IN THE NATIONAL COMPANY LAW TRIBUNAL

KOCHI BENCH

IA (IBC)/57/KOB/2025
IN
IA (IBC)/215/KOB/2023
IN
CP(IBC)/05/KOB/2021

(Under Rules 11 of the NCLT Rules 2016)

Memo of Parties

Muthoot Fincorp Limited,
Registered Office at Muthoot Center,
TC 27/3022, Punnen Road,
Trivandrum, Kerala- 695034.

...Applicant

Versus

1. **Orchid Valley Buyer's Association Apartment**
   Santhosh Nagar, Muttada PO,
   Thiruvananthapuram- 695025
   Functioning at TC/24/244 (Old 4/505),
   D4, Sreenivasa Lane, Kowdiar,
   Thiruvananthapuram-695003

   Rep. by its Secretary, Mr. Shaju Thomas,
   Villa No. 7, Deodate Homes,
   Mannanthala - Mukkola Road,
   Trivandrum- 695015

2. **Mr. Parameswaran Nair**
   Resolution Professional,
   Samson and Son Builders and
   Developers Private Limited, 37/1736E,
   Kripasagaram, K.Murali Road,
   Kadavanthara,

Ernakulam, Kerala-682020.

...Respondents

Order delivered on: 24.06.2025

Coram:

Smt. Madhu Sinha — **Hon'ble Member (Technical)**

Shri. Vinay Goel — **Hon'ble Member (Judicial)**

Appearances:

For the Applicant	:	Mr Jayasankar, Advocate
For the Respondents No 1	:	Mr Bijoy P. Pulipra, Advocate
For the Respondents No 2	:	Mr Vinod P V, Advocate Mr Parameshwaran Nair, RP

O R D E R

Per: Coram

1. The present application has been filed by the Applicant, Muthoot Fincorp Limited under Rules 11 of the NCLT Rules, 2016 against the Respondents herein for the following reliefs;

   i. To recall the order dated 14.08.2024 in IA No. IA(IBC)/215/KOB/2023 in CP(IB)/05/KOB/2021 and reject Annexure A-1 resolution plan submitted by the 1st Respondent.

ii. Pass such other orders as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.

2. The Applicant herein is a Public Limited Company incorporated under the provisions of the Companies Act, 1956, primarily engaged in the business of granting retail loans and advances against the security of gold jewellery and other movable and immovable properties.

3. M/s Samson and Sons Builders and Developers Private Limited (hereinafter referred to as the "Corporate Debtor") was engaged in real estate and proposed to undertake ten housing projects. In 2016, the Corporate Debtor approached the Applicant for a loan of Rs. 8.25 Crores to meet its working capital requirements for these projects. Applicant sanctioned the loan amount of Rs. 8.25 Crores in three tranches:

   First Tranche: Rs. 1.50 Crores sanctioned on 09.06.2016 against mortgage of a) 39.5 cents in Survey Nos. 2571/1, 2572/A, and 2572/A/1 of Vanchiyoor Village (Selene Project), and b) 10.0035 cents in Survey No. 547/11 of Kudappanakunnu Village, forming part of the Orchid Valley Project.

   Second Tranche: Rs. 6.50 Crores sanctioned on 22.06.2016 against the continuing security mentioned above and additional security of 15.36 cents in Survey Nos. 547/22 and 547/9, contiguous to the previous 10.0035 cents in the Orchid Valley Project.

   Third Tranche: Rs. 25 Lakhs sanctioned on 22.06.2016 against the continuing equitable mortgage of all aforementioned properties (both plots of land) apart from the registered mortgage of all three plots. The

registered mortgage was executed on 19.10.2016, thereby creating a valid security interest in favour of the Applicant.

