NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.93/2025
(IA No.262/2025)

In the matter of:

M/S RAGHAVA SQUARE PRIVATE LIMITED
(Being successful Bidder of IVRCL Ltd under Liquidation as going Concern represented by Mr. Pongulati Prasad Reddy)
H.No.8-20603/1/27 & 28, Krishnapuram Street,
Road No.10, Banjara hills, Hyderabad,
Telangana, India-500 034. **… APPELLANT**

V

1. M/S. IVRCL LIMITED
(Acquired by M/s. Raghava Square Private Limited
as a going concern under Liquidation)
rep. by the Chairman of the Supervisory Committee
Mr. Sutanu Sinha - Liquidator,
M-22/3RT, Vijayanagar Colony,
Hyderabad-500057 **...RESPONDENT/CORPORATE DEBTOR**

2. Mr. SUTANU SINHA,
Chairman of Supervisory Committee - cum - Liquidator,
"Mihir", 8-2-350/5/a/24/ IB,
Road#2, Panchavati Colony, Banjara Hills,
Hyderabad-500 034 **…RESPONDENT/LIQUIDATOR**

3. ICICI BANK
Towers, Financial Dist, Plot No 12,
Nanakramguda, Gachibowli, Hyderabad,
Rangareddy Dist, Telangana, 500032.

4. UNION BANK OF INDIA
(**erstwhile Andhra Bank, Corporation Bank & UBOI**)
23, 4-5-1, Koti Women's College Rd,
Sultan Bazar, Kachiguda, Hyderabad,

Telangana 500195.

5. IDBI BANK
IDBI Towers, WTC complex,
Cuffe Parade Mumbai - 400005.

6. CANARA BANK
2nd Floor, T Subba Rami Reddy Complex 1-7-1,
S.P. Road, Secunderabad,
Secunderabad H.O., Hyderabad, Telangana 50000.

7. STATE BANK OF INDIA
Stressed assets management branch Secunderabad,
5-9-76, 2nd Floor Prabhat towers,
Opp -SBI Amaravathi LHO chapel Road,
Gunfoundry, Hyd 500001, TS.

8. INDUSIND BANK
Ashoka Janardhan Chambers,
1-10-72, Begumpet Rd, Old Patigadda,
Patel Nagar, Begumpet,
Hyderabad, Telangana 500016

9. INTERNATIONAL ASSET RECONSTRUCTION COMPANY (IARC)
A-506 & 508, 5th Floor, 215 Atrium,
Kanakia Spaces, Andheri Kurla Road,
Andheri East-400093.

10. STANDARD CHARTERED BANK
4th floor, Parinee crescenzo,
BKC, Bandra East Mumbai.

11. INDIAN OVERSEAS BANK
street Number 8, Viveka Nagar,
Chikkadpally, New Nallakunta,
Hyderabad, Telangana 500020.

12. TATA CAPITAL
Tata Capital Financial Services Ltd.,
Auto Plaza, Plot No. 3-6,
Opp. Times of India, Road No.3,
Banjara Hills, Hyderabad - 500034.

13. BANK OF INDIA
Ground Floor, 28, SV Road,
Sahayog Society, Munshi Nagar,
Andheri West, Mumbai, Maharashtra 400058.

14. EMIRATES ISLAMIC BANK DUBAI
Dubai Healthcare City, 16th Executive Building,
2nd floor, PO Box 6564, Dubai.

15. LIFE INSURANCE CORPORATION OF INDIA
Yogakshema, 2nd Flr., East Wing, JB Marg,
Nariman Point, Mumbai. 400021.

16. ASSETS CARE & RECONSTRUCTION ENTERPRISE LTD. (ACRE)
502, C wing, One BKC, G block, BKC, Mumbai.

17. BARCLAYS BANK PLC
B-6, Nirlon Knowledge Park, Goregaon,
Mumbai, Maharashtra 400063.

18. AXIS BANK
Axis House 7th Floor, C-2, Wadia International Centre,
Pandurang Budhkar Marg, Worli, Mumbai - 400 025.

19. KARUR VYSYA BANK
H: No:5-8-356 To 362, 3rd Floor, Chirag Ali Lane,
Abids, Hyderabad, Telangana, 500001.

20. SREI EQUIPMENT FINANCE LTD., (SREI)
2nd Floor, Stamford Park, D No. 8-2-269/4/B,
Road No. 2, Banjara Hills, Hyderabad, Telangana 500034.

21. EXIM BANK
2nd Floor, Golden Edifice, Near Khairatabad Circle,
Khairatabad Rd, Khairtabad,
Hyderabad, Telangana 500004.

22. PUNJAB AND SIND BANK
1st Floor, Metro Estate, Hollywood Footwear Building,
Main Road, Abids, Hyderabad - 500001.

23. TAMILNADU MERCANTILE BANK LTD., (TMBL)
15-2-696, First Floor, Siddiamber Bazar Rd,
Siddiamber Bazar, Kishan Gunj,
Hyderabad, Telangana 500095.

24. DBS BANK
(The Lakshmi Vilas Bank Ltd.)
DBS Bank, 2B & 2C, Aditya Trade Centre,
Beside lane Mytrivanam, Ameerpet, Hyderabad.

25. SCOTIA BANK
Mumbai Branch: Mittal Tower, B Wing,
Ground Floor, Nariman Point, Mumbai - 400021.

26. HDFC BANK
Ground Floor, Bank House, Roxana Palladium,
Rd Number 1, Shyam Rao Nagar, Banjara Hills,
Hyderabad, Telangana 500034.

27. BANK OF BARODA
Orient House, near Port Trust, Ballard Estate,
Office, Mumbai, Maharashtra 400001.

28. KOTAK INVESTMENT
Kotak Mahindra Bank; 6th Floor Plot No. C- 27,
Block 9; Bandra Kurla Complex,
Bandra (E); Mumbai - 400051.

29. IFCI LIMITED
IFCI Limited IFCI Tower, 61 Nehru Place,
New Delhi-110 019. **…RESPONDENTS**

Present:

For Appellant : Mr. TK. Bhaskar, Advocate
For Mr. Mayan H Jain, Advocate

For Respondents: Mr. Y. Suryanarayana, Advocate
For Mr. Nithyavendhan K &
Mr. Jash Shah, Advocates for R1 & R2
Mr. Krishna Grandhi, Senior Advocate
For Ms. Chandra Lekha for R4
Mr. VVSN. Raju, Advocate for R7, R9, R12, R19, R21, R22 & R24

With

Company Appeal (AT) (CH) (Ins) No.96/2025
(IA No.270/2025)

In the matter of:

M/S RAGHAVA SQUARE PRIVATE LIMITED
(Being successful Bidder of IVRCL Ltd under Liquidation as going Concern represented by Mr. Pongulati Prasad Reddy)
H.No.8-20603/1/27 & 28, Krishnapuram Street,
Road No.10, Banjara hills, Hyderabad,
Telangana, India-500 034. **… APPELLANT**
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1. M/S. IVRCL LIMITED
(Acquired by M/s. Raghava Square Private Limited
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rep. by the Chairman of the Supervisory Committee
Mr. Sutanu Sinha - Liquidator,
M-22/3RT, Vijayanagar Colony,
Hyderabad-500057 **...RESPONDENT/CORPORATE DEBTOR**

2. Mr. SUTANU SINHA,

Chairman of Supervisory Committee - cum - Liquidator,
"Mihir", 8-2-350/5/a/24/ IB,
Road#2, Panchavati Colony, Banjara Hills,
Hyderabad-500 034 **…RESPONDENT/LIQUIDATOR**

With

Company Appeal (AT) (CH) (Ins) No.309/2024
(IA No.829/2024)

In the matter of:

M/S RAGHAVA SQUARE PRIVATE LIMITED
(Being successful Bidder of IVRCL Ltd under Liquidation as going Concern represented by Mr. Pongulati Prasad Reddy)
H.No.8-20603/1/27 & 28, Krishnapuram Street,
Road No.10, Banjara hills, Hyderabad,
Telangana, India-500 034**.** **… APPELLANT**
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1. M/S. IVRCL LIMITED
(Acquired by M/s. Raghava Square Private Limited
as a going concern under Liquidation)
rep. by the Chairman of the Supervisory Committee
Mr. Sutanu Sinha - Liquidator,
M-22/3RT, Vijayanagar Colony,
Hyderabad-500057 **...RESPONDENT/CORPORATE DEBTOR**

2. Mr. SUTANU SINHA,
Chairman of Supervisory Committee - cum - Liquidator,
"Mihir", 8-2-350/5/a/24/ IB,
Road#2, Panchavati Colony, Banjara Hills,
Hyderabad-500 034 **…RESPONDENT/LIQUIDATOR**

With

Company Appeal (AT) (CH) (Ins) No.310/2024
(IA No.828/2024)

<u>In the matter of :</u>

M/S RAGHAVA SQUARE PRIVATE LIMITED
(Being successful Bidder of IVRCL Ltd under Liquidation as going Concern represented by Mr. Pongulati Prasad Reddy)
H.No.8-20603/1/27 & 28, Krishnapuram Street,
Road No.10, Banjara hills, Hyderabad,
Telangana, India-500 034. **… APPELLANT**

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1. M/S. IVRCL LIMITED
(Acquired by M/s. Raghava Square Private Limited
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rep. by the Chairman of the Supervisory Committee
Mr. Sutanu Sinha - Liquidator,
M-22/3RT, Vijayanagar Colony,
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2. Mr. SUTANU SINHA,
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"Mihir", 8-2-350/5/a/24/ IB,
Road#2, Panchavati Colony, Banjara Hills,
Hyderabad-500 034 **…RESPONDENT/LIQUIDATOR**

<u>Present:</u>

For Appellant : Mr. TK. Bhaskar, Advocate
For Mr. Mayan H Jain, Advocate

For Respondents : Mr. Y. Suryanarayana, Advocate
For Mr. Nithyavendhan K &
Mr. Jash Shah, Advocates for R1 & R2

JUDGMENT
(Hybrid Mode)

<u>[Per: As per - Justice Sharad Kumar Sharma, Member (Judicial)]</u>

These are a bunch of four company appeals preferred by a common Appellant by invoking the Appellate provision, as contained under Section 61 of

the I & B Code, 2016. Though there are various interrelated factual aspects, which are required to be elaborately dealt with, the same would be ventured at a later stage by us, but presently we feel it apt to deal with the controversy precisely as it engages consideration in each of the appeals.

A. <u>Company Appeal (AT) (CH) (Ins) No. 93/2025 (Restraint of sale)</u>

2. As far as Company Appeal (AT) (CH) (Ins) No. 93/2025 is concerned, the Appellant who happens to be the successful bidder in the e-auction process of M/s. IVRCL Limited, the company under liquidation, has questioned the propriety of the impugned order dated 05.02.2025, which has been passed by the Ld. Adjudicating Authority in IA No. 357/2023 as preferred in CP (IB) No. 294/07/HDB/2017, and as a consequence to which the IA thus preferred by the Appellant before the Ld. Tribunal praying for that during the pendency of this proceedings, the Respondents No. 3 to 29 in the IA filed before the Ld. NCLT may be restrained from alienating the property. However, the Ld. NCLT has denied the relief sought.

3. The modulation of relief, which was prayed for by the Appellant in the said IA No. 357/2023, is extracted hereunder: -

> *a) To declare the action of the Respondent Nos. 3 to 29 in attempting to alienate the assets of the third party 100% subsidiaries/joint ventures/associates of CD*

covered under the Business Plan, as illegal, unjust and arbitrary.

b) *To pass necessary restraint orders directing the Respondent Nos. 3 to 29 not to deal, in any manner, with any third party securities or assets of the 100% subsidiaries/joint ventures/associates of CD which are covered under the Business Plan.*

c) *To pass necessary orders directing the Respondent No.2 to take steps for the protection of assets covered under the Business Plan.*

d) *To direct Respondent No.2 to take steps for handover of peaceful possession of all the assets/properties covered under the Business Plan, as approved by this Tribunal to the Applicant.*

e) *To pass any order/orders as this Hon'ble Tribunal may deem fit and proper in the said circumstances of the case."*

4. The Ld. Tribunal while considering the propriety of the relief sought for, in the IA, and particularly in the context of the bidding documents, in which the Appellant was declared as to be a successful bidder and the exceptions, which was attempted to be carved out by the Appellant was under the garb of the alleged consideration of the "Business Plan", which is said to have been submitted by the Appellant, by virtue of which, in fact the Appellant had attempted to intrude with the properties, which was contained in the successful bid, because the subsidiary and/holding companies of M/s. IVRCL Limited, were never included in the auction notice, which was contrary to the covenants of the invitation of bid, as it

was issued by the liquidator on 21.12.2021 for the purposes of auctioning the property of the Corporate Debtor, in the 3rd e-auction process.

5. The Ld. Tribunal, precisely while dealing with the aspect and so-called philosophy as argued by the Ld. Counsel for the Appellant, pertaining to the percept of approval of the business plan and consequentially inclusion of subsidiary and holding companies in the auction process, was not accepted on the ground that, the reference of the orders which were passed, that is dated 15.06.2022 or the order of 25.07.2022 had been misread by the Appellant, as it never approved the business plan, the plan not known to law. This Appellate Tribunal has observed that, the two orders do not at any point, make any reference to the approval of business plan or its terms while recording any directions to the Applicant or the liquidator in its two orders for the purposes of reflecting any aspect, which could have been taken to have accorded to be treated as an approval of the Business Plan.

6. The Ld. Tribunal while interpreting the order of 25.07.2022 claimed to be, as to be an order granting an approval of the business plan of the Appellant, wherein it has observed that, in the IA, which was subject matter of consideration that is IA No. 947/2023, which was decided on 02.08.2024 (which is subject matter of Company Appeal (AT) (CH) (Ins) No. 309/2024), was never an

approval of business plan, which could have enabled to grant the relief claimed in it.

7. The Tribunal observed that, there were as many as 59 reliefs, which were claimed by the Appellant in the aforesaid IA(IBC)/656/2022, wherein the Ld. NCLT had not granted any relief or concession which were claimed by the Appellant in relation to the business plan, nor even any deliberation was made on the same in the order of 25.07.2022, thus the same cannot be taken as to be, an order of an approval of the business plan for the purposes of including the assets of the holding or subsidiary company of M/s. IVRCL Limited as to be the property which stands included in the auction proceedings, which was held exclusively for the purposes of selling the assets of the Corporate Debtor, M/s. IVRCL Limited, as a going concern. The Tribunal has rightly so observed that the order dated 25.07.2022 passed in IA(IBC)/656/2022, it cannot be treated as to be a direction given to hand over the assets of the subsidiaries, joint ventures, or the associates too of the Corporate Debtor as allegedly claimed to be stipulated under the business plan, apart from that there was no such directions, besides this major relief claim stood denied it cannot be treated have accorded any approval of business plan.

8. Consequently, the Ld. Tribunal has observed that, in the absence of any specific instance or case cited, regarding the actions taken by Respondent No. 3

to 29, pertaining to any overt effort or attempt to have been made by them to alienate the asset of third party, that is subsidiary/joint ventures/associates of the Corporate Debtor, there would not be any necessity to pass any restraint order from alienation of assets as against Respondent No. 3 to 29 in any manner, as there is no specific instance established to have been taken by R3 to R29 intending to be transfer any asset. The Ld. Tribunal observed that the aforesaid conclusion drawn, based upon the order of 25.07.2022, to be read with, the order dated 15.06.2022, it will be absolutely preposterous to observe that the Ld. NCLT in its orders had ever mentioned to have established any act with regards to the apprehension expressed by the Appellant pertaining to the attempts alleged is to have been made by the Respondent, for transferring the assets of the Corporate Debtor and hence the Ld. Tribunal had rightly declined to grant an order in anticipation for protection of the assets because there could not have been an order in apprehension of an act expected to be done or which is an act yet to be established to have chanced.

9. Hence the Appellant preferred the present Company Appeal (AT) (CH) (Ins) No. 93/2025, wherein the Appellant has prayed for quashing the order, which is under challenge, and simultaneously has prayed for the relief as sought for in IA No. 357/2023, seeking direction as against the Respondent from alienating the property may be granted. The detailed reference to the arguments

and the rival contentions, which would be common in nature almost in all these four appeals, they would be independently dealt with when we deal with the arguments extended by the respective counsels for the parties.

B. <u>Company Appeal (AT) (CH) (Ins) No. 309/2024 (Extension of time to Deposit)</u>

10. In the connected appeal being company appeal, CA (AT) (CH) (Ins) No. 309/2024. It emanates from an order dated 02.08.2024, as it was passed in IA No. 947/2023, as preferred in CP (IB) No. 294/07/HDB/2017, wherein by virtue of the impugned order under challenge, the Ld. Tribunal had declined to extend the time period, as it stood provided by the order dated 15.06.2022, which was passed in MA No. 2/2022, for the purposes of depositing the amount.

As far as MA No. 2/2022 is concerned, the Ld. Tribunal in the order, where the proceedings were in the context of the relief of the following nature which is extracted hereunder: -

> *"1. The present IA No.2 of 2022 is filed under section 35(1)(n) and 60(5) of the IB Code, 2016 R/w the IBBI (Liquidation Process) Regulations, 2016 and Rule 11 of the NCLT Rules, 2016 seeking the following reliefs:*
>
> *a) To pass appropriate orders or issue directions, so as to allow Lenders / stakeholders to consider and finalize the proposal of Sole Successful Bidder for payment mode of balance sale consideration as per time line mentioned in the payment plan together with interest, if any, payable for*

deferred payments as proposed by letter dated 03.03.2022 and conclude the sale considering such deferred payment;

b) To extend the time period for completion of the Liquidation process of the Corporate Debtor for a further period till the completion of this process of liquidation of IVRCL Limited as going concern."

