NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 423 of 2025
& I.A. No. 1601 of 2025

IN THE MATTER OF:

Raj Radhe Finance Ltd. **...Appellant**

Versus

Pegasus Assets Reconstruction Pvt. Ltd. & Ors. **...Respondents**

Present:

For Appellant	:	**Mr. Gaurav Mitra, Sr. Advocate with Mr. Chirag J. Shah, Mr. Utsav Trivedi, Ms. Ekta Dalvi, Ms. Shivani Bhushan, Mr. Piyush Tiwari, Mr. Ashish Kumar Yadav, Ms. Lavanya Pathak, Advocates.**
For Respondents	:	**Mr. Dinkar Singh and Mr. Rohit Singh, Advocates for R-1.**

O R D E R
(Hybrid Mode)

11.03.2025: Heard Shri Gaurav Mitra, learned counsel for the Appellant and Shri Dinkar Singh, learned counsel appearing for the Respondent. This appeal has been filed against order dated 31.01.2025 passed by NCLT, Court-V, Mumbai Bench in I.A. No. 590/2025 which IA was filed by member of the CoC. The application has been allowed and direction has been issued to the HDFC Bank to reissue the demand draft to the extent of the amount available with them i.e., Rs. 2.18 Cr.

2. Brief facts of the case necessary to be noticed to decide the appeal are:

2.1 In the CIRP of the Corporate Debtor - 'K & K Foundry Private Limited', resolution plan was submitted by Respondent No.2 herein –

'Samir Kale'. Resolution Plan was approved by the Adjudicating Authority.

2.2 The SRA approached the Appellant, who is a NBFC for financing to enable him to make payment as per the Resolution Plan. The Appellant sanctioned financial assistance of Rs.5 Crore to the SRA, out of which disbursement was made for an amount of Rs.2.94 Crores, which on the instance of the SRA was disbursed by way of a Demand Draft in favour of one 'Pegasus Group Twenty-Eight Trust 4'. Subsequently, the Demand Draft was reissued in the name of the Corporate Debtor on the request of the SRA on 27.08.2024, which Demand Draft was to be expired on 27.11.2024.

2.3 There has been certain correspondence between the Appellant and the SRA with regard to Demand Draft and the Appellant by letter dated 07.12.2024 has recalled the loan. Subsequently, the Adjudicating Authority passed an order on 10.12.2024, which was extension of time for SRA for meeting the requirement of approval of Resolution Plan.

2.4 After order dated 10.12.2024, an I.A. No.590 of 2025 was filed by one member of the CoC seeking a direction to the HDFC Bank to revalidate the Demand Draft. I.A. No.590 of 2025 came to be heard by the Adjudicating Authority. Appellant appeared before the Adjudicating Authority through counsel and sought to raise objections to the prayers made in the application. The Adjudicating Authority noticed the objections and observed that the Appellant has no locus to intervene in the application and allowing the application directed the HDFC Bank to reissue the Demand Draft. Aggrieved by which order this appeal has been filed by the Appellant.

3. We have heard Shri Gaurav Mitra, learned counsel for the Appellant and Shri Dinkar Singh, learned counsel appearing for the Respondent.

4. Shri Mitra, learned counsel for the Appellant submits that when the Demand Draft which issued to the SRA came to be expired on 27.11.2024 and there was no request by the SRA for extension of the Demand Draft, the amount was not available to the SRA and the Adjudicating Authority erred in issuing direction for reissuing Demand Draft. It is submitted that the HDFC Bank has issued the Demand Draft from the amount received from the Appellant, hence, the Appellant was necessary party to be heard in the application and the Adjudicating Authority erred in not allowing the Appellant to intervene in the matter.

5. Shri Dinkar Singh, learned counsel for the Respondent refuting the submission of learned for the Appellant has referred to Para 7.8 and 7.9 of the appeal and submitted that it is the Appellant's case that out of the sanctioned amount of Rs.5 Crore, they have disbursed an amount of Rs.2.94 Crores to the SRA. When the amount was disbursed, the amount did not remain of the Appellant and it became amount of the SRA, who made a

Demand Draft through the HDFC Bank for giving the same in the CIRP process. It is submitted that the Appellant has absolutely no locus to intervene in the CIRP process and Appellant is free to take remedy against the SRA for recovery of his amount.

