

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 267 of 2026

(Arising against the impugned order dated 09.01.2026 passed by the Ld. National Company Law Tribunal, Delhi Bench in I.A. No. 4269 of 2024 and I.A. No. 5798 of 2025 in Company Petition (IB) No. 197 (PB) of 2017)

IN THE MATTER OF:

Ramachandran Subramanian,

Erstwhile Liquidator of Tecpro Systems Limited

...Appellant

Versus

1. **Anil Kohli**, New Liquidator of Tecpro Systems Limited, ARCK Resolution Professionals LLP, New Delhi. **...Respondent No.1**
2. **Edelweiss Asset Reconstruction Company Limited** (EARCL). **...Respondent No.2**
3. **Bank of Baroda**, Chennai. **...Respondent No.3**
4. **Assets Care and Reconstruction Enterprise Ltd.** (Assignee of Standard Chartered Bank). **...Respondent No.4**
5. **Pegasus Asset Reconstruction Company Ltd.** (Assignee of IndusInd Bank). **...Respondent No.5**

Present:

For Appellant: **Mr. Gaurav Mitra, Mr. Mohit Singh, Ms. Garima Jain, Ms. Arushi Mishra, Advocates.**

For Respondents: **Mr. Sandeep Bajaj, Ms. Aakansha Nehra, Mr. Mayank Biyani, Mr. Shubham Jaiswal, Mr. Raj, Mr. N.S. Aulakh, Advocates for R-1.**

Mr. Arvind Nayyar, Sr. Advocate, Ms. Nisha, Ms. Charu Bansal, Ms. Diksha, Advocates for EARCL.

Cont'd.... /

J U D G M E N T
(10th March, 2026)

INDEVAR PANDEY, MEMBER (T)

The present Appeal has been preferred by **Mr. Ramachandran Subramanian, Erstwhile Liquidator of Tecpro Systems Limited** under Section 61 of the Insolvency and Bankruptcy Code, 2016, challenging the Order dated 09.01.2026 passed by the Ld. National Company Law Tribunal, Delhi Bench (Adjudicating Authority) in I.A. No. 4269 of 2024 and I.A. No. 5798 of 2025 in Company Petition (IB) No. 197 (PB) of 2017. By the said order, the Adjudicating Authority dismissed the application filed by the Appellant seeking declaration of **Edelweiss Asset Reconstruction Company Limited (Respondent No. 2)** as a “related party” under Section 5(24) of the IBC and also allowed the application filed by Respondent No. 2 for replacement of the Appellant as Liquidator. Consequently, Mr. Anil Kohli, New Liquidator of Tecpro Systems Limited (**Respondent No. 1**) was brought into the proceedings in his capacity as the newly appointed Liquidator. The other respondents in this proceeding are Bank of Baroda (**Respondent No.3**); Assets Care and Reconstruction Enterprise Ltd., assignee of Standard Chartered Bank (**Respondent No. 4**), and Pegasus Asset Reconstruction Company Ltd., assignee of IndusInd Bank (**Respondent No. 5**), all being stakeholders in the liquidation process of the Corporate Debtor. The Appellant, being aggrieved by his removal on the basis of voting share allegedly influenced by a creditor claimed to be a related party, has approached this Appellate Tribunal seeking setting aside of the Impugned Order.

Brief facts of the case

2. The brief facts of the case are as given below:
 - i. The Corporate Debtor, Tecpro Systems Limited, came under financial distress, at this stage, State Bank of India, which was the main Financial Creditor of CD assigned its debt of about Rs. 2200 crores to Respondent No. 2 – Edelweiss Asset Reconstruction Company Limited (**EARCL**), on 03.03.2015 for a consideration of approximately Rs. 171 crores. Respondent No. 2 subsequently acquired further stakes from other lenders and thereby became the dominant financial creditor.
 - ii. Following such acquisition during the year 2015, EARCL actively participated in the management and affairs of the Corporate Debtor by forming committees, stipulating escrow mechanisms, corresponding directly with clients and engaging Ernst & Young LLP (EY) under an agreement dated 16.09.2015 for monitoring and advisory service.
 - iii. During a meeting held on 13.09.2017, the Committee of Creditors was informed that EY had already been engaged by EARCL since 16.09.2015 for project monitoring and cash flow supervision with respect to the Corporate Debtor, and thereafter on 16.09.2017 the erstwhile Resolution Professional entered into a restructuring and IBC advisory agreement with EY for preparation of the Information Memorandum.
 - iv. Respondent no. 2 EARCL filed a petition under Section 7 of the Code, which was admitted on 07.08.2017 and the Corporate Insolvency Resolution Process was initiated against the Corporate Debtor. Mr.

Venkatesan Sankaranarayanan was appointed as Interim Resolution Professional and later confirmed as Resolution Professional after constitution of the Committee of Creditors.