11. In fact, the Tribunal has not granted the relief as it was sought for, for issuance of a direction to the lenders and stakeholders to re-consider and finalize the proposal of sole successful bidder i.e., the Appellant herein, for the purposes of the payment mode of balance sale consideration. As per the timeline prescribed in the payment plan, together with the interest payable on it, if any, which would have been payable on the deferred payment by the letter of 03.03.2022, and conclude the remittance of sale consideration, considering such deferred payment. The Tribunal did not accede to the prayer, as made in MA No. 2/2022, but rather the Tribunal has modulated the relief which was granted in the following manner, which is extracted hereunder: -

"8. Further, considering the various aspects and views as expressed by lenders in various meetings of the stakeholders committee and upon perusal of the record, this Adjudicating Authority deems it fit to pass an order directing the payment schedule for balance sale consideration of Rs. 1150 Crores, as an amount of Rs. 50 Crore is already paid as EMD, to be made within a period of 12 months from date of this order, in six tranches. For sake of clarity, a table detailing the payment schedule is placed as under:

Sl. No.	*Tranche No.*	*Amount*	*Date of Payment*
1	*I*	*Rs. 200 Crores*	*14.08.2022*
2	*II*	*Rs. 200 Crores*	*14.10.2022*
3	*III*	*Rs. 200 Crores*	*14.12.2022*
4	*IV*	*Rs. 200 Crores*	*14.02.2023*
5	*V*	*Rs. 200 Crores*	*14.04.2023*
6	*VI*	*Rs. 150 Crores*	*14.06.2023*
Total		*Rs. 1150 Crores*	

> *9. The successful bidder is directed to make strict adherence to the timelines as directed above and failure or any delay on part of the successful bidder to make payment in time shall attract the interest @12% p.a. for such delayed period. It is also clarified that, in case, the successful bidder is willing to make payments before the said timelines, then this order shall not act as bar in making payment, if so desired."*

12. Thus, the relief which was granted in MA No. 2/2022, as decided by an order of 15.06.2022 was simpliciter, it was rather an extension of time to deposit the money, as upon the determination of the Appellant, being a successful bidder, for the balance amount of Rs. 1150 Crores, within the time slot as prescribed therein. The impugned order or even the order dated 15.06.2022, is absolutely silent about the grant of relief as it was sought by the Appellant in the IA qua the declaration of cancellation of sale to be bad in law. Rather to the contrary, this IA No. 947/2023, where the Appellant has sought an extension of time as provided by the order of 15.06.2022, the Ld. Adjudicating Authority has rather declined to pass any orders on the IA No. 947/2023, and has restricted the Appellant to adhere

to the timeline prescribed, for depositing the amount as per the order of 15.06.2022, which was passed in MA No. 2/2022, which was perhaps solicited by the Appellant himself. In these circumstances, it could be inferred that owing to the fact that, the order of 15.06.2022 has attained finality having not been questioned before any superior forum by the Appellant, and since the order passed on IA No. 947/2023 was rather reaffirming the order passed on 15.06.2022 as passed in MA No. 2/2022, it would automatically lead to a judicious conclusion that, the Tribunal has denied to venture into the aspect of grant of the relief sought for, a declaration, that the cancellation of auction sale dated 21.12.2021, as made by the e-mail communication on 28.07.2023 and the forfeiture of the Earnest Money, as it was made while exercising powers which was reserved under Clause 10.5 of the bidding document was absolutely held to be justified and was not entertained by the Tribunal.

C. Company Appeal (AT) (CH) (Ins) No. 96/2025 (Declaration of Cancellation of sale to be illegal)

13. Primarily, in the instant bunch of appeals the relevance would be on the adjudication made in the IA. 1314/2023 in CP (IB) No. 294/07/HDB/2017, where the Ld. Adjudicating Authority by the impugned order of 05.02.2025 has rejected the IA. Consequently, denying the relief sought for, by the Appellant for declaring the sale cancellation and the consequential forfeiture of the Earnest Money

Deposit by the Appellant, which was deposited in pursuance to the confirmation of auction sale in their favor, as to be illegal.

14. In fact, it has chanced so that, the Corporate Debtor by an order passed as back as on 26.07.2019 had directed the Corporate Debtor to be put to liquidation and upon the appointment of the liquidator, the liquidator had conducted three auctions and owing to the fact that, out of three processes, since two have failed and the auctions were not successful, yet another attempt was made for the third time for conducting an auction proceedings and as a result thereto on 15.05.2021, the Appellant was declared as to be a successful bidder, whereby the auction was settled in his favour with the fall of hammer. In the 3rd auction proceedings, selling the assets of the Corporate Debtor as specified in the bidding document for a reserve price of Rs. 1200 Crores as per the decision taken by the Stakeholder Consultation Committee, the auction was thus confirmed in favour of the Appellant, and in a step forward he deposited Earnest Money Deposit.

15. It is contended by the Appellant, that upon the confirmation of sale of Corporate Debtor as going concern on 27.12.2021, the Appellant was asked to deposit Rs. 50 Crores as Earnest Money Deposit, which he complied with, and thereafter the balance amount, which was left, due to be paid was Rs. 1150 Crores of balance consideration as a consequence of the confirmation of the sale on 27.12.2021. We had referred to the earlier order, which was passed on

15.06.2022, which would be of great relevance, as it was passed on MA No. 2/2022, which had intended for a prayer, seeking a clarification from the Ld. NCLT with regards to the timelines within, which the auction purchase amount was to be deposited by the Appellant, after having been determined as successful bidder in which, the direction was issued on 15.06.2022 (as referred above), this order has attained finality and it still exists in the eyes of law.

16. The direction issued then in the order of 15.06.2022, was that the Appellant was to pay, the balance amount in 12 months in 6 installments. The first installment was to be paid in accordance with the order of 15.06.2022, it was to commence on 14.08.2022 and would be ending on 14.06.2023, with an interest payable on it at the rate of 12 percent per annum.

17. There would be yet another important feature, which is required to be reiterated which is that an IA, which was filed by the Appellant being IA No. 656/2022 with regards to seeking clarification of the business plan as preferred on 08.01.2022. The same did not at any stage contemplate or even remotedly intended to make any observation with regards to the alleged theory of approval of the business plan, the contention which was attempted to be derived by the Appellant counsel, for the purposes of contending there that, he could not follow the conditions of the deposit under the orders of 15.06.2022 was owing to the approval granted to the business plan and as such, they contented, in the company

appeal that the decision taken by the Respondent of declaring the sale to be bad and the consequential forfeiture of the Earnest Money Deposit as to be an action which was arbitrary and contrary to the orders dated 15.06.2022 and 25.07.2022, which was being attempted to be interpreted by the Appellant, as if, it was an order granting an approval of the Business Plan. But still, at this stage, we may not be much concerned with the aforesaid aspect, because that would be dealt with, by us at a later stage, but primarily in the instant Company Appeal, where the decision which was rendered on IA No. 1314/2023 is subjected to challenge. The Appellant had submitted that, the Respondent had erred at law in proceeding to cancel the auction sale vide their letter dated 28.07.2023 by which the communication was made about the cancellation of the sale and forfeiture of the Earnest Money which stood deposited by the Appellant with the liquidator in terms of the affirmation of the auction bid in his favor has made on 15.12.2021.

18. In fact, the modulation of relief by the Appellant in IA No. 1314/2023, it was to the effect, that to declare the cancellation of the sale as communicated by the email of 28.07.2023 as to be illegal and unlawful. The relevant relief, as modulated by the Appellant in IA No. 1314/2023, is extracted: -

> ***"MAIN PRAYERS SOUGHT FOR:***
>
> *In view of the above stated facts, it is humbly prayed that this Hon'ble Tribunal may be pleased to:*

a) Pass an order declaring the action of the 2nd Respondent in cancelling the sale of the CD made in favor of the Applicant as a going concern and forfeiting the amounts paid, vide his Letter of Cancellation d ated 27.08.2023, as illegal, unlawful, unjust and arbitrary;

b) Pass an order setting aside the Letter of Cancellation dated 27.08.2023 issued by the 2nd Respondent to the Applicant and it's Members;

c) Pass any other order/orders as this Hon'ble Tribunal may deem fit and proper in the said circumstance of the case."

19. In fact, when this application came up for consideration before the Ld. Tribunal, the Tribunal proceeded to pass the impugned order on 05.02.2025, whereby the Ld. Tribunal had instead of granting the relief as prayed for declaring the sale cancellation as to be bad, had passed an order to the effect that, since the time slot, which was provided to the Appellant for depositing the money in pursuance to the confirmation of sale, that was alternatively directed to be extended by the observation, which was made in the order passed by the Tribunal on 05.02.2025 and relevant conclusion which was arrived at in para 16 of the impugned order is extracted hereunder:-

> *"16. However, considering the entire conspectus of the events surrounding the sale of the CD to the Applicant and consequent litigation, we believe that the* ***Applicant be given another opportunity to make payments towards the balance sale consideration of Rs 1050 Crores (along with interest @12% p.a. for the period of delay) within 30 days from the date of pronouncement of this order. Failure to comply, will lead to the cancellation of the sale of the CD to the Applicant, and forfeiture of the amounts deposited as per***

> ***the clause*** *10.5 of THIRD E-AUCTION PROCESS INFORMATION DOCUMENT' issued by the Liquidator on 20.11.2021.”*

20. Tentatively we are of the view that when a party to a litigation initiates a proceeding for a grant of particular relief as modulated in the proceedings or in an any application is neither granted nor denied by the impugned order nor any discussion is made regards the relief claimed, and when the Tribunal or the court carves out another equitable relief, which happened in the instant case, where 30 days further time was granted to the Appellant to deposit the money. The question would be, will it amount to, denial of relief by the Tribunal, as against the declaration of cancellation of sale, and would there be a bar of estoppel?

D. Company Appeal (AT) (CH) (Ins) No. 310/2024 (Amendment in extention of period to deposit money)

21. Lastly, the Appellant has filed Company Appeal (AT) (CH) (Ins) No. 310/2024, being aggrieved as against the order, dated 02.08.2024, as it was passed in IA No. 1257/2024, as preferred in CP (IB) No. 294/07/HDB/2017, wherein, in the application thus preferred, by the Appellant had attempted to amend the period sought for an extension of an order, which was prayed for in IA No. 947/2023, based upon the earlier order of 15.06.2022 passed in MA No. 2/2022. The appellant in this IA No. 947/2023 as preferred another IA being IA No. 1257/2024, and had prayed for, that the time, which was granted to deposit the amount, at the time of approval of the sale, that may be permitted to be amended

and the time period thus settled by the order of 15.06.2022 to make the payment and as affirmed by the order of 02.08.2024 as passed on IA No. 947/2023, was sought to be extended for a further period, as it was prayed for in the application for the purposes of complying with the directions given in the order of 15.06.2022 and 02.08.2024 as passed on IA No. 947/2023 for depositing the balance amount due i.e., Rs. 1050 Crores, for having purchase the CD as going concern.

22. The Ld. Tribunal rejected the application IA No. 1257/2024 by making a quite elaborate observation, and considering the entire conspicuous of the case by dealing with the implications of the order passed on 15.06.2022 and 25.07.2022, as well the order dated 02.08.2024 which was passed on the application IA No. 1257/2024 where amendment was sought for, extension of time to deposit the money which stood rejected by the impugned order.

23. The issue which would emerge for consideration before us would be when the Appellant himself has filed an IA No. 1257/2024, seeking an amendment in extension of time to enable the Appellant to deposit the money under the bidding document, as it stood granted by the earlier orders, will it not amount to be an estoppel against him, to raise a case to the contrary that, in the absence of non-adherence to the conditions of the so-called theory of approved business plan, the entire process and the subject, which has been put to challenge by the Appellant would be bad. We are of the view, when a party to the proceeding seeks an

amendment in the relief to do an act, in compliance of the earlier order, which has not been challenged, it will amount to that the party, by his conduct, accepts the conditions of the earlier order, which in the present case was containing a direction to deposit the money. And if, that is the situation where the earlier condition rendered by an order, of depositing money has been accepted, whether he could at all, resile away from his earlier commitment and content to carve out an exceptions to not to honor his commitments made in pursuance to the confirmation of auction in his favor as made as back as on 15.12.2021.

24. It is under the aforesaid backdrop that these appeals would be considered. In order to answer all the issues, it becomes inevitable for us and rather indispensable for this Tribunal to go into the very root cause, from where the actual controversy has started generating, i.e., the "**bidding document**" and the "**Business Plan**". All rights and liability of any of the parties to the proceedings of the above four appeals would have its pivot on the bidding document itself, and the answer which is required to be given is, whether the auction held on 15.12.2021 and the Appellant having been determined as to be a Successful bidder whether, he could at all under law widen the scope of entitlement of assets of the Corporate Debtor, alleging thereof that the holding company, subsidiary companies of the Corporate Debtor would stand included in the property which

was subjected to auction in the bidding document as it was published by the liquidator and held on 15.12.2021.

25. All these appeals coexist, and they cannot survive to be considered in the absence of another. In fact, the foundation of the respective case of parties to these appeals are considered it is almost based upon the common principles which has to be commonly applied while considering the respective appeals, though marginally under a different backdrop. As we have already observed, the controversy stood initiated as a consequence of the invitation of Expression of Interest (EoI) to submit a bid in respect of **“sale of M/s. IVRCL Limited”** which is the company under liquidation, which was to be done by way of the 3rd e-auction process where the reserve price was fixed at Rs. 1200 Crores.

26. The Appellant's case was that the Appellant, being a private limited company having being incorporated under the provisions of the Companies Act, was determined as to be a successful bidder on the basis of the e-auction which was conducted on 15.12.2021. He submitted that he was as determined as to be a successful bidder, for purchasing the assets notified of the Corporate Debtor, that is, the company under liquidation as an ongoing concern. The Corporate Debtor was put to Corporate Insolvency Resolution Process by an order of the Ld. Adjudicating Authority as rendered on 23.02.2018. In the initial processes, since there was no Successful Resolution Applicant (SRA), the Ld. Adjudicating

Authority ordered the liquidation of the Corporate Debtor by an order of 26.07.2019. A corrigendum to the said order was issued on 31.07.2019 (which may not have any bearing as far as the instant appeals are concerned).

27. It is not in controversy that the e-auctions were attempted to be conducted for the sale of the assets of the Corporate Debtor as a going concern; two processes of the e-auction of the assets of CD has failed, and it was in the 3rd e-auction process that the Appellant was held to be a successful bidder, on 27.12.2021, since having offered an amount of Rs. 1200 Crores, which was unanimously accepted by decision of the Stakeholders Consultation Committee, out of which it is an admitted case of the Appellant that the Appellant had deposited, Rs. 50 Crores as an Earnest Money, and the balance was required to be paid, as per schedule given thereunder the bid settlement document.

28. The controversy which was engraved by the Appellant was when he submits that, after depositing the Earnest Money, he had submitted a "**business plan**". The outlining principles as sought to be put to vogue, by the Appellant was, under the pretext of the so-called philosophy of business plan, which the Appellant has said to have submitted. On the premise that the outlined assets of the Corporate Debtor it ought to have been made as a part of the bidding process, and it will be inclusive of the same. Hence, the subsidiary companies/joint ventures/ associates of M/s. IVRCL Limited was also intended by the Appellant

to be included in the auction, which was conducted on 15.12.2021 and stood affirmed on 27.12.2021.

29. The Appellant's case was that, since there was an uncertainty and an ambiguity too, with regards to, the remittance of the balance consideration, he submits that, under the garb of advice extended by the liquidator, he sought clarification from Ld. NCLT, by filing M.A. No. 2 of 2022 filed by Liquidator in which the Ld. NCLT has passed an order on 15.06.2022 making it quite explicitly clear that, the Appellant had to deposit the balance amount in 12 months in 6 trenches, with first amount to be falling due to be paid with effect from 14.08.2022 ending with 14.06.2023, along with the interest payable on it at the rate of 12% per annum. In order to intricate the issue and to avoid payment of money as settled to be paid by him on the affirmation of the auction on 27.12.2021 and further intending to overcome the directives issued by an order of 15.06.2022, which was solicited by the Appellant himself.

30. He filed yet another application being IA No. 656/2022 just to complicate the issue seeking a clarification with regards to the articulated and self-imposed theory of business plan, which he contends to have submitted, on 28.01.2022, which the Appellant contends that it stood approved by the stakeholders committee, on 28.01.2022, which yet again is argued that, it was affirmed by the Ld. NCLT by an order of 25.07.2022.

31. In fact, the two orders dated 15.06.2022 or 25.07.2022, would be the main bone of contention which has been sought to be read by Appellant as if, it would result into an affirmation of the business plan dated 28.01.2022, is an absolute distortion of understanding of the Appellant to the orders of 15.06.2022 and 25.07.2022, as it was mal intended by the Appellant by inclusion within itself, the subsidiary, the holding companies/ and Associate Company, of the Corporate Debtor. It is the case of the Appellant that, the liquidator had constituted a supervisory committee as per the Ld. NCLT's order, which had convened the first supervisory meeting on 06.09.2022, and the observations made therein was for the remittance of the part of the money due to be paid as settled under the auction sale, which was to be paid by the Appellant, which he contends that he has complied with the said direction, since having deposited the amount of additional Rs. 100 Crores on 26.09.2022. The Appellant, later on, developed a case that since the Liquidator to the Corporate Debtor were making an attempt to sell the property under the garb of the fact that the Appellant, out of the total Rs. 1200 Crores, has deposited only Rs. 150 Crores, and still the balance amount of Rs. 1050 Crores was still not paid. The property was alleged to have been attempted to be sold, which according to the Appellant were the assets, which fell part and parcel of the e-auction and according to the Appellant it would fall to be part and parcel of the business plan too which was submitted by him before the liquidator for the purposes of inclusion of the subsidiary company, the holding companies,

of the Corporate Debtor to be included into the liquidation estate of the Corporate Debtor.

32. It is at that the behest of the request made by the Appellant, that a 2nd supervisory committee meeting was held on 17.02.2022 in order to clarify the aspect of the business operations of the Corporate Debtor for the purposes of identification and demarcation of the assets forming part of the auction proceedings. And with regard to the assets which was attempted to be included in the business plan which was proposed to be taken over by the Appellant, its only upon the payment of balance sale consideration as it was directed by the orders passed by the Ld. NCLT on 15.06.2022, which did not carve out any exception of giving any expression of exemption or inclusion of any other assets of the Corporate Debtor, except the asset as it was included in the auction notice of 20.11.2021. In fact, the minutes of the 1st supervisory committee of 06.09.2022, the members of the supervisory committee were unable to arrive at a consensus, which resulted in holding of the 2nd meeting for the purposes of clarification, which was said to have been filed by the Appellant on the oral directions issued by the liquidator in the shape of an alien theory of Business Plan.

33. There had been a contempt proceeding drawn being Contempt Proceeding (IBC) No. 2/2023 for non-compliance with the order passed on 15.06.2022 in M.A. No. 2 of 2022, which was filed by the liquidator (Mr. Sutanu Sinha), but

we may not be of much concern as far as the contempt proceedings are concerned, which happens to be an issue independent to the controversy at hand, which is required to be decided by the instant company appeals.

