

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 954 of 2021

(Arising out of Order dated 01.11.2021 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench at New Delhi in C.A. No. 2357/2019 and C.A. No. 1170/2019 in C.P. (IB)-46 (PB)/2018)

IN THE MATTER OF:

GP Global Energy Private Limited

(Now known as Nivaya Resources Private Limited)

Registered office at Office No. 203,

2nd Floor, Plot No. 341,

Ward No. 12/B, Banking Circle

Gandhidham Kachchh,

Gujarat – 370201.

...Appellant

Versus

1. Mr. Sandeep Mahajan

Monitoring Professional

For Allied Strips Limited

ARCK Resolution Professionals LLP409,

Ansal Bhavan, 16,

K.G. Marg (Connaught Place),

New Delhi – 110001.

2. Monitoring Committee

Represented Through

Canara Bank, Having its Circle Office Delhi at

8th Floor,

Ansal Towers, 38, Nehru Place,

New Delhi – 110010.

...Respondents

Present:

For Appellant: Mr. Virendra Ganda, Sr. Advocate with Mr. Raghav Kakkar and Mr. Ayandeb Mitra, Advocates.

For Respondents: Mr. Arun Kathpalia, Sr. Advocate with Mr. Abhishek Anand and Mr. Pathik Choudhury, Advocates for R-1.

Mr. Dinkar Singh, Mr. Gagan Garg and Mr. Rohit Singh, Advocates for R-2.

With

Company Appeal (AT) (Insolvency) No. 1011 of 2021

(Arising out of Order dated 01.11.2021 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench at New Delhi in C.A. No. 1246/2019 in C.P. (IB)-46 (PB)/2018)

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Mr. Dinkar Singh, Mr. Gagan Garg and Mr. Rohit Singh, Advocates for R-2.

J U D G M E N T

ASHOK BHUSHAN, J.

The Successful Resolution Applicant (SRA) has filed these Appeals challenging two different orders of the same date i.e. 01.11.2021 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench at New Delhi. The Company Appeal (AT) (Insolvency) No. 954 of 2021 has been filed against the order by which C.A. No. 2357/2019 and C.A. No. 1170/2019 filed by the Appellant have been disposed of. Company Appeal (AT) (Insolvency) No. 1011 of 2021 has been filed against the order by which C.A. No. 1246/2019 filed by the Monitoring Professional – Respondent No. 1 has been disposed of. The Appellant aggrieved by the aforesaid orders have come up in these Appeals.

2. We need to notice the facts and sequence of events giving rise to the impugned orders for deciding these two Appeals.

M/s Allied Strips Ltd., the Corporate Debtor took to insolvency resolution process on an application filed by the Financial Creditor M/s Oriental Bank of Commerce under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC'). In the Corporate Insolvency Resolution Process (CIRP), the Appellant submitted a Resolution Plan on 19.10.2018. The Resolution Plan of the Appellant offering total financial plan of INR 233.71 Crores was approved by the Committee of Creditors (CoC) on 27.12.2018. By order dated 30.05.2019, application

filed under Section 31 of the IBC by the Resolution Professionals for approving Resolution Plan, was allowed. Plan of INR 235.86 Crores was approved. The first meeting of the Monitoring Committee was held on 06.06.2019 where it was noticed that the amount of INR 5 Crore has been credited in the account of the Corporate Debtor. The Successful Resolution Applicant also informed the Monitoring Professional that an amount of INR 3.55 Crores payable to Operational Creditors in terms of the approved plan shall be paid by 09.06.2019. By 10.06.2019 an amount of INR 10.55 Crores was credited in the account of the Corporate Debtor. In the Monitoring Committee meeting dated 06.06.2019 request was made on behalf of the representative of Successful Resolution Applicant to undertake detailed analysis and assessment of the plant for four days with their technical team which was declined by the Monitoring Committee observing that first the SRA should deposit the substantial amount as required under Resolution Plan and then only they can undertake the necessary visits. The C.A. 1170/2019 was filed by the Appellant making various prayers including prayer to allow the SRA to have physical inspection of the plant and machinery of the Corporate Debtor.

On 07.07.2019, the Respondent No. 1 filed an application being C.A. 1246/PB/2019 under Section 74 sub-section (3) of the IBC against the SRA. Parties decided to mutually settle the issues and as a pre-requisite the Appellant was first made to pay another amount of INR 28.50 Crores in addition to the payment of INR 10.55 Crores. The Monitoring Committee met on 29.08.2019 and Monitoring Committee in consultation with the

lenders regarding revised time lines for payment agreed that CoC shall not object on behalf of the CoC before Hon'ble NCLT as per decision on 29.08.2019 proposing revised time line for payment. In pursuance of decision dated 29.08.2019, the matter was taken by the Adjudicating Authority and by order dated 03.09.2019, the Adjudicating Authority noticed the terms as decided on 29.08.2019 and that the condition has been complied by the Successful Resolution Applicant. The Adjudicating Authority directed that rest of the terms to be complied with to the satisfaction of the Monitoring Committee as per the reschedule. On 03.09.2019, one of the arrangement which was approved by the Adjudicating Authority was that visits to the plan may be allowed to the officials and authorized representatives of the lending banks for processing the sanctioning of the fund to the SRA. On 07.09.2019, the Appellant further paid an amount of INR 23.00 Crores. In the meeting dated 07.10.2019 of the Monitoring Committee, where several issues of concerns raised by the SRA were considered. Demarcation of land owned by the Corporate Debtor, inventorisation of legal documents pertaining to such land was noticed and it was recorded that Monitoring Committee will extend its full cooperation in this regard. It was further discussed and agreed that considering various processes and compliances to be made, the Monitoring Professional may consider to move an application before the Adjudicating Authority for seeking additional time for implementation of Resolution Plan. However, the Monitoring Professional – Respondent No.1 did not file application before the Adjudicating Authority seeking extension

of time. On 29.10.2019, the Appellant filed C.A. 2357/2019 praying for extension of time period for implementation of the Resolution Plan. On 08.11.2019, the Appellant further paid an amount of INR 8.25 Crores to prove its bonafide. Total payment by the Appellant as on 08.11.2019 was INR 70.25 Crores. On 03.12.2019, the Adjudicating Authority directed the Appellant to file an affidavit undertaking to deposit the balance amount by specifying the last date by which balance payments can be deposited. In pursuance of order dated 03.12.2019, an affidavit was filed on 06.12.2019 by the Successful Resolution Applicant.

