NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Company Appeal (AT) (Insolvency) No. 1252 of 2023

[Arising out of Order dated 27.07.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-III in I.A. No.3787 of 2022 in C.P. 1067/I&B/MB/2019]

In the matter of:

Securities and Exchange Board of India **...Appellant**

Vs.

Mr. Girish Siriram Juneja & Anr. **...Respondents**

For Appellant:	**Mr. Neeraj Malhotra, Sr. Advocate with Mr. Dhaval Mehrotra, Ms. Aditi Desai and Mr. Nimish Kumar, Advocates.**
For Respondents:	**Mr. Jay Zaveri and Mr. Harsh Saxena, Advocates for R-1.**

J U D G M E N T
(6th December, 2023)

Ashok Bhushan, J.

1. This Appeal by Securities and Exchange Board of India has been filed against the order dated 27.07.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-III in I.A. 3787 of 2022 in C.P. 1067/I&B/MB/2019. IA No.3787 of 2022 was filed by the Appellant praying for several reliefs in the CIRP of the Corporate Debtor namely— 'Osian's Connoisseurs of Art Private Limited'. The Adjudicating Authority after hearing the Appellant as well as the Resolution Professional has rejected the IA No.3787 of 2022. Aggrieved by the aforesaid order, this Appeal has been filed.

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

2.1. 'Osian's Connoisseurs of Art Private Limited', the Corporate Debtor was founded in 2000. Corporate Debtor was in business of artworks and has its own auction house and the centre for research and documentation. The Corporate Debtor sponsored a private trust called 'Osian Art Fund' under the Indian Trusts Act, 1882. 'Oseta Investments Trustee Company Pvt. Ltd.' ("Oseta" or "Trustee") for short) was appointed as a Trustee of the Trust. The Trust Deed was executed on 10.03.2006 between the trustee and the Corporate Debtor and an Asset Management Agreement dated 08.06.2006 was executed between Oseta and the Corporate Debtor under which the Corporate Debtor was to act as an Asset Management Company of the Trust ('Osian Art Fund'). The Corporate Debtor launched a fund, "The Osian's Art Fund Scheme Contemporary 1" inviting subscription from private investors in order to make investments in artworks and an amount of Rs.1,02,40,00,000/- was collected from 656 investors for the said purpose. SEBI, the Appellant herein issued a show cause notice and initiated proceeding under the Securities & Exchange Board of India Act, 1992 against the Corporate Debtor holding a duty of sponsoring and managing 'Collective Investment Scheme' without obtaining the Registration Certificate under Section 12(1B) of the SEBI Act, 1992 and Regulation 3 of the SEBI (Collective Investment Scheme) Regulations, 1999. After certain litigations between the

SEBI and the Corporate Debtor final order was passed by SEBI on 28.05.2021 under Section 11 and Section 11B of the SEBI Act, 1992 directing 'Osian's Connoisseurs of Art Private Limited' to refund the balance amount to remaining investors along with the interest @10% p.a. Direction was also issued that 'Osian's Connoisseurs of Art Private Limited' shall not alienate or dispose of or sell any assets except for the purpose of making refund to its investors as directed by the order. Direction under paragraph 16 (a) was to come in effect w.e.f. 01.07.2021, balance was to be refunded within six months from the date of an order. On a Company Petition filed by IDBI Bank against the 'Osian's Connoisseurs of Art Private Limited', proceedings under Section 7 was initiated by order dated 19.12.2021 passed by the Adjudicating Authority and Respondent No.1- Mr. Girish Siriram Juneja was appointed as Resolution Professional of the Corporate Debtor. On 09.05.2022, SEBI informed the Corporate Debtor that in view of the non-compliance of the SEBI order dated 28.05.2021, recovery proceedings would be initiated against the Corporate Debtor. On 20.05.2022, Shri Neville Tuli, Suspended Director of the Corporate Debtor wrote to the Manager Investment Department-1 of the Appellant that the CIRP has been initiated against the Corporate Debtor and the Art Fund's inventory has been handed over to the Resolution Professional. SEBI sent an e-mail on 27.09.2022 to the Resolution Professional to refund the amount to the investors pursuant to the SEBI's order dated 28.05.2021. The Resolution Professional replied the e-mail vide e-mail dated 03.10.2022. SEBI vide e-mail dated 23.11.2022 called the Resolution Professional to clarify as to how the amount directed to be refunded to the investors pursuant to SEBI's order has been included in the Resolution Plan and not kept aside.

