

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

Company Appeal (AT) (Insolvency) No. 179 of 2025

[Arising out of Order dated 22.01.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi in IA No.52 of 2024 & IA No.5176 of 2024 in Company Petition No. (IB)- 653(PB)/2023]

IN THE MATTER OF:

Alchemist Asset Reconstruction Company Ltd.

...Appellant

Versus

ASC Insolvency Services LLP & Ors.

...Respondents

Present:

For Appellant: **Mr. Krishnendu Datta, Sr. Advocate with Mr. Milan Singh Negi, Mr. Nikhil Kumar Jha, Ms. Aakriti Gupta and Ms. Alina Merin Mathew, Advocates**

For Respondents: **Mr. Ramji Srinivasan, Sr. Advocate with Mr. Arijit Mazumdar, Ms. Akansha Kaushik and Mr. Shambo Nandy, Advocates for R-2.
Mr. Abhishek Sinha, Mr. Dhruv Malik, Ms. Aditi Sinha and Ms. Rajnandini Singh, Advocates for R-3/NARCL.**

J U D G M E N T
(15th May, 2025)

Ashok Bhushan, J.

This Appeal by a Dissenting Financial Creditor has been filed challenging the order dated 22.01.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi allowing IA No.52 of 2024 approving the Resolution Plan submitted by Respondent No.2- 'OCL Iron and Steel Limited' (Successful Resolution

Applicant) as well as rejecting IA No.5176 of 2024 filed by the Respondent No.5- 'Gateway Investment Management Services Limited' (Unsuccessful Resolution Applicant).

2. Brief facts of the case necessary to be noticed for deciding the Appeal are:-

2.1. The Corporate Debtor- 'Helios Photo Voltaic Ltd.' was subjected to Corporate Insolvency Resolution Process (CIRP) by order dated 11.01.2024 on an application filed by Respondent No.3- 'National Asset Reconstruction Company Ltd.'. Appellant being Secured Financial Creditor of the Corporate Debtor filed its claim in response to the public announcement, Appellant was included as member of the Committee of Creditors (CoC) with voting share of 18.69%. The other two CoC members were National Asset Reconstruction Company Limited (Respondent No.3) had 73.36% vote shares and third member, International Finance Corporation (Respondent No.4) having vote share of 7.95%. CoC finalised the Request for Resolution Plan (RFRP) in the CoC meeting. RFRP was issued by the Resolution Professional with the approval of the CoC under which last date for submission of the Resolution Plan was 06.06.2024. Resolution Plans were submitted by the Respondent Nos.2 and 5 and other Resolution Applicants. On 29.07.2024, CoC in 11th meeting decided to hold a Challenge Process. Challenge Process was conducted on 29.07.2024 where Respondent Nos.2 and 5 and other Resolution Applicants participated. The Respondent No.5 offered net present value of Rs.101,05,01,742/- whereas Respondent No.2 - 'OCL Iron and Steel Limited' offered net present value of

Rs.99,05,00,000/-. All the Resolution Applicants were permitted to submit their final Resolution Plan in accordance with the final offer in the bidding process by 05.08.2024. Resolution Plans were submitted by the Resolution Applicants including Respondent Nos.2 and 5. 30.08.2024 was fixed as a last date for submission of addendums /clarification. Voting commenced on the Resolution Plan on 31.08.2024 and was to be completed by 07.09.2024. On 05.09.2024, Respondent No.5 issued e-mail to the CoC and the Resolution Professional that it is offering payment of second instalment (75% of NPV) within 90 days instead of 364 days which was proposed in the Resolution Plan. Voting result on the Resolution Plan was placed before the CoC and CoC in meeting dated 12.09.2024 approved the Resolution Plan of Respondent No.2 with 73.38% vote share. Respondent No.5 filed a Writ Petition No.13278 of 2024 in the Delhi High Court seeking a direction to consider its revised offer given vide e-mail dated 05.09.2024. Writ Petition was dismissed by the Delhi High Court on 23.09.2024. A review application was also filed by the Respondent No.5 before the Delhi High Court which too was disposed of on 04.10.2024. On 07.10.2024, Respondent No.5 gave revised financial offer of Rs.120 Crores payable within 30 days. The CoC in the meeting held on 14.10.2024 considered the revised financial proposal submitted by Respondent No.5 and resolved to adhere to the provisions of the IBC and RFRP and not to consider any revised offer after approval of the Resolution Plan. Respondent No.5 filed an IA No.5176 of 2024 seeking consideration of its revised offer submitted on 07.10.2024 and also praying for rejection of the Resolution Plan submitted by Respondent No.2. The

aforesaid applications was dismissed on 22.01.2025 by the Adjudicating Authority aggrieved by which order this Appeal has been filed.

