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2023 SCC OnLine NCLAT 9

Affirmed in *Srei Equipment Finance Ltd.* v. *Kalpataru Properties (P) Ltd.*, (2023) 14 SCC 638

In the National Company Law Appellate Tribunal[†]

(BEFORE ASHOK BHUSHAN, CHAIRPERSON AND BARUN MITRA, MEMBER (TECHNICAL))

Company Appeal (AT) (Insolvency) No. 880 of 2021

Indiabulls Housing Finance Ltd. ... Appellant;

Versus

Kalpataru Properties Pvt. Ltd. and Others ... Respondents.

With

I.A. No. 2623 of 2021

In

Company Appeal (AT) (Insolvency) No. 880 of 2021

And

In the matter of: SREI Equipment Finance Ltd. ... Intervener;

Company Appeal (AT) (Insolvency) No. 880 of 2021 and I.A. No. 2623 of 2021[†]

Decided on January 3, 2023

Advocates who appeared in this case :

Mr. Vikram Nankani, Sr. Advocate with Ms. Vishakha Gupta, Mr. Mohit Rai, Mr. Shivam Wadhwa, Advocates for Appellant;

Mr. Arun Kathpalia, Sr. Advocate with Mr. Mahesh Agarwal, Mr. Sunil Mittal, Ms. Anu Tiwari, Mr. Arshit Anand, Ms. Geetika Sharma, Mr. Kyrus Modi, Mr. Aditya Dhupar, Mr. Sudhir Kumar, Advocates for R-1.

Mr. Gaurav Mitra, Mr. Honey Satpal, Mr. Ishan Roy Chowdhury, Mr. Sunil Singh, Advocates for IRP.

Mr. Nakul Dewan, Sr. Advocate with Mr. Ativ Patel, Mr. Anirban Bhattacharya, Mr. Sathvik Chandrasekharan, Mr. Rohan Naik, Mr. Harshad Vyas and Mr. Krishna S., Advocates for Applicant in I.A. No. 2623 of 2021 for Respondents.

The Judgment of the Court was delivered by

ASHOK BHUSHAN, CHAIRPERSON:— Both Company Appeal (AT) Ins. No. 880 of 2021 as well as I.A. No. 2623 of 2021 has been heard together and are being decided by this common Judgment.

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2. We need to first notice the facts giving rise to Company Appeal (AT) Ins. No. 880 of 2021 before we notice the details of I.A. No. 2623 of 2021 filed by SREI Equipment Finance Ltd.

i. This Appeal has been filed by Indiabulls Housing Finance Limited challenging the Order dated 08.10.2021 passed by the National Company Law Tribunal, Mumbai Bench, Court No. I (the Adjudicating Authority) in I.A. No. 1921 of 2021. I.A. No. 1921 of 2021 was filed by Kalpataru Properties Pvt. Ltd. who has been arrayed as Respondent No. 1 in this Appeal.

ii. On 28th June, 2004, a Memorandum of Understanding was executed between the Corporate Debtor, Shree Ram Urban Infrastructure Ltd. Vijay Infrastructure Technology Pvt. Ltd. ("VIT" in short) a sister concern of the Corporate Debtor and Respondent No. 1 for sale, transfer, assignment and conveyance of the property admeasuring 20,955.40 sq. mts. situated at Plot No. 5A of Lower Parel Division.

iii. The Respondent No. 1-Kalpataru Properties Pvt. Ltd. had paid a sum of Rs. 30 Crores to the Corporate Debtor towards the sale consideration for transfer of subject property. In the year 2005, the Corporate Debtor sought to resile from the Agreement and failed to complete the sale transaction. The Respondent No. 1 referred the dispute to Arbitration for *inter alia* as specific performance of the Agreement and transfer of subject property with all rights under the agreement. On 29th August, 2016 an Award was passed by the Arbitral Tribunal in favour of the Respondent No. 1 in terms thereof the Corporate Debtor and Vijay Infrastructure Technology Pvt. Ltd, a sister concern of the corporate debtor were ordered and directed to specifically perform the agreement. The Corporate Debtor was directed to sell, transfer and assign the subject property and convey the title to the Respondent No. 1. The Corporate Debtor challenged the arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996 before the Bombay High Court. The Bombay High Court appointed official liquidator in the winding up petition on 24th August, 2017. The Respondent No. 1 filed a commercial execution application no. 134 of 2017 before the Bombay High Court for execution/enforcement of the arbitral award. The Corporate Debtor challenged the order of the Learned Single Judge rejecting Section 34 Application of the Corporate Debtor before the Division Bench of the Bombay High Court under Section 37 of the Arbitration and Conciliation Act, 1996. The Division Bench of the Bombay High Court vide Order dated 11.10.2018 dismissed the Appeal upholding the order passed under Section 34 by the