- v. During CIRP, the Committee of Creditors approved a Resolution Plan submitted by Kridhan Infrastructures Private Limited on 08.03.2019 with 89.92% voting share, and the same was approved by the Ld. NCLT under Section 31 of the IBC on 15.05.2019; however, the Resolution Applicant failed to implement the plan and defaulted in fulfilling its equity infusion obligations within stipulated timelines.
- vi. Consequent upon failure CIRP, the Adjudicating Authority ordered the liquidation of the Corporate Debtor on 16.01.2020 and appointed the present Appellant as Liquidator to conduct the liquidation proceedings in accordance with the provisions of the IBC and the Liquidation Process Regulations.
- vii. Respondent No.2, EARCL filed I.A. No. 4349 of 2020 on 08.10.2020 seeking replacement of the Liquidator, and parallel complaints were also filed before the IBBI; however, such attempts did not culminate in removal of the Appellant at that stage.
- viii. During the liquidation process, a property of the Corporate Debtor was auctioned in September 2022 yielding realization of approximately Rs. 28.28 crores against prior valuation of around Rs. 24 crores, and issues arose regarding payment of alleged past dues of Rs. 7.89 crores to HSIIDC, which according to the Appellant was commercially and legally

justified in order to maximize value and ensure viability of the transaction.

- ix. Respondent No. 2 EARCL filed I.A. No. 5780 of 2023 on 13.10.2023 seeking replacement of the Appellant as Liquidator. The application was disposed of by the Adjudicating Authority on 26.09.2024 based on the undertaking given by the Appellant, that he would conduct a meeting of Stakeholder's Consultation Committee on 04.10.2024 on the agenda of replacement of existing liquidator.
- x. The Appellant filed I.A. No. 4269 of 2024 on 24.08.2024 seeking a declaration that EARCL/R-2 be treated as a "related party" under Section 5(24) of the IBC on account of its alleged managerial control over the Corporate Debtor prior to and during CIRP.
- xi. During meetings of the Stakeholders' Consultation Committee held on 04.10.2024, an agenda for replacement of the Appellant as Liquidator was considered, and voting was conducted between 17.10.2024 and 18.10.2024, wherein the resolution for replacement was passed with 92.35% voting share, out of which 84.82% voting share were attributed to EARCL.
- xii. Based on the resolution passed on 18.10.2024, EARCL/R-2 filed IA No. 5798 of 2024 before Adjudicating Authority seeking replacement of Appellant with Shri Anil Kohli/R-1.
- xiii. Upon challenge and further judicial directions, a specific voting exercise was conducted on 17.07.2025 under the independent observation of Justice (Retd.) Sunil Gaur excluding the vote of EARCL, and in such

voting the resolution for replacement secured only about 59% voting share, thereby failing to meet the mandatory threshold of 66% prescribed under Regulation 31A(11) of the Liquidation Process Regulations.

- xiv. Despite the above, the Ld. NCLT by the Impugned Order dated 09.01.2026 dismissed I.A. No. 4269 of 2024 seeking declaration of EARCL as related party and allowed I.A. No. 5798 of 2025, thereby directing replacement of the Appellant as Liquidator based on voting which, according to the Appellant, included invalid vote of a related party.
- xv. Aggrieved by the dismissal of his application and the consequential order permitting his removal as Liquidator, and contending that the Impugned Order violates Section 5(24), proviso to Section 21(2) of the IBC and Regulation 31A(11) of the Liquidation Process Regulations, the Appellant has preferred the present Appeal before this Appellate Tribunal on 01.02.2026 challenging the legality and correctness of the Impugned Order.

Submissions of the Appellant

3. At the outset, Ld. Counsel for the Appellant respectfully submits that the present Appeal has been preferred against the Order dated 09.01.2026 ("Impugned Order") passed by the Ld. NCLT, New Delhi Bench in I.A. 4269/2024 and I.A. 5798/2025 in Company Petition (IB) No. 197 (PB)/2017. By way of the Impugned Order, the Ld. NCLT has (a) dismissed the

Appellant's application (I.A. 4269/2024) seeking declaration of Respondent No. 2, Edelweiss Asset Reconstruction Company Limited ("EARCL"), as a 'related party' of the Corporate Debtor ("CD"), and (b) allowed EARCL's application (I.A. 5798/2025) seeking replacement of the Appellant as Liquidator of the CD.

4. Ld. Counsel submits that during the tenure of the Appellant as Liquidator, the CD recovered approximately INR 620 Crores, which is significantly higher than the value of INR 470 Crores contemplated under the earlier Resolution Plan. Despite such demonstrable recovery and value maximization, the Appellant has been removed at the behest of an entity which is itself ineligible on account of being a related party.

5. It is submitted that on 23.03.2015, EARCL acquired the entire stressed asset portfolio of the CD from State Bank of India for a consideration of INR 171 Crores, thereby acquiring control over assets valued in excess of INR 2700 Crores, including six immovable properties and 30% of the underlying equity, on an absolute ownership basis. Ld. Counsel submits that such acquisition was not a mere financial assignment but amounted to assumption of managerial control over the CD.

6. Ld. Counsel further submits the following chronology to demonstrate EARCL's pervasive control and conduct:

- i. In April 2015, EARCL facilitated an External Financing Support Agreement between the CD and CSPGCL for Rs. 55 Crores at 18% interest, while exercising control over the CD.

