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. have not been entirely repaid, Escrow Agent will entitle to continue to hold the document in custody until the entire amount is repaid. Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. have never terminated the MoU. Thus, the above clause never came into operation. It is further submitted that Arrow Engineering Ltd. has filed an application to be impleaded in IA No.357 of 2023 which IA came to be rejected by the Adjudicating Authority on 22.03.2024. When Arrow Engineering Ltd. was not heard in IA No.357 of 2023, the impugned order passed by the Adjudicating Authority directing for reduction of the claim of Arrow Engineering Ltd. from Rs.265 Crore to Rs.40.75 Crores is in violation of principle of natural justice and the impugned order directing reduction of the claim of Arrow Engineering Ltd. deserves to be set aside on this ground alone. It is further submitted by Arrow Engineering Ltd. that there was no ground made out for directing for replacement of the RP. Adjudicating Authority's direction to replace the RP is not in accordance with the procedure prescribed in the IBC. It is the CoC's prerogative to pass the resolution for replacement of the RP. It is submitted that IA No.849 of 2023 filed by Arrow Engineering Ltd. before the Adjudicating Authority seeking the names of Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. to be removed from the list of Financial Creditors need to be heard and decided. Counsel for Arrow Engineering Ltd. submits that the Appeal filed by Arrow Engineering Ltd. deserves to be allowed setting aside the order passed by the Adjudicating Authority.

10. Counsel appearing for the Central Bank of India challenging the impugned order submits that the Adjudicating Authority without giving an opportunity of hearing to the Central Bank of India have affected the rights of the Appellant. It is submitted that the Central Bank of India was not party in IA No.357 of 2023 and IA No.358 of 2023. It is submitted that the claim of the Central Bank of India was based on the decree of the Debt Recovery Tribunal (DRT) and the observations of the Adjudicating Authority that the Resolution Professional has admitted the inflated claim of the Central Bank of India is incorrect. It is submitted that the IA Nos. 697 of 2023 and 703 of 2023 filed by Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. challenging the admission of the claims of Central Bank of India is still pending before the Adjudicating Authority. Without deciding the said applications, adverse observations have been made against the Central Bank of India in the impugned order which is unsustainable. It is submitted that MoU dated 26.12.2009 entered by Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. with the Corporate Debtor has been declared void by the order of the Hon'ble Supreme Court, no right can be claimed by Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. It is submitted that Section 65 of the Contract Act relied by Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. is not applicable. It is submitted that Section 65 is attracted when Agreement is discovered to be void. Present is a case when Agreement was void and unenforceable from very beginning.

11. We have also heard Shri Narender L. Jain, Learned Counsel appearing for the new Resolution Professional. Counsel appearing in Company Appeal (AT) (Insolvency) No. 1085 of 2024 submits that Appellant- Shree Ram Vessel Scrap Pvt. Ltd. had filed an IA No.456 of 2024. Appellant has submitted a *suo motu* Resolution Plan which was not considered. Appellant has filed another IA No.723 of 2024 challenging the process and issuance of fresh Form G without final constitution of the CoC. By the impugned order, observation has been made that Resolution Plans received as on date is put up before newly constituted CoC and CoC may not continue with any process of fresh Resolution Plan.

12. Counsel for the parties has placed reliance on various judgments of the Hon'ble Supreme Court and this Tribunal in support of their respective submissions which we shall notice hereinafter.

13. From the submissions advanced by Counsel for the parties and materials on record, following are questions which arise for consideration in this group of Appeals:

- I. Whether Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. are Financial Creditors of the Corporate Debtor?
- II. Whether Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. are Secured Financial Creditors of the Corporate Debtor in view of the MoU dated 26.12.2009 coupled with deposit of title with the common agent (Escrow Agent)?

- III. Whether the order of the Adjudicating Authority passed in IA No. 357 of 2023 and IA No.358 of 2023 holding that Appellant Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. are entitled for 18% interest is sustainable?
- IV. Whether Adjudicating Authority by the impugned order could have reduced the claim of Arrow Engineering Limited to the extent of Rs.40.75 Crores without giving an opportunity to the Arrow Engineering Ltd.?
- V. Whether the conclusion of the Adjudicating Authority that Resolution Professional accepted inflated claim of Central Bank of India are sustainable especially when Central Bank of India was neither heard nor was made party to IA No. 357 of 2023 and IA No.358 of 2023?
- VI. Whether the Adjudicating Authority committed error in exercise of its jurisdiction in directing replacement of the Resolution Professional and there were sufficient material on the record to make adverse observations against the Resolution Professional?
- VII. Whether there was any basis for issuing direction for conducting a detailed Forensic Audit by KPMG as directed by the Adjudicating Authority in the impugned order?
- VIII. Whether Appellant- Shree Ram Vessel Scrap Pvt. Ltd. has made out a case for interfering with the direction in Para 42(vi)(k) and 43(D) of the order dated 13.05.2024 passed by the Adjudicating Authority in IA No.358 of 2023?

IX. Relief to which Appellants in this group of Appeals are entitled?

Question No. (I) -Whether Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. are Financial Creditors of the Corporate Debtor?

14. The first question which needs to be answered is as to whether Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. are the Financial Creditors of the Corporate Debtor. The CIRP against the Corporate Debtor commenced vide order dated 07.06.2022. On 20.06.2022 both Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. filed their claims in Form C claiming to be Financial Creditors for an amount of Rs.424,63,62,138/-. The IRP vide letter dated 26.06.2022 has rejected their claims. In 1st CoC meeting dated 07.07.2022, the CoC have appointed IRP as Resolution Professional. IA No.690 of 2022 was filed by Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. challenging the rejection of claims by erstwhile IRP. Adjudicating Authority vide order dated 16.03.2023 allowed IA No.690 of 2022 holding that debt of Rs.132 Crores owed by the Corporate Debtor to Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. had acquired the nature of interest bearing advance, therefore, the said amount is a financial debt. Adjudicating Authority on 16.03.2023 directed the erstwhile IRP to treat the claim of Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. as claim by Financial Creditors of financial debt and further, directed the erstwhile RP to consider Suraksha's claim of interest and also its prayer to be treated as Secured Creditor. Copy of the order dated 16.03.2023 is filed as Annexure P-4 in Company Appeal (AT)

(Insolvency) No.1018 of 2024. It is useful to extract paragraphs 11.5 and 11.6 of the judgment which are as follows:-

“11.5 As per clause 9.1 of the MoU, if the Corporate Debtor fails to execute and register irrevocable joint development agreement in favour of the developers (the applicant herein), then developers will have option to terminate the MoU and Corporate Debtor shall have to refund all amounts to the developers together with interest @18%. The relevant clause of the MoU is reproduced below:

“9.1 In the event that:

(a) GTL is unable to obtain the approval of its shareholders to this MoU within two (two) months from the date of execution of these presents or within such extended time as the developers may at their discretion agree or;

(b) GTL is unable to (1) pay all dues and complete all formalities under the labour agreement dated arrived between GTL and the Labour Union, or (2) make encumbrances; or (3) execute and register the irrevocable joint development agreement and irrevocable power of attorney in favour of the developers; or (4) fulfil its obligation in terms of this MoU within a period of 6 (six) months from the execution of this MoU or within such extended time as the developers may at their discretion agree;

Then the developers will have no option to terminate this understanding by giving 2 (two) day notice and upon such termination, GTL shall refund all amounts paid by the developers to (or on behalf of) GTL till such date together with interest thereon at 18%

(eighteen per cent) per annum from the date of termination till the date of refund.”

Thus, as per the MoU, failure to execute and register the joint development agreement would have converted the advances given to interest bearing refundable advance. Though the applicants had not terminated the MoU, it got terminated by the operation of law according to the judgment of the Hon'ble Supreme Court. The applicants had invested Rs.132 crore as advance and after full payment were to get 90% of built up area or alternatively refund with 18% interest if the joint development agreement could not be executed. We hold that it is a financial debt within the applicable provisions of Section 5(7) and 5(8) of IBC, 2016.

11.6 We are not dwelling on the issue of interest payable to the applicant companies as the said MoU had no legal force and this issue has not been considered and decided by the IRP. We are also not dwelling on the issue whether the debt is secured or unsecured. The securities were lodged with the Solicitors as per para 6.4 of the MoU which is reproduced below:

“6.5 GTL shall within 48 hours upon execution of this MoU, deposit all original documents of title in relation to the said property with Mr. M L Bhakta, Senior Partner, M/s. Kanga and Co. Advocates and Solicitors in escrow pending execution of the joint development agreement. The escrow agent shall handover the original document to the developers on execution of the joint development agreement”

The said MoU has lost its legal force and no joint development agreement was executed. This issue as to whether the debt is secured or unsecured has also not been examined by the IRP and it will be premature to decide on this issue. Thus, we wish to decide only on the issue whether the said advance as on date should be treated as operational debt or as financial debt by the IRP. As stated earlier, no joint development agreement was signed and no goods or services were rendered by the applicant companies. Thus, debt cannot be classified as operational debt. On failure to execute the joint development agreement, as per MoU, the debt had acquired the nature of interest bearing refundable advance and therefore, it gathers the character of a financial debt for the reasons stated in foregoing paras.”

15. In pursuance of the order dated 16.03.2023, Resolution Professional took a decision on 20.03.2023 where Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. were accepted as Financial Creditors. By the order dated 20.03.2023 addressed to both Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. an amount of Rs.66 Crores each disbursed to Corporate Debtor was accepted as financial debt. The Resolution Professional vide letter dated 20.03.2023 has rejected the claim of interest of 18% as well as claims of Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. being Secured Creditors. It was challenging the order dated 20.03.2023, IA No.357 of 2023 was filed by Suraksha Realty Ltd. and IA No.358 of 2023 by Sheth Developers Pvt. Ltd. which came to be decided by

the impugned order dated 13.05.2024. The submission which has been advanced by Counsel for the Appellant is that the order dated 16.03.2023 passed by the Adjudicating Authority holding Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. as Financial Creditors was never challenged and had become final, hence, it is not open for any stakeholders to question the status of Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. as Financial Creditors. Learned Counsel appearing for Arrow Engineering Ltd. submitted that Arrow Engineering has filed an IA for being impleaded in IA No.690 of 2022 filed by Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. which impleadment was refused by the Adjudicating Authority. Arrow Engineering Ltd. having not been heard and the decision dated 16.03.2023 being passed without hearing to Arrow Engineering Ltd., the said order it to be treated as nullity and cannot bind the Arrow Engineering Ltd. or the CoC.