34. The interpretation, which was given by the Ld. Counsel for the Appellant to the order of 25.07.2022, passed by the Ld. NCLT, as if, reading it to have accorded an approval of the business plan, which was submitted by the Appellant, for including the other assets of the liquidator, which was in the shape of the subsidiary, ancillary or the holding company, all the assets thus claimed belongs to the 3rd party or the subsidiary companies. The Appellant is said to have file an IA No. 357/2023, which is subject matter of consideration in Company Appeal (AT) (CH) (Ins) No.93/2025, where under a false apprehension of a probable sale of the assets belonging to the 3rd party assets of the subsidiary and holding company of the Corporate Debtor, which according to the Appellant it was alleged that it was covered under the assets of the Corporate Debtor which was covered by auction notice, and it was an asset which was covered under the business plan through an e-auction hence contended that ought not to be permitted to be sold and illegally alienated. The said application came up for consideration before the Ld. NCLT, which was rejected by an order of 05.02.2025. We feel it apt to precisely deal with the observations which had been made by the Ld. Adjudicating Authority while deciding IA No. 357/2023. While dealing with the

backdrop of the so-called theory of the "business plan", which has been considered in para 22 of the Impugned Order, the respondent had argued before the Ld. Adjudicating Authority that, in the light of the provisions contained under Section 36 (4) (d) of IBC, coupled with reading with the Minutes of the Meeting of the lenders of M/s. IVRCL Limited is (under liquidation). It was already held that "**the assets of the subsidiaries, were outside the purview of liquidation estate, and as such it will now fall to be part of the liquidation estate**", which would be covered by auction proceedings.

35. Based on the aforesaid theory of the business plan of the Applicant/Appellant, the same was not accepted, while deciding IA No. 357/2023, contending thereof that the sale of the ancillary, subsidiary and holding companies of the Corporate Debtor may be sustained the said plea was not accepted and while making the aforesaid observation the Ld. Adjudicating Authority observed that the business plan, which has been submitted by the Appellant while purchasing the Corporate Debtor as a going concern. And the so-called acceptance of the "business plan" by an order of 15.06.2022, which was reiterated by an order of 25.07.2022, was not accepted and ultimately it was concluded that, disregard to whether they form the assets of the liquidation estates or not, but for the purposes of the relief, which was claimed for in IA No. 357/2023 that, cannot be accepted to be granted owing to the observations made

therein to the following effect, "**that business plan is not grounded in law, but rather it seems to form an opinion which was flawed at the behest of the Appellant**" because under Section 36 (4) (d) of IBC, it clearly provides that the assets of the subsidiary of the Corporate Debtor shall not be included in the liquidation estate and such assets cannot be utilized for the purposes of recovery of the liquidation estate process. For the aforesaid purpose, ***36 (4) (d) of IBC to be read with Regulation 21A*** is extracted hereunder: -

> *"**Section 36. Liquidation Estate**. —(1) For the purposes of liquidation, the liquidator shall form an estate of the assets mentioned in sub-section (3), which will be called the liquidation estate in relation to the corporate debtor.*
>
> *(2) The liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors.*
>
> *(3) Subject to sub-section (4), the liquidation estate shall comprise all liquidation estate assets which shall include the following:—*
>
> *(a) any assets over which the corporate debtor has ownership rights, including all rights and interests therein as evidenced in the balance sheet of the corporate debtor or an information utility or records in the registry or any depository recording securities of the corporate debtor or by any other means as may be specified by the Board, including shares held in any subsidiary of the corporate debtor;*
>
> *(b) assets that may or may not be in possession of the corporate debtor including but not limited to encumbered assets;*

(c) tangible assets, whether movable or immovable;

(d) intangible assets including but not limited to intellectual property, securities (including shares held in a subsidiary of the corporate debtor) and financial instruments, insurance policies, contractual rights;

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

(f) any assets or their value recovered through proceedings for avoidance of transactions in accordance with this Chapter;

(g) any asset of the corporate debtor in respect of which a secured creditor has relinquished security interest;

(h) any other property belonging to or vested in the corporate debtor at the insolvency commencement date; and

(i) all proceeds of liquidation as and when they are realised.

(4) The following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation—

(a) assets owned by a third party which are in possession of the corporate debtor, including—

(i) assets held in trust for any third party;

(ii) bailment contracts;

(iii) all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund;

(iv) other contractual arrangements which do not stipulate transfer of title but only use of the assets; and

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

(b) assets in security collateral held by financial services providers and are subject to netting and set-off in multilateral trading or clearing transactions;

(c) personal assets of any shareholder or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter;

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

(e) any other assets as may be specified by the Board, including assets which could be subject to setoff on account of mutual dealings between the corporate debtor and any creditor."

36. The provisions contained Section 36 (4) clearly stipulates and carves out an exception that the assets of Indian or foreign "**subsidiaries**" of the Corporate Debtor will not be included in the liquidation estates and shall not be used for the purposes of recovery from liquidation estate. Similar were the observation, which was made under Regulation 21A, which also excludes the subsidiary or a holding company of the Corporate Debtor from constituting it to be as to be part of the liquidation estate. Ultimately, the Ld. Adjudicating Authority, while dealing with the relief sought for, by way of a restraint to alienate the property of the subsidiary and the holding company, which is excluded by virtue of Section 36 (4) (d) of IBC to be read with Regulation 21A was declined to be restrained, to be sold,

under the so-called percept of the alleged business plan, which according to the perception of the Appellant stood approved by the orders of 15.06.2022 and 25.07.2022, which has been absolutely misread by the Appellant. While dealing with the relevant part of the orders dated 15.06.2022 and 25.07.2022, the theory was not ever at all accepted by the Tribunal on the ground that the relief which was sought by way of a restraint from alienation in fact is where it was mis founded and no restraint order as such could have been passed in relation to deal of sale based on auction proceedings in any manner with regards to a 3rd party securities or assets of the 100% subsidiaries / joint ventures or associates of the Corporate Debtor which were claimed to be part and parcel of the business plan which the Appellant has attempted to seek its clarification by filing the aforesaid IA.

37. However, the Ld. Adjudicating Authority rejected the application apart from the above grounds, also on the ground that there cannot be a fictional reason which could be permitted to be pertuated, based on conception of Appellant, to restrain asubsidiary or a joint venture or associates of the Corporate Debtor to be sold in the absence of there being any established fact brought on record as per Regulation 21A of Liquidation Process Regulations 2016, it was an ambit of Corporate Debtor under Liquidation that there was any attempt made by

the opposite party to the proceedings to sell the property hence, the application was rejected on the aforesaid grounds.

38. In **Company Appeal (AT) (CH) (Ins) No.309/2024**, the appellant challenges the Impugned Order dated 02.08.2024, which was passed on IA No. 947/2023 in CP (IB) No. 294/07/HDB/2017. The Appellant in the said IA, which was preferred on 05.06.2023, has prayed for the following reliefs, which is extracted hereunder: -

PRAYERS SOUGHT FOR:

"In view of the above stated facts, it is humbly prayed that this Hon'ble Tribunal may be pleased to:

e. Pass an order extending the time period stipulated by this Hon'ble Tribunal in M.A.No.2 of 2022 in CP(IB).No.297/7/HDB/2017 by a period of 10 months from 15-6-2023 to 14-4-2024 for payment of balance sale consideration consequent to purchase of the Corporate Debtor as a Going Concern.

f. Pass any other order/orders as this Hon'ble Tribunal may deem fit and proper in the said circumstance of the case."

39. Factually, the claim remains anchored, on the same principles and facts, as to whether at any point of time the business plan was ever approved, as it has been argued by the Ld. Counsel for the Appellant for the purposes to include the ancillary, subsidiary, and the holding company of the Corporate Debtor. There could be two ways of interpreting the implications of IA No. 947/2023; the

modulation of relief to the IA, intending to indirectly was seeking a modulation of the prayer sought for in M.A. No. 2 of 2022, which was decided on 15.06.2022.

40. The question which would emerge for consideration is whether the extension prayed for in IA No. 947/2023 could at all be granted by extending the same for the period from 15.06.2023 to 14.04.2024, and particularly in the context of the order of 15.06.2022, there could be two-fold implications as follows:

(i) That when the Appellant has sought an extension of time to deposit the money, it will amount that he would be rather admitting that his rights would be confined to the auction which stood confirmed in his favor on 27.12.2021, and

(ii) Further, his rights would be limited to the depositing of the amount as directed by the order of 15.06.2022.

41. For the aforesaid purpose, we will have to consider as to for what did basically M.A. No. 2 of 2022 was instituted before the Ld. NCLT. On perusal of the record, it reveals that M.A. No. 2 of 2022 was filed under Section 35(1)(n) and Section 60(5) of the I & B Code, 2016 which is to be read with IBBI (Liquidation Process) Regulations, 2016, wherein the Appellant has sought for the following reliefs, which is extracted hereunder: -

"1. The present IA No.2 of 2022 is filed under section 35(1)(n) and 60(5) of the IB Code, 2016 R/w the IBBI (Liquidation

Process) Regulations, 2016 and Rule 11 of the NCLT Rules, 2016 seeking the following reliefs:

(a) To pass appropriate orders or issue directions, so as to allow Lenders / stakeholders to consider and finalize the proposal of Sole Successful Bidder for payment mode of balance sale consideration as per time line mentioned in the payment plan together with interest, if any, payable for deferred payments as proposed by letter dated 03.03.2022 and conclude the sale considering such deferred payment;

(b) To extend the time period for completion of the Liquidation process of the Corporate Debtor for a further period till the completion of this process of liquidation of IVRCL Limited as going concern."

42. If the order of 15.06.2022 passed on it is read in its entirety, it cannot be interpreted to be at all considered in any manner whatsoever that, it did had any element of approving the so-called business plan/payment plan, which was sought for by the Appellant by filing the same on 10.12.2021, before the liquidator for acquiring the Corporate Debtor as a going concern under Regulation 32A of the Liquidation Regulations.

43. Another important feature which emerges for consideration on perusal of the order of 15.06.2022, is absolutely a new theory which was carved out by treating the alleged business plan which is said to have been submitted by the Appellant for the purposes of inclusion of the holding and subsidiary company of the Corporate Debtor, as to be treating it as to be a payment plan. In either of the

circumstances and under normal human prudence, a "business plan" can never be a substitute to be read for a "payment plan". Since a business plan in itself, as already observed, is not a philosophy provided and was ever perceived of in the auction proceedings, the same cannot be permitted to be alternatively read as to be a payment plan. There would be a negative implication too to his arguments and case based on business plan, if the Appellant accepts that the business plan was alternatively a payment plan, in that eventuality, his basic theory of including the holding and subsidiary company of the Corporate Debtor to be within the auction purchase of the Liquidation estate made by him on 27.12.2021 falls down and the said portrayed business plan dated 10.12.2021, would be confined to be taken only, for the purposes of re-classification of the payment schedule, as it was directed by the order of 15.06.2022, and not otherwise. The entire order of 15.06.2022, if it is considered, it does not at anywhere observes that the so-called business plan or the payment plan, was ever approved and that could not have been so also for the reason being that, it was not a concept which was available to the appellant under the terms and conditions of the auction notice issued by the liquidator.

44. The said argument of the Appellant that the business plan was approved by the order of 15.06.2022 either in the shape of a business plan or in the so called shape of a "payment plan" could very well be drawn from the findings which has

been recorded in the order of 15.06.2022 where the Tribunal has observed in its order of 15.06.2022 in its para 8 observing thereof that "***further, consider the various aspects and views as expressed by the lender in various meetings of the stakeholders committee and upon perusal of record, this Adjudicating Authority deems it fit to pass an order directing the payment schedule for the balanced sale consideration of Rs. 1150 Crores, as an amount of Rs. 50 Crores is already paid as an Earnest Money Deposit (EMD) to be made within 12 months from the date of this order in 6 trenches***". If this would be the finding, it would rather reiterate that there was no relaxation of any nature whatsoever which could held to be granted by way of any approval for inclusion of the assets of the holding and subsidiary company of the Corporate Debtor and rather to the contrary, the observations made in para 8 and 9 of the order dated 15.06.2022 does not at all ever accord an approval of the business plan, which has been claimed by the Appellant because had it been so there wouldn't have been any occasion for the Ld. Adjudicating Authority while passing an order on 15.06.2022 to issue a directives to the successful bidder, i.e., the Appellant, to make strict adherence to the timelines as directed in para 8 of the order of 15.06.2022, to pay the amount of balance Rs. 1150 Crores, along with the interest payable on it. The very observation and the directives made in para 8 and 9 would amount to that there was no approval or even a remote approval as such to the business plan, giving any deviation of any nature as such to the rights which was limited to by

virtue of the affirmation of the auction on 27.12.2021. The relevant para 8 and 9 of the order dated 05.06.2022, as passed on ***M.A. No. 2 of 2022***, is extracted hereunder: -

> *"8. Further, considering the various aspects and views as expressed by lenders in various meetings of the stakeholders committee and upon perusal of the record, this Adjudicating Authority deems it fit to pass an order directing the payment schedule for balance sale consideration of Rs. 1150 Crores, as an amount of Rs. 50 Crore is already paid as EMD, to be made within a period of 12 months from date of this order, in six tranches. For sake of clarity, a table detailing the payment schedule is placed as under:*

Sl. No.	*Tranche No.*	*Amount*	*Date of Payment*
1	*I*	*Rs. 200 Crores*	*14.08.2022*
2	*II*	*Rs. 200 Crores*	*14.10.2022*
3	*III*	*Rs. 200 Crores*	*14.12.2022*
4	*IV*	*Rs. 200 Crores*	*14.02.2023*
5	*V*	*Rs. 200 Crores*	*14.04.2023*
6	*VI*	*Rs. 150 Crores*	*14.06.2023*
Total		*Rs. 1150 Crores*	

> ***9. The successful bidder is directed to make strict adherence to the timelines as directed above and failure or any delay on part of the successful bidder to make payment in time shall attract the interest @12% p.a. for such delayed period. It is also clarified that, in case, the successful bidder is willing to make payments before the said timelines, then this order shall not act as bar in making payment, if so desired."***

45. The Ld. Adjudicating Authority, while deciding IA No. 947/2023, where the Appellant as sought an extension of time by way of amendment, as granted by the order of 15.06.2022 had rightly denied to extend the time by making reference to para 8 and 9 as extracted above and for the reasons, which has been given in para 10 and 12 of the said judgment. The inference which could be drawn from the Ld. Adjudicating Authority observations made in the judgment of 02.08.2024, as rendered in IA No. 947/2023, it was observed that none of the prayers as was sought for by the Appellant, stood recognized, that the Corporate Debtor, which was sold was as an on going concern prior to its sale or in any of the minutes of the Stakeholder Consultation Committee at any point of time did include any of the ancillary or subsidiary company of the Corporate Debtor to be part of auction proceedings, which cannot be added based on claim by business plan, and hence it was observed that the "business plan outline", which was modulated in a fashion claiming 59 reliefs therein in relation to the multiple concessions claimed or the approval of the business plan stood denied and since it was not approved. The Ld. Adjudicating Authority in its **para 19** has directed that, the Tribunal is not inclined to accept the argument of the Appellant to modify the order of the payment schedule, as given by the order of 15.06.2022 and that was not taken as to be, an order of approving the business plan as it was sought and argued for by the Appellant. Relevant para 19 of the impugned order, is extracted hereunder: -

"Under the circumstances, we are not inclined to disturb the payments schedule as outlined in the order of 15.06.2022. Applicants request for extention of the time period stipulated in the order of this authority dated 15.06.2022 is therefore rejected."

46. Hence, in this appeal too, we do not see any reason to interfere when the controversy so far as it relates to IA. No. 947/2023 which when taken into consideration in the context of the order passed on 05.06.2022 in M.A. No. 2 of 2022. the denial of extension of time was absolutely just and proper, which does not call for any interference by this Tribunal.

47. On the basis of the aforesaid short analysis, which we have made in relation to the respective appeals, we could ultimately deduce that the entire fictional story, which has been created by the Appellant was based on the pretext that since the auction proceedings which was held on 27.12.2021, it had a scope of submission of a 'business plan', as it has been sought to, be enforced by the Appellant, which is said to have been submitted on 28.01.2022. In order to answer the aforesaid, we feel it apt that in order to answer all the questions qua 'Business Plan', as argued by the Ld. Counsel for the Appellant from the viewpoint, that as to what was, the scope, which could have been mentioned into, based upon the scrutiny of the auction document, which has been issued by the liquidator, while calling upon the prospective Applicants to apply, for getting the bids settled in their favor. As far as the auction documents and its implication are concerned, we

have to make a detailed analysis with regard to the auction notice, as it was got published by the Respondent/Liquidator on 20.11.2021 and its consequential impact, of the Appellant having been settled as a successful bidder, on the basis of the e-auction which was held on 27.12.2021.

48. What is being required to be answered, and as also placed by the respective counsels, is that both the parties agreed to the fact that, it was upon the failure of two earlier auction proceedings that, ultimately the 3rd auction process was resorted to, for the purposes of selling the exclusive assets of M/s. IVRCL Limited, the company under liquidation. According to the auction notice itself as it was published on 22.11.2021, if we could go into the terms of it, the auction notice is quite explicit in its terms, which do not anywhere intend to invoke or widen the scope of the assets, which were expected to be sold, in relation to the company under liquidation, that is only M/s. IVRCL Limited. If the same is taken into consideration, and as argued by the Ld. Counsel for the Respondent too, that invitation of Expression of Interest (EoI), which was for the purposes of inviting the bids was exclusively observed to be in respect of "**sale of M/s. IVRCL Limited**". According to the contents of the said auction notice of 20.11.2021, nowhere it ever opened the scope, or provided any scope of expansion that the auction thus intended to be held, and as concluded on 27.12.2021, it had at any point of time left the scope opened for the purposes of inclusion of any other

assets of the ancillary, subsidiary and holding company of M/s. IVRCL Limited, because that been an intention of the 3rd e-auction process, as notified on 27.11.2021, to be held on 15.12.2021 and its ultimate conclusion on 27.12.2021, in none of the correspondences which was made in relation to the aforesaid e-auctioning processes anywhere it had provided, the opening of an avenue, or invitation of an Expression of Interest (EoI) from the prospective bidders for any of the assets belonging to the ancillary or a holding company of the company under liquidation i.e., M/s. IVRCL Limited as they were absolutely independent legal entity. If that be the scope of interpretation to the processes of auction contemplated under the liquidation regulations and the code, for holding of auction proceedings on a simpliciter interpretation, to be given to, as to what would be the ambit of exercise of powers under Regulation 31A, and the Regulation 33 to be read with the mode of sale under Schedule I of Para 1 of Clause 4A of the Liquidation Regulations. It quite specifically limits the auction proceedings to be in relation to the assets of the company under the liquidation, and nothing beyond that. If that be the interpretation to the contents of the notice dated 20.11.2021, and particularly as argued by the Ld. Counsel for the Respondent contending thereof, that, apart from the company under liquidation, there was no other asset, which was proposed or even shown to be proposed to be sold. It may not be faulted, because the Appellate Tribunal or the Ld. Adjudicating Authority too, cannot introduce or add something in relation to

assets in particular, which is not included by expression given in the invitation of bids, by the liquidator. If that be the situation, and particularly if the auction was to be limited to the assets of the M/s. IVRCL Limited only, then the entire theory has sought to be built by the Appellant, that it included the subsidiary and the holding company of the Appellant may not be acceptable by us.

