

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

**Company Appeal (AT) (Insolvency) No. 733 of 2022**

(Arising out of Order dated 24.06.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Jaipur Bench in IA No.327/JPR/2019 in CP No.(IB) 54(PB)/2018)

**IN THE MATTER OF:**

State of Rajasthan  
Through Officer in Charge  
Panchu Ram Sharma, Joint Director,  
Industries Rajasthan Udyog Bhawan,  
Tilak Marg, Jaipur-302005.

.... Appellant

Vs

1. Arunava Sikdar,  
Resolution Professional,  
Jaipur Metals & Electricals Limited  
D-3, LGF, Lajpat Nagar,  
Part-1, New Delhi-110024.
2. Alchemist Asset Reconstruction  
Company Limited,  
A-270, 1<sup>st</sup> and 2<sup>nd</sup> Floor, Defence Colony,  
New Delhi, Delhi-110024.
3. Asset Reconstruction Company (India) Limited  
10<sup>th</sup> Floor, the Ruby, 29,  
Tulsi Pipe road,  
Dadar West, Mumbai,  
Maharashtra-400028.

.... Respondents

**Present:**

**For Appellant:** **Dr. Abhishek Manu Singhvi, Sr. Advocate**  
**Mr. Prakul Khurana, Mr. Ankit Sareen,**  
**Mr. Yash Tandon, Mr. Hemant Kothari,**  
**Mr. Gourav, Advocates**

**For Respondents:** **Mr. Abhijeet Sinha, Mr. Ashu Kansal, Ms.**  
**Heena Kochar, Advocates for R-1.**

**Mr. Ramji Srinivasan, Sr. Advocate, Mr.**  
**Gaurav Singh, Ms. Varsha Banerjee, Ms.**  
**Shruti Pandey, Advocates for R-2.**

**Mr. Abhirup Dasgupta, Mr. Ishaan Duggal,**  
**Mr. Pathik Choudhury, Advocates for R-3.**

**With**

**Company Appeal (AT) (Insolvency) No. 734 of 2022**

(Arising out of Order dated 24.06.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Jaipur Bench in IA No.328/JPR/2019 in CP No.(IB) 54(PB)/2018)

**IN THE MATTER OF:**

State of Rajasthan  
Through Officer in Charge  
Panchu Ram Sharma, Joint Director,  
Industries Rajasthan Udyog Bhawan,  
Tilak Marg, Jaipur-302005.

.... Appellant

Vs

1. Arunava Sikdar,  
Resolution Professional,  
Jaipur Metals & Electricals Limited  
D-3, LGF, Lajpat Nagar, Part-1, New Delhi-110024.
2. Alchemist Asset Reconstruction  
Company Limited,  
A-270, 1<sup>st</sup> and 2<sup>nd</sup> Floor, Defence Colony,  
New Delhi, Delhi-110024.
3. Asset Reconstruction Company (India) Limited  
10<sup>th</sup> Floor, the Ruby, 29, Tulsi Pipe road,  
Dadar West, Mumbai, Maharashtra-400028. .... Respondents

**Present:**

**For Appellant:** **Dr. Abhishek Manu Singhvi, Sr. Advocate  
Mr. Prakul Khurana, Mr. Ankit Sareen,  
Mr. Yash Tandon, Mr. Hemant Kothari,  
Mr. Gourav, Advocates**

**For Respondents:** **Mr. Abhijeet Sinha, Mr. Ashu Kansal, Ms.  
Heena Kochar, Advocates for R-1.  
Mr. Ramji Srinivasan, Sr. Advocate, Mr.  
Gaurav Singh, Ms. Varsha Banerjee, Ms.  
Shruti Pandey, Advocates for R-2.  
Mr. Abhirup Dasgupta, Mr. Ishaan Duggal,  
Mr. Pathik Choudhury, Advocates for R-3.**

**With**

**Company Appeal (AT) (Ins.) No. 996 of 2022**

(Arising out of Order dated 24.06.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Jaipur Bench in IA No.301/JPR/2019 in CP No.(IB) 54(PB)/2018)

**IN THE MATTER OF:**

State of Rajasthan  
Through Officer in Charge  
Panchu Ram Sharma, Joint Director,  
Industries Rajasthan Udyog Bhawan,  
Tilak Marg, Jaipur-302005.

.... Appellant

Vs

Arunava Sikdar,  
Resolution Professional,  
Jaipur Metals & Electricals Limited  
D-3, LGF, Lajpat Nagar,  
Part-1, New Delhi-110024.

.... Respondent

**Present:**

**For Appellant:**

**Dr. Abhishek Manu Singhvi, Sr. Advocate  
Mr. Prakul Khurana, Mr. Ankit Sareen,  
Mr. Yash Tandon, Mr. Hemant Kothari,  
Mr. Gourav, Advocates**

**For Respondent:**

**Mr. Abhijeet Sinha, Mr. Ashu Kansal, Ms.  
Heena Kochar, Advocates for R-1.**

**J U D G M E N T**

**ASHOK BHUSHAN, J.**

These three Appeal(s) have been filed by the State of Rajasthan through Officer-in-Charge Panchu Ram Sharma, Joint Director, Industries, challenging order dated 24.06.2022 passed by National Company Law Tribunal, Jaipur Bench in IA No.327/JPR/2019 in Company Appeal (AT) (Insolvency) No. 733 of 2022. Company Appeal (AT) (Insolvency) No. 734 of 2022 has been filed against the same order passed in IA No.328/JPR/2019. Company Appeal (AT) (Insolvency) No. 996 of 2022 has also been filed against the order of the same date passed in IA No.301/JPR/2019. All the

Appeal(s) have been heard together and are being decided by this common judgment.