- ii. Vide Agreement dated 16.09.2015 between EARCL and EY, various committees and Management Information Systems were established to manage the CD, even while the erstwhile top management continued, thereby reflecting direct operational structuring by EARCL.
- iii. On 07.08.2017, CIRP was initiated on a Section 7 application filed by EARCL and Mr. Venkatesan was appointed as IRP and subsequently confirmed as RP.
- iv. Since the Resolution Plan proposed by Kridhan Infrastructures Private Limited failed implementation, liquidation was permitted on 16.01.2020 and the Appellant was appointed as Liquidator. The said order was unsuccessfully challenged before this Hon'ble Tribunal as well as before the Hon'ble Supreme Court, wherein EARCL supported the challenge by filing impleadment applications.
- v. In October 2020, EARCL filed I.A. 4349/2020 seeking removal of the Appellant as Liquidator, which came to be dismissed on the basis of an undertaking to cooperate with the SCC.
- vi. On 05.03.2021, the IBBI Disciplinary Committee passed an Order holding that the erstwhile RP acted under the influence of EARCL and violated statutory duties.
- vii. On 13.10.2023, EARCL filed a second application seeking replacement of the Appellant, which was dismissed vide Order dated 26.09.2024.
- viii. On 23.08.2024, the Appellant filed I.A. 4269/2024 seeking declaration of EARCL as a related party and for denuding its voting rights.
- ix. During 17–18.10.2024, voting was conducted for replacement of the Appellant wherein EARCL, holding 84.82% share, participated, and

the agenda was passed with 92.25% votes. Based on the said voting, EARCL filed I.A. 5798/2024 on 03.12.2024 seeking replacement.

- x. On 09.07.2025, the Ld. NCLT directed an independent voting exercise excluding EARCL under the supervision of Hon'ble Mr. Justice (Retd.) Sunil Gaur. On 17.07.2025, the said voting was conducted and the resolution for replacement secured only 59%, thereby failing to meet the statutory 66% threshold. Despite this, the Impugned Order dated 09.01.2026 dismissed the Appellant's application and allowed replacement.

7. Ld. Counsel submits that the Impugned Order is unsustainable as the Ld. NCLT ignored material evidence demonstrating that EARCL qualifies as a related party. It failed to appreciate the IBBI Order which categorically recorded that the erstwhile RP was "guided by" EARCL and did not act independently. Further, the third Proviso to Regulation 31A(2) of the Liquidation Process Regulations bars a related party financial creditor from voting in the SCC. The replacement of the Appellant was proposed by EARCL itself, which also proposed the new Liquidator. Moreover, the Ld. NCLT's own direction for independent voting excluding EARCL was rendered meaningless by ignoring the outcome wherein the replacement failed.

8. Ld. Counsel submits that EARCL dictated the corporate management of the CD in multiple ways. It installed EY for day-to-day management, demonstrating conduct beyond agency and reflective of absolute ownership. It directed that employees take instructions exclusively from EY; mandated appointment of an EY representative as CRO and Board Observer; imposed

prior approval requirements for agendas; constituted and populated Core, Sub and Asset Sale Committees with its personnel; incorporated turnaround and restructuring within its agreement with EY; and ensured that all outgoing vendor payments required EY approval, with ultimate control resting with EARCL.

9. Ld. Counsel further submits that the IBBI Order conclusively establishes EARCL's undue influence. It records that EARCL used its 85% stake to unduly influence the CIRP process and that the RP violated Clause 5 of the Code of Conduct by acting at the instance of EARCL. Emails dated 14.11.2020 reveal admission that EY was engaged without competitive quotes merely because EARCL suggested continuation for operational convenience.

10. Ld. Counsel submits that the finding of the Ld. NCLT characterizing the Appellant's application as a 'counterblast' is erroneous. The Appellant was discharging fiduciary duties to preserve the integrity of the liquidation process. It was the Appellant's refusal to facilitate handover of the CD to a disqualified Resolution Applicant that triggered repeated attempts by EARCL to remove him. Since October 2020, EARCL has persistently filed applications seeking removal. Further, EARCL suppressed its related party status and illegally exercised 85% voting rights, thereby diluting rights of genuine external creditors such as Standard Chartered Bank, Bank of Baroda and Pegasus ARC.

11. Ld. Counsel submits that adjudication of the related party issue is a threshold jurisdictional issue. The Proviso to Section 21(2) of the IBC read

with the third Proviso to Regulation 31A(2) creates an absolute statutory embargo against voting by related party financial creditors. If EARCL is held to be a related party, its vote is void ab initio and any resolution based upon such vote is a nullity. Allowing such participation defeats the legislative intent behind the 2018 amendment to Section 5(24), intended to safeguard genuine external creditors.

12. Lastly, Ld. Counsel submits that the Impugned Order itself records that no adverse remark shall be pursued against the Appellant and that his fee shall be paid in accordance with rules and regulations. The Appellant has already filed I.A. No. 610/ND/2026 seeking payment of dues, and notice has been issued on 09.02.2026. Without prejudice, in the event this Hon'ble Tribunal upholds replacement, a specific direction may kindly be issued to ensure expeditious adjudication of the said application so that the Appellant is compensated for services rendered.

