NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 1557 of 2023
&
IA No. 5562 of 2023

(Arising out of the Impugned Order dated 13.09.2023 passed by the 'Adjudicating Authority' (National Company Law Tribunal, New Delhi Bench) in IA No. 1764 of 2021 in C.P. (IB) No. 571 (ND)/2020)

IN THE MATTER OF:

Kanwar Raj Bhagat
6 GF, Block 3 Eros Garden, Charmwood Village,
Surajkund Road, Faridabad- 121009 **...Appellant**

Versus

1. **M/s. Gujarat hydrocarbons and Power Sez Limited**
   Having its registered office at:
   22 Community Centre Basant Lok,
   Vasant Vihar, New Delhi – 110057 **...Respondent No.1**

2. **M/s. Srei Infrastructure Finance Limited**
   Having its registered office at:
   Vishwakarma, 86 C, Topsia Road (South),
   Kolkata – 700046 **...Respondent No.2**

3. **Mr. Rakesh Kumar Agarwal**,
   Erstwhile Resolution Professional of M/s.
   Gujarat hydrocarbons and Power Sez Limited
   at 20 N.S. Road Room No. 15 Block A,
   Kolkata – 700001 **...Respondent No.3**

4. **Zaveri & Company Limited**
   Having its registered office at:
   U-02, Upper Plaza, Swagat Building,
   Near Lal Bungalow, C.G. Road,
   Ahmedabad – 38006 **...Respondent No.4**

With
Company Appeal (AT) (Insolvency) No. 1684 of 2023

(Arising out of the impugned Orders dated 13.09.2023 passed by the National Company Law Tribunal, New Delhi in I.A. No. 596 of 2022 in C.P. (IB) No. 571 (ND)/2020 and 19.09.2023 passed by the National Company Law Tribunal, New Delhi, in I.A. No. 4585 of 2021 in C.P. (IB) No. 571 (ND)/2020]

<u>IN THE MATTER OF:</u>

Assam Company India Limited
Having its corporate office at:
Nilhat House, 11 RN Mukherjee Road,
Kolkata- 700001, West Bengal
And its registered office at:
Greenwood Tea Estate, Dibrugarh – 786001 **...Appellant**

Versus

1. **M/s. Gujarat hydrocarbons and Power Sez Limited**
   Having its registered office at:
   22 Community Centre Basant Lok,
   Vasant Vihar, New Delhi – 110057 **...Respondent No.1**

2. **M/s. Srei Infrastructure Finance Limited**
   Having its registered office at:
   Vishwakarma, 86 C, Topsia Road (South),
   Kolkata – 700046 **...Respondent No.2**

3. **Mr. Rakesh Kumar Agarwal**,
   Erstwhile Resolution Professional of M/s. Gujarat hydrocarbons and Power Sez Limited
   at 20 N.S. Road Room No. 15 Block A,
   Kolkata – 700001 **...Respondent No.3**

4. **Zaveri & Company Limited**
   Having its registered office at:
   U-02, Upper Plaza, Swagat Building,
   Near Lal Bungalow, C.G. Road,
   Ahmedabad – 38006 **...Respondent No.4**

<u>Present:</u>

For Appellant : Mr. Ajay Gaggar and Mr. Shreedhar Gaggar, Advocates

For Respondent : Mr. Raheel Patel, Mr. Himanshu Satija and Mr. Anshul Rao, Advocates for RP.

Mr. Palash Singhai, Mr. Harshal Sareen and Ms. Aashima Gautam, Advocates for SRA.

<u>With</u>
<u>Company Appeal (AT) (Insolvency) No. 626-628 of 2025</u>
<u>&</u>
<u>I.A. No. 4475, 5530 of 2025</u>

(Arising out of the impugned Orders dated 19.02.2025 passed by the National Company Law Tribunal, New Delhi in I.A. No. 4585 of 2021 in CP (IB) No. 571 of 2020 and IA No. 136 of 2022 and IA No. 5224 of 2024 in CP (IB) no. 571 of 2020 passed by the National Company Law Tribunal, New Delhi, in I.A. No. 4585 of 2021 in C.P. (IB) No. 571 (ND)/2020]

IN THE MATTER OF:

Gujarat Industrial Development Corporation
Block No. 4, 2nd Floor, Udhyog Bhavan,
Sector-11, Gandhinagar-382011 **...Appellant**

Versus

1. **Zaveri & Co. Pvt. Ltd.**
Swagat, CG Road, Ahmedabad – 380006 **...Respondent No.1**

2. **Rakesh Kumar Agarwal**
Ex-Resolution professional of Gujarat Hydrocarbon & Power SEZ Ltd.
20 N S Road, Room No. 15, Block A,
1st Floor, Kolkata, West Bengal – 700001 **...Respondent No.2**

3. **Gujarat Hydrocarbon & Power SEZ Ltd.**
(Corporate Debtor)
22 Community Centre, Basant Lok,
Vasant Vihar, South Delhi, New Delhi,
Delhi, India – 110057 **...Respondent No.3**

4. **M/s SREI Infrastructure Finance Ltd.**
Y 10, Block EP, Sector V,
Salt Lake City, Kolkata 700091 **...Respondent No.4**

Present:

For Appellant : Mr. Virendra Ganda, Sr. Advocate with Mr. A. Sheth, Ayandeb Mitra, Ishita Singh, Advocates.

For Respondent : Mr. Abhimanyu Bhandari and Arav Pandit, Advocates for SREI/CoC.

Mr. Abhijeet Sinha, Sr. Advocate with Palash Singhai, Tirth Nayak, Harshal Sareen and Aashima Gautam, Advocates for SRA.

Mr. Raheel Patel, Himanshu Satija, Harsh Saxena and Anshul Rao, Advocates for RP.

<u>J U D G M E N T</u>
<u>(Hybrid Mode)</u>

<u>[Per: Arun Baroka, Member (Technical)]</u>

This judgment disposes of a cluster of connected Appeals arising out of the Corporate Insolvency Resolution Process ("CIRP") of M/s Gujarat Hydrocarbons and Power SEZ Limited ("the Corporate Debtor" or "GHPSL"), incorporated on 17.08.2007 to develop, operate and maintain a sector-specific Special Economic Zone ("SEZ") on leasehold land at Vilayat, Bharuch, Gujarat (the "Demised Premises"), taken on lease from the Gujarat Industrial Development Corporation ("GIDC"), a statutory corporation which features in this matter simultaneously as lessor of the land, as an Operational Creditor of the Corporate Debtor, and as the statutory regulator of GIDC-allotted industrial land. The Demised Premises is, on the admitted case of all parties, the sole material asset of the Corporate Debtor.

2. In these two sets of Appeals the subject matters are interconnected and arise from the same insolvency matrix and are heard together and accordingly we are disposing of together by this common judgment.

3. <u>Set 1</u> — Company Appeal (AT)(Ins) No. 1557 of 2023 (by the suspended director of the Corporate Debtor) and Company Appeal (AT)(Ins) No. 1684 of 2023 (by Assam Company India Limited, the corporate guarantor, through its own Successful Resolution Applicant, BRS Ventures Investments Ltd.) — concerns the quantum of the claim of the sole Financial Creditor, SREI Infrastructure Finance Limited ("SREI"), admitted in this CIRP, and the ranking of the corporate guarantor's subrogated claim.

4. Set 2 — Company Appeal (AT)(Ins) Nos. 626, 627 and 628 of 2025, filed by GIDC — concerns whether a resolution plan built upon leasehold SEZ land, on the premise that the land stands (or will stand) de-notified for non-SEZ industrial use, can be sustained where that de-notification has not been completed and the plan's very feasibility is contested by the land-owning regulator.

5. The two sets of Appeals revolve around the Corporate Insolvency Resolution Process of the Corporate Debtor (GHPSL) and an approved resolution plan, and for that reason they are analysed together – though each set is analysed separately with its independent conclusions. Since the appeals arise from the same Corporate Insolvency Resolution Process and involve overlapping questions, they are being disposed of by this common judgment.

Brief facts and chronology

6. The Corporate Debtor availed a credit facility of ₹ 100 crores from SREI in 2011, for which Assam Company India Limited ("ACIL"), the holding/guarantor company, executed a corporate guarantee dated 05.01.2011. In the CIRP of ACIL before the NCLT, Guwahati Bench (CP(IB) No. 20/GB/2017), SREI's claim of ₹ 648.80 crore was reduced by the Interim Resolution Professional to ₹ 357.29 crore, and thereafter by the Resolution Professional to ₹ 241.27 crore on 03.04.2018, principally on the ground that capitalisation of penal interest is impermissible in law. SREI's challenge to this reduction (I.A. No. 34/2018) was dismissed by the NCLT, Guwahati by order dated 23.07.2018, which was affirmed by this Tribunal on 01.02.2019 in Company Appeal (AT)(Ins) No. 291 of 2018, this Tribunal there recording

that it expressed "no opinion" on the claim but leaving SREI at liberty to take recourse under Section 60(6) of the Code, a liberty SREI did not avail. The resolution plan of BRS Ventures Investments Ltd. for ACIL was approved by the NCLT, Guwahati on 20.09.2018, under which SREI was paid ₹ 38.87 crores.

7. On SREI's application under Section 7 of the Code against the Corporate Debtor (the principal borrower on the very same 2011 facility), CIRP commenced by order dated 18.11.2020, and the third Respondent was appointed Resolution Professional ("RP"). In this CIRP, SREI filed and the RP admitted a claim of ₹ 1,885.08 crores as a secured Financial Creditor — a figure roughly 7.8 times the ₹ 241.27 crore judicially fixed and finally settled in the ACIL CIRP barely two years earlier, on the very same debt and default. SREI's claim was admitted at ₹ 1,885.08 crore in GHPSL despite the earlier ACIL determination. ACIL was admitted only as an unsecured related-party Financial Creditor, at nil value on liquidation-value logic, notwithstanding its payment of ₹ 38.87 crore to SREI.

8. The resolution plan of Zaveri & Co. Pvt. Ltd. was approved by the CoC (SREI, 100% voting share) on 30.08.2021. The suspended director filed I.A. No. 1764 of 2021 seeking correction of the admitted claim and rectification of the Information Memorandum ("IM"); ACIL filed I.A. No. 596 of 2022 seeking recognition as a secured Financial Creditor to the extent of ₹ 38.87 crore. Both were dismissed by the Adjudicating Authority on 13.09.2023, with costs of ₹50,000 imposed on the suspended director, principally on the reasoning that

the Adjudicating Authority could not, post-CoC-approval, go into "the nitty gritties" of a claim admitted on the strength of facts arising in a different Corporate Debtor's CIRP. The resolution plan itself was approved on 19.09.2023 and the costs were imposed..

9. Meanwhile, GIDC — lessor of the Demised Premises and an Operational Creditor — terminated the Lease Deed on 13.12.2021, during the subsistence of the Section 14 moratorium, and initiated eviction proceedings under the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972. GIDC's objections to the resolution plan (I.A. No. 136 of 2022) and its later application (I.A. No. 5224 of 2024, seeking deferment pending the outcome of its writ challenge) were both dismissed by the Adjudicating Authority.

10. Following a remand directed by this Appellate Tribunal on 08.08.2024 (upheld by the Hon'ble Supreme Court on 20.08.2024), GIDC's objections were reheard and again dismissed, together with the approval of the plan, by the composite Impugned Order dated 19.02.2025, essentially by a one-paragraph disposal (para 10.2) holding that there was "no infirmity in the decision of the CoC" and declining to "interfere in the decision on the Resolution Plan taken by the CoC in their Commercial Wisdom."

11. It is necessary to record two further, undisputed developments. First, the Hon'ble Supreme Court, in [1]**BRS Ventures Investments Ltd. Vs SREI Infrastructure Finance Ltd. & Anr. (2025) 1 SCC 456** decided on

[1] BRS Ventures Investments Ltd. v. SREI Infrastructure Finance Ltd. & Anr., 2024 INSC 548: (2025) 1 SCC 456 decided on 23.07.2024

23.07.2024 held (i) that payment of ₹ 38.87 crore to SREI in the ACIL CIRP did not extinguish the Corporate Debtor's liability for the balance of the debt; (ii) that a Financial Creditor may proceed under Section 7 against the Corporate Debtor and the corporate guarantor separately or simultaneously; and (iii) that even where Section 140 of the Indian Contract Act, 1872 is attracted, the surety's subrogation runs only to the extent of the amount actually recovered by the creditor from the surety — here, ₹ 38.87 crore — though the Court did not render an operative finding on subrogation as the point was not pressed before it. Second, the **Gujarat High Court**, by judgment dated **01.12.2025 in Gujarat Hydrocarbons and Power SEZ Limited v. Gujarat Industrial Development Corporation & Ors. SCA No. 4937 of 2022,** quashed GIDC's termination of the Lease Deed and the consequent eviction proceedings, holding that GIDC, a statutory authority, could not invoke the Gujarat Public Premises Act, 1972 to defeat the moratorium and the overriding scheme of the Code under Section 238; GIDC's Letters Patent Appeal against that judgment has also since been dismissed.

CA(AT) (Ins.) No. 1557 of 2023 and CA (AT) (Ins.) No. 1684/2023

12. Set-1 involves CA(AT) (Ins.) No. 1557 of 2023 and CA (AT) (Ins.) No. 1684 of 2023 which arise out of the Corporate Insolvency Resolution Process of M/s Gujarat Hydrocarbons and Power SEZ Limited ("the Corporate Debtor"). Company Appeal (AT) (Ins.) No. 1557 of 2023 is being treated as the lead matter.

Submissions of the Appellant/ Suspended Director of GHPSL in Set 1 CA (AT) (Ins.) No. 1557 of 2023

13. Mr. Kanwar Raj Bhagat, the suspended director of the Corporate Debtor, submits that the claim of the Financial Creditor, having been quantified at ₹ 241.27 crore in the Corporate Insolvency Resolution Process of the Corporate Guarantor and judicially affirmed, could not have been admitted at ₹ 1,885.08 crores in the Corporate Insolvency Resolution Process of the Corporate Debtor. The Resolution Professional is bound by the said adjudication and is not vested with any adjudicatory power to enlarge a claim already determined. The Information Memorandum, being founded upon the said admission and upon the classification of the Corporate Guarantor as an unsecured related party, stands vitiated, and that the Corporate Insolvency Resolution Process is, in consequence, liable to be set aside and re-conducted in accordance with law. The costs of ₹ 50,000/- came to be imposed upon the Appellant without any reason being recorded. It is accordingly prayed that the impugned order dated 13.09.2023 be set aside; that the admission of the claim of the Financial Creditor at ₹ 1,885.08 crores be set aside; that the Information Memorandum be rectified and the claim re-assessed; and the Appellant be permitted to submit its claim in Form C; and that the costs of ₹50,000/- imposed upon it be set aside.

Submissions of the Appellant/ACIL-the Corporate Guarantor/BRS Ventures in Set 1 - CA (AT) (Ins.) No. 1684 of 2023

14. Learned Counsel appearing for the Appellant, M/s Assam Company India Limited, the Corporate Guarantor (represented by the successful resolution applicant, that is, BRS Ventures Investment Limited), submits that upon payment of a sum of ₹ 38.87 crore in discharge of its liability as surety,

it stands subrogated, by virtue of Section 140 of the Indian Contract Act, 1872, to the rights of the Financial Creditor to the extent of the said amount, and ought accordingly to have been treated as a secured financial creditor of the Corporate Debtor to that extent, and not as an unsecured related-party Financial Creditor. Learned Counsel has placed reliance on the judgment of the Hon'ble Supreme Court in [1]**BRS Ventures Investments Ltd.** in support of the said submission.