In 6th Monitoring Committee meeting dated 07.12.2019, the Respondent No. 1 assured the Appellant to provide support for demarcation and fencing of property of the Corporate Debtor. On 30.12.2019, Monitoring Professional wrote a letter to the Sub-Divisional Magistrate Bhadurgarh, District Jhajjar, Haryana, where Sub-Divisional Magistrate informing that few local adjoining farmers have destroyed the demarcation and also created hindrances in the fencing work, therefore, assistance was sought for in completing the fencing work. Sub-Divisional Magistrate, on 07.02.2020, wrote to the Collector, Jhajjar requesting for appropriate action by appointing a Duty Magistrate. On 25.02.2020, the Appellant filed an affidavit alongwith supporting documents whereby it was stated that the land, immovable property of the Corporate Debtor is in possession of third party. On 08.06.2021, the Adjudicating Authority gave final opportunity to the parties to complete the pleadings in the Applications. The Monitoring Professional demanded the balance amount of INR 165.61

Crores alongwith interest by email dated 03.07.2021. The Appellant filed an undertaking on 02.08.2021 to make the balance payment. On 07.08.2021, the Respondent No. 1 filed certain documents before the Adjudicating Authority without any information to the Appellant. On 09.08.2021, the Adjudicating Authority heard the parties on the applications and orders were reserved. On 01.11.2021, the Adjudicating Authority passed an order disposing C.A. 2357/2019 and C.A.1170/2019 by denying any relief to the Appellant. By another order of the same date, C.A. 1246/2019 filed by the Respondent No. 1 was allowed by allowing prayer (c) and (d) of the Application and with regard to prayer (a) the Adjudicating Authority further made a reference to the IBBI for taking appropriate action in accordance with Section 74 (3) of IBC. The above two orders dated 01.11.2021 have been challenged in these two Appeals.

3. The Company Appeal (AT) (Insolvency) Nos. 954 of 2021 and 1011 of 2021 were heard by this Tribunal on 07.12.2021, where following order was passed:

“ORDER
(Through Virtual Mode)

07.12.2021: *Learned Counsel for the Appellant submits that the Appellant is still desirous of implementing the ‘Plan’ and to deposit the balance amount of Rs. 165.31 crores in 14 working days. He submits that the Appellant should also be permitted to have a visit of the land in question to find out as to whether the encroachment has been removed as has been submitted by the ‘Resolution*

Professional' in his affidavit dated 04.12.2021 before this Court. We permit the Appellant to have visit of the land in question after intimation of the date of the visit to the 'Resolution Professional' as well as to the Sub-Divisional Officers of the area concern. The visit shall be made within 14 (fourteen) working days after due intimation.

We are of the view that Sub-Divisional Officer concerned be also present on the date as intimated by the Appellant to assist the Appellant to see the status of the encroachment, if any and to do the needful.

Learned Counsel for Respondent No. 2 Shri Dinkar Singh submits that the interest be also allowed, which submission we are not considering as on date. Learned Counsel for the Appellant has refuted the submission of Shri Dinkar Singh, he submits that the Appellant is not liable to pay any interest.

Learned Counsel for the Appellant made a statement that on or before 27.12.2021 the Appellant shall deposit the amount of Rs. 165.31 crores in the registry of this Tribunal.

List the matter on 03.01.2022.

In the meantime, the impugned orders dated 01.11.2021 shall be kept in abeyance.”

4. I.A. No. 2941 of 2021 was filed by the Appellant in Company Appeal (AT) (Insolvency) Nos. 954 of 2021 on 23.12.2021 bringing on record copy of the Report of the Sub-Divisional Officer (Civil) dated 21.12.2021

addressed to the Principal Bench, NCLT in compliance of order dated 07.12.2021 issued by this Tribunal as noticed above. The Sub-Divisional Officer in the Report noticed that in area of several Khasra Nos. there is encroachment for cultivation and in the last paragraph of the Report following was stated:

“Further, in respect of encroachment the needful to be done is to get the demarcation of the land done in order to hand over the possession of the land to the owner(s) which would be possible only after the land in question gets dried which may take two to three months, i.e. till February/March, 2022. Further, in the context of the Khewat no. mentioned in point 4 above the possession of the land cannot be made possible unless partition of the same is done amongst the co-owners. Also, in order to establish whether there is any encroachment on the Khewat no. mentioned in point 4 above the partition of that piece of land would be necessary beforehand.”

5. The Applicant in the application prayed for issuing direction to Respondent No. 1 to clear the encroachment of the land of the Corporate Debtor. In the application following prayers have been made:

a. To place the inspection report of the Sub-Divisional Officer (Civil) dated December, 2021, in respect of the status of the encroachment as has been submitted by the Respondent No.1.

b. To seek further directions for the deposit of the balance resolution amount.

6. Another Report dated 10.04.2022 of Sub-Divisional Officer (Civil), Bahadurgarh, Haryana has been brought on record, where now the Sub-Divisional Officer has reported that after demarcation proper fencing has been done. The said Report was addressed to Respondent No.1. The learned counsel for the Appellant submitted that the said Report dated 10.04.2022 was obtained by Respondent No. 1 without informing or notice to the Appellant.

7. We have heard Shri Virender Ganda, learned senior counsel appearing for the Appellant, Shri Arun Kathpalia, learned senior counsel with Shri Abhishek Anand appearing for Monitoring Professional (Respondent No.1) and Shri Dinkar Singh, learned counsel appearing for Committee of Creditors (Respondent No.2).

8. Learned counsel for the Appellant submits that present is a case where Appellant has been ready and willing to implement the plan and Appellant till 08.11.2019 had already made payment of INR 70.25 Crores to the Corporate Debtor and was always ready and willing to make balance payment. The Respondent No. 1 did not cooperate with the Appellant in removing the difficulties in implementation of the plan. Visit to the factory premises was denied to the Appellant on 06.06.2019 i.e. within six days from approval of the Resolution Plan and Appellant had to file I.A. 1170/PB/2019 seeking direction to allow the Successful Resolution