4. The Corporate Debtor defaulted on repayment of the loan, leading to its account being classified as NPA on 01.11.2016. The Applicant invoked their right and issued a demand notice under Section 13(2) of the SARFAESI Act, 2002, and subsequently took symbolic possession on 28.01.2017. Thereafter, pursuant to an application moved by the Applicant, under Section 14 of the SARFAESI Act, 2002, the CJM Court, Trivandrum, passed an order dated 27.04.2017 in favour of the Applicant for taking the physical possession. The said order was challenged by the Corporate Debtor in W.P.(C) No. 16417 of 2017 before the Hon'ble High Court of Kerala, and the Corporate Debtor's failure to comply with the repayment direction, the Applicant took physical possession on 08.07.2017 and has remained in continuous control of the secured property since then.

5. The Applicant issued a Sale Notice on 31.01.2018 for the mortgaged subject property. The 1st Respondent, a society of homebuyers, challenged this sale notice by filing S.A. No. 112 of 2018 before DRT-II, Kochi, the said application was closed by the DRT on the very next day. Later, an Operational Creditor filed CP(IBC)/05/KOB/2021 under Section 9 of the Code, which was admitted by this Tribunal on 03.11.2021, with the 2nd Respondent appointed as IRP and later confirmed as RP. Liquidation of Corporate Debtor was ordered on 26.04.2023 but was set aside by the NCLAT on 02.05.2024, reinstating the CIRP.

6. Following this, the Resolution Professional filed IA(IBC)/215/KOB/2023 under Section 30(6) read with Section 31 of the Code, seeking approval of a Resolution Plan submitted by the 1st Respondent in respect of the Orchid Valley Project. This Tribunal approved the plan by its order dated 14.08.2024.

7. The Applicant states that they remained completely unaware of the reinstatement of the CIRP or the approval of the Resolution Plan, despite being in lawful possession of the subject property under the SARFAESI Act, 2002.

8. The Applicant first became aware of the proceedings only upon receiving a caveat notice dated 21.09.2024 from the 1st Respondent before the Hon'ble NCLAT, Chennai. It was only after being served with notice in IA(IBC)/442/KOB/2024, filed by the 1st Respondent seeking possession of the subject property, that the Applicant approached this Hon'ble Tribunal, which directed the Resolution Professional to furnish a copy of the approved plan. The Applicant received a copy of the approved Resolution Plan from the RP vide e-mail on 27.11.2024.

9. On perusal, the Applicant finds that the Resolution Plan suffered from fundamental irregularities, that the 1st Respondent, being the sole CoC member, had approved its own plan, effectively acting as judge in its own cause, against the principles of natural justice.

10. The approved Resolution Plan is inherently conditional and contingent. As per Clause 6.6, the SRA has committed to make payments only upon the acceptance of settlements by other creditors and subject to obtaining all

requisite permissions and approvals from relevant governmental authorities. Further, Clause 7.1 stipulates that the SRA shall not bear the CIRP costs if certain milestones are not achieved, including: (i) secured and operational creditors accepting the settlement terms and refraining from filing appeals; (ii) transfer of the Orchid Valley Project property to the Orchid Valley Claimants; and (iii) securing necessary approvals for the remaining construction within 3 to 6 months.

11. The approved Resolution Plan further undermines its enforceability by allowing the SRA to unilaterally modify or withdraw the Plan, as stated in Clause 2.4.5. The implementation is made subject to six contingencies, including: (i) failure to obtain necessary approvals, (ii) disagreement to settlement terms by financial creditors including the Applicant and governmental authorities, (iii) receipt of new information post-plan submission, (iv) modifications to information by the Resolution Professional, (v) admission of additional claims, and (vi) revisions to existing claims through discussions between the CoC and the Resolution Professional. The Plan also permits withdrawal for any other reason deemed adverse to the interest of the SRA, thereby rendering it non-binding and uncertain in nature.