15. It is prayed by ACIL that it be treated as a secured Financial Creditor of the Corporate Debtor to the extent of ₹ 38.87 crore; and, in the alternative, that it be held entitled to a proportionate share in the amount payable under the resolution plan to the Financial Creditors of the Corporate Debtor.

16. The claim of ₹ 1885.08 Cr filed by the Financial Creditor (Respondent No. 2) and accepted by the erstwhile Resolution Professional (Respondent No. 3) is erroneous and inflated and ought to be set aside and the Information Memorandum prepared by the Resolution Professional is erroneous and incorrect and waiver of Cost imposed upon the Appellant.

Submissions of the Appellant – GIDC in Set 2 – CA (AT) (Ins.) No. 626-628 of 2025

17. In IA No. 4585 of 2021 in CP (IB) No. 571 of 2020 and IA No. 136 of 2022 and IA No. 5224 of 2024 in CP (IB) No. 571 of 2020 the Ld. NCLT has approved the resolution plan which is based on sub plotting the leased premises leased by the appellant to the CD. This plan was approved without any consent /permission from the appellant, where such lease has already

come to be terminated and CD is evicted under the provisions and order of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972. Such position is accepted by the SRA. Further the resolution plan is not in line with the purpose for which the lease was given to the CD being that of SEZ purpose being that of Energy sector. Also the denotification of the SEZ has never been effected qua the land in question, since the Development Commissioner has never issued certificate no benefits availed certificate and/or refund of benefit received certificate to complete the denotification process. Further the resolution plan seeks to revive the CD by sub leasing the land of the Appellant in piece meal as non SEZ sub plots which is not permissible as per the terms and conditions between the Appellant and the CD, and the approval has tantamounted to rewriting the contract between the Appellant and the CD and resulting in violation of the law of the land.

Submissions of the Respondents/FC – SREI Finance in Set 1 CA (AT) (Ins.) No. 1557 of 2023

18. Learned Counsel appearing for the Financial Creditor, the second Respondent, refuting the submissions of the Appellants, submits that the orders passed in the Corporate Insolvency Resolution Process of the Corporate Guarantor contained an express reservation that no opinion was expressed therein and that other proceedings would remain unaffected. It is submitted that each Resolution Professional is required independently to verify the claims placed before him, and that the claim of the Financial Creditor in the Corporate Insolvency Resolution Process of the Corporate Debtor has been

correctly verified and admitted. It is submitted that the appeals are liable to be dismissed and the approved resolution plan upheld.

Submissions of the Respondents/Resolution Professional in Set 1 CA (AT) (Ins.) No. 1557 of 2023

19. Learned Counsel appearing for the Resolution Professional, the third respondent, submits that a Resolution Professional is not bound by the computation of claims made in the resolution process of a different Corporate Debtor, and is not vested with adjudicatory power to sit in judgment over a creditor's proof. It is submitted that the claims were collated and verified, and the Information Memorandum prepared, in accordance with the provisions of the Code and the Regulations framed thereunder.

Submissions of the Respondents/Successful Resolution/Zaveri in Set 1 CA (AT) (Ins.) No. 1557 of 2023

20. Learned Counsel appearing for the Successful Resolution Applicant submits that the resolution plan, having been approved by the Committee of Creditors with a hundred per cent voting share and sanctioned by the Adjudicating Authority, is binding and irrevocable; that the commercial wisdom of the Committee of Creditors is not justiciable save upon the grounds contemplated by Section 30(2) of the Code; and that the amount payable to the secured Financial Creditor under the plan is fixed and is unaffected by the quantum of the claim as admitted. It is submitted that the challenge to the approved resolution plan is liable to be rejected.

Appraisal

[CA AT Ins No. 1557 of 2023 & 1684 of 2023]
[By ex-director of the CD & corporate guarantor]

21. Entities involved in the Appeals being dealt in here are noted as follows for better appreciation:

Role	Entity	Significance
Appellant (1557/2023)	Mr. Kanwar Raj Bhagat	Suspended director of GHPSL; Against impugned order dated 13.09.2023 NCLT, New Delhi In IA-1764/ND/2021 in CP (IB) 571 (ND)/2020
Appellant (1684/2023)	Assam Company India Ltd.	Connected appeal seeks secured-creditor status to extent of ₹ 38.87 Cr by subrogation Against impugned order dated 13.09.2023 NCLT, New Delhi In I.A. Nos. 596/ND/2022 in CP (IB) 571 (ND)/2020;
Corporate Debtor (R-1)	Gujarat Hydrocarbons & Power SEZ Ltd. (GHPSL)	Principal borrower; CIRP under CP(IB) 571(ND)/2020 before NCLT Delhi.
Financial Creditor (R-2)	SREI Infrastructure Finance Ltd.	Original lender of ₹ 100 cr (2011); itself underwent CIRP at NCLT Kolkata (plan approved 11.08.2023).
Corporate Guarantor	Assam Company India Ltd. (ACIL)	Guaranteed the GHPSL loan (Deed dt. 05.01.2011); underwent its own CIRP at NCLT Guwahati; ₹ 38.87 cr paid to SREI in that CIRP.
Resolution Professional (R-3)	Mr. Rakesh Kumar Agarwal	RP of GHPSL; admitted SREI's claim at ₹ 1885.08 cr; figure being challenged

Role	Entity	Significance
SRA	Zaveri & Co. Pvt. Ltd.	Successful Resolution Applicant for GHPSL; plan of ₹ 135 cr approved by CoC 100% (30.08.2021).
Objector below	Gujarat Industrial Development Corpn. (GIDC)	Lessor of the SEZ land; objections (IA-136/2022, IA-5224/2024) dismissed 19.02.2025.

22. We note that the appeal CA (AT) Ins No 1684 of 2023 has been filed by the Appellant/Corporate Guarantor (BRS Ventures - SRA of ACIL) challenging the impugned order dated 13.09.2023 passed by the Ld. NCLT, New Delhi in I.A. Nos. 596/ND/2022 in CP (IB) 571 (ND)/2020. The appeal CA (AT) Ins No 1557 of 2023 has been filed by the Appellant/the erstwhile Director of Respondent No. 1, challenging the same impugned order. The main grounds for challenging the impugned order in both the appeals are similar and are related to exaggerated claim and subrogation and are noted together as follows:

- Claim of ₹ 1885.08 Cr filed by the Financial Creditor (Respondent No. 2-SREI) and accepted by the erstwhile Resolution Professional (Respondent No. 3) is erroneous and inflated and ought to be set aside.
- ACIL to be treated as a Secured Financial Creditor to the extent of ₹ 38.87 crores, and not an Unsecured Financial Creditor by the Respondent No. 3.
- The Information Memorandum prepared by the Resolution Professional is erroneous and incorrect.

23. Briefly speaking the Appellants (suspended director and ACIL/BRS Ventures) contend that SREI's claim, having been finally and judicially fixed at ₹ 241.27 crore in the ACIL CIRP — a determination that attained finality upon dismissal of SREI's own challenge by the NCLT, Guwahati and by this Tribunal — could not, on the very same debt and default, balloon to ₹ 1,885.08 crores in the CIRP of the principal borrower within a span of roughly two years. It is also claimed that the RP, though not possessed of adjudicatory power, was nonetheless bound to correctly collate and verify the claim in light of that judicial determination, and that mechanical admission of an inflated, unverified figure is itself a failure of the RP's statutory duty under [2] **Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17** and is amenable to correction under [3] **Axis Bank Ltd. v. Samruddhi Realty Ltd., (2023) 23**

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[2] **Swiss Ribbons Pvt. Ltd. v. Union of India (2019) 4 SCC 17** paras 88–91 (holding that the Resolution Professional is statutorily entrusted with receiving, collating and verifying creditors' claims, and may require such information, documents or evidence as are necessary to satisfy himself regarding the existence and quantum of the claim. The verification of claims is an integral statutory function to be undertaken in accordance with the Insolvency and Bankruptcy Code, 2016 and the CIRP Regulations, and is intended to ensure that only duly verified claims are taken into account during the corporate insolvency resolution process.

[3] **Axis Bank Ltd. v. Samruddhi Realty Ltd., (2023) 23 Comp Cas-OL 596**
Para 49 and 50, "49. It is to be pointed that a "Tribunal" has the power to look behind the judgment on which the "creditor" cements his proof with a view to decide whether the "debt" is really and truly due. A liquidator has these, powers, while functioning in a quasi, judicial status. As a matter of fact, the "Tribunal" and the liquidator may not look behind every decision/judgment "as a matter of routine".
50. A "Tribunal" can interfere where the liquidator has not exercised his discretion in a bona fide manner or he was proposing to do an act which no reasonable or prudent person will do. A "liquidator" as an "officer of the Tribunal" is to act justly and fairly while dealing with an individual who has an adverse claim to his own and does not stand on his right either in equity or in law, as opined by this Tribunal."

Comp Cas-OL 596, which permits the Adjudicating Authority to look behind an admitted claim.

24. Further relying on Section 140 of the Indian Contract Act, 1872 and on **BRS Ventures (supra),** that ACIL, having paid ₹ 38.87 crore to SREI in discharge of its guarantee, stands subrogated to SREI's rights as secured Financial Creditor to that extent, and ought to have been so recognised in the Corporate Debtor's CIRP rather than being classified as an unsecured related party entitled to nil.

25. Further, it is claimed that the IM prepared by the RP is vitiated on two counts — the erroneous classification of ACIL and the erroneous, inflated admission of SREI's claim — rendering the entire CIRP arbitrary and non-transparent and requiring the process to be set aside and re-conducted with a corrected IM, relying on [4]**Bimalesh Bhardwaj v. Value Infratech India Pvt.**

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[4] **Bimalesh Bhardwaj v. Value Infratech India Pvt. Ltd., 2021 SCC OnLine NCLAT 443**
Para 20. "We find that, while the CoC took a decision for going for liquidation of the Corporate Debtor, the Appellants have challenged the very basis of constitution of CoC and fixing of voting rights by labeling it illegal, done to provide undue and unfair advantage to Respondent No. 4. Moreover, the Appellants have also claimed that the CoC took a decision for liquidation without following the procedure under CIRP stipulated in the IBC. The basic reason for seeking Resolution Plan under CIRP is to ensure that the Corporate Debtor can continue to function as a going concern, while taking care of interests of its creditors. Liquidation is the last resort which implies corporate death of the company. For the Corporate Insolvency Resolution Process to result in successful resolution of the corporate Debtor, preparation of a correct information memorandum is a must, which may result in work able resolution plans. In the present case, we find that information memorandum was not prepared with full and correct details of assets and liabilities of the Corporate Debtor. The RP also did not pursue his application u/s 19(2). As a result the CoC decided to abandon the step of inviting of EOI for Resolution Plan. Thereafter in undue haste, the CoC decided to go for liquidation of the Corporate Debtor. Since the CoC consisted of two members - Capri Global and homebuyers - with Respondent No. 4 being given inflated voting share, the decisions by CoC was completely swayed by the Respondent No. 4 and its selfish interests. The decisions of CoC was a blotted

Ltd., 2021 SCC OnLine NCLAT 443. It is also claimed that the costs of ₹ 50,000 imposed on the suspended director were imposed without recorded reasons and are liable to be set aside.

26. GIDC in set 2 contends that it approaches this Tribunal in its dual capacity as lessor/regulator and as Operational Creditor, and that only the order approving the plan (I.A. 4585/2021) needs to meet the closed-list test of Section 61(3), while the dismissal of its objection-IAs (136/2022 and 5224/2024) stand on ordinary appellate footing. It contends that the resolution plan proceeds on the SRA's own unilateral presumption that the SEZ stands, or will stand, de-notified, permitting conversion of the Demised Premises to non-SEZ industrial use and its sub-plotting/sub-leasing — without GIDC's consent, without the Development Commissioner's “no benefits availed”/refund certificate ever having issued, and without the Corporate Debtor's name having been formally removed from the notified-SEZ list. It submits that Clause 3.3(v) of the Lease Deed permits a change of use only with GIDC's “prior consent, approval or permission,” which has never been granted, and that a resolution plan cannot rewrite that condition or Regulation 37(j) of the CIRP Regulations cannot be stretched to authorise a change in the very nature of the demised land's permitted use.

27. GIDC also contends that the IM did not disclose the pendency, or the incomplete state, of the de-notification correspondence between the Corporate

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one, since it was taken in the CoC, in which Respondent No. 4 was given voting right much in excess of its real and correct share.”

Debtor, GIDC and the Development Commissioner's office, whereas the SRA's resolution plan itself reveals detailed, non-public knowledge of that very correspondence — correspondence dated 05.03.2024, 07.03.2024, and SRA's own letters of 10.04.2024, 29.05.2024 and 26.07.2024 — giving rise to a serious question of an uneven playing field among competing resolution applicants and of suppression of material information going to the feasibility of the plan. It submits that, as land-owner and statutory regulator, its objections on feasibility are not ordinary commercial-wisdom grievances immune from scrutiny, relying on [27]**Greater Noida v. Prabhjit Singh Soni (2024) 6 SCC 767**, where a plan founded on statutorily regulated land was held to require closer feasibility scrutiny and the necessary statutory approvals, and where both the NCLT and this Tribunal were faulted for not engaging with that dimension. It submits that the composite order's disposal of its restored objection-IAs by a single paragraph of reference (para 10.2), without discrete findings on the statutory-land and suppression questions, does not meet the standard expected of objections reheard de novo pursuant to this Tribunal's own remand.

28. Brief description of the opposition by the Respondents (SRA/Zaveri & Co.; SREI; Resolution Professional) is that a resolution plan, once approved by the CoC with 100% voting share and sanctioned by the Adjudicating Authority, is binding and its commercial wisdom non-justiciable save on the closed grounds of Section 30(2) and Section 61(3), relying on [5]***K. Sashidhar;***

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[5] K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150;

[6]***Essar Steel*** *;* [7]***Kalpraj Dharamshi*** *;* [8]***Vallal RCK*** ; and the recent decisions in [9] ***Independent Sugar Corpn. Ltd.,*** and in [10] ***Piramal Capital & Housing Finance Ltd.*** It is submitted that the RP is under no obligation to treat a different Corporate Debtor's claim-computation as binding, that each RP verifies independently, and that the fixed pay-out to SREI (₹ 125 crore) under the plan is, in absolute terms, materially less than even the Appellants' own reckoning of the correct figure (₹ 202.40 crore), such that any error in the admitted quantum is not outcome-determinative and causes no prejudice.

On the SEZ question, it is claimed that Clause 3.3(v) of the Lease Deed itself contemplates change of use, that Clause 4.1–4.3 permits sub-leasing, that Regulation 37(j) of the CIRP Regulations permits a change in portfolio of goods/services under a plan, that the Corporate Debtor's name does not appear on the current notified-SEZ list, that the Development Commissioner has filed no claim in the CIRP, and that the plan itself provides ₹ 3,06,65,250 towards stamp duty to complete the de-notification formalities, with Section 30(4) of the Code affording the SRA a further year to secure necessary approvals post-approval. It is submitted that GIDC's objections are, in substance, a monetary grievance seeking better-than-class treatment, having accepted ₹ 6.14 crore under the plan; that GIDC cannot resile from its own

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[6] Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta, (2020) 8 SCC 531;
[7] Kalpraj Dharamshi v. Kotak Investment Advisors Ltd., (2021) 10 SCC 401;
[8] Vallal RCK v. Siva Industries and Holdings Ltd., (2022) 9 SCC 803;
[9] Independent Sugar Corporation Ltd. v. Hindustan National Gas & Industries Ltd. (Resolution Professional) (2025) SCC OnLine SC 181
[10] Piramal Capital & Housing Finance Ltd *v*. 63 v. 63 Moons Technologies Ltd., reported in (2025) 10 SCC Comp Cas 452

affidavit dated 20.05.2022 while simultaneously demanding further sums; that the lease termination — effected during the moratorium and since quashed by the Gujarat High Court — furnishes no ground of infeasibility; and that the sole-CoC-member ground was neither pleaded in I.A. 136/2022 nor otherwise available, SREI's Administrator having ratified all decisions taken.