16. The application being IA No.777 of 2022 was filed by Arrow Engineering Ltd. was rejected which was not pursued any further by Arrow Engineering Ltd. by filing any Appeal in this Tribunal. Further, the order dated 16.03.2023 passed by the Adjudicating Authority in IA No.690 of 2022 filed by Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. declaring them as Financial Creditors was not questioned by any stakeholders including Arrow Engineering Ltd. Adjudicating Authority when determined an issue in CIRP of the Corporate Debtor, the finality to such determination has to be attached unless the said decision is modified/ set aside by order of a Competent Court. Arrow Engineering Ltd.

has already been declared as Financial Creditor and has been allotted seat in the CoC. Central Bank of India has also been accepted as Financial Creditor and is Member of the CoC. The claims of Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. were not accepted as Financial Creditors by the Resolution Professional, hence, they aggrieved by the decision of the Resolution Professional has filed IA No.690 of 2022 which was allowed on 16.03.2023 insofar as claim of Financial Creditor is concerned. Counsel for Arrow Engineering Ltd. has also referred and relied to the pleadings of Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. before the Bombay High Court in an application under Section 9 of the Arbitration Act to contend that the said pleading indicates that Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. cannot be held to be Financial Creditors.

17. The fact remains that the order dated 16.03.2023 declaring Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. as Financial Creditors has become final having not been questioned by any stakeholders and in pursuance of the said order dated 16.03.2023, Resolution Professional has included both Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. in the CoC. The CIRP process is a time bound process and when Adjudicating Authority decides the claim of a particular creditor unless the said order is challenged in the higher forum, thus, the finality of the said claim has to be respected to permit the CIRP process to be completed within time bound period. We, thus, hold that the order dated 16.03.2023 declaring Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. as Financial Creditors having become final, the said question cannot be

allowed to be raised in these Appeals which have been filed challenging the order dated 13.05.2024 deciding IA No.357 of 2023 and IA No.358 of 2023 filed by Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. with regard to claim of interest and claim of being Secured Creditors.

18. We do not find any substance in the objection raised by Learned Counsel for the Arrow Engineering Ltd. that Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. are not Financial Creditors.

Question (II)- Whether Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. are Secured Financial Creditors of the Corporate Debtor in view of the MoU dated 26.12.2009 coupled with deposit of title with the common agent (Escrow Agent)?

19. As noted above, by the order dated 16.03.2023, Adjudicating Authority after accepting the claims of Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. as Financial Creditors directed the Resolution Professional to consider the claim of Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. qua the claim interest of 18% and further, the claim of Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. to be declared as Secured Creditors. After the order dated 16.03.2023, the Resolution Professional has considered the claim of Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. and by letter dated 20.03.2023 while admitting the claim of Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. of Rs.66 Crores each as financial debt has proceeded to reject the claim of interest as well as Secured Creditors. With respect to claim of security interest,

Resolution Professional in paragraphs 14 to 20 of the letter dated 20.03.2023 has given following reasons:-

“Security Interest

(14) With respect to the security interest (para 4 (ii) of your claim dated 20-06-2022 in Form C you have submitted as follows:

In order to secure the said advance/borrowing, the Corporate Debtor, created a mortgage in respect of the said Land by the deposit of title deeds with the Escrow Agent appointed at instance of Financial Creditor. The Escrow letter dated 26 December 2009 is annexed hereto and marked as Exhibit - "B". The said mortgage continues to be subsisting and binding.

(15) We note, however, that you state to the contrary in para 4 of the 'Declaration' that is filed in support of your claim (emphasis supplied):

4. In respect of the said sum or any part thereof, neither I, nor any person, by my order, to my knowledge or belief, for my use, had or received any manner of satisfaction or security whatsoever.

(16) Further, you seek to rely upon the Escrow Letter dated 26-12-2009 (Exhibit-B to your claim) to prove your claim qua 'security interest.

17) We note that the alleged mortgage even if it arguendo was effected has not been registered under

section 125 of the Companies Act, 1956 (as was in force at the relevant point in time), thus rendering it void in terms of the said provision. Further, the CD had. contemporaneously, expressly denied any intention to create such mortgage on the subject property.

(18) We note from the record of the proceedings in the matter of IA 690 of 2022 that you had preferred an application under section 9 of the Arbitration & Conciliation Act, 1996 WT OF Seeking inter alia security from the CD for the purpose of securing your claim of refund of the sums disbursed by you to CD under the void MOU.

(19) In view of the above, and in light of the settled law on the subject of equitable mortgage and memorandum, if any, accompanying the deposit of title deeds, our observations are as follows:

a. Since the parties chose to reduce the terms of deposit of title deeds to writing, the implication in law (that such deposit was made with the intent to create a security) is excluded by their express bargain and the document will be the sole evidence of its terms.

b. The Escrow Letter dated 26-12-2009-signed by both the creditor and the CD-contains the substantial terms of escrow arrangement agreed by and between the parties thereto qua the deposit of title deeds with the escrow agent.

c. The said Escrow Letter, accompanying the deposit of title deeds with the Escrow Agent and

forming integral part of the said transaction, is thus compulsorily registrable under the Registration Act, 1908 failing which it cannot be used in the evidence at all and the transaction itself cannot be proved by oral evidence either.

d. Without prejudice to the aforesaid, we note that even otherwise the essentials of an 'equitable mortgage' are not satisfied in the facts of the matter as:

(i) the title deeds were deposited with the Escrow Agent and thus, by definition, are not, and were not intended to be, deposited with the creditor;

(ii) the CD had contemporaneously denied any intention to create such mortgage; and

(iii) the creditor itself did not seem to consider, at the relevant time, the said escrow arrangement to be in the nature of a mortgage.

(20) Therefore, in the facts of the matter and considering the documents submitted by you in support of your claim, we are unable to verify and admit your claim for security interest in respect of the subject claim.

With regards,

(Dr Vichitra Narayan Pathak)

Resolution Professional

Golden Tobacco Limited (under CIRP)”

20. Both Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. have challenged the order dated 20.03.2023 by means of IA No.357 of 2023 and IA No.358 of 2023 which were decided by the impugned order dated 13.05.2024. Adjudicating Authority in the impugned order from paragraphs 25 to 39 while deciding the IA No.357 of 2023 has discussed the claim of Suraksha Realty Ltd. to be declared as Secured Creditor. Adjudicating Authority has recorded its conclusion that mortgage has not been created and deposit of title cannot be considered of valid creation of charge as it is not registered. In paragraph 40 (ii) & (iii), the claim of Suraksha Realty Ltd. to be declared as Secured Creditor has not been accepted in the conclusion arrived at by the Adjudicating Authority. The order of the Adjudicating Authority rejecting the claim of Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. for declaring them as Secured Creditors has been questioned in Company Appeal (AT) (Insolvency) Nos.1018 of 2024 and 1017 of 2024. Counsel for the Arrow Engineering Ltd. and Central Bank of India has supported the impugned order insofar as it declared Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. are not Secured Creditors.

21. Now we proceed to examine the sequence of events and materials relied by Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. for declaring them as Secured Creditors and submissions of Arrow Engineering Ltd. and Central Bank of India to refute such contention.

22. The facts which are on the record indicate that the Corporate Debtor has made a reference under The Sick Industrial Companies (Special

Provisions) Act, 1985 on which Case No.17 of 1997 was registered before BIFR. On 03.04.1997, M/s. Golden Tobacco Limited, the Corporate Debtor was declared as SICK Industrial Company. State Bank of India was appointed as operating agency who submitted a Draft Rehabilitation Scheme (DRS) for revival of the M/s. Golden Tobacco Limited. The BIFR by its order dated 16.12.2002 sanctioned the scheme for rehabilitation which scheme was to operate till 31.03.2011. The scheme included the asset land of Vile Parle, Mumbai which is subject matter of issue in these Appeals. The dues of different banks and Government departments were noticed in the scheme which contained a heading 'General Terms and Conditions'. Clause 10(f) provided as follows:-

"10. GENERAL TERMS AND CONDITIONS:

(f) The company would not undertake any major modernization /diversification program / capital expenditure except normal capital expenditure during the period of implementation of the rehabilitation scheme without specific prior permission of the MA/BIFR."

23. The rehabilitation scheme was under implementation. The Corporate Debtor entered into MoU dated 26.12.2009 with Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. Both Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. were jointly referred as 'developers'. The Corporate Debtor agreed to grant development rights with respect to Vile Parle land measuring 31,128 sq. mtr. for consideration of Rs.542,70,00,000/-.

Clause 6.1 provided that GTL, within a period of one month from the date of the company getting the necessary resolution passed at its shareholders' meeting, execute a formal Joint Development Agreement in favour of the Developers. Clause 9.1 provided that if the GTL is unable to obtain the approval of its shareholders or unable to pay all dues and complete all formalities under the labour agreement or unable to execute and register the irrevocable Joint Development Agreement, GTL shall refund the amount paid to the developers together with interest @18%. Clauses 6.1 and 9.1 are as follows:

“6.1 It is agreed by the parties that GTL shall, within a period of one month from the date of the Company getting the necessary resolution passed at its shareholders' meeting, execute a formal Joint Development Agreement in favour of the Developers incorporating all the terms and conditions of joint development and register the same in the office of the sub-registrar of assurances together with issuance of an Irrevocable Power of Attorney in favour of the Developers authorizing the Developers to develop the said Property including but not limited to:

(i) submitting to the Municipal corporation and all other concerned authorities plans for getting the said Property developed;

(ii) appointing at their own cost Architects, Contractors, Engineers, Supervisors, Labourers etc. for development of the said Property:

(iii) all other relevant powers required for development of the said Property including the power of creation of mortgages/charges thereon; sale and marketing the project under the name of the Developers (or name of its nominees) and execution of conveyances in relation thereto.

xxx

9.1 In the event that:

(A) GTL is unable to obtain the approval of its shareholders to this MOU within 2 (two) months from the date of execution of these presents or within such extended time as the Developers may at their discretion agree;

or

(B) GTL is unable to (1) pay all dues and complete all formalities under the labour agreement arrived between GTL and the Labour Union; or (2) make encumbrances; or (3) execute and register the Irrevocable Joint Development Agreement and Irrevocable Power of Attorney in favour of the Developers; or (4) fulfil its obligations in terms of this MOU within a period of 6 (six) months from the execution of this MOU or within such extended time as the Developers may at their discretion agree;

then the Developers will have an option to terminate this understanding by giving 2 (two) day notice and upon such termination GTL shall refund all amounts paid by the Developers to (or on behalf of) GTL till such-date together with interest thereon at 18% (eighteen per cent) per annum from the date of termination till the date of refund.”