12. The approved Resolution Plan fails to address the feasibility of the construction, especially considering that the validity of the original building permit issued in 2013 expired in 2022. The Plan does not examine whether, under the revised building regulations introduced in 2019 and the National Building Code, it is legally and technically permissible to construct the proposed 25 apartments with the same saleable area. The

fact that no other party expressed interest in reviving the project further reinforces this concern. Given that the 1st Respondent proposed to complete and deliver finished apartments, they needed to explain how they intended to navigate the existing regulatory landscape, yet no such explanation is offered in the Plan.

13. The order dated 14.08.2024 approving the Resolution Plan proceeds on the assumption, as recorded in para 17 of the order, that the total financial outlay under the Plan amounts to Rs. 1804 Lakhs (Rs. 18.04 Crores). However, the Resolution Plan reveals that the actual secured recovery totals only Rs. 12.56 Crores. There is a lack of clarity as to how the balance amount is proposed to be mobilised. The Plan merely rests on an uncertain expectation that the remaining unsold flats can be monetised, contingent upon other apartment buyers (who are not members of the 1st Respondent) agreeing to relinquish their rights in exchange for just 10% of the amounts already paid to the Corporate Debtor. Notably, there is no confirmation, undertaking, or consent from these buyers indicating their acceptance of such terms.

14. Under Clause 7.7 of the Resolution Plan, while it is stated that the depositors will be settled at 10% of their admitted claims, the actual computation reflects a settlement at merely 5% of the total admitted claim amounting to Rs. 4.96 Crores.

15. As per Clause 7.8.3 of the Resolution Plan, those allottees who have not filed claims before the NCLT but whose allotments are reflected in the books of accounts are permitted to submit their claims within 60 days from the effective date of the Plan. Such an open-ended post-approval

claim mechanism renders the revival effort and the Resolution Plan itself legally untenable.

16. The Applicant objects to the 1st Respondent's claim for transfer of title over the subject property, as such transfer is not necessary for reviving the project under the approved Resolution Plan. At best, a No Objection Certificate may be issued for development, but ownership should remain with the Applicant. Allowing transfer of title, especially when the Resolution Plan is conditional and may fail, is unjustified and undermines the Applicant's legal rights.

17. Clause 8.4 of the Resolution Plan reveals significant uncertainties there is no financial closure, no fixed timelines for securing additional funding or contributions from the 1st Respondent's members. Moreover, the SRA seeks title transfer of the property, despite being merely an intermediary tasked with implementing the Plan.

18. The Respondent No. 1 filed reply stating that the Code does not allow for the recall of any order. The Applicant, having missed the 30-day limitation for appeal, is now improperly attempting to challenge the approved Resolution Plan.

19. The Resolution Plan was duly approved by the CoC on 14.04.2023, but before it could be placed for final approval, this Tribunal passed a liquidation order on 26.04.2023. This order was challenged before the Hon'ble NCLAT, which stayed the liquidation on 27.07.2023 and ultimately set it aside on 02.05.2024. The Resolution Plan was subsequently approved by this Tribunal on 14.08.2024.

20. During the CIRP, the Resolution Professional complied with all procedural requirements under the Code, including publications of notices inviting expression of interest and other relevant updates, through newspapers and the IBBI website. The Applicant failed to file any claim or participate in the CIRP.

21. Further stated that the Applicant's claim under SARFAESI Act is legally untenable, as physical possession under Section 13(8) SARFAESI Act, 2002 does not confer ownership. Ownership arises only upon successful auction, issuance of a sale certificate, and its registration under the Registration Act, 1908. As such, mere possession is not equivalent to ownership**,** especially when CIRP has commenced, and all other proceedings stand stayed under Section 14 of the Code**.**

22. Respondent No. 1 stated that as an act of good faith and without any legal obligation, Respondent No. 1 voluntarily agreed to pay Rs. 25,00,000/- towards the Applicant, even though no such payment was required by law. And added that the present allegation challenging the aforesaid amount is nothing but an attempt to reopen the settled claims and disrupt the finality and sanctity of the insolvency resolution process.