Apex Court on co-extensive liability of the Corporate Debtor and the corporate guarantor

29. Before formulating the points of determination in the two sets of appeals, we would like to take up the judgment of the apex court with respect to co-extensive liability of the Corporate Debtor and corporate guarantor, which is crucial for this case. This case hinges upon this issue, which was litigated before the Honourable Supreme Court, which was related to challenge to filing of appeals against both the principal borrower and also the corporate guarantor, and which has been now settled by the Honourable Supreme Court. For better appreciation of the context and the import of the judgment of the honourable apex court, it will be useful to extract the history of litigation starting from NCLT to NCLAT and thereafter before the honourable Supreme Court, which are extracted as below:

10.02.2020	FC filed a petition u/s 7 of the Code against the GHPSL, being CP (IB) No. 571 of 2020 before the NCLT New Delhi for a sum of ₹ 1428.84 Crores on the basis of same set of debt and default for which CIRP of ACIL took place.
18.11.2020	NCLT admitted the petition being CP (IB) No. 571 of 2020 and the GHPSL was admitted into CIRP

14.12.2020	BRS Ventures Investment Ltd./SRA of ACIL preferred an appeal against the admission order dated 18.11.2020 before the NCLAT being CA(AT) (Ins) 1109 of 2020.
05.04.2021	Being aggrieved, by the acceptance of the RP of the claim of the FC of the sum of ₹ 1885 Crores against the GHPSL, the erstwhile director along with BRS Venture Investment Ltd. filed an application being IA. No. 1764/ND/2021 in CP(IB)571(ND)/ 2020 before the NCLT, New Delhi.
11.05.2021	NCLAT dismissed CA(AT) (Ins) 1109 of 2020 filed by BRS Venture Investment Ltd. This order was challenged before the Hon'ble Supreme Court in Civil Appeal No. 4565 of 2021.
17.09.2021	The Hon'ble Supreme Court passed an order in Civil Appeal No. 4565 of 2021 directing that *"any further orders would abide by the final decision of this Court"*.
13.09.2023	NCLT, New Delhi dismissed the IA. No. 1764/ND/2021 in CP (IB) 571 (ND)/2020 filed by the Appellant.
19.09.2023	NCLT approved the resolution plan submitted by the Zaveri
23.07.2024	Final judgment in Civil Appeal No. 4565 of 2021 (BRS Ventures Investments Ltd (supra) passed by Hon'ble Apex Court

30. The Section 7 admission order of 18/11/2020 in CP 571/2020 against the CD-GHPSL, was challenged by the Successful Resolution Applicant (SRA) of the ACIL / Corporate Guarantor before this Appellate Tribunal in CA AT (Ins) 1109/2020. This Appellate Tribunal on 11/5/2021 dismissed the appeal and allowed the Financial Creditor to claim for the balance amount from the principal borrower in the Section 7 Proceedings in CP 571/2020. The decision of this Appellate Tribunal was challenged by [1]**BRS Ventures (supra)** before Hon'ble Supreme Court in **Civil Appeal 4565/2021**. The Hon'ble Supreme Court by its interim order dated 17th September, 2021 noted that *"any further*

orders would abide by the final decision of this Court". Honourable Supreme Court had noted the following two issues in its final judgement decided on 23.07.2024, which are noted as below:

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12. Before we deal with the submissions canvassed across the Bar, we must note the issues formulated in the impugned judgment of the NCLAT. Based on the submissions made before it, two issues were framed, which read thus:

13. Following issues arise in this appeal for our consideration:

(i) Whether the application Under Section 7 of IBC is barred by limitation?

(ii) Whether the second Application Under Section 7 of IBC is not maintainable against the Corporate Debtor as for the same debt and default, CIRP has already been taken place against the Corporate Guarantor and the Financial Creditor has accepted the amount in full and final settlement of all its dues?

31. The **Hon'ble Supreme Court** in [1]**BRS Ventures (supra)** holds that:

"21. Under the corporate guarantee, in the facts of this case, the liability of ACIL was to the extent of the entire amount repayable by the 2nd respondent corporate debtor to the corporate creditor. In the CIRP of ACIL, the appellant paid a sum of Rs. 38.87 crores only to the 1st Respondent financial creditor. The amount was paid by the appellant on behalf of ACIL, the corporate guarantor. For the rest of the amount payable as per the guarantee, the 1st Respondent financial creditor had to take a haircut because of the involuntary process by operation of law. Only the liability of ACIL under the corporate guarantee to repay the loan to the 1st respondent financial creditor has been extinguished on the payment of Rs. 38.87 crores. By the involuntary act of the creditor of accepting part of the amount from the surety in the discharge of the entire liability of the surety, even if Section 140 is attracted, it will confer on the guarantor or the appellant the right to recover only the amount mentioned above from the corporate debtor. The subrogation will be only to the extent of the amount recovered by the Creditor from the surety."

32. We observe that the Hon'ble Supreme Court of India has rendered its final judgment in [1]**BRS Ventures (supra)**, decided on 23.07.2024, the operative part of which is extracted as below:

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28. Hence, we summarize some of our conclusions as under:

a. Payment of the sum of Rs. 38.87 crores to the 1st Respondent-financial creditor under the resolution plan of the corporate guarantor-ACIL will not extinguish the liability of the 2nd Respondent- principal borrower/corporate debtor to pay the entire amount payable under the loan transaction after deducting the amount paid on behalf of the corporate guarantor in terms of its resolution plan;

b. A holding company is not the owner of the assets of its subsidiary. Therefore, the assets of the subsidiaries cannot be included in the resolution plan of the holding company, and

c. <u>The financial creditor can always file separate applications Under Section 7 of the IBC against the corporate debtor and the corporate guarantor. The applications can be filed simultaneously as well</u>;

29. Thus, the view taken by NCLAT cannot be faulted. Accordingly, the appeal is hereby dismissed with no order as to costs.

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33. The above judgment of the Hon'ble Supreme Court makes it clear that a Financial Creditor can always file a separate application under Section 7 of the Code against the Corporate Debtor after it had filed the Section 7 proceedings against the Corporate Debtor. That too to pay the entire amount payable under the loan transaction after deducting the amount paid on behalf of the corporate guarantor in terms of its resolution plan.

34. In the facts of the present case, FC/R2 contends that the Appellant is re-agitating its claim by way of this present appeal and the arguments of the Appellant have already been dealt with by the Hon'ble Supreme Court in [1]**BRS Ventures (supra)**. We note that in [1]**BRS Ventures (supra)**, the appeal was filed before the Hon'ble Apex Court to challenge the Section 7 admission order passed against the Principal borrower i.e. Respondent No. 1. The argument raised by the Appellant before the Hon'ble Apex Court was that upon approval of the resolution plan in the CIRP of the ACIL, and on payment of ₹ 38.87 crores to the Respondent No. 2/ Financial Creditor, the same constituted a full and final settlement of the dues of the Respondent No. 2. The Hon'ble Apex Court concluded that payment of a sum of ₹ 38.87 crores to the Respondent No. 2/FC under the resolution plan will not extinguish the liability of the Respondent No. 1/CD/GHPSL to pay the entire amount payable under the loan transaction after deducting the amount paid by the Corporate Guarantor/ Appellant in terms of the resolution plan. Thus, even from the findings made by the Hon'ble Apex Court, it is evident that the Respondent No. 2 is only liable to recover the remaining amount in the CIRP

of Respondent No. 1 i.e. the difference between the amount already adjudicated by the Ld. NCLT and Ld. NCLAT i.e. ₹ 241.27 crores minus the amount already paid in the CIRP of the Appellant i.e. ₹38.87 crores. Thus, we note that the Hon'ble Apex Court has nowhere adjudicated the claim amount of the Respondent No. 2. Similarly, while observing that the subrogation will be to the extent of the amount recovered by the creditor from the surety i.e. ₹ 38.87 crores, the Hon'ble Apex Court does not provide any finding to that effect as the issue of subrogation had never been pressed by the SRA.

35. Thus, we find that the arguments of the Appellant as made in the present appeal have not been decided by the Hon'ble Apex Court, and is thus not barred by the principles of res judicata.

<u>Points of determination</u>

36. Having heard the counsels of both sides and also after perusal of the material placed on record, the following points of determination emerge:

CA (AT(Ins.) No. 1557 of 2023 & 1684 of 2023 by ex-director of the Corporate Debtor & Corporate Guarantor

I. Whether the Adjudicating Authority erred in declining to examine the admitted claim of SREI at ₹ 1,885.08 crore, and whether that claim, and the classification of ACIL as an unsecured related party, vitiate the Information Memorandum;

CA (AT(Ins.) No. 626-628 of 2025 by GIDC/lessor of land

II. Whether GIDC has the locus to maintain its challenge, and whether its objections fall within the scope of appellate scrutiny under Section 61(3) and the ordinary appellate jurisdiction over the dismissal of its objection-IAs;

III. Whether the resolution plan, premised on the Demised Premises standing or becoming de-notified from SEZ to non-SEZ industrial use, and on GIDC's consent to change of use and sub-plotting being assumed rather than obtained, is feasible and viable within the meaning of Section 30(2) of the Code;

IV. Whether the Impugned Order's disposal of GIDC's restored objection-IAs by reference (para 10.2), without discrete reasons, can be sustained; and

V. What relief and directions are called for, including as to the recognition of the amount paid by ACIL/BRS Ventures Investments Ltd. to SREI in the ACIL CIRP.

37. Each of these issues is being dealt with here in after.

<u>Claim of ₹ 1885.08 Crs filed by FC & accepted by RP – erroneous & inflated or not</u>

38. The first point for determination, which arises from the first set of appeals, is whether the Adjudicating Authority erred in declining to examine the admitted claim of SREI at ₹ 1,885.08 crore, and whether that claim, and the classification of ACIL as an unsecured related party, vitiate the Information Memorandum. This section delves into this issue in detail.

39. The Appellants claims that the Financial Creditor has filed an exaggerated claim of approx. ₹ 1885 crores in the CIRP proceedings of the Corporate Debtor, i.e. Gujarat Hydro Carbons and Power SEZ Limited.

40. We find that the Impugned order dated 13.09.2023 dismissed the applications filed by the Appellants holding that once the resolution plan was approved by the Committee of Creditors, the Adjudication Authority could not

look into the nitty gritty involved in the CIRP of the Corporate Debtor based on facts that were in existence earlier in the CIRP of another Corporate Debtor. Furthermore, the Ld. Adjudicating Authority imposed costs of ₹ 50,000/-. The relevant portion is extracted as below for better appreciation of the views of the Adjudicating Authority:

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> 9. We find that that there is no provision under the IBC which allows the computation of claims done by a Resolution Professional for one Corporate Debtor's Resolution to be binding on a completely different Resolution Process of a different Corporate Debtor. In the present case, the Applicant has wrongly attempted to seek directions from this Adjudicating Authority. It is well within the ambit of IBC for reducing the claim of the answering Respondent in the CIRP of M/ s. Assam Company India Limited and not to exclude penal interest but to remove calculation mistakes and errors committed by the IRP m calculating and compounding the penal interest in the claim submitted by the answering Respondent.
>
> 10. Coming to the factual matrix of the present Application, it is a <u>settled law that once the Resolution Plan has been approved by the CoC, the Adjudicating Authority can't go back to look into the nitty gritties involved in the CIRP of the Corporate Debtor based on facts which were in existence earlier in the CIRP of different Corporate Debtor</u>. Therefore, this Adjudicating Authority cannot entertain the present Application which is devoid of merits and not sustainable. The Applicant has no locus standi to file the present Application and is attempting to derail and delay the present CIRP proceedings of the Corporate Debtor.

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41. For better appreciation we briefly look into the filing process of the claim by the Financial Creditor - R2 - SREI in the related Insolvency Proceedings in

the matter of ACIL, which is the Corporate Guarantor. In the CIR proceedings of ACIL, the Respondent No. 2/FC lodged a claim of ₹ 648,80,93,833/- (Approx. ₹ 648.80 Crores) with the Interim Resolution Professional on 14.11.2017. The claim of the Respondent No. 2 amounting to a sum of ₹648.80 Crores was assessed at ₹ 357.29 Crores by the Interim Resolution Professional on 28.11.2017. In the meantime, on 12.01.2018 an order was passed by the Hon'ble NCLT, Guwahati in CP (IB) No. 20/GB/2017 wherein, the Interim Resolution Professional was replaced by the Resolution Professional namely, Mr. Kannan Tiruvengadam. Thereafter on 03.04.2018 the claim of the Respondent No. 2 was further reduced to ₹ 241.27 Crores from ₹ 357.29 Crores by the Resolution Professional.

42. Being aggrieved by the decision of the Resolution Professional to reduce the claim of the Respondent No. 2 to ₹ 241.27 Crores, the Respondent No. 2 in July 2018 filed an application being IA. No 34/2018 in CP (IB) No. 20/GB/2017 before the Hon'ble NCLT, Guwahati challenging the decision of the Resolution Professional. On 23.07.2018 this application challenging the decision of the Resolution Professional was dismissed by the Ld. NCLT, Guwahati and the decision of the Resolution Professional to reduce the claim of the Respondent No. 2 to ₹ 241.27 Crores was upheld. NCLT – Guwahati upheld the decision of the resolution professional to reduce the claim. We note that with respect to the contention of the Financial Creditor that penal interest was excluded from the claim of the creditors only for the purpose of assigning

the voting rights of individual FCs in the CoC and not for any other purpose whatsoever, Adjudicating Authority gave a very clear finding noted as below:

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> 31. I have considered the reply advanced by the RP in regard to the contention of the Applicant that "penal interest was excluded from the claim of the creditors only for the purpose of assigning the voting rights of individual FCs in the CoC and not for any other purpose whatsoever," having regard to the definition of "voting share" as given in Section 5(28) of the Code, 2016, and found reason to concur with such submission advanced from the side of the RP. Being so, the contention of the respondents that the term "voting share", so used in the Code of 2016, does not contemplate different connotations for different purposes appears to be convincing and same is accordingly accepted.
>
> 32. It may be noticed here that the decision of IRP and COC in its first meeting to exclude the penal interest from the claims of the creditors has not been disputed by the applicant although till the time of filing of the present application as many as four other creditors' meetings were conducted during the period between 28/11/2017 and 28/02/2018 but at no point of time, the applicant found it necessary to question such decision, adopted by COC in its first meeting held on 28.11.2016.
>
> 33. Such revelation, in the facts and circumstances, firmly serves to show that the applicant had accepted the decision to exclude the penal interest from the claim of the creditors wholeheartedly and that too, even for the purpose of ascertainment of admissible claim of the creditors including the applicant. The fact that none of the other creditors whose penal interests were also so excluded from the claims, they had made against the CD had ever questioned such decision of the RP/COC only fortifies my conclusion that the trimming of penal interests from the claims

of the creditors was for all purposes including the ascertainment of legally admissible claim of the creditors.