13. In view of the foregoing submissions, the Appellant prayed for setting aside the Impugned Order dated 09.01.2026 and allow the prayer made in I.A. 4269/2024 declaring EARCL as a related party and consequently hold that its participation and vote in the SCC are void, and restore the Appellant as Liquidator of the Corporate Debtor, along with such further orders as this Tribunal may deem fit in the interest of justice.

Submissions of Respondent No. 1/ Liquidator Mr. Anil Kohli

14. Ld. Counsel for Respondent No. 1 respectfully submits that the Preliminary Compliance of Impugned Order dated 09.01.2026 has been

made by the Respondent No. 1 by taking over charge as the newly appointed liquidator of the Corporate Debtor

15. Ld. Counsel submits that pursuant to the Impugned Order, representatives of Respondent No. 1 visited the office premises of the Corporate Debtor on 02.02.2026 for taking charge. However, the Appellant informed telephonically that an appeal had been filed/is being filed and, on that ground, the handover process was not initiated by him.

16. It is further submitted that due to complete non-cooperation from the Appellant, Respondent No. 1 was constrained to take charge of the premises and documents on an “as is where is” basis in the presence of Mr. Rohit Singh, an employee of the Corporate Debtor, since neither the Appellant nor his representatives appeared for formal handover. The documents available appeared to pertain only to the normal course of business, while insolvency process records could not be traced.

17. Ld. Counsel submits that despite repeated requests, meetings and correspondence, complete handover of process documents and case-specific email credentials was not done. In view of multiple ongoing litigations and arbitrations involving substantial recoveries in favour of the Corporate Debtor, including matters where favourable awards have already been passed, Respondent No. 1 was compelled to file 2 applications viz.:

- i. I.A. No. 632 of 2026 seeking compliance of the Impugned Order, which was allowed on 11.02.2026; and

- ii. Contempt Application No. 2 of 2026, which was listed on 13.02.2026 and 18.02.2026 and stands adjourned to 27.02.2026.

18. It is submitted that even before this Hon'ble Tribunal on 16.02.2026, despite statement of the Appellant's counsel that charge would be handed over within the week, complete handover has still not been affected as on 20.02.2026.

19. Respondent No. 1 submits that a Liquidator does not possess any personal or vested right to continue in the liquidation process once the Adjudicating Authority has lawfully ordered his replacement.

20. He places reliance upon the judgment of this Appellate Tribunal in *Ranjeet Kumar Verma (Erstwhile IRP) v. Committee of Creditors of Straight Edge Contract Pvt. Ltd.*, Company Appeal (AT) (Ins.) No. 1129 of 2020, wherein it has been categorically held that an IRP/RP has no vested legal interest to continue and has no locus to maintain an appeal against replacement once the competent authority has taken a decision.

21. Respondent No. 1 further places reliance upon '*V. Venkata Sivakumar v. IDBI Bank Limited*', [2022 SCC OnLine NCLAT 1616], wherein this Hon'ble Tribunal held that a Liquidator does not have any personal right to continue in the liquidation process and that replacement by the Adjudicating Authority, in exercise of its jurisdiction, is not liable to interference.

22. Ld. Counsel submits that in the present case, the jurisdiction of the Learned Adjudicating Authority to pass the replacement order has not been substantively challenged. No stakeholder has challenged the Impugned

Order. The Appellant, being merely a professional, cannot claim to be an “aggrieved person” under Section 61 of the Code, as no legal right of his stands infringed. Accordingly, the present appeal is not maintainable and deserves dismissal on this ground alone.

23. Ld. Counsel submits that from the records, it is an admitted position that EARCL was a member of the Committee of Creditors from commencement of CIRP on 07.08.2017 (upon admission of CP (IB) 197 of 2017 under Section 7 filed by EARCL) until liquidation was ordered on 16.01.2020. It is submitted that EARCL held approximately 85% voting share in the CoC, which remained unchanged and was never challenged at any stage of CIRP, including when crucial commercial decisions were taken.

24. It is submitted that the Appellant himself was appointed as Liquidator on 16.01.2020 based on the same composition and voting structure of the CoC, wherein EARCL held overwhelming majority. Having accepted appointment pursuant to such composition, the Appellant cannot now turn around and challenge the constitution of the CoC or the status of EARCL.

25. It is further submitted that from 16.01.2020 (date of commencement of liquidation) till 23.08.2024 (date of filing I.A. No. 4269 of 2024 by the Appellant), no objection was ever raised by the Appellant regarding EARCL being a related party.

26. This clearly demonstrates that the objection was an afterthought and raised only to derail the liquidation process and resist lawful replacement.

27. Ld. Counsel submits that the appointment of Respondent No. 1 has been made strictly in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 and pursuant to judicial directions of the Learned Adjudicating Authority. The Impugned Order was passed after due consideration of pleadings and material placed on record. No procedural illegality, perversity, or jurisdictional error has been demonstrated by the Appellant.

28. He submitted that the entire conduct of the Appellant post replacement—non-handover of charge, non-cooperation, and continuation of representation—further reinforces the necessity and correctness of the Impugned Order.

29. In light of the foregoing submissions, Ld. Counsel for Respondent No. 1 respectfully submits that:

- The Appellant has no vested right or locus to challenge his replacement.
- The Impugned Order is lawful, reasoned and passed within jurisdiction.
- No stakeholder has challenged the replacement.
- The appeal is devoid of merit and is not maintainable under Section 61 of the Code.
- The conduct of the Appellant post-Impugned Order further justifies dismissal of the appeal.