2.2. The Appeal was filed on 24.01.2025. When it came for consideration on 31.01.2025, Counsel for the Appellant prays leave to file Additional Affidavit. Time was allowed to file Additional Affidavit. All the parties have appeared on 31.01.2025 when the Appeal was heard. On 07.02.2025, time was allowed to file reply to Additional Affidavit before the next date. Reply to the Additional Affidavit has been filed. Appeal was again taken on 19.03.2025 when Learned Counsel for the Respondent No.1 submitted that the composite reply to the Additional Affidavit has already been filed. Respondent Nos.2 and 3 submitted that they have also filed reply to the Additional Affidavit of the Appellant and they relied on the composite reply filed by Respondent No.1. Appeal was heard on 26.03.2025 and 28.03.2025 when orders were reserved.

3. Shri Krishnendu Datta, Learned Senior Counsel appearing for the Appellant in support of the Appeal contends that the Appellant being Secured Financial Creditor is an aggrieved person who is interested in the value maximisation of the Corporate Debtor. Counsel for the Appellant referring to the grounds raised in the Additional Affidavit submits that the proposed acquisition of the Corporate Debtor through Composite Scheme of Merger and Demerger in the Resolution Plan is a combination in terms of Section 5 of the Competition Act, 2002 and obtaining approval of the Competition Commission of India (CCI) for combination is a mandatory condition and no approval having been obtained from CCI, the approval of

the Resolution Plan is contrary to the provisions of Section 5 of the Competition Act, 2002 and deserves to be set aside on this ground. Counsel for the Appellant has relied on judgment of the Hon'ble Supreme Court in ***“Independent Sugar Corporation Ltd. vs. Girish Sriram Juneja and Ors.- Civil Appeal No.6071 of 2023”*** decided on 29.01.2025. It is further submitted that the proposed assignment of debt from an ARC to the SRA who is non-ARC is impermissible in terms of the SARFAESI Act, 2002 and RBI's Master Directions. It is submitted that an ARC being a financial entity registered under Section 3 of the SARFAESI Act with RBI, is strictly regulated in terms of SARFAESI Act, 2002 as well as RBI's Master Directions which permit the ARC to carry out only such activities which are specifically permitted under the law. ARC is not permitted to assign its debt to non-ARC, hence, assignment of debt under the Resolution Plan to SRA is contrary to law and Resolution Plan deserves to be rejected. It is further submitted that the proposed assignment of debt from International Finance Corporation (Respondent No.4 herein) is impermissible. Assignment of debt from Respondent No.4 being an ECB lender to a non-ECB lender is clearly in contravention of law. Counsel for the Appellant further submitted that the proposed treatment of Noida Project Land (sub-leased to Corporate Debtor) post termination of the sub-lease deed by the lessor and creation of rights in favour of third party could not have been included in the Resolution Plan. Resolution Plan thus, included third party assets which is impermissible. SRA has provided for unilateral and illegal withdrawal of the termination letter by making some payment to the Liquidator of MBIL, despite the fact that such lease rights have been assigned to a third party. The proposal in

the Resolution Plan qua the Noida land is in contravention of the law. It is submitted that in addition of the above said grounds, the Resolution Plan fails to maximise the value of the Corporate Debtor. It is submitted that the Respondent No.5 who has given the highest NPV has enhanced its offer vide email dated 07.10.2024 to Rs.120,00,00,000/- which was not accepted by the CoC in its meeting held on 14.10.2024. Respondent No.3 being the largest member of the CoC with 73.36% vote did not agree to accept the revised offer of Rs.120,00,00,000/- although commercial wisdom of the CoC is non-justiciable but in the facts of the present case, it cannot be said that CoC has exercised its commercial wisdom. CoC failed to maximise the value of the Corporate Debtor. It is submitted that in view of the aforesaid grounds the Resolution Plan deserves to be rejected and the Adjudicating Authority committed error in approving the Resolution Plan.