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43. Furthermore, on the issue of the reduction in the claim of the Financial Creditor, the Adjudicating Authority, gave the following findings:

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34. Now, let us see if capitalisation of penal interest is permissible under the law. Here, it needs to be noted that the law relating to capitalization of penal interest is no longer res integra. In that connection, one can look into [11] **Central Bank of India**. For ready reference, same is reproduced below:

> "(1) Though interest can be capitalised on the analogy that the interest falling due on the accrued date and remaining unpaid, partakes the character of amount advanced on that date, yet penal interest, which is charged by way of penalty for non-payment, cannot be capitulised. Further interest, i.e. interest on interest, whether simple, compound or penal, cannot be claimed on the amount of penal interest. Penal Interest cannot be capitalised. It will be opposed to public policy."

35. In [12]**M. Rajeswar Rao (supra**, it has again been held that the capitalisation of penal interest is also not permissible. The relevant part is reproduced below:

> "However, 'penal interest' has to be distinguished from 'interest'. Penal interest is an extraordinary liability incurred by a debtor on account of his being a wrong-doer by having

[11] Central Bank of India Vs Ravindra and others, reported in (2001) SCC 367
[12] Rajeswar Rao and others Vs. Chituri Satyam (Died) & others, reported in 2013 SCC OnLine AP 809.

committed the wrong of not making the payment when it should have been made, in favour of the person wronged and it is neither related with nor limited to the damages suffered. Thus, while liability to pay interest is founded on the doctrine of compensation, penal interest is a penalty founded on the doctrine of penal action. Penal interest can be charged only once for one period of default and, therefore, penal interest cannot be permitted to be capitalized. Further interest i.e., interest on interest, whether simple or compound or penal cannot be claimed on the amount of penal interest."

36. The above leaves no manner of doubt that penal Interest by whatever name it is called cannot be allowed to be capitalized. On a perusal of the application and other relevant documents, it is found that the applicant herein has capitalized the penal interest. In that view of the matter too, the decision of the IRP to exclude the penal interest in calculating the actual claim of the creditors is found to be well founded.

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44. Adjudicating Authority, after noting the above findings, had come to the following conclusion:

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The above leaves no manner of doubt that penal Interest by whatever name it is called cannot be allowed to be capitalized. On a perusal of the application and other relevant documents, it is found that the applicant herein has capitalized the penal interest. In that view of the matter too, the decision of the IRP to exclude the penal interest in calculating the actual claim of the creditors is found to be well founded.

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45. Adjudicating Authority has also gone through the loan agreement and the deed of agreement to find out whether the terms and conditions in these documents override the position as existing in the law and has returned the following findings:

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> 37. I have also noticed that referring to loan agreement 05-01-2011 and deed of guarantee dated 05-01-2011, the applicant argued that under the loan agreement, the borrower was to pay not only the interest at the agreed rate on the principal amount, same being 100 crores but was to pay default interest too at the agreed rate for every default. More importantly, the parties thereto also agreed that default interest would be capitalised. The CD herein, being the guarantor to the due repayment of such loan as per schedule of repayment, had unconditionally undertaken to abide by all the conditions under which said loan was made available to the borrower vide deed of guarantee 05-01-2011.
>
> 38. Since both the borrower and the guarantor had agreed to pay not only the interest at the agreed rate but also agreed to pay penal interest with provision for capitalisation of penal interest, the borrower as well as the guarantor are bound by such terms and conditions and it is beyond the competence of the COC, IRP or RP to ignore such a contract.
>
> 39. In other words, the agreements, aforementioned, makes it impossible for the IRP/RP/COC to reduce the claim of the applicant from an amount of Rs.648,80,93,833 crores as on 14.11.2017 to any lesser amount on the date aforesaid. In support of such contention, my attention has been drawn to the decision of Hon'ble High Court of Judicature, Andhra Pradesh at Hyderabad in State Bank of India, Hyderabad Vs S.H Associates, Hyderabad & others, 2011 AIR CC 2467, to contend that the

parties to a contract are bound by contractual agreement regarding the rate of interest to be paid on the principal amount.

40. But then, it is a settled proposition of law that parties to an agreement cannot be allowed to do something which runs counter to any law whether statutory law or the law, made by the court. Since capitalization of penal interest is not permissible in view of law, laid down in Central Bank of India (supra), therefore, IRP had committed no wrong whatsoever in excluding the penal interest (which was compounded and capitalised) in computation of claim for the purpose of voting rights in the meeting of the COC or for any other purpose whatsoever....

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46. We find that the Adjudicating Authority has given a clear finding that parties to an agreement cannot be allowed to do something which runs counter to any law whether statutory law or the law, made by the court. Since capitalization of penal interest is not permissible in view of law, laid down in [11] **Central Bank of India (supra)**, therefore, IRP had committed no wrong whatsoever in excluding the penal interest (which was compounded and capitalised) in computation of claim for the purpose of voting rights in the meeting of the COC or for any other purpose whatsoever.

47. We note that the above decision of the Adjudicating Authority as noted here in earlier was challenged by the Financial Creditor – R2-SREI before this Appellate Tribunal in [13]**CA (AT) (Ins.) No. 291/2018** but it was dismissed by

[13] CA AT INS 291/2018 dtd 01.02.2019 Prasad Gempex vs Star Agro with SREI Infra Finance vs Kannan @ 175 APB

this Appellate Tribunal on 01.02.2019. This Appellate Tribunal had noted as below:

> "So far as the SREI Infrastructure Finance Ltd. who is aggrieved by the decision of the Resolution Professional, it may also take steps under sub-section (6) of Section 60 against the corporate debtor or any other party. In this case, we make it clear that <u>we have not expressed any opinion with regard to the claim made by the SREI Infrastructure Finance Ltd. or the decision as taken by the Resolution Professional</u>."

Thus, we find that the initial claim of the Financial Creditor/R2 during the CIRP of the ACIL/Appellant initially stood at an inflated amount of ₹ 648.80 crores in the year 2017, which was reduced to ₹ 357.29 crore by the IRP, and subsequently reduced to ₹ 241.27 crores by the RP. The reduction was done as the claim of the Financial Creditor/R2 included capitalization of penal interest. The claim amount of the Financial Creditor/R2 being reduced to ₹ 241.27 crores were challenged before the Ld. NCLT, Guwahati bench, which upheld the reduction of claim the RP in its order dated 23.07.2018 which was subsequently upheld by this Hon'ble Appellate Tribunal in its order dated 01.02.2019 passed in **CA (AT) (Ins.) No. 291/2018.** Despite liberty being given to the Financial Creditor/R2 to take steps under sub-section 6 of Section 60 against the Corporate Debtor or any other party, it did not challenge the order dated 01.02.2019 or take any steps. Thus, the order dated 01.02.2019 had attained finality. Against that background, the admission, within a short span of roughly two years and on the very same facility, of a claim of ₹ 1,885.08 crore — nearly 7.8 times the judicially settled figure called for careful verification, not mechanical acceptance.

48. As noted by us here in the earlier section that [1]**BRS Ventures (supra)** cleared the way for proceeding further against the principal borrower but to be guided as per the ratio. Per the decision of the Hon'ble Supreme Court, we note that it has not gone into the issue of the extent of the claim which was filed by the Financial Creditor and thus the question is still open. There is nothing in [1]**BRS Ventures (supra)** that reopens the quantum. Hon'ble Supreme Court there addressed maintainability of a separate Section 7 application and the principle of subrogation, and did not adjudicate, much less enlarge, the figure of ₹ 241.27 crore.

49. In such a background in the CIR proceedings of CD-Gujarat Hydro Carbon, the RP has to has to correctly identify the claim against the principal borrower. The remaining quantum of claim, which has to become part of the insolvency proceedings of the Corporate Debtor, will have to be determined on the basis of the past determination and payment which had happened in the earlier CIR proceedings. Moreover, the claim cannot have quantum leap from ₹241 crores to ₹1,885 crores within a span of 3 years. And the observation of the Adjudicating Authority that they cannot go into the nitty-gritty is not appropriate. In fact, for this reason alone both the resolution professional and the Adjudicating Authority will have to go into the details. We observe that the determination of the claim of the Financial Creditor in the CIR proceedings of the Corporate Debtor is not dependent on the determination of the RP of the corporate guarantor alone but basis the judicial decision which attained finality. Further because of its interlinkage in the CIR

proceedings of the principal borrower, it becomes an important determining factor for the remaining amount of the claim. Therefore, the argument of the Adjudicating Authority that it will not go into the nitty-gritties is unsustainable and deserves to be set aside.

50. Particularly if an exaggerated claim is presented before the resolution professional, it is the duty of the resolution professional to correctly determine the claims and maintain an updated list of claims. This process cannot be construed to be adjudication. This becomes all the more relevant in the present proceedings where in the earlier proceedings the insolvency under Section 7 had been initiated against the corporate guarantor Financial Creditor/SREI. And now for the balance amount the same Financial Creditor, SREI, is invoking Section 7 insolvency proceedings against the principal borrower. Thus, we find that in the background of the past history of the present case, the claim needs to be thoroughly scrutinized and more so when the Financial Creditor/SREI has made unjustified claims, which are primarily based on capitalization of the penal interest.

51. The Ld. NCLT by way of the impugned order dated 13th September, 2023, dismissed the application filed by the Appellant and further on 19th September, 2023 approved the resolution plan submitted by the R4/Zaveri. We further observe that this was done inspite of the fact that the Resolution Applicant of ACIL i.e. BRS Ventures Investment Ltd. had already preferred an appeal before the Hon'ble Supreme Court being Civil Appeal No. 4565 of 2021 against the order of this Hon'ble Appellate Tribunal dated 11th May, 2021 in

which the Hon'ble Supreme Court by its order dated 17th September, 2021 clearly stated that *"any further orders would abide by the final decision of this Court"*.

52. As noted by us here earlier, despite adjudication of the claim amount to be ₹ 241.27 crores in the CIRP of the ACIL and receipt of ₹ 38.87 crores by the FC, the Financial Creditor/R2 filed another claim of ₹ 1885.09 crores against the Principal Borrower in a very short period of time, which is claimed by the Appellant to be improbable. Further the same has been accepted by the Resolution Professional, Respondent No. 3 as a secured Financial Creditor to the tune of ₹ 1885.08 crores.

53. We find that in the impugned order IA 1764/2021 in CP(IB)571(ND)/2020, the Adjudicating Authority, while delving into the issue of the claims, has given the finding that

> "once the Resolution Plan has been approved by the CoC, the Adjudicating Authority can't go back to look into the nitty gritties involved in the CIRP of the Corporate Debtor based on facts which were in existence earlier in the CIRP of different Corporate Debtor."

54. Such a conclusion of the Adjudicating Authority could have been fully justified if the situation was different than what exists in the present facts and circumstances, wherein the Financial Creditor had initially invoked insolvency resolution proceedings under Section 7 of the Code against the corporate guarantor and now it has also invoked the insolvency proceedings under Section 7 against the principal borrower. We observe that the

Resolution Plan of BRS Ventures Investment Ltd. for ACIL – the holding company /Corporate guarantor of the CD was approved by the NCLT, Guwahati by an order dated 20th September, 2018, per which Respondent No. 2/ SREI was paid a sum of ₹ 38.87 Crores, which the Appellant claims were in full and final settlement of its dues against the sum of ₹ 241.27 Crores. It is the contention of the Appellant that inspite of receiving the sum of ₹ 38.87 Crores in full and final settlement of its dues in the CIRP of ACIL, the Respondent No. 2/FC/SREI filed an application being CP (IB) No. 571 of 2020 under Section 7 of IBC, 2016 before the Ld. NCLT, New Delhi against the Respondent No. 1/Gujarat Hydro Carbons and Power SEZ Limited and which was admitted by the order dated 18th November, 2020 and the Respondent No. 3 was appointed as the Interim Resolution Professional. During the CIRP of the Respondent No. 1/Gujarat Hydro Carbons and Power SEZ Limited, the Respondent No. 2 filed its claim for an amount of ₹ 1885.08 Crores on the basis of the same set of debt and default for which CIRP of ACIL took place. The Appellant is aggrieved by the admission of the Respondent No. 2's claim by the Respondent No. 3 to the tune of ₹ 1885.08 Crores filed an application being I.A. No. 1764 of 2021 before the Ld. NCLT, New Delhi and is seeking directions to the Respondent No. 3/ex-RP to reassess and/ or recalculate the claim submitted by the Respondent No. 2 in light of the fact that the claim of the Respondent No. 2 had already been admitted by the Hon'ble NCLT, Guwahati for an amount of ₹ 241.27 Crores and a sum of ₹ 38.87 Crores had already been paid to the Respondent No. 2 in full and final settlement of its dues through the Resolution Plan of ACIL which was accepted by the

Respondent No. 2 and thus, the right of the Respondent No. 2 with respect to the debt had been extinguished by virtue of Section 63 of the Indian Contract Act, 1872.

55. Thus, we are unable to accept the Adjudicating Authority's view, expressed in the order dated 13.09.2023, that once a resolution plan has been approved by the CoC, it is impermissible to examine facts arising in the CIRP of a different Corporate Debtor bearing on the same debt. That view overlooks that this is not a case of two unconnected insolvencies; it is a single debt and a single default, litigated first against the corporate guarantor and, for the balance, against the principal borrower. The claim of ₹ 241.27 crore was not an informal or provisional figure; it was fixed after a reasoned adjudication by the NCLT, Guwahati Bench (order dated 23.07.2018) — expressly disallowing capitalisation of penal interest as opposed to public policy — which was affirmed by this Tribunal on 01.02.2019 and thereafter attained finality, SREI having availed no further recourse despite the liberty granted to it.

56. Furthermore, we also note that the issue relating to the extent of the claim was already settled in the judgment of the NCLT Guwahati dated 23.07.2018 and was not agitated before the Hon'ble Supreme Court in [1]**Civil Appeal No. 4565 of 2021** by the Respondents. Thus, we find that the issue of quantum of claim was raised before NCLT and the claim amount had crystallized in the judgment dated 23.07.2018 in IA 34/2018 in CP (IB) 20/GB/2017 of NCLT- Guhahati Bench and later on attained finality. This judgment of NCLT had returned a finding that:

> "penal interest by whatever name it is called cannot be allowed to be capitalized. On a perusal of the application and other relevant documents, it is found that the applicant herein has capitalized the penal interest. In that view of the matter too, the decision of the IRP to exclude the penal interest in calculating the actual claim of the creditors is found to be well founded."

57. We observe that had it been a standalone case of insolvency proceedings, then it could have proceeded totally independently. But in this case RP of the Corporate Debtor had to find out the remaining amount for Section 7 proceedings against the Corporate Debtor basis a judgement which had attained finality. Here in this case the RP was bound by the judgment of the NCLT Guwahati, which had attained finality.

58. The argument of the Adjudicating Authority that the RP is not bound by the decision of the RP of another Corporate Debtor is unsustainable. We find that in the conclusion, the observations of the Adjudicating Authority that:

> "there is no provision under the IBC which allows the computation of claims done by a Resolution Professional for one Corporate Debtor's Resolution to be binding on a completely different Resolution Process of a different Corporate Debtor. In the present case, the Applicant has wrongly attempted to seek directions from this Adjudicating Authority. It is well within the ambit of IBC for reducing the claim of the answering Respondent in the CIRP of M/ s. Assam Company India Limited and not to exclude penal interest but to remove calculation mistakes and errors committed by the IRP m calculating and compounding the penal interest in the claim submitted by the answering Respondent."

59. This is very much against the judgment of the apex court in the case of [14]**Central Bank (supra)** as was cited by the Adjudicating Authority, Guwahati Bench, in its dated 23-07-2018. Therefore, the adjudicating authority has to go into the details of the CIR proceedings and return an appropriate finding and it will not be appropriate to say that it need not go into the nitty-gritties of the CIR proceedings, and thus such a finding is unsustainable.