Accordingly, Learned Counsel prayed for dismissal of the present Appeal with costs.

Submissions of Respondent No. 2/ EARCL

30. Ld. Counsel for EARCL submits that the Impugned Order is well reasoned, factually correct, and legally sustainable. The Appellant has sought to misconstrue ordinary lender protection mechanisms as instances of managerial control so as to wrongly classify EARCL as a related party under Section 5(24) of the Insolvency and Bankruptcy Code, 2016 (“Code”). The allegations are factually incorrect, legally untenable, and devoid of any evidentiary basis.

31. Ld. Counsel submits that the Appellant’s allegation is premised upon a fundamental misunderstanding of the nature of security interests. The shares referred to were not equity investments by EARCL, but pledged shares forming part of the original security package created in favour of SBI and later assigned to EARCL. Upon assignment, EARCL merely stepped into the shoes of the original lender and acquired the debt along with its underlying securities.

32. It is submitted that the pledged shares were never invoked during the CIRP. Consequently, no ownership rights, voting rights, or management rights ever vested in EARCL. In law, a pledgee has only a limited right to retain and, upon default, invoke and sell the pledged securities. Until

invocation, ownership remains with the pledgor. Therefore, holding pledged shares cannot amount to management or policy control.

33. Ld. Counsel further submits that acceptance of the Appellant's argument would lead to an absurd result whereby every secured creditor holding pledged shares would automatically become a related party. Such interpretation would disqualify a vast class of secured financial creditors and is contrary to both statutory scheme and commercial reality.

34. Ld. Counsel submits that EARCL never appointed or nominated any director to the Board of the Corporate Debtor. Mr. D. Venkatsubramaniam, an employee of Ernst & Young, was appointed merely as an observer in accordance with contractual lender rights. An observer is not recognised under the Companies Act, 2013 as a director and possesses no voting or statutory authority. The purpose of appointing an observer was limited to oversight in a distressed financial scenario to safeguard lender exposure. Oversight cannot be equated with management control.

35. With respect to the email dated 16.12.2015 relied upon by the Appellant, Ld. Counsel submits that the communication merely required sharing of agenda and prior information. It did not confer veto rights, approval authority, or decision-making power upon EARCL. Lender oversight in distressed accounts cannot be equated with assumption of control.

36. With respect to the escrow arrangement dated 08.09.2015, ld. Counsel submitted that it was introduced as a cash-flow monitoring mechanism in view of financial stress. Such arrangements are standard in lending

transactions to prevent diversion of receivables. The Corporate Debtor was a consenting party to the Escrow Agreement. Monitoring of receivables does not amount to management or operational control. It does not involve business decision-making or policy direction. It is a protective mechanism to preserve asset value. By the time EARCL acquired the debt, the Corporate Debtor was already classified as NPA. Therefore, the measures adopted were routine protective lender actions and cannot constitute control.

37. Ld. Counsel submits that prior to CIRP, EY was engaged under contractual lender rights for advisory and monitoring purposes. In December 2015, Mr. D. Venkatsubramaniam was appointed Chief Restructuring Officer for monitoring cash flows and restructuring performance. Such restructuring support is standard in ARC transactions. The engagement letter expressly provided that EY would not assume management responsibility, which remained with the Corporate Debtor. EY's role was advisory.

38. Post commencement of CIRP, EY was appointed at the instance of the Resolution Professional under Sections 20(2)(a) and 25(2)(d) of the Code. The appointment was ratified by an overwhelming majority of the CoC. EY functioned only as a professional agency assisting the RP and not as a managerial arm of EARCL. Continuity of advisor was logical and commercially prudent.

39. Ld. Counsel submits that the allegation regarding facilitation of INR 55 crores funding from CGPGCL is wholly unsupported by evidence. No material has been produced demonstrating EARCL's role. Similarly,

allegations regarding encashment of bank guarantees by NTPC are speculative. Even assuming financial consequences arose, such commercial arrangements do not establish managerial or policy control.

40. Regarding the sale of Property, Ld. Counsel submits that the sale was conducted under the SARFAESI Act through private treaty following due statutory procedure and was completed prior to initiation of CIRP. The transaction attained finality and was expressly consented to by the ex-management. It is impermissible for the Ex-Liquidator to challenge a concluded SARFAESI sale years later. In any event, the transaction has no nexus with related party determination.

41. It is the submission of the Ld. Counsel that reliance on the IBBI order is misplaced. The observation in paragraph 6.3.5 merely notes that the RP was guided by EARCL in appointing EY. This cannot be construed as evidence of management control. Statutory responsibility for conducting CIRP vests exclusively with the Resolution Professional. Observations concerning appointment of advisors cannot lead to inference of control by EARCL.

42. Ld. Counsel respectfully submits that none of the circumstances relied upon by the Appellant demonstrate that EARCL exercised management control, policy control, or control of any nature over the Corporate Debtor so as to attract related party status under Section 5(24) of the Code. The Ld. NCLT rightly rejected the Related Party Application and correctly allowed the application for replacement of the Appellant based on the overwhelming 92.25% SCC vote.