Applicant to have physical inspection of the plant and machinery of the Corporate Debtor, which Adjudicating Authority by order dated 03.09.2019 accepted and permitted visit to the plant to the officials and authorized representatives of the lending bank for processing the sanction of funds to the SRA. The Bank of Baroda who had agreed in principle to advance the amount to make the balance payment cannot be given necessary deeds and documents for financial sanction which was one of the reasons for Appellant not been able to make payment. In the Monitoring Committee meeting dated 07.10.2019, the Monitoring Committee itself opined that the Monitoring Professional may consider to move application before the Adjudicating Authority for seeking additional time for implementation of the plan. The Monitoring Committee was satisfied that additional time is required for implementation due to various issues which are to be sorted out. Unfortunately, the Monitoring Professional did not file any application for extension of time. Consequently, on 29.10.2019, the Appellant had to file C.A. No. 2357/2019 for extension of time, which application remained pending before the Adjudicating Authority. The Monitoring Professional – Respondent No. 1 never filed any reply to C.A. No. 2357/2019 disputing the claim of the Appellant including the claim that immovable property has been illegally occupied by third party. For the first time in the Appeal No. 954 of 2021 an affidavit was filed on 04.12.2021 by the Respondent No. 1 that there is no encroachment, which affidavit proved to be false in view of the Report dated 21.12.2021 which was submitted by the Sub-Divisional Officer under orders of this Tribunal dated 07.12.2021. The above Report

clearly prove that there was encroachment on the land. The Adjudicating Authority in the impugned order dated 01.11.2021 while rejecting C.A. 2357/2019 has not considered any facts. The Adjudicating Authority has been unnecessarily influenced by its earlier order dated 23.01.2019 by which C.A. No. 114/PB/2019 praying to forgo/dispense with Bank Guarantee was rejected. The Adjudicating Authority failed to consider that against said order dated 23.01.2019 an Appeal was filed in this Appellate Tribunal, where this Appellate Tribunal vide order dated 12.03.2019 directed the Adjudicating Authority to consider the plan approval application without submission of any Bank Guarantee. The Adjudicating Authority did not consider the substantial payment made by the Appellant i.e. INR 70.25 Crores in the year 2019 itself. C.A. 2357/2019 has been disposed of without considering any of the grievances of the Appellant and the order is completely a non-speaking order with no judicious consideration at all. The Adjudicating Authority also committed error in observing that the Tribunal has no jurisdiction to amend the approved Resolution Plan. The Appellant was only asking for extension of time for payment, there was no prayer for amending Resolution Plan. It is submitted that the Adjudicating Authority itself has not considered its order dated 03.09.2019 where revised payment timeline was agreed by the Adjudicating Authority which was also substantially complied by the Appellant.

9. Shri Virender Ganda, learned senior counsel challenging the order passed by the Adjudicating Authority in C.A. 1246/2019 submits that no

reasons have been given in the order of the Adjudicating Authority as to why directions for initiation of prosecution has been issued. Neither there is any consideration in the order nor is any finding that present a case for initiation of any prosecution. In view of the order dated 03.09.2019 passed by the Adjudicating Authority and substantial payments made, very basis of the application filed by the Monitoring Professionals being C.A. 1246/2019 had become non-existent and the Adjudicating Authority committed error in allowing C.A. 1246/2019. The Respondent No. 1 has failed to protect the assets of the Corporate Debtor, it has failed to protect the immovable property and occupation of land and it has also failed to maintain plant and machinery of the Corporate Debtor. Learned counsel lastly submitted that the Appellant had always been ready and willing to make balance payment and is still ready to make balance payment.

10. Shri Arun Kathpalia, learned counsel appearing for the Respondent No. 1 submits that total area of agricultural land is 45 Acres and as per Report of 21.12.2021 of the Sub-Divisional Officer encroachment at best is of 5 Acres. It is submitted that it was not encroachment even on 5 Acre areas but only some cultivation, as has been noticed in the Report. It is submitted that Appellant could have very well made deposit of the entire amount and encroachment of immovable property is only an excuse which was raised by the Appellant. Under the Resolution Plan, Appellant was to deposit entire amount within 30 (Thirty) days from the approval of the plan. The Appellant failed to deposit entire amount in 30 days, hence, has committed default. In so far as, submission of the Appellant that Appellant

was not allowed to visit the plant and factory premises, suffice it to say that it was duty of the Appellant to observe due diligence prior to making an offer. The possession of plant and machinery can be handed over to the Appellant only when it makes entire payment. Learned counsel for the Respondent further submits that Appellant was further liable to make payment of interest @ 11% per annum which was agreed by him, as recorded in the order dated 03.09.2019 of the Adjudicating Authority. Appellant himself undertook to pay interest @11% per annum from the date of approval of the Resolution Plan. Hence, Appellant is liable to pay entire amount alongwith 11% interest and Appellant cannot be heard to say that he is not liable to pay interest on the balance amount.

11. Shri Dinkar Singh, learned counsel appearing for the Committee of Creditors adopted the submissions of Shri Arun Kathpalia and further submits that Appellant is fully liable to pay interest @11%. Appellant having failed to deposit the amount within 30 days from the date of approval of the plan is not entitled for possession of the assets of the Corporate Debtor.

12. Shri Virender Ganda, in his rejoinder, submits that Application 2357/2019 was filed by the Appellant on 29.10.2019 where issue of encroachment was raised and no reply was filed by Respondent No. 1 to the application. The letter written by Monitoring Professional on 30.12.2019 itself indicate that there was encroachment and Sub-Divisional Magistrate was requested to carry on demarcation. The Inspection Report

of Sub-Divisional Officer (Civil) and Tehsildar dated 10.04.2020 obtained by the Respondent No. 1 was surreptitiously placed on record without filing any affidavit and without serving copy of the said report. The submission raised by the Appellant that immovable property is occupied came to be proved by Sub-Divisional Officer Report dated 21.12.2021, which was submitted to this Tribunal in pursuance to order dated 07.12.2021. The claim of the Respondent No.1 as made on 04.12.2021 that there is no encroachment has been proved to be false. Respondent No. 1 never filed any reply to C.A. No. 2357/2019 before the Adjudicating Authority nor at any point of time submitted any affidavit that there is no encroachment on the land. Shri Ganda further submitted that in the facts of the present case, the Appellant cannot be saddled with any liability of interest. It is submitted that Appellant's INR 70.25 Crores which were paid in the year 2019 itself already lying with Respondent No. 1 and being utilized by Respondent No.1. It is the Appellant who is suffering due to not having received the assets and having paid huge amount. Respondent No. 1 has not suffered any prejudice. CIRP cost, as stated in the plan, has already been paid to the Respondent No.1. The Respondent No. 1 instead of cooperating in removing the difficulties in implementation of the plan has adopted obstructive attitude. Filing of application under 74(3) in C.A. 1246/2019 was nothing but arm-twisting tactics by the Respondent No.1. Respondent No. 1 has failed to protect the plant and machinery of the Corporate Debtor. Learned counsel further submitted that the Appellant had agreed to make payment of interest @11% before the Monitoring

Committee in August, 2019 with a hope that Monitoring Committee shall solve all issues in shortest time obviating any huge liability of interest. At best, this Court may consider imposing any token amount towards interest to protect the Appellant who has already suffered a lot being out of possession of the assets.