60. We briefly look into the duties of the resolution professional and whether they were discharged appropriately or not. While an RP possesses no adjudicatory power to determine disputed questions **[15]NTPC Ltd. v. Rajiv Chakraborty, Resolution Professional (supra)**, the RP's duty under [2]**Swiss Ribbons Pvt. Ltd. v. Union of India (supra)** to collate, verify and correctly determine the amount of a claim is a distinct and antecedent obligation, and this Tribunal, and the Adjudicating Authority before it, retain the power under [16]**Axis Bank Ltd. v. Samruddhi Realty (supra)** to look behind a claim so admitted where, as here, its correctness is squarely put in issue by a judicially settled figure on the identical debt.

61. SREI's claim had already been judicially reduced to ₹ 241.27 crore in the ACIL CIRP, and ₹ 38.87 crore was thereafter paid under the ACIL resolution plan. The later admission of ₹ 1,885.08 crore in GHPSL's CIRP, without reconciliation with that final determination, rendered the IM materially inaccurate. We accordingly hold that the admission of SREI's claim

[14] Central Bank of India Vs Ravindra and others, reported in (2001) SCC 367
[15] NTPC Ltd. v. Rajiv Chakraborty, Resolution Professional (2021) 10 SCC 480
[16] Axis Bank Ltd. v. Samruddhi Realty (2023) 23 Comp Cas-OL 596

at ₹ 1,885.08 crores, without reference to or reconciliation with the finally adjudicated figure of ₹ 241.27 crore, was not a proper discharge of the RP's verification duty, and that the correct starting point for computation of SREI's recoverable claim against the Corporate Debtor is ₹ 241.27 crore, less credit for the ₹ 38.87 crore already recovered by SREI in the ACIL CIRP, consistent with the Hon'ble Supreme Court's holding in BRS Ventures (supra) that payment by the guarantor does not extinguish the principal borrower's liability for the balance but the creditor may recover from the borrower only the sum remaining after such credit.

Is ACIL a secured Financial Creditor to the extent of ₹ 38.87 crs paid by ACIL to FC in the CIRP of ACIL or not

62. We observe that ACIL has been shown as an Unsecured Financial Creditor in the CIRP of GHPSL (R1). The argument of ACIL that they are to be treated as a Secured Financial Creditor in the CIRP of R1 to the extent of ₹38.87 crores are basis the judgment of the **Hon'ble Supreme Court** in [1]**BRS Ventures (supra)** wherein the judgment held that:

> "Under the corporate guarantee, in the facts of this case, the liability of ACIL was to the extent of the entire amount repayable by the 2nd respondent corporate debtor to the corporate creditor. In the CIRP of ACIL, the appellant paid a sum of Rs. 38.87 crores only to the 1st Respondent financial creditor. The amount was paid by the appellant on behalf of ACIL, the corporate guarantor. For the rest of the amount payable as per the guarantee, the 1st respondent financial creditor had to take a haircut because of the involuntary process by operation of law. Only the liability of ACIL under the corporate guarantee to repay the loan to the 1st respondent financial creditor has been extinguished on the payment of Rs. 38.87 crores. By the involuntary act of the creditor of accepting part of the

amount from the surety in the discharge of the entire liability of the surety, even if Section 140 is attracted, it will confer on the guarantor or the appellant the right to recover only the amount mentioned above from the corporate debtor. The subrogation will be only to the extent of the amount recovered by the Creditor from the surety."

63. We note that in the CIRP of ACIL, the resolution plan submitted by BRS Venture Investments Ltd (SRA) was duly approved on 20.09.2018 by the NCLT, Guwahati, by virtue of which the SRA through ACIL had paid ₹ 38.87 Cr to the Financial Creditor, against its total claim of INR 241.27 crores. Appellant/ACIL/SRA contends that upon such payment made by ACIL, Section 140 of the Indian Contract Act, 1872 would squarely apply as the rights of the Secured Financial Creditor shall stand subrogated in favour of ACIL and ACIL would directly step into the shoes of the R2, as Secured Financial Creditor to the extent of the amount paid to the R2 i.e. ₹ 38.87 crores. Appellant places its reliance on the judgment by the Hon'ble Supreme Court in [1]**BRS Ventures (supra)** wherein it has clearly held that the SRA or ACIL has stepped into the shoes of the R2 as a Secured Financial to the extent of an amount of ₹ 38.87 crores paid by the SRA through ACIL to the R2, and is thus entitled to all benefits as enjoyed by the R2 to the extent of the amount paid. Thus, by virtue of the above, ACIL claims to have become a secured Financial Creditor to the extent of ₹ 38.87 crores paid by SRA through ACIL to the R2 in the resolution plan ACIL.

64. The Appellant/ACIL further relies on the following Judgements:

- Hon'ble Supreme Court in [17]**Amrit Lal Goverdhan Lalan (Dead)** wherein it was held that while a surety is not discharged merely because the creditor grants the principal debtor time or indulgence, the surety is discharged *pro tanto* under Section 141 of the Indian Contract Act where the creditor, by negligence or otherwise, loses or parts with the security held for the debt without the surety's consent. The Court explained that a surety is entitled to the benefit of every security held by the creditor, and any impairment or loss of such security attributable to the creditor proportionately reduces the surety's liability**.**
- [18]**Economic Transport Organization v. Charan Spinning Mills,** in this the Supreme Court held that the doctrine of subrogation, reflected in Section 140 of the Indian Contract Act, embodies the equitable principle that upon satisfying the guaranteed obligation or indemnifying the assured for the entire loss, the surety or insurer is invested with all the rights and remedies that the creditor or assured could have enforced against the principal debtor or wrongdoer. The Court clarified that subrogation operates by operation of law upon full indemnification, enabling the subrogee to step into the shoes of the original claimant, while the extent and mode of enforcement may

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[17] Amrit Lal Goverdhan Lalan (Dead) by his Legal Representatives vs. State Bank of Travancore, (1968) 3 SCR 724: AIR 1968 SC 1432 (Refer Para No. 7)

[18] Economic Transport Organization v. Charan Spinning Mills Private Ltd. and Another: (2010) 4 SCC 114 (refer Para No. 20, 26 and 35)

be modified by the terms of a written subrogation or subrogation-cum-assignment.

65. The Appellant/ACIL contends that without prejudice to the rights of ACIL and without admitting in any manner, in case the proposition as placed by the ACIL that the Resolution Plan submitted by the Successful Resolution Applicant in the case of the Corporate Debtor is not set aside, ACIL should be entitled to the proportionate share in the amount agreed to be paid by the Successful Resolution Applicant to the Financial Creditors of the Corporate Debtor.

66. SRA of the CIR proceedings of the CD/GHPSL, on the other hand contends that the right of subrogation under Section 140 of the Contract Act is attracted only when the surety pays all that it is liable for under the guarantee and it further claims that in the present case, the resolution applicant of ACIL paid only ₹ 38.87 Crores against an admitted liability of ₹241.27 Crores. Therefore, Section 140 has no application to extinguish the Corporate Debtor's liability.

67. FC contends that before Honourable Supreme Court in [1]**BRS Ventures (supra),** subrogation was not pressed and the Court gave no operative finding. They bring to our notice that ACIL is shown as an unsecured related party and the resolution plan pays such parties nil on liquidation-value logic.

68. Appellant had separately claimed that payment of about ₹ 38.87 crores was as per the resolution plan in the CIR Proceedings of ACIL was for full and

final settlement of the claim of about ₹ 241.27 crores but as we had noted earlier, that argument is unsustainable and has been dismissed by us herein earlier.

69. We further note that subrogation is dealt in Sections 140 and 141 of the Indian Contract Act, which are extracted as below:

> "Section 140. **Rights of surety on payment or performance**
> Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.
>
> **Section 141. Surety's right to benefit of creditor's securities.**
> A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security."

70. Section 140 provides that where a guaranteed debt has become due and the surety has paid or performed "all that he is liable for", the surety is "invested with all the rights which the creditor had against the principal debtor" i.e. 'stepping into the shoes'. We observe that subrogation is not a new right the surety is contending for, but the transfer of the creditor's existing rights, with their incidents. Section 141 gives the surety "a right to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into."

71. We observe that while delivering the judgment of [1]**BRS Ventures (supra)**, the Hon'ble Supreme Court articulated the principle but declined to apply it operationally because it was not pressed. The Supreme Court had noted that even if Section 140 is attracted, it will confer on the guarantor or the Appellant the right to recover only the amount mentioned above from the Corporate Debtor. The subrogation will be only to the extent of the amount recovered by the Creditor from the surety.

72. Thus, in the above circumstances we find that RP needs to re-rank ACIL's claims as secured creditor above unsecured related parties and also Information Memorandum (IM) and distribution require correction.

<u>Does the erroneous Information Memorandum vitiate CIR proceedings?</u>

73. On the Issue of information memorandum being erroneous and incorrect, the Appellant contends that the Information Memorandum prepared by the Resolution Professional of the Corporate Debtor is erroneous in two ways:

- The Appellant is treated as an unsecured Financial Creditor in the CIRP of the Respondent No. 1, whereas the Appellant was required to be treated as a Secured Financial Creditor in the CIRP of Respondent No. 1 to the tune of ₹ 38.87 crores;
- The Financial Creditor's claim is admitted to the tune of ₹ 1885 Crores in the CIRP of Respondent No. 1.

74. The Appellant further claims that the information memorandum is the foundation and has a pivotal role for preparation of a proper resolution plan. In the Corporate Insolvency Resolution Process, the information memorandum is the basic document which contains all aspects of the Corporate Debtor that enables the resolution applicant/s to prepare the resolution plan in accordance with the information contained in the information memorandum and submit the same to the resolution professional. Section 29 of the Insolvency and Bankruptcy Code, 2016 provides that the Resolution Professional shall prepare an Information Memorandum in such form and manner which shall contain relevant information as maybe specified by the Board for formulating a Resolution Plan whereas Regulation 36 of the IBBI (Insolvency resolution process for corporate persons) Regulations, 2016 clearly states the relevant information should contain details of assets and liabilities of the Corporate Debtor, latest annual financial statement, audited financial statement of the Corporate Debtor, list of creditors, particulars of debt due from or to the Corporate Debtor and other information.

75. For canvassing the importance of the correct information memorandum, the Appellant has relied on the following judgments:

- [19]**M/s. Avenue Realty vs. The Assistant Commissioner Srirangam dated 14.08.2025**

[19] Madurai Bench of the Madras High Court **in M/s. Avenue Realty (A Partnership Firm) vs. The Assistant Commissioner Srirangam (GST Circle) & Ors**. [W.P. (MD) No. 8260 of 2025, paras 70-73]

“70. Reading of Section 29 of the Code read with Regulation 36 of the 2016 Regulations reveals that a Resolution Professional (RP) appointed has to prepare an “Information Memorandum” containing various details of the “Corporate Debtor” so that a Resolution Applicant who intends to submit a “Resolution Plan” (RP) is aware of the assets and liabilities of the “Corporate Debtor”, including the details about the “Creditors” and the amounts claimed by them.

71. The “Information Memorandum” is required to contain the details of the guarantees that have been given in relation to the debts of the Corporate Debtor by other persons and the details with regard to all material litigation and an ongoing investigation or proceeding initiated by the Government and statutory authorities are also required to be detailed in the information memorandum. So also the details regarding the number of workers and employees and liabilities of the corporate debtor towards them and other Statutory Authorities are required to be contained in the Information Memorandum.

72. Section 29 of the Code is reproduced below:-
“29. Preparation of information memorandum. -
(1) The resolution professional shall prepare an information memorandum in such form and manner containing such relevant information as may be specified by the Board for formulating a resolution plan.
(2) The resolution professional shall provide to the resolution applicant access to all relevant
information in physical and electronic form, provided such resolution applicant undertakes-
(a) to comply with provisions of law for the time being in force relating to confidentiality and insider trading;

(b) to protect any intellectual property of the corporate debtor it may have access to; and
(c) not to share relevant information with third parties unless clauses (a) and (b) of this sub-section are complied with.
Explanation. – For the purposes of this section,“relevant information” means the information required by the resolution applicant to make the resolution plan for the corporate debtor,

which shall include the financial position of the corporate debtor, all information related to disputes by or against the corporate debtor and any other matter pertaining to the corporate debtor as may be specified."

73. Thus, the Resolution Professional (RP) is required to take note of pre-existing charges. The details contained in the Information Memorandum is intended to equip a Resolution Applicant about the liabilities of the Corporate Debtor to prepare a "Resolution Plan", which apart from satisfying a part of such liabilities would also ensure that the Corporate Debtor is revived and made a running establishment."

- [20]**Bimalesh Bhardwaj** : the Hon'ble NCLAT has held that "for the Corporate Insolvency Resolution Process to result in a successful resolution of the Corporate Debtor, preparation of a correct Information memorandum is a must, which may result in workable Resolution Plans."

76. The Appellant therefore argues that the information memorandum lays down the path for maximization of the value of the assets of the Corporate Debtor by providing true and correct information about the Corporate Debtor including its financial statements which includes such amount due and payable to the Creditors. But due to aforesaid two errors which are reflecting in the Information Memorandum, the entire CIRP of the R1 has been conducted in a wholly arbitrary, haphazard and non-transparent manner. thereby causing serious prejudice to the stakeholders and defeating the objective of maximization of value of the assets of the Corporate Debtor. Consequently, the entire CIRP stands vitiated in law and is liable to be set

[20] **Bimalesh Bhardwaj & Ors. v Value Infratech India Pvt. Ltd** & Ors: [2021 SCC Online NCLAT 443]

aside, with a direction for initiation of the process afresh in accordance with law.

77. Appellant further argues that even assuming the fact that the total pay-out in terms of the approved Resolution Plan is less than the correct amount due and payable to the Financial Creditor i.e. ₹ 202.40 crores (₹ 241.27 crores-₹ 38.87 crores), such proposition cannot be accepted as the law is well laid down that any information memorandum which is faulty and does not comprise of the correct assets and liabilities of the Corporate Debtor should be set aside and the correct information memorandum is once again required to be floated for inviting new applicants for a resolution.

78. Vehemently opposing the argument that erroneous information memorandum vitiates the CIR proceedings, the SRA/R4 contents that such an argument is ex facie contrary to Section 61(3) of the IBC. It is argued that a resolution plan can be challenged only on the exhaustive grounds enumerated in Section 61(3). Alleged discrepancies in the Information Memorandum do not constitute any of the prescribed grounds for challenge. Once a resolution plan is approved by the CoC and sanctioned by the Adjudicating Authority, it is not open to the tribunal to scrutinize the commercial wisdom of the CoC in accepting the plan. Moreover, even assuming that the claim of SREI was somehow overstated, the Resolution Plan proposed a payment of only ₹ 125 Crores to SREI against its admitted claim of ₹ 1885.08 Crores. Even by the Appellant's own reckoning, the original principal amount of the loan was ₹ 100 Crores and the outstanding balance

(as determined during the ACIL CIRP) was ₹ 241.27 Crores, which is substantially higher than the ₹ 125 Crores being paid under the present Resolution Plan. Therefore, even if the Appellant's argument regarding the quantum of claim is accepted in its entirety (which is denied), it would have no impact whatsoever on the validity or the fairness of the Resolution Plan to any stakeholder, least of all the Appellant who is only an erstwhile director.