Resolution Professional vide e-mail dated 07.12.2022 wrote to the SEBI that the amount from the Art Fund was considered in the resolution plan, which provides that all claims arising on account of OAF shall be paid out of the proceeds of sale of assets belonging to OAF and that no valid claims arising out of SEBI's order dated 28.05.2021 were received. Resolution Plan having been approved by the CoC in the CIRP, the Resolution Professional filed an IA No.2645 of 2022 before the Adjudicating Authority for approval of the Resolution Plan. On 12.12.2022, SEBI filed an IA No.3787 of 2022 before the Adjudicating Authority where following prayers have been made:-

> *"i. That this Hon'ble Tribunal be pleased to declare that the sum of Rs. 30,86,62,832/-(Rupees Thirty Crore Eighty Six Lakh Sixty Two Thousand Eight Hundred and Thirty Two only), along with the interest at the rate of 10% per annum on the principal amount collected from the investors, from the date when the amount to such investors first became due and till the date of closure of its scheme, to the Investors of 'Art Fund' which is subject matter of the SEBI Order dated 28.05.2021 be kept outside the resolution process/plan as it does not form part of the properties and assets of the Corporate Debtor;*
>
> *ii. That this Hon'ble Tribunal be pleased to direct the Resolution Professional to comply with the SEBI Order dated 28.05.2021 and to forthwith pay to the Applicant an amount of Rs. 30,86,62,832/- (Rupees Thirty Crore Eighty Six Lakh Sixty Two Thousand Eight Hundred and Thirty Two only), along with the interest at the rate of 10% per annum on the principal amount collected*

from the investors, from the date when the amount to such investors first became due and till the date of closure of its scheme, to the Investors of 'Art Fund';

iii. This Hon'ble Tribunal be pleased to pass such other or further orders as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case, in the interest of justice and equity."

2.2. The Resolution Professional filed an Affidavit in reply to IA No.3787 of 2022 to which Rejoinder was also filed. Adjudicating Authority vide order dated 27.07.2023 rejected the IA. Adjudicating Authority held that the Resolution Plan deals only with assets and liabilities of the Corporate Debtor and no direct investment/deposit from OAF reflects in the books of the Corporate Debtor. However, the Resolution Plan deals in a broad manner with the manner of compliance of the order of the SEBI dated 28.05.2021. The Adjudicating Authority further held that the Corporate Debtor is a distinct entity from OAF with segregated assets and, as admitted by the SEBI the funds of OAF do not form part of the assets of the Corporate Debtor. Aggrieved by the order of the Adjudicating Authority, this Appeal has been filed.

3. We have heard Shri Neeraj Malhotra, Learned Senior Counsel for the Appellant and Shri Jay Zaveri, Learned Counsel appearing for the Resolution Professional.

4. Shri Neeraj Malhotra, Learned Senior Counsel appearing for the Appellant submits that the Corporate Debtor is asset management company of the trust i.e. OAF and all inventories and assets of the OAF has been handed over to the Resolution Professional and was communicated by letter dated 20.05.2022 of the Suspended Director of the Corporate Debtor. Appellant being in possession of assets of the Corporate Debtor, the amount of Rs.30,86,62,832/- which is still to be refunded to the investors need to be kept separate from the CIRP of the Corporate Debtor. It is submitted that the aforesaid amount belongs to the OAF which is a trust, hence, the said amount does not belong to the assets management company i.e. Corporate Debtor by virtues of clause (a) of explanation to Section 18 of the IBC which provides that asset held in trust by the Corporate Debtor shall not be included in the assets of the Corporate Debtor, hence, the Resolution Professional was obliged to keep apart the total investment as investors to be returned under the Scheme to the investors. It is submitted that due to the above reason, the prayer was made to keep Rs.30,86,62,832/- apart from the assets of the Corporate Debtor which application has wrongly been rejected by the Adjudicating Authority. It is submitted that all inventories of the OAF i.e. trust having come in the hands of the Corporate Debtor which has been handed over to the Resolution Professional, the Resolution Professional has to keep the aforesaid amount separately and not to deal the said amount in the Resolution Process of the Corporate Debtor. It is submitted that the order dated 28.05.2021 passed by the Appellant directing for refund to the investors along with the interest have become final which need to be complied with. It is submitted that since the assets of the OAF i.e. trust has been handed over to the Resolution Professional, IA No.3787 of 2022 was filed for keeping the amount separate. It is submitted that if the assets of the OAF i.e. Trust are also dealt in the CIRP of the Corporate Debtor, Appellant's direction issued on

28.05.2021 shall become impossible to the complied causing great prejudice to the Appellant.