23. The Applicant's challenge to the approved Resolution Plan is legally untenable**,** as the Plan has attained finality under Section 31 of the Code, making it binding on all stakeholders**,** including the Applicant.

24. And stated that the allegations regarding the Plan being conditional and contingent are misconceived. In the absence of any other revival proposal, the 1st Respondent submitted a project-specific Resolution Plan; in these circumstances, certain provisions were conditional or contingent, but

these were carefully examined, accepted by the CoC, and subsequently approved by this Tribunal. The request to modify the Plan is likewise unsustainable, as the Plan has already undergone scrutiny and approval under the IBC framework. The claim that the Plan is unfeasible is also unfounded, given that its commercial viability and feasibility were thoroughly assessed by the CoC before approval. Lastly, the Applicant's contentions regarding financial entitlements are stated to be meritless and not supported by law or facts on record.

25. The Respondent No. 2 filed reply stating that the present application is not maintainable, having been filed on 01.02.2025, well beyond the statutory limitation of 45 days (which ended on 27.09.2024) for challenging the resolution plan under Section 61 of the Code. No appeal was filed before the Hon'ble NCLAT within this timeframe.

26. The Tribunal is not vested with any jurisdiction to recall the order approving the resolution plan by reviewing its judgment; the grounds raised by the Applicant pertain to review, which falls exclusively under the jurisdiction of the Hon'ble NCLAT, not this Tribunal. And added that the Applicant was fully aware of the CIRP proceedings. The IRP had communicated with the Applicant as early as 13.12.2021 (Annexure R2/1), and the Applicant responded on 09.04.2022, further seeking details of the RP. Multiple communications followed, evidencing the Applicant's awareness.

27. The Applicant failed to file a claim during CIRP. Nevertheless, the RP included details of the Applicant's loan in the Information Memorandum. Under Section 18(f) and Section 14 of the Code, the IRP took control of all

corporate debtor assets, including those that may not be in the possession of the Corporate Debtor. The Applicant is barred from enforcing security interests under SARFAESI or otherwise during CIRP. And stated that the mortgaged assets remain the property of the Corporate Debtor, and thus, no claim can be maintained outside the resolution framework.

28. The Applicant filed rejoinder stating that the facts of the present case reveal more than just procedural irregularities; they reflect a collusion between the 1st and 2nd Respondents aimed at securing approval of a Resolution Plan that is faulty, fraudulent, and ill-conceived. The Applicant has placed on record several substantive objections, pointing out how the plan fails to meet the basic standards of feasibility, compliance, and fairness. the Respondents have chosen not to address these concerns in their reply, thereby indirectly conceding the validity of the issues raised. Added that it is well within the power of this Tribunal to recall an order approving a resolution plan if it is found to have been passed on erroneous grounds or where proper facts were not placed before the Tribunal by the parties.

Findings

29. Heard the Learned Counsels for both parties. And we have gone through the pleadings and documents placed before this Tribunal. We have considered all relevant materials in light of arguments advanced on behalf of the parties to the lis**.** The primary relief sought by the Applicant is for the recall of the order dated 14.08.2024, whereby the Resolution Plan was approved. Upon perusal of the averments and the relief sought, it is evident that the Applicant, under the guise of a recall, is in fact seeking a

substantive review of the merits of the Resolution Plan already approved by this Adjudicating Authority. It is an admitted and undisputed fact that the Applicant did not file any claim before the Resolution Professional to claim its amount or the mortgage rights during CIRP.