79. The Appellants lean on [20]**Bimalesh Bhardwaj v. Value Infratech (NCLAT)** that a correct IM is a 'must' for a workable plan — and on the [19]**Madras High Court's Avenue Realty (2025)** for the IM's pivotal role and we find that both these judgments support the case of the Appellant.

80. The Respondents also relies on the entire commercial-wisdom arguments and with the practical point that the secured FC's pay-out is fixed and the unsecured related parties get Nil on liquidation-value logic, so the alleged errors are not outcome-determinative.

81. Thus, on the issue whether the Adjudicating Authority erred in declining to examine the admitted claim of SREI at ₹ 1,885.08 crores, and whether that claim, and the classification of ACIL as an unsecured related party, vitiate the Information memorandum we find that the Information Memorandum was fundamentally incorrect as SREI's claim of about ₹1,885 crores was admitted despite earlier judicial determination reducing the recoverable debt. Material facts relating to the earlier ACIL CIRP and the amount already recovered were either omitted or not properly reflected. Since

every prospective resolution applicant bases its commercial decision upon the Information Memorandum, an IM founded on materially incorrect financial information vitiates the entire resolution process. We also find that exaggerated admission of SREI's claim materially distorted the CIRP. The RP failed to discharge his statutory obligation of independent verification. The inflated claim resulted in distorted voting dynamics and valuation.

82. The Respondents have argued that the commercial wisdom is non-justiciable and therefore cannot be questioned. On the contrary we find that Commercial wisdom cannot validate a plan founded upon incorrect material information. The CoC's commercial wisdom cannot be insulated where the commercial decision itself proceeded on incorrect foundational facts. We observe that Judicial review would be available where Information Memorandum is materially defective; mandatory provisions of the Code have been violated; feasibility rests upon assumptions contrary to statutory records; the decision-making process is fundamentally flawed. Thus, we overrule the argument of the commercial wisdom of the committee of creditors (COC).

83. In the above facts and circumstances, we find that the IM is vitiated and therefore we find sufficient justification to set aside the resolution plan and go for a fresh information memorandum and also a re-invitation of expression of interest.

Findings in CA (AT) (Ins.) No. 1557 of 2023 & 1684 of 2023

84. We find that the Information Memorandum was fundamentally incorrect as SREI's claim of about ₹1,885 crores was admitted despite earlier judicial determination reducing the recoverable debt. Material facts relating to the earlier ACIL CIRP and the amount already recovered were either omitted or not properly reflected. Since every prospective resolution applicant bases its commercial decision upon the Information Memorandum, an IM founded on materially incorrect financial information vitiates the entire resolution process. Furthermore, exaggerated admission of SREI's claim materially distorted the CIRP**.** The RP failed to discharge his statutory obligation of independent verification. The inflated claim resulted in distorted voting dynamics and valuation. The CoC's commercial wisdom cannot be insulated where the commercial decision itself proceeded on incorrect foundational facts. We also find that there has been failure to account for BRS Ventures payment. The amount paid under ACIL CIRP through BRS Ventures ought to have been reflected while determining SREI's outstanding entitlement and corresponding secured creditor rights by way of subrogation also required consideration. Failure to incorporate these facts rendered the claim register and IM materially defective.

CA (AT(Ins.) No. 626-628 of 2025 - Another set of interrelated Appeals filed by GIDC/lessor of land

85. Basis conclusions and findings in the above two Appeals [CA (AT) (Ins.) No. 1557 of 2023 & 1684 of 2023], we cannot give a quietus to the issues involved in the CIRP proceedings against the Corporate Debtor as we were confronted with another set of appeals in which we find that there is a

commonality of the debt, two corporate insolvencies (guarantor and principal borrower), one Financial Creditor, and one piece of leasehold land. Because of the interrelatedness of the two sets of appeals, we have consolidated them and now we deal with the second set of appeals. The order dated 19.02.2025 of the Adjudicating Authority, in CP (IB) No. 571/2020, is a single composite order disposing of three interlocutory applications. We note that three Appeal numbers CA (AT(Ins.) No. 626-628 of 2025 correspond to three Interlocutory Applications which were disposed of as follows:

Interlocutory application	**What it sought**	**How Disposed of (19.02.2025)**
IA 4585/2021	Approval of the SRA's Resolution Plan (s. 30(6) r/w s. 31, filed by the RP)	**Allowed** Plan approved
IA 136/2022	GIDC's objections to the Resolution Plan	**Dismissed**
IA 5224/2024	GIDC's application to defer plan hearing pending the Gujarat High Court	**Dismissed**

86. We briefly recapitulate that the Corporate Debtor is Gujarat Hydrocarbons and Power SEZ Limited-GHPSL, incorporated on 17.08.2007 to develop, operate and maintain a sector-specific Special Economic Zone (SEZ) on land at Vilayat, Bharuch, Gujarat. Its principal — effectively sole — asset is that leasehold land (the "Demised Premises"), taken from the Appellant, Gujarat Industrial Development Corporation ("GIDC" or "the Appellant"), a statutory corporation acting in this matter as lessor, as an Operational Creditor, and as regulator of the land. The Successful Resolution Applicant (SRA) is Zaveri & Co. Pvt. Ltd. The sole Financial Creditor and sole member of

the Committee of Creditors (CoC) was SREI Infrastructure Finance Limited (SREI), itself admitted to insolvency during this CIR proceedings.

87. Per Appellant/GIDC the resolution plan is based on sub plotting the leased premises leased by the Appellant to the CD without any consent /permission from the Appellant, where such lease has already come to be terminated and CD is evicted under the provisions and order of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 and such position is accepted by the SRA, and further neither is the resolution plan in line with the purpose for which the lease was given to the CD being that of SEZ purpose being that of Energy sector, and the denotification of the SEZ has never been effected qua the land in question, since the Development Commissioner has never issued certificate no benefits availed certificate and/or refund of benefit received certificate to complete the denotification process, and the resolution plan seeks to revive the CD by sub leasing the land of the Appellant in piece meal as non SEZ sub plots which is not permissible as per the terms between the Appellant and the CD, and the approval has tantamounted to rewriting the contract between the Appellant and the CD and resulting in violation of the law of the land.

Locus of the Appellant/GIDC as Operational Creditor

88. In this subsection we are dealing with the issue whether GIDC has the locus to maintain its challenge-raised by the SRA, and whether its objections fall within the scope of appellate scrutiny under Section 61(3) and the ordinary appellate jurisdiction over the dismissal of its objection-IAs.

89. The respondent-SRA questions the locus of the Appellant GIDC on the ground that a resolution plan may be challenged only on the s. 61(3)[21] grounds and the appeal discloses none. Appellant has countered these arguments by bringing to our notice that it is only the impugned order passed in IA 4585 of 2021, the order for approval of the resolution plan, is required to meet the test of s. 61(3)[21] of the IBC, which in the present case is being met with.

90. Appellant contends that such test does not apply in the impugned orders passed in IA 136 of 2022 and IA 5224 of 2024. The appeals against those dismissals stand on ordinary appellate grounds. Basis the material placed on record, we find sufficient grounds in to take up appeals within Section 30(2) as well as within Section 61(3)(ii)/(iii). We find that the arguments of the Respondents are not convincing and the Appellant has a locus to file an appeal. This line of argument presented by the Respondent is rejected.

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[21] **Section 61: Appeals and Appellate Authority.**

61. (1) …

(2) …

(3) An appeal against an order approving a resolution plan under section 31 may be filed on the following grounds, namely:—

(i) the approved resolution plan is in contravention of the provisions of any law for the time being in force;

(ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;

(iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;

(iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or

(v) the resolution plan does not comply with any other criteria specified by the Board.

91. Respondent also claims that GIDC is an Operational Creditor whose claim was frozen on admission. Its grievance is really that it wants better than class treatment, which is more of a monetary grievance cloaked as objections. Appellant/GIDC contends that it has objected on the grounds of contravention of law, within section 30(2)(e) and also within section 61(3)(ii)/(iii). It further claims that they are not a collateral attack on commercial wisdom but on the legality and the feasibility of the plan. We are not in agreement with the line of argument presented by the Respondent and concur with the argument of the appellant and we cannot question the locus of the Appellant.

92. The Respondent also contends that Appellant/GIDC has no locus on the issue of the de-notification/SEZ status and only the SEZ authorities could raise it, and none has raised it. The appellant/GIDC, on the other hand, contends that GIDC is not an ordinary Operational Creditor. Since the resolution plan deploys the land which it owns and also regulates and therefore the Appellant/GIDC definitely has the locus. We also note that the denotification of the SEZ status has not reached finality. In such a situation the claim of the Respondent that since the land is almost de-notified (as noted by us here in the earlier submissions of the Respondent), GIDC has no locus and only SEZ authorities could raise it is not a justified ground.

93. We note that the judgment relied upon by the Appellant/GIDC in the matter of the of the [22]**Greater Noida Industrial Development Authority v. Prabhjit Singh Soni** (see *infra note 27/as discussed below in para 94*) , in which the Hon'ble SC held that where a resolution plan depends on assets or approvals of a third-party statutory authority, there must be a closer examination of plan's feasibility. Thus, we find that the argument of the Respondents is not sustainable on this line and GIDC, as an Operational Creditor, has the locus.

94. Respondents rely upon various precedents and claim that commercial wisdom is non-justiciable. The Respondents places reliance on the following judicial precedents:

- **Essar Steel v. Satish Kumar Gupta[23]:** Commercial wisdom non-justiciable; review confined to s. 30(2)- cited by AA / SRA / SREI.
- **K. Sashidhar v. Indian Overseas Bank[24]:** AA's discretion circumscribed by s. 31; commercial wisdom of CoC is not

[22] Greater Noida v. Prabhjit Singh Soni (2024) 6 SCC 767 (Refer Para 54 and 55)

[23] **Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta, (2020) 8 SCC 531;**

67… Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of Section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and Section 32 read with Section 61(3) of the Code, insofar as the Appellate Tribunal is concerned. the parameters of such review having been clearly laid down in K. Sashidhar."

[24] **K. Sashidhar v. Indian Overseas Bank K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150**;
"55. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan "as approved" by the requisite per cent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides: (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of

to be interfered with, excepting the limited scope as provided under Sections 30 and 31 of the I&B Code- cited by AA / SRA.

- **Kalpraj Dharamshi v. Kotak Investment[25]:** No factor beyond ss. 30(2)/61(3); CoC wisdom paramount - cited by SRA.

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operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code."

[25] **Kalpraj Dharamshi v. Kotak Investment (2021) 10 SCC 401**
Para 158. "This Court has held, that it is not open to the adjudicating authority or appellate authority to reckon any other factor other than specified in Sections 30(2) or 61(3) of the I&B Code. It has further been held, that the commercial wisdom of CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. This Court thus, in unequivocal terms, held, that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. It has been held, that the opinion expressed by CoC after due deliberations in the meetings through voting, as per voting shares, is a collective business decision. It has been held, that the legislature has consciously not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority and that the decision of CoC's "commercial wisdom" is made non-justiciable. "

- [26]**Vallal RCK v. Siva Industries & Holdings Ltd., (2022) 9 SCC 803** NCLT/NCLAT cannot sit in appeal over CoC wisdom – noted by Adjudicating Authority.

95. On the other hand, the Appellant places its reliance on [27] **Greater Noida v. Prabhjit Singh Soni** where a plan uses land owned by a statutory body bound by its own regulations, feasibility demands closer scrutiny and the necessary statutory approvals, and both NCLT and NCLAT were faulted for not dealing with this. Even the SRA relies upon this judgment for the general s. 30/31 scheme of the Code, but its ratio is not of assistance to the Appellant.

96. We note the judgments cited by the Respondents on the commercial wisdom line; however, we find that they do not answer the questions relating to fraud or the statutory land feasibility scrutiny that **Greater Noida v. Prabhjit Singh Soni (supra)** carves out in the following paragraphs:

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[26] **Vallal RCK v. Siva Industries & Holdings Ltd., (2022) 9 SCC 803** Para 24.

> "When 90% and more of the creditors, in their wisdom after due deliberations, find that it will be in the interest of all the stake-holders to permit settlement and withdraw CIRP, in our view, the adjudicating authority or the appellate authority cannot sit in an appeal over the commercial wisdom of CoC. The interference would be warranted only when the adjudicating authority or the appellate authority finds the decision of the CoC to be wholly capricious, arbitrary, irrational and de hors the provisions of the statute or the Rules."

[27] **Greater Noida v. Prabhjit Singh Soni Para 26 and 27.**

> "26. It is thus clear that the decision of the CoC was taken after the members of the CoC, had due deliberation to consider the pros and cons of the settlement plan and took a decision exercising their commercial wisdom. We are therefore of the considered view that neither the learned NCLT nor the learned NCLAT were justified in not giving due weightage to the commercial wisdom of CoC.
> 27. This Court has, time and again, emphasized the need for minimal judicial interference by NCLAT and NCLT in the framework of IBC."

"54.3. Under Regulation 38(3) of the CIRP Regulations, 2016, a resolution plan must, inter alia, demonstrate that:

(a) it is feasible and viable; and

(b) it has provisions for approvals required and the timeline for the same.

In the instant case, the plan conceived utilisation of land owned by the appellant. Ordinarily, feasibility and viability of a plan are economic decisions best left to the commercial wisdom of the CoC. However, where the plan envisages use of land not owned by the CD but by a third party, such as the appellant, which is a statutory body, bound by its own rules and regulations having statutory flavour, there has to be a closer examination of the plan's feasibility. Here, on the part of the CD there were defaults in payment of instalments which, allegedly, resulted in raising of demand and issuance of pre-cancellation notice. In these circumstances, whether the resolution plan envisages necessary approvals of the statutory authority is an important aspect on which feasibility of the plan depends. Unfortunately, the order of approval does not envisage such approvals. But neither NCLT nor NCLAT dealt with those aspects."

97. Applying the above principles in the facts and circumstances of this case we find that the Appellant is a statutory body, who is the owner of the land and has given the land on lease. This body is bound by its own regulations. Feasibility of a resolution plan requires closer scrutiny and necessary statutory approvals, which in this case are lacking and therefore there is locus for the Appellant.

98. In this background, we are unable to accept the Respondents' contention that GIDC's grievances are, in substance, a disguised monetary claim immune from scrutiny. GIDC appears before us in a dual capacity: as

an Operational Creditor whose claim stands admitted, and, also as the statutory land-owning authority whose own regulations and consent are being invoked by a resolution plan that proposes to alter the very character of use of its land. The objection that a plan deploys land owned and regulated by a statutory body without the necessary consequential approvals is not a commercial-wisdom grievance as in the precedents cited in **K. Sashidhar, Essar Steel, Kalpraj Dharamshi or Vallal RCK (supra)**. Herein it is a feasibility objection of the kind this Appellate Tribunal must weigh under [28]Section 30(2)(e) and Regulation 38 (as noted herein earlier), and one to which **Greater Noida Industrial Development Authority v. Prabhjit Singh Soni (supra)** speaks directly — where a plan is built upon land owned by a statutory authority bound by its own regulations, feasibility "demands closer scrutiny and the necessary statutory approvals," and a failure to engage with that dimension is itself appealable error. We accordingly hold that GIDC has the locus to maintain these appeals, that its objections are not foreclosed by the commercial-wisdom line of authority, and that the appeals against the dismissal of I.A. 136/2022 and I.A. 5224/2024 stand on the ordinary

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[28] Section 30. Submission of resolution plan.

(1) A resolution applicant may submit a resolution plan 1[along with an affidavit stating that he is eligible under section 29A] to the resolution professional prepared on the basis of the information memorandum.
(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—
(a)
(b)
(c)
(d)
(e) does not contravene any of the provisions of the law for the time being in force;

appellate footing GIDC claims for them, independent of, though cumulatively reinforcing, its challenge to the approval order under Section 61(3).