43. The Impugned Order is legally sound, factually justified, and warrants no interference. Accordingly, the present Appeal deserves to be dismissed.

Analysis and Findings

44. We have heard learned counsel for the parties at length and carefully perused the record.

45. The first and foremost issue that arises for determination is whether the Liquidator/Appellant has the locus to maintain the appeal against his replacement. We would thereafter take up the issues raised in appeal on merits.

46. The procedure for replacement of the liquidator is provided in Regulation 31A of The IBBI (Liquidation Process) Regulations, 2016. The relevant regulation 31A (11) is extracted below:

“Regulation 31A. Stakeholders’ Consultation Committee

(1)

*

*

(11) The consultation committee, after recording the reasons, may by a majority vote of not less, than sixty-six per cent., propose to replace the liquidator and shall file an application, after obtaining the written consent of the proposed liquidator in Form AA of the Schedule II, before the Adjudicating Authority for replacement of the liquidator:

Provided that where a liquidator is proposed to be replaced, he shall-

(a) continue to work till his replacement; and

(b) be suitably remunerated for work performed till his replacement.

Provided that where a consultation committee under Regulation 31A has been constituted before the commencement of Insolvency and Bankruptcy Board of India (Liquidation Process) (Second

Amendment) Regulations, 2022, the liquidator within thirty days of the commencement of the said Regulations, shall re-constitute the consultation committee as required under the said Regulations and provisions provided under amended Regulation 31A shall come into effect only after such constitution.”

47. It is clear from the aforesaid regulation that the Stakeholders' Consultation committee with a majority vote of not less than 66% may propose replacement of Liquidator to the Adjudicating Authority.

48. In the facts of the present case, it is seen that as early as 08.10.2020, an application was filed seeking removal of the Appellant. In the 22nd SCC meeting held on 15.09.2023, it was noted that the Appellant had released INR 3,71,06,440 to HSIIDC allegedly in violation of Section 53 of the Code and the Process Memorandum, and the SCC decided to file an application for replacement. Thereafter, voting in October 2024 reflected an overwhelming majority of 92.25% in favour of replacement. Based on this, EARCL filed the third removal application and the Impugned Order was passed on 09.01.2026.

49. The Appellant argues that an independent voting exercise excluding EARCL did not meet the 66% threshold. However, the power of the Adjudicating Authority is not limited to mechanical counting of votes. The liquidation process remains under the supervision of Adjudicating Authority. If the Authority, on overall consideration of stakeholder confidence, conduct of proceedings and repeated friction, forms an opinion that continuation of the Liquidator is not conducive to smooth completion of liquidation, it is within its jurisdiction to direct replacement.

50. This tribunal in Ranjeet Kumar Verma (Erstwhile IRP) v. Committee of Creditors of Straight Edge Contract Ltd., Company Appeal (AT) (Ins.) No. 1129 of 2020, decided on 04.01.2021, observed as follows in para 3 of the judgement:

*"3. In the instant case, it is not disputed that the replacement has been done by the Committee of Creditors with 100% vote share, the requisite vote share being 66%. It is indisputable that the Appellant has no vested legal interest and he has no right to continue once the decision is taken by the Committee of Creditors to replace him. **He has no locus standi to maintain the Appeal as he cannot claim invasion of any of his legal rights and under the I&B Code, we say so because the Interim Resolution Professional is not a stake holder.** That apart, Committee of Creditors which decided to replace Appellant was itself constituted by the Appellant and he would not be permitted to argue that the constitution of Committee of Creditors was bad."*

(Emphasis Supplied)

51. In this judgment, the Appellate Tribunal clearly held that an Interim Resolution Professional does not have any vested legal right to continue once the Committee of Creditors, by the requisite majority, decides to replace him. The Tribunal further observed that the IRP is not a stakeholder in the insolvency process and therefore cannot claim that any of his legal rights have been invaded, merely because he has been replaced. It was also specifically noted that where the CoC, which was constituted during the tenure of the professional himself, decides to replace him, he cannot subsequently challenge the very constitution or decision-making authority of that CoC. Applying this principle to the present case, the Appellant, having

functioned as Liquidator pursuant to the decision of the CoC/SCC structure in which EARCL was a dominant voting member, cannot now assert that he has a legal right to continue in office or challenge the validity of the very decision-making body from which his authority originated. The ratio of this judgment directly supports the position that the Appellant has no vested right to insist upon continuation and that replacement, by itself, does not give rise to a cause of action unless some statutory violation is shown.

52. The matter relating to removal of liquidator was examined by Chennai bench of this Tribunal in *V. Venkata Sivakumar v. IDBI Bank Limited, in Company Appeal (AT) (Ins.) No. 269/decided on 20.12.2022*. The relevant extracts of para 48 relevant portions of which are extracted below:

- “This ‘Appellate Tribunal’ also notes that in recent judgement passed by Principal Bench, NCLAT vide order dated 13.10.2022 in *Company Appeal (AT) (Ins.) No. 1234 of 2022* as held:

“The Liquidator does not have any personal right to continue in the Liquidation Process and the reasons which have been noted in the order are sufficient to exercise even the inherent power by NCLT to replace the Liquidator. It is not a fit case to interfere in exercise of our Appellate Jurisdiction.”