30. In this context, reliance is placed on the judgment of the Hon'ble Supreme Court in **Ghanashyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited, (2021) 9 SCC 657**, wherein it was observed as under:

> *86.As discussed hereinabove, one of the principal objects of I&B Code is, providing for revival of the Corporate Debtor and to make it a going concern. I&B Code is a complete Code in itself. Upon admission of petition under Section 7, there are various important duties and functions entrusted to RP and CoC. RP is required to issue a publication inviting claims from all the stakeholders. He is required to collate the said information and submit necessary details in the information memorandum. The resolution applicants submit their plans on the basis of the details provided in the information memorandum. The resolution plans undergo deep scrutiny by RP as well as CoC. In the negotiations that may be held between CoC and the resolution applicant, various modifications may be made so as to ensure, that while paying part of the dues of financial creditors as well as operational creditors and other stakeholders, the Corporate Debtor is revived and is made an on-going concern. After CoC approves the plan, the Adjudicating Authority is required to arrive at a subjective satisfaction that the plan conforms to the requirements as are provided in sub-section (2) of Section 30 of the I&B Code. Only thereafter, the Adjudicating Authority can grant its approval to the plan. It is at this stage that the plan becomes binding on the Corporate Debtor. its employees, members, creditors, guarantors, and other stakeholders involved in the resolution Plan.* ***The legislative intent behind this is to freeze all the claims so that the resolution***

> ***applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans would go haywire, and the plan would be unworkable.***
>
> *95. In the result, we answer the questions framed by us as under: (i) That once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders.* ***On the date of approval of the resolution plan by the Adjudicating Authority, all such claims, which are not a part of the resolution plan, shall stand extinguished, and no person will be entitled to initiate or continue any proceedings in respect to a claim which is not part of the resolution plan.***

31. It is thus a settled position that once a Resolution Plan is approved, all claims not forming part of the plan stand extinguished, and creditors who fail to submit their claims within the stipulated time are bound by the terms of the approved Resolution Plan.

32. With respect to the power of this Tribunal to recall an order approving a Resolution Plan, the Applicant placed reliance on the decision of the Hon'ble National Company Law Appellate Tribunal in **Union Bank of India v. Dinkar T. Venkatasubramanian & Ors., 2023 SCC OnLine NCLAT 283** it was held that,

> *8. In our opinion a tribunal or a court may recall an order earlier made by it if*
> ***(i) the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent,***

(ii) there exists fraud or collusion in obtaining the judgment,
(iii) there has been a mistake of the court prejudicing a party, or
(iv) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented.
The power to recall a judgment will not be exercised when the ground for re-opening the proceedings or vacating the judgment was available to be pleaded in the original action but was not done or where a proper remedy in some other proceeding such as by way of appeal or revision was available but was not availed. The right to seek vacation of a judgment may be lost by waiver, estoppel or acquiescence."

20. The above judgments of the Hon'ble Supreme Court clearly lays down that there is a distinction between review and recall. The power to review is not conferred upon this Tribunal but power to recall its judgment is inherent in this Tribunal since inherent power of the Tribunal are preserved, powers which are inherent in the Tribunal as has been declared by Rule 11 of the NCLAT Rules, 2016. Power of recall is not power of the Tribunal to rehear the case to find out any apparent error in the judgment which is the scope of a review of a judgment. Power of recall of a judgment can be exercised by this Tribunal when any procedural error is committed in delivering the earlier judgment; for example; necessary party has not been served or necessary party was not before the Tribunal when judgment was delivered adverse to a party. There may be other grounds for recall of a judgment. Well known ground on which a judgment can always be recalled by a Court is ground of fraud played on the Court in obtaining judgment from the Court. We, for the purpose of answering the questions referred to us, need not further elaborate the circumstances where power of recall can be exercised.