24. Clause 17 of the MoU also needs to be noticed which provides as follows:-

“17. In the event, any provision of this Agreement is declared by judicial or any other competent authority, quasi-judicial or administrative, to be void, voidable, illegal or otherwise unenforceable, or indications of the same are received by either of the parties from any relevant competent authority/ies, the Parties shall construe the concerned provision of the Agreement in a reasonable manner which achieves the intention of the Parties without illegality.”

25. Clause 18 contained arbitration clause. On 26.12.2009, a joint letter was also written by the Corporate Debtor, Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. to Kanga & Company, Advocates & Solicitors. It is useful to notice letter dated 26.12.2009 which is as follows:-

“From: 26.12.09

*Golden Tobacco Limited,
Tobacco House,
S.V. Road, Vile Parle (West)
Mumbai 400 056*

*Sheth Developers Private Limited,
11, Vora Palace, next to Dena Bank,
M.G. Road, Kandivali (West),
Mumbai 400 067*

SURAKSHA REALTY LIMITED,

9, Gurukul CHS,
3rd Floor, Ram Mandir Road,
Vile Parle (East)
Mumbai Maharashtra

To:

Kanga & Company,
Advocates & Solicitors,
Ready Money Mansion, **Attn. Mr.M.J. Bhakta**
43, Veer Nariman Road,
Fort, Mumbai 400 001

Dear Sir,

Re: ALL THOSE pieces or parcels of land bearing C.TS. No. 383, 385, 385, C.T.S. No: 387 adm. 7448.9 sq. mtrs., C.TS. No. 387/1 adm. 150.5 sq. mtrs, C.TS. No. 387/2 adm. 183.0 sq. mtrs, C.TS. No. 387/3 adm. 348.0 sq. mtrs., C.TS. No. 387/4 adm, 1111.4 sq. mtrs., C.TS. No. 387/5 adm. 298.4 sq. mtrs., C.TS. No. 387/6 adm. 62.7 sq. mtrs., C.TS. No. 387/7 adm. 286,2 sq. mtrs., C.TS. No. 387/8 adm. 987.1 sq. mtrs., C.T.S. No. 387/9 udm. 35.9 sq. mtrs., G.T.S. No. 387/to adm. 101.2 sq. mtrs., C.TS. No. 387/1 adm. 16.1 sq. mtrs., C.T.S. No. 387/12 adm. 128 sq. mtrs., C.TS. No. 387/13 adm. 1069.5 sq. mtrs., C.T.S. No. 387/14 odm. 60.8 sq. mtrs., C.TS. No. 387/15 adm. 2033.6 sq. mtrs., C.T.S. No. 387/16 adm. 10.4 4. mtrs., C.T.S. No. 387/17 adm. 11.8 sq. mtrs., C.TS. No, 387/18 adm. 10.4 sq. mtre C.TS. No. 387/19 adm. 9.7 sq. mtrs., C.TS. No. 387/20 adm. 7.5 sq. mtrs., C.TS. No, 387/21 adm. 16.7 sq. mtrs., C.T.S. No. 387/21 adm. 16.7 sq. mtrs, C.TS. No. 3.87/23 adm. 16.7 sq. mtrs., C.TS. No. 387/24 adm.

15.0 sq. mtrs., CTS. No. 387/25 adm. 7.7 sq. mtrs., C.T.S. No. 387/26 adm. 3.7 sq. mtrs., C.T.S. No. 387/27 adm. 12.1 sq. mtrs., C.T.S, No. 415 adm. 1488.7 sq. mtrs., C.TS. No. 416 adm. 1730.1 sq. mtrs., and bearing Survey No. 290, Hissa No. 1, Survey No, 293 Hissa No. 1, Survey No. 194-A Hissa No. 1 & 3, Survey No. 262, Hissa No, 1 & 2, Survey No. 195, Hissa No. 17, Survey No. 193-C, Survey No, 262, Hissa No. 3, Survey No. 194-A, Hissa No. 2, Survey No. 195 Hissa No. 13, 15, 16, 19 & 20, Survey No. 193 Hissa No. 14 & 16 changed to Survey No. 193 Hissa No. 18 & 2, Survey No. 195, Hissa No. 6. Survey No. 104, Hissa No. 5 & to. Survey No. 195 Hissa No. 18 (Part) & II, Hissa No. to, Survey No. 195 Hissa No. 4. Survey No, 195 Hissa No. 7, Survey No. 105 Hissa No. 8, Survey No. 195 Hissa No. 9. situate, lying and being at Village Vile Parle, S. V. Road, Vile Parle (West) Mumbai

We have to inform you that we have entered into the attached Memorandum of Understanding dated 26th December 2009 (MOU) in relation to the aforesaid Premises in pursuance whereof Golden Tobacco Limited ("GTL") has granted development rights in relation to the said property to Sheth Developers Private Limited and Suraksha Realty Limited (collectively "the Developers").

2. We are hereby depositing the title deeds which are more particularly specified in Schedule I hereinbelow, with you to be held in escrow pending completion of the obligations of the parties specified therein.

3. We request you to handover the title deeds to the Developers once the Joint Development Agreement is executed amongst us in terms of the MOU in favour of

the Developers and the same is registered in the office of the sub-registrar of assurances.

4. In the event the MOU has been terminated by the Developers and the Developers intimate you that consequent to termination they have not been paid the whole of the amount payable to them in terms of the MOU then we request you to continue to hold the under mentioned documents of title in your custody until the Developers have intimated to you that they have been paid the whole amount payable to them in terms of the MOU.

5. We agree to pay your fees as may be specified from time to time.

26. Schedule of the letter contained the details of original deed of conveyance. The claim as noted above was filed in Form C by Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. The claim was made on the basis of Rs.56 Crores towards principal amount and interest @ of 18% per annum from 15.03.2011. Claim security by creation of a mortgage in respect of land by deposit of title with escrow agent appointed at the instance of Financial Creditor and Sheth Developers Pvt. Ltd. The copy of the escrow letter dated 26.12.2009 was relied. In relevant particulars of Item No.4 with regard to claim of security, following was pleaded:-

“In order to secure the said advance/borrowing, the Corporate Debtor, created a mortgage in respect of the said Land by the deposit of title deeds with the Escrow Agent appointed at instance of the Financial Creditor and Sheth Developers Private Limited. The

Escrow letter dated 26th December 2009 is annexed hereto and marked as Exhibit "B". The said mortgage continues to be subsisting and binding."

27. We also need to notice judgment of the Hon'ble Supreme Court dated 12.05.2016 in Civil Appeal No.5038 of 2016 which has been noticed by Adjudicating Authority and is relevant for determination of the issues raised in the Appeals. Civil Appeal was filed in the Hon'ble Supreme Court by Director General of Income Tax challenging the order of AAIFR as well as the order passed by BIFR. The order of the Appellate Authority was challenged by means of Writ Petition in Delhi High Court which Writ Petition was withdrawn, the Appellate Authority has restrained the revenue from taking coercive action against the company for recovery of dues, aggrieved by which order Writ Petition filed by revenue department was also dismissed. The Hon'ble Supreme Court had occasion to examine the Scheme approved under the Sick Industrial Companies (Special Provisions) Act, 1985 of the Company (Corporate Debtor). The MoU entered by Company, Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. was also noticed and considered by the Hon'ble Supreme Court in the said judgment. MoU dated 26.12.2009, entered with Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. has been noticed by the Hon'ble Supreme Court in paragraph 10 of the judgment which is as follows:-

"10) Within few days of this demand, the Revenue found from the reports in print media that the company had sold its Vile Parle Property in Mumbai for a sum of Rs.591 crores. In order to verify this sale transaction, a specific survey

under Section 133(A) of the Income Tax Act was conducted from which it was gathered that the Company had entered into a Memorandum of Understanding (MOU) with M/s. Sheth Developers Pvt. Ltd. and Suraksha Reality Ltd. for developing the said property. This MOU prescribed that on execution of agreement for development, the assessee Company would receive a total consideration of Rs.542.70 crores out of which the assessee Company had already received advance consideration of Rs.60 crores at the time of signing the MOU. Further, the company had also entered into an agreement for development of assessee's land at Hyderabad for construction of Ashoka Golden Mall and Multiplex. The company had not passed on the possession of Vile Parle as development agreement was not signed. Thus, the company had, by this time, converted almost all the immovable properties owned by it as business assets into stock-in-trade and almost all properties were put on sale. The tentative cost of sale of all these properties would be between Rs. 700 crores to Rs. 1000 crores approximately.”

28. In the aforesaid Civil Appeal, both Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. have filed an IA for intervention on the basis of MoU dated 26.12.2009. With regard to claim of Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd., the Hon’ble Supreme Court made following observations in paragraph 34 which are as follows:-

“34) Before parting with, we may point out that M/s. Sheth Developers Private Limited and Suraksha Realty Limited have filed applications to intervene in the matter as they submit that in respect of Ville Parle Land, MOU was entered into by the Company with them. However, once it is found that such an agreement was in violation of the Scheme, the arrangement with the aforesaid interveners entered into by the Company loses its legal force and no right would accrue to these interveners on the basis of the said agreements. We, thus, dismiss the plea raised by the intervener.”

29. The Hon’ble Supreme Court in the above paragraph held *“However, once it is found that such an agreement was in violation of the Scheme, the arrangement with the aforesaid interveners entered into by the Company loses its legal force and no right would accrue to these interveners on the basis of the said agreements”*.