13. We have considered submissions of learned counsel for the parties and perused the record.

14. We may first consider the submissions of learned counsel for the parties regarding impugned order dated 01.11.2021 passed in C.A. 2357/2019 and C.A. 1170/2019. By noticing the facts and sequence of events, we have already noticed that after approval of the Resolution Plan on 30.05.2019, Appellant by 10.06.2019 has made payment of INR 10.55 Crores. The Monitoring Committee has met in the month of June, 2019 itself on several occasions to consider steps towards implementation of the plan. In the meeting of the Monitoring Committee dated 06.06.2019, the request made by representative of the Successful Resolution Applicant to undertake visit of the plant for four days was noticed and not acceded to with observation that first the Appellant should deposit the substantial amount as required under the Resolution Plan and only then they can do undertake the necessary visit.

15. The Application C.A. 1170/2019 was filed by the Appellant in the above background. The prayer made in C.A. 1170/2019 are to the following effect:

“a) To allow the Successful Resolution Applicant to have physical inspection of the plant and machinery of the Corporate Debtor.

b) To supply audited balance sheets and statutory filings of the Corporate Debtor uptill May 30, 2019.

c) To obtain no due certificate from statutory authorities and other operational creditors after distribution of their dues arising/ arisen against the Corporate Debtor uptill May 30, 2019 and to satisfy all such demand and notices received by the Respondent No. 1/ the Corporate Debtor.

d) To restore the essential supplies such as electricity/ power to the plant of Corporate Debtor after distributing the dues of Power Utility.”

16. It is also relevant to notice that the Appellant made request to the Monitoring Committee to permit the Appellant to make payment in a revised time schedule. The Monitoring Committee held its meeting on 29.08.2019, in which revised schedule for payment of the amount was decided and the lenders recorded their no objection. The Adjudicating Authority passed an order dated 03.09.2019 which order records the decision of the Monitoring Committee taken on 29.08.2019. It is useful to extract the entire order dated 03.09.2019 which is to the following effect:

“ORDER

CA-1170(PB)/2019 & CA-1246(PB)/2019

In the aforesaid application arguments were heard on 26.08.2019. However, before the order could

be pronounced. CA-1676(PB)/2019 has been filed under Rule 11 of the NCLT Rules with a prayer that order dated 08.08.2019 passed has been substantially complied with and permission has been sought for the Implementation Committee to accept the payment schedule as mentioned at paragraph 13. Accordingly the proposal for re-scheduling the payment time line made in paragraph 13 by the successful resolution applicant was considered. The Monitoring Committee in its meeting dated on 29.08.2019 after consulting lenders has rescheduled the payment by noticing various factors the rescheduled find mentioned in the affidavit dated 03.09.2019 which has been filed in the Court today. According to the view taken by the Monitoring Committee in consultation with the lenders the following decision has been taken:-

“In view of the above, the lenders were of the view that in the best interest of IBC, 2016 (Code), they would not have objection to the revised payment plan of SRA if the same be allowed by the Hon’ble NCLT. Post discussions, the following revisions in the payment plan were noted, as agreed by the SRA, at the meeting and it was decided that a confirmation on the behest of lenders may be given before Hon’ble NCLT subject to directions of Hon’ble Tribunal.

- 1. SRA would remit a sum of Rs.28.50 crores by way of RTGS in the account of corporate debtor maximum by 30th August 2019 out of the balance amount payable of Rs.225.31 crores.*
- 2. SRA would issue the two post-dated cheques, one dated 7th September 2019 for Rs.23.00 crores*

and second for Rs.173.83 crores dated 29th October 2019 towards the balance amount payable under the approved resolution plan. The cheques are to handover to the Monitoring Professional, Chairman of Monitoring Committee on 29th August, 2019.

3. Interest @11% p.a. from the date of approval of resolution plan i.e. 30.05.2019 till the date money is credited to the account of corporate debtor will be paid by the SRA. Financial Creditors shall issue no dues certificate after receipt of balance payment along with interest due.

4. Visits to plant may be allowed to the officials and authorized representatives of the lending bank for processing the sanction to fund SRA. Such visit may be made at the premises/factory of the corporate debtor for the purpose of valuation of the assets of the CD or anything connected to sanctioning of funds.

5. All the cost being incurred, or which may be claimed in future, including but not limited to, salary of the employees, fee of Monitoring Professional etc. Pertaining to be period after the date of approval of resolution plan by the AA vide its order dated 30.05.2019 would be borne by SRA. The same was confirmed by the representative of SRA present at the meeting.

6. The amount paid by the SRA against the revised payment plan i.e. Rs.28.50 crores and post dated cheques be refundable in case the payment plan be not allowed/ approved by the Hon'ble NCLT.

7. In case of any default on the part of SRA in remitting the amount payable as approved by the Hon'ble NCLT through this revised payment plan, the amount deposited till the date of default shall stand forfeited and be distributed amongst the lenders in their respective

proportion of voting shares held in the Committee of Creditors after adjusting the cost as mentioned here-above.

Concluding on the above revisions in the payment plan of SRA, there were discussions on the mechanism of consideration of the revised payment plan, whereby the lenders agreed that the counsel for CoC/ lenders be instructed to submit the no objection on behalf of lenders before Hon'ble NCLT as per the above decisions. The same was taken note by the participants.”

It is appropriate to mention that there was miniscule minority of 0.16% represented by Siemens. Even that has been clarified by accepting the aforesaid terms by the Siemens Financial Services Private Limited and with the aforesaid acceptance of the proposal for re-scheduling payment has now been supported by 100% voting share.

It is appropriate to mention that amount of Rs. 28.50 crores by way of RTGS has already been deposited in the account of the corporate debtor out of the balance amount of Rs. 225.31 crores. The second condition has also been complied with as the successful resolution applicant has issued two post-dated cheques dated 07.09.2019 and 29.10.2019 amount for a sum of Rs.23.00 crores and 173.83 crores respectively. The rest of the terms are to be complied with to the satisfaction of the Monitoring Committee as per the reschedule.

All the other application to be listed on 23.09.2019.”

