

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1956 of 2025

[Arising out of Order dated 30.10.2025 passed by the Adjudicating Authority (National Company Law Tribunal, Division Bench, Court – I, Ahmedabad), in I.A. No.370/AHM/2025 in C.P. (IB) No. 175/9/AHM/2018]

IN THE MATTER OF:

Mehsana Urban Co – Operative Bank Ltd.

...Appellant

Versus

Swastik Ceracon Ltd.

...Respondents

Present:

For Appellant : Mr. Kamlesh Patel, Advocate.

For Respondents : Mr. Palash Singhai, Mr. Jinth Nayak, Mr. Harshal Sareen, Ms. Aashima Gautam, Advocates.

J U D G M E N T

ASHOK BHUSHAN, J.

This appeal has been filed challenging the order dated 30.10.2025 passed by the adjudicating authority (National Company Law Tribunal, Division Bench, Court I, Ahmedabad), in I.A.370/AHM/2025 in C.P. (IB) No. 175/9/AHM/2018. Adjudicating authority by the impugned order has allowed the I.A. 370/AHM/2025 filed by the Swastik Ceracon Limited, the respondent herein and directed the appellant to refund the amount of ₹56,00,000/- with 10% interest from respective adjustments dates.

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

- i. The corporate debtor, Swastik Ceracon Limited was subjected to Corporate Insolvency Resolution Process (CIRP) by order dated 15.01.2019 passed by the adjudicating authority. In pursuance of publication issued by Interim Resolution Professional (IRP), appellant has filed its claim in Form-C for an amount of ₹10,43,45,631/-.
- ii. The corporate debtor had equity shares of Mehsana Urban Cooperative Bank Limited, which was reflected in the Information Memorandum of the corporate debtor as prepared by Resolution Professional (RP). Resolution plan of the corporate debtor was approved by the adjudicating authority vide order dated 20.06.2022. Under the resolution plan against the admitted claim of the appellant, appellant was proposed an amount of more than ₹5,00,00,000/-.
- iii. Successful Resolution Applicant (SRA) having taken control of the corporate debtor after approval of the resolution plan filed an I.A.370/AHM/2025 praying for reliefs which have been quoted in paragraph 1 of the impugned order which are to the following effect:

“(A). This Hon'ble Tribunal be pleased to direct the Respondent herein to refund and I or pay the Applicant herein an amount of Rs. 56,00,000/- or part thereof alongwith the interest calculated at the interest of 10 % per annum calculated from the date of remittance of amounts from the account of the Corporate Debtor till the date of actual payment or any such other amount that this Tribunal may deem appropriate;

(B) This Hon'ble Tribunal may be pleased to direct the Respondent herein to Close the account(s) held in the accounts of the Applicant and direct the Respondent to refund I pay an amount to the tune of Rs. 20,37,

767.85ps. or part thereof along with appropriate interest thereon;

(C) This Hon'ble Tribunal may be pleased to pass any other and/or further orders.”

- iv. The case of the SRA in the application was that the appellant during the CIRP period, as well as subsequent to the approval of resolution plan has adjusted the dividends and the value of the shares unauthorisingly, the shares were assets of the corporate debtor and during CIRP and after the approval of the plan, appellant was not entitled to adjust the amounts towards its dues. Moreso, when appellant has filed its claim.
- v. Adjudicating authority heard the parties and issued notice to the appellant, and after hearing the parties by the impugned order has allowed the application. 4 issues were framed by the adjudicating authority in paragraph 20, which are as follows:

“20. Upon meticulous analysis of the pleadings, documents, and submissions, the following issues crystallize for adjudication: (i) Whether this Tribunal possesses jurisdiction under Section 60(5) of the Code to entertain and decide the Application, particularly post-approval of the Resolution Plan on 20.06.2022?