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Learned Single Judge of the High Court as well as arbitral award.

iv. Respondent No. 1 wrote a letter to the Corporate Debtor through the Provisional Liquidator on 12.10.2018 claiming upon the corporate debtor to comply the arbitral award and it also offered to pay balance sale consideration of Rs. 75,30,00,000/- on execution of the conveyance. The provisional liquidator filed a Special Leave Petition (C) No. 12495 of 2020 before the Hon'ble Supreme Court challenging the Division Bench Order dated 11.10.2018.

v. A Company Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC in short) was filed by the Corporate Debtor-SREI Equipment Finance Ltd. before the NCLT Mumbai. On 06.11.2019, Section 7 Petition was admitted and Respondent No. 2 was appointed as Interim Resolution Professional.

vi. On 08.10.2020, Hon'ble Supreme Court granted leave to the Respondent No. 2-IRP to bring on record in place of Provisional Liquidator in SLP No. 12495 of 2020. On 16.10.2020, the Hon'ble Supreme Court dismissed the said SLP filed by IRP on behalf of the Corporate Debtor-VIT and erstwhile director of the corporate debtor.

vii. The Respondent No. 1 wrote to Respondent No. 2-IRP about the right of the Respondent No. 1 in subject property requesting the Respondent No. 2 to perform its obligation. Respondent No. 2-RP addressed an email informing that subject property does not form part of the CIRP and it further acknowledged that amount of Rs. 75,30,00,000/- is entitlement of the Corporate Debtor.

viii. I.A. No. 1921 of 2021 was filed by Kalpataru Properties Pvt. Ltd. -Respondent No. 1 before the adjudicating authority seeking a direction to Respondent No. 2 to do all such acts as may be necessary for executing the conveyance deed and other documents of transfer in CP(IB) No. 494/MB/2019 after receipt of the balance consideration. In I.A. No. 1921 of 2021, objection was filed by VIT through I.A. No. 2107/2021 opposing the prayer of the Kalpataru Properties Pvt. Ltd. in I.A. No. 1921 of 2021. Resolution Professional has filed its Reply to I.A. No. 1921 of 2021 relaying on Section 14 of the IBC, 2016. In its Reply, Resolution Professional submitting that completion of transaction in pursuance of decree of arbitral award ordered by the High Court will be beneficial for the corporate debtor and execution of formal conveyance by the Corporate Debtor in favour of the Applicant-Kalpataru Properties Pvt. Ltd. valuable balance sale consideration of Rs. 75,30,00,000/- would be available to the Corporate Debtor to make the CIRP possible and to conclude it as a going concern.

ix. The Adjudicating Authority after hearing the Applicant - Kalpataru

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Properties Pvt. Ltd. who had filed I.A. No. 1921 of 2021, Learned Counsel for the RP and Learned Counsel for the Intervener-VIT passed an Order on 08.10.2021 allowing the Appeal. Prayer "b" and "c" in I.A. No. 1921 of 2021 was allowed. It is useful to quote the operative portion of the Order contained in paragraph 18 of the Impugned Order:

> *"18. Therefore, having convinced with the arguments on the part of the Applicant, as we hereby allow the prayer (b) and (c) sought by the applicant:*
>
> *…….Prayer (b)*
>
> *This Tribunal direct and authorize Respondent No. 1 herein to join in the execution of the conveyance deed and other required documents to sell, transfer, convey and assign the Decreed Property to the Applicant in the pending Execution Application No. 134 of 2017 in the Hon'ble Bombay High Court including authorizing the Respondent No. 1 to execute and sign the said documents or consent to the said documents being executed and signed on behalf of the Corporate Debtor by an officer appointed by the Hon'ble Bombay High Court in those proceedings, against payment of the balance consideration of Rs. 75,30,00,000/- (Rupees Seventy-Five Crores Thirty Lakhs only) to Respondent No. 1 in the manner set out in prayer (a) above viz (i) the sum of Rs. 1,30,53,674/-(Rupees One Crore Thirty Lakh Fifty-Three Thousand Six Hundred and Seventy Four only) or such other amounts as are payable to Respondent No. 2 directly against reimbursement of expenses from the common pool as per the Orders dated 28 November, 2019, 23 January, 2020 and 28 July, 2021 and (ii) the balance sum to Respondent No 1;*
>
> *……Prayer "c"*
>
> *This Tribunal hereby direct and authorize Respondent No. 1 jointly with the Applicant to apply to the Hon'ble Bombay High Court for orders and directions in the said I.A. No. 243 of 2021 or by fresh application, including to direct Respondent No. 2 to comply with the orders of the Hon'ble Bombay High Court by removal of construction materials, equipment, sheds, porta cabins etc. lying on the Decreed Property and directions to remove the obstruction on the Applicant's sight of way on one of the three 12 metre-wide accesses to the Decreed Property;*
>
> *Hence, this Order with the aforesaid directions. Accordingly, I.A.-1921/2021 is hereby disposed of"*

x. Aggrieved by the Order dated 08.10.2021, Company Appeal (AT) Ins. No. 880 of 2021 has been filed by the Indiabulls Housing

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Finance Ltd. praying to set aside the Order dated 08.10.2021.

3. This Tribunal passed an Interim Order in Company Appeal (AT) Ins. No. 880 of 2021 on 28.10.2021 staying the prayer "b" granted vide Order dated 08.10.2021 by the Adjudicating Authority.

4. Civil Appeal No. 7050 of 2022 was filed by Kalpataru Properties Pvt. Ltd. and Others challenging the Interim Order passed by this Tribunal dated 28.10.2021. Hon'ble Supreme Court on 14.11.2022 passed following order in Civil Appeal No. 7050 of 2022:

"C.A. No. 7050/2022

Learned senior counsel for the appellant, on instructions states that the appellant is willing to bring in the money in terms of the arbitral award, approximately Rs. 75.30 crores in the corporate debtors' account and the Resolution Professional will execute the sale deed on the said amount being so deposited. He submits on instructions that the amount will be deposited within 10 days.

On the aforesaid statement taken on record, learned counsel for respondent no. 1 who is the appellant before the NCLAT submit that if the amount is brought in, the sale deed can be executed by the Resolution Professional and the appeal filed by the Respondent No. 1 before the NCLAT would stand withdrawn.

In view of the aforesaid, we direct as under:

1) The amount be deposited within a period of 10 days stipulated, as aforesaid;

2) On the amount being deposited, the Company Appeal (AT) Ins. No. 880/2021 before the NCLAT, filed by Respondent No. 1 shall stand dismissed as withdrawn;

3) The Resolution Professional shall execute the sale deed in favour of the appellant within a period of 10 days of the deposit of the amount;

4) In view of the aforesaid agreement arrived at, no impediment should be created to the execution of the same.

The Appeal stands disposed of in terms aforesaid."

5. SREI Equipment Finance Ltd. has filed I.A. No. 2623 of 2021 in Company Appeal (AT) Ins. No. 880 of 2021 in this Tribunal on 17.11.2021 wherein I.A. No. 2623 of 2021 Applicant-SREI Equipment Finance Ltd. sought intervention in Company Appeal (AT) Ins. No. 880 of 2021. SREI Equipment Finance Limited also filed a Miscellaneous Application No. 2064 of 2022 in Civil Appeal No. 7050 of 2022 before the Hon'ble Supreme Court. On M.A. No. 2064 of 2022, Hon'ble Supreme Court passed following order on 09.12.2022:

"Miscellaneous Application No. 2064/2022 IN C.A. No. 7050/2022

We have heard learned counsel for parties at length.

What emerges is that in the proceedings before the NCLAT in

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Company Appeal (AT)(Insolvency) No. 880/2021 an order was passed on 26.09.2022. The matter was being adjourned apparently repeatedly and that is what persuaded the appellant in the Civil Appeal before us to approach this Court. The counsel stated that the appellant before us being the appellant before the NCLAT seeks to withdraw the appeal on the deposit of certain amounts by respondent No. 1. It is this what persuaded us to accept the request and dispose of even the Company Appeal pending before the NCLAT as nothing would survive in view of the withdrawal by the appellant itself.