49. The Ld. Counsel for the Respondent Mr. Surayanarayan, in elaboration to his argument, which has been built up, was based upon the interpretation given to the auction notice of 20.11.2021, he had further submitted that in the communication, which was made by the liquidator, to the National Stock Exchange India Limited, in its communication of 20.11.2021, under its subject, it had intimated, with regards to the initiation of Expression of Interest (EoI), to submit the bids for M/s. IVRCL Limited only, the company under liquidation, as a going concern. Even the averments made in the aforesaid communication of 20.11.2021 by the liquidator, to the National Stock Exchange India Private Limited, it nowhere expresses that it provided any avenue to the liquidator while conducting the auction, or to the Appellant who was participating in the auction proceedings, to have included in it something, which was not expressly provided in the bidding document, and the subsequent communications which was made by the liquidator, which was necessary for the purposes of a valid conclusion of the auction proceedings.

50. The aforesaid contention, could be further elaborated upon if the auction notice of 20.11.2021, is read, along with the terms and conditions of the governance of the e-auction process, as preceded by the notice dated 20.11.2021, as aforesaid and in accordance with the terms and conditions of the e-auction bidding document, its title head was quite clear in its term that, the participation were invited in the 3rd e-auction process for sale of **M/s. IVRCL Limited**, it was for the purposes of the aforesaid entity only, and it would not be inclusive of the subsidiary and the ancillary companies, which have got their own independent judicial and legal existence, and they cannot be added into by way of an interpretation given by the Appellant on the basis of the "Business Plan", which was yet again would be a philosophy, not contemplated under any of the documents, and the terms and conditions of the auction proceedings as it was published by the liquidator. Based on the title head of the terms of the e-auction and the subsequent contents, which are being dealt with hereunder, leave the issues closed, that it was only the exclusive sale of M/s. IVRCL Limited, which was intended. For the aforesaid purpose, certain excerpts of the bidding terms and conditions of the bidding document are required to be extracted hereunder, for example, the title head of the Bidding document, which is extracted hereunder: -

> ***"Participation In This Third E-Auction Process For Sale Of Ivrcl Limited ("In Liquidation As Going Concern") ("Company") Under The Provisions Of Insolvency And Bankruptcy Code,"***

51. The basic intention, which was expressed by the terms of the e-auction it was exclusively for an invitation of bids for participation in the 3rd e-auction processes of M/s. IVRCL Limited and nothing beyond that was even perceived of, and the aforesaid contention has been sought to be pressed upon by the Ld. Counsel for the Respondent in the terms of the sale of the company, as a going concern, which has been given under the terms, of the auction notice date 20.11.2021 and the subsequent communications also, which provides that the term "**sale**" of the company which was being sold as a going concern basis, wherever used in this document, it shall mean that it would be for M/s. IVRCL Limited only. For the aforesaid purpose, extraction of the term sale of company becomes relevant to be extracted in order to denounce the argument of the Ld. Counsel for the Appellant, that the conditions contained therein cannot be permitted to be magnified according to the expectation of the Appellant, which may not be an express intention of the auction proceedings as it was notified to be conducted by the liquidator. The term "**sale**", as contained under the Terms and Conditions of the auction notice itself, is extracted hereunder: -

> *"The term "**Sale of the Company on going concern basis**" wherever used in this document shall mean, sale of the company on Going Concern basis in accordance with the provisions of Insolvency and Bankruptcy Code, 2016 (IBC) and Liquidation Process Regulations and this Third E-Auction Process Information Document."*

52. If the aforesaid definition which deals with the sale of the company under the terms and conditions of the auction. It has specifically pointed out that in accordance with the provisions of the I & B Code, 2016, where the liquidation process was being conducted it was in relation to M/s. IVRCL Limited only, that is, the company under liquidation, the same would be read exclusively for the sale of the company, and here the scope of the company under liquidation, yet again cannot be widened, than, what it was intended by the terms of the auction, as already asserted above, the company under liquidation, will not include within itself, the subsidiary company or a holding company, since they have altogether, a different legal status in the eyes of law. Based upon the specific terms and conditions of its legal existence, it cannot be merged to be considered as to be a body constituent of the company under liquidation, because a holding company under the shares, would be limited to the extent of its shareholding, and that would be the independent unit in itself, which will not be covered by the bidding document.

53. The aforesaid contention, could further be magnified to be considered in terms of yet another condition which was given under the terms and conditions of the 3rd e-auction process in relation to the assets of the company under liquidation, which was intended to be sold, by the 3rd e-auction process, as it was conducted on 27.12.2021. According to the bidding document, the sale of the

assets of the company under liquidation was to be conducted upon the following terms and conditions. The relevant terms and conditions which takes the shape of a mandatory condition, for the purposes of acknowledging the scope of the auction to be held under its conditions, it confines its sale to the company, which was explicitly described in the terms and conditions and in the auction notice itself, and that is why the bidding document in its condition as contained, it had provided that the sale of the company under liquidation would be done on the basis of, **'as is, where is basis' and 'as is what is basis', and 'whatever there is basis' and 'no recourse'**. The relevant excerpt of condition of auction is extracted hereunder: -

> *"The sale of the Company is proposed to be done "as is where is basis", "as is what is basis", "whatever there is basis" and "no recourse" basis and the proposed sale of the company on going concern basis does not entail transfer of any other title, except the title which the company had on its assets as on date of transfer. The Liquidator does not take or assume any responsibility for any shortfall or defect or shortcoming in the moveable/immoveable assets of the Company."*

54. The use of term, "**no recourse**", as given in the aforesaid conditions, provided under the terms and conditions of the contract, rather, it created a restriction that under no given set of circumstances, a new thought could be introduced or to be permitted to be introduced, to read something which is otherwise not explicitly given under the auction notice or in the terms of the

bidding document, and that could be safely inferred, that the so-called introduction of the theory of business plan, on which the entire controversy is being based upon by the Appellant, would be restricted to be introduced and be considered in view of, the expression given in the aforesaid clause, that no recourse, would be open to be accepted for the purposes of the proposed sale of the company under liquidation as a going concern. In other words, the word used '**no recourse**' would create an absolute bar that, in whatsoever manner, the horizon of the conditions of the contract could not be expanded in any manner whatsoever, and that too, particularly when under its terms and conditions of the contract, and particularly in the context of the definition has given therein, as contained under Clause 2.8, it describes the company, has to be the M/s. IVRCL Limited. The relevant portion of definition, Clause 2.8 is extracted hereunder: -

> *"**Company**" shall mean IVRCL Limited, a company incorporated in India under the Companies Act of 1956, having its registered and corporate office at 'MIHIR', H. No. 8-2-350/5/A/24/1B, Panchavati Colony, Road No. 2, Banjara Hills, Hyderabad – 500 034, Telangana;"*

55. If the said definition is once again, taken into consideration and read in context of the title head of the terms and conditions of the bidding document, or even to the notice of invitation of bids, as published on 20.11.2021, it nowhere expresses that it ever remotedly intended to introduce the holding or the ancillary company of the company under liquidation, because if that would have been the

intention of the bidding document and the terms and conditions of the contract, then it would have become inevitable for the liquidator, who had formulated the terms and conditions of the bidding document to have introduced the word M/s. IVRCL Limited, which would have obviously followed by the holding, or a subsidiary company, which has specifically not been done, which could be safely said that a condition, which has not been introduced in the terms of the bidding document cannot be artificially permitted to be introduced under a bleak conception made by the Appellant, by submission of the alleged business plan, which, as already expressed earlier, is not a concept which is open to be introduced under the terms of the bidding documents or the conditions contained therein.

56. What is more important is if Clause 2.8, as extracted above, defining the company which is under liquidation, is read with the definition of "**reserve price**" as given in Clause 2.23, which is extracted hereunder: -

> *"**Reserve Price**" shall mean an aggregate price after rounding off to INR 1200 Crores (Indian Rupees One Thousand Two Hundred Crores Only) as arrived pursuant to the Regulation 31A and Regulation 33 read with Mode of Sale under Schedule I (Paragraph No. 1 Clause 4A) of the Liquidation Process Regulations;"*

57. The reserve price herein only denotes to the name of the company under liquidation, and it cannot be expanded to be read, to be made applicable, to be

treated, to have been determined after including the ancillary or the holding company, of the company under liquidation, because under a bidding process, when a company under liquidation is put to sale by virtue of conduct of e-auction, the basic spadework which is required to be done by the liquidator before auctioning is with regards to the valuation process of the entity, which is intended to be sold by way of conduct of e-auction. It is only upon the conduct and satisfaction recorded on the preliminary evaluation, its then only the terms and conditions of the bidding document are formulated to be made in league and harmony with the actual value of the assets, which could be made as a subject matter of e-auction and the fixation of minimum price i.e., the Reserve Price. This has been observed by us, for the reason being that when the bidding document in its Clause 2.23, as expressed above, refers to the term "**reserve price**", the normal analogy, which would be drawn is that before publication of the auction notice on 20.11.2021, it becomes inevitable for the entire agency, to first arrive at a conclusion as to what would be the appropriate reserve price, and it is thereupon only, when the assets are being valued, the reserve price is determined based on which the bids are invited. The said declaration of the reserve price is arrived at on the basis of the stipulations contained under Regulation 31A and Regulation 33, which has to be made as a mode of sale, under Schedule I, Para 1 Clause 4A of the Liquidation Process Regulations. Determination of the value of the asset to be sold is one of the basic essential ingredients which discloses the factors to be

considered by the prospective bidder as to whether at all, to extend the bid in the process of bidding or not.

58. In these eventualities, where the reserve price is determined, it would be, in the instant case, be treated as the reserve price in relation to the company as defined under Clause 2.8 of the terms of the bidding document. Hence, under no set of circumstances, if a harmonious construction is given to the term "**sale**", the term "**property to be sold**", and the term "**reserve price**", it can at all be stretched and made elastic to include the subsidiary and the holding company of the company under liquidation, which was never intended by the documents.

59. The aforesaid contention also stands, further established because of the fact that under the terms of the bidding document, particularly that as contained, under clause 2.12, it deals with the "**e-auction information documents**". The contents of the said expression as given under 2.12, was a forum which was available from where the prospective aspirant who wanted to participate in the e-auction process could have very well collected the information and the data's, which could have made them understand as to whether they should at all extend their bidding documents for the purposes of participation in the e-auction process. The Appellant cannot have a defence available to be raised, that they could not inspect the assets under liquidation as to be, beyond what has been expressed in the terms of the bidding document, where the description of the company under liquidation

has been given. There is nothing on record attempted to be placed by the Appellant, that they had ever, at any stage, invoked Clause 2.12, for the purposes of collecting the information, from the data room information, from the documents, and various other sources as made available under the bid document itself, to clear the doubts, that the property of the company under liquidation, which is intended to be sold, whether it included its holding or a subsidiary company or not. Since the Appellant having failed to invoke the avenue of accumulation of information for their satisfaction before bidding, as provided under Clause 2.12, they cannot now come forward with a stand, under a fake expectation that the description of the property under liquidation would be inclusive of the ancillary and the holding company of the company under liquidation. Because prior to, submission of the so-called self-generated business plan, which is a theory not permissible under the terms of the bidding document or under the liquidation process rules, as pointed out under the statute, a fictional theory of submission of the business plan intending for the purposes of expansion to include the other assets of other independent entities, which are the holding, ancillary, company to the company under liquidation. The Appellant cannot take an advantage that merely because of the fact that they have submitted their business plan, it would be inferred that it was in inclusion of the holding and ancillary company merely based upon the interpretation given by the Appellant to the two orders passed on **15.06.2022, in M.A. No. 2 of 2022** and the order

dated **25.07.2022, as passed on IA No. 656/2022**, which has been interpreted by the Appellant in an absolute, wrongful manner, contrary to the exact expression given in the two orders, that under no set of circumstances, these two orders could be read in the manner in which it has been attempted by the Ld. Counsel for the Appellant to treat as if, it was an order of approval of the business plan. It could not have been also otherwise, for the reason being that there cannot be a judicial approval of a factor, which is otherwise not contemplated under the Liquidation Process Regulations, to read something which is not even remotely prescribed by the statute, and particularly that as contained under the Schedule I, Para 1, Clause 4A of the Liquidation Process Regulations, and in its literal connotation, to the two orders of 15.06.2022 and 25.07.2022, under no set of circumstances, even on its careful scrutiny, could be read at all that it ever intended an approval of a business plan, particularly when the conclusion which has been ultimately directed by the aforesaid two orders. There was a specific direction given to the Appellant, to make the payment of the value of the property as expressed in the bidding document, in accordance with the schedule of payment, which has been detailed in the two orders which have been already extracted above.

60. What attempt has been made by the Ld. Counsel for the Appellant, in order to substantiate his case, for the purposes of arguing as if the business plan stood, approved, is on the basis of an interpretation given to Clause 3.2 of the terms of

the bidding document, wherein while making reference to the earlier two processes of e-auction, which was attempted to be conducted on the respective reserve prices as given therein. Since it could not be successfully fortified, the same was cancelled, resulting into holding of a fresh auction on 27.12.2021, as a consequence of the auction notice of 20.11.2021, by putting a reserve price of the assets under liquidation, at Rs. 1200 Crores. Clause 3.2, has been argued by the Ld. Counsel for the Appellant, with all due reverence at our command, it cannot be read that failure in an attempt to get a higher price, which was reserved in the previous auction, which was previously expected to be conducted on 27.02.2020, reserving the price at Rs. 1654 .47 Crores and its failure can at all be determined that the said valuation too at all in intended to include the ancillary and the holding company, of the liquidator, when even these documents are silent upon it.

61. The Ld. Counsel for the Respondent while opposing the motion of the appeal, as it was being argued by the Ld. Counsel for the Appellant, submitted that, as the Appellant has not complied with the terms and conditions and modalities of remittance of the amount due to be paid, and even despite the directions issued by the order on M.A. No. 2 of 2022, as decided on 15.06.2022, the consequences, as it was contained in the bid document under Clause 10 of the bidding document, giving a right of forfeiture to the liquidator of the earnest

money. The invocation of the forfeiture clause contained under Clause 10.5 of the terms of the conditions of the bidding document, does not suffer from any legal error, as such, because failure to deposit the amount is apparent, it would not call for any interference, by this tribunal in the exercise of its Appellate Jurisdiction.

62. We have meticulously, gone into the terms of bidding documents, the documents placed on record by the parties, as well as the various laws, which have been relied upon by the respective counsels in support of their case. We would not hesitate to observe that, when the sale is put, on the basis of, "**as is, where is basis**" based upon a predetermined declared reserve price. Particularly when the bidding document itself provides an avenue for the prospective bidder to go into the terms and conditions of the property, by virtue of visiting the site as provided under Clause 7, which is extracted hereunder: -

"7. SITE VISIT

7.1 The Qualified Bidder is expected to make its own arrangements including accommodation for the Site Visit. All costs and expenses incurred in relation to Site Visits shall be borne by the Qualified Bidder.

7.2 In Site Visit, the Qualified Bidder(s) may carry out its own comprehensive due diligence in respect of the Company and shall be deemed to have full knowledge of the condition of the Company, its assets, relevant documents, information etc. whether the Qualified Bidder actually inspects or participates in the Site Visit or verifies the document provided

by the Liquidator. During the Site Visit, a Qualified Bidder shall not:

(i) take any photographs of the Site or take any documents back with it; or

(ii) initiate any discussion regarding the Liquidation Process, with the personnel at Site, during its Site Visit.

7.3 The Qualified Bidder shall not be entitled to receive any reimbursement of any expenses which may have been incurred in carrying out of due diligence, search of title to the assets and matters incidental thereto or for any purpose in connection with the Bid.

7.4 Any delay in completion of the Site Visit by the Qualified Bidder, shall not entitle the Qualified Bidder to any extension in the timelines, including the timeline for completion of such Site Visit or submission of the Bid, by or before the last date for submission of the Bid."

63. The Appellant in the light of, the 3rd e-auction process, which was held under the settled following terms and conditions, cannot later on speculate upon and contend that, he was expected to get something more than what was actually offered to be sold to him in the bidding document and the e-auction, which was conducted on 27.12.2021, and in an event, if there is any failure on part of the Appellant to comply with the following directions, as it constituted to be part of the bidding document, the Appellant cannot take the benefit of his own misconception, about the expanse of property, which was offered to be sold which was the subject matter of the auction. And once the Appellant has submitted to the e-auction process conducted by the Respondent, he would be simultaneously

bound by the following terms and conditions, which are being extracted hereunder by way of a repetition, to submit that after having been determined as to be a successful bidder on 27.12.2021, he cannot now revert back and say that it would be inclusive of the subsidiary and ancillary company, of the company under liquidation. Because of the implication of Clause 7 as extracted above, and the following clause, which is extracted hereunder by way of a repetition which the Appellant would be bound to once he has willingly, participated in the e-auction process. The relevant portion of the terms and conditions from which the Appellant cannot resile is extracted hereunder: -

1. *"Third E-Auction is being held on* ***"AS IS WHERE IS, AS IS WHAT IS, WHATEVER THERE IS AND WITHOUT RECOURSE BASIS"*** *and will be conducted "Online". The E-Auction will be conducted through the approved service provider, which shall be published on the website (www.ivcd.com) of IVRCL Limited. Interested bidders can register, bid and receive confirmation of their bid online. The requisition of additional information, if any, be sent to liquidatorivrcl@bdo.in with a copy to sutanusinha@bdo.in disclosing the identity of the interested Bidder.*
2. ***The Bidders should make their own independent inquiries regarding the encumbrances, title of assets put on auction and claims/rights/dues/ affecting the assets of the Company*** *and should conduct their own due diligence prior to submitting their Bid. The Third e-Auction advertisement does not constitute and will not be deemed to constitute any commitment or any*

representation of the Liquidator. The Company is proposed to be sold on a going concern basis with all the existing and future encumbrances/claims/dues/demands whether known or unknown to the Liquidator. Liquidator shall not be responsible in any of way for any third-party claims/rights/ dues."