33. However, the Hon'ble Supreme Court in Greater Noida Industrial Development Authority v Prabhjit Singh Soni & anr. (2024) 6 SCC 767, ALSO held as under;

> *50. In light of the discussion above, what emerges is, a Court or a Tribunal, in the absence of any provision to the contrary, has inherent power to recall an order to secure the ends of justice and/or to prevent abuse of the process of the Court. Neither the IBC nor the Regulations framed thereunder, in any way, prohibit, exercise of such inherent power. Rather, Section 60(5)(c) of the IBC, which opens with a non-obstante clause, empowers the NCLT (the Adjudicating Authority) to entertain or dispose of any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under the IBC. Further, Rule 11 of the NCLT Rules, 2016 preserves the inherent power of the Tribunal. Therefore, even in the absence of a specific provision empowering the Tribunal to recall its order, the Tribunal has the power to recall its order.* ***However, such power is to be exercised sparingly, and not as a tool to re-hear the matter****. Ordinarily, an application for recall of an order is maintainable on limited grounds, inter alia, where (a) the order is without jurisdiction; (b) the party aggrieved with the order is not served with notice of the proceedings in which the order under recall has been passed; and (c)the order has been obtained by misrepresentation of facts or by playing fraud upon the Court/Tribunal resulting in gross failure of justice*

34. Applying the above principles to the present case, this Tribunal finds no averment or material to support the grounds on which recall is permissible. The Applicant does not allege that the order dated 14.08.2024 suffers from lack of jurisdiction or that it was obtained through fraud or misrepresentation.

35. In fact, it is the case of the Applicant that he became aware of the insolvency proceedings of the Corporate Debtor only upon receipt of a caveat notice dated 21.09.2024, filed by Respondent No. 1 before the Hon'ble NCLAT, Chennai. However, Respondent No. 1 has already placed

on record Annexure R/2-2 that there was direct communication with the Applicant, to which the Applicant had duly responded.

3/17/25, 1:17 PM Gmail - Re: CIRP in the matter of Samson & Sons Developers & Builders Pvt Ltd

Gmail **Parameswaran NairK <cakpnair@gmail.com>**

Re: CIRP in the matter of Samson & Sons Developers & Builders Pvt Ltd
12 messages

lukose joseph <lukoseja@yahoo.co.in> Sat, Apr 9, 2022 at 2:31 PM
To: MOSES W F <moses.wf@muthoot.com>, Parameswaran NairK <cakpnair@gmail.com>

Sir,

New RP is Sri K Parameswaran Nair (Mob:9567875348). For email id please see the "to " above being I am sending the copy to him too.

Thanking You,
Yours Truly

CA Lukose Joseph

On Saturday, 9 April, 2022, 12:39:07 pm IST, MOSES W F <moses.wf@muthoot.com> wrote:

We note that you were appointed as IRP in the subject matter.

We are now in receipt of an order from The Chief Executive Officer and Deputy Collector, (Disaster Management) , Thiruvananthapuram, directing the said Samson & Sons Developers & Builders Pvt Ltd To carry out certain works to protect the property of one of the neighbours to their Muttada Property.

When contacted over phone, it was conveyed that you are not continuing as RP in the subject matter.

kindly share with us the details of the current RP in the matter so that we can share the orders with the current RP.

Regards,

W. F. Moses

Associate Vice President

Operations Department, Muthoot Fincorp Ltd

Head Office, Muthoot Centre

Punnen Road, Trivandrum, 695001

Phone number +91 471 4911647/ 8943813336

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True (copy)

36. Despite being aware of the CIRP, the Applicant failed to take any effective steps for the resolution of its dues rather deliberately and consciously abstained from participating in the CIRP. The Applicant opted to abstain from CIRP, under some misconception or apprehension that joining the CIRP would affect its claimed secured interest over the mortgaged property. So, it was the commercial decision of the Applicant, if the Applicant loses any rights or interest in the said property due to the operation of provisions of IBC, the Applicant is bound to face the consequences of its miscalculations and commercial decision.

37. The assertion made by the Applicant that it came to know of the CIRP only upon receipt of the caveat notice is false. Respondent No. 1 has placed on record sufficient material showing that the Applicant was aware of the CIRP at the relevant time. Hence, we can conclude that the Applicant has not approached this Tribunal with clean hands and has made a false and misleading statement, which disentitles it to any equitable relief even otherwise.