2. We need to notice background facts of the case giving rise to these Appeal(s):

- (i) The Corporate Debtor – Jaipur Metals & Electricals Limited was incorporated in 1943 and was engaged in the manufacturing of electrical meters, aluminium and copper conductors etc. The Management of the Corporate Debtor was acquired by the Government of Rajasthan in the year 1977. Since then, the Secretary/ Joint Secretary of the Government of Rajasthan was the Chairman/ Managing Director of the Corporate Debtor. The Corporate Debtor was declared as relief undertaking by Government of Rajasthan in the year 1978, under the Rajasthan Relief Undertakings Act, 1961 (hereinafter referred as the “**1961 Act**”), which was extended by Government of Rajasthan by various notifications from time-to-time upto 07.12.2016.
- (ii) The Corporate Debtor has taken various financial facilities from different Banks, namely – IDBI, SBBJ, Central Bank of India, State Bank of Indore and Oriental Bank of Commerce. IDBI, State Bank of Bikaner and Jaipur, Central Bank of India, State Bank of Indore and Oriental Bank of Commerce had assigned their debts in favour of Alchemist Asset Reconstruction Company Ltd. (hereinafter referred to

“**Alchemist**”). The debt of Central Bank of India was assigned to Asset Reconstruction Company (India) Ltd. (hereinafter referred to “**ARCIL**”)

- (iii) The Alchemist filed an Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**IBC**”) on 11.01.2018. Notices were issued to the Corporate Debtor in Section 7 Application. A reply to the Application was also filed by the Corporate Debtor. The Adjudicating Authority vide order dated 13.04.2018 admitted Section 7 Application and appointed Interim Resolution Professional (“**IRP**”).
- (iv) The Adjudicating Authority vide order dated 13.06.2019, directed the State Government of Rajasthan as well as other Directors, who were nominee of the workers to be impleaded in the proceedings.
- (v) The Corporate Debtor being in loss, a reference was filed before the Board for Industrial and Financial Reconstruction (“**BIFR**”) for its revival and the same was registered as Case No.03/1999. On 26.09.2002, the BIFR after giving opportunity to Government of Rajasthan for submitting a revival proposal for the Corporate Debtor, confirmed its opinion to wind up of the Corporate Debtor under Section 20(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (“**SICA**”) and forwarded its opinion to the High Court of Rajasthan and

Jaipur. An Appeal was filed by the Coordination Committee of the Workers Union against BIFR order dated 26.09.2022 before the Appellate Authority for Industrial and Financial Reconstruction (“**AAIFR**”), which was dismissed on 11.05.2005.

- (vi) On the opinion forwarded by BIFR, Company Petition No.19 of 2009 was registered before the Rajasthan High Court. In Company Petition No.19 of 2009 and other connected matters, various writ petitions were filed by the Labour Union. The High Court vide interim order dated 26.04.2018 stayed the implementation of the order passed by the Adjudicating Authority dated 13.04.2018. The High Court passed a final judgment on 01.06.2018 in which it refused to transfer the winding up proceedings pending before it and set-aside the order of the Adjudicating Authority dated 13.04.2018 stating that it was passed without jurisdiction. Against the order dated 01.06.2018 passed by the High Court, Civil Appeal No. 12023 of 2018 was filed by the Jaipur Metals & Electricals Employees Organisation in the Hon’ble Supreme Court, which Appeal was allowed vide judgment dated 12.12.2018. The judgment of the High Court was set-aside and Hon’ble Supreme Court disapproved the view of the High Court that proceeding before NCLT was without jurisdiction. In

paragraph 18 of the judgment of the Hon'ble Supreme Court, following was held:

*“18. ... “We are of the view that the NCLT was absolutely correct in applying Section 238 of the Code to an independent proceedings instituted by a secured financial creditor, namely, the Alchemist Asset Reconstruction Company Ltd. This being the case, it is difficult to comprehend how the High Court could have held that the proceedings before the NCLT were without jurisdiction. On this score, therefore, the High Court judgment has to be set aside. The NCLT proceedings will now continue from the stage at which they have been left off. Obviously, the company petition pending before the High Court cannot be proceeded with further in view of Section 238 of the Code. The writ petitions that are pending before the High Court have also to be disposed of in light of the fact that proceedings under the Code must run their entire course. We, therefore, allow the appeal and set aside the High Court’s judgment.”*

- (vii) Consequent to the order passed by the Hon'ble Supreme Court, the proceedings were revived before the Adjudicating Authority. The RP filed an Application under Section 19, sub-section (2) of the IBC being IA No.99/JPR/2019 seeking directions against the State of Rajasthan and other authorities to cooperate in the resolution proceedings.
- (viii) The Government of Rajasthan filed IA No.327/JPR/2019, in which following prayer was made by the State of Rajasthan:

*“Therefore in view of the aforesaid it is most respectfully prayed before this Hon’ble Tribunal to pass necessary directions to call for the original loan agreement dated 21<sup>st</sup> March 1996 executed between JMEL and IDBI and impound that same being insufficiently stamped and direct the Resolution Professional to reject the claim of Alchemist Asset Reconstruction Company Limited while making a reference to the collector mandated under the law.”*

- (ix) Notice was issued to Alchemist by the State of Rajasthan under Section 37 read with Section 51 and 53 of the Rajasthan Stamps Act directing the Alchemist to pay requisite stamps duty on the documents which were executed as Asset Credit Agreement and other ancillary documents as mentioned in the notice. Writ Petition No.7747/2021 and 7748/2021 was filed by the Alchemist in the Rajasthan High Court, challenging the notice in which initially an interim order was passed, but subsequently vide judgment dated 01.09.2021, the Writ Petitions were dismissed. In D.B. Special Appeal Writ No.1032 of 2021, the Division Bench of the High Court noted that Stamp Duty Authority had passed final orders in pursuance to show cause notice. The Division bench passed an interim order preventing the Respondent – State of Rajasthan and the Stamp Duty Authority from recovering the stamp duties in relation to the show cause notice dated 27.04.2021.