30. The submission which has been advanced by the Counsel for Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. are creation of security interest by mortgage under Section 58(f) of the Transfer of Property Act by deposit of title on 26.12.2009 with the escrow agent as it is reflected by letter dated 26.12.2009 noticed above. Section 58(f) of the Transfer of Property Act defines ‘mortgage’. Section 58 (a) & (f) which are relevant for the present case are as follows:-

“58. “Mortgage”, “mortgagor”, “mortgagee”, “mortgage-money” and “mortgage-deed” defined.—(a) A mortgage is the transfer of an

interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

*(f) Mortgage by deposit of title-deeds.—Where a person in any of the following towns, namely, the towns of Calcutta, Madras, 2[and Bombay], 3*** and in any other town which the [State Government concerned] may, by notification in the Official Gazette, specify in this behalf, delivers to a creditor or his agent documents of title to immoveable property, with intent to create a security thereon, the transaction is called a mortgage by deposit of title-deeds.”*

31. The question to be answered in the present case is that whether mortgage is created by deposit of title under Section 58(f) of the Transfer of Property Act in the facts of the present case. The present is a case where documents of title were handed over to the escrow agent along with the letter dated 26.12.2009. The letter dated 26.12.2009 have been noted by us in foregoing paragraphs which letter is from Corporate Debtor along with Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. to Kanga & Company, Advocates & Solicitors. The Corporate Debtor along with developers informed Kanga & Company, Advocates & Solicitors that “we

have entered into the attached Memorandum of Understanding dated 26th December 2009 (MOU) in relation to the aforesaid Premises in pursuance whereof Golden Tobacco Limited ("GTL") has granted development rights in relation to the said property to Sheth Developers Private Limited and Suraksha Realty Limited". Paragraph 2 of the letter mentioned "We are hereby depositing the title deeds which are more particularly specified in Schedule I hereinbelow, with you to be held in escrow pending completion of the obligations of the parties specified therein". The letter thus, require the documents to be held in escrow and paragraph 3 further mentioned that "Kanga & Company, Advocates & Solicitors to handover the title deeds to the Developers once the Joint Development Agreement is executed amongst us in terms of the MOU in favour of the Developers and the same is registered".

32. When we look into Section 58(f), the keywords for mortgage by deposit of title deed is **"with intent to create a security thereon"**. Thus, the intention of the parties for deposit of title are one of the relevant factors for determining as to whether mortgage is creating by deposit of title. In the present case, documents of title were deposited with Advocates & Solicitors to keep the documents in escrow pending completion of the obligation of the parties. Paragraph 4 of the letter dated 26.12.2009 mentioned that *"in the event the MOU has been terminated by the Developers and the Developers intimate you that consequent to termination they have not been paid the whole of the amount payable to them in terms of the MOU then we request you to continue to hold the under mentioned*

documents of title in your custody until the Developers have intimated to you that they have been paid the whole amount payable to them in terms of the MOU". The entire transaction indicates that transaction was towards keeping the title deed with escrow agents and there was no intent to create mortgage in the assets of the Corporate Debtor.

33. It is relevant to note that the Corporate Debtor was well aware of the Rehabilitation Scheme sanctioned by BIFR. Scheme itself noted that the debts are various banks, secured creditors and government departments. Corporate Debtor has to be presumed to be well aware that the mortgage right cannot be legally or validly created in assets which are subject matter of Rehabilitation Scheme framed by BIFR, hence, the deposit of title was with limited purpose and intent which is reflected in the letter dated 26.12.2009 as extracted above. We, thus, are of the view that looking at the anvil of Section 58(f), intent on the part of the Corporate Debtor to create a mortgage by deposit of title is not reflected in the transaction. In this context, we may need to notice certain judgments relied by parties.

34. Judgment of the Hon'ble Supreme Court in ***"Rachpal Mahraj vs. Bhagwandas Daruka and Others- 1950 SCC 195"*** has been relied by Arrow Engineering Ltd. In the above case, the Hon'ble Supreme Court had occasion to consider Section 58(f) and Section 59 of the Transfer of Property Act, 1882. In paragraph 5 of the judgment, the Hon'ble Supreme Court held that when the debtor deposits with the creditor the title deeds of his property with intent to create a security, the law implies a contract between the parties to create a mortgage, and no registered instrument is

required under Section 59 as in other forms of mortgage. Paragraph 5 of the judgment is as follows:-

“5. A mortgage by deposit of title deeds is a form of mortgage recognised by Section 58(f) of the Transfer of Property Act, 1882 which provides that it may be effected in certain towns (including Calcutta) by a person “delivering to his creditor or his agent documents of title to immovable property with intent to create a security thereon”. That is to say when the debtor deposits with the creditor the title deeds of his property with intent to create a security, the law implies a contract between the parties to create a mortgage, and no registered instrument is required under Section 59 as in other forms of mortgage. But if the parties choose to reduce the contract to writing, the implication is excluded by their express bargain, and the document will be the sole evidence of its terms. In such a case the deposit and the document both form integral parts of the transaction and are essential ingredients in the creation of the mortgage. As the deposit alone is not intended to create the charge and the document, which constitutes the bargain regarding the security, is also necessary and operates to create the charge in conjunction with the deposit, it requires registration under Section 17 of the Registration Act, 1908, as a non-testamentary instrument creating an interest in immovable property, where the value of such property is one hundred rupees and upwards. The time factor is not decisive. The document may be handed over to the creditor along with the title deeds and yet may not be registrable, as in Obla Sundarachariar v. Narayanna

Ayyar [Obla Sundarachariar v. Narayanna Ayyar, (1930-31) 58 IA 68 : 1931 SCC OnLine PC 2] or, it may be delivered at a later date and nevertheless be registrable, as in Sir Hari Sankar Paul v. Kedar Nath Saha [Sir Hari Sankar Paul v. Kedar Nath Saha, (1938-39) 66 IA 184 : 1939 SCC OnLine PC 25]”.

35. It was further held in paragraph 6 of the judgment that the crucial question is did the parties intend to reduce their bargain regarding the deposit of the title deeds to the form of a document. It was further held that if the bargain has been reduced in writing, the document requires registration. In paragraph 6 of the judgment, following has been held:-

“6. The crucial question is: did the parties intend to reduce their bargain regarding the deposit of the title deeds to the form of a document? If so, the document requires registration. If, on the other hand, its proper construction and the surrounding circumstances lead to the conclusion that the parties did not intend to do so, then, there being no express bargain, the contract to create the mortgage arises by implication of the law from the deposit itself with the requisite intention, and the document, being merely evidential does not require registration.”

36. In the case before the Hon’ble Supreme Court, the document had only recorded transaction in which case party did not intent to reduce the bargain to writing, hence, it was held that agreement did not require registration and could have been admitted in evidence to prove the creation of charge. When we apply the above ratio of the above judgment

in the facts of the present case, it is clear that following two conclusions are irresistible:

- (i) Corporate Debtor did not intend to create mortgage on the assets by deposit of title. Corporate Debtor only intended to keep the title deeds with escrow agent which was clear by the letter dated 26.12.2009.
- (ii) The document contained the bargain. Both the parties reduced the bargain into writing i.e. MoU dated 26.12.2009, for creating any charge on the assets on the strength of the MoU, the said MoU requires restriction under Section 17 of the Registration Act, 1908.

37. Counsel for the Suraksha Realty Limited has placed reliance on **“Cosmos Co. Operative Bank Ltd. vs. Central Bank of India and Others- 2025 SCC OnLine SC 352”** where the Hon’ble Supreme Court held that mortgage by deposit of title deeds is accepted as mortgage under the Transfer of Property Act, 1882. In the above case before the Hon’ble Supreme Court, original borrower while availing the loan facility from the Central Bank of India had deposited the sale deed and another unregistered agreement to sell. In the above context, the Hon’ble Supreme Court had occasion to consider the provisions of the Transfer of Property Act, 1882. In paragraphs 48 and 49, the Hon’ble Supreme Court held:-

“48. At this stage we must also address ourselves on one another important aspect where the High Court grossly erred whilst passing the impugned judgment

and order. As discussed in the foregoing paragraphs of this judgment, the original borrower whilst availing the loan facility from the respondent no. 1 and appellant, had deposited with them two unregistered agreement to sale, and another unregistered agreement to sale along with the share certificate of ownership, respectively. Although both of the aforesaid transactions seek to create mortgage by deposit of documents or title, yet there lies a very fine but pertinent distinction between the two transactions. In respect of the loan advanced by the respondent no. 1 bank, only two unregistered agreements to sale were deposited which as discussed earlier do not purport any title as held in Suraj Lamps (supra) while with the appellant bank herein apart from one unregistered agreement to sale the share certificate of ownership had also been deposited which has the effect of conveyance of title.

49. *Under the English Law, whether the documents so deposited actually purport or transfer any title is immaterial for the purpose of creating an 'equitable mortgage' as long as the intention to do so is clearly discernible. The position in India however is quite different. This is because under the English Law, a mortgage created by deposit of title or documents is not construed as a legal mortgage and is only treated as an equitable mortgage. Whereas in India under the Act, 1882, more particularly under Section 58 sub-section (f) a statutory recognition has been given to the mode of creation of mortgage by deposit of title deeds. Such a mortgage by deposit of title deeds is for all purposes a 'legal mortgage' and not an equitable mort- gage.....”*

38. In paragraph 51, the Hon'ble Supreme Court has noticed the requisite for valid mortgage. Paragraph 51 is as follows:-

“51. Deposit of title deeds is one of the many forms of mortgages whereunder there is a transfer of interest in specific immovable property for the purpose of securing payment of money advanced or to be advanced by way of loan. The three requisites for a valid mortgage are, (i) debt; (ii) deposit of title deed; and (iii) an intention that the deed shall operate as security for the debt. In other words, when the debtor deposits with the creditor title deeds of his property with an intent to create a security, the law implies a contract between the parties to create a mortgage and no registered instrument is required under Section 59 of the Act, 1882 as in other classes of mortgage. It is essential to bear in mind that the essence of a mortgage by deposit of title deeds is the actual handing over by a borrower to the lender of documents of title to immovable property with the intention that those documents shall constitute a security which will enable the creditor ultimately to recover the money which he has lent. Whether there is an intention that the deed shall be security for the debt is a question of fact to be decided in each case on its own merits. The said fact will have to be decided just like any other fact based on legal presumptions, oral, documentary and/or circumstantial evidence. Normally, title deeds are delivered to the bank along with a covering letter indicating therein an intention of delivering title deed i.e. to create security for the present or future liability.