5. Learned Counsel for the Resolution Professional refuting the submissions of the Counsel for the Appellant submits that the assets of the Corporate Debtor and assets of OAF are separate and distinct. It is submitted that the Corporate Debtor was only asset manager of OAF the trust. Monies under the OAF do not form part of the assets of the Corporate Debtor and have not been recorded in the information memorandum prepared under the CIRP of the Corporate Debtor. The Resolution Professional has also got forensic audit conducted which report has been produced substantiating the fact that the Corporate Debtor and OAF are two distinct entities with segregated assets. It is submitted that in the Resolution Plan of the Corporate Debtor, the assets of OAF are not being dealt with. It is submitted that in spite of Appellant writing to the Resolution Professional to send the requisite form for filing the claim, no claim has been filed by the Appellant in the CIRP of the Corporate Debtor. It is submitted that the Resolution Plan contains a clause for manner of compliance of the order of the SEBI dated 28.05.2021 by the Successful Resolution Applicant after the plan is approved. It is submitted that the amount received by OAF by the investors was the monies and properties of the OAF and are controlled by the trustee- Oseta. The Corporate Debtor who is asset manager as per the agreement dated 08.06.2006 was entitled only to 3% of the commission and the assets of the OAF never came in the kitty of the Corporate Debtor. It is submitted that the Adjudicating Authority has rightly held that no direct investment/deposit OAF reflects in the books of the Corporate Debtor. When no direct investment/deposit of the books of the Corporate Debtor, there is no question of keeping any amount of Rs.30,86,62,832/- separate by the Resolution Professional. The Application filed by the Appellant has rightly been rejected by the Adjudicating Authority which warrant no interference.

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

7. Before we proceed to enter into the respective submissions of both the parties, it is relevant to notice the order passed by the Appellant dated 28.05.2021 under Section 11 and Section 11B of the SEBI Act, 1992. Directions issued by the SEBI in the said order is contained in paragraph 16. Paragraphs 16 to 19 of the order are as follows:-

> *"16. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11 and 11B read with Section 19 of the SEBI Act, 1992 and Regulation 65 of CIS Regulations, hereby issue the following directions:*
>
> > *a. Osian shall refund the balance amount to remaining Investors. Osian shall also pay on the total principal amount collected from each of the remaining investors, an interest at the rate of 10% per annum, from the date when amount to such Investors first became due and till the date of closure of its scheme. The aforesaid balance amount shall be refunded within a period of Six months from the date of this order and the*

aforesaid interest on total amount shall be paid within a period of Nine months from the date of coming into force of this order.

b. Osian shall file winding up and repayment reports, duly certified by an auditor, to SEBI in the format provided under SEBI (Collective Investment Schemes) Regulations, 1999, along with the trail of funds claimed to be so refunded, bank account statements indicating refund to the investors and receipt from the investors acknowledging such refunds, within a period of 15 days after the expiry of aforesaid Six months and Nine months period, respectively, as referred in para 16(a) above. These reports shall be forwarded by Osian to "The Division Chief, EFD, DRA-3, Securities and Exchange Board of India, SEBI Bhawan, Plot NO. C4 A, G Block, Bandra Kurla Complex, Bandra (East), Mumbai - 400051.

c. Osian shall not alienate or dispose of or sell any assets except for the purpose of making refund to its investors, as directed above.

d. SEBI, on failure of Osian Capital Art Fund, to effect the refunds as directed in the para 16(a) or to file reports as directed in para 16(b), above, within the period provided thereunder, shall recover such amounts, in accordance with Section 28A of the SEBI Act, 1992.

e. Other directions, as contained in paragraph 45(b) and (c) of the SEBI order dated April 15, 2013 passed against the Noticees shall remain *intact and be mutatis mutandis enforced against the Noticee subject to the directions given above.*

f. The direction in para 16(c) above shall cease to operate once Osian has complied with the directions in para 16(b) above.

17. The direction for refund, as given in paragraph 16(a) above, does not preclude the investors, to pursue the other legal remedies available to them under any other law, against the Noticee for refund of money as per the terms of their Investment or deficiency in service before any appropriate forum of competent jurisdiction.