- (x) An IA No.328/JPR/2019 was filed by the State of Rajasthan, where following prayers were made:

*“Therefore in the light of the above stated factual and legal position, it is most respectfully prayed before this Hon’ble Tribunal that it may kindly be pleased to set aside the action of the RP admitting the claim filed by Alchemist Asset Reconstruction Company Limited and Asset Reconstruction Company (India) Limited being time barred and pass appropriate direction pursuant thereto.”*

- (xi) Another IA No.301/JPR/2019, was filed by the State of Rajasthan, in which Application prayer was made to substitute the Resolution Professional Mr. Arunava Sikdar with a new RP. The prayer in the said Application is as follows:

*“Therefore, in the light of the above stated factual and legal position, it is most respectfully prayed before this Hon’ble Tribunal to pass necessary directions substituting the Present RP Mr. Arunava Sikdar with a new RP to continue with the ongoing Corporate Insolvency Resolution Process in the matter of Jaipur metals and Electricals Limited.”*

- (xii) All the above three Applications, came to be heard by the Adjudicating Authority and have been rejected by the impugned orders dated 24.06.2022. Aggrieved by which orders these Appeal(s) have been filed by the State of Rajasthan.

3. We have Dr. Abhishek Manu Singhvi, learned Senior Counsel appearing for the Appellant; Shri Abhijeet Sinha, learned Counsel appeared

for Resolution Professional; Shri Ramji Srinivasan, learned Senior Counsel appeared for Alchemist; and Shri Abhirup Dasgupta, learned Counsel appeared for ARCIL.

4. Dr. Abhishek Manu Singhvi, learned Senior Counsel appearing for the Appellant challenges the impugned order on two separate grounds. It is submitted that RP while verifying claims of Alchemist and ARCIL has verified the claims by relying on documents, which were not admissible as per Section 39 of the Rajasthan Stamp Act, 1998, which provision provided that *“Instruments not duly stamped are inadmissible in evidence”*. The RP while verifying the claims under Regulation 8 of CIRP Regulations is duty bound to consider only admissible evidence. If the loan documents and security documents of Alchemist and ARCIL, which were under-stamped, the claims of Alchemist and ARCIL would become inadmissible. It is submitted that competent Authority, Deputy Inspector General, Registration & Stamp (Tax Evasion) has passed four different orders dated 17.09.2021, 18.11.2021 and 26.11.2021 (two orders) under Sections 37 and 53 of the Rajasthan Stamp Act, 1998, where a demand of around Rs.629 crores has been raised against the Corporate Debtor. All these facts were placed before the Adjudicating Authority, but Adjudicating Authority held that existence of debt can be proved by different documents and Adjudicating Authority do not wish to impinge in the domain of the Collector or the High Court. The Adjudicating Authority has not analyzed any such documents, which proves evidence of debt. It is submitted that

issue of under-stamped was not before the Hon'ble Supreme Court, when it delivered its judgment on 12.12.2018.

5. Dr. Singhvi further submits that the claims filed by Alchemist and ARCIL were barred by time. It is submitted that date of NPA of Corporate Debtor was 30.09.1997 and Corporate Debtor was notified as a relief undertaking from 03.10.1998 to 07.12.2016. The Corporate Debtor was de-notified as relief undertaking from 07.12.2016. It is submitted that reliance of Alchemist and ARCIL on provisions of Section 4(1) (b) of the 1961 Act is misplaced. It is submitted that the term "*because*" and "*for such suit or proceeding*" has been used in relation to only those remedies which are contemporaneous at that point of time. The remedy of filing Section 7 Application under the IBC came into existence only on 01.12.2016, hence, the exclusion, if any available could not have been applied to the remedies under the IBC, which came into existence subsequent to denotification of the Corporate Debtor from the category of relief undertaking. The IBC being not in force until 01.12.2016, the same could not have been initiated. The defense taken by the Respondents under 1961 Act is not available for IBC. It is further submitted that assignee Alchemist itself has filed Writ Petition No.13461/2010 before the Rajasthan High Court, challenging notification under the 1961 Act beyond 07.12.2018, since the prescribed period of 20 years under the 1961 Act stood expired. When the Alchemist itself is challenging the validity of Notification, it cannot be permitted to take benefit of the Notification. The Adjudicating Authority ought to have awaited the outcome of the Writ Petition, pending in the Rajasthan High Court. The

Alchemist cannot be allowed to reprobate and approbate at the same time. Further, principle of estoppel of conduct is also applicable to the Alchemist, since it has challenged validity of the Notification in the High Court, which Writ Petition is still pending. Hence, Alchemist is estopped by their own conduct from taking any benefit from the said Notification. It is further submitted that in Form-C, which was filed by the Alchemist and ARCIL before the RP, submitting their claims, there was no mention of 1961 Act and RP took the defense on his own without even asking from Alchemist and ARCIL. It is further submitted that issue before the Hon'ble Supreme Court in Appeal, which was decided on 12.12.2018, did not pertain to limitation of filing Section 7 Application and the admission of Section 7 Application by Adjudicating Authority does not mean automatic admission of claims of Financial Creditors by RP. The RP has to independently assess the claim of the Financial Creditors. The balance sheet for the period between 01.04.2002 and 31.03.2010, that is of nine years were prepared along with the balance sheet of the year ending 2010, hence, no acknowledgement under Section 18 of the Limitation Act can be valid from the balance sheet. The acknowledgement has to be made before the period of limitation expires. During the period from 01.04.2002 to 31.03.2010, there was no acknowledgement.