64. The said inference and analogy could be drawn from the minutes of the re-scheduled 15th meeting of the Stakeholders Consultation Committee, which was almost based upon the foundation, as it has been expressed above, which was based upon the terms and conditions of, the e-auction process and for the purposes of brevity, the conclusion arrived in the re-scheduled 15th Stakeholders Consultation Committee are not being extracted hereunder. There could be yet another logic, to be considered as to what would have been the ambit and expansion of the e-auction process, as initiated by the liquidator by the notice of 20.11.2021, that could be by virtue of the e-auction process, which has been conducted based upon, the various stages of analysis, of which has been and particularly that as the analysis made pertain to the resolution scheme, which was explained by the liquidator, in its 15th meeting of the Stakeholders Consultation Committee, as held on 27.12.2021. The liquidator, in the aforesaid meeting, has quite elaborately discussed the issue and has expressed the terms and conditions under which the auction proceedings were held, and where the liquidator has observed that there would be no deviation in the payment schedule as it was

provided in Clause 5 of the 15th Stakeholder's Consultation Committee, and the payment schedule as given therein was strictly required to adhere to. The liquidator in the aforesaid meeting had presented the payment proposal, as submitted by the successful bidder, for the purposes of remitting the entire amount of Rs. 1200 Crores, which was an admitted schedule known to the successful bidder, the Appellant herein, was given with the cut-off periods, within which the Appellant, was expected to deposit the entire sale value of the assets.

65. It is not only that the Ld. Counsel for the Respondent had particularly drawn the attention of this Tribunal to the minutes of the 16th meeting of the Stakeholders Consultation Committee, too which was held on 31.01.2022. And particularly he has quite elaborately argued, that in accordance with Clause 4, upon much deliberation and the interactions, which were made in the aforesaid 16th meeting of the Stakeholders Consultation Committee. It was observed that the bidder was informed that the revised plan documents submitted by them is not, as per the Insolvency and Bankruptcy Code, 2016, which is to be read with the liquidation regulations made therein, for the purposes of the remittance of the amount to be paid under the auction schedule as it was subject matter of consideration in the 15th Stakeholders Consultation Committee, which was deliberated upon by the liquidator, to the Appellant, the auction purchaser. The Ld. Counsel for the Respondent, had submitted that during the course of the 16th

Stakeholders Consultation Committee, which was held on 28.01.2022. In fact, in all the proceedings which was conducted, the revised proposal document, which was submitted by the bidder, was considered, but the same was answered in the following manner: -

> *"2. Revised Proposal/Document submitted by the Bidder under Liquidation Process cannot be considered as the Resolution Plan as the same can only be submitted and considered under CIRP Process and not under liquidation process of the Corporate Debtor on going concern basis. Under Liquidation process, there is no concept of Resolution Plan and accordingly the revised plan/document submitted by the Bidders though termed as Business Plan purports to be Resolution Plan and hence cannot be taken into cognizance for purchase of IVRCL Limited undergoing liquidation process on going concern basis.*
>
> *3. Revised Plan/Document provides that entire control should be handed over to the Bidder from effective date viz. approval from Hon'ble NCLT. Liquidator informed that Control of the IVRCL Limited cannot be handed over to the bidder unless and until full payment of sale consideration is made for the purchase of IVRCL Limited as per Liquidation Regulations.*
>
> *4. Under Liquidation Regulations, sale consideration shall be paid fully within the stipulated timeframe. Liquidator apprised that Liquidation Regulations does not provide for payment of balance sale consideration through instrument as proposed by Bidder in their revised plan/document. If the payment of balance sale consideration through financial instruments as proposed by the Bidders is*

acceptable to Lenders, then, the same would be subject to the approval of the Hon'ble NCLT.

5. *Payment of balance sale consideration is to be made by the Bidders within 90 days time period as per the Liquidation Regulations.*

The Liquidator informed Bidders that the payment of sale consideration after thirty days from the issue of Demand Notice by Liquidator attracts interest as per Liquidation Regulations. Accordingly, Bidders will be liable to pay interest on the balance sale consideration in view of the fact that Demand Notice to the Bidders was issued by Liquidator on 29th December 2021."

66. Ultimately the conclusion, which has been made by the 16th Stakeholders Consultation Committee, a very clear information was imparted to the bidder that there was no scope of the re-schedulement of the payment plan, as it was given in the 15th Stakeholder's Consultation Committee. And the ultimate determination was given therein that the demand notice to the bidder, which was issued after the culmination of the auction sale on 27.12.2021, it was to be strictly adhered to, and any violation of the same would result into the invocation of Clause 10 and its consequential cancellation. Further, if the minutes of the 16th Stakeholders Consultation Committee is taken into consideration, **where the representative of the Appellant had participated**, namely Mr. Kiran. In the Stakeholders Consultation Committee held in presence of Appellant, it was clearly provided that the terms and conditions of the bidding document, as per the IBC Regulations, dealing with the liquidation process, which provides that the revised

plan in the payment proportion as submitted by the bidder can be considered and submitted to the Ld. NCLT, which was accepted by the grant of its approval of the e-auction was conducted on 27.12.2021. The decision thus upon it was taken in the 16th Stakeholders Consultation Committee, the payment schedule submitted by the bidders, was informed on the basis of the provisions contained under the Liquidation Regulation, that the payment of the sale consideration has to be made within 90 days, and however, the revised plan and the payment proposal submitted by the bidders provided and the payment of the sale consideration for acquiring M/s. IVRCL Limited under liquidation as a going concern, has to be paid in its totality within a maximum period of 18 months. He further informed that there is no such power vested with the liquidator to accept any money beyond the period of 90 days as it was provided under the Liquidation Regulations. The relevant provision of fixation of the upper limit of 90 days for the acceptance of the value of the bidding document, which stood accepted by the Appellant in the presence of the participation of its representative Mr. Kiran, as is representative, would be deemed to be that it was an acceptance by him as it remained unchallenged about the conditions, which are enumerated hereunder:

> *"i. There is no precedent in the IBC for the kind of plan submitted by the bidders, however,* ***he informed that the revised plan may kindly be considered as business plan, and not as resolution plan under CIRP****. He informed that the revised plan submitted by Bidders provides how the*

bidder wants to take over and run the business of Corporate Debtor on going concern basis"

67. There is yet another important factor which is required to be considered and deliberated upon by this Appellate Tribunal, because the Appellant has been pivoting his case on the basis of, the business plan, which he contends that to have submitted on 28.01.2022. What is important to remark is that the 16th Stakeholders Consultation Committee was held thereafter on 13.01.2022, which was held in the presence of the representative of the bidder and the bidder was appraised of the following conditions which included, one of the conditions under which was informed to the representative of the Appellant, which is as under: -

> *"As regards payment schedule submitted by Bidders, he informed that the Liquidation Regulations provide that the payment of sale consideration has to be made within 90 days, however, the revised plan and payment proposal submitted by Bidders provides that the payment of sale consideration for acquiring IVRCL Limited under liquidation on going concern basis, to be made over a period of 18 months. He informed that Liquidator has no such power to accept payment beyond the period of 90 days provided under Liquidation Regulations."*

68. In continuation thereof in the 16th Stakeholders Consultation Committee, had further made it quite clear to the Appellant that, under the terms of the bidding document or even under the Liquidation Regulations, there is no scope to consider the revised plan or any such business plan, as it was submitted by the Appellant. And no such business plan can be considered to be accepted when not

contemplated under law or the bidding document. In fact, the conclusion drawn by the 16th meeting of the Stakeholders Consultation Committee on **31.01.2022, is not subject to challenge** or even is not subject to judicial scrutiny at the behest of Appellant by the agitation of any ground which had been taken by the Appellant, in the instant appeal as to what implication will the decision of the 16th Stakeholders Consultation Committee would have in relation to the auction proceedings, which stood culminated, prior to the 16th Stakeholder's Consultation Committee. Accordingly, the conclusion which was embarked upon by the minutes recorded in the 16th Stakeholders Consultation Committee, the following points were made quite clear.

i. The Liquidator had no power to accept the revised plan or alleged business plan.

ii. The bidder on 28.01.2022, has accepted the terms of the payment schedule of paying the consideration in 18 months.

iii. The property could not be given under the control of the bidder until and unless the payment schedule as given under the 15th Stakeholders Consultation Committee is strictly followed by the Appellant.

iv. According to the 16th Stakeholders Consultation Committee Resolution, it was observed that the liquidator cannot go beyond the

liquidation regulations and the last date of completion of the regulation process of the Corporate Debtor i.e., 31.03.2022.

v. It further provided that no extension of any nature, what could have been granted, even if the lender agreed for the payment of the sale consideration to be made after the expiry of the period of 90 days as it was accorded to the bidder in the minutes of the 15th Stakeholders Consultation Committee.

vi. All decision were taken in the presence of representative of Appellant, it will bind the Appellant.

69. Upon conclusion arrived at the following points as dealt with above. The representative of the Appellant had sought for, the following clarification in the 16th Stakeholders Consultation Committee, which was held on 31.01.2022 by praying for the following, which is extracted hereunder: -

> *"Mr. Kiran requested to consider the time period of 18 months for making payment of balance sale consideration and to allow Bidders to approach Hon'ble NCLT for relaxation in payment timelines as prescribed under Liquidation Regulations."*

70. The said relaxation, which was sought by the representative of the Appellant for the purposes of making the payment of balanced sale consideration, and to allow the bidder to approach the Ld. NCLT for relaxation of payment itself

will amount to that, the Appellant has accepted the conditions, which is as follows:

i. that the sale was confined to M/s. IVRCL Limited only, and the very aspect that he intended to move before the Ld. NCLT for relaxation of the payment timeline, will create an estoppel against the Appellant.

ii. Owing to the aforesaid statement made under the 16th Stakeholder's Consultation Committee, now the Appellant cannot take a somersaulted stand by arguing that he would be entitled to, for inclusion of the subsidiary and the ancillary units of the company under liquidation, which has been indirectly sought to be included by submission of the business plan, which was not at all theoretically possible owing to the restrictions imposed by the terms and conditions of the bidding document, as well as by the various restrictive clauses as included, in the bidding document.

71. This could be further analyzed and concluded that in the application thus preferred by the liquidator being M.A. No. 2 of 2022, the order has rendered on it on 15.06.2022 itself is a complete answer, that any of the proposals extended by the Appellant for inclusion of the ancillary and any subsidiary unit of the liquidator, was not a scope which was at all required to be ventured into, or could

have been borne out at all for the purposes of expansion of the conditions of the business plan for inclusion of the aforesaid, ancillary and subsidiary units of the liquidator.

72. The Ld. Counsel for the Respondent, while dealing with the argument extended by the Appellant qua the enforcement of, the ancillary and subsidiary units of the company under liquidation, had submitted that, in accordance with the 18th meeting of the lender's group of M/s. IVRCL Limited, and the agenda as quoted therein. It dealt with, as to what was the property, which was made as subject matter, of the auction proceedings and ultimately, in the aforesaid 18th meeting of the lender's group of M/s. IVRCL Limited, the company under liquidation as it was held on 10.08.2022. It had come to a conclusion that the liquidator, who participated in the said meeting had sought further elaborated clarity, as to what was approved to be sold. The representatives of the Appellant who were participating in the aforesaid meeting, made it clear that the portion of property for auction, at the reserve price of Rs. 1200 Crores, was only inclusive of the value of the property of the M/s. IVRCL Limited. The company's CDs investments in the various other associates and subsidiary companies, the value of those investments have been independent altogether and will not be included for the purposes of the conclusion of the instant auction proceedings, as it was sought to be included by the business plan as submitted by the Appellant. The Ld.

Counsel for the Respondent, in order to better substantiate his argument, had submitted that the entire conception as agitated by the Ld. Counsel for the Appellant, could be well answered on the pretext of, the judgment which he intended to rely upon, i.e., ***2024 SCC Online SC Page 1767 BRS Ventures Investment Limited versus SREI Infrastructure Finance Limited***. Particularly the Appellant has made reference to para 20, 21, and 28 of the said judgment in support of his contention. In case of para 20 is taken into consideration, it was exclusively a determination of factors which was in relation to the issue involved therein, in the said case, in the matters of SREI Infrastructure Finance Limited, the Financial Creditor, who was interested in the Corporate Debtor to be purchased, along with the subsidiary of M/s. Assam Company India Limited (ACIL). The observation made in para 20 and 21, which has been sought to be applied by the Ld. Counsel for the Appellant, since it's absolutely based under distinct facts and circumstances, thus, the conclusion arrived at in para 28, will not be applicable for the purposes of the instant appeal for the inclusion of the subsidiary and ancillary unit of the company under liquidation. And the reason which would be that, if the conclusion of a judgment is to be read, to be applied. In a particular case, it is always a fact which plays an important role to be considered, because exclusively the conclusion drawn cannot be isolatedly, extracted to be applied in a case which is factually based upon a different parameter altogether. The conclusion drawn in para 28, in the matters of BRS

Ventures Investment Limited (Supra), as applied by the Ld. Counsel for the Appellant, would not be applicable for the purposes of accepting the conception of inclusion of the subsidiary and ancillary company of the company under liquidation. Para 20, 21, 28 to be extracted hereunder: -

> *"20. If the creditor recovers a part of the amount guaranteed by the surety from the surety and agrees not to proceed against the surety for the balance amount, that will not extinguish the remaining debt payable by the principal borrower. In such a case, the creditor can proceed against the principal borrower to recover the balance amount. Similarly, if there is a compromise or settlement between the creditor and the surety to which the principal borrower is not a consenting party, the liability of the borrower qua the creditor will remain unaffected. The provisions regarding the discharge of the surety discussed above show that involuntary acts of the principal borrower or creditor do not result in the discharge of surety.*
>
> *21. In Lalit Kumar Jain [Lalit Kumar Jain v. Union of India, (2021) 9 SCC 321 : (2021) 4 SCC (Civ) 527 : (2021) 15 Comp Cas-OL 1] , this Court dealt with the legal effect of approving the resolution plan in CIRP of the corporate debtor on the liability of the surety. This is in the context of Section 135 of the Contract Act, which provides that if the creditor compounds with or gives time or agrees not to sue the principal debtor, it amounts to discharge of the surety. In paras 122 to 125 of the said decision, this Court held thus : (SCC pp. 397-400)*
>
> > *"122. It is therefore, clear that the sanction of a resolution plan and finality imparted to it by Section 31 does not per se operate as a discharge of the guarantor's liability. As to the nature and extent of the liability, much would depend on the terms of the guarantee itself. However, this Court has indicated, time and again, that an involuntary act of the principal debtor leading to loss of security, would not absolve*

a guarantor of its liability. InMaharashtra SEB [Maharashtra SEB v. Official Liquidator, (1982) 3 SCC 358 : (1983) 53 Comp Cas 248] the liability of the guarantor (in a case where liability of the principal debtor was discharged under the Insolvency law or the Company law), was considered. It was held that in view of the unequivocal guarantee, such liability of the guarantor continues and the creditor can realise the same from the guarantor in view of the language of Section 128 of the Contract Act, 1872 as there is no discharge under Section 134 of that Act. This Court observed as follows : (SCC pp. 362-63, para 7)

'7. Under the bank guarantee in question the Bank has undertaken to pay the Electricity Board any sum up to Rs 50,000 and in order to realise it all that the Electricity Board has to do is to make a demand. Within forty-eight hours of such demand the Bank has to pay the amount to the Electricity Board which is not under any obligation to prove any default on the part of the Company in liquidation before the amount demanded is paid. The Bank cannot raise the plea that it is liable only to the extent of any loss that may have been sustained by the Electricity Board owing to any default on the part of the supplier of goods i.e. the Company in liquidation. The liability is absolute and unconditional. The fact that the Company in liquidation i.e. the principal debtor has gone into liquidation also would not have any effect on the liability of the Bank i.e. the guarantor. Under Section 128 of the Contract Act, 1872, the liability of the surety is coextensive with that of the principal debtor unless it is otherwise provided by the contract. A surety is no doubt discharged under Section 134 of the Contract Act, 1872 by any contract between the creditor and the principal debtor by which the principal debtor is released or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor. But a discharge which the principal debtor may secure by operation of law in bankruptcy (or in liquidation proceedings in the case of a company) does not absolve the surety of his liability (see Jagannath Ganeshram Agarwale v. Shivnarayan Bhagirath [Jagannath Ganeshram Agarwale v. Shivnarayan Bhagirath, 1939 SCC OnLine Bom 65 : AIR 1940 Bom 247] ; see also Fitzgeorge, In re [Fitzgeorge, In re, (1905) 1 KB 462]).'

123. This legal position was noticed and approved later in IFCI Ltd. v. Cannanore Spg. & Wvg. Mills Ltd. [IFCI Ltd. v. Cannanore Spg. & Wvg. Mills Ltd., (2002) 5 SCC 54] An earlier decision of three Judges in Punjab National Bank v. State of U.P. [Punjab National Bank v. State of U.P., (2002) 5 SCC 80 : (2002) 112 Comp Cas 150] pertains to the

issues regarding a guarantor and the principal debtor. The Court observed as follows : (Punjab National Bank case [Punjab National Bank v. State of U.P., (2002) 5 SCC 80 : (2002) 112 Comp Cas 150] , SCC pp. 80-81, paras 1-6)

'1. The appellant had, after Respondent 4's management was taken over by U.P. State Textile Corporation Ltd. (Respondent 3) under the Industries (Development and Regulation) Act, advanced some money to the said Respondent 4. In respect of the advance so made, Respondents 1, 2 and 3 executed deeds of guarantee undertaking to pay the amount due to the Bank as guarantors in the event of the principal borrower being unable to pay the same.