17. The aforesaid order clearly indicate that the Adjudicating Authority itself accepted the decision of the Monitoring Committee to grant revised schedule to the SRA to remit the amounts. It was noticed by the Adjudicating Authority that in pursuance of Minutes of 29.08.2019, second condition has been complied by the SRA. Revised payment plan when got approval by the Adjudicating Authority, the case of Respondent No. 1 that Appellant having failed to make payment within 30 days of approval, the plan did not survive any further, is not correct.

18. There were several issues regarding implementation of the plan which came to be noticed in the Monitoring Committee meeting dated 07.10.2019. At point (xii) discussion took place on points of concerns raised by the Successful Resolution Applicant. Point xii (1) and (2) is as follows:

“xii. Discussion on the points of concern of SRA, GP Global raised through their e-mail dated 05.10.2019

The Chairman apprised the members of the Committee that MP has received an e-mail dated 5th October, 2019 from SRA regarding following points of concerns of SRA which requires consideration and deliberation by the members of the committee.

1. Process of handing over and inventorisation (itemized) of the Fixed assets, other than Immoveable Property, owned and possessed by Allied Strips Limited;

On the request of MP, the representative of SRA gave a brief on the requirement and requested the Committee that process of handing over the CD be discussed or clarified to them being the way forward. In response, the MP gave an overview on the status of assets of CD. Adding to it he stated that a car of CD is in possession of Petrol Pump owner, Vishal Filing Station, which had been handed over to him by ex-management of CD against their dues and after following up & explaining the present status of resolution to Petrol Pump owner, the said person expressed their intention to meet the SRA. The SRA agreed to meet and requested to share the contact details of him. Thereafter, various discussions were held and it was decided that MP and SRA may depute their personnel to start the inventorisation (itemized) of the Fixed assets, other than Immoveable Property, owned and possessed by CD. SRA also requested the MP to prepare a handover report in order to facilitate the handover. Further it was also discussed and agreed that considering the various processes and compliances to be made, MP may consider to move an application before AA for seeking additional time for implementation of Resolution Plan.

2. *Demarcation of land owned by Allied Strips Limited; Inventorisation of legal documents*

pertaining to such land; and Bringing the land in a position so that peaceful enjoyment of total land, free from encumbrances(s) other than disclosed in IM, is vested in SRA upon take-over.

As discussed in point x in above paras, the demarcation process was noted to be initiated, further the MP stated that if SRA found that it is warranted to file application with Tehsildar, they can move ahead with it and file the same. Monitoring Committee will extend its full cooperation on this.”

19. The above minutes also record that **"it was also discussed and agreed that considering the various processes and compliances to be made, MP may consider to move an application before AA for seeking additional time for implementation of Resolution Plan."** Respondent No. 1 did not file application for extension of time as was contemplated in the meeting dated 07.10.2019. The above decision of the Monitoring Committee indicate that there were genuine issues with regard to implementation of the plan for which Monitoring Professional was requested to file application for extension of time but the Monitoring Professional did not choose to file an application for the reasons best known to him.

20. After approval of the Resolution Plan, Monitoring Committee under the statutory scheme is to function for process of implementation of Resolution Plan and has not to act as any adversary body to the Resolution

Applicant. If there were any genuine roadblocks found in the implementation of the plan, Monitoring Committee as well as Monitoring Professional is to use their good offices to sort out the difficulties and not to create roadblocks themselves in successful resolution of the Corporate Debtor. The C.A. No. 2357/2019 had to be filed by the Appellant since no application was filed by Respondent No.1 for extension of time as noted above. We need to notice payers in C.A. No. 2357 of 2019. In C.A. No. 2357/2019, the Appellant pleaded that they came to know that there were certain issues with regard to title of some piece of land and possession of another piece of land. Several other issues were also mentioned and pleaded. Following prayers have been made in the C.A. 2357/2019:

“i) To extend the time period for Implementation of the Resolution Plan Thirty days beyond the date when the Respondents are able to satisfy the Lending Bank;

ii) Pass any such other order(s) as may be deemed fit and proper by this Hon’ble Tribunal in the facts and circumstances of the case.”

21. Now, we come to the impugned order dated 01.11.2021 passed by the Adjudicating Authority in C.A. No. 2357/2019 and 1170/2019. The discussion pertaining to C.A. 2357/2019 is from Para 1 to Para 6. In those paragraphs only the contents of the application and contents of an additional affidavit filed by the Appellant has been noticed. Under heading C.A. 1170/2019 para 1 to 7 are the pleadings of the applicant. Para 8 deals with reply of the Respondent. In Para 9 of the judgment, the Adjudicating

Authority has referred to its order dated 23.01.2019 passed in C.A. No. 114(PB) of 2019 which was filed by the Appellant to forgo/dispense with the condition of the submission of Bank Guarantee till adjudication of the plan by the Tribunal. Resolution Plan was approved on 27.12.2018 by the Committee of Creditors. Letter of intent was issued on 03.01.2019 to the Appellant. The CoC asked the Appellant for Bank Guarantee of 25% of the amount. The Adjudicating Authority has noticed that by order dated 23.01.2019 application of the Appellant was dismissed with cost of Rs.50,000/- but failed to notice that said order was challenged before this Tribunal by filing an Appeal being Company Appeal (AT) (Ins.) No. 231 of 2019, in which this Appellate Tribunal on 12.03.2019 passed following order:

“5. The Respondents may file reply within a week as to why the impugned order dated 23rd January, 2019 be not set aside and the Adjudicating Authority be not directed to consider the ‘Resolution Plan’ in terms of Section 31 of the ‘I&B Code’. On consideration, if the Adjudicating Authority is of the opinion that the plan is to be approved, the Adjudicating Authority may approve the same conditionally allowing the Appellant to deposit the payment in terms with the ‘Resolution Plan’ within the stipulated period, and on compliance may pass final order of approval.

Rejoinder, if any, be filed by the Appellant within a week thereof.”

22. The consequence of the aforesaid order by this Tribunal was that the Adjudicating Authority was to consider the plan without giving Bank Guarantee prior to approval of Resolution Plan. The Adjudicating Authority ought to have noticed that against the order dated 23.01.2019, the Appeal was subsequently disposed of by this Tribunal on 24.04.2019 noticing that plan approval application has already been heard on 02.04.2019 and judgment reserved. In view of the above, the order dated 23.01.2019 had lost its relevance and observation of the Adjudicating Authority that SRA has been continuously engaging the CoC in litigation wasting the time of insolvency resolution, was uncalled for. Further, the orders passed by the Adjudicating Authority as well as this Appellate Tribunal were prior to plan approval and independent to aforesaid proceeding, the C.A. No. 2357/2019 was to be considered by the Adjudicating Authority.