6. Shri Ramji Srinivasan, learned Senior Counsel appearing for Alchemist, refuting the submissions of learned Counsel for the Appellant submits that debt of Alchemist is admitted debt and not denied even by the Appellant. The impugned order clearly records the factum of disbursal of

the debt and the debt being due and payable. The submission of the Appellant as regards inadmissibility of the documents annexed with the claim are liable to be rejected. It is submitted that all the documents forming part of the Alchemist claim has been duly considered at the time of passing of the admission order and said order having been upheld by the Hon'ble Supreme Court, the documents, which have been admitted in the proceeding, cannot be questioned on account of being insufficiently stamped. Reliance has been placed on Section 40 of Rajasthan Stamp Act. It is submitted that RP exercise limited jurisdiction at the time of admission of claim and the duty of RP is to collate and verify the claims only. Under Regulation 8 of the CIRP Regulations, Financial Creditor can prove its financial debt on the basis of other relevant documents. The documents issued by the State Government including the Information Memorandum issued by the Government of Rajasthan CERSAI Certificate, which was filed along with the claim Form, fully proved the debt of Financial Creditor. The Corporate Debtor, in its reply to Section 7 Application has admitted the liabilities of the Alchemist. The learned Counsel for the Respondent has also placed reliance on the Notification issued by the Government of Rajasthan dated 08.03.2017 and 10/11.04/2018, which clearly exempts assignment agreement entered with Asset Reconstruction Companies from payment of Stamp Duty. In fact, the initiation of proceedings against the Corporate Debtor, who was party to the document entered between the Corporate Debtor and the erstwhile lender is hit by Section 14 of the IBC. The order passed by Deputy Inspector General has not attained finality and

are pending adjudication before the Rajasthan High Court. It is submitted that claim of Financial Creditors were fully proved from other documents on the record and subsequent to admission of Section 7 Application as well as admission of the claim, State cannot be allowed to say that for deficiency of stamp duty, the claim of the Financial Creditor be rejected. Replying to the submission of the learned Counsel for the Appellant with regard to claim being barred by limitation, it is submitted the the Corporate Debtor was Notified as relief undertaking from 03.10.1998 to 07.12.2016. Therefore, from 30.09.1997 till 02.10.1998 only a period of one year and two days have elapsed. The Corporate Debtor was de-notified as relief undertaking on 07.12.2016 and from the said date till the filing of Section 7 Application, period of one year and 34 days have elapsed. Thus, the Application was clearly within the period of three years as prescribed under Article 137 of the Limitation Act. The Rajasthan Relief Undertakings (Special Provisions) Act, 1961 clearly supports the calculation of the period by Alchemist. The learned Senior Counsel has also relied on Section 4(1) (b) and 4(2) of the 1961 Act. The Appellant himself has clearly submitted before the Adjudicating Authority that Corporate Debtor was continuously Notified as relief undertaking from 03.10.1998 to 07.12.2016. The Financial Creditor filed OA No.10/2003, OA No.50/2004 and OA No.223/2013, but no proceedings could take place on account of Corporate Debtor being a relief undertaking under the 1961 Act. In view of overriding effect of Section 238 of IBC, initiation of DRT and SARFAESI proceedings is no bar in filing Section 7 Application, the Alchemist filed its claim on

11.01.2018 in response to public notification issued by IRP. The Appellant in its Information Memorandum dated 14.07.2018 clearly stated that IDBI as its Financial Creditor, which also contains an admission that debt has been assigned to Alchemist, which amounts to clear admission of debt by the State also.

7. The learned Counsel appearing for ARCIL has adopted the arguments made by the learned Senior Counsel Shri Ramji Srinivasan. It is further submitted that against Respondent No.3, although a notice was issued, pointing out deficiencies in the documents, but no proceedings were undertaken under the Rajasthan Stamp Act against the ARCIL.

8. The learned Counsel for the RP also supported the impugned order and submits that claims of Alchemist and ARCIL were duly verified and accepted by the RP in accordance with law. There were various materials on record including the admission of the Corporate Debtor, which proved the existence of 'debt' and 'default'. Section 7 Application having been admitted and which admission order having been affirmed by the Hon'ble Supreme Court, the Appellant cannot be allowed to negate the 'debt' and 'default' in the same proceedings before the Adjudicating Authority.

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

10. The arguments advanced by the parties are in two major heads, which need to be separately considered. We proceed to consider the first submission pertaining to insufficient stamp duty challenge under the

Rajasthan Stamp Act and thereafter, the challenge to the claim being barred by time.

11. The Adjudicating Authority in its impugned order has noted the details of the loan taken by the Corporate Debtor from four different Banks, which were assigned to Alchemist and ARCIL. In paragraph 5(f), the assignments have been noticed in following manner:

*“5.(f) The Corporate Debtor had taken loans from four different banks, viz. State Bank of Bikaner & Jaipur, State Bank of Indore, IDBI Bank, and Central Bank of India (‘CBI’) under various loan agreements. The said loans were registered to AARCL and Asset Reconstruction Company India Limited (‘ARCIL’), as follows:*

<i>Date</i>	<i>Particulars</i>
<i>29.09.2007</i>	<i>CBI assigned its loan to ARCIL vide assignment agreement</i>
<i>11.10.2007</i>	<i>IDBI Bank assigned its loan to AARCL by assignment agreement</i>
<i>29.03.2017</i>	<i>SBBJ assigned its loan to AARCL vide assignment agreement</i>
<i>31.03.2018</i>	<i>State Bank of Indore assigned its loan to AARCL vide assignment agreement</i>

*While the State Bank of Rajasthan refers to loans as having been bought; the common understanding is assignment to the respective banks.”*