[emphasis supplied]

- This clearly establishes that, no Liquidator, has any ‘personal rights’, to continue in ‘Liquidation’ and the ‘Adjudicating Authority’, can order for ‘Replacement’ of the ‘Liquidator’, recording sufficient reasons, as per ‘Law’.

- *Further, since the 'Adjudicating Authority', is vested with the power, to 'appoint a Liquidator', under Section 33 and 34 of the I & B Code, 2016. It is by the virtue of the Section 16 of the General Clauses Act, 1897, that an 'Adjudicating Authority', who also, has the power, to remove the 'Liquidator'.*
- *Combined reading of above Case Laws and Provisions along with Section 33 and Section 34 of the I & B Code, 2016, would make it clear that the 'Adjudicating Authority', which had the 'powers', to appoint the 'Liquidator', will also have the powers, to remove the 'Liquidator' for reasons, the 'Adjudicating Authority', may find fit, just, valid and proper."*

53. In this decision, the Appellate Tribunal reaffirmed that a Liquidator does not possess any personal right to continue in the liquidation process and that the Adjudicating Authority is competent to replace a Liquidator if reasons exist which justify such action. The Tribunal further observed that where the Adjudicating Authority has recorded reasons and exercised even its inherent powers to ensure proper conduct of the liquidation process, appellate interference is unwarranted, unless the order is perverse or without jurisdiction. The emphasis was that the office of Liquidator is functional and fiduciary in nature, and continuation depends upon the confidence of stakeholders and supervision of the Adjudicating Authority, not upon personal entitlement. In the present case, where repeated removal applications were filed, stakeholder dissatisfaction was recorded, and an overwhelming majority supported replacement, the principle laid down by this judgment squarely applies. It reinforces that once the Adjudicating

Authority, upon consideration of material on record, forms an opinion that replacement is necessary for smooth conduct of liquidation, such decision does not violate any personal right of the outgoing Liquidator and does not warrant appellate interference.

54. These two judgments establish that the Liquidator's position is not proprietary, that he has no vested right to continue, and that replacement is legally sustainable. A Liquidator is appointed under the statutory scheme of the IBC. He acts as an officer of the process and performs fiduciary duties for the benefit of all stakeholders. He does not acquire any personal or vested right to continue in office. It is well settled that once the Adjudicating Authority, for reasons recorded, directs replacement of a Liquidator, he cannot claim continuation as a matter of right. Section 61 permits an appeal by a "person aggrieved." Removal from a statutory assignment, without affecting any independent civil or proprietary right, does not automatically create a vested entitlement to continue and such a person can not be treated as "person aggrieved" and would therefore have no locus to maintain an appeal before this tribunal merely on the ground of replacement.

55. We now turn to the address the appeal on merit on whether EARCL is a related party within the meaning of Section 5(24) of the IBC. The Appellant contends that EARCL exercised control over the Corporate Debtor by virtue of pledged shares, appointment of EY, oversight over board meetings, escrow arrangements, facilitation of funding, and alleged influence over the Resolution Professional. It is argued that such conduct amounts to management and policy control and therefore EARCL must be treated as a related party.

56. Respondent No.2 has, however, given a detailed factual explanation. It is clarified that the 30% shares referred to by the Appellant were not equity investments made by EARCL, but were pledged shares forming part of the security package originally created in favour of SBI and later assigned to EARCL. The pledged shares were never invoked. Until invocation of a pledge, ownership and voting rights remain with the pledgor. A pledgee merely holds a security interest. If mere holding of pledged shares were to make a financial creditor a related party, then almost every secured lender would become ineligible under the Code, which would defeat the statutory framework. We find merit in this submission.

57. With regard to appointment of board observers, Respondent No.2 has clarified that no director was appointed by EARCL. An observer from EY was present for monitoring purposes. An observer has no voting rights under the Companies Act, 2013 and does not form part of the Board. Sharing of agenda papers with lenders prior to meetings is a common protective measure in distressed accounts. It does not confer decision-making power. Oversight is not equivalent to control.

58. The escrow arrangement dated 08.09.2015, relied upon by the Appellant, has also been explained. Escrow mechanisms are routinely used in stressed accounts to monitor cash flows and prevent diversion of receivables. The Corporate Debtor was itself a consenting party to the arrangement. Monitoring of receivables cannot be equated with taking over business decisions or corporate policy.

59. With respect to engagement of EY, Respondent No.2 has clarified that prior to CIRP, EY was engaged in advisory and restructuring capacity under contractual rights of lenders. The engagement letter specifically provided that management decisions remained with the Corporate Debtor. After commencement of CIRP, EY was appointed by the Resolution Professional under Sections 20(2)(a) and 25(2)(d) of the Code and the appointment was ratified by the CoC. Therefore, EY functioned as a professional advisor assisting the Resolution Professional and not as a managerial arm of EARCL. The continuity of EY post-CIRP seems to be based upon familiarity with the account and ratification by the CoC.