2. Subsequently, Respondent 3 which had taken over the management of Respondent 4 became sick and proceedings were initiated under the Sick Textile Undertakings (Nationalisation) Act, 1974 (for short "the Act"). The appellant filed suit for recovery against the guarantors and the principal debtor of the amount claimed by it.

3. The following preliminary issue was, on the pleadings of the parties, framed:

"Whether the claim of the plaintiff is not maintainable in view of the provisions of Act 57 of 1974 as alleged in Para 25 of the written statement of Defendant 2?"

4. The trial court as well as the High Court, both came to the conclusion that in view of the provisions of Section 29 of the Act, the suit of the appellant was not maintainable.

5. We have gone through the provisions of the said Act and in our opinion the decision of the courts below is not correct. Section 5 of the said Act provides for the owner to be liable for certain prior liabilities and Section 29 states that the said Act will have an overriding effect over all other enactments. This Act only deals with the liabilities of a company which is nationalised and there is no provision therein which in any way affects the liability of a guarantor who is bound by the deed of guarantee executed by it. The High Court has referred to a decision of this Court in Maharashtra SEB v. Official Liquidator [Maharashtra SEB v. Official Liquidator, (1982) 3 SCC 358 : (1983) 53 Comp Cas 248] where the liability of the guarantor in a case where liability of the principal debtor was discharged under the Insolvency law or the Company law, was considered. It was held in this case that in view of the unequivocal guarantee, such liability of the guarantor continues

and the creditor can realise the same from the guarantor in view of the language of Section 128 of the Contract Act, 1872 as there is no discharge under Section 134 of that Act.

6. In our opinion, the principle of the aforesaid decision of this Court is equally applicable in the present case. The right of the appellant to recover money from Respondents 1, 2 and 3 who stood guarantors arises out of the terms of the deeds of guarantee which are not in any way superseded or brought to a naught merely because the appellant may not have been able to recover money from the principal borrower. It may here be added that even as a result of the Nationalisation Act the liability of the principal borrower does not come to an end. It is only the mode of recovery which is referred to in the said Act.'

124. In Kaupthing Singer & Friedlander Ltd. [Kaupthing Singer & Friedlander Ltd. (No. 2), In re, (2012) 1 AC 804 : (2011) 3 WLR 939 (SC), paras 11, 12, 53-54] the UK Supreme Court reviewed a large number of previous authorities on the concept of double proof i.e. recovery from guarantors in the context of insolvency proceedings. The Court held that : (AC p. 814, para 11)

'11. The function of the rule is not to prevent a double proof of the same debt against two separate estates (that is what insolvency practitioners call "double dip"). The rule prevents a double proof of what is in substance the same debt being made against the same estate, leading to the payment of a double dividend out of one estate. It is for that reason sometimes called the rule against double dividend. In the simplest case of suretyship (where the surety has neither given nor been provided with security, and has an unlimited liability) there is a triangle of rights and liabilities between the principal debtor ("PD"), the surety ("S") and the creditor ("C"). PD has the primary obligation to C and a secondary obligation to indemnify S if and so far as S discharges PD's liability, but if PD is insolvent S may not enforce that right in competition with C. S has an obligation to C to answer for PD's liability, and the secondary right of obtaining an indemnity from PD. C can (after due notice) proceed against either or both of PD and S. If both PD and S are in insolvent liquidation, C can prove against each for 100p in the pound but may not recover more than 100p in the pound in all.'

125. In view of the above discussion, it is held that approval of a resolution plan does not ipso facto discharge a personal guarantor (of

a corporate debtor) of her or his liabilities under the contract of guarantee. As held by this Court, the release or discharge of a principal borrower from the debt owed by it to its creditor, by an involuntary process i.e. by operation of law, or due to liquidation or insolvency proceeding, [Ed. : The matter between two asterisks has been emphasised in original as well.] does not absolve the surety/guarantor [Ed. : The matter between two asterisks has been emphasised in original as well.] of his or her liability, which arises out of an independent contract."

28. Sub-section (2) of Section 60 contemplates separate or simultaneous insolvency proceedings against the corporate debtor and guarantor. Therefore, sub-section (3) of Section 60 provides that if CIRP in respect of the corporate guarantor is pending before an adjudicating authority and if the CIRP against the corporate debtor is pending before another adjudicating authority, CIRP proceedings against the corporate guarantor must be transferred to the adjudicating authority before whom CIRP in respect of the corporate debtor is pending. Thus, consistent with the basic principles of the Contract Act that the liability of the principal borrower and surety is coextensive, the IBC permits separate or simultaneous proceedings to be initiated under Section 7 by a financial creditor against the corporate debtor and the corporate guarantor."

73. On the contrary, the Ld. Counsel for the Respondent had submitted that, in the light of the ratio laid down by the judgment reported in ***2023 Volume 10 SCC Page 189 Eva Agro Feed Private Limited versus Punjab National Bank and Another***. ***Para 79*** of the said judgment, which is extracted hereunder: -

"79. Thus, mere expectation of the Liquidator that a still higher price may be obtained can be no good ground to cancel an otherwise valid auction and go for another round of auction. Such a cause of action would not only lead to

incurring of avoidable expenses but also erode credibility of the auction process itself. That apart, post auction it is not open to the Liquidator to act on third-party communication and cancel an auction, unless it is found that fraud or collusion had vitiated the auction. The necessary corollary that follows therefrom is that there can be no absolute or unfettered discretion on the part of the Liquidator to cancel an auction which is otherwise valid. As it is in an administrative framework governed by the rule of law there can be no absolute or unfettered discretion of the Liquidator. Further, upon a thorough analysis of all the provisions concerning the Liquidator it is evident that the Liquidator is vested with a host of duties, functions and powers to oversee the liquidation process in which he is not to act in any adversarial manner while ensuring that the auction process is carried out in accordance with law and to the benefit of all the stakeholders. Merely because the Liquidator has the discretion of carrying out multiple auction it does not necessarily imply that he would abandon or cancel a valid auction fetching a reasonable price and opt for another round of auction process with the expectation of a better price. Tribunal had rightly held that there were no objective materials before the Liquidator to cancel the auction process and to opt for another round of auction."

74. It has laid down that, the expectation of fetching a higher price or an expectation to include, an asset which is otherwise not part and parcel of the liquidation estate, cannot be brought together by an overt act or expectation, based upon a document tried to be enforced upon by the successful bidder, particularly when he has already submitted to all the terms and conditions of the bidding document, which were open to be examined by him prior to his

submission of the bidding document, and having been declared as to be a successful bidder. Thus, the basic ratio propounded therein is that mere expectation of fetching a higher price or including of the property, which is otherwise not expressly included in the bidding document, is not a scope which is open to be considered, by introducing a concept which is not known to the eyes of law.

75. The Ld. Counsel for the Respondent, further, in order to denounce the concept as argued by the Ld. Counsel for the Appellant, on the basis of the business plan and its alleged approval on the basis of the orders dated 15.06.2022 and 25.07.2022, as sought to be attempted to be argued based on the orders passed on M.A. No. 2 of 2022 and IA No. 656/2022 respectively, cannot be accepted, on the basis of the ratio laid down by the ***principal bench of the NCLAT in Company Appeal (AT) (INS) No. 890/2020, Union Bank of India erstwhile Andhra Pradesh versus Siripuram Developers Private Limited and Others***, particularly the Ld. Counsel for the Respondent has referred to para 9, 10, and 12 of the judgment, which is extracted hereunder:-

> *"9. On going through the Minutes of Meetings of the lenders (CoC) of Corporate Debtor (IVRCL Limited) under Liquidation as per Paper Book Company Appeal (AT) (Insolvency) No. 890 of 2020 Annexure-11 page 330 it clarifies on the issue of subsidiary assets as a part of liquidation estate or not and the same is reproduced below:*

a. "The claim submitted for Corporate Guarantee given for subsidiary companies will not form part of Liquidation Estate.
b. The claim admitted amount is subject to return of bank guarantee means if the bank guarantee is not utilized and returned to bank will not form part of claim and will be reduced from the admitted claim amount.
c. Some assets given interest to SREI was taken over by SREI before CIRP period, so the corresponding claim amount of SREI is being reduced to that extent.
d. Charge created on the assets of subsidiaries will not form party of Liquidation Estate. In the Liquidation estate, Liquidator has considered the assets of IVRCL Limited only and we have considered the investment value of subsidiary companies not the assets of subsidiary companies."

This clarifies that exclusive security given for subsidiary companies is not forming party of liquidation estate.

10. Liquidation Estate Section 36(4)(d) is reproduced below:

Company Appeal (AT) (Insolvency) No. 890 of 2020 "Section 36(4)(d) :The following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation:--

(a) assets owned by a third party which are in possession of the corporate debtor, including—
(i) assets held in trust for any third party;
(ii) bailment contracts;
(iii) all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund;
(iv) other contractual arrangements which do not stipulate transfer of title but only use of the assets; and

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

(b) assets in security collateral held by financial services providers and are subject to netting and set-off in multi- lateral trading or clearing transactions;

(c) personal assets of any shareholder or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter;

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

Hence, the assets of the subsidiaries are outside the purview of liquidation estate and as such cannot form part of the liquidation estate. The Appellant Tribunal itself in Company Appeal (AT) (Ins) No. 167 of 2020 has held on 28.01.2020, the following:

"After hearing learned counsel for the Appellant for a while we find that the claim sought to be enforced by the 'Corporate Debtor' has been rightly declined by the Company Appeal (AT) (Insolvency) No. 890 of 2020 Adjudicating Authority (National Company Law Tribunal) Division Bench, Chennai as in terms of provisions of Section 36 (4) (d) of the 'Insolvency and Bankruptcy Code, 2016' assets of its subsidiary did not fall within the ambit of liquidation Estate. Learned counsel for the Appellant vehemently tried to stress that under sub-Section 3(a) of section 36 of the 'Insolvency and Bankruptcy Code, 2016' assets over which the 'Corporate Debtor' has ownership right including all rights and interests herein as evidenced in the balance sheet of the 'Corporate Debtor' or an information utility etc. comprise the liquidation Estate of 'Corporate Debtor'.

However, the provision itself has been subjected to the exclusion clause engrafted in sub-Section 4 and assets of

subsidiary of the 'Corporate Debtor' are not included in the liquidation Estate."

12. Since, these exclusive securities were not forming part of liquidation estate, correctly done by Liquidator to comply with the provisions of Section 36 of the Code and precedence of this Appellate Tribunal already exists & the Code vide Section 36(4)(d) prohibits inclusion of assets of Indian or Foreign subsidiary of the Corporate Debtor in the liquidation estate, we have to set aside the impugned order of the Company Appeal (AT) (Insolvency) No. 890 of 2020 Adjudicating Authority and allow the present appeal. The Appeal is accordingly allowed. Pending applications, if any, stands disposed of. No order as to costs."

76. What could be summarised from the aforesaid ratio are, that the ongoing minutes of the Stakeholders Consultation Committee, in which there is an active participation of the representative of the Appellant. It would be deemed that all the processes, which has been completed, in accordance with and in an express knowledge of the auction purchaser, and it would be read to be in the context of the liquidation state, which was included in, the bidding document and for the said purpose, the liquidation estate as contemplated under Section 36 (4)(d), is to be taken into consideration, which excludes the subsidiary, of the Corporate Debtor. The relevant extract has been dealt with in para 10 of the said judgment, which is extracted above.

77. Based on which the exclusive analysis was drawn by, the principal bench in para 12, where it has laid down that exclusive securities, will not be forming

part of the liquidation estate, in view of the language used under Section 36 (4)(d) as already referred to herein above, and the liquidation estate would not be included for the purposes of the expansion of the assets to be included in the bidding document, for the purposes of the e-auction which is conducted by the Respondent. One another important and relevant factor which has been skipped for the reason known to the Appellant to be argued by the Ld. Counsel for the Appellant is that, the Appellant himself has filed an **IA No. 2180/2024**, **with a prayer for implementation of the business plan**, which he intended to argue from the implications of the order of 15.06.2022 and 25.07.2022 for the purposes of enforcement of the business plan, which the two orders have been attempted to be read as if they were an approval of the business plan. The first answer, which we would like to give, is that none of the expressions given in the order dated 15.06.2022 or 25.07.2022 could be read and concluded as if it was an approval of the business plan. And secondly, the IA which was preferred by the Appellant being IA No. 2180/2024, contending it to be, an application filed for implementation of a business plan, the same remained undecided, meaning thereby in the proceedings invoked by the Appellant for enforcing alleged approval of the business plan itself was not accepted by the Appellate Tribunal.

78. There is yet another important feature which has to be considered by us, as to what implication would the proceedings have when the Appellant had filed an

IA. No. 1314/2023, seeking to declare the cancellation of sale, and the forfeiture under Clause 10 has to be illegal.

79. The ultimate conclusion drawn by the Ld. Adjudicating Authority, by the impugned order dated 05.02.2025, as passed on, IA No. 1314/2023 was that though the relief claimed was for the declaration of cancellation of sale to be void, but the said relief was not granted. Rather, to the contrary, the Ld. Adjudicating Authority, based upon the orders passed on 15.06.2022, had granted further 30 days time to the Appellant to deposit the amount, as scheduled to be paid, upon being declared as to be a successful bidder. We are of a considered view, that if a person or a party to the proceedings invokes the same for the purposes of grant of a particular relief, which in the instant case was for a declaration of sale and forfeiture to be illegal, the same was not granted. Rather to the contrary, the Tribunal has proceeded to pass an order of extension of time for complying with the conditions of payment as directed by the order of 15.06.2022, as passed in M.A. No. 2 of 2022. It is a settled proposition of law that when in a judicial proceeding, if a person prays for a certain relief and that is not granted or, the court remains silent on the same, it would amount to that, the relief claimed, even if no finding has been recorded on it, it will be treated to have been denied, and the analogy could be culled out from the ratio laid down by the Hon'ble Apex Court in a judgment reported in ***2001 Volume 1 SCC Page 73, State Bank of***

India versus Ram Chandra Dubey and Others, and particularly the observations which has been made in ***para 8*** of the said judgment, which is extracted hereunder:-

> *"8. The principles enunciated in the decisions referred by either side can be summed up as follows:*
>
> *Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33-C(2) of the Act. The benefit sought to be enforced under Section 33-C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33-C(2) of the Act while the latter does not.* ***It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding.*** *Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to*

all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages."

80. The aforesaid judgment of the Hon'ble Apex Court has laid down that once a party to the proceedings has prayed for a certain relief and that is not granted, it will amount to that the said relief has been denied to be granted. For the aforesaid discussion, we ultimately, conclude with the following inferences in relation to the controversy in question:

(i) The Appellant would be deemed to have unequivocally accepted the terms of the bidding notice dated 20.11.2021.

(ii) In view of various clauses contained in, the bidding document, particularly that as Clause 7, it would be deemed that the Appellant had the liberty to proceed with, to inspect the site and the proposed property, which was subject matter of the bidding document would lead to deemed knowledge of property to be auctioned.

(iii) That in the Stakeholder's Consultation Committee, what had been the scope of sale of property and the parameters prescribed therein was acceptable by the Appellant, owing to the fact his

representative, Mr. Kiran, had participated and was very well aware of the conclusions arrived at, which remained unquestioned.

(iv) The interpretation given by the Appellant through the orders passed on M.A. No. 2/2022, as decided by the judgment of 15.06.2022, in fact, it was a direction given for the payment of the money, and it did not, at any stage could be interpreted to have recorded any finding that it had approved the alleged business plan.

(v) Even the IA. No. 656/2022, on which the order was rendered on 25.07.2022, it nowhere provided for, that at any stage, there was an acceptance of the business plan or approval was granted to it.

(vi) Under the provisions of Section 36 of the I & B Code, 2016, the holding and subsidiary company, being an independent entity cannot be included into the liquidation estate and that cannot be brought within an ambit of the auction proceedings as it was conducted on 27.12.2021.

(vii) The action of the Appellant, by drawing the proceedings would be barred by the principle of estoppel, having acquired his rights after accepting the terms and conditions of the entire auction proceedings till the bid was finalized in his favour on 27.12.2021.

(viii) The prayer for declaration of cancellation of sale, has automatically resulted in a denial by modulating the relief of remitting the amount,

as per the modulations of payment of amount as made in the order of 15.06.2022, would be deemed that the relief claimed for cancellation of sale was denied.

(ix) More particularly when the Appellant has prayed for, an implementation of the business plan, which he perceived to have been approved, was not pressed upon to, be decided by the Tribunal, which he invoked by filing IA No. 2180/2024.

(x) I am of the considered view that in a public auction process. We cannot introduce a proceeding, which is alien to the one which is prescribed under the statute or under the terms of the bidding document so as to attach fairness to it, assuring to introduce any alien process, by included within it the alleged conception of moving of a business plan for its approval.

(xi) The business plan is not being a percept contemplated under the terms of the bidding document, it couldn't be even have been acted upon or considered because it would be in violation of Articles 14, 21, and 19(1)(g) of the Constitution of India.

81. For the aforesaid reasons, I do not find any 'merit', in these 'appeals', the 'appeals' are accordingly 'dismissed'.

[Per: As per Jatindranath Swain, Member (Technical)]

M/s. Raghava Square Pvt. Ltd., (Appellant) has filed following Company Appeals, namely- CA(AT)(CH)(Ins) No. 309/2024 and CA(AT)(CH)(Ins) No. 310/2024 against the Common order passed by Ld. NCLT, Hyderabad–II, in IA No. 947/2023 & 1257/2024 in CP(IB) No. 294/07/HDB/2017, dated 02.08.2024. The application IA/947/2023 was preferred before Ld. NCLT by the appellant requesting for extension of time period for payment of balance sale consideration, from 15.06.2023 by a period of 10 months. IA/1257/2024 was filed by him subsequently praying for exclusion of time period till disposal of IA 947/2023 and grant of extension of time of 10 months thereafter. Both these applications were rejected by the impugned order dated 02.08.2024.