12. It is relevant to notice that Adjudicating Authority in its admission order dated 13.04.2018 has noted in detail, the details of financial debt as given in Part-IV of the Application. Various loan agreements, hypothecation deeds, mortgage deeds executed between the Corporate Debtor and the

Financial Institutions has been noticed in paragraph 13 and 14 of the order dated 13.04.2018, which is to the following effect:

*“13. The applicant has placed on record the following documents in support of IDBI debt:*

- *Copy of the Asset Credit Agreement dated 23.03.1995 executed between the Corporate Debtor and IDBI upto the maximum sum of Rs.474 lakh for purchase of assets from time to time under the Credit Scheme of IDBI.*
- *Copy of loan agreement dated 23.03.1995 executed between the corporate Debtor and IDBI for an amount of Rs.200 lakhs towards working Capital Facility.*
- *Copy of the Deed of Hypothecation dated 23.03.1995 executed between the Corporate Debtor and IDBI for availing the credit facilities amounting to Rs.200 lakh.*
- *Copy of the Joint Mortgage deed dated 07.04.1995 executed by Shri Gopal Singh, Director, and the Corporate Debtor (JMEL) in respect of deposit of title deeds of immovable and hypothecation of movables with reference to credit facilities availed from various Financial Creditors.*
- *Copy of the Loan agreement dated 21.03.1996 executed between the corporate Debtor and IDBI for availing the credit facility for an amount of Rs.150 lakh for purchase of equipments.*
- *Copy of the Deed of Hypothecation dated 21.03.1996 executed between the Corporate Debtor and IDBI for availing the credit facilities amounting to Rs.150 lakh.*

- *Copy of the Joint mortgage deed dated 29.04.1996 executed by Shri Gori Shankar Pathak, Director and the Corporate Debtor in respect of deposit of titles deeds of immovable and hypothecation of movables with reference to credit facilities availed from various financial Creditors.*
- *Copy of Memorandum of entry dated 11.04.1996 wherein Mr. Gori Shanker Pathak, Director, of the Corporate Debtor submitted the title of documents at the office of IFCI (acting for itself and other financial creditors).*
- *Copy of assignment agreement dated 11.10.2017 executed between IDBI and AARCL assigning the debt in favour of AARCL.*

14. *Similarly in support of the SBBJ debt (now SBI) the following documents have been placed on record:*

- *Copy of the sanction letter dated 11.11.1994 issued by SBBJ to the Corporate Debtor granting the credit facilities i.e. Fund Based Limits totalling to Rs.720 lakhs and Non-Fund Based limits totalling to Rs.1090 Lakh.*
- *Copy of the Agreement dated 21.11.1994 for Cash credit hypothecating goods by The Corporate Debtor.*
- *Copy of Hypothecation Agreement for debts and Assets dated 21.11.1994.*
- *Copy of Demand Promissory note dated 21.11.1994 promising SBBJ to pay an amount of Rs.20.66 Cr.*
- *Copy of Hypothecation agreement dated 21.11.1994 executed by the Corporate Debtor for securing the credit facilities including guarantees*

*amount to Rs.5.00 Cr. And letter of credit limit not exceeding the sum of Rs.3.90 Crore.*

- *Copy of letter of undertaking dated 21.11.1994 by the Corporate Debtor giving further charge over the property (movable or immovable) including the uncalled capital.*
- *Copy of Sanction letter dated 30.04.1996 issued by SBBJ to the Corporate Debtor renewing the sanctioned credit faculties fund Based Limits totalling to Rs.720 Lakhs and Non-Fund Based Limits totalling to Rs.1050 Lakh.*
- *Copy of Demand Promissory Note dated 14.06.1996 by The Corporate debtor in favour of SBBJ to pay a sum of Rs.20.58 Crore.*
- *Copy of Hypothecation agreement dated 14.06.1996 for debts and Assets hypothecation by the Corporate Debtor.*
- *Copy of the Agreement dated 14.06.1996 for Cash Credit Hypothecating goods by the Corporate Debtor.*
- *Copy of assignment agreement dated 11.03.2016 executed on 29.03.2017 between SBBJ and AARCL assigning the debt in favour of AARCL.”*

13. It is also relevant to note that apart from aforesaid documents, the Applicant also relied on the Certificates of Registration for modification of charge under Section 132 read with Section 135 of the Companies Act, 1956 issued by Registrar of Companies, Rajasthan modifying the charge created by IDBI in favour of M/s Dhir & Dhir Asset Reconstruction and Securitisation Company Ltd. (now Alchemist). Certificate of CERSAI with

respect to assets of the Corporate Debtor, wherein the security held by Alchemist was also filed. Further, audited financial statements of the Corporate Debtor for the financial year ending on 31.03.2013 was also relied. In this respect, paragraph 22 of the order dated 13.04.2018 is as follows:

*“22. The audited financial statement of the respondent company for the financial year ending 31 March 2013 clearly reveals that a total amount of Rs.391,72,98,134/- is due and payable to all the financial creditors including IDBI and SBBJ. The audited financial statement for the year ending 31.03.2013 also reveals that the outstanding dues of IDBI Bank and SBBJ have been assigned to the applicant AARCL. There is thus clear admission that consequent to the assignment of the outstanding dues of IDBI Bank and SBBJ, the applicant AARCL comes within the purview of ‘financial creditor’ in order to maintain the present application preferred under section 7 of the Code. Besides the material on record clearly goes to show that the respondent corporate debtor has committed default in payment of the outstanding loan amount.”*