*In turn, bank gives a letter to the person delivering title deeds indicating acceptance of the documents and/or title deeds by way of security either for the outstanding dues or for the loan to be advanced. The banks, normally, maintain register of securities called Equitable Mortgage Register; wherein the entry of title deeds is taken in the form of memorandum signed by the Branch Manager alone, as a person accepting delivery of the documents as security. **These formalities are done to establish three essential requisites of equitable mortgage, viz. (1) debit, (2) deposit of title deed and (iii) the intention that deed shall operate as security for the present or future debt.** But if the parties choose to reduce the contract to writing, this implication of law is excluded by their express bargain, and the document will be the sole evidence of its terms. In such a case the deposit and the document both form integral parts of the transaction and are essential ingredients in the creation of the mortgage.”*

39. There can be no quarrel to the proposition laid down by the Hon’ble Supreme Court in the above case. The question to be considered is as to whether essential ingredients requisite as noticed above are fulfilled in the present case or not. We have already noticed that the deposit of title deeds by the debtor was not with intent to create a mortgage rights in the Corporate Debtor assets rather than the title documents were deposited with the escrow agent to keep with escrow agent till the obligation under MoU is fulfilled. The transaction when look into all attended

circumstances and intent of the parties clearly indicate that there was no intent for creating mortgage.

40. Counsel for the Appellant- Suraksha Realty Limited has also relied on the judgment of this Tribunal in **“Home Kraft Avenues vs. Jayesh Sanghrajka- 2025 SCC OnLine NCLAT 309”** where this Tribunal while considering Section 77 of the Companies Act, 2013 held that intent of legislature was never to apply Section 77 of the Companies Act upon the Corporate Insolvency Resolution Process. In paragraphs 12 and 13, following was laid down:-

“12. A bare reading of Section 77(3) of Companies Act, 2013 casts an obligation upon ‘Liquidator’. However, the present case is confined to the duty and role of ‘Resolution Professional’ and admittedly company is not under liquidation.

13. The intent of legislature was never to apply Section 77 of Companies Act upon the ‘Corporate Insolvency Resolution Process’. This is for the reason the treatment of “secured creditor” and “security interest” in liquidation process is entirely different from that of during the ‘Corporate Insolvency Resolution Process’. A ‘secured creditor’ under ‘liquidation process’ has an indefeasible right to realise its security interest by excluding its assets from the Liquidation Estate per Section 52. In case of ‘liquidation’ a ‘Secured Creditor’ who intends to realise its ‘security’ outside the ‘waterfall mechanism’ as per section 53, has to prove that he has a “Charge” over a property. In that case the Liquidator has to

‘recognise a charge’ which is “registered as per section 77 of Companies Act”. Further, the definition of “Liquidation Estate” under 36(3) (g) includes ‘secured assets’ only and only if the ‘secured creditor’ has relinquished its interest. Distinctively, Section 18(1)(f) and 25(2)(a) mandates the Resolution Professional to take control of ‘all assets’ of the Corporate Debtor irrespective of any encumbrance. Further, no secured creditor has right to ‘realise’ its ‘security interest’ during ‘CIRP’”.

41. The present is not a case where the claim of Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. to declare them as secured creditors is being resisted by the Resolution Professional on the ground that the charge has not been registered under Section 77 of the Companies Act, 2013, hence, the above judgment has no application. We, thus, are satisfied that in the facts of the present case, by deposit of title deeds by letter dated 26.12.2009 to the escrow agent which was documented by MoU, no mortgage was created within the meaning of Section 58(f). We, thus, uphold the decision of the Resolution Professional and the Adjudicating Authority holding that Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. does not have any security interest in the assets of the Corporate Debtor.

42. Lastly and more importantly, the Hon’ble Supreme Court vide its judgment dated 12.05.2016 has held that agreement (MOU dated 26.12.2009) being in violation of the scheme (Rehabilitation Scheme sanctioned by BIFR), the agreement with Suraksha Realty Ltd. and Sheth

Developers Pvt. Ltd. entered into by the company loses its legal force and no right would accrue to the interveners on the basis of said agreement. The Hon'ble Supreme Court had occasion to notice the arrangement of Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. with the Company i.e. Corporate Debtor dated 26.12.2009 and held that no right would accrue to these interveners (Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd.) on the basis of said agreement. When the Hon'ble Supreme Court has specifically held that no right shall accrue to the Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd on the basis of 26.12.2009, it is difficult to accept the submission of the Appellant that security interest in the assets of the Corporate Debtor i.e. Vile Parle property is created in favour of Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. and they have mortgage rights in the Corporate Debtor. We, thus, are of the clear opinion that the claim of the Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. to claim mortgage rights on the assets has to be rejected.

Question No.(III)- Whether the order of the Adjudicating Authority passed in IA No. 357 of 2023 and IA No.358 of 2023 holding that Appellant Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. are entitled for 18% interest is sustainable?

43. The Adjudicating Authority by the impugned order passed in IA No.357 of 2023 and 358 of 2023 has held that Appellants are entitled for 18% interest per annum. Challenge to the said order has been made both by the Arrow Engineering Ltd. as well as the Central Bank of India.

44. Learned counsel for the Arrow Engineering Ltd. has challenged the grant of interest @18% per annum to Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. by the impugned order. It is submitted that the grant of interest is not in conformity of the order of the Hon'ble Supreme Court dated 12.05.2016 where the Hon'ble Supreme Court held that MOU entered between the Company and Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. is void. It is submitted that even if, assuming that MOU was valid, under the terms of MOU that mentions 18% interest only if there is breach and default by the Company which entitled the Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. to terminate the MOU and MOU was in fact not terminated by Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. It is not case of Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. that they have terminated the MOU at any point of time. It is further submitted that Section 9 application under Arbitration and Conciliation Act has been filed before the Bombay High Court seeking interim relief, where it was submitted that MOU was valid and subsisting. When the Hon'ble Supreme Court held that the MOU loses its legal force and no right could accrue to these interveners on the basis of said agreement, there was no occasion to grant 18% interest to Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd.

45. Learned counsel for Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. refuting the submissions of Appellant submits that the Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. has cumulatively paid the amount of Rs.66 Crores each i.e. Rs.132 Crore to the Company and the balance amount, as agreed, was payable on clear and irrevocable title of the subject

land after obtaining approval from Secured Creditors and after execution of irrevocable joint development agreement and irrevocable power of attorney to hand over vacant possession. The Company – GTL has not performed its obligation, therefore, there was no occasion for payment of any balance amount and as stipulated in the MOU, refund of the money along with 18% interest was to be made upon failure to execute the Joint Development Agreement. In the balance sheet of the Company for financial year 2011-12, 2012-13, 2013-14 the debt has been acknowledged. It is further submitted that the Corporate Debtor in its Reply filed to Section 9 application before the Bombay High Court has categorically accepted that amount is payable to Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. with interest of 18%.

46. The reply filed by the Corporate Debtor in Section 9 proceeding before the Bombay High Court is part of the record where it was pleaded by the Company that the Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. are not entitled for specific performance of MOU, however, they will be entitled to refund of the amount paid along with interest and no other reliefs can be granted. Para 4 (p) of the Reply filed before the Bombay High Court in Arbitration Petition No. 667 of 2012 is relevant, which is as follows:

“(p) Without prejudice to the above and assuming without admitting that Respondent Company has committed any breach or default under the terms of the MoU, in that event also as per the terms of MoU, Petitioner is not entitled to seek any specific relief and call upon the Respondent Company to execute the Development Agreement. At best as per the terms of the MoU, Petitioner will be entitled to refund of the amount

paid along with the interest and no other relief whatsoever, hence the relief sought by the Petitioner restraining the Respondent Company to deal with its assets cannot be granted and the Petition deserves to be rejected.”

47. It is further brought on the record that Company in the proceeding before BIFR has filed an application seeking leave of the Board to refund the amount to Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. along with interest, if any, directed by the Board.

48. The issue in the present proceeding in the CIRP process was with regard to financial debt within the meaning of I&B Code. ‘Financial Debt’ is defined in Section 5 Sub-section (8) of the I&B Code, which contains the definition. Section 5(8)(f) provides for a financial debt with regard to any amount raised under any other transaction. There is no dispute between the parties that amount of Rs.132 Crores was advanced by Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. Even if, the MOU dated 26.12.2009 was declared unenforceable by Hon’ble Supreme Court by its order dated 12.05.2016, the amount of Rs.132 Crores received by the Company cannot be negated. We have already held that the decision of the Adjudicating Authority declaring that the Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. are financial creditors by its order dated 16.03.2019 has become final having not been challenged by any stakeholder. We, thus, have to proceed on the premise that the said amount was financial debt. Thus, even if, MOU dated 26.12.2009 has been declared as unenforceable and void, the financial transaction taken thereunder remains a financial transaction. We

have also noticed Clause 17 of the MOU which provides that in the event, any provision of this Agreement is declared by judicial or any other competent authority, quasi-judicial or administrative, to be void, voidable, illegal or otherwise unenforceable, the Parties shall construe the concerned provision of the Agreement in a reasonable manner which achieves the intention of the Parties without illegality. From the pleadings made by the Corporate Debtor in the proceedings before the Bombay High Court under Section 9 of the Arbitration and Conciliation Act, it is indicated that the Company made submission that the amounts are to be refunded with interest. Thus, both the parties are under clear understanding that amount advanced by Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. has to be refunded with interest. In the Para 24 of the impugned order passed in IA No.357 of 2023, the Adjudicating Authority has made following observations:

“24. The annual reports for the year 2011-2012, 2012-2013, 2013-2014 and the Balance Sheet of CD also demonstrates that the applicant is entitled to interest on the said amount. The CD mentioned in the balance-sheet that the company has proposed that the money received under the MoU be refunded along with interest as approved by the BIFR. It has also mentioned further that "the company has in the MDRS submitted to the OA appointed by BIFR in July 2013 sought for refunding advances and also advances of Rs. 40,75,00000/- received from strategic investor against Vile Parle property along within interest, if any, as decided by the BIFR by selling the said property". Thus, the RP overlooked admission given by the CD. Even otherwise,

irrespective of MoU, it is a financial debt. Interest kicks in only when there is default. Hence, the debt and date of default should be from the date of MoU as it becomes the return of principal and interest agreed based on time value of money. Intention of borrower was to repay amount with interest. So we allow the borrowed funds to be repaid in terms of Contract Act as per agreement. We therefore, hold that the applicant is entitled to interest @ 18% per annum from the date of MoU i.e 26.12.2009.”