The present appellant before us is actually an intervener before the NCLAT. He seeks to make a grievance that the order passed by the NCLT which was in appeal before the NCLAT, he also had some grievances. On our query, he concedes that he did not file an appeal against the order of the NCLT. That being the position, his status as claimed before the NCLAT was of an intervener. Learned senior counsel submits that at least he should have been given liberty to be heard even as the status as an intervener before the NCLAT.

We do believe that this controversy should be resolved by the NCLAT itself i.e. whether on the appellants seeking to withdraw the appeal, there can be any impediment in withdrawal of the appeal and is the NCLAT really required to comment on the merits of the order of the NCLT at the behest of an intervener. We further make it clear that we are not expanding the array of parties before the NCLAT as a number of entities seems to have jumped into the picture as the matter has gone on before this Court. We make it clear that only the parties/existing interventionist before the NCLAT will have the right of hearing.

In view of the orders passed in Civil Appeal No. 9062/2022, this appeal will also to be listed before the Bench presided over by the Chairman.

In view thereof, the final picture which would emerge would be before the NCLAT and to that extent the order passed by us on 14.11.2022 would be kept in abeyance till the NCLAT resolves the issue.

List on 07.02.2023."

6. I.A. No. 2623 of 2021 which is filed in Company Appeal (AT) Ins. No. 880 of 2021 now needs to be heard keeping in view the Order of the Hon'ble Supreme Court dated 09.12.2022 as extracted above.

7. We have heard Mr. Vikram Nankani, Sr. Advocate appearing for the Appellant, Mr. Nakul Dewan, Sr. Advocate appearing on behalf of SREI Equipment Finance Ltd. and Mr. Arun Kathpalia, Sr. Advocate appearing for Kalpataru Properties Pvt. Ltd.

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8. Mr. Vikram Nankani, Learned Sr. Counsel appearing for the Appellant-Indiabulls Housing Finance Ltd. submits that Indiabulls Housing Finance Ltd. has already made a statement before the Hon'ble Supreme Court in Civil Appeal No. 7050 of 2022 that if the amount of Rs. 75.30 crores is deposited by the Kalpataru Properties Pvt. Ltd., sale deed can be executed, appeal filed by the Indiabulls Housing Finance Ltd. (C.A.(AT) Ins. No. 880 of 2021) shall be withdrawn. In view of the above statement, Order dated 14.11.2022 was passed by the Hon'ble Supreme Court as quoted above.

9. We may further notice that when the matter C.A.(AT) Ins. No. 880 of 2021 was taken before this Tribunal on 11.11.221, learned counsel appearing for the SREI Equipment Finance Ltd. stated that SREI Equipment Finance Ltd. proposes to intervene in the matter. This tribunal on 11.11.2021 granted liberty to SREI Equipment Finance Ltd. to file hard copy of the intervention application within one week. In consequent to which, I.A. No. 2623 of 2021 was filed on 17.11.2021.

10. We have further noticed that SREI Equipment Finance Ltd. has filed MA No. 2064 of 2022 in C.A. No. 7050 of 2022 where order was passed on 09.12.2022 as quoted above.

11. Learned Sr. Counsel for the Appellant-Mr. Vikram Nankani has made a statement that Appellant may be permitted to withdraw the Appeal (C.A. (AT) Ins. No. 880 of 2021) which statement was also made before the Hon'ble Supreme Court as noted in its Order dated 14.11.2022. The prayer of the Appellant is opposed by Mr. Nakul Dewan, Sr. Advocate appearing for Applicant-SREI Equipment Finance Ltd. We thus need to notice the submission made by Learned Sr. Counsel for the Applicant in I.A. No. 2623 of 2021 as well as Learned Sr. Counsel appearing for the Appellant and Learned Counsel appearing for Respondent No. 1 on I.A. No. 2623 of 2021.