99. Thus, we find that the Appellant definitely has a locus and the objections raised by the Respondents are found to be not sustainable.

Lease termination during moratorium by the Appellant/GIDC - Can the Resolution Plan be set aside due to termination of Lease Deed?

100. Now we delve into the issue whether GIDC's termination of the Lease Deed on 13.12.2021 — during the s. 14 moratorium — is void or ineffective as against the CIRP; and, if the Corporate Debtor's title to its sole asset is in question, whether the plan can be feasible. A related sub-question is the effect of the Gujarat High Court's judgment dated 01.12.2025 quashing the termination, and outcome of the LPA against it (which has been decided by the Gujarat High Court at the time of pronouncement of this judgement).

101. Respondents claims that the termination during the moratorium is per se illegal and in the teeth of Section 14 of the court and the Adjudicating Authority rightly so held. The Respondents bring to our notice that the Gujarat High Court on 01-12-2025 quashed the termination and eviction and this ground does not survive. The Appellant/GIDC cannot seek to profit from their own wrong by terminating in breach of the code and then pleading infeasibility from that termination. SRA contends that they are ready and willing to implement the resolution plan regardless of the outcome of the termination of the lease deed and claim that the Corporate Debtor continues to exist.

102. The Appellant claims that the termination question is not for the NCLT/NCLAT. Appellant also brings to our notice that RP chose to litigate it before the Gujarat High Court in SCA 4937/2022. In its Rejoinder Appellant /GIDC claims that it reserved the right to cancel the allotment in its very claim form and no protest was raised against that reservation by anyone. Therefore, as of today, the Corporate Debtor has no right, title or interest in the land, which stands terminated. In this situation the plan is therefore neither feasible nor viable. Further the SRA says it will implement "irrespective of" the High Court outcome shows the SRA is indifferent to title — underscoring infeasibility.

103. Appellant claims that the termination of the lease deed is extraneous to NCLT/NCLAT. Without going into this question, we find that the facts of the matter very much go against the Appellant. We note that during the moratorium per Section 14 of the Code during the pendency of the IBC proceedings, the Appellant/GIDC could not have terminated the lease deed. Furthermore, Section 238 of the Code overrides the lease termination proceedings or eviction proceedings which were ongoing at the start of the CIRP proceedings. This has been held by even the Gujarat High Court in the appeal by the Respondent against the termination of the lease deed. At the time of the arguments, the letter patent application (LPA) from the Appellant's side/GIDC before the Gujarat High Court was pending. From a web search of the Gujarat High Court, we find that even that has been dismissed. In such a situation the contention of the Appellant that, since the lease has been

terminated, consequently the plan is not feasible, does not hold any ground. Therefore, the contentions of the Appellant are rejected on this ground.

104. Thus, on this narrow point, we are unable to accept GIDC's submission that the Corporate Debtor's title stands terminated so as to render the plan infeasible. The termination of the Lease Deed on 13.12.2021 occurred squarely during the subsistence of the Section 14 moratorium, and Section 238 of the Code overrides any provision of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 to the contrary — a position now authoritatively confirmed by the Gujarat High Court's judgment dated 01.12.2025 quashing the termination, GIDC's Letters Patent Appeal against which stands dismissed. GIDC cannot found an infeasibility objection on a termination that was itself void ab initio and has since been judicially undone. This ground fails.

<u>Is the Affidavit filed by the SRA undertaking to pay GIDC's "legitimate claim" binds it to make payment of entire dues</u>

105. Now we delve into another issue which has been agitated by the Appellant, which is that whether the SRA's letter (03.05.2022) and affidavit (20.05.2022) — offering to pay GIDC's "legitimate" claim over and above the plan — bind the SRA to pay GIDC's entire dues, or whether that offer lapsed with the collapse of the contemplated withdrawal of objections; and whether GIDC, having accepted plan payment, is bound by it.

106. The Appellant/GIDC contends that the affidavit binds the SRA to pay the entire dues and GIDC's demand of 18.10.2023 for full payment shows it never accepted ₹ 6.14 crore as full and final.

107. The case for the Respondents (SRA/SREI) is that the offer was made in view of a withdrawal of objections that never happened. Once GIDC refused to withdraw and the NCLAT issued remand order dated 08.08.2024 **[CA (AT) (Ins.) No. 1648-1649/2023)** and which was upheld by Honourable Supreme Court, on 20.08.2024 **(in SRA's Civil Appeals Nos. 8777–8778/2024)**, the 03.05.2022 letter and 20.05.2022 affidavit have no significance. Moreover, the Respondents claims that the offer was only for a “legitimate”/“acceptable” amount, expressly outside the IBC. Respondents also claims that GIDC's real grievance is a monetary one.

108. We find that the offer was made in a specific, conditional context — in contemplation of a withdrawal of objections that did not materialise — and its terms (“legitimate”/“acceptable”) were, on a plain reading, always outside the four corners of the plan and incapable of converting into an unconditional payment obligation once the contemplated withdrawal collapsed. Thus, we find no substance in the contention of the Appellant/GIDC that the SRA's letter dated 03.05.2022 and affidavit dated 20.05.2022, offering to pay GIDC's “legitimate” or “acceptable” claim over and above the plan, bind the SRA to discharge GIDC's entire demand. Thus this ground fails.

Can the Resolution Plan be set aside on the ground that the Sole CoC member has undergone insolvency?

109. Now we delve into the issue whether the approval of the plan by a CoC whose sole member (SREI) was itself admitted to CIRP on 08.10.2021 is vitiated; and whether this ground can be raised at the Appellate stage at all.

110. The Appellant claims that since the sole CoC member was undergoing insolvency, therefore on this ground the plan should be set aside. The Appellant also claims that SREI filed nothing to substantiate decisions taken post-termination of the lease deed (13.12.2021) and initiation of eviction proceedings and there has been no reply to the prayers in IA 5224/2024. On the other hand, SRA/SREI contends that there are no pleadings on this in IA 136/2022 and such a ground cannot be raised belatedly. It is also brought to our notice by the Respondent that the plan was first approved by SREI before its own CIRP. Thereafter the Administrator (appointed on 08.10.2021) and the RBI superseded governance ratified the authorized officers' acts. We find that both sides have not been able to clearly canvass the arguments specifically validating or invalidating approval by a COC whose sole member is in CIRP. In the facts and circumstances of the case the Respondent/SREI was being governed by the Administrator and furthermore the authorized officer's acts were ratified by the Administrator. In such a situation the grounds raised by the Appellant/GIDC are not sustainable and therefore the argument canvassed by the Appellant that approval of the plan by a CoC whose sole member (SREI) was itself admitted to CIRP on 08.10.2021 cannot be considered to be vitiated.

111. Thus, we find that the ground that approval by a CoC whose sole member (SREI) was itself under CIRP from 08.10.2021 is vitiated was not specifically pleaded in I.A. 136/2022, and the record shows that decisions were thereafter taken through and ratified by SREI's Administrator. In the

absence of any authority establishing that approval by a sole CoC member in insolvency is per se vitiated, and given the ratification on record, we do not find this a sustainable independent ground for disturbing the plan. Thus, this ground raised by the Appellant also fails.

<u>De-notification premise, feasibility, and the fraud allegation</u>

112. In this section we deal with the issue whether the resolution plan, premised on the demised premises standing or becoming de-notified from SEZ to non-SEZ industrial use, and on GIDC's consent to change of use and sub-plotting being assumed rather than obtained, is feasible and viable within the meaning of Section 30(2) of the Code.

113. This is the heart of the matter. We note that GIDC's Appeals, CA (AT) (Ins) 626-628/2025 attacks the approved resolution plan on the grounds that whether a resolution plan can provide for converting the demised SEZ premises to non-SEZ industrial use, and for sub-plotting / sub-leasing, without the lessor's consent.

114. It is the claim of the SRA/R1 that the lease deed itself permits a change of land use per Clause 3.3 (v)[29] and the lease deed further allows subleasing as per Clause 4.1-4.3[30] without further consent.

[29] **<u>Clause 3.3 (v)</u>** of the Lease Deed 21.02.2008: Notwithstanding the foregoing however, the parties herewith agree that the lessee may, during the term of this lease, seek a change of the nature of use of the demised premises from an SEZ to any other industrial use duly sanctioned under the applicable statutory or regulatory provisions enacted in reference thereto, with prior consent, approval or permission of the lessor.

[30] **<u>4. SUB-LEASE</u>**

115. SRA/R1 further relies on Regulation 37(j) of the CIRP Regulations, which expressly permits a change in the portfolio of goods or services under a plan. SRA/R1 claims that the resolution plan merely continues the Corporate Debtors' object of developing and sub-leasing the land.

116. We observe that GIDC/Appellant, has contended in their appeal that the change of land use is not simpliciter as clause 3.3 (v), which is relied upon by the SRA, itself requires the lessor's/GIDC's prior consent, approval, or permission. Furthermore, for SEZ land the Development Commissioner's permission is also required along with the return of availed benefits.

117. A perusal of the relevant clauses of the lease deed brings clarity and we find that Clause 3.3 (v) permits a change of use but only on the lessor's consent. The relevant Clause 3.3(v) is extracted as below for better appreciation of the terms and conditions of the lease deed for the change of use from SEZ to any other industrial use:

4.1 The Lessor herewith undertakes that the Lessee is free to make independent sub-Lease with units within the SEZ in accordance with the SEZ Act and Rules thereunder. Lessee shall sub-lease the parts of the Demised Premises on the terms and conditions as finalized by the Lessee but not contravening to the Lease Deed executed with Lessor.

4.2 In the event of cancellation/surrender of plot or building or structure on Account of the non-fulfillment of the terms and conditions of the sub-lease or any other agreement or conditions of approval of such Units, the Lessee may offer such plots to other Units in accordance with the provisions of applicable law.

4.3 The Lessor agrees that no administrative fee or any transfer fee shall be payable to the Lessor by the Lessee in respect of sub-leases entered by the Lessee for giving land to Units in SEZ area.

> "3.3(v) Notwithstanding the foregoing however, the Parties herewith agree that the Lessee may during the Term of this Lease seek a change of the nature of use of the Demised Premises from an SEZ to any other industrial use duly sanctioned under the applicable statutory of regulatory provisions enacted in reference thereto <u>with prior consent, approval or permission of the Lessor</u>."

118. We further note that the resolution plan makes a presumption that the permission will be granted to convert the land from SEZ to non-SEZ. This is apparent from the following extracts from the resolution plan, which were brought to our notice by GIDC:

> "Based on the information available on the official website of the SEZ-INDIA, pertaining to the SEZs which are notified and operating in the country and also pertaining to the list published for existing notified SEZ in the country wherein the name of the Corporate Debtor is not appearing in the list. The Development Commissioner, SEZ has also not filed any claim(s) for any of their dues pertaining to the Corporate Debtor with the Resolution Professional. So. the Resolution Applicant have all the good reasons to believe that the SEZ de-notification is approved and all the dues between the Corporate Debtor and Development Commissioner. SEZ might have been settled at the time of de-notification.
>
> With the de-notification of the SEZ, now the only business activity that can be carried out by the Corporate Debtor is the development of the Demised Premises by building the necessary infrastructure within the Demised Premises as the anchor tenant, on-boarding the entrepreneurial units by sub-leasing the industrial plots created & developed within the Demised Premises as per the customized requirement for the proposed entrepreneurs who would be occupying the units."
>
> [page 306 APB: page 58-Res Plan]

119. We find that on the basis of these presumptions, the SRA has come to its own conclusion that, with the denotification of the SEZ, the only business activity that can be carried out by CD is the development of the demised premises by building necessary infrastructure within the demised premises as an anchor tenant. On the basis of the presumption of denotification, the SRA provides its own interpretation of the lease deed and makes a proposal in the resolution plan as follows:

> "The terms of the Lease Deed also provide for the change of sector specific usage to general industrial usage and also the terms therein also permit the Lessee to be the developer and act as an anchor tenant for the Demised Premises as per the prevailing regulations of the GIDC. The Resolution Applicant envisages undertaking the development of the Demised Premises by building the necessary infrastructure within the Demised Premises, on-boarding the entrepreneurial units by sub-leasing the industrial plots created & developed within the Demised Premises as per the customized requirement for the proposed entrepreneurs who would be occupying the units."

120. We note that as per [29]clause 3.3 (v), the change of the nature of use of the demised premises from an SEZ to any other industrial use is possible only with the prior consent or permission of the lessor. Even though correspondence was going on between the Lesser, Lessee and the Development Commissioner but it has not fructified in the grant of the permission to the CD for use of the land from SEZ to any other industrial use. Thus, the resolution plan cannot make a presumption that it has been granted or it will be granted. And on that basis , SRA makes a proposal for

developing the leased area as an anchor tenant for purposes other than a SEZ. Such a presumption, if allowed will make the plan a conditional plan.

121. To better understand the contents of the resolution plan, we need to compare its contents with the information memorandum. The information memorandum, which was not on record, was handed over in the open court by the Respondents. We had gone through the information memorandum (IM) and we do not find any disclosure of the pendency of the SEZ denotification process or any pending application. If this information memorandum did not have such vital information, it means that the prospective resolution applicants would not have been aware of such relevant fact. This information was not commonly available to all and was known only to the Corporate Debtor and in the current scenario of the CIR Proceedings with the Resolution Professional. It is worth noting that the Information Memorandum did not disclose that the Corporate Debtor is trying and likely to get permission for use other than SEZ purpose. The exchange of correspondence between the Corporate Debtor, GIDC and Development Commissioner was not public information. When we peruse the contents of the resolution plan of the successful resolution applicant, inference can be drawn that it had detailed information relating to the correspondence which was going on between the Corporate Debtor and the GIDC and also the development commissioner's office.

122. Such a level playing field was not available to the other prospective resolution applicants. If the other resolution applicants had known that a

conditional resolution plan could be submitted, which allows the conversion from SEZ to non-SEZ purposes also, then probably more people would have applied and value maximization could have happened.

123. A perusal of the resolution plan also indicates that the information contained in the resolution plan is much more than what was available in the information memorandum and also in the public domain, as a lot of specific details relating to the Corporate Debtor were contained in the resolution plan. We are not going deep into the circumstances under which this information was available with the SRA - whether it was exclusively available to SRA or to the other resolution applicants or not but suffice it to say that it raises a lot of doubts about the level playing field and the resolution process itself. Without going into the details of excessive information available with the SRA, we delve into the other related and important issue that if the SRA was to be allowed for converting from SEZ to any other industrial use, it should have been made explicit in the information memorandum for all resolution applicants and that would have made a level playing field for others.

124. We further note that the resolution plan itself admits that the land leased by GIDC is the only asset available with the Corporate Debtor and the entire revival of the Corporate Debtor depends on how the said asset is used or utilized. The relevant paragraph is extracted as below:

> "This Demised Premises along-with all its rights is the only the asset available with the Corporate Debtor and entire revival of the Corporate Debtor depends on how the said asset is utilized and put to its best use. With the development of industrial infrastructure facilities; the same can

generate steady revenues in the form of lease rentals if granted on sub-lease for long term to industrial units of good repute or looking at the current market scenario, even the Corporate Debtor has the option of charging the entire premium amount upfront to recover the capital cost."

125. Perusal of the Resolution Plan indicates that SRA made the resolution plan basis visit and inspection of the project site, information available on the official website of the SEZ-India, and its commercial analysis, and also basis presumptions that this land can be used for any other purpose also.–Thus, we find that the resolution plan itself is based on some presumptions, which makes it a conditional plan.