4. Counsel for the Resolution Professional refuting the submissions of the Counsel for the Appellant submits that the entire CIRP process was conducted in accordance with the IBC and CIRP Regulations. Resolution Plans which were filed on 06.06.2024 were required to undergo a Challenge Process which was conducted on 29.07.2024. After the Challenge Process, all the Resolution Applicants were required to submit their final Resolution Plan by 05.08.2024. All Resolution Applicants included Respondent Nos.2 and 5 submitted their final Resolution Plans in accordance with the bidding in Challenge Process by 05.08.2024. All Resolution Applicants were also permitted to submit addendum/clarification which addendum/clarification were submitted by Resolution Applicant by 30.08.2024. Marks of Resolution Applicants were computed as per the evaluation matrix both on quantitative

and qualitative basis and Respondent No.2 secured 51 marks whereas Respondent No.5 secured 48 marks. Voting on the plan commenced on 31.08.2024 and was to be completed on 07.09.2024. On 05.09.2024, Respondent No.5 sent a revised offer copy of which e-mail was sent to the CoC members as well as the Resolution Professional. As per the Challenge Process Document, financial offers received in the Challenge Process could not be modified by any Resolution Applicants, hence, revised financial offer given on 05.09.2024 was not liable to be considered. In the CoC meeting held on 12.09.2024, Resolution Plan of Respondent No.2 was approved with 73.38% vote share. Letter of Intent (LoI) was issued and Performance Guarantee has already been submitted by Respondent No.2. Respondent No.5 has given a revised offer of Rs.120 Crores on 07.10.2024. The CoC in its meeting held on 14.10.2024 considered the revised offer dated 07.10.2024 submitted by Respondent No.5 and was of the view that in view of the RFRP and the Challenge Process Document, no revised offer can be considered, Resolution Plan having already been approved on 12.09.2024. It is further submitted that there is no embargo on Asset Reconstruction Company to assign their debt to non-ARC. It is further submitted that the provisions of Section 5 of the Competition Act, 2002 are not attracted. The value of the Corporate Debtor is only Rs.70.76 Crores and turnover of Rs.10.72 Crores, no prior approval from CCI was required to be obtained. It is submitted that the Appellant is Dissenting Financial Creditor who has never raised any objection, which is now sought to be raised in the Additional Affidavit, in the meetings of the CoC although Appellant was part of the CoC, objections are raised as an afterthought to delay

implementation. Appellant having never raised any such objection, it is precluded from raising any objection in the present Appeal. Counsel has referred to Notification dated 07.03.2025 and 09.09.2024.

5. Counsel for the Respondent No.3 refuting the submissions of the Counsel for the Appellant submits that the Adjudicating Authority has rightly approved the decision of the CoC approving the Resolution Plan with requisite majority. CoC in its commercial wisdom decided to approve the Resolution Plan submitted by Respondent No.2 which has secured highest marks on the evaluation matrix. The Respondent No.5 who had given Rs.101 Crore had proposed to give 25% of the amount within 45 days and rest 75% within 364 days. The revised offer given by e-mail dated 05.09.2024 could not have been considered since the voting had already commenced on the Resolution Plan and as per Process Document, no Applicant was entitled to modify its offer. It is further submitted that the provisions of the SARFAESI Act, 2002 or the RBI (Asset Reconstruction Companies) Directions 2024 does not prohibit ARCs from assigning its debt to a non-ARC entity. It is submitted that the judgment of the Hon'ble Supreme Court in ***Independent Sugar Corporation Ltd.*** (supra) is not applicable in the present case. In the present case, no prior approval of the CCI was required under Section 5. It is submitted that by virtue of Notification issued by Central Government on 07.03.2024 any merger or amalgamation referred to in Section 5(c) of the Competition Act where the value of assets being acquired, taken control of, merged or amalgamated is not more than Rs.450 Crores in India or turnover or not more than Rs.1250 Crores in India are exempt from the provisions of Section 5 of the

Competition Act for a period of two years. It is submitted that as per the above Notification dated 07.03.2024, the Corporate Debtor's value being less than Rs.450 Crores, acquisition of Corporate Debtor by merger was exempted and there is no applicability of Section 5. With regard to Noida Project Land, it is submitted that the Resolution Plan of SRA mentioned that it will continue the litigation as regard the Noida Project Land after approval of the Resolution Plan, hence, there is no violation of any provision.