12. Learned Sr. Counsel appearing for the Intervener/Applicant submits that the SREI Equipment Finance Ltd. is a non-banking financial institution. The CIRP has already been initiated against the SREI Equipment Finance Ltd. pursuant to order dated 08.10.2021 passed by the NCLT, Kolkata Bench, Kolkata in CP(IB) No. 294/2021. Mr. Rajnish Sharma has been appointed administrator of the intervener who authorized officers and management of the Corporate Debtor to continue to undertake requisite action in pursuance of which the present application has been filed. It is submitted that intervener's application filed under Section 7 of the Code, CIRP was initiated against the Corporate Debtor vide Order dated 06.11.2019. The SREI Equipment Finance Ltd. is a member of CoC of the Corporate Debtor and is a secured Financial Creditor. It is submitted that the Respondent No. 1-Kalpatatru Properties Pvt. Ltd. by I.A. No. 1921 of 2021 is seeking enforcement of the decree during the CIRP of Corporate Debtor

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which is not permissible in view of the provisions of Section 14(1)(b) of the Code. It is submitted that intervener has also filed objection before the Adjudicating Authority vide I.A. No. 2205 of 2021 in I.A. No. 1921 of 2021 which objection has not been considered by the Adjudicating Authority by passing the Order dated 08.10.2021. The Adjudicating Authority wrongly on one hand records that subject property is not the asset of the corporate debtor and on the other hand direct the RP to join in execution of the conveyance deed so as to convey and assign the subject property to Kalpataru Properties Pvt. Ltd. The Respondent No. 1 who has filed I.A. No. 1921 of 2021 on account of arbitral award in his favour which is nothing more than a decree holder and hence the treatment of Kalpataru cannot be different to one given to other creditors. It is submitted that in the Application I.A. No. 2623 of 2021 the Applicant has also prayed for impleadment. It is submitted that Order dated 08.10.2021 shall prejudicially affect the rights of the Applicant who is a secured financial creditor. Learned Counsel for the Applicant submits that he has every right to oppose the Appeal filed by the Indiabulls Housing Finance Ltd. It is submitted that since the Order dated 08.10.2021 was challenged by Indiabulls Housing Finance Ltd., no separate appeal was filed by the Applicant but now since Indiabulls Housing Finance Ltd. seeking withdrawal of the Appeal, Applicant may be allowed to prosecute the Appeal and the Indiabulls Housing Finance Ltd. be not permitted to withdraw the Appeal. Learned Counsel for the Applicant has placed reliance on Judgment of the Madras High Court as well as Kolkata High Court and two Judgments of the Hon'ble Supreme Court which we shall consider hereinafter.

13. Mr. Vikram Nankani, Learned Sr. Counsel appearing for the Appellant refuting the submissions of Learned Counsel for the Applicant contends that Applicant has no right to oppose the withdrawal of Appeal filed by the Appellant. It is submitted that Applicant has not filed any Appeal challenging the Order dated 08.10.2021 hence no relief can be granted to the applicant in this Appeal. Applicant's status and right is only of intervener who cannot claim any relief for himself in the present proceedings. The arbitral award passed in favour of the Respondent No. 1 had become final upto the Hon'ble Supreme Court and Special Leave Petition in which the Resolution Professional of the Corporate Debtor was also brought on record, has been dismissed by Hon'ble Supreme Court. The Order passed by the Hon'ble Supreme Court dismissing the Appeal by Resolution Professional makes the arbitral award final between the parties and need to be implemented which cannot be objected by the Applicant.

14. Mr. Arun Kathpalia, Learned Sr. Counsel appearing for the Kalpataru Properties Pvt. Ltd. submits that the MoU between the Kalpataru Properties Pvt. Ltd. and Indiabulls Housing Finance Ltd. was

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executed on 28th June, 2004 and the arbitral award in favour of the Kalpataru was delivered on 29th August, 2016 which was affirmed by both Learned Single Judge and Division Bench of the Bombay High Court dismissing the Application under Section 34 and 37 of the Arbitration and Conciliation Act, 1996 filed by the Corporate Debtor. SLP Challenging the Order of Bombay High Court filed by the Official Liquidator in which the Resolution Professional was also permitted to be substituted got dismissed by Hon'ble Supreme Court on 16.10.2022 hence no error was committed by the Adjudicating Authority in passing the Order dated 08.10.2021 on application filed by the Respondent No. 1 seeking direction for execution of conveyance. Mr. Arun Kathpalia submits that IBC contemplates strict timeline of completion of all proceedings which timeline can not be allowed to be thwarted by the Applicant by filing this Application. The Applicant having not filed any Appeal against the Order dated 08.10.2021 can not claim any right.