14. The Adjudicating Authority considering the relevant documents pertaining to loans extended by the Banks as well as noticing the assignment in favour of Alchemist and ARCIL has admitted Section 7 Application. The order of admission passed by Adjudicating Authority has been affirmed by the Hon’ble Supreme Court vide its judgment dated 12.12.2018 as noted above. It is after order of the Hon’ble Supreme Court

setting aside judgment of the High Court, the CIRP was revived before the Adjudicating Authority, when the Application No. 327/JPR/2019 filed by the Appellant for summoning and impounding the documents and agreements dated 21.03.1996 executed between the Corporate Debtor and the IDBI, same being insufficiently stamped. It is relevant to notice that in Application, prayer was confined to Agreement dated 21.03.1996. The claims of Alchemist and ARCIL were admitted by the RP after considering the relevant documents filed along with the Form-C. The Adjudicating Authority in the impugned order has clearly held that the existence of debt is proved by different documents irrespective of numerous under/ over/ correctly stamped documents. In paragraph 25 of the impugned order dated 24.06.2022, following has been observed by the Adjudicating Authority:

*“25. However, in light of pleadings, submissions made and overall assessment of the matter, we hold and concur with the view that existence of a debt can be proved by different documents/ means irrespective of numerous (under/ over/ correctly) stamped instruments, and, inter-alia, more so in this case, several diverse documents and admission of debt in pleadings, which have already been considered at the stage of admission clearly establishing debt in favour of AARCL and ARCIL. In view of entirety of the foregoing, the Application of the State of Rajasthan is rejected.”*

15. In the financial statement of the Corporate Debtor for the year ending on 31.03.2013, there is clear admission of debt towards Alchemist, which is a sufficient acknowledgement of debt by the Corporate Debtor. The learned Counsel for the Financial Creditor has relied on Notification dated 08.03.2017 and 10/11.04/2018, by which exemption was granted from the stamp duty in assignment agreement entered in favour of any Asset Reconstruction Companies from payment of Stamp Duty. The said Notification at best apply to assignments, which were made subsequent to the said Notification.

16. The learned Counsel for the Appellant has placed much emphasis on the orders passed by Deputy Inspector General, Registration & Stamp (Tax Evasion) dated 17.09.2021, 18.11.2021 and 26.11.2021 (two orders), by which demand of an amount of Rs.629 crores have been raised. As noticed above, the said order is under scrutiny by the High Court. More so, the RP has taken into consideration various other documents, which were filed along with Form-C, also in addition to the assignments Deeds. The proceedings under the Rajasthan Stamp Act are separate and independent proceedings to the proceedings under the IBC initiated by the Financial Creditors under Section 7 of the IBC. The admission of claim by the RP, took place much before the proceedings initiated under the Stamp Act and which were based on other relevant materials as noted above cannot be faulted on the ground that Stamp Authorities have declared deficiencies in several documents relied by Financial Creditors. We, thus, are not persuaded to agree with the submission of learned Counsel for the

Appellant that on the ground of orders passed by Stamp Duty Authorities, the admission of claims by RP of the Financial Creditors need to be rejected. The Adjudicating Authority has elaborately considered the submission of Applicant/ Appellant and has rightly rejected the IA No.327/JPR/2019.

17. Now, we come to the second ground of attack made by learned Counsel for the Appellant that claim of the Financial Creditors is barred by time.

18. We have noticed that Corporate Debtor was declared NPA on 30.09.1997 and the Application under Section 7 was filed on 11.01.2018. The limitation for filing an Application under Section 7 is three years under Article 137 of the Limitation Act. The learned Counsel for the parties have raised submission in regard to Rajasthan Relief Undertakings (Special Provisions) Act, 1961. The question to be answered before us is whether the Financial Creditors can take benefit of limitation as per the provisions of Section 4(1)(b) read with 4(2) of the 1961 Act, or the said benefit is not available to the Financial Creditor? For appreciating the submission, we need to notice the relevant provisions of the 1961 Act. The Rajasthan Relief Undertakings (Special Provisions) Act, 1961 was enacted to make special provisions to enable certain industrial undertakings to attain revival and to offer continued employment to their employees, by declaring them as relief Undertakings, and for other matters connected therewith. Section 4, which is relevant for the present case, is as follows:

***“4. Power to specify industrial relation and other facilities temporarily for relief undertaking.—(1) Notwithstanding any law, usage,***

*custom, contract, instrument, decree, order, award, submission, settlement, standing order or other provisions whatsoever, the State Government may, by notification in the official Gazette, direct that—*

*(a) in relation to any relief undertaking and in respect of the period for which the relief undertaking continues as such under sub-section (2) of section 3—*

*(i) All or any of the laws mentioned in the Schedule to this Act or any provisions thereof shall not apply (and such relief undertaking shall be exempted therefrom) or shall, if so directed by the State Government, be applied with such modifications (which do not however affect the policy of the said laws) as may be specified in the notification; and*

*(ii) all or any of the agreements, settlements, awards or standing orders made under any of the laws mentioned in the Schedule to this Act which may be applicable to the undertaking immediately before it was acquired or taken over by the State Government or before the issue of the notified order in respect thereof under section 18-A of the Industries (Development and Regulation) Act, 1951 (Central Act 65 of 1951), or before any loan, guarantee, or other financial assistance was provided to it, by the State Government, shall be suspended in operation, or shall, if so directed by the State Government, be applied with such modifications as may be specified in the notification; and*

*(b) no suit or other legal proceeding shall be instituted or commenced or if pending, shall be proceeded with, against any industrial undertaking during the period in which it remains a relief undertaking.*

*Explanation.—“Legal proceeding” means any proceeding under any law before any court, tribunal, officer, authority or arbitrator, started on a plaint, petition of appeal, application, reference, or otherwise. 2*