6. Counsel for the Successful Resolution Applicant (SRA) refuting the submissions of the Counsel for the Appellant submits that the submission of the Appellant that Composite Scheme of Merger and Demerger required prior approval of the CCI is not correct. The value of Corporate Debtor being less than the amount as provided in Notification dated 07.03.2024 obtaining prior approval from the CCI for combination under Section 5 of the CCI is thus, clearly exempted and there is no applicability of Section 5 nor there was any requirement of obtaining prior approval of the CCI. Financial Statement of the Corporate Debtor as on 31.03.2023 mentions that its value is Rs.79,78,84,000/- which is much less than Rs.450 Crores. It is submitted that the assignment of debt from ARC to non-ARC entity is not prohibited and there is no prohibition under the SARFAESI Act, 2002 or Master Direction- Reserve Bank of India (Asset Reconstruction Companies) Directions, 2024. Any approval from the RBI with respect to external commercial borrowing can be obtained under Section 31(4) within one year after approval of the Resolution Plan. The Corporate Debtor had acquired leasehold right over a Noida Project Land along with building structures in 2008. The lease was terminated prior to initiation of CIRP of the Corporate

Debtor. Litigation with regard to Project Land is pending before the Adjudicating Authority. SRA has acknowledged the pending litigation. SRA has offered to pay the lessor Rs.7,20,00,000/- as a solution to ending the dispute regarding the project. The money offered to the lessor is in addition to the payments to be made to the financial creditors under the Resolution Plan of SRA. The above mechanism does not violate any provision of the Code. It is submitted that the Appellant who is Dissenting Financial Creditor is taking steps to obstruct the implementation of the Resolution Plan.

7. We have considered the submissions of the Counsel for the parties and perused the record.

8. The Appellant was part of the CoC having 18.69% vote shares, Appellant participated in the process of the CoC. The RFRP and the Evaluation Matrix was approved by the CoC with 81.31% vote share. Resolution Plan was approved on 12.09.2024. After receiving the final Resolution Plans by the Resolution Applicants by 05.08.2024, marks were computed as per Evaluation Matrix. CoC decided to put the plans on vote, as a result of the voting, CoC approved the Resolution Plan with 73.38% vote share. Appellant did not vote for approval of the Resolution Plan and has now filed this Appeal challenging the approval of the Resolution Plan. As per Section 30(4), the CoC is to approve the Resolution Plan by vote not less than 66% voting share of the Financial Creditors after considering its feasibility and viability and the manner of distribution proposed. The Resolution Plan in the present case has been approved with 73.38% vote

share. Resolution Plan approved by the Adjudicating Authority is binding on all including the Dissenting Financial Creditor.

9. Counsel for the Respondent has referred to judgment of this Tribunal in **“Yogesh Kelkar & Ors. vs. Resolution Professional of Anudan Properties Private Limited & Ors.- Company Appeal (AT) (Insolvency) No. 751 of 2023”** where this Tribunal laid down following:-

“24.....Regardless of the composition of CoC, the IBC places the CoC in control of the insolvency resolution process. For this purpose it has provided for different threshold levels of voting percentages for CoC to take decisions. As regards approval of resolution plan is concerned, the IBC provides for 66% vote share and once this threshold is met, the decision of the CoC, irrespective of whether it is a single-member or multi-member, the decision of the CoC becomes sacrosanct and binding on all stakeholders. The decision of the CoC on the validity of a resolution plan is essentially a business decision and hence should be left to the CoC so long as it musters more than 66% vote share. There can be no fetters on the commercial wisdom of the CoC.”

10. As noted above, Additional Affidavit was filed by the Appellant raising certain additional grounds to challenge the Resolution Plan under which ground as per the Appellant, Resolution Plan could not have been approved. We need to examine each of the grounds raised by the Appellant challenging the approval of the Resolution Plan in seriatim.

11. The 1st ground on which order approving the Resolution Plan by the Appellant is challenged on the strength of Section 5 of the Competition Act, 2002. Counsel for the Appellant relied on judgment of the Hon'ble Supreme Court in ***Independent Sugar Corporation Ltd.*** (supra) decided on 29.01.2025. The Hon'ble Supreme Court in the said judgment has laid down that approval of the CCI as contemplated under Section 31(4) proviso of the IBC has to be mandatorily obtained before approval of the plan by the CoC. Section 31(4) of the IBC provides as follows:-

“31. Approval of resolution plan. -(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later:

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.”