2. While the above company appeals are pending for decision, the appellant has also filed another two Company Appeals, namely, CA(AT)(CH)(Ins) No. 93/2025 and CA(AT)(CH)(Ins) No. 96/2025. In CA(AT)(CH)(Ins) No. 93/2025 he has sought to challenge the orders passed by Ld. NCLT, Hyderabad-II, in IA No. 357/2023 dated 05.02.2025, rejecting his prayer for a direction to the secured creditors not to alienate and a direction to the Liquidator to protect, the assets of 3rd party 100% subsidiaries/JV /associates of the CD which are covered under the Business Plan submitted by him which is claimed by him to be an approved Business Plan. In CA(AT)(CH)(Ins) No. 96/2025 he challenges the orders passed

by Ld. NCLT, Hyderabad-II in IA No.1314/2023 dated 05.02.2025, rejecting his prayer to set aside the action of Liquidator cancelling his bid and forfeiting of amounts already paid by him.

FACTS OF THE CASE

3. The Appellant is the successful bidder in the auction where IVRCL Ltd, the Corporate Debtor was sought to be sold as a "Going Concern". Ld. NCLT, vide its orders dated 23.02.2018, commenced the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, IVRCL Ltd. and later, on failure of the CIRP process, ordered for its Liquidation by order of 26.07.2019 and the corrigendum order dated 31.07.2019.

4. The Liquidator commenced liquidation process and initiated action to sell the CD as a going concern. After failure of first two e-auctions, to sell the Corporate Debtor as a going concern, he conducted the 3rd e-auction on 15.12.2021. The Appellant was the sole bidder in the said e-auction. He had submitted the Business Plan (which he termed as resolution plan and later renamed it as Business Plan) along with the bid and the required EMD of Rs.50 crore. His bid was evaluated by the Stakeholders Consultation Committee (SCC) and the Lenders' Group and certain revisions were proposed. After the revised proposal was submitted by the Appellant, upon deliberation of the same by SCC,

the Liquidator submitted the application MA No. 2/2022 before Ld. NCLT, praying for fixing the payment schedule for the bid amount of Rs. 1200 crore. The same was adjudicated by Ld. NCLT vide its order dated 15.07.2022, directing the Appellant to pay the balance bid value of Rs.1150 Cr., (after adjusting the EMD amount of Rs.50 Cr.,) in 6 tranches with the first instalment due on 14.08.2022 and the last on 14.06.2023, and to pay interest at 12% per annum for any delays.

5. The Appellant, realizing that the said order did not deal with the issue of the reliefs and concessions sought under the Business Plan submitted by him as part of his bid, filed an application IA No. 656/2022 before Ld. NCLT for necessary orders on the same. He also prayed for formation of an empowered committee to take decisions in day-to-day operations and in monetisation of non-core assets of the CD, in order to facilitate the discharge of the deferred sale consideration obligations. In the said Business Plan, 3rd party assets were described as follows: -

> *"assets proposed to be taken over as part of the sale of the CD in Liquidation as Going Concern, and the bid offered, include the assets of Third – Party Guarantors / Securities and 100% Subsidiaries / Joint Ventures / Associates of the CD, which have been exclusively charged to various lenders from whom the CD availed financial assistance, and are covered under the admitted claims of Financial Creditors".*

6. Ld. NCLT vide its order dated 25.07.2022 passed the following orders on the Application filed by the Appellant to the following effect: -

> a. *Prior to the approval of Company being sold as a going concern, whatever the Business plan the Applicant has submitted to the Liquidator or Stakeholder's committee on account of which both the parties have come forward before this Adjudicating Authority to approve the sale as a going Concern, shall be scrupulously followed by both the parties.*
> b. *We hereby direct that there shall be a supervisory committee consisting of the Applicant, Liquidator and other stakeholders who shall meet as and when required to take stock of the situation with regard to the business of the Company and also to protect assets of the company.*
> c. *We hereby further direct that all the parties should endeavour to see that the company, its employees, its works and business go on in a proper manner with the cooperation of all the parties concerned. There shall not be any stone left unturned for the protection of assets, business and to achieve the maximization of the value of the company.*

7. Thereafter, the Liquidator constituted a Supervisory Committee as per the Hon'ble NCLT's directions, and convened the 1st Supervisory Meeting on 06.09.2022. The Appellant complied with the obligations by making a further payment of Rs.100 crores on 26.09.2022. The Appellant requested for convening 2nd Supervisory Committee Meeting seeking clarity in respect of business operations of Corporate Debtor, in identification and demarcation of assets forming part of Virtual Data Room (VDR) and Business plan which are proposed to be taken over by the Appellant upon payment of balance consideration etc.

During the Second Supervisory Committee Meeting held on 17.10.2022, it was recorded that there was no consensus regarding the third-party assets and hence the Liquidator will file an application before Ld. NCLT for clarification on the said issue. However, no application for clarification was filed by the Liquidator despite specific mention that the Liquidator would do so.

8. The Appellant later observed that lenders were attempting to sell third-party assets covered under the Business Plan through e-auction notices published under the SARFAESI Act, 2002, which were contrary to the approved Business Plan and the Hon'ble NCLT's directions. Consequently, the Appellant filed an IA No. 357/2023 on 22.02.2023 before the Adjudicating Authority seeking restraint orders and protection of assets covered under the Business Plan. Later the Appellant filed one more application IA No. 947/2023 on 05.06.2023, seeking extension of time of 10 months for payment of balance sale consideration, that is, from 15.06.2023 to 14.04.2024. Subsequent to this, the Appellant filed another IA No. 1257 of 2024 seeking amendment to the prayer for IA No. 947/2023 seeking additional time of 10 months for payment of balance consideration from the date of disposal of IA No. 947/2023 as it was not decided within the time of extension sought.

9. While applications IA No. 357/2023 and IA No. 947/2023 were pending adjudication before Ld. NCLT, the Appellant received a letter dated 28.07.2023

from Liquidator (Respondent) declaring the cancellation of the Bid and forfeiture of the entire amount of Rs.150 Cr., already paid by him. Aggrieved by such letter, the Appellant once again approached Ld. NCLT by filing an application IA No. 1314/2023 on 09.08.2023, with a request to suspend the cancellation letter dated 28.07.2023 issued by Liquidator and to declare the forfeiture of bid amount as unjust.

10. The Adjudicating Authority passed a common order dated 02.08.2024 in IA 947/2023 and in IA 1257/2023, rejecting the plea for extension of the time period as sought by the appellant. Aggrieved by the said orders, since it was passed without deciding on his earlier application IA No. 357/2023, in which he had prayed for restraining the financial creditors from alienating the assets of subsidiaries and which was the main cause for seeking extension of time, the appellant has approached this Appellate Tribunal by filing Company Appeals No. 309/2024 and 310/2024.

11. Subsequently, the Adjudicating Authority also dismissed the application IA No. 357/2023 vide its order dated 05.02.2025, rejecting the prayer of the Appellant for protection of assets covered under Business Plan on the ground that the said Business Plan was never approved by NCLT, that it only approved sale of the CD as a going concern and the associated payment schedule, that it did not endorse the specific terms and conditions contained in the Business Plan

including those relating to assets of subsidiaries, JVs & associates and that, the assets referred to by the Appellants will have to held as 3rd party assets as per the provisions of section 36(4)(d) of the I&B Code and they cannot be made a part of liquidation estate of the CD. Further, it also dismissed the application IA No. 1314 of 2023 vide its order dated 05.02.2025, declining to set aside the letter of the Liquidator cancelling the bid and forfeiting the amount so far deposited by him except for giving 30 days' time to pay the balance sale consideration of Rs.1050 crore with interest @12% per annum for the period of delay, failing which the cancellation of bid and forfeiture of the amount already paid will automatically kick in as per clause 10.5 of the 3rd e-auction process information document. Aggrieved by the above two orders of Adjudicating Authority, the Appellant has approached this Appellate Tribunal by filing Company Appeal No. 93/2025 against the order in IA 357 of 2023 dated 05.02.2025 for protection of assets covered under Business Plan and by filing Company appeal No. 96/2025 against the order in IA 1314/2023 dated 05.02.2025.

12. Central to the prayers in all the above four Company Appeals are the following: -

a. There was a Business Plan allegedly submitted by the Appellant while making the bid for the acquisition of the CD as going concern.

b. The Adjudicating Authority by its order dated 15.07.2022 in MA No. 2/2022 dated 15.06.2022 and the order dated 25.07.2022 in IA No. 656/2022 had, in fact, approved the Business Plan submitted by him and the subsequent orders by Ld. NCLT amounted to revisiting and re-interpreting the said orders.

c. The Business Plan submitted by him made certain stipulations in relation to acquisition of the CD as a going concern before the consideration of Rs.1200 Crores was to be paid which was not taken into consideration while passing the impugned orders.

d. There were discussions and deliberations in the meetings of Stake-holders Consultation Committee (SCC) and Supervisory Committee (which was formed by virtue of Adjudicating Authority order dated 25.07.2022) regarding the operation of the business plan which were not acknowledged and taken into account while passing the impugned orders.

13. In view of above, all the Company Appeals are being taken up together for consideration.

<u>APPELLANTS SUBMISSIONS</u>

14. The Appellant had submitted its bid along with EMD of Rs. 50 crore and the Business Plan with payment timelines. It became the successful bidder pursuant to unanimous decision of SCC in its 15th Meeting held on 27.12.2021 and more specifically in the 20th SCC meeting dated 10.06.2022 for the purchase of Corporate Debtor as a going concern for an amount of Rs.1200 crores. Rs.50 crores had already been deposited as EMD. The Appellant had given a payment schedule in the business plan submitted by him for payment of balance Rs. 1150 crore. SCC being conscious that the payment schedule for the balance consideration goes beyond the stipulation of the auction document that payment should be completed in 3 months as per Liquidation Regulations, advised the Respondent/Liquidator to seek clarification from the Hon'ble NCLT. Thus, the Liquidator filed MA.No.2 of 2022 for such orders or directions as necessary for the completion of Liquidation process of Corporate Debtor as a going concern. In the said application, the Appellant was not made a party. in the said application MA No. 2 of 2022, the Liquidator had also filed the Business Plan submitted by him and suitably modified after consultation with the lenders and SCC before the adjudicating authority and this has been recorded in in Para No. 2(f) page No. 4 of the order of Adjudicating Authority dated 15.06.2022 on the said application. The appellant has contended that had the SCC not approved the business plan, the Liquidator who would not have placed the Business Plan before the Hon'ble NCLT in the first place. He has contended that the above will confirm that the

business plan submitted by him along with the bid has been approved by both the SCC as well as the adjudicating authority.

15. He has contended that the Business Plan submitted by him was placed and discussed / deliberated in detail in various SCC meetings viz., 16th to 20th SCC meetings and various other Lender's meetings as can be seen by the minutes of such meetings as submitted by him in his appeal memo as well as in the counter filed by the Respondent / Liquidator and that, based on their recommendations the Ld. NCLT has passed its order dated 15.06.2022 in MA No. 02/2022. Appellant has submitted that the words Business Plan and Payment plan were used interchangeably in the SCC meeting minutes, but no payment plan was submitted by Appellant and only Business Plan was submitted which included the manner and schedule of payment of bid amount. Further the Appellant had filed I.A.No.656 of 2022 before the Hon'ble NCLT seeking certain clarifications as per the Business Plan approved by the SCC. The Hon'ble NCLT vide orders dated 25.07.2022 had approved the business plan of the Appellant in following words- "prior to the approval of the company being sold as a going concern, whatever business plan the applicant has submitted to the liquidator or stakeholders' committee on account of which both the parties have come forward before this adjudicating authority to approve the sale as a going concern, shall be scrupulously followed by both the parties." and had directed all parties to follow

the Business Plan scrupulously. The said order has attained its finality in the absence of any challenge to it.

16. He has submitted that the terms and conditions of the Business Plan approved by the SCC more specifically in Para Nos. 3.1, 3.5.7.e, 3.5.7.g, 7.1.17, 7.1.21, 7.1.24, 7.1.37, 7.1.38, Annexure 1.2 & 1.3 of Business Plan *(internal paras of Business Plan)* clearly stipulate and provide the details of the assets considered in bidding process and the assets to be taken over as part of the sale of the CD in Liquidation as a going concern. They include the assets of third-party guarantors and 100% subsidiaries/associates of CD which have been exclusively charged to the various lenders for the loans availed by CD which are covered under admitted claims of Financial Creditors. The Appellant also unequivocally stated in its Business plan that their bid was placed, on the premises that all the assets disclosed in the Virtual Data Room (VDR) will vest with the bidder and no additional consideration shall be paid for the same, regardless of whether they form part of Assets of the liquidation estate of CD. It is based on this that the Appellant has thereafter made part payment of Rs.100 crores towards balance consideration on 26.09.2022.

17. It was contended that, the Lenders, despite the above stipulations in the business plan, which was agreed to by the lenders, started making attempts to alienate third party securities/assets which formed part of assets covered under

the Business Plan. One of the Lenders, Union Bank of India went on to publish an E-Auction Notice on 25.01.2023 for the sale of a third-party security asset for the loan availed by CD, which was forming part of Business Plan of the Appellant. The Liquidator, did not ensure adherence to the approved business plan and did not take any action against the same and at the same time, filed Contempt Petition No.2 of 2023 against the Appellant for delay in payment of balance sale consideration.

18. During the 2nd Supervisory Committee Meeting which was held on 17.10.2022, there were detailed discussions on the agenda items submitted by the Appellant, including the clarification sought in respect of third party/subsidiary assets as detailed and clearly enumerated in the Business Plan which was to be taken over by the Appellant as the Successful bidder. At that time, it was informed by the Liquidator that, there was no consensus arrived at in the said Meeting in respect of third-party assets, and the lenders of the Corporate Debtor were of a different view than that of the Appellant and therefore, he will file an application before the Hon'ble NCLT for clarification on third party/subsidiary assets in view of the Business Plan submitted by the Appellant wherein it categorically states that the assets of the third party/subsidiaries will be taken over by the Appellant as part of the sale of the Corporate Debtor as a going concern. No such Application has been filed by the Liquidator till date.

19. It was specifically pointed out by the Appellant to the Liquidator to clarify whether is there any difference between the assets contained in the VDR and those in the Liquidation Estate of the Company. To this query, the Liquidator had informed that: -*“As far as Liquidation estate is concerned, asset of third party/subsidiary is not the property of the IVRCL but enterprise value of those subsidiary companies/third party assets are part of the liquidation estate”.* He has contended that on one hand the liquidator is asking him to pay the value of the assets held by the third-party/subsidiary assets without handing over the same to him which is not envisaged in the business plan submitted by him..

20. He has submitted that the Assets covered under the Business Plan (Annexure 1.2 & 1.3 of Business Plan) are assets of Third-party Guarantors/ Securities and 100% subsidiaries/Associates of CD which have been exclusively charged to the various lenders over which CD availed loans. The shareholdings held by Corporate Debtor in the subsidiaries are within the purview of Liquidator as per Section 36(3)(d) of IBC code, which reads as follows: -

> *“(d) intangible assets including but not limited to intellectual property, securities (including shares held in a subsidiary of the corporate debtor) and financial instruments, insurance policies, contractual rights;”*

21. Thus the assets in the subsidiaries are under the control of the CD as per the shareholding pattern of these subsidiaries and as there are no specific

borrowings in those subsidiaries, and these companies are mere asset holding companies and their assets are being mortgaged to the lenders of Corporate Debtor only, for all practical purposes, they are part of the CD and therefore, the liquidator can transfer the control of the assets of these subsidiaries by transferring the shareholding of the respective subsidiaries to bidder which is well within the Liquidators purview as per provisions of Section 36(3)(d) of IBC Code. Further, since the Appellant is clearing the said loans under the Business Plan, there should not have been any roadblocks in handing over the aforesaid assets to them. He has contended that the Lenders are enriching themselves twice over by getting the sale consideration from the present auction and also separately auctioning off the assets of the subsidiaries over which they have security charge. Further, it is not lawful for the Lenders resort to auctioning of the assets under SARFAESI Act, 2002, which are secured to the loans of CD which is being discharged under IBC Code and that, the Lenders are permitted to take action either under IBC or under SARFAESI Act for the recovery of their dues but cannot do the both simultaneously in respect of the same assets.

22. He has submitted that, as stated in Business Plan in Annexure 1.1, the land / assets held by Corporate Debtor consists of only 355.17 Acres, whereas, the land bank in subsidiaries is about 1670 acres spread across various locations in India as detailed in Annexure 1.2 & 1.3 of the business plan. Nobody will not pay

a hefty price of Rs. 1200 crores for only 355 acres of land. The Appellant has offered Rs. 1200 crores for the entire assets of the subsidiaries also which is covered under the business plan. Further, the Land bank in subsidiaries covering 1670 acres as detailed in Annexure 1.2 & 1.3 of business plan can be broadly divided into two categories, that is, (i) the assets relinquished by all lenders of the CD and covered under Common pool and shared by all the lenders of CD, covering 1118.63 Acres and (ii) the assets under exclusively charge of certain lenders of CD consisting of 551.37 Acres. From the above it is evident that all the 1670 acres of land belongs to subsidiaries only and then in such case the treatment shall be the same for all of these assets, which means that they all will form part of liquidator estate and should be handed over him without differentiating on the basis that they are 3rd party assets within the meaning of section 36(4)(d) of the Code.

23. It was contended that, Ld. NCLT has erred in interpreting the Section 36(4)(d) and Regulation 21A of the Liquidation Regulations. While it is true that the assets of the subsidiaries are excluded from the Liquidation Estate U/Sec.36(4), there is a distinction between regular assets and secured assets of such subsidiaries. Security interest has been defined in Sec 3(31) of the IBC Code, read as follows: -

"security interest" means right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person; Provided that security interest shall not include a performance guarantee;

24. Thus, when there are secured assets and Security interest is created therein, Regulation 21A would apply and if a secured creditor does not communicate its decision on the relinquishment under 21A(1) within 30 days or does not proceed to realise the security interest within 90 days from the date of commencement of liquidation as the case may be, under 21A(2) the asset which is subject to security interest, shall automatically become part of the liquidation estate, as per Regulation 21A(3). Thus, when there is no conflict between the provisions of the IBC and Regulations made thereunder, the Regulations shall apply and the assets which are given as securities for the loan availed by the CD shall fall into the liquidation estate. Since he was asking for handing over of those assets of the subsidiaries that are exclusively charged for the loans availed by the Corporate Debtor, there should not have been any difficulty on part of the liquidator and the lenders to agree to the same once he has committed to pay the balance consideration. He has contended that what has happened in this case is that the lenders are receiving the amounts for the same loans and on the other hand proceeding to alienate the assets, which are secured to the said loans which is not

permissible. The Lenders, should either opt for not to relinquish their right over the security interest and deal with the asset separately, or to participate with their secured assets in the Liquidation Process as a common pool and they cannot do both, which Ld. NCLT failed to understand.