15. We have considered the submissions of Learned Counsel for the parties and have perused the record.

16. The Applicant is a secured financial creditor of the corporate debtor. In the I.A. No. 2623 of 2021, following are the prayers made by the Applicant:

"a. That this Hon'ble Appellate Tribunal be pleased to implead the Applicant herein as party Respondent in the present Appeal;

b. That this Hon'ble Appellate Authority be pleased to pass an order set aside the order dated 08th October, 2021;

c. That this Hon'ble Appellate Authority be pleased to pass and order directing the Respondent No. 2 to call for Meeting of Committee of Creditors and discuss the aforesaid issues with the members of the CoC at the earliest;

d. for interim and ad-interim reliefs in terms of prayer clause (a) to (c);

e. For costs;

f. For such further and other reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

17. I.A. No. 1921 of 2021 was filed by the Kalpataru Properties Pvt. Ltd. before the Adjudicating Authority where the Kalpatatru Properties Pvt. Ltd. has given all details regarding the claim of the Kalpataru Properties Pvt. Ltd. The details of the award dated 29th August, 2016 and challenges made to the award before the Bombay High Court as well as Supreme Court, execution Application No. 134 of 2017 has already been filed by the Kalpataru Properties Pvt. Ltd. before the Bombay High Court for execution and assignment of the documents on behalf of the Corporate Debtor by officer appointed by the Bombay High

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Court against the balance sale consideration of Rs. 75.30 crores. In the Application prayer 'b' and 'c' was allowed by the Adjudicating Authority which has already been extracted in foregoing paragraphs of this judgment. The Order dated 08.10.2021 has been challenged by the Indiabulls Housing Finance Ltd. by filing an Appeal on 25.10.2021 that is within limitation prescribed under Section 61 of the Code. The limitation for filing an Appeal under Section 61 is 30 days. Admittedly the Applicant-SREI Equipment Finance Ltd. has not filed any appeal. It has filed only an Intervention Application No. 2623 of 2021 as noticed above.

18. Following are the two questions for consideration in this Appeal:

i. Whether Applicant who has not filed any Appeal against the Order dated 08.10.2021, can claim for setting aside the Order dated 08.10.2021 on the basis of Intervention Application?

ii. Whether the withdrawal of Company Appeal (AT) Ins. No. 880 of 2021 can successfully be opposed by the Applicant?

19. Both the questions being inter-related are being considered together. The Order dated 08.10.2021 which has been challenged in the Company Appeal (AT) Ins. No. 880 of 2021 has been passed by the Adjudicating Authority on an Application filed under Section 60(5) of the Code. IBC provides for filing an Appeal against the Order passed by the Adjudicating Authority by virtue of Section 61(1). Section 61(1)& (2) are as follows:

> *"Section 61.-(1) Notwithstanding anything to the contrary contained under the Companies Act, 2013, any person aggrieved by the order of the adjudicating authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.*
>
> *(2). Every appeal under sub-section (1) shall be filed within thirty days before the National Company Law Appellate Tribunal:*
>
> *Provided that the National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty days if it is satisfied that there was sufficient course for not filing the Appeal but such period shall not exceed fifteen days."*

20. Admittedly, no Appeal has been filed by the Applicant and filing of any Appeal by the Applicant at this stage shall stand barred by time. Learned Counsel for the Appellant has relied on the Judgment of the Hon'ble Supreme Court in [(1999) 3 SCC 141] "*Saraswati Industrial Syndicate Ltd.* v. *Commissioner of Income Tax Haryana Rohtak*". Hon'ble Supreme Court has categorically held that only purpose for granting an Intervention Application is entitled to intervene in support of one or other side. In paragraph 12 of the Judgment, following has been laid down:

> *"12. Learned Counsel for the interveners submits that he is*

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entitled to the same order as we have just passed. We cannot pass such an order in an intervention application. The only purpose of granting an intervention application is to entitle the intervener to address arguments in support of one or the other side. Having heard the arguments, we have decided in the assessee's favour. The interveners may take advantage of that order."