18. The order shall come into force with immediate effect. However, In view of the exceptional circumstances emerged due to the outbreak of a COVID-19 and consequential lockdowns imposed in different parts of the country, the direction given in paragraph 16(a) shall come into force on July 01, 2021.

19.A copy of this order shall also be sent to the Noticee, Mr. A. K. Muthuswamy. recognised Stock Exchanges, the relevant banks, Depositories and Registrar and Transfer Agents of Mutual Funds to ensure that the directions given above are strictly complied with."

8. A perusal of the order indicate that the Corporate Debtor was to comply the order within six months. The direction under paragraph 16(a) came into force only on July 2021 and before the period of six months was expired. CIRP against the Corporate Debtor commenced on 19.01.2021. The Appellant is well informed about the CIRP of the Corporate Debtor. Appellant himself has brought on record a letter dated 20.05.2022 sent by the Suspended Director of the Corporate Debtor informing about the commencement of the CIRP. Learned Counsel for the Appellant has pressed his submission that the Suspended Director has informed the Appellant that all the other assets and liabilities have been handed over to the Resolution Professional. The Appellant vide its e-mail dated 27.09.2022 asked the Resolution Professional to send the form required for filing claims. The e-mail dated 27.09.2022 is as follows:-

> *"From: MEDHA SONPAROTE*
> *Sent: 27/09/2022 15:05*
> *To: Junejagirish31@gmail.com*
> *Cc: SHRADDHA JOSHI*
> *Subject: Refund to investors as per SEBI order dated 28/05/2021*
>
> *Sir/Madam,*
>
> *SEBI has passed an order dated 28/05/2021 (copy attached).*
> *Out of the total amount of Rs.1,02,40,00,000/- collected by Osian from the 656 Investors.*
> *An amount of Rs.30,86,62,832/- is yet to be refunded to investors by the Noticee.*
> *Thus, Osian must return the amounts or SEBI may recover as per the SEBI order.*
> *As per records on IBBI, you have been appointed as the resolution professional.*
> *It is requested that the form required for filing claims may be sent to the undersigned for the purpose of filing claims.*
>
> *Medha Sonparote*
> *General Manager,*
> *EFD1*
> *Securities and Exchange Board of India*
> *1st Floor, SEBI New premises*
> *Plot No.C-7, G Block,*
> *Bandra Kurta Complex (BKC), Bandra (E),*
> *Mumbai- 400051*

Tel: (022) 2644 9312
Email: medhad@sebi.gov.in"

9. It is relevant to notice that no claim was filed by the Appellant in the CIRP of the Corporate Debtor. However, Resolution Professional was well aware of the order dated 28.05.2021 passed by the SEBI issuing direction against the Corporate Debtor to refund the amount with interest to investors. The said was shown both in the information memorandum as well as in the Resolution Plan. The Resolution Plan contains a clause which has been noted by the Adjudicating Authority in paragraph (q) which is to the following effect:-

> *"Contingent liability (if any), arrived after the approval of Resolution Plan, such liability shall be taken into consideration and the payment will be made with other operational creditor from the amount offered to their category. Further, the contingent liability which may arise on account of "Osian's Art Fund" shall only be paid out the proceeds of Sale of Assets belonging to the said fund."*

10. The principal submission which was advanced by the Appellant is that the Resolution Professional is obliged to keep an amount of Rs.30,86,62,832/- separate from CIRP of the Corporate Debtor it being amount due to be refunded as per the order dated 28.05.2021. The contention is that the said amount belongs to OAF and was amount held in trust by the Corporate Debtor, the asset management company it could not form the part of the CIRP of the Corporate Debtor. The prayer to the aforesaid has been made in the Application IA No.3787 of 2022 filed by the Appellant before the Adjudicating Authority. The Resolution Professional filed a detailed reply to the said application before the Adjudicating Authority. An Affidavit has also been filed by the Resolution Professional in the Appeal. In the Affidavit, Resolution Professional has given in detail the facts of the case and plea taken by the Resolution Professional. The Resolution Professional in its Affidavit has reiterated that the monies in the OAF do not form part of the assets of the Corporate Debtor and they have not been recorded in the information memorandum dated February, 2022 prepared under the IBC. Resolution Professional has further pleaded that Pipara & Co. LLP. Chartered Accountants has been directed to carry out a forensic audit with a view to investigate the transactions between the Corporate Debtor and OAF and a report has been submitted by forensic audit. It is useful to extract pleadings in paragraphs 6 and 7, which are to the following effect:-