(ii) Whether the adjustments/set-offs effected by the Respondent from the share/ dividend account (aggregating Rs. 56,00,000/-) during CIRP (15.07.2019 and 02.08.2021) and post-Plan (18.07.2022, 01.06.2023, and 29.08.2023) violate the moratorium under Section 14 of the Code and/ or the extinguishment provisions under Section 32A of the Code?

(iii) Whether the shares held in the Respondent qualify as "assets" of the Corporate Debtor under Section 18 read with Section 3(37) of the Code, protected during CIRP and transferable to the Applicant upon Plan

implementation, and whether the fixed deposits/margin money against expired Bank Guarantees (invoked pre-CIRP) is refundable? and

(iv) What reliefs, if any, are to be granted to the Applicant?”

- vi. Adjudicating authority on Issue No. 1, held that Tribunal has jurisdiction to entertain the application. On deciding Issue No.2, it was held that the adjustment set off affected by appellant from the share dividend account is violative of moratorium under Section 14 and shares held by the corporate debtor qualify in the definition of assets. In paragraph 25, while allowing the application following was directed:

*“25. Accordingly, the Application filed by the Applicant/SRA qua **Prayer (A)** is allowed, directing the Respondent to:*

(A) Refund Rs. 56,00,000 /- with 10% p.a. interest from respective adjustment dates (15.07.2019, 02.08.2021, 18.07.2022, 01.06.2023, 29.08.2023 till payment, within 45 days;

(B) "No relief qua Prayer (B) is granted as regards closure of the account(s) and refund/pay an amount to the tune of Rs. 20,37,767.85ps. or part thereof along with appropriate interest thereon on fixed deposits/margin money against pre-invoked Bank Guarantees, as upheld in Indian Overseas Bank v. Consortium of GSECL and Rakesh Shah. (supra).”

- vii. Challenging the said order, this appeal has been filed by the appellant.

3. Learned counsel for the appellant challenging the order submits that the proceeding before the adjudicating authority was not maintainable. Adjudicating authority has no jurisdiction to entertain the application and decide the issues. Learned counsel for the appellant submitted that by virtue of Section 121 of the Multi-State Cooperative Societies Act, 2002, the provisions of Companies Act 2013 are not to apply to the Multi-State

Cooperative Societies Act. NCLT, the Tribunal is constituted under Companies Act 2013, hence NCLT shall have no jurisdiction to adjudicate the issues against the appellant. The impugned order and the direction issued by the adjudicating authority are without jurisdiction. It is further submitted that relief sought, cause of action are not solely arising out of or in relation to the insolvency proceeding, hence the same cannot be decided by the NCLT. It is submitted that issue involved in the proceedings is a dispute which ought to have been resolved by virtue of Section 84 of the Multi-State Cooperative Societies Act, 2002. It is further submitted that shares of the Multi-State Cooperative Societies are not the assets of the corporate debtor, which shares cannot be attached. Learned counsel for the appellant has referred to Section 55 and 56 of the Multi-State Cooperative Societies Act 2002. The observation of the adjudicating Authority that Section 238 of the IBC overrides Section 55 and 56 of the Multi-State Cooperative Societies Act, 2002 is not correct.

4. Learned counsel for the respondent refuting the submissions of the counsel for the appellant contends that appellant itself having filed claim in the CIRP of the corporate debtor which claim was admitted and appellant having received the amount in the resolution plan, it is not open for the appellant to contend that proceeding before the adjudicating authority are without jurisdiction. The submission of the appellant that since the Companies Act is not applicable to the Multi-State Cooperative Societies Act, 2002, NCLT cannot exercise any jurisdiction is also fallacious. Insolvency and Bankruptcy Code has been given the overriding effect. Provisions of Multi-State Cooperative Societies Act, 2002, which are in conflict with the

IBC, shall be overridden and appellant cannot rely on the provisions of the Multi-State Cooperative Societies Act, 2002, to contend that dispute ought to have been raised by the SRA under Section 84 of the Multi-State Cooperative Societies Act, 2002. After approval of the resolution plan, all claims and rights of the appellant shall stand extinguished and it is further submitted that after enforcement of the moratorium, no dividend could have been adjusted by the appellant payable to the corporate debtor. The submission of the appellant that the shares of the corporate debtor are not the assets of the corporate debtor is also misconceived. Shares are assets owned by the corporate debtor.