12. Majority judgments of the Hon'ble Supreme Court in the above case in paragraph 150 laid down following:-

“150. In the present case, for reasons discussed above, the statutory provision and legislative intent

unequivocally affirm the mandatory nature of the proviso to Section 31(4) of the IBC. For a Resolution Plan containing a combination, the CCI's approval to the Resolution Plan, in our opinion, must be obtained before and consequently, the CoC's examination and approval should be only after the CCI's decision. This interpretation respects the original legislative intent, and deviation from the same would not only undermine the statute but would also erode the faith posed by the stakeholders in the integrity of our legal and regulatory framework."

13. Section 5 of the Competition Act, 2002 deals with 'combination'. Sub-clause (c) of Section 5 provides as follows:-

"Combination

(c) any merger or amalgamation in which— (i) the enterprise remaining after merger or the enterprise created as a result of the amalgamation, as the case may be, have,—

(A) either in India, the assets of the value of more than rupees one thou sand crores or turnover more than rupees three thousand crores; or

(B) [in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or]

(ii) the group, to which the enterprise remaining after the merger or the enter prise created as a result of the amalgamation, would belong after the merger or the

amalgamation, as the case may be, have or would have,—

A) either in India, the assets of the value of more than rupees four-thou sand crores or turnover more than rupees twelve thousand crores; or

(B) [in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees Fifteen Hundred Crores in India

Explanation.— For the purposes of this section,—

(a) “control” includes controlling the affairs or management by—

(i) one or more enterprises, either jointly or singly, over another enterprise or group;

(ii) one or more groups, either jointly or singly, over another group or enterprise;

(b) “group” means two or more enterprises which, directly or indirectly, are in a position to —

(i) exercise twenty-six per cent or more of the voting rights in the other enterprise; or

(ii) appoint more than fifty per cent of the members of the board of directors in the other enterprise; or

(iii) control the management or affairs of the other enterprise;

(c) the value of assets shall be determined by taking the book value of the assets as shown, in the audited books of account of the enterprise, in the financial year immediately preceding the financial year in which the date of proposed merger falls, as reduced by any depreciation, and the value of assets shall include the brand value, value of goodwill, or value of copyright, patent, permitted use, collective mark, registered

proprietor, registered trade mark, registered user, homonymous geographical indication, geographical indications, design or layout- design or similar other commercial rights, if any, referred to in sub-section (5) of section 3.”

14. Section 6 of the Competition Act, 2002 deals with ‘regulation of combinations’ which contemplated approval by the CCI for such merger and amalgamation amounting to combination. Counsel for the Appellant contended that the assets of the SRA as well as the Corporate Debtor after merger are more than prescribed threshold which are more than Rs.2500 Crore assets in India, hence, meets the threshold of combination under Section 5 of the Competition Act. Thus, mandatory approval from the CCI was required prior approval of the plan by the CoC. Counsel appearing for the Respondent refuting the submission submits that the above Section 5 of the Competition Act is not attracted in the facts of the present case and it is covered by exemption issued by MCA by Notification dated 07.03.2024. The Notification dated 07.03.2024 provided that Section 5 of the Competition Act is not applicable for two years where the value of the assets being acquired, taken control of , merged or amalgamated is not more than Rs.450 Crore in India or turnover of not more than Rs.1250 Crores in India. It is useful to extract the Notification dated 07.03.2024 which is as follows:-

**“MINISTRY OF CORPORATE AFFAIRS
NOTIFICATION**

New Delhi, the 7th March, 2024.

S.O. 1131(E).— *In exercise of the powers conferred by clause (a) of section 54 of the Competition Act, 2002 (12 of 2003), the Central Government, in public*

interest, hereby exempts the enterprises being parties to —

- (a) any acquisition referred to in clause (a) of section 5 of the Competition Act;*
- (b) acquiring of control by a person over an enterprise when such person has already direct or indirect control over another enterprise engaged in production, distribution or trading of a similar or identical or substitutable goods or provision of a similar or identical or substitutable service, referred to in clause (b) of section 5 of the Competition Act; and*
- (c) any merger or amalgamation, referred to in clause (c) of section 5 of the Competition Act,*

where the value of assets being acquired, taken control of, merged or amalgamated is not more than rupees Four hundred and fifty crore in India or turnover of not more than rupees One thousand two hundred and fifty crore in India, from the provisions of section 5 of the said Act for a period of two years from the date of publication of this notification in the Official Gazette.