*Provided that a notification issued under this Act shall have no effect in respect of any law, legal proceedings, agreement, settlement, award, standing order or the like relating to the payment of wages to the workmen of the industrial undertaking specified in the said notification:*

*Provided further that with the issuance and publication of notification under section 3 or section 4 of the Act, the State Government shall, in no case, be liable for payment of the wages or any other financial obligations or otherwise on behalf of the industrial undertaking specified in the said notification.*

*(2) The period, during which any suit or legal proceeding cannot be instituted or commenced because of the provisions of clause (b) of sub-section (1), shall be excluded in computing the period of limitation prescribed by the Indian Limitation Act, 1908 (Central Act 9 of 1908), or any other law for the time being in force, for such suit or proceeding.”*

19. The Corporate Debtor was notified as relief undertaking from 03.10.1998 to 07.12.2016. The IBC came into force from 01.12.2016. The

present Application has been filed on 11.01.2018. The period of limitation of three years for filing an Application under Section 7 commenced from the date Corporate Debtor was declared as Non-Performing Asset, i.e. 30.09.1997. The submission which Dr. Singhvi has much pressed is that the benefit of 1961 Act shall not be applicable for filing Section 7 Application, since the benefit under Section 4, sub-section (2) can be claimed only for remedies, which were contemporaneous at the relevant time. It is submitted that IBC having been enforced from 01.12.2016, any period prior to the said, cannot be claimed for the purpose of limitation in Section 7 Application. It is true that The Rajasthan Relief Undertakings (Special Provisions) Act, 1961 was enacted in 1961 and Section 4, sub-section (2) provides that the period, during which any suit or legal proceeding cannot be commenced because of the provisions of clause (b) of sub-section (1), shall be excluded in computing the period of limitation prescribed by the Indian Limitation Act, 1908. For determining the limitation for filing Section 7 Application, we have to revert to provisions of Limitation Act, which has been made expressly applicable by Section 238A. We in the present case are to determine the period of limitation for filing Section 7 Application, for which the provisions of Limitation Act have to be looked into. Since the limitation as per Article 137 for filing Section 7 Application is three years, we, thus, have to look into the provisions of Limitation Act and Section 4, sub-section (2) of the 1961 Act, which provide for exclusion of period of limitation, which has direct concern with the computation of the limitation as per Limitation Act and is relevant and

cannot be ignored. The submission of learned Counsel for the Appellant that since the IBC come into force on 01.12.2016, Section 4(2) has to be read only with the remedies which are contemporaneous, cannot be accepted. As noted above, period of limitation for filing an Application commenced on 30.09.1997, which is much before the enforcement of IBC. It is well settled that IBC does not give any fresh period of limitation for filing any Application and no fresh lease of life can be given to the State or dead claim by the enforcement of IBC. But when the Applicant has still balance period of limitation for filing an Application under Section 7 on the principle of computation of limitation as per provisions of 1961 Act, the said benefit cannot be denied. As noted above, the period of limitation commenced on 30.09.1997 and Corporate Debtor was declared a relief undertaking on 03.10.1998 and continued till 07.12.2016. The period, which could be counted for filing Section 7 Application from 30.09.1997 was one year and 2 days. The period of limitation, which cannot be computed and was arrested by virtue of Section 4, sub-section (2), which again recommenced with effect from 08.12.2016, when the Corporate Debtor was de-notified from relief undertaking from 07.12.2016, so from 07.12.2016 to 11.01.2018 the period of one year and 34 days have elapsed. Thus, the Application under Section 7 was filed within a period of two years and 36 days from the date of commencement of the limitation, which is well within three years. We, thus, are of the view that admission of the claim of Alchemist cannot be said to be barred by time and Adjudicating Authority has rightly rejected IA No.328/JPR/2019.

20. Now, we come to the third Application, i.e., IA No.301/JPR/2019, which was filed for substitution of RP. It is pleaded case of the parties that vote share of State of Rajasthan is only 4% in the Committee of Creditors. As per the provisions of Section 27, sub-section (2), the RP can be replaced only by a vote of 66% of vote share. Section 27, sub-section (2) is as follows:

*“27(2) The committee of creditors may, at a meeting, by a vote of sixty-six per cent of voting shares, resolve to replace the resolution professional appointed under section 22 with another resolution professional, subject to a written consent from the proposed resolution professional in the specified form.”*

21. Learned counsel for the Appellant has submitted that present is a case where the Adjudicating Authority ought to have exercised its inherent powers under Rule 11 for removal of the Resolution Professional. Reliance has been placed on the judgment of this Tribunal in **“Srigopal Choudary, Resolution Professional of Shree Ram Urban Infrastructure Ltd. Vs. SREI Equipment Finance Ltd., Company Appeal (AT) (Ins) No. 1443 of 2022”** decided on 10.01.2023. In the above case, the Adjudicating Authority has removed the Resolution Professional by the impugned order and submission was raised before this Tribunal that the Appellant could have been removed only in accordance with the procedure prescribed under Section 27 of the I&B Code under a resolution of the CoC. This Tribunal considered the submission of the parties and upheld the order of removal of Resolution Professional noticing the peculiar facts and circumstances of the said case. This Tribunal held that in the said case request was made

by the Financial Creditor to the Resolution Professional to convene the meeting of CoC with agenda of removal of the Resolution Professional but despite the request from the Financial Creditor, the Resolution Professional sat tight over the matter and did not convene the meeting. In the peculiar circumstances applications were filed by the Financial Creditor praying for removal of the Resolution Professional. In Para 12 of the judgment following has been observed:

*“12. Besides hearing the learned counsel for the parties we have examined the material available on record particularly the impugned order. It is reflected from the impugned order that the CIRP was initiated long back in 2019, however, for more than one and half years, no step was taken by the Appellant/RP for revival of the CD or even for generating funds. There is no order of any ‘Stay’ regarding the convening of the said ‘Meeting’ placed before us. The CoC Meeting was delayed for such a long time. This conduct is sufficient to draw an adverse inference against the appellant as it has been noticed that though the applicant/respondent No.1 had intimated the RP for convening Meeting for removal of the RP, the appellant did not respond to the request of the applicant nor did he convene any ‘Meeting’, compelling the applicant to approach the Adjudicating Authority for passing order for replacing of the RP. It is true that Section 27 empowers CoC for replacement of the RP but if there is a peculiar situation in which the RP, who under Regulation 18 of the IBC CIRP Regulation 2016, himself is sitting tight over the matter for convening Meeting of CoC, the Adjudicating Authority who is also the appointing authority of IRP cannot be allowed to be a mere spectator. So far as judgment of Veeral Controls*

*Pvt Ltd (Supra) on which reliance was placed by learned senior counsel for the appellant, in view of the peculiar facts and circumstances of the present case, i.e. more than one and half year delay in convening 1st CoC Meeting, sitting tight over request for holding CoC Meeting for removal of RP etc, this appellant may not get any assistance from the said judgment.”*

22. This Tribunal has also extracted in the judgment an email dated 03.10.2021 where specific request was made to the Resolution Professional to call for a meeting of the CoC with an agenda to replace the current Resolution Professional with another Resolution Professional. The Resolution Professional, who was expected to convene the meeting, avoided to convene the meeting. In Paras 13 and 14 of the judgment following was held:

*“13. In the present case the RP who was expected to convene the CoC Meeting was avoiding to convene the ‘Meeting’ despite a request made by the applicant/respondent herein vide email dated 06.10.2021 for convening the ‘Meeting’ with agenda to remove the RP. Accordingly the applicant was left with no option but to approach the Adjudicating Authority and the Adjudicating Authority has rightly exercised its inherent jurisdiction. Moreover it is settled law that one who appoints can also remove/dismiss the appointee. This position is further clarified on examination of Section 16 of The General Clauses Act, 1897 which is quoted herein below:*

*“16. Power to appoint to include power to suspend or dismiss.-Where, by any Central Act or*

*Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power.”*

*The Hon’ble Supreme Court in M/s. Heckett Engineering Co. Vs. Their Workmen reported in (1977) 4 SCC 377 has held that the Appointing Authority can also dismiss the appointee.”*

23. The judgment of this Tribunal in **Srigopal Choudary’s case** was in peculiar facts and circumstances where the Resolution Professional did not convene the meeting for consideration of agenda for removal of Resolution Professional, hence, application had to be filed before the Adjudicating Authority for removal of Resolution Professional. In the above case, the Adjudicating Authority exercised its inherent power under Rule 11 for passing order. The facts and circumstances under which the order of this Tribunal was passed in **Srigopal Choudary’s case** is entirely different from the facts and circumstances of the present case. Present is a case where the Appellant has only 4% vote share in the Committee of Creditors and no member of the CoC apart from the Appellant has made any request for convening any meeting for consideration of agenda for removal of the Resolution Professional. We, thus, are of the view that reliance placed on the judgment of **“Srigopal Choudary, Resolution Professional of Shree Ram Urban Infrastructure Ltd. Vs. SREI Equipment Finance Ltd.”** by the Appellant is misplaced.

24. In the Written Submission filed on behalf of the Appellant various allegations and facts have been placed doubting/alleging collusion of the Resolution Professional with the Financial Creditor. Various applications were filed before the Adjudicating Authority which were considered by the Adjudicating Authority and orders passed, which had also received approval of this Appellate Tribunal, as noted above. Appellant is also making allegation that Resolution Professional has admitted the claim which were time barred claims and which were based on insufficiently stamped documents. Both the above issued have sufficiently been considered by us in the foregoing paragraphs and we have upheld the decision of the Resolution Professional.

25. The Committee of Creditors, till date has not passed any Resolution for change of RP. There being no Resolution of the Committee of Creditors for replacing the RP, the Adjudicating Authority did not commit any error in rejecting IA No.301/JPR/2019. While rejecting IA No.301/JPR/2019 by a separate order of the same date, i.e., 24.06.2022, following was observed by the Adjudicating Authority in paragraph 8 and 9:

*“8. This Application has been filed by State of Rajasthan through Joint Director Industry who holds 4% shares in Committee of Creditors for change of Resolution Professional alleging certain allegations against the RP.*

*9. As per Section 27(2) of IBC such Resolution can only be passed by minimum 66% of votes by the members of Committee of Creditors. In this case no such proposal of change of Resolution Professional has been placed before the CoC by the Applicant. The Applicant as only*

*made allegations and failed to provide substantial proof of the same. The Hon'ble NCLAT has categorically held that if there is an explicit provision in the Code for change of Resolution Professional the same should be followed. It also held that the ingredients of Section 27 of the Code are self-explanatory and admits of no exception. Therefore, the present application filed by the State of Rajasthan is dismissed.”*

26. In view of the above, we do not find any error in the order of the Adjudicating Authority in rejecting IA No.301/JPR/2019.

27. In view of the foregoing discussions, we are of the view that the orders passed on 24.06.2022 rejecting IA Nos.327/JPR/2019 and IA No.328/JPR/2019 and order of the same date passed by Adjudicating Authority in rejecting IA No.301/JPR/2019 do not suffer from any error, warranting interference in these Appeal(s). There are no merits in these Appeal(s), all the Appeal(s) are dismissed. Parties shall bear their own costs.

**[Justice Ashok Bhushan]  
Chairperson**

**[Barun Mitra]  
Member (Technical)**

**NEW DELHI**

**21<sup>st</sup> February, 2023**

Ashwani