5. We have considered the submissions of the counsel for the parties and perused the records.

6. From the facts brought on the record, it is clear that appellant has filed claim in CIRP of the corporate debtor on 08.02.2019 for an amount of ₹10,43,35,631/- and was allocated voting share of 8.9% in the Committee of Creditors (CoC). In the claim, appellant has not declared any mutual credit debt or particulars of its security over the shares. The material on record indicate that corporate debtor received dividend for the period 2018-19 of ₹5,25,000/-, 2020-21 of ₹5,25,000/- and again ₹5,25,000/- for 2022-23 and lasting of ₹35,00,000/- on year 2023-24. The appellant was informed to reverse such remittance in accordance with the provisions of IBC. In view of the aforesaid background, the application was filed by the appellant whose prayers we have already noticed above.

7. The first submission which has been pressed by the counsel for the appellant is that appellant being Multi-State Cooperative Bank under Multi-State Cooperative Societies Act, 2002, the provisions of Companies Act, 2013 are not applicable to Multi-State Cooperative Societies. The submission is that NCLT is a Tribunal constituted under the Companies Act 2013, hence its jurisdiction shall also be ousted by virtue of Section 121 of the Multi-State Cooperative Societies Act, 2002. We need to first notice certain provisions of the Multi-State Cooperative Societies Act 2002. Section 121 of the Multi-State Cooperative Societies Act, 2002, provides as follows:

“121. Certain Acts not to apply.—(1) The provisions of the Companies Act, 2013 (18 of 2013) and [the Competition Act, 2002 (12 of 2003)] shall not apply to the multi-State co-operative societies.

(2) The multi-State Co-operative societies registered or deemed to be registered under the provisions of this Act shall not indulge in monopolistic and restrictive trade practices as defined in the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969).”

8. The Multi-State Cooperative Societies Act, 2002, has been enacted to consolidate and amend the law related to cooperative societies. The preamble of the act is as follows:

“An Act to consolidate and amend the law relating to co-operative societies, with objects not confined to one State and serving the interests of members in more than one State, to facilitate the voluntary formation and democratic functioning of co-operatives as people’s institutions based on self-help and mutual aid and to enable them to promote their economic and social betterment and to provide functional autonomy and for matters connected therewith or incidental thereto.”

9. Multi-State Cooperative Societies are registered under the act, the provisions of Section 121, which provides that provisions of Companies Act

shall not apply to the Multi-State Cooperative Societies is with the intendment that provisions of the Companies Act, which generally governs the affairs of the registered companies under the Companies Act are not applicable to the Multi-State Cooperative Societies Act, 2002. The related question which has been raised by the appellant is that whether the Tribunal constituted under the companies act, that is, NCLT is also excluded to exercise any jurisdiction. We may notice the provisions of the IBC, which is an Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons and partnership firms and individuals in time bound manner. The provision of the Companies Act has been amended in its applicability to IBC. Companies Act, 2013 is amended as specified in 11th Schedule of the IBC. Adjudicating Authority is defined in Section 5(1) as a National Company Law Tribunal constituted under Section 408 of the Companies Act, 2013. Thus, for the purposes of the IBC, adjudicating authority is the National Company Law Tribunal and IBC defines adjudicating authority. Now we look into Section 238 of the IBC, which contains an overriding effect, which is as follows:

“238. Provisions of this Code to override other laws.–

The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

10. Section 121 of the Multi-State Cooperative Societies Act, 2002, which excludes the applicability of the Companies Act 2013, on Multistate

Cooperative Societies cannot be read to mean that provisions of IBC are not applicable with respect to Multistate Cooperative Societies.