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

7. The Adjudicating Authority while allowing the application made following observations:

> *"The Applicant submits that subsequently the Respondent bank was informed by the 3rd party that the draft has been lost and hence requested for cancellation of the same. The learned counsel appearing for the HDFC Bank submits that in view of the request made, they cancelled the draft but they are ready and willing to reissue the same. The learned counsel for the bank submits that though initially the amount of draft was Rs. 2.94 Cr. But subsequently after withdrawal of certain amount, they are presently in possession of approximately Rs. 2.18 Cr. and are thus ready and willing to reissue the draft to the said extent i.e., Rs. 2.18 Cr. Adv. Ekta Tripathi appearing on behalf NBFC Raj Radhe alleged to have initially funded the SRA, claims to be the owner of the said amount has raised objection to the reissuance of the draft by HDFC. It deserves to be taken note of that NBFC does not have any locus in the present case as the indulgence of extension of payment period was*

granted vide order dated 10.12.2024, to the SRA on the understanding with sole COC member that the requisite amount shall be paid and the plan shall be implemented. In view of the controversy in the present case it is evident that the plan has failed as the ld. Counsel for the COC has submitted that the RP has already filed an IA for liquidation of the CD. Keeping in view the fact that it is the SRA who delayed the entire CIRP process. Not only that the COC had to suffer but also the precious time of the court was also wasted; Firstly, approving the plan and secondly granting indulgence so as 96 to ensure that the plan is duly implemented. Hence, we deem it appropriate to direct the HDFC Bank to reissue the demand draft to the extent of the amount available with them i.e., Rs. 2.18 Cr. Let the demand draft be handed over to the RP of the CD. The details of SRA be forwarded to the IBBI for record purpose. With these observations IA stands disposed of."

8. The pleadings of the Appellant, which learned counsel for the Respondent has referred to in Paras 7.8 and 7.9 are as follows:

"7.8. On 24.07.2024, after following the due diligence and loan appraisal, the loan of Rs. 5 Crore (as requested by the Respondent No. 2) was sanctioned by the Appellant, with certain terms and conditions vide the Sanction Letter. In view of the same, the Appellant and Respondent No. 2 entered into a Loan Agreement dated 24.07.2024 ('Loan Agreement') for an amount of Rs. 5 Crores upon the terms and conditions as stated therein. True copy of Loan Sanction letter dated

24.07.2024 is annexed herewith and marked as 'ANNEXURE A4'. True copy of Loan Agreement dated 24.07.2024 is annexed herewith and marked as 'ANNEXURE AS'.

7.9. The Respondent No. 2 sought an amount of Rs.2,94,00,000/- (Rupees Two Crore Ninety-Four Lakhs Only)/ Rs. 2.94 Crores to be disbursed by way of a Demand Draft ('DD') in favour of one "Pegasus Group Twenty-Eight Trust 4" from the overdraft loan facility available to it as the first part of loan disbursement. Therefore, the Appellant herein issued from Respondent No. 3 i.e., HDFC Bank Limited, a DD bearing No. "002777" dated 26.07.2024 in favour of one "Pegasus Group Twenty-Eight-Trust 4" as requested by Respondent No. 2, and the same was duly handed over to the Respondent No. 2 as well. True copy of Letter dated 24.07.2024 by Respondent No. 2 to Appellant is annexed herewith and marked as 'ANNEXURE A6'. True copy of Demand Draft dated 26.07.2024 is annexed herewith and marked as 'ANNEXURE A7'."

9. The facts pleaded by the Appellant itself indicate that the Appellant has sanctioned a loan of Rs.5 Crore to the SRA and out of Rs.5 Crore, an amount of Rs.2.94 Crore was disbursed by way of a Demand Draft from the overdraft loan facility available to the SRA. When the amount has been disbursed by the Appellant to the SRA out of the sanctioned loan, it was SRA on whose instructions Demand Draft was prepared, which was given by the SRA in the CIRP to the Resolution Professional. The submission of the Appellant that

Appellant is still owner of the amount of Rs.2.94 Crores and the amount which was utilized by the HDFC Bank is the amount of the Appellant, cannot be accepted. When the Financer has disbursed the amount to the SRA under the loan agreement, the disbursed amount is the amount which could be used by the SRA for the purpose of the CIRP, for which loan was taken by the SRA. The Adjudicating Authority has rightly taken the view that the Appellant cannot intervene in the CIRP process and it was SRA who took extension of time to deposit the amount and due to which HDFC has to reissue the Demand Draft.

10. The submission of Shri Mitra is that amount which was utilized to prepare Demand Draft by the HDFC Bank was the amount belonging to the Appellant and when the Demand Draft came to be expired it was not open for the Adjudicating Authority to issue direction for reissuance of Demand Draft. We are of the view that the amount having been disbursed by the Appellant to the SRA, which amount has been dealt with by the SRA by way of Demand Draft dated 27.08.2024 in favour of the Corporate Debtor, it was within the domain of the Adjudicating Authority to direct the HDFC Bank to revalidate the Demand Draft with respect to which no objection can be raised by the Appellant.

11. We make it clear that Appellant having disbursed the amount to the SRA and as submitted by the Appellant which has already been recalled, it is open for the Appellant to take such remedy against the SRA for recovery of amount as per agreement between the parties and as per law. We further

make it clear that the impugned order in any manner shall not come in the way of the Appellant in recovery of the disbursed amount. With these observations the Appeal is dismissed.

12. Learned counsel for the Appellant submits that for a period of 7 days the impugned order be stayed. No case has been made out to grant any such interim order in favour of the Appellant. Prayer is rejected.

[Justice Ashok Bhushan]
Chairperson

[Arun Baroka]
Member (Technical)

Archana/nn