23. Further, in Para 10 the Adjudicating Authority only noticed that Appellant has deposited an amount of INR 10.55 Crore. All subsequent events including deposit of amount INR 70.25 Crore by the Appellant which were brought before the Adjudicating Authority by filing additional affidavits were not even noticed by the Adjudicating Authority. In this context the affidavit filed by the SRA dated 02.08.2021 which was filed in C.A. 2357/2019 is referred to, where details of payment of INR 70.25

Crores as well as possession of 7.34 Acres of land has been specifically mentioned in para 3 and 4, which is to the following effect:-

“3. I state that the Successful Resolution Applicant is only suffering party due to the delay in implementation, as the Successful Resolution Applicant has already infused funds of Rs. 70.25 Crores and the process of implementation is not completed for no fault, whatsoever, on account of the Successful Resolution Applicant. That, the summary of the payments made by the Successful Resolution Applicant for successful implementation of the Resolution Plan is as under:

S.N	Date of the Payment	Amount
1.	June 10, 2019	10.50 Crores
2.	August 29, 2019	28.50 Crores
3.	September 7, 2019	23.00 Crores
4.	November 8, 2019	8.25 Crores
AMOUNT PAID BY THE SRA		70.25 Crores
BALANCE AMOUNT AS PER THE RESOLUTION PLAN		165.61 Crores
GRANT TOTAL		235.86 Crores

4. I state that that approximately 7.5 Acres out of total acres of 45.56 Acres land of the Corporate Debtor, has been illegally encroached and is under the illegal possession of third party(ies). This fact was neither disclosed in the Information Memorandum of the Corporate Debtor nor was informed to the Successful Resolution Applicant any time before the Approval of the Resolution Plan. The details of such land of the Corporate Debtor has been are set out as under:”

Village	Khewat No.	Khata No.	Khasra No.	Bigha	Biswa
Asauda Todran	108	193	3002/387	1	18
			3003/387	1	9
			3006/407	1	1
			3007/407	0	18
			3008/411	1	14
			3009/411	1	9
				5	69
				8	9
	99	177/178/179/180		3	6
				11	15
			Total	7.34 Acres	

24. The Adjudicating Authority has not even noticed its own order dated 03.09.2019 by which revised timeline were approved as was agreed by the Monitoring Committee on 29.08.2019. Para 11 and 12 does not contain any further consideration regarding C.A. No. 2357/2019.

25. In Para 13, the Adjudicating Authority has observed that “it is beyond the powers of this Tribunal to make amendments to the approved resolution plan”. The above observation of the Tribunal was not appropriate in context of the prayers which have been made in C.A. No. 2357/2019. The Appellant was not claiming any modification of the Resolution Plan and the Appellant was only claiming for extension of time for making payments which the Adjudicating Authority itself by order dated 03.09.219, as quoted above, has already approved the revised timelines to make payments. When the Adjudicating Authority has itself granted revised timelines, the observation that Tribunal that it has no powers to amend the approved resolution plan is not justified and uncalled for. In this context we refer to a recent judgment of this Appellate Tribunal dated

20.01.2022 in Company Appeal (AT) (Ins.) No. 1038 of 2021, 'Tricounty Premier Hearing Service Inc vs. State Bank of India & others', which was filed against the order in which the application of the Successful Resolution Applicant for extension of time for making deposit was rejected by the Adjudicating Authority which came to be questioned before this Appellate Tribunal. One of the arguments raised before this Tribunal was that in view of the judgment of Hon'ble Supreme Court in 'Ebix Singapore Private Limited vs. CoC Educomp', the Adjudicating Authority cannot even extend the time for making payment. This Tribunal in Para 22, 23 and 24 laid down following:

"22. We may also refer to the judgment of the Hon'ble Supreme Court in Ebix Singapore Private Limited (supra) relied by learned Senior Counsel for the State Bank of India in support of his submission. In Ebix Singapore Private Limited (supra), following conclusion has been recorded by the Hon'ble Supreme Court in paragraphs 202, 203 and 204:

"202 The residual powers of the Adjudicating Authority under the IBC cannot be exercised to create procedural remedies which have substantive outcomes on the process of insolvency. The framework, as it stands, only enables withdrawals from the CIRP process by following the procedure detailed in Section 12A of the IBC and Regulation 30A of the CIRP Regulations and in the situations recognized in those provisions. Enabling withdrawals or modifications of the Resolution Plan at the behest of the successful Resolution

Applicant, once it has been submitted to the Adjudicating Authority after due compliance with the procedural requirements and timelines, would create another tier of negotiations which will be wholly unregulated by the statute. Since the 330 days outer limit of the CIRP under Section 12(3) of the IBC, including judicial proceedings, can be extended only in exceptional circumstances, this open-ended process for further negotiations or a withdrawal, would have a deleterious impact on the Corporate Debtor, its creditors, and the economy at large as the liquidation value depletes with the passage of time. A failed negotiation for modification after submission, or a withdrawal after approval by the CoC and submission to the Adjudicating Authority, irrespective of the content of the terms envisaged by the Resolution Plan, when unregulated by statutory timelines could occur after a lapse of time, as is Company Appeal (AT) (Insolvency) No. 1038 of 2021 28 the case in the present three appeals before us. Permitting such a course of action would either result in a down-graded resolution amount of the Corporate Debtor and/or a delayed liquidation with depreciated assets which frustrates the core aim of the IBC. 203 If the legislature in its wisdom, were to recognize the concept of withdrawals or modifications to a Resolution Plan after it has been submitted to the Adjudicating Authority, it must specifically provide for a tether under the IBC and/or the Regulations. This tether must be coupled with directions on narrowly defined grounds on which such actions are permissible and procedural directions, which may include the timelines in which they can be proposed, voting requirements and threshold for approval by the CoC (as the case may be). They must also contemplate at which stage the Corporate Debtor may be sent into liquidation by the Adjudicating Authority or otherwise, in the event of a failed negotiation for modification and/or