60. The allegation that EARCL facilitated external funding of Rs. 55 crores or permitted encashment of bank guarantees has not been supported by documentary evidence, demonstrating management control. Even assuming such commercial events occurred, they do not automatically establish policy control or managerial takeover. These are mere allegations, not based on any documentary evidence.

61. The Appellant has placed reliance on the IBBI Order dated 05.03.2021. The relevant para 11.6(iv) of the IBBI order is extracted below:

“11.6 (iv) Mr. Venkatesan was guided by one of the members of CoC Edelweiss while appointing professional services of EY and did not act independently nor did he discharge his duty of undertaking due diligence before appointing any professional, therefore, has contravened section 208(2)(a) and (e) of the Code, Regulation 7(2)(a) and (h) of the IP Regulations read with clauses 3, 5 and 14 of the Code of Conduct.”

62. It can be seen from the findings in that order relates to the conduct of the Resolution Professional and his independence. The observation that the RP was “guided by” EARCL while appointing EY is not equivalent to a finding that EARCL exercised statutory control over the Corporate Debtor’s management. The responsibility for CIRP vests with the Resolution Professional. Any lapse in professional independence cannot be automatically converted into related party status of a financial creditor.

63. We must also have a look at chronology of events in this case. CIRP of the CD commenced in 2017, thereafter, Liquidation was ordered on 16.01.2020. The Appellant was appointed Liquidator pursuant to a decision of the CoC in which EARCL held approximately 85% voting share. From 2020 till August 2024, no application was filed by the Appellant to declare EARCL a related party. The related party application was filed only after replacement proceedings were revived against the appellant on 13.10.2023. The facts relied upon by the appellant related to period from 2015 onwards, when the Corporate Debtor was undergoing restructuring. Thereafter, the CD went in CIRP on 07.08.2017 and in liquidation on 16.01.2020. No one including RP; erstwhile Directors of CD; members of the CoC; members of Stakeholders Committee and Liquidator raised any issue of related party till 2024. It’s only after the Respondent-2 filed the application for replacement of liquidator, that the appellant suddenly realised that the Respondent-2 was a related party and filed the I.A. 4269 Of 2024. The conduct of the liquidator has been duly noted by the Adjudicating Authority in the impugned order.

64. Section 5(24) defines “related party” in specific and precise terms. Commercial influence, monitoring rights, and restructuring supervision, are common features of lending transactions involving distressed companies. These do not automatically amount to management or policy control. Control in the statutory sense requires something more concrete and demonstrable. We have also noted that almost all the events through which the appellant has tried to prove that EARCL is a related party relate to a period prior to initiation of CIRP proceedings. Such events are not relevant to the present proceedings in any case. Action taken by EARCL during that period are in line with restructuring of CD which was under financial stress and EARCL as the largest secured creditor was well within its rights to monitor the progress of restructuring of the CD.

65. The appellant has relied on first proviso to Section 21 (2) of the Code to state that EARCL as a related party could not have taken part in meeting of Committee of Creditors. We now have a look at the Section 21 (2) of the Code which is extracted below:

“21. (2) The committee of creditors shall comprise all financial creditors of the corporate debtor:

Provided that a financial creditor or the authorised representative of the financial creditor referred to in sub-section (6) or sub-section (6A) or sub-section (5) of section 24, if it is a related party of the corporate debtor, shall not have any right of representation, participation or voting in a meeting of the committee of creditors:

Provided further that the first proviso shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account

of conversion or substitution of debt into equity shares or instruments convertible into equity shares or completion of such transactions as may be prescribed], prior to the insolvency commencement date.”

66. It can be seen from the first proviso debars the related parties from participating in the CoC meetings. However, it can be seen that the present case is covered by the second proviso which is applicable to a Financial Creditor regulated by financial sector regulator, which would be RBI in the case of Asset Reconstruction Companies (like EARCL in this case) if such an entity becomes a related party solely due to conversion or substitution of debt into equity shares prior to the insolvency commencement date. The fact that EARCL held 30% of the equity shares prior to the initiation of CIRP due to assignment of pledged shares which were held by SBI prior to assignment of such shares to EARCL does not make EARCL as related party of the Corporate Debtor in terms of second proviso of Section 21 (2) of the Code.

67. On the basis of the material placed before us, we are of the view that the EARCL does not fall within the statutory definition of related party in the present case.

68. It is equally important to reiterate that the Liquidator has no vested right to continue in office. Performance during tenure, even if commendable, does not create an indefeasible right. The Code prioritizes institutional integrity of the process over individual tenure.

69. Under Section 61, this Appellate Tribunal interferes only if the order is arbitrary, perverse, or contrary to law. The Impugned Order reflects consideration of the related party issue, the history of removal applications,

SCC decisions, and voting patterns. We do not find any jurisdictional error or material irregularity warranting interference.

70. In conclusion, we hold that the direction replacing the Appellant as Liquidator was within the supervisory powers of the Adjudicating Authority and does not suffer from illegality. The Appellant, in any event, has no vested right to continue in office and he had no locus to maintain the appeal against his replacement. We further hold that the EARCL cannot be considered as related party under Section 5(24) of the code. Accordingly, the Appeal is dismissed. Pending I.As, if any, are closed. There shall be no order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Mr. Indevar Pandey]
Member (Technical)**

SA/Pragya (LRA)