126. Another line of argument canvassed by the SRA is reliance on the Regulation 37(j) of the CIRP Regulations, which permit a change in the portfolio of goods or services under a plan. We have gone through the provision and find that a change in the portfolio of goods or services is not the same as the change of the use of the land from SEZ to any other industrial purpose. Therefore, reliance on this regulation is misplaced and we reject such a contention.

127. It is also brought to our notice by the Appellant that the Resolution Plan seeks reliefs and concessions which are re-writing the lease Deed. GIDC further claims that a plan cannot rewrite the lease. Presumptions by SRA of change of use to non SEZ along with the approvals for reliefs and conclusions all the more conditional.

128. From the materials placed on record we find an important fact that SEZ denotification was only granted in principle, subject to certain conditions. Does this mean that the non-issuance of the formal notification vitiates a plan which is premised on the land being available for non-SEZ use? Is there any suppression/fraud on the Adjudicating Authority as GIDC alleges? Briefly speaking Clause 2.1 of the Lease Deed records that the Demised Premises was allotted "on an 'as is where is' basis for the purpose of setting up an SEZ." Clause [29]3.3(v) permits the Lessee to "seek a change of the nature of use of the Demised Premises from an SEZ to any other industrial use duly sanctioned under the applicable statutory or regulatory provisions," but only "with prior consent, approval or permission of the Lessor." Further that consent has admittedly never been granted. Nor has the Development Commissioner issued the "no benefits availed"/refund-of-benefits certificate that alone completes the de-notification process; correspondence between the Corporate Debtor, GIDC and the Development Commissioner's office on this very question remained pending as recently as March–July 2024, well after the plan had been approved by the CoC. Notwithstanding this, the resolution plan proceeds on the SRA's own stated assumption — recorded in terms in the plan itself — that because the Corporate Debtor does not presently appear on the published list of notified SEZs and the Development Commissioner has filed no claim in the CIRP, the SRA has "all the good reasons to believe that the SEZ de-notification is approved." On that unverified premise, the plan proposes to develop the Demised Premises as an anchor tenant and to sub-lease industrial plots created within it for general, non-SEZ industrial use —

activity that Clause 3.3(v) permits only with GIDC's prior consent, and that, for SEZ land, additionally requires the Development Commissioner's formal permission and completion of the benefits-refund process. A resolution plan cannot proceed on a presumption of a regulatory approval that has not been obtained, particularly where the very authority whose consent is required has, throughout these proceedings, actively contested that presumption. To approve such a plan is, in substance, to accept a conditional and contingent plan as though it were unconditional, leaving the realisation of the Corporate Debtor's sole asset hostage to a future regulatory event that GIDC — the regulator — says will not occur. We are unable to regard reliance on Regulation 37(j) of the CIRP Regulations (permitting a change in the "portfolio of goods or services"). We note that a change in the sanctioned character of use of statutorily regulated leasehold land is not a mere portfolio adjustment within the CoC's ordinary commercial discretion. It is a matter requiring the consent of the land-owning regulator under the very lease on which the Corporate Debtor's existence depends.

129. We are further troubled by the disparity between the disclosures in the Information Memorandum placed before all prospective resolution applicants and the granular knowledge of the de-notification correspondence reflected in the SRA's own resolution plan. The IM placed before us contains no disclosure of the pendency, or incompleteness, of the de-notification process, nor of the correspondence exchanged between the Corporate Debtor, GIDC and the Development Commissioner. Yet the resolution plan submitted by the SRA

demonstrates a level of familiarity with that very correspondence that goes well beyond what was available in the IM or in the public domain. If conversion from SEZ to non-SEZ use, and the sub-plotting/sub-leasing that the SRA's plan is built upon, were genuinely open possibilities, that fact — and the existence and status of the correspondence bearing upon it — ought to have been disclosed in the IM to all resolution applicants alike, so that a level playing field existed for the formulation of competing plans and so that the CoC's commercial wisdom was exercised on complete and accurate information, consistent with the object of value maximisation. Its omission from the IM, coupled with its evident availability to the SRA, is sufficient by itself to vitiate the informational foundation on which the plan was invited, evaluated and approved. We do not find it necessary, for the purposes of this judgment, to attribute this omission to any individual; it suffices to hold, as we do, that the Information Memorandum was materially incomplete and inaccurate on a matter going to the very feasibility of the plan, and that a plan invited and approved on such an Information Memorandum cannot be sustained.

130. We accordingly hold that the resolution plan of the SRA, resting as it does on contested presumption that the SEZ status of the Demised Premises stands or will stand de-notified, without GIDC's consent under Clause 3.3(v) of the Lease Deed and without the Development Commissioner's certificate, is not a feasible or viable plan within the meaning of Section 30(2)(e) of the Code and Regulation 38 of the CIRP Regulations; and that its approval, invited and

obtained on an Information Memorandum that did not disclose the true and complete state of the de-notification process, cannot stand.

Costs

131. The Appellant/Corporate Guarantor brings to our notice that NCLT, New Delhi has imposed cost of ₹ 50,000/- on the Appellant without providing any proper reason. The application being IA No. 596/ND/2022 was filed by the Appellant in good faith before the Ld. NCLT, New Delhi to bring the facts on record, and the Ld. NCLT, New Delhi without appreciating the same have simply imposed the said cost without providing any formal reasons. Thus, the said cost imposed by the Ld. NCLT, New Delhi should be waived and/ or set aside. After having gone through the facts and circumstances of the case and also the impugned order, we do not find sufficient grounds to impose a cost of ₹50,000. As the cost was imposed without any reasons being recorded for the quantum or the necessity thereof, and in light of our findings above, the imposition of costs cannot be sustained and we are inclined to set aside the imposition of cost on the Appellant/the suspended director by the order dated 13.09.2023.

Adequacy of reasons on the objection-IAs

132. Now we delve into the issue whether the composite order adequately reasons the dismissal of IA 136/2022 and IA 5224/2024 — disposed of by reference in para 10.2 rather than by discrete issue-by-issue findings — such that the dismissals withstand appellate scrutiny.

133. The Appellant contends that the objection-IAs were disposed of without engaging the specific grounds. The reasoning is by reference and not by any finding, which was the basis for remand. On the other hand, the Respondent

(SRA/SREI) brings to our notice that the order does deal with feasibility/viability and it holds it to be within COC's commercial wisdom. For better appreciation of the contention of the Appellant, we extract the contents of Para 10.2 in the impugned order dated 19.02.2025:

> "We have taken a view in IA-136/2022 In (IB) - 571(ND) / 2020 filed by Gujarat Industrial Development Corporation, Applicant under the provision of Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 and IA-5224/2024 In (IB)-571(ND)/2020 filed by Gujarat Industrial Development Corporation, Applicant under the provision of Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 that there is no infirmity in the decision of the CoC and find no reason to interfere in the decision on the Resolution Plan taken by the CoC in their Commercial Wisdom and dismissed both the IAs (IA-136/2022 and IA-5224/2024). Therefore, the prayers in the present IA4585/2021 survives."

134. We find that in IA-5224/24, the prayer was to defer the hearing pending the Gujarat High Court order and since the matter has already been disposed of by the Gujarat High Court, therefore there is no merit in continuing with this IA.

135. As examined by us separately, in IA 136/2022 the Appellant was raising issues relating to the legality and feasibility of the plan and was not an attack on the commercial wisdom. The Appellant, being the lessee and also the land regulator, had a much better locus and sufficient justification to question the resolution plan wherein it is being treated as an ordinary Operational Creditor

(supra). The plan deploys the land which is owned and regulated by the Appellant and therefore the commercial wisdom line which has been taken up by the Adjudicating Authority may not be sufficient justification to ignore the grounds raised by the Appellant in IA 136 of 2022. We further note that the commercial wisdom line does not immunize a want of reasons. It could at best limit the grounds of interference. We need to note that it was the duty of the Adjudicating Authority to deal with the objections that were formally restored and heard de nova by the NCLAT, on this Appellate Tribunal's direction of 08.08.2024. Furthermore, the judicial precedent in **Greater Noida Industrial Development Authority v. Prabhjit Singh Soni** is very pertinent. We need to note that the statutory approval aspect of the land which has been raised herein has to be dealt with while dealing with the feasibility. Therefore, the objection-IAs, which were restored by this Appellate Tribunal, cannot be dismissed just by a reference. There has to be adequacy of reasons.

<u>Can the Appellant contest the Reliefs and Concessions?</u>

136. Appellant claims that the relief sought are very wide and contrary to the law and a plan cannot create rights alien to it. On the other hand, the Respondent/SRA/SREI contends that para 10.8 grants no individual relief and each one have to be dealt “strictly as per law”. Therefore, there is nothing to be aggrieved by and even the SRA has not appealed against these releases. It claims that the plan as a whole is compliant and the reliefs are merely to enable the implementation and create no extraneous rights. We observe that this has been dealt with by the Adjudicating Authority at para 10.8, which is extracted as below for better appreciation:

"The reliefs, concessions and waivers sought by the Successful Resolution Applicant will be dealt with strictly as per law"

137. We observe that the Adjudicating Authority has given a very broad waiver with respect to the treatment of the SRA's reliefs, concessions, and waivers when it states that it to be dealt with strictly as per law. It could be appropriate in a normal situation but in this situation, wherein the main asset of the Corporate Debtor is land which is leased by the appellant and the Appellant is also the regulator, it is appropriate that the objections raised by the Appellant, particularly citing the judgment of **Greater Noida Industrial Development Authority v. Prabhjit Singh Soni (supra)** should have been dealt with appropriately.

138. The most important issue which was raised by the Appellant was with respect to the presumption of the Respondent/SRA that denotification has already happened and that concession will be granted. If such notification has to be dealt with as per law and it has to be decided by the Appellant being a regulator, then it is a resolution plan fraught with a lot of future problems and thus not a feasible resolution plan.

Common Conclusions

139. For the reasons recorded above, we hold:

(a) that GIDC has the locus and the appeals are maintainable;

(b) that the resolution plan of Zaveri & Co. Pvt. Ltd., proceeding on an unverified and contested presumption that the Demised Premises stands or will stand de-notified from SEZ to non-SEZ industrial use, without GIDC's consent as lessor and without the

Development Commissioner's certificate, is not feasible or viable and its approval cannot be sustained;

(c) that the Information Memorandum on which the plan was invited and evaluated was materially erroneous in overstating SREI's claim, misclassifying ACIL's status, and omitting material disclosures on the de-notification process;

(d) that the dismissal of GIDC's objection-IA (136/2022) by bare reference, without discrete reasons, cannot be sustained; and

(e) that ACIL/BRS Ventures Investments Ltd. is entitled to be recognised as a secured financial creditor of the Corporate Debtor to the extent of ₹38.87 crore paid to SREI in the ACIL CIRP, and that SREI's recoverable claim against the Corporate Debtor is to be computed on the footing of the finally adjudicated figure of ₹241.27 crore, net of such credit.

140. In these circumstances, the appropriate and only just course is to set aside the approval of the resolution plan and direct that the CIRP of the Corporate Debtor be recommenced from the stage of a fresh invitation of Expression of Interest, on a corrected and complete Information Memorandum.

141. As we noted herein that the CIR proceedings have not gone ahead smoothly, partly due to the errors which have crept into the information memorandum and also partly due to acceptance of the exaggerated claims and consequently defective information memorandum being published and several other issues which we have already noted here in earlier, it would therefore be appropriate that it is led by a fresh resolution professional.

Order

142. Company Appeals (AT)(Ins) Nos. 626, 627 and 628 of 2025, filed by Gujarat Industrial Development Corporation, are allowed as described herein. The composite order dated 19.02.2025 is set aside in its entirety, including the approval of the resolution plan of Zaveri & Co. Pvt. Ltd. in I.A. No. 4585 of 2021 and the dismissal of I.A. No. 136 of 2022; I.A. No. 5224 of 2024 having been rendered academic by the decision of the Gujarat High Court, no further orders are required thereon.

143. Company Appeal (AT)(Ins) No. 1557 of 2023 is allowed in part. The order dated 13.09.2023 in I.A. No. 1764 of 2021 is set aside. i.e. setting aside admission of claim of ₹ 1885.05 crores.

144. The costs of ₹50,000 imposed on the Appellant are set aside.

145. Company Appeal (AT)(Ins) No. 1684 of 2023 is allowed in part. The order dated 13.09.2023 in I.A. No. 596 of 2022 is set aside to the extent it classifies Assam Company India Limited as an unsecured related-party Financial Creditor. It is declared and directed that Assam Company India Limited stands subrogated to, and shall be recognised and ranked as, a secured Financial Creditor of the Corporate Debtor to the extent of ₹38.87 crore paid by it (through its resolution applicant, BRS Ventures Investments Ltd.) to SREI Infrastructure Finance Limited in the Corporate Insolvency Resolution Process of Assam Company India Limited.

146. The resolution plan of Zaveri & Co. Pvt. Ltd., as approved, stands set aside and shall not be implemented further. Any steps already taken in implementation shall abide by the directions herein, and the Resolution Professional/CoC, as reconstituted pursuant to the directions below, shall take an account of any part-implementation and payments made, for adjustment in the fresh process.

147. The Adjudicating Authority/Resolution Professional shall recommence the Corporate Insolvency Resolution Process of the Corporate Debtor from the stage of issuance of a fresh Form G / invitation of Expression of Interest, on the basis of a corrected and complete Information Memorandum, which shall, without limitation:

i. correctly and completely disclose the status of the Demised Premises as SEZ-notified land, the precise stage and status of any de-notification correspondence or proceedings with GIDC and the office of the Development Commissioner, and the requirement of GIDC's prior consent under Clause 3.3(v) of the Lease Deed for any change in the nature of use, so that all prospective resolution applicants compete on an equal informational footing;

ii. reflect the claim of SREI Infrastructure Finance Limited computed on the basis of the finally adjudicated figure of ₹241.27 crore (as fixed by the NCLT, Guwahati Bench by order dated 23.07.2018 and affirmed by this Tribunal on 01.02.2019), net of the sum of ₹ 38.87 crore already recovered by SREI in the corporate insolvency resolution process of Assam Company India Limited, subject to independent verification by the newly engaged Resolution Professional; and

iii. reflect Assam Company India Limited as a secured financial creditor of the Corporate Debtor to the extent of ₹38.87 crore, ranking pari passu with other secured financial creditors to that extent.

148. The Adjudicating Authority shall, within two weeks of this order, issue fresh orders and appoint a new Resolution Professional to carry the process forward in terms of this judgment.

149. The period from the date of admission of the Corporate Debtor into CIRP (18.11.2020) until the date of this judgment shall stand excluded for the purpose of computing the timelines under Section 12 of the Code, and the CIRP shall proceed afresh from the stage directed above within the timelines prescribed by the Code and the Regulations framed thereunder, computed from the date of this order.

150. Status quo with respect to title, possession and use of the Demised Premises, as it stood immediately prior to the resolution plan's implementation, shall be maintained until the Committee of Creditors is reconstituted and appropriate directions are obtained from the Adjudicating Authority.

151. It is clarified, for the avoidance of doubt, that our findings on the lease termination, the SRA's affidavit dated 20.05.2022, and the sole-CoC-member ground are affirmed against GIDC and do not survive as independent

grounds; they are recorded here only for completeness and do not detract from the relief granted on the grounds set out at above.

152. All IAs stand disposed of as per this order. Parties shall bear their own costs.

[Justice N. Seshasayee]
Member (Judicial)

[Arun Baroka]
Member (Technical)

New Delhi.
August 31, 2026.

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