11. IBC is a code for resolution of corporate debtor. When the corporate insolvency resolution proceedings are initiated for resolution of the corporate debtor and claims are invited, the claims to be filed in the CIRP of the corporate debtor are not qualified or restricted in any manner, claim can be filed by anyone. In the present case, the appellant chose to file its claim as a financial creditor as per CIRP Regulations 8. Admittedly, the appellant has filed its claim in the CIRP of the corporate debtor. Regulation contemplated filing of claim by any person. The person is defined in Section 3(23), which is an inclusive definition. Section 3(23) is as follows:

“3. Definitions.— In this Code, unless the context otherwise requires,—

(23) “person” includes—

(a) an individual;

(b) a Hindu Undivided Family;

(c) a company;

(d) a trust;

(e) a partnership;

(f) a limited liability partnership; and

(g) any other entity established under a statute, and includes a person resident outside India;”

12. Multistate Cooperative Societies Act, 2002, is also included within definition of person and covered by definition 3(23)(g). We, thus are of the opinion that Multi-State Cooperative Societies are not beyond the fold of IBC and submission of the appellant that Tribunal constituted under the

provisions of the Companies Act that is NCLT cannot have any jurisdiction by virtue of Section 121 of the Multi-State Cooperative Societies Act, 2002, is fallacious. More so, as noted above the appellant himself having filed the claim which claim was admitted and he has received the substantial amount under the resolution plan, appellant cannot be heard to contend that NCLT has no jurisdiction.

13. Now coming to the submission of the appellant that the issue raised by the SRA in I.A. 370/2025, was beyond jurisdiction of the NCLT also cannot be accepted. From the facts noted above, it is clear that the CIRP commenced on 15.01.2019 and after commencement of the CIRP, the dividend which was payable to the corporate debtor on the shares held by the corporate debtor of the appellant, the dividends were unilaterally adjusted during the CIRP period as well as subsequent to the approval of the resolution plan. The shares of the appellant held by the corporate debtor were shown in the Information Memorandum and were clearly assets of the corporate debtor. Section 60(5)(c) empowers the adjudicating authority to exercise jurisdiction on any question of law or facts arising out of or in relation to the insolvency resolution or liquidation proceedings. Section 60(5)(c) is as follows:

“60. Adjudicating Authority for corporate persons.—

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—

(c) 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 this Code.”

14. The prayers made in the application filed by the SRA arose out of insolvency proceeding, in which proceeding the plan was also approved, thus the submission of the appellant that it is beyond jurisdiction cannot be accepted.

15. Learned counsel for the appellant has relied on the judgement of the Hon’ble Supreme Court in **‘Embassy Property Development Private Limited’ Vs. ‘State of Karnataka & Ors.’** reported in **[(2020) 13 SCC 308]**. Learned counsel for the appellant has relied on paragraphs 31, 36 & 40 of the **‘Embassy Property Development Private Limited’ (supra)**. Hon’ble Supreme Court in the above case has occasion to consider Section 60(5)(c) of the IBC. Question which arose in the above case was as to whether NCLT would have jurisdiction over a decision taken by the state government under the provisions of the MMDR Act 1957 and in the above context in paragraphs 36, 37, 39 and 40 following was observed:

“36. Interestingly, there are separate provisions both in Part II and Part III of the IBC, 2016 ousting the jurisdiction of civil courts. While Section 63 contained in Part II bars the jurisdiction of a civil court in respect of any matter on which NCLT or Nclat will have jurisdiction, Section 180 contained in Part III bars the jurisdiction of civil courts in respect of any matter on which DRT or DRAT has jurisdiction. But curiously there is something more in Section 180 than what is found in Section 63, which can be appreciated if both are presented in a tabular column:

Section 63	Section 180
------------	-------------

“63. Civil court not to have jurisdiction.—No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code. Civil court not to have jurisdiction.”	“180. Civil court not to have jurisdiction.—(1) No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which the Debts Recovery Tribunal or the Debts Recovery Appellate Tribunal has jurisdiction under this Code. (2) No injunction shall be granted by any court, tribunal or authority in respect of any action taken, or to be taken, in pursuance of any power conferred on the Debts Recovery Tribunal or the Debts Recovery Appellate Tribunal by or under this Code.”
---	---