withdrawal. These are matters for legislative policy. 204 In the present framework, even if an impermissible understanding of equity is imported through the route of residual powers or the terms of the Resolution Plan are interpreted in a manner that enables the appellants' desired course of action, it is wholly unclear on whether a withdrawal of a CoC-approved Resolution Plan at a later stage of the process would result in the Adjudicating Authority directing mandatory liquidation of the Corporate Debtor. Pertinently, this direction has been otherwise provided in Section 33(1)(b) of the IBC when an Adjudicating Authority rejects a Resolution Plan under Section 31. In this context, we hold that the existing Company Appeal (AT) (Insolvency) No. 1038 of 2021 29 insolvency framework in India provides no scope for effecting further modifications or withdrawals of CoC approved Resolution Plans, at the behest of the successful Resolution Applicant, once the plan has been submitted to the Adjudicating Authority. A Resolution Applicant, after obtaining the financial information of the Corporate Debtor through the informational utilities and perusing the IM, is assumed to have analyzed the risks in the business of the Corporate Debtor and submitted a considered proposal. A submitted Resolution Plan is binding and irrevocable as between the CoC and the successful Resolution Applicant in terms of the provisions of the IBC and the CIRP Regulations. In the case of Kundan Care, since both, the Resolution Applicant and the CoC, have requested for modification of the Resolution Plan because of the uncertainty over the PPA, cleared by the ruling of this Court in Gujarat Urja (supra), a one-time relief under Article 142 of the Constitution is provided with the conditions prescribed in Section K.2.”

23. *Shri Saha relying on the paragraph 202 of the above judgment submits that Adjudicating Authority under the IBC cannot exercise jurisdiction, which is not provided in IBC. Hon'ble Apex Court in the said judgment has held that residual powers of the Adjudicating Authority cannot be exercised to create procedural remedies, which have substantive outcomes on the process of insolvency. The above observations have been made in a case where the question before the Hon'ble Apex Court was as to whether after submission of Resolution Plan, Resolution Applicant can withdraw the Plan. Hon'ble Apex Court held that it is only Section 12-A, which enables withdrawal from the CIRP, hence, it was held that Resolution Applicant cannot withdraw from the Plan. The Hon'ble Apex Court has also laid down in the above case that existing insolvency framework in India provides no scope for effecting further modification and withdrawals of CoC approved Resolution Plans, at the behest of the Successful Resolution Applicant.*

24. *The present is not a case where the Resolution Applicant wants to withdraw from the Plan or seeks any modification in the Plan. We are of the view that a prayer for extension of 30 days' time to comply financial commitments as per order dated 20th September, 2021 cannot be said to modification of the Plan when the Adjudicating Authority itself granted time to the Resolution Applicant to comply the financial obligations till*

31st March, 2021. The issue which is sought to be raised in the Appeal that whether Adjudicating Authority erred in exercising its jurisdiction in refusing to grant extension by 30 days as prayed by Resolution Applicant or not? The judgment of the Hon'ble Supreme Court in the Ebix Singapore Private Limited (supra) thus, does not support the submission of learned Counsel for the State Bank of India that Adjudicating Authority has no jurisdiction to extend the time for complying the financial obligations in the Resolution Plan.”

26. This Tribunal rejected the submission that the Adjudicating Authority has no jurisdiction to extend the time for complying the financial obligations in the Resolution Plan. This Tribunal ultimately after considering all facts and circumstances allowed the Appeal and granted 30 days' time to the Appellant to make the payment of the balance amount.

27. The observations in Para 13 about behaviour as demonstrated by SRA so far that of non-seriousness towards the laws and that it defaulted on its obligations is also made without considering all facts and circumstances. The Adjudicating Authority not even was aware of the payments of INR 70.25 crores which have been made till 08.11.2019, when the application was rejected on 01.11.2021, where under the orders of the Adjudicating Authority itself the payments were made by the Appellant.

28. We, thus, are of the opinion that the Adjudicating Authority has rejected both the C.A. Nos. 2357/2019 and 1170/2019 without considering any of the grievances and issues raised by the Appellant in

those applications. The order dated 01.11.2021 is thus unsustainable and deserves to be set aside. We may notice that the Appellant, as recorded by this Tribunal in order dated 07.12.2021, has offered to deposit balance amount of Rs.165.31 Crores before 27.12.2021 but before aforesaid dated an I.A. was filed by the Appellant being I.A. No. 2941 of 2021 when Appellant came to know about the Report of the Sub-Divisional Officer dated 21.12.2021 that there is encroachment on the immovable property. Learned counsel for the Appellant before us submitted that they are ready to deposit the entire balance amount of Rs.165.31 Crores within any time allowed by this Tribunal to finally implement the Resolution Plan.

29. We need to also consider submissions raised by learned counsel for the Respondent No. 1 and 2 that Appellant is liable to pay interest @ 11% p.a. in event Appellant is permitted to deposit the balance amount of Rs.165.31 Crores. Learned counsel for the Respondents have referred to decision of the Monitoring Committee dated 29.08.2019, where one of the decision agreed was Decision No. 3, which is to the following effect:

“3. Interest @ 11% p.a. from the date of approval of resolution plan i.e. 30.05.2019 till the date money is credited to the account of corporate debtor will be paid by the SRA. Financial Creditors shall issue no dues certificate after receipt of balance payment along with interest due.”

30. We may also notice that the above decision of the Monitoring Committee has been verbatim quoted in order dated 03.09.2019, in which

order revised timelines for payments of amount as agreed by Monitoring Committee were accepted by the Adjudicating Authority. Thus, it is clear that extension of timelines for payment as was permitted on 03.09.2019 was on the payment of interest @ 11% p.a. There is no denial that Appellant has not been able to make the payment within the time as provided in the Resolution Plan or as revised by the Adjudicating Authority by order dated 03.09.2019. We, thus, are of the view that Appellant by themselves having undertaken to make payment of interest @11% p.a., they cannot now deny. However, there is one fact which needs to be noticed. We have noticed that after order dated 03.09.2019 in the Minutes of Monitoring Committee dated 07.10.2019 certain issues concerning SRA were discussed and substance having been found in the issues raised, the Monitoring Committee decided that Respondent No. 1 – Monitoring Professional may consider to file an application for extension of time before the Adjudicating Authority but Respondent No. 1 did not file any application and application for extension of time was filed by the Appellant on 29.10.2021. The Application, C.A. No. 2357/2019 in which the Appellant has prayed for extension of time remained pending from 29.10.2019 to till passing of order dated 01.11.2021. The fact that application could not be decided by the Adjudicating Authority for a long period of two years, the Appellant cannot be saddled with interest liability of the aforesaid period. We, thus are of the view that the Appellant shall be liable to pay interest @11% p.a. on the balance amount from 30.05.2019 i.e. the date on which plan was approved by the Adjudicating Authority till

28.10.2019 and thereafter w.e.f. 02.11.2021 till the payment is made by the Appellant. The Appellant themselves shall calculate the interest liability @11% simple interest for the aforesaid two periods and deposit the amount in the account of the Corporate Debtor as hereinafter we shall direct.