49. We fully concur the view taken by the Adjudicating Authority that Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. were entitled for their amount with 18% per annum interest.

Question No. (IV)- Whether Adjudicating Authority by the impugned order could have reduced the claim of Arrow Engineering Limited to the extent of Rs.40.75 Crores without giving an opportunity to the Arrow Engineering Ltd.?

50. The claim of Arrow Engineering was admitted by the Resolution Professional to the extent of Rs.265 Crores and odd. The Adjudicating Authority vide impugned order has reduced the said claim to Rs.40.75 Crores. The Adjudicating Authority in Para 40(iii) Sub-clause (b) has provided as follows:

“b) The claim of Arrow Engineering is restricted at Rs.41.70 crores till submission of Audit Report by KPMG.”

51. The submission which has been advanced by learned counsel for Arrow Engineering is that the said direction of the Adjudicating Authority reducing the admitted claim of Arrow Engineering from Rs.265 Crores to Rs.40.75 Crores is wholly illegal and contrary to the principles of natural justice. It is submitted that in IA No. 357 of 2023, Arrow Engineering was not impleaded and when application was filed by the Arrow Engineering for impleadment in IA No.357 of 2023, the said application was rejected by the Adjudicating Authority observing that in IA No.357 of 2023 no prayers have been made against the Arrow Engineering, hence, Arrow Engineering need not be impleaded in IA No.357 of 2023. Learned counsel for the Arrow Engineering further submits that IA No.703 of 2023 and IA No.697 of 2023 has been filed by Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. challenging the acceptance of claim of Arrow Engineering and Central Bank of India, which application is still pending. When the application filed by Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. challenging the admitted claim of Arrow Engineering is pending consideration, there was no occasion to pass any order in IA No.357 of 2023 to reduce the claim of Arrow Engineering to Rs.40.75 Crores. It is submitted that the order deserves to be set aside on the ground that order has been passed in violation of principles of natural justice.

52. In IA No.357 of 2023, the Arrow Engineering has filed IA No.1058 of 2023 praying it to be impleaded in IA No.357 of 2023, the said application was rejected by the Adjudicating Authority vide order dated 22.03.2024, which order has been brought on the record as Annexure P-14. In Para 6 of

the order, the Adjudicating Authority has given reason for rejecting the application, which Para 6 is as follows:

“6. Heard the applicant and the respondent and perused the documents submitted. It is pertinent to note that the applicant has also been the participant in the CoC constituted on acceptance of claims from creditors of the Corporate Debtor and contributes to 98% of the voting shares of CoC. Neither stated collusion between the Resolution Professional and present applicant have been established by any document produced by the respondent either in this matter or in the IA 357 of 2023. The applicant in IA 357 of 2023 have also not made any prayers against the present applicant for not considering his claims or his removal from the CoC. The matter under reference in that IA and prayers is for their consideration as a claimant for principal and interest with secured status which is yet to be adjudicated. Hence there would be no locus standi of present applicant to be made a respondent in the IA 357 of 2023 as the prayers sought do not have any bearing against the any allegations, if any, made against the applicant. It is for the Resolution Professional to reply the facts of the case. Accordingly, the respondent in the matter is restricted to the Resolution Professional and none other for the purpose of adjudication of the IA 357/2023 by this Tribunal.”

53. When we look in to the aforesaid reason, where the Adjudicating Authority has observed that Arrow Engineering has no locus in the present application to be made party in IA No.357 of 2023 and it is for the Resolution professional to reply the facts of the case, thus, the Adjudicating

Authority did not admit the application of Arrow Engineering in IA No.357 of 2023. It is, thus, clear that in IA No.357 of 2023 there was no opportunity to the Arrow Engineering to make its submissions. The order of the Adjudicating Authority in IA No.357 of 2023 to reduce the claim of Arrow Engineering to Rs.40.75 Crore was thus uncalled for. When Arrow Engineering was not being heard in IA No.357 of 2023, the order in IA No.357 of 2023 and IA No.358 of 2023 reducing the claim of Arrow engineering to Rs.41.70 Crores deserved to be set aside having been passed in violation of principles of natural justice.

54. Furthermore, the applications filed by Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd., where the admission of claim of Arrow Engineering as well as Central Bank of India is challenged are still pending. A copy of IA No.703 of 2023 has been brought on the record in Company Appeal (AT) (Ins.) No.1060 of 2024. IA No.703 of 2023 has been filed by Suraksha Realty Ltd. where both Arrow Engineering and Central Bank of India are parties. In the said application IA No.703 of 2023 Suraksha Realty Ltd. made following prayers:

“(a) That this Hon'ble Tribunal be pleased to reject the claim of Rs.592,67,70,051/- (Rupees Five Hundred Ninety-Two Crore Sixty-Seven Lakh Seventy Thousand Fifty-One Only) of Respondent No.3 (Central Bank of India) as a financial creditor in its entirety and accordingly direct the Respondent No. 1 to reconstitute the Committee of Creditors of the Corporate Debtor;

- (b) *That this Hon'ble Tribunal be pleased to reject the claim of Rs.265,97,10,569/- (Rupees Two Hundred Sixty-Five Crore Ninety Seven Lakh Ten Thousand Five Hundred Sixty-Nine Only) of Respondent No.2 (Arrow Engineering Limited) and admit only a sum of Rs.40,75,00,000/- (Rupees Forty Crore Seventy-Five Lakh Only) and accordingly direct the Respondent No. 1 to reconstitute the Committee of Creditors of the Corporate Debtor with appropriate voting rights of Respondent No. 2 (Arrow Engineering Limited);*
- (c) *That this Hon'ble Tribunal be pleased to reject the claim submitted by Respondent No.5 (Aimgold Hospitality LLP) and Respondent No.4 (Punjab National Bank) on 21st March 2023 and 11th October 2011 respectively as a financial creditor and accordingly direct Respondent No. 1 to reconstitute the Committee of Creditors of the Corporate Debtor;*
- (d) *That this Hon'ble Tribunal be pleased to reconstitute the Committee of Creditors of the Corporate Debtor;*
- (e) *That this Hon'ble Tribunal may be pleased to remove Respondent No.1 as the Interim Resolution Professional / purported Resolution Professional of the CIRP process of the Corporate Debtor;*
- (f) *In furtherance of prayer clause (e), this Hon'ble Tribunal be pleased to replace Respondent No.1 as the Interim Resolution Professional 1 purported Resolution Professional with another Interim Resolution Professional for the CIRP process of the Corporate Debtor from the panel of Interim*

Resolution Professionals with IBBI as this Hon'ble Tribunal may deem fit;

- (g) That this Hon'ble Tribunal be pleased to order and direct Respondent No.1 to produce all relevant information, documents, and papers (including but not limited to the documents submitted by Central Bank along with its claim) based on which Respondent No. 1 admitted and verified the claim of Central Bank for a sum of Rs.592,67,70,051/- (Rupees Five Hundred Ninety-Two Crore Sixty-Seven Lakh Seventy Thousand Fifty-One Only);*
- (h) That this Hon'ble Tribunal be pleased to nullify all the decisions, orders and resolutions passed by the impugned Committee of Creditors of the Corporate Debtor till the due committee of creditors of the Corporate Debtor is reconstituted;*
- (i) Pending the hearing and final disposal of the present Application, this Hon'ble Tribunal be pleased to direct that no meeting of the Committee of Creditors of the Corporate Debtor, Golden Tobacco Limited be held;*
- (j) Pending the hearing and final disposal of the present Application, this Hon'ble Tribunal be pleased to direct that no voting be undertaken in any meeting of the Committee of Creditors of the Corporate Debtor;*
- (k) For ad-interim /interim reliefs in terms of the prayer clause (i) and (j);*
- (l) For such further and other reliefs as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.”*

55. Similarly, IA No.697 of 2023 has been filed by Sheth Developers Pvt. Ltd. praying for similar reliefs. Specific prayers were made in the application to reject the claim of Arrow Engineering of Rs.265,97,10,569/- and admit claim of only Rs.40,75,00,000/-. When issues in the said applications are still pending, there was no occasion for issuing any direction by the Adjudicating Authority for reducing the claim of Arrow Engineering to Rs.40.75 Crores. We, thus, are of the view that the impugned order dated 13.05.2023 in far as it direct for reducing the claim of Arrow Engineering to Rs.40.75 Crores is unsustainable. We make it clear that our decision to set aside the said direction is on the basis that said order was passed without giving opportunity of submission to the Arrow Engineering in violation of principles of natural justice. We are not expressing any opinion on the merits of the application and said issue need to be decided while deciding IA No.703 of 2023 and IA No.697 of 2023 in accordance with law.

Question No.(V): Whether the conclusion of the Adjudicating Authority that Resolution Professional accepted inflated claim of Central Bank of India are sustainable especially when Central Bank of India was neither heard nor was made party to IA No. 357 of 2023 and IA No.358 of 2023?

56. The Adjudicating Authority in the impugned order has also made observation with regard to claim of Central Bank of India. Claim of Central Bank of India has been admitted by the Resolution Professional to the extent of Rs.592,67,70,051/-. The Adjudicating Authority in the impugned order

has made observation that the Resolution Professional has admitted the inflated claim of the Central Bank of India. The Adjudicating Authority has also issued direction that claim of Central Bank of India will be re-examined in the light of decree passed by the DRT and the BIFR by the new RP including legal position, limitation etc. In the body of the judgment, the submission advanced by the Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. was noticed that the Resolution Professional being earlier in employment of the Central Bank of India has accepted the inflated claim of the Central Bank of India.