2. Where a portion of an enterprise or division or business is being acquired, taken control of, merged or amalgamated with another enterprise, the value of assets of the said portion or division or business and or attributable to it, shall be the relevant assets and turnover to be taken into account for the purpose of calculating the thresholds under section 5 of the Act. The value of the said portion or division or business shall be determined by taking the book value of the assets as shown, in the audited books of accounts of the enterprise or as per statutory auditor's report

where the financial statement have not yet become due to be filed, in the financial year immediately preceding the financial year in which the date of the proposed combination falls, as reduced by any depreciation, and the value of assets shall include the brand value, value of goodwill, or value of copyright, patent, permitted use, collective mark, registered proprietor, registered trade mark, registered user, homonymous geographical indications, geographical indications, design or layout- design or similar other commercial rights, if any, referred to in sub-section (5) of section 3. The turnover of the said portion or division or business shall be as certified by the statutory auditor on the basis of the last available audited accounts of the company.

[F. No. 05/7/2013-CS]

MANOJ PANDEY, Addl. Secy.”

15. In the Consolidated Reply filed by the Resolution Professional, balance sheets of the Corporate Debtor as on 31.03.2023 and 31.03.2024 have been referred to and brought on record. As per the balance sheets of the Corporate Debtor who is being acquired under the Resolution Plan, the value of the Corporate Debtor is Rs.70.76 Crore and the turnover is Rs.13.72 Crores. The value of the Corporate Debtor as above is clearly covered by exemption provided in Notification dated 07.03.2024 as extracted above. We thus, are of the view that Section 5 of the Competition Act, 2002 is not applicable in the facts of the present case and there was no requirement of any prior approval from CCI. Hence, the submission advanced by the Appellant cannot be accepted.

16. Now we come to the second submission advanced by the Appellant i.e. assignment of debt by ARC is not permissible to non-ARC. It is submitted that the SARFAESI Act, 2002 under which ARC is registered is regulated by Sections 9 and 10 and further, RBI has issued RBI (Asset Reconstruction Companies) Directions 2024 which master direction permits ARC to assign its debt only to ARC. Subject to certain conditions under Sections 9 and 10 as well as above Master Directions, no assignment of debt is permissible to non-ARC. ARC is registered under the SARFAESI Act. Section 9 of the SARFAESI Act, 2002 deals with 'measures for assets reconstruction'. Section 9 of the SARFAESI Act, 2002 is as follows:-

“9. Measures for assets reconstruction.—

(1) Without prejudice to the provisions contained in any other law for the time being in force, an asset reconstruction company may, for the purposes of asset reconstruction, provide for any one or more of the following measures, namely:—

- (a) the proper management of the business of the borrower, by change in, or take over of, the management of the business of the borrower;*
- (b) the sale or lease of a part or whole of the business of the borrower;*
- (c) rescheduling of payment of debts payable by the borrower;*
- (d) enforcement of security interest in accordance with the provisions of this Act;*
- (e) settlement of dues payable by the borrower;*
- (f) taking possession of secured assets in accordance with the provisions of this Act;*

(g) conversion of any portion of debt into shares of a borrower company:

Provided that conversion of any part of debt into shares of a borrower company shall be deemed always to have been valid, as if the provisions of this clause were in force at all material times.

(2) The Reserve Bank shall, for the purposes of sub-section (1), determine the policy and issue necessary directions including the direction for regulation of management of the business of the borrower and fees to be charged.

(3) The asset reconstruction company shall take measures under sub-section (1) in accordance with policies and directions of the Reserve Bank determined under sub-section (2)."

17. Sub-section (2) of Section 9 empowers the RBI, for the purposes of sub-section (1), determine the policy and issue necessary directions. RBI has issued Master Directions 2024 which is relied by the Appellant. Copy of the said Master Directions 2024 has been brought on the record by the Appellant by means of Additional-Affidavit. Counsel for the Appellant has referred to Master Directions 2024 issued on 24.04.2024 which has brought on record as Annexure 2 of the Additional Affidavit. Clause 8 of the Master Directions 2024 deals with 'activities of ARCs' which is as follows:-

"8. Activities of ARCs

8.1 An ARC shall commence/ undertake only securitisation and asset reconstruction activities and functions provided under Section 10 of the Act.