Though what is found in sub-section (2) of Section 180 is not found in the corresponding provision in Part II, namely, Section 63, a similar provision is incorporated in an unrelated provision, namely, Section 64, which primarily deals with expeditious disposal of applications. Thus, there appears to be some mix-up. However, we are not concerned about the same in this case and we have made a reference to the same only because of sub-section (4) of Section 60, vesting upon the NCLT, all the powers of the DRT.

37. From a combined reading of sub-section (4) and sub-section (2) of Section 60 with Section 179, it is clear that none of them hold the key to the question as to whether NCLT would have jurisdiction over a decision taken by the Government under the provisions of the MMDR Act, 1957 and the Rules issued thereunder. The only provision which can probably throw light on this

question would be sub-section (5) of Section 60, as it speaks about the jurisdiction of the NCLT. Clause (c) of sub-section (5) of Section 60 is very broad in its sweep, in that it speaks about any question of law or fact, arising out of or in relation to insolvency resolution. But a decision taken by the Government or a statutory authority in relation to a matter which is in the realm of public law, cannot, by any stretch of imagination, be brought within the fold of the phrase “arising out of or in relation to the insolvency resolution” appearing in clause (c) of sub-section (5). Let us take for instance a case where a corporate debtor had suffered an order at the hands of the Income Tax Appellate Tribunal, at the time of initiation of CIRP. If Section 60(5)(c) of the IBC is interpreted to include all questions of law or facts under the sky, an Interim Resolution Professional/ Resolution Professional will then claim a right to challenge the order of the Income Tax Appellate Tribunal before the NCLT, instead of moving a statutory appeal under Section 260-A of the Income Tax Act, 1961. Therefore the jurisdiction of the NCLT delineated in Section 60(5) cannot be stretched so far as to bring absurd results. [It will be a different matter, if proceedings under statutes like Income Tax Act had attained finality, fastening a liability upon the corporate debtor, since, in such cases, the dues payable to the Government would come within the meaning of the expression “operational debt” under Section 5(21), making the Government an “operational creditor” in terms of Section 5(20). The moment the dues to the Government are crystallised and what remains is only payment, the claim of the Government will have to be adjudicated and paid only in a manner prescribed in the resolution plan as approved by the adjudicating authority, namely, the NCLT.]

39. But the said argument cannot be sustained for the simple reason that the duties of a resolution professional are entirely different from the jurisdiction and powers of NCLT. In fact Section 20(1) cannot be read in isolation, but has to be read in conjunction with Section 18(1)(f)(vi) of the IBC, 2016 together with the Explanation thereunder. Section 18(1)(f)(vi) reads as follows:

“18. Duties of interim resolution professional.—(1) The interim resolution

professional shall perform the following duties, namely—

*(a)-(e) ****

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including—

*(i)-(v) ****

(vi) assets subject to the determination of ownership by a court or authority;

*(g) ****

Explanation.—For the purposes of this section, the term “assets” shall not include the following, namely—

(a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;

(b) assets of any Indian or foreign subsidiary of the corporate debtor; and

(c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.”

40. *If NCLT has been conferred with jurisdiction to decide all types of claims to property, of the corporate debtor, Section 18(1)(f)(vi) would not have made the task of the interim resolution professional in taking control and custody of an asset over which the corporate debtor has ownership rights, subject to the determination of ownership by a court or other authority. In fact an asset owned by a third party, but which is in the possession of the corporate debtor under contractual arrangements, is specifically kept out of the definition of the term “assets” under the Explanation to Section 18. This assumes significance in view of the language used in Sections 18 and 25 in contrast to the language employed in Section 20. Section 18 speaks about the duties of the interim resolution professional and Section 25 speaks about the duties of resolution professional. These two provisions use the word “assets”, while Section 20(1)*

uses the word “property” together with the word “value”. Sections 18 and 25 do not use the expression “property”. Another important aspect is that under Section 25(2)(b) of the IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings. Sections 25(1) and 25(2)(b) reads as follows:

“25. Duties of resolution professional.—(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions:

(a) ***

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings;”

(emphasis supplied)

This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).”