> *"6. In the aforesaid background and in response to the limited issue raised before the Hon'ble Tribunal on the OAF monies being available with the Corporate Debtor and/or considered as an asset of the Corporate Debtor, I say and submit that the monies under the OAF do not form part of the assets of the Corporate Debtor and have accordingly not been recorded in the Information Memorandum dated February 2022 prepared under the Code: Further, Pipara & Co. LLP. Chartered Accountants have carried out a forensic audit with a view to investigate the transactions occurring between the Corporate Debtor and OAF. In such audit, it has been observed by the auditor, that no direct investment/deposit from OAF reflects in the books of the Corporate Debtor. A copy of the Information Memorandum dated February*

2022 is hereto annexed and marked as 'ANNEXURE R-1' A copy of the said forensic audit is annexed to the captioned Appeal and marked as ANNEXURE Q.'

7. It is further reiterated that the forensic audit produced by the Respondent has substantiated the fact that the Respondent and OAF were two distinct entities with segregated assets, thus the only manner in which the Respondent could assure compliance with the SEBI Order amidst the Insolvency Proceedings would be by notifying the Resolution Applicant of the same vide the resolution plan. I say that the refund amount has been dealt with in the resolution plan in a limited scope in relation to the compliance of the SEBI Order and the liability as an asset manager Relevant portion of the approved resolution plan provides as follows:

> *"the contingent liability which may arise on account of "Osian's Art Fund shall only be paid out of the proceeds of sale of assets belonging to the said fund"*

11. The Resolution Professional in the Affidavit has also extracted various clauses of trust deed dated 10.03.2006 as well as relevant clauses of information memorandum. Paragraph 1.5 of the Affidavit of the Resolution Professional extract certain clauses from the information memorandum circulated to the investors relating to OAF 'The Osian's Art Fund Scheme Contemporary 1'. It is useful to extract paragraph 1.5 of the Affidavit, which is as follows:-

"1.5. <u>Evidentiary clauses from the Information Memorandum circulated to investors relating to 'Osian's Art Fund Scheme Contemporary 1</u>':

*"Osian's shall act as both Sponsor und Asset Management Company for the **Art Fund. The Art Fund has established appropriate mechanisms for the segregation of the separate functions being performed by Osian's** in its capacities as the Sponsor and the Asset Management Company" (Ref: Pg. 7)*

*II. The **Trustee Company has exclusive ownership of the assets of the Schemes of the Art Fund** ("Trust Property") and holds the same in trust and for the benefit of the Unit Holders for the purpose of collecting capital from select investors fur collective investment by way of acquisition, holding, management, trading or disposal of Indian and foreign art or any other property..". (Ref: Pg. 19)*

*"II. The **Trustee Company is responsible for the management of the Art Fund and for providing information to the Unit Holders, the Sponsor, and any other regulatory body** and to ensure compliance by the Art Fund AMC of all statutory formalities. (Ref.: Pg. 19)*

*"II. The **Trustee Company, <u>through the AMC</u> is, inter alia, empowered and entitled to:***

(i) "Pay all costs, charges expenses and outgoings of and incidental to the administration and

execution of the Trust and the management and maintenance of the Trust Property and incurred for the same (including remuneration of the Trustee Company and the AMC)..." (Ref.: Pg. 20)

(o) "Take into its custody and/or control all the capital, assets. property of the scheme floated by the Art Fund and hold the same in trust for the Unit Holders in accordance with the Trust Deed." (Ref: Pg. 22)

"D. I. The AMC shall manage the schemes of the Art Fund in ***accordance with the provisions of the Asset Management Agreement, the Trust Deed*** *and the objectives of each scheme option. The AMC* ***can be removed by the Trustee.****" (Ref.: Pg. 28)*

"III. ***The AMC shall exercise these powers subject to the superintendence, control and direction of the Board of Directors of the Trustee Company****" (Ref: Pg. 31)*
"III. The duties and obligations of AMC shall include:
(i) ensure that the ***Art Fund is segregated from assets of the AMC*** *and assets of any other funds for which the AMC is responsible. (Ref: Pg. 33)*

"X.A. Osian's Art Fund has not had any transactions with the Sponsor or any of the Sponsor's associates from the date of registration till the date of the Information Memorandum." (Ref.: Pg. 66)