8.2 In terms of the provision of Section 10(2) of the Act, ARCs have been permitted to undertake those activities as Resolution Applicants under Insolvency and Bankruptcy Code, 2016 (IBC) which are not specifically allowed under the Act. This permission shall be subject to the following conditions:

- i. The ARC has a minimum NOF of ₹1,000 crore.*
- ii. The ARC shall have a Board-approved policy regarding taking up the role of Resolution Applicant which may, inter alia, include the scope of activities, internal limit for sectoral exposures, etc.*
- iii. A committee comprising of a majority of independent directors shall be constituted to take decisions on the proposals of submission of resolution plan under IBC.*
- iv. The ARC shall explore the possibility of preparing a panel of sector-specific management firms/ individuals having expertise in running firms/ companies which may be considered for managing the firms/ companies, if needed.*
- v. In respect of a specific corporate insolvency resolution process (CIRP), the ARCs shall not retain any significant influence or control over the corporate debtor after five years from the date of approval of the resolution plan by the Adjudicating Authority under IBC. In case of non-compliance with this condition, the ARCs shall not be allowed to submit any fresh resolution plans under IBC either as a Resolution Applicant or a Resolution Co-Applicant.”*

18. We need to notice Clause 10 of the Master Directions 2024 which deals with 'plan for realisation of financial assets'. Clause 10.1, 10.2, 10.3 and 10.4 which are relevant are as follows:-

“10. Plan for realisation of financial assets

10.1 Every ARC may, within the planning period, formulate a plan for realisation of assets which may provide for one or more of the following measures:

- i. Change in or takeover of the management of the business of the borrower*
- ii. Sale or lease of the whole or part of business of borrower*
- iii. Rescheduling of debts payable by the borrower*
- iv. Enforcement of security interest in accordance with the provisions of the Act*
- v. Settlement of dues payable by the borrower*
- vi. Conversion of any portion of debt into equity of a borrower company*

10.2 The ARC shall formulate the policy for realisation of financial assets under which the period for realisation shall not exceed five years from the date of acquisition of the financial asset concerned.

10.3 The Board of the ARC may increase the period for realisation of financial assets so that the total period for realisation shall not exceed eight years from the date of acquisition of the financial asset concerned.

10.4 In case, the ARC is one of the lenders in an account, where a resolution plan has been finalised and the same extends beyond the maximum resolution

period allowed for ARCs as per paragraph 10.3 above, the ARC may accept a resolution period co-terminus with other secured lenders.”

19. When we look into the above, clause 10.1 empowers every ARC to formulate a plan for realisation of assets which may provide for one or other measures referred to in Clause 10.1. Sub-clause (v) of Clause 10.1 deals with settlement of dues payable by the borrower. Settlement of dues is a wide phrase which encompasses in itself any manner of settlement of dues. Settlement of dues can include part payment of upfront or by any other mode or manner. Clause 10.2 provides that ARC shall formulate the policy for realisation of financial assets under which the period for realisation shall not exceed five years from the date of acquisition of the financial asset concerned whereas under Clause 10.3 the Board of the ARC may increase the period for realisation of financial assets so that the total period for realisation shall not exceed eight years. However, Clause 10.4 contains further exemption that where resolutions plan has been finalised and which extends beyond the maximum resolution period allowed for ARCs. Under clause 10.4, the ARC may accept a resolution period co-terminus with other secured lenders. Thus, Clause 10.4 contemplates extension of period of realisation which may exceed to eight years as provided in Clause 10.3. Thus, Resolution Plan has been contemplated as one contingency where relaxation can be granted.

20. When we look into Section 9(1)(e) of the SARFAESI Act, 2002, settlement of dues payable by the borrower is also one of the measures contemplated for purposes of asset reconstruction. We are of the view that

the settlement of dues is a phrase of wide import which can take measure for settlement of dues payable by the borrower. In the present case, Resolution Plan submitted by the Respondent No.2 which is approved by requisite vote share of the CoC provides for the payment of dues of the Financial Creditor. The debt has been categorised in sustainable and unsustainable debt and sustainable debt discharge is the payment proposed by the Resolution Applicant to the secured Financial Creditors whereas unsustainable debt is the balance amount claim of secured creditors which is noticed in paragraph 7.2 of the impugned order. The plan proposes the secured financial creditors Rs.99.05 Crores within 30 days of the approval of the Resolution Plan. Appellant in paragraph 5 of the Additional Affidavit has extracted Clause E(iv) of Section IV of the plan which provides for unsustainable debt shall be assigned to the Resolution Applicant which assignment to the Resolution Applicant is sought to be questioned by the Appellant. Section 9 of the SARFAESI Act, 2002 which specifically empowers the ARC to take measures of settlement of dues payable by the borrower, all modes and manner for settlement of dues are permissible and the debt having been classified into sustainable and unsustainable debt. Sustainable debt is being discharged by payment to the financial creditors and unsustainable debt being assigned to the Resolution Applicants, it is the commercial wisdom of the CoC to approve or not approve the mode and manner of settlement of dues and in the present case, when settlement of dues have been approved by the CoC by 73.38% vote share, we are not persuaded to accept the submission that the assignment of the unsustainable debt to the Resolution Applicants violates any provision of the

IBC or CIRP Regulations or any provisions of the SARFAESI Act, 2002. We, thus, do not find any substance in the submission of the Appellant.