16. The judgement of the Hon’ble Supreme Court in the **‘Embassy Property Development Private Limited’ (supra)** was delivered in the context of orders passed by the NCLT, where NCLT has directed the government of Karnataka to execute supplemental lease deed in favour of the corporate debtor, which order was challenged before the Karnataka High Court. High Court set aside the order of the NCLT and remanded the matter back. Again, the NCLT set aside the order of rejection and directed the government to execute supplemental lease deed. In the above context, the Hon’ble Supreme

Court made the observation as noted above. The judgement of the Hon'ble Supreme Court in '**Embassy Property Development Private Limited**' (**supra**) was in entirely different context and has no applicability. Learned counsel for the appellant has relied on the judgement of the Hon'ble Supreme Court in '**Union of India & Anr.**' Vs. **Deoki Nandan Aggarwal**' reported in **[(1992) Supp. (1) SCC 323]**. The above was a case, where Hon'ble Supreme Court had occasion to consider a different question. In the above context, the Hon'ble Supreme Court has held that Court cannot enlarge the scope of the legislation. Learned counsel for the appellant has relied on paragraph 7 of the judgement where Hon'ble Supreme Court made following observations:

“7. By the Amending Act 35 of 1976 the First Schedule was amended by substituting paragraphs 2 and 9 and deleting paragraphs 3, 4 and 5. The substituted paragraphs 2 and 9 read as follows:

“2. Subject to the other provisions of this Part, the pension payable to a Judge to whom this Part applies and who has completed not less than seven years of service for pension shall be—

(a) for service as Chief Justice in any High Court, Rs 2400 per annum; and

(b) for service as any other Judge in any High Court, Rs 1600 per annum:

Provided that the pension shall in no case exceed Rs 28,000 per annum in the case of a Chief Justice and Rs 22,400 per annum in the case of any other Judge.

9. Where a Judge to whom this Part applies retires or has retired at any time after the 26th January, 1950 without being eligible for a pension under any other provision of this Part, then, notwithstanding anything contained in the foregoing provisions, a pension of Rs 8400 per annum shall be payable to such a Judge:

Provided that nothing in this paragraph shall apply—

(a) to an additional Judge or acting Judge; or

(b) to a Judge who at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Union or a State.”

17. There cannot be any dispute to the above proposition. Present is not a case where Court has enlarged the scope of legislation. In the present case, the CIRP of the corporate debtor commenced under the IBC and in which IBC proceedings, the appellant filed its claim, and the said proceedings was conducted in accordance with the legislation, thus, the above judgement in no manner comes to any assistance of the appellant. Another judgement which is relied by the appellant is **‘Vishal N. Kalsaria’ Vs. ‘Bank of India & Ors.’** reported in **[AIR 2016 SC 530]**, where Hon’ble Supreme Court had occasion to consider the provisions of Maharashtra Rent Control Act, 1999, which has been noted in paragraph 3 of the judgement to the following effect:

“3. In all the appeals, the same question of law would arise for consideration. For the sake of convenience and brevity, we would refer to the relevant facts from the appeal arising out of SLP (Crl.) No. 8060 of 2015, which has been filed against the impugned judgment and order dated 29-11-2014 in MA No. 123 of 2011 in Case No. 237 of 2010 passed by the learned Chief Metropolitan Magistrate, Esplanade, Mumbai, wherein the application of the appellant herein for impleadment as intervenor as well as stay of the order dated 8-4-2011 passed in Case No. 237 of 2010 by the learned Magistrate, Esplanade, Mumbai, was dismissed.”