25. He has also submitted that, Ld. NCLT failed to consider that the Liquidator failed to appreciate the fact that the sale under CIRP and sale of the Company as going concern under Liquidation are akin except the manner of distribution of proceeds. Further the 3rd e-auction notice was issued to conduct the sale under Regulation 32(e) to be read with regulation 31A and Regulation 33 of IBC Liquidation Process regulations, 2016. As such submission of Business Plan is allowed under Liquidation Process and the Appellant relies on the ***Observations by various Adjdicating Authorities as per guidelines issued by Honb'le Supreme Court***

> *"In the case of Ghanashayam Mishra and Sons Pvt. Ltd., Vs., Edleweiss Asset Reconstrion Company Ltd., ((2021) 9 SCC 657), It was observed that, the sale of Corporate Debtor as a going concern under Liquidation process is akin to approval of resolution plan and, therefore to enable the successful bidder to continue with the operations of the CD on a clean slate."*

26. ***In case of Arun Kumar Jagatramka Vs Jindal Steel and Power Ltd., & Anr., ((2021) 7 SCC 474)*** The Honb'le Supreme Court held that the primary objective of IBC 2016 is to revive and continue the operations of Corproate

Debtor. It was further held that, Three modes i.e. (i) Sale via Resolution plan CIRP, (ii) Sale during Liquidation Process as a going concern and (iii) Sale through a scheme under section 230 of Companies Act, 2013 during liquidation process have been prescribed under IBC, 2016 and Liquidation process regulations, 2016 which ensure the continuance of the operations of the CD and they are alike or similar and hence conditions and processes to be followed in one mode can also be applied to other mode. Thus Honb'le supreme court has also held that sale of a CD under Resolution plan and sale of the CD as a going concern under Regulation 32(e) or 32(f) r.w. Regulation 32A are similar in nature and the object is also same.

27. It was submitted that, the Liquidator is just an officer of court and cannot object to the extension of time sought for by the Appellant herein for payment of balance sale consideration. This conduct by Liquidator is not consistent with the neutrality and fiduciary responsibility expected of a court officer under Regulation 2(f) and 44 of the Liquidation Regulations. During the course of arguments, the Appellant herein relied on the order of the ***Hon'ble Supreme Court in the case of Eva Agro Feeds Private Limited vs Punjab National Bank and Anr. (2023) 10 SCC 189,*** which cautioned against such arbitrary exercise of discretion by Liquidators, emphasizing that the sanctity of valid auctions cannot be undermined by post-facto decisions, absent fraud or collusion.

28. He has submitted that the Ld. NCLT, instead of deciding on the facts of the case, started reviewing and interpreting their own orders passed in MA No. 2 of 2022 dated 15.06.2022 and in IA No. 656/2022 dated 25.07.2022 which have attained its finality, which is contrary to the settled principle that Ld. NCLT does not have the power to review their own orders.

Submissions of the LIQUIDATOR AND RESPONDENT(S) LENDER(S)

29. The Liquidator has relied on the 3rd E-auction information process document (internal page no. 6) the relevant portion is reproduced below

> *"The sale of the Company is proposed to be done on "as is where is basis", "as is what is basis", "whatever there is basis" and "no recourse" basis and the proposed sale of the Company on going concern basis does not entail transfer of any other title, except the title which the Company had on its assets as on date of transfer. The Liquidator does not take or assume any responsibility for any shortfall or defect or shortcoming in the moveable/immoveable assets of the Company."*

30. The Respondents state that the Business Plan has never been approved by the SCC and Ld. NCLT and that only the payment plan has been considered, and the Business Plan has not been considered or deliberated upon.

31. Properties shown in the VDR are shown only to show the enterprise value of the assets of the subsidiaries of the CD.

32. Assets of subsidiaries were not/cannot be sold under Liquidation of CD. Hon'ble NCLAT has already ordered that Section 36(4)(d) prohibits inclusion of assets of Indian or Foreign subsidiary of CD in the liquidation estate.

33. The Respondent herein on 14.02.2025 had filed a memo informing this Hon'ble Appellate Tribunal that present appeals filed by the Appellant has become infructuous by virtue of the subsequent order passed by the Hon'ble NCLT in I.A. 1314 of 2023.

34. The Respondents herein have placed reliance on the judgment of the Hon'ble Supreme Court in the case of *BRS Ventures Investments Ltd vs SREI Infrastructure Finance Ltd and Anr. (Civil Appeal No. 4565 of 2021)* to state that a holding company is not the owner of the assets of its subsidiary. Therefore, the assets of the subsidiaries cannot be included in the resolution plan of the holding company and hence the contention of the Appellant does not merit any consideration.

35. The Lenders in their reply have broadly supported the Liquidators contentions. Assets owned by subsidiaries or Joint Ventures etc., which are subject to security charges with the respective lenders and do not form part of Liquidation estate, are excluded from Liquidation Process. Therefore, the assets cannot be claimed by the applicant, as successful bidder of the CD in Liquidation.

ANALYSIS AND FINDINGS

36. The 3rd e-auction notice was issued to conduct the sale under Regulation 32(e) read with regulation 31A and Regulation 33 of IBC Liquidation. The first point to determine is whether submission of the business plan mandated as per the e-auction notice. The e-auction notice was issued on 20.11.2021 and as per the liquidator, there was no requirement to submit a business plan. The bidders were required to submit the EMD and to submit their offer as per the process specified in the third e-auction process document. However, the Appellant submitted his bid along with the resolution scheme. As per the minutes of the 15th SCC meeting, the bid of the Appellant comprised of the demand draft, confidentiality undertaking, KYC of all individuals who were the part of the bidding entity, power of attorney of the said group of individuals, no turn capability, statement of highlighting the strategy to run the company as a going concern, affidavits and undertakings, and the resolution scheme. In the meeting itself it was recorded that the scheme submitted by the bidder needs to be revised to make it a proposal for the acquisition of the company under liquidation and that the proposed payment scheme is in deviation to the payment terms and timelines provided under Liquidation Regulations, 2016, and therefore the same has to be negotiated with the successful bidder. Consequent to several rounds of discussions between the liquidator, the lenders and the Appellant herein, the name

of the “Resolution Scheme” was changed to “Business Plan” and the payment terms were changed from “payment through financial instruments” to “payment in cash” spread over 18 months. Consequentially, in the 20th meeting of the SCC held on 10.06.2022, the decision was taken that an application be filed with Ld. NCLT and the views of the members of the SCC regarding the payment schedule and regarding various terms and conditions stipulated in the business plan will be placed before Ld. NCLT for decision. Accordingly, MA No.02/2022 was filed by the liquidator seeking directions on the payment schedule of the balance sale consideration. The Ld. NCLT in its order dated 15.06.2022 recorded that the sole successful bidder has submitted a business plan / payment plan dated 10.12.2021 to the liquidator for acquiring the Corporate Debtor as a going concern under Regulation 32A of the Liquidation Regulations, 2016, for a price of Rs.1200 crores to be paid over a period of 24 months as detailed in the plan and also recorded that bidder has submitted a revised business plan along with the payment plan which were deliberated in the SCC and solicited orders on the same. After hearing both sides, Ld. NCLT fixed a payment schedule for the payment of the balance sale consideration of Rs.1150 crores in six tranches within a period of 12 months from the date of its order and directed that any delay will attract an interest of 12 percent per annum. From this it is clear that a business plan was submitted by the bidder along with its bid which contained various other conditions apart

from the payment schedule and that it was acknowledged by the liquidator and the lenders contrary to their claim that it was only a payment plan.

37. Now the question arises whether the said business plan was approved by the SCC and the liquidator. From the minutes of the various SCC meetings, it is very clear that no consensus was arrived at on the said plan with respect to payment schedule, treatment of third-party assets and various concessions being demanded by the bidder. The order of Ld. NCLT dated 15.06.2022 fixed the payment schedule. However, the other issues remained unresolved as per the records available and submitted before this Appellate Tribunal. The Appellant filed an interlocutory application, being IA No.656/2022, for getting a clarity on the treatment of third-party assets in which Ld. NCLT passed on order on 25.07.2022 with a direction that prior to the approval of the company being sold as a going concern, whatever the business plan the Appellant has submitted to the liquidator or SCC, on account of which both the parties have come forward before this Appellate Tribunal to approve the sale of the CD as a going concern, shall be scrupulously followed by both the parties. Further, Ld. NCLT directed that all parties should endeavour to see that the value of the CD is maximized and a supervisory committee be formed to take stock of the situation with regard to the business of the company and to protect the assets of the company.

38. Now the question arises whether the business plan was agreed by the liquidator and the lenders. It is clear from the minutes of the SCC prior to 15.07.2022 and even after that there are no consensus among the lenders and the business plan submitted by bidder except for the payment schedule which was stipulated by the Ld. NCLT. This will be clear from the minutes of the 22nd meeting of SCC held on 01.08.2022, immediately after the order of Ld. NCLT dated 15.07.2022 in the said minutes it is recorded as follows: -

> *"Liquidator informed that there is a rider which is silent in the aforesaid NCLT Order dated 25th July 2022. He gave the background and informed that when the application, viz., MA 2 of 2022, was filed by Liquidator detailed views of the SCC as detailed in the minutes of meeting were annexed with the said application MA 2 of 2022, and which contained many points wherein there was disagreement to the business plan submitted by the Successful Bidder. For example, sale of assets and full control of the company etc. were not agreed by SCC. He informed that certain things in the business plan relate to the conclusion of the liquidation of the IVRCL Limited, for example, SEBI registration to continue etc., however, these appear to be not much of the concern if the same are allowed by SCC. He informed members that as regards issues related to sale of assets, core or non-core, and granting absolute control of the IVRCL Limited is concerned, views of the SCC were clearly communicated to the Successful Bidder as contained in the minutes of meeting of SCC and also informed to the Hon'ble NCLT in the application filed by Liquidator, viz., MA 2 of 2022.*
>
> *He further informed members that hence Hon'ble NCLT Order dated 25 July 2022 is not clear whether above submissions/views of the SCC are covered by the said order and accordingly this is an area where clarity may be required."*

39. It is clear that the liquidator and SCC did not agree with the business plan and communicated the same to the bidder. The point to consider now will be whether the bidder agreed to it. The answer is a clear 'no' because the bidder, as it can been the minutes of various meetings conducted thereafter, has raised the issue of treatment of third-party assets and the need for handing over the same to the bidders as stipulated in the plan to which the lenders have not agreed to. In fact, some of the lenders as can be seen in the minutes, has even suggested for cancellation of the bid and going for a fresh tender so as to make the sale process successful. Thus, to put in very simple terms, the bid was invited by the liquidator, in response the bid was submitted by the bidder, negotiations were carried out to improve the bid and matter was carried to Ld. NCLT to fix a payment schedule and to carve out an exception because the proposed payment schedule was in variance to the stipulations made by the liquidation regulations, 2016, but there was no final business plan which was agreeable to both the parties.

40. In a normal tendering process, the bid is invited specifying the EMD amount and the tender conditions, which can be termed as 'invitation for offer'. In response the tenderers submit their bids which can be termed as 'counter offer'. If the bid is accepted or modified and then accepted through negotiations, then it results into a contract between the two parties and it becomes binding on both. In this case, there is no final document which was agreed by both the parties and no

contract was signed. In a normal situation bid should have been considered as a non-responsive bid and should have been cancelled and in case, there is no lapse on the part of the bidder such as withdrawing the bid after the deadline or during the validity period, failing to sign the contract or to submit performance security or submitting false or forged documents, the EMD is returned back to the bidder and the tenderer goes for a fresh round of auction. In this particular case, this standard procedure, unfortunately, has not been followed. Admittedly, the liquidator invited bids on 'as is' 'where is' 'whatever there is' and 'without recourse' basis. Admittedly, the bidder has submitted a bid which had certain conditionalities in form of a resolution scheme, which was later renamed as business plan and which the Respondents call as a payment plan. The liquidator admittedly was not agreeable to such a plan as it comes in his submissions before the Ld. NCLT and also before this Appellate Tribunal. If that is the case, then the bid should have been rejected as a non-responsive bid and the EMD should have been duly returned and the liquidator should have gone for a fresh bid.

41. But the said process was not followed, the bid evaluation and subsequent processes was allowed to linger for a long time, possibly because of the anxiety of the liquidator and the lenders to make the sale of the Corporate Debtor as a going concern a success. The liquidator and the SCC never submitted before the Ld. NCLT that they are not agreeable to the business plan as a whole nor the

bidder was asked point blank before approval of the payment plan whether he is agreeable to the modifications sought by the lenders in the business plan submitted by him which was supposed to scrupulously followed as per the directions of Ld. NCLT. Because of this Ld. NCLT passed two orders on 15.06.2022 and 25.07.2022, respectively, to keep alive a process that should have been terminated in January 2022 itself being vitiated as the bid evaluation process did not reach its natural conclusion.

42. Because of this fundamental issue, differences arose between the lenders and the bidder regarding treatment of third-party assets and some of the lenders attempted to dispose of such secured assets which led to filing of IA No. 357/2023 by the Appellant herein. While the same was pending, the Appellant filed one more application IA No. 947/2023 for extension of timeline so that once clarity is bought into treatment of third-party assets, he will be able to remit subsequent instalments as he had quoted the price of Rs. 1200 crore based on the premises that such assets will be coming under his control. He filed one more application IA No. 1257/2024 for exclusion of time on account of the same. Finally, the liquidator terminated the bid on 28.07.2023 and forfeited the amount paid, i.e., Rs. 50 crores as EMD and Rs.100 crores as the first instalment for non-performance of the contract.

43. Ld. NCLT in its order in IA No.357/2023 held that the reliefs sought with regard to the 3rd party assets as stipulated in the business plan cannot be given because the Tribunal had never approved the business plan except the payment schedule. We cannot find fault with the said order as actually the Tribunal had only directed in its order dated 25.07.2022 to scrupulously follow the business plan which was mutually agreed between the SCC and the bidder and did not approve the business approval as such. Ld. NCLT in its order in IA No.947/2023 and IA No.1257/2024 has declined to extend the time period for payment of balance sale consideration from 15.06.2023 for exclusion of the time period lost during litigation. The said order also cannot be faulted because as per liquidation regulations, 2016, 90 days' time is normally available to make the full payment for the asset purchased in auction under the said regulations. Ld. NCLT, using its inherent powers had already extended it to 12 months and refusal to use its discretion to extend it again cannot be questioned in the absence of any extraordinary situation that has arisen during the time and the extension was sought in the first place for getting a clarification on the 3rd party assets which was answered in negative by the Ld. Tribunal.

44. The Appellant has raised certain issues such as the error in interpretation of Section 36 (4) (d) of the I & B Code, 2016, and Regulation 21A of the Liquidation Regulations, 2016 on part of Ld. NCLT and has stated that though

assets of subsidiaries are excluded from liquidation estate under Section 36 (4), when there are secured assets the regulation 21A will apply and if the secured creditor does not realise the security interest or communicate the same within the time frame, these assets shall automatically become part of the liquidation estate as per Regulation 31A(3). Though it is an interesting point of law we need not go into this because in the first place the bid, which had proposed such a treatment of 3rd party assets was a bid that was not a finalized bid in true sense. The aforesaid questions should have been settled by the Bidder with the Liquidator who is the tender accepting authority before MA No. 02/2022 was filed before Ld. NCLT for finalization of the payment schedule.

45. Ultimately the Liquidator cancelled the bid and forfeited the amount deposited to the tune of Rs. 150 crore on account of non-payment of subsequent instalments as per the approved payment plan. While the liquidator is correct in cancelling the bid, such cancellation on the grounds of non-performance is not correct and the cancellation should have been done on the sole ground that, it didn’t meet the criteria of the biding guidelines and the evaluation. Having said that, it cannot be said that the bid was submitted with fraud or ill intention. It cannot also the case that the bidder unilaterally withdrew his bid after his offer was accepted. It is not also the case of the liquidator that the offer of the bidder was accepted in full and that the modifications suggested by the SCC / liquidator

was accepted fully by the bidder. Though the matter was allowed to drag on from 15.12.2021 (the day e-auction was held) to 28.07.2023 (the date of cancellation of the bid and forfeiture of the entire amount paid), no responsibility can be ascribed to anybody because to be fair to the liquidator, he tried his best to make something out of a bad deal, while the Appellant was under the perennial hope that the terms and conditions he has set in his business plan will finally be agreed upon by Ld. NCLT, which he had prayed for in IA No.357/2023. The bid failed and had to be cancelled because of the action on part of both parties. The bidder should not have accepted the order of Ld. NCLT dated 15.06.2022 without first settling the issue of the treatment of 3rd party assets over which he and the lenders could not agree. The liquidator also should not have pressed for finalization of the payment plan alone without addressing the issue of 3rd party assets which was the bone of contention in all SCC meetings in the run-up to filing of MA No. 02/2022 before Ld. NCLT for approval of payment schedule. Therefore while the action of the liquidator to cancel the bid is correct, the action to forfeit the amount deposited by the bidder is not correct and as per standard tender practices, he ought to have refunded the entire amount of Rs.150 crore to the bidder, the Appellant herein. Further, Ld. NCLT while passing the orders in IA No. 1314/2023 should have accepted that the tender process was faulty and incomplete and ordered refund of the said amount while agreeing with the

cancellation of the bid, instead of giving a final 30 days' notice to the Appellant to pay the entire balance amount, which did not address the crux of the matter.

46. Accordingly, we do not see any reason to interfere in the orders being challenged in CA (AT) (CH) (Ins) No.309/2024, CA (AT) (CH) (Ins) No.310/2024, CA (AT) (CH) (Ins) No.93/2025 and CA (AT) (CH) (Ins) No.96/2025, except that the forfeiture of the sum of Rs. 150 crores deposited by the Appellant with the Liquidator is contrary to law and the same shall be refunded back within a period of 15 days from the date of uploading of this order.

47. The four company appeals are disposed accordingly. All pending interlocutory applications will be closed.

48. As there happens to be a difference of opinion only with regards to the issue of forfeiture of a sum of Rs.150 crores deposited by the Appellant, on that exclusive issue itself as to whether forfeiture could be done or not. Let the matter be placed before the Hon'ble Chairperson, NCLAT, for an appropriate nomination, to answer the said question about justification of forfeiture.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

09/06/2026
SN/AR/MS/AK