21. The next submission which has been pressed by the Appellant is that the debt owed to Respondent No.4- 'International Finance Corporation' cannot be assigned to an entity in India without specific approval by the RBI. The CoC as well as the SRA had submitted that approval of the RBI, if required for assignment of debt of Respondent No.4 is to be obtained within one year from approval of the Resolution Plan. As per provision of Section 31(4) of the IBC, the SRA can obtain approval from RBI after approval of the Resolution Plan once the assignment has been approved. We, thus, do not find any error in the above part of the Resolution Plan which proposes assignment of debt of Respondent No.4 to the Resolution Applicant. Approval, if any, can be obtained within one year from the RBI as per Section 31(4), hence, on the said ground approval of Resolution Plan cannot be faulted.

22. The next ground urged by the Appellant is that under the Resolution Plan, SRA has dealt with Noida Project Land which is not the asset of the Corporate Debtor. The Noida Project Land along with building structure was obtained by sub-lease deed dated 18.01.2008 and lease deed dated 23.06.2008 from Moser Baer India Ltd. (MBIL). MBIL went into liquidation under the Code and liquidator of MBIL vide letter of termination dated 30.03.2019 addressed to the Corporate Debtor has cancelled the said sub-lease and the Noida Project Land along with the pending litigation has been assigned to Palika Towns LLP by the Liquidator of MBIL. The submission of

SRA in the above regard is that lease was terminated prior to initiation of CIRP. With regard to which the litigation is pending before the NCLT, SRA has acknowledged the pending litigation and offered to pay the lessor Rs.7,20,00,000/- as a solution to ending the dispute regarding the project. The money offered to the lessor is in addition to the payments to be made to the financial creditors under the Resolution Plan of the SRA. The above mechanism which was adopted by SRA in Resolution Plan does not violate any provisions of the Code and the Resolution Plan submitted by the SRA is strictly in compliance with the provisions of the IBC. Counsel for the NARCL submits that Appellant has no locus to intervene in the issue pertaining to Noida Project Land which is a subject matter of dispute between the Liquidator of MBIL, Pallika Towns LLP and the SRA. Clause 5.3 of the Resolution Plan mentions that it will continue the litigation as regards the Noida Project Land after approval of the Resolution Plan which provision in no manner violates any process.

23. We, thus, are of the view that on the above ground Appellant cannot raise any grievance nor above clause in the Resolution Plan dealing with the manner proposing a solution for Noida Project Land and continue the litigation by SRA with regard to Noida Project Land does not violate any provisions of the IBC or CIRP Regulations. The Resolution Plan cannot be said to have violated any provisions of the law in the above regard. We, thus, do not find any substance in the above submission.

24. Now as far as the submission of the Appellant that Respondent No.5- 'Gateway Investment Management Services Limited' has given a revised offer

of Rs.120 Crore which ought to have been accepted by the CoC to fulfil the object of maximisation the value of the assets. Respondent No.5 itself has filed an IA before the Adjudicating Authority being IA No.5176 of 2024 seeking a direction to consider its revised offer of Rs.120 Crore and to reject the Resolution Plan of Respondent No.2 which IA has been rejected by order dated 22.01.2025. Respondent No.5 has filed its separate Appeal being Company Appeal (AT) (Insolvency) No. 148 of 2025 challenging the order dated 22.01.2025. We by our separate order of the date has dismissed the Company Appeal (AT) (Insolvency) No. 148 of 2025, hence, the Respondent No.5 who was the Resolution Applicant offering the revised offer has already raised grounds which did not find favour. It is not open for the Appellant to raise any ground on behalf of the Respondent No.5 whose Appeal has already been dismissed.

25. In view of the foregoing discussions, we do not find any substance in any of the submissions of the Counsel for the Appellant. There is no merit in the Appeal. The Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

New Delhi
Anjali