38. The Hon'ble Supreme Court in HMT Ltd. v. Smt. Rukmini and Ors. (2024 INSC728) held that: -

> *12. In K.D. Sharma vs. Steel Authority of India Limited and others, this Court observed that the jurisdiction of the High Court under Article 226 of the Constitution is extraordinary, equitable, and discretionary and the prerogative Writs mentioned therein are issued for doing substantial justice. This Court, therefore, held that it would be of utmost necessity that the* ***petitioner approaching the Writ Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything, and seek appropriate relief. It was further held that if there is no candid***

> ***disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition should be dismissed at the threshold without considering the merits of the claim.*** *The aforestated principle would apply on all fours to the case at hand, given the clear lack of bona fides on the part of the respondents/writ petitioners, as is demonstrable from their deliberate suppression of relevant particulars, which were adverse to the claim that they sought to project in their writ petition. The filing of the writ petition was, therefore, nothing short of an abuse of process and did not warrant examination on the merits. They were liable to be nonsuited on this short ground*.

39. The Applicant claims certain alleged rights under the SARFAESI Act, 2002. However, it is a settled position in law that proceedings under the SARFAESI Act, 2002 do not by themselves confer any title or interest upon the creditor. Under the SARFAESI proceedings the creditor takes possession or effect sale of the secured asset without interaction of court and the purchaser would get the title upon sale by the creditor by adopting due process under the law, so on account of the said proceedings, the Applicant cannot claim any right on the basis of possession taken under under section 13(8) of the SARFAESI Act, 2002.

40. In **Santhosh Wasantrao Walokar v. Vijay Kumar Iyer and anr,** Company Appeal (AT) (Insolvency) No 871-872 of 2019, the Hon'ble NCLAT, relying on Supreme Court precedent, held that conditionality in a resolution plan is not per se illegal, so long as the commercial wisdom of the CoC has been exercised.

41. While the Applicant has raised substantial concerns about the conditionality and feasibility of the Resolution Plan, it is important to note that the commercial viability, conditional commitments, and recovery

expectations have all been considered and approved by the CoC. The Applicant, being a third party, has very limited scope to say anything after the approval of the CoC and this Adjudicating Authority.

42. It is a fact that the Applicant has failed to point out any patent jurisdictional defect, procedural irregularity, or fraud in the submission and approval of the resolution plan. So, the application for reconsideration of the resolution plan is tantamount to questioning the commercial wisdom of CoC. This Tribunal, under the given circumstances, would exceed its jurisdiction while allowing the relief sought for.

43. The power of recall does not extend to re-evaluating the merits of the case, and as such, the exercise falls within the scope of review, which is not available to this Tribunal.

44. The Applicant, having consciously abstained from participating in the CIRP despite being aware of the ongoing proceedings and by opting to remain outside the IBC framework and instead relying solely on proceedings under the SARFAESI Act, 2002, the Applicant has waived its right to participate in the resolution process. In view of the binding nature of the Resolution Plan under Section 31 of the Code, the Applicant cannot now disturb or seek to challenge the Resolution Plan after its approval. No valid ground has been made out for recall of the order dated 14.08.2024, and such a remedy does not lie within the scope of Rule 11 of the NCLT Rules, 2016, in the present circumstances.

45. This Application **IA(IBC)/57/KOB/2025** is hereby **dismissed** and disposed of accordingly.

46. The Registry is hereby directed to send e-mail copies of the order forthwith to all the parties and their counsel for information and to take necessary steps.
47. Let the certified copy of the order be issued upon compliance with requisite formalities.
48. File be consigned to records.

SD/-	**SD/-**
MADHU SINHA	**VINAY GOEL**
(MEMBER TECHNICAL)	**(MEMBER JUDICIAL)**

Signed on this the 24th day of June, 2025.

Krishna /LRA