Order dated 01.11.2021 in C.A. No. 1246/2019:

31. Now we come to the impugned order dated 01.11.2021 passed by the Adjudicating Authority on C.A. No. 1246/2019. C.A. no. 1246/2019 has been filed by the Respondent No. 1 on 07.07.2019. Copy of the application is part of the record of Company Appeal (AT) (Ins.) No. 1011 of 2021. In the application 1246/2019 following prayers have been made by the Applicant (Respondent No.1):

“(a) Allow the present application; and

(b) Issue appropriate directions against the Respondent M/s. G.P. Global Energy Pvt. Ltd. for knowingly and willfully contravening the terms of the resolution plan for the Corporate Debtor as approved by this Hon’ble Adjudicating Authority vide order dated 30.05.2019 and appropriate order be passed under Section 74(3) read with Section 235A of the Code against the Respondent; and

(c) Issue appropriate direction for forfeiture of the amount of Rs.10.55 crores submitted by the Respondent being a consequence for contravening the terms of the approved resolution plan; and

(d) exclude the period from the date of submission of resolution plan by the Respondent i.e. 19.10.2018 till the order of approval of resolution plan of the Respondent passed by this Hon'ble Adjudicating authority i.e. 30.05.2019 (224 days) for the purposes of calculation of 270 days of CIRP period of the Corporate Debtor and Committee of Creditors be reinstated to make another attempt for a fresh process for resolution plan for the Corporate Debtor;

(e) pass such other or further order/ order(s) as may be deemed fit and proper in the facts and circumstances of the instant case.”

32. First prayer in the application is direction is sought against the Appellant under Section 74(3) read with Section 235A of the Code. In the entire application there is not even pleading that Appellant has even prima-facie knowingly and willfully contravened any provision of plan within the meaning of Section 74. Section 74 provides for punishment for contravention of Resolution Plan. Pre-condition for punishment under Section 74 is “any such officer who knowingly or willfully committed or authorised or permitted such contravention shall be punishable”.

Section 74 sub-section (3) is as follows:

“74(3) Where the corporate debtor, any of its officers or creditors or any person on whom the approved resolution plan is binding under section 31, knowingly and wilfully contravenes any of the terms of such resolution plan or abets such contravention, such corporate debtor, officer,

creditor or person shall be punishable with imprisonment of not less than one year, but may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.”

33. For offence under Section 74(3), there is to be pleading that SRA or any person knowingly or willfully contravened any of the terms of the Resolution Plan. In entire application neither any pleadings nor averments have been made that SRA has willfully and knowingly contravened the terms of Resolution Plan.

34. The Adjudicating Authority in its order dated 01.11.2019 has not even recorded a prima-facie satisfaction that there is any material to prove any willful contravention of the plan by the Successful Resolution Applicant. The Applicant's averment in application in Para 21 is that even after lapse of 30 days from the date of approval of the plan Appellant has filed to adhere to the terms of the Resolution Plan. Para 21 and 22 of the Application are as follows:

“XXI. That however, even after lapse of 30 days from the date of the approval of the resolution plan the Respondent M/s G.P. Global Energy Pvt. Ltd. has failed to adhere to the terms of the Resolution Plan as approved by this Hon'ble Adjudicating Authority and thereby have defaulted in making payment as per the resolution plan i.e. 25% of the Resolution Plan amount within 7 days of approval of the resolution plan and further even has failed

to make the entire payment as required under the resolution plan as approved by this Hon'ble Adjudicating Authority within a period of 30 days from the approval of resolution plan which expired on 30.06.2019.

XXII. That Section 74(3) of the Code provides for the consequences where any person on whom the approved resolution plan is binding under Section 31, knowingly and wilfully contravenes any of the terms of such resolution plan or abets such contravention. That Section 74 (3) of the Code is reproduced as hereunder:"

35. The Adjudicating Authority has not even adverted to Section 74(3) and had directed for making a reference to IBBI for taking appropriate action under Section 74(3), which order is unsustainable.

36. Adjudicating Authority has further directed for forfeiture of the amount of Rs.10.55 Crores. The Adjudicating Authority in the entire order has not even noticed that Appellant has deposited Rs.70.25 Crores till 08.11.2019. The Adjudicating Authority has not even referred to its earlier order dated 03.09.2019 by which the Adjudicating Authority has approved the revised timelines for payment. The Adjudicating Authority has noticed its order dated 23.01.2019 with regard to which we have already dealt in the foregoing paragraphs. Further, in view of discussions and conclusions while considering order dated 01.11.2021 passed in C.A. No. 2357/2019 and C.A. No. 1170/2019, the order dated 01.11.2019 passed in C.A. No.

1246/2019 becomes unsustainable. In view of the foregoing discussion, we decide both the Appeals in following manner:

- (a) Company Appeal (AT) (Ins.) No. 1011/2021 is allowed. The impugned order dated 01.11.2021 is set aside and C.A. No. 1246/2019 is dismissed.
- (b) Company Appeal (AT) (Ins.) No. 954/2021 is allowed. The impugned order dated 01.11.2021 is set aside. C.A. No. 2357/2019 is allowed. The Appellant is allowed time till 30.05.2021 to deposit the balance amount of Rs.165.31 Crores in the account of the Corporate Debtor.
- (c) Alongwith the deposit of aforesaid amount of Rs.165.31 Crores, the Appellant shall also deposit the interest on the balance amount w.e.f. 30.05.2019 till 28.10.2019 and interest from 02.11.2021 till the date of payment @ 11% p.a. simple interest.
- (d) Monitoring Committee and the Respondent No. 1 shall handover the physical possession of all movable properties and vacant possession of all immovable properties property including land, within two weeks from the date of payment.
- (e) The Monitoring Committee and Respondent No. 1 shall also handover all deeds and title of all movable and immovable

assets of the Corporate Debtor within the same period of two weeks.

- (f) Financial Creditors shall grant no dues certificate and release all clearances with regard to existing default after receiving the payment as permitted above within the period of two weeks.
- (g) Respondent No. 1 shall file a Compliance Report before the Adjudicating Authority as well as this Appellate Tribunal within the period of six weeks from today giving details of all disbursement in pursuance of the approval of Resolution Plan after 30.05.2019 and all other relevant facts.

The parties shall bear their own costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Dr. Alok Srivastava]
Member (Technical)**

**[Shreesha Merla]
Member (Technical)**

NEW DELHI

6th May, 2022

Archana