57. Applications IA No.357 of 2023 and IA No.358 of 2023 were filed by the Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. praying for allowing their claim with interest @ 18% per annum and their claim of being Secured Creditor. In the application only these two issues were under consideration. As noted above, both Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. have filed separate IAs being IA No.703 of 2023 and 697 of 2023 praying for rejection of claim of Central Bank of India. Prayers made in IA No.703 of 2023, we have already noticed above, were with regard to Central Bank of India to reject the claim of Central Bank of India, Financial Creditor in its entirety. When separate applications have already been filed by the Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. praying for rejection of claim of Central Bank of India, there was no occasion to make adverse observation by the Adjudicating Authority against the Central Bank of India while deciding IA No.357 of 2023 and IA No.358 of 2023.

58. We, thus, are of the view that observation of the Adjudicating Authority in the impugned order that Resolution Professional has accepted the inflated claim of Central Bank of India deserves to be set aside. Observation has been made against Central Bank of India and direction for re-examination has been passed without giving an opportunity to the Central Bank of India to have its say is unsustainable. The question is answered accordingly.

Question No. (VI): Whether the Adjudicating Authority committed error in exercise of its jurisdiction in directing replacement of the Resolution Professional and there were sufficient material on the record to make adverse observations against the Resolution Professional?

59. The Adjudicating Authority vide impugned order has replaced the Resolution Professional – Dr. Vichitra Narayan Pathak and direction has been issued to appoint another Resolution Professional. The order of the Adjudicating Authority impugned in the appeal indicate, in so far as decision of the Resolution Professional to not accept the Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. as Secured Creditor, the Adjudicating Authority has upheld the said decision. In so far as claim of the Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. with 18% interest per annum, the said claim was allowed and it was held that the Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. are entitled for interest @18% per annum.

60. Learned counsel appearing for the Resolution Professional has contended that Resolution Professional is a 68 years old Insolvency Professional who has become Insolvency Professional on 01.10.2018. It was submitted that he was formerly Deputy General Manager in Central Bank of India.

61. The mere fact that Resolution Professional was appointed in the Central Bank of India cannot lead to inference that admission of the claim of Central Bank of India by the Resolution Professional is for any extraneous consideration. Neither any such evidence was brought before the Adjudicating Authority nor anything was proved that there was any bias by the Resolution Professional in favour of the Central Bank of India. We having held that observation of the Adjudicating Authority that Resolution Professional admitted inflated claim of Central Bank of India is unsustainable, which has been passed in violation of the principles of natural justice, said observations cannot be any basis for direction of replacement of Resolution Professional. Further, with regard to claim of the Arrow Engineering which has been directed to be limited to Rs.40.75 Crores, we have also held that said decision is unsustainable, which decision was rendered in violation of principles of natural justice. The adverse observations, as noted above, and admission of the claim of Arrow Engineering of Rs.265 Crores appears to be foundation of order directing for replacement of the Resolution Professional.

62. Learned counsel appearing for the Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. has contended that the Adjudicating Authority has

power under Rule 11 of NCLT Rules to grant reliefs considering specific facts and circumstances. Learned counsel for the Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. has relied on judgment of this Tribunal in **“Stressed Assets Stabilization Fund (SASF) vs. Piyush Periwal & Ors., Company Appeal (AT) (Insolvency) No. 947 of 2021”** and the judgment of this Tribunal in **“Srigopal Choudary, Resolution Professional vs. SREI Equipment Finance Ltd., Company Appeal (AT) (Insolvency) No. 1443 of 2022”** where this Tribunal has held that the Adjudicating Authority has power to replace the Resolution Professional in exercise of its power in the facts and circumstances of present case. In the **Stressed Assets Stabilization Fund (SASF) vs. Piyush Periwal & Ors. (Supra)** in Para 61-67 following was laid down:

“61. The learned Counsel for the RP has emphatically submitted that Adjudicating Authority had no jurisdiction to pass an order replacing the RP. He submits that RP can be replaced only in accordance with Section 27 of the Code, when a Resolution is passed by the CoC for such replacement. There can be no doubt to the scheme of the Code for removal of the RP by the CoC which has to pass a Resolution. The Adjudicating Authority, who has appointed the RP cannot be said to lack jurisdiction to take a decision to replace the RP, when the facts and circumstances of a particular case warrants. In the present case, where serious allegations were made against the RP, regarding not conducting the CIRP transparently, the Adjudicating Authority did not lack jurisdiction to pass an order for replacement of the RP. The jurisdiction of Adjudicating Authority to pass an

order replacing the RP has also been accepted by this Tribunal in **Company Appeal (AT) (INS.) No.1443 of 2022 – Srigopal Choudary vs. SREI Equipment Finance Ltd.**, wherein in paragraph 14 and 16, this Tribunal held following:

“14. We are of the opinion that the Adjudicating Authority being the appointing authority of IRP/RP was well within its jurisdiction to pass an order for removal of the RP particularly in a situation where the RP had not taken any steps to convene a meeting of the CoC for the purposes of removal of RP.

16. After going through the material available on record we are satisfied that the Adjudicating Authority with an object to implement the provisions of IBC in its letter and spirit has rightly exercised its inherent jurisdiction by way of passing order of removing the appellant as RP of the CD. This fact which is reflected on record is sufficient to draw an inference that the Appellant was proceeding contrary to the statutory provisions as contained in the IBC and also delaying the smooth conclusion of CIRP. We are of the considered opinion that there is no defect in the impugned order warranting interference by this Tribunal. On the contrary the conduct of the appellant/RP which was observed by the Adjudicating Authority and reflected so in the impugned order is sufficient enough to direct IBBI to conduct an inquiry regarding the role played by the RP in this matter.

62. We, thus, do not accept the submission of learned Counsel for the RP that Adjudicating Authority lack jurisdiction to pass an order replacing the RP.

63. Coming to the conflict of interest, we have already taken the view that observations made in the impugned order against Respondent No.3, i.e., Anand Verma were uncalled for. We have already allowed **Company Appeal (AT) (Insolvency) No. 804 of 2022** filed by Anand Varma, Advocate challenging adverse observations made against him, which Appeal was decided on 04.11.2022. We are also of the view that the

plea taken on behalf of Respondent No.5/ Praful Jindal, who was an Advocate, appearing for Financial Creditor was correct that Respondent No.5 never appeared for the RP and he always appeared for the Financial Creditor. Thus, there is no question of any conflict of interest with regard to Respondent No.5 with other Respondents. We thus are of the view that adverse observations made against Respondent No.5, Praful Jindal in the above order also deserves to be set aside and ordered accordingly.

64. Insofar as observation made in the impugned order by the Adjudicating Authority regarding and RP are concerned, we are of the view that said observations were made only for the purposes of deciding the Application and the observations cannot furnish any foundation for initiating any action against RP in any Forum. We, thus, observe and clarify that observations made against RP be not treated regarding integrity of RP and the observations will be confined and treated as observation for the purpose of case only and the said observations shall not be made basis for initiating any proceedings against RP in any Forum.

65. As observed above, the decision of the Adjudicating Authority in IA No.43 of 2021 for terminating the CIRP from Second EOI and replacement of RP can be sustained by our reasons and conclusions while deciding Company Appeal (AT) (Insolvency) No. 526 of 2022, hence, we need not delve upon various other contentions raised by respective parties regarding the collusion between SASF, RP and PLBB.

66. Insofar as Financial Creditor is concerned, the Adjudicating Authority in paragraph 22 has observed that information which was submitted by Financial

Creditor in Section 7 Application were incorrect. However, Adjudicating Authority has taken the view that present is not a case where any proceeding under Section 75 of the Code be proceeded with. We fully concur with the view taken by the Adjudicating Authority in paragraph 22 of the impugned order, which is to the following effect:

“22. The action of the FC attracts the provisions of Section 75 of IBC for incorrect information about claim amount furnished in the Application filed before this Bench. However, considering the submissions of the FC and the lack of exposure on the part of the officials of the FC in filing the Application under Section 7 of IBC, we take a lenient view and the prayer made by the Petitioner to proceed in the matter is rejected.”

67. In view of our forging discussions and conclusions, we dispose of Company Appeal (AT) (Insolvency) Nos. 499 of 2022, 525 of 2022 and 612 of 2022 in following manner:

- (I) The order of Adjudicating Authority dated 08.04.2022 passed in IA No.43 of 2021 to the extent it terminates the CIRP from the stage of Second EOI as well as replacement of the RP is upheld.*
- (II) The adverse observations made by the Adjudicating Authority against Respondent No.5 in the impugned order, i.e., Counsel who was appearing for Financial Creditor are deleted. Ordered accordingly.*
- (III) Observations made by the Adjudicating Authority against the RP shall not to be treated as adverse to the integrity of RP and not be made basis for initiating any proceeding or action against the RP in any Forum.*

(IV) The new RP, who has been appointed under the impugned order shall conclude the entire CIRP process within 90 days from today, under the supervision and control of Committee of Creditors.”

63. In **Srigopal Choudary, Resolution Professional vs. SREI Equipment Finance Ltd. (Supra)** in Paras 14 and 15 following was laid down:

“14. We are of the opinion that the Adjudicating Authority being the appointing authority of IRP/RP was well within its jurisdiction to pass an order for removal of the RP particularly in a situation where the RP had not taken any steps to convene a meeting of the CoC for the purposes of removal of RP.

15. At the cost of repetition, it is pertinent to mention that the CIRP was initiated vide order dated 06.11.2019 and the first CoC Meeting was conducted on 19.04.2021 after a lapse of one and half years and the Adjudicating Authority has categorically observed that the RP has ‘miserably failed to adhere to the timelines stipulated in the Code’. We are conscious of the fact that the provision of Section 27 of the Code contemplates that the replacement of the Resolution Professional can be done by the CoC alone. But if the ingredients of Section 27 of the Code cannot be met i.e. in the event, the RP is not convening the meeting of CoC, which in turn has to decide the replacement of the RP himself, we are of the considered view that the Adjudicating Authority, in order not to delay the CIRP proceedings, on an application under Rule 11 of the NCLT Rules, 2016 has rightly invoked its inherent jurisdiction and passed the

impugned order. Needless to add, this order shall not come in the way or impede any directions issued by the Hon'ble Apex Court in any connected matter and the Adjudicating Authority shall proceed in accordance with law."