18. Learned counsel for the appellant has further relied on the paragraphs 24 and 30 of the judgement which are as follows:

“24. Thus, it becomes clear that the Sarfaesi Act is meant to operate as a tool for banks and ensures a smooth debt recovery process. The provisions of the Sarfaesi Act make its purport amply clear, specifically under the provisions of Sections 13(2) and 13(4) of the Act, which read as under:

“13.Enforcement of security interest.—(1)***

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely—

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;”

30. The issue of determination of tenancy is also one which is well settled. While Section 106 of the Transfer of Property Act, 1882 does provide for registration of leases which are created on a year-to-year basis, what needs to be remembered is the effect of non-registration, or the creation of tenancy by way of an oral agreement. According to Section 106 of the Transfer of Property Act, 1882, a monthly tenancy shall be deemed to be a tenancy from month to month and must be registered if it is reduced into writing. The Transfer of Property Act, however, remains silent on the position of law in cases where the agreement is not reduced into writing. If the two parties are executing their rights and liabilities in the nature of a landlord-tenant relationship and if regular rent is being paid

and accepted, then the mere factum of non-registration of deed will not make the lease itself nugatory. If no written lease deed exists, then such tenants are required to prove that they have been in occupation of the premises as tenants by producing such evidence in the proceedings under Section 14 of the Sarfaesi Act before the learned Magistrate. Further, in terms of Section 55(2) of the special law in the instant case, which is the Rent Control Act, the onus to get such a deed registered is on the landlord. In the light of the same, neither can the landlord nor the banks be permitted to exploit the fact of non-registration of the tenancy deed against the tenant.”

19. Relying on observation in paragraph 30, it is submitted that non-obstante clause in Section 121 and 238 of the IBC has to be interpreted.

20. As observed above Section 121, which makes the provisions of the Companies Act 2013, not applicable on the Multi-State Cooperative Societies Act, 2002, has no bearing on the applicability of the IBC, which is entirely different subject.

21. We, thus are of the view that the above judgement relied by the appellant does not help the appellant in the facts of the present case. Learned counsel for the appellant has further referred to Section 84 of the Multi-State Cooperative Societies Act, 2002, and submits that under Section 84, which deals with reference of dispute, the dispute which was sought to be raised by the respondent before the adjudicating authority ought to have been referred under Section 84. The above submission also cannot be accepted. Section 84 which provides for reference cannot override the provisions of Section 60(5)(c) of the IBC, which are under overriding effect by virtue of Section 238. We thus do not find any substance in the submission of the appellant that

reference ought to have been made under Section 84 of the Multi-State Cooperative Societies Act, 2002.

22. Learned counsel for the appellant has lastly contended that the Court has directed for payment of interest with the rate of 10%. In the impugned order as noted above adjudicating authority has directed for payment of interest from respective adjustment dates, i.e., 15.07.2019, 02.08.2021, 18.07.2022 and 01.06.2023, and 29.08.2023 till payments. The application which was filed by the respondent was filed on 04.03.2025. In the CIRP process, no application was filed by RP or any other stakeholders. We are of the view that payment of interest on the refund amount of ₹56,00,000/- directed by adjudicating authority with 10% interest ought to be given from the date of filing of the application that is with effect from 04.03.2025.

23. We, thus modify and substitute the order as contained in paragraph 25(A) to the following effect:

(A) Refund of ₹56,00,000/- with 10% per annum interest from 04.03.2025, till payment, within 45 days.

24. In result, the appeal is partly allowed, direction in paragraph 25(A) substituted as follows:

- i. Refund of ₹56,00,000/- with 10% per annum interest from 04.03.2025, till payment, within 45 days.

- ii. The appellant shall have 45 days for payment from date of this judgement. Rest of the order of the adjudicating authority dated 30.10.2025 is upheld.

Parties shall bear their own costs.

**[Justice Ashok Bhushan]
Chairperson**

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

NEW DELHI

12th March, 2026

himanshu