(emphasis supplied)

A copy of the Information Memorandum circulated to investors relating to "Osian's Art Fund Scheme Contemporary 1' is hereto annexed and marked as ANNEXURE R-5"

12. The Adjudicating Authority after considering the submissions of the parties has returned a finding in paragraph 6 to the following effect:-

> *"6. As rightly contended by the RP the Resolution Plan deals only with assets and liabilities of the Corporate Debtor and no direct investment/deposit from OAF reflects in the books of the Corporate Debtor."*

13. The Adjudicating Authority also while returning the finding observed following in paragraphs 2, 3 and 4:-

> *"2. The sole reason for the SEBI for imposing liability upon the Corporate Debtor is that the Corporate Debtor acted as the Assets Manager of OAB and the deposits were collected from investors under "CIS" without approval from SEBI. The Corporate Debtor is a distinct entity from OAF with segregated assets and, as admitted by the SEBI the funds of OAR do not form part of the assets of the Corporate Debtor. All the times the Trust property of OAF was held in trust for the investors by the Trustee company and the said property was never in possession of the Corporate Debtor and the Corporate Debtor merely managed in the capacity*

as an Asset's Manager on behalf of the Trustee company. SEBI having requested the RP to send the claim form in order to submit their claim before the RP did not choose to file the same for the reasons best known to them.

3. Even though SEBI did not submit their claim, the issue of refund of SEBI's amount has been dealt with by COC as well as in the Resolution Plan in a broad manner; and in order to comply the SEBI Order. It is provided that after approval of the Resolution Plan, the Resolution applicant shall take over the management of the Corporate Debtor and shall once again become the Asset's Manager of OAF and at such time the SRA would then be able to take successful steps towards the execution of the SEBI Order and the monies may be refunded to the investors. Since, the issue of approval of Resolution Plan is subjudice before this Tribunal, this Tribunal is not expressing anything about the entitlement of the Corporate Debtor to continue as the Asset's Manager of the OAF.

4. As rightly contended by the RP, SEBI cannot insist for compliance of its order by RP after commencement of moratorium and knowing well that the Corporate Debtor is merely an Asset's manager of the OAF. The above application is nothing but an illegal attempt by SEBI to enforce the order knowing well that the moratorium U/s 14 has kicked in against the Corporate Debtor and no legal proceedings can be instituted or continued against Corporate Debtor."

14. The Appellant in its application had prayed to keep apart the amount of Rs.30,86,62,832/- as if the said amount belonging to OAF has been received by the Corporate Debtor and need to be separated and segregated from the CIRP of the Corporate Debtor. The Resolution Professional has directed for forensic audit which report has also been received and has been relied by the Resolution Professional. It is not shown as per the forensic report that the amount of Rs.30,86,62,832/- belonging to OAF lying with the Corporate Debtor or is reflected in the accounts of the Corporate Debtor, no material has been placed either before the Adjudicating Authority or before this Tribunal by the Appellant to show that the said amount is reflected in the books of the account of the Corporate Debtor which amount is claimed to be belonging to OAF. The Adjudicating Authority has returned the finding that no direct investment/deposit from OAF reflects in the books of the Corporate Debtor. In the appeal also, neither any foundation has been laid nor any material has been produced to indicate that the said finding is incorrect.

15. Even though the Appellant has not filed its claim, the Resolution Professional has already pleaded that the Resolution Plan notices the amount to be refunded as per the SEBI's order dated 28.05.2021. The Resolution Plan also contains a clause for discharge of the liability of the SEBI. There shall be no question of extinguishment of the claim of the SEBI pursuant to the order dated 28.05.2021 on completion of the CIRP of the Corporate Debtor. The Resolution Plan envisaged for clearing such liability as per scheme envisaged in the Resolution Plan. Counsel for the Resolution Professional is right in his submission that during currency of moratorium which was imposed by order dated 19.12.2021, no recovery can be affected from the Resolution Professional of the Corporate Debtor as per SEBI's order dated 28.05.2021.

16. We, thus, are of the view that no error has been committed by the Adjudicating Authority in rejecting IA No.3787 of 2022 filed by the Appellant. The Adjudicating Authority has given ample reasons for dismissing the Application IA No.3787 of 2022, in which we do not find any infirmity warranting any interference in the said order. In result, subject to observations as made above, we dismiss the Appeal.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

New Delhi
Anjali