64. There is no dispute to the proposition that the Adjudicating Authority has power to replace the Resolution Professional while exercising powers under Rule 11 of 2016 Rules and Section 60(5), even though there is no resolution by the CoC under Section 27 of I&B Code. We, however, in the present case, are satisfied that basis and foundation given by the Adjudicating Authority for replacement of Resolution Professional are unfounded and adverse observations and direction given by the Adjudicating Authority have not been sustained by us.

65. One of the submission which has been made by learned counsel for Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. that IBBI has initiated disciplinary proceeding against the Resolution Professional on the complaint filed by Suraksha Realty Ltd. On the said complaint advisory has already been issued by the IBBI to the Resolution Professional which was also one reason on which the Resolution Professional ought to have been replaced.

66. The complaint which has been filed by Suraksha Realty Ltd. against the Resolution Professional was the complaint with regard to the present CIRP process making allegations against the Resolution Professional in conducting the CIRP process not in accordance with Regulations and the Resolution Professional being earlier employee of Central Bank of India,

which he failed to disclose. The IBBI decision dated 27.02.2024 has been brought on the record as Annexure P-16, which is as follows:

“F.No. IBBI/C/2023/01014

27th February 2024

To,

*Mr. Vichitra Narayan Pathak,
IBBI/ IPA-001/ IP-P01353/2018-2019/ 12063
120, Jharneshwar Colony, Madhuban Vihar,
Near International Public School, Hoshangabad Road,
Bhopal, Madhya Pradesh - 462047*

Subject: Complaint against Mr. Vichitra Narayan Pathak, Insolvency Professional (IBBI/ IPA-001/ IP-P01353/2018-2019/12063) in the matter of Golden Tobacco Limited

Dear Sir,

This is in reference to the investigation conducted by the Insolvency and Bankruptcy Board of India (IBBI/ the Board) in exercise of its powers under Section 218(1) of the Insolvency and Bankruptcy Code, 2016 (Code) pursuant to the complaint dated 30.10.2023 received from Sheth Developers Private Limited.

2. On consideration of the investigation report in accordance with the Code and Regulations made thereunder, the Board has noted that you have not made disclosure about your past employment with Central Bank of India, to the CoC.

3. The Board has taken note of this and deemed it appropriate to advise you to be vigilant and strictly adhere to the requirements as prescribed under the Code and

Regulations made thereunder in all your existing/ future assignments.

Yours faithfully,

(Nitish Saini)

Deputy General Manager”

67. The advisory issued by the IBBI, as above, cannot be said to furnish any foundation for replacement of Resolution Professional from its present assignment as Resolution Professional of the Corporate Debtor. Thus, the said decision also cannot furnish any basis for replacement of Resolution Professional from the present assignment.

68. We, thus, are of the view that there are no sufficient reasons to allow replacement of Resolution Professional and order passed by the Adjudicating Authority in IA No.357 of 2023 and IA No.358 of 2023 directing for replacement of Resolution Professional deserves to be set aside.

69. The Adjudicating Authority by the impugned order has directed for appointment of another Resolution Professional, one Mr. Sanjay Borad, who has continued to discharge functions of Resolution Professional during pendency of the appeal. We, thus, are of the view that order of the Adjudicating Authority directing replacement of Resolution Professional is unsustainable and deserve to be set aside, the consequence of which is that new IRP stand replaced.

Question No.(VII):- Whether there was any basis for issuing direction for conducting a detailed Forensic Audit by KPMG as directed by the Adjudicating Authority in the impugned order?

70. The Adjudicating Authority in the impugned order has also directed for forensic audit to be conducted through KPMG. The facts of the present case indicate that CIRP process was conducted after obtaining necessary reports from Valuers as per CIRP Regulation, 2016. Form G was published in the year 2023 under which 13.04.2023 was last date for submission of Expression of Interest. Resolution Plans have been received and they were under consideration before the CoC. On 18.09.2023, NCLT has directed the Resolution Professional to convene meeting and seeks view of CoC on the CIRP period expiring on 22.09.2023 and also place the eligible Resolution Applications within 14 days. CIRP period was extended till 21.12.2023. The Adjudicating Authority, however, has directed that no Resolution Plan be considered and process is held up for last one year. In these Appeals also, this Tribunal passed an interim order on 21.05.2024 directing that no further steps shall be taken in pursuance of the impugned order.

71. A perusal of the impugned order indicate that no stakeholders made any prayer for directing for any forensic audit. The issues which were under consideration before the Adjudicating Authority were issues regarding nature of claim, quantum of the claim which were all in the domain of the Resolution Professional. The Resolution Professional has taken a decision, which decision was under challenge before the Adjudicating Authority by the Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd., whose claim of

interest and prayer to be declared as Secured Creditor was rejected. When the CIRP process was already over despite extensions granted by the Adjudicating Authority, at this stage, there was no necessity for issuing any direction for forensic audit. The quantum of claim, nature of claim and the adjudication of claim were on the basis of claims filed and materials received in the CIRP process as well as affidavit. No stakeholders having made any complaint or having requested for any forensic audit, direction to carry on forensic audit shall further delay the CIRP process which is already delayed and running beyond the timeline. We, thus, are of the view that there was no occasion to direct for forensic audit by the Adjudicating Authority. The Adjudicating Authority committed error in issuing direction to conduct detailed forensic audit. The issues did not relate to forensic audit rather issues before the Adjudicating Authority related to nature of claim and quantum of claim.

Question No.(VIII):- Whether Appellant- Shree Ram Vessel Scrap Pvt. Ltd. has made out a case for interfering with the direction in Para 42(vi)(k) and 43(D) of the order dated 13.05.2024 passed by the Adjudicating Authority in IA No.358 of 2023?

72. The case of the Appellant - Shree Ram Vessel Scrap Pvt. Ltd. is that as per Form G published, last date for submission of Resolution Plan was 02.03.2024. Appellant on 12.03.2024 sent an email to the Resolution Professional showing its inclination for submitting a Resolution Plan and further proposed a plan of approx. Rs.1400 Crores. The Resolution Professional has responded to the Appellant that CoC members in 12th

meeting held on 05.03.2024 has not granted any extension the timeline for submission of Resolution Plan. The Adjudicating Authority in the impugned order in Para 42(vi)(k) recorded following conclusion:

“k) All resolution plans received as on date would be put up before newly constituted CoC after the report of KPMG is submitted to this Tribunal and approved.”

73. Another direction which is sought to be impugned by the Appellant is Para 43(D), which is as follows:

“(D) The CoC will not continue any process of any fresh resolution plans (other than already received) and will be reconstituted after the forensic report.”

74. On its own showing, Appellant has not been able to submit the Resolution Plan within the timeline allowed. Appellant was informed by the Resolution Professional that the CoC has not taken decision to extend the timelines for submission of Resolution Plan. Appellant has further submitted that it has filed an application IA No.723 of 2024 seeking direction to issue fresh Form G and earlier filed IA No.456 of 2024 seeking direction for consideration of the proposal of the Resolution Plan of the Appellant. According to the Appellant, the said applications are still pending. Application filed by the Appellant on the above issues being still pending, the direction issued by the Adjudicating Authority in Paras which have been impugned in the present appeal cannot be set aside, at the instance of the Appellant. We only observe that it is always open for the

Appellant to press his applications IA No.456 of 2024 and IA No.723 of 2024 before the Adjudicating Authority.

Question No.(IX):- *Relief to which Appellants in this group of Appeals are entitled?*

75. In view of our foregoing discussion and conclusions, we decide all these Appeals in following manner:

- I. Company Appeal (AT) (Ins.) No.1309 of 2024 and 1310 of 2024 praying for setting aside finding of the judgment dated 13.05.2024 to the extent that Appellant has not been granted status of Secured Financial Creditor of the Corporate Debtor are dismissed.
- II. Company Appeal (AT) (Ins.) No.1017 of 2024 and 1018 of 2024 filed by the Resolution Professional are allowed. Direction contained in the impugned order replacing the Appellant is set aside. Consequently, direction to appoint a New Resolution Professional – Sanjay Borad shall come to an end. The New Resolution Professional who was allowed to function during pendency of these appeals shall handover all the records to the Appellant within seven days from today to enable the Appellant to proceed further in the CIRP, in accordance with law. Both the Appeals are allowed to the above extent.
- III. Company Appeal (AT) (Ins.) No.1096 of 2024 is allowed to the extent of setting aside the observation and direction in the

impugned order dated 13.05.2024 by which claim of Arrow Engineering was restricted to Rs.40.75 Crores.

- IV. IA No.703 of 2023 filed by Suraksha Realty Ltd. and IA No.697 of 2023 filed by Sheth Developers Pvt. Ltd. which are pending be decided in accordance with law without being influenced by any observation in the impugned order which decision shall be taken by the Adjudicating Authority within 60 days from 17.6.2025. Looking to the fact that the CIRP process has already been delayed, we direct both the parties to appear before the Adjudicating Authority on 17.06.2025. Copy of the order passed by this Tribunal may be filed by the parties before the date fixed.
- V. Company Appeal (AT) (Ins.) No.1060 of 2024 and 1061 of 2024 are partly allowed deleting observation made in the impugned order that Resolution Professional has inflated the claim of Central Bank of India.
- VI. Company Appeal (AT) (Ins.) No.1085 of 2024 is dismissed with liberty to the Appellant to pursue his pending applications IA No.456 of 2024 and IA No.723 of 2024, in accordance with law.
- VII. IA No.849 of 2023 filed by the Arrow engineering pending before the Adjudicating Authority to remove the names of Suraksha Realty Ltd. and Sheth Developers Pvt. Ltd. from the list of Financial Creditors has become infructuous in view of the order of this Tribunal, as above.

- VIII. The Resolution Professional after decision of the Adjudicating Authority in IA No.703 of 2023 and 697 of 2023, as above, shall reconstitute the CoC and convene a meeting for consideration of the Resolution Plans, in accordance with law.
- IX. The direction of the Adjudicating Authority to conduct a forensic audit by KPMG is set aside.
- X. The CIRP process shall be conducted and completed within a period of two months after decision of the Adjudicating Authority in IA No.703 of 2023 and 697 of 2023.
- XI. The period from 21.05.2024 till date is excluded from the CIRP process, during which period the interim order passed in the appeal has operated. CIRP period is extended till 17.10.2025 during which entire CIRP process shall be completed.

Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

New Delhi
Anjali/Archana