21. The intervener is well within its rights either to support the order dated 08.10.2021 or to oppose the said order. But when the Company Appeal (AT) Ins. No. 880 of 2021 which has been filed challenging the Order dated 08.10.2021 is sought to be withdrawn, there is no proceeding in which intervener can be heard in opposition of the Order dated 08.10.2021. Proceedings under the IBC are proceedings in a special statute with timeline where limitation prescribed under the Act is for a purpose. The timeline which are prescribed in the IBC has to be given weight which principle has been reiterated by the Hon'ble Supreme Court in [(2022) 2 SCC 244] "*V. Nagarajan* v. *SKS Ispat and Power Limited*". Paragraph 28 of the Judgment, Hon'ble Supreme Court has laid down following:

"In this background, when timelines are placed even on legal proceedings, reading in the requirement of an "order being made available" under a general enactment (Companies Act) would do violence to the special provisions enacted under IBC where timing is critical for the workability of the mechanism, health of the economy, recovery rate of lenders and valuation of the corporate debtor. IBC, as a prescriptive mechanism, affecting rights of stakeholders who are not necessarily parties to the proceedings, mandates diligence on the part of applicants who are aggrieved by the outcome of their litigation. An appeal, if considered necessary and expedient by an aggrieved party, is expected to be filed forthwith without awaiting a free copy which may be received at an indefinite stage. Hence, the omission of the words "from the date on which the order is made available" for the purposes of computation of limitation in Section 61 (2) IBC, is a consistent signal of the intention of the legislature to nudge the parties to be proactive and facilitate timely resolution."

22. Now we need to notice the judgments which have been relied by the Learned Counsel for the Applicant. The first Judgment relied on by the Applicant is Judgment of Madras High Court "The Law Weekly, 1934" Part 13, Page 521, Volume 39. In the above case, a suit filed by the plaintiff against two brothers of deceased husband for decree directing the defendant to render on account of the assets belonging to her estate was sought to be withdrawn by the plaintiff which was opposed by the intervener who has filed an I.A. in the suit opposing the withdrawal. It was the case of the intervener that there is a compromise between the parties and should be decreed in terms of

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compromise, for that he had filed I.A. No. 673-674 of 1931 and the Application which was filed by the plaintiff was I.A. No. 249 of 1933. In the above context, following observations were made by the Madras High Court:

> *"Ordinarily, the Court finds no impediment to the dismissal of a suit after the announcement of the withdrawal of the claim by the plaintiff; it will simply say that the suit is dismissed as the plaintiff has withdrawn from it. An order as to costs will also be passed. But several exceptions have been recognized to this general rule. In suits for partition, if a preliminary decree is passed declaring and defining the shares of the several parties, the suit will not be dismissed by reason of any subsequent withdrawal by the plaintiff, for the obvious reason that the rights declared in favour of the defendants under the preliminary decree would be rendered nugatory if the suit should simply be dismissed. So also in partnership suits and suits for accounts where the defendants too may be entitled to some reliefs in their favour as a result of the settlement of accounts, the withdrawal of the suit by the plaintiff cannot end in the mere dismissal of the suit. Similarly in suits for specific performance and administration suits, withdrawal by the plaintiff should not necessarily lead to the dismissal of the suit, because some appropriate reliefs have to be given even in favour of the defendants. In a representative suit the Court need not dismiss the suit in spite of the withdrawal by the plaintiff, but it may add another person as a party in substitution of the plaintiff or transpose a defendant as plaintiff and direct the continuance of the suit. The case reported in 34 LW 548 is one of such cases. Such substitution was made in appeal. In a suit where a compromise was set up by which certain rights were alleged to have been acquired by the defendants with the consent of the plaintiff and the defendants produced the agreement in Court and applied for a decree in terms of the compromise, the Court declined to dismiss the suit by reason of the subsequent withdrawal of the suit by the plaintiff vide* Tukaram Mahadu *v.* Ramchandra Madahu *(1). The terms of O. 23 R. 3, Civil Procedure Code, are equally imperative. The Court if satisfied that the suit has been compromised, is bound to pass a decree in accordance with the terms thereof. That being so, it has been held that the special procedure therein laid down is not affected by the general provisions of O. 23 R. 1. The principle to be kept in view in a matter like this has been stated by Jenkins C.J. in* Satyabhama Bai *v.* Ganesh Balkrishna *(2) at page 18;*
>
> *....."*

23. The High Court after considering the case observed that suit cannot be dismissed at that stage and application of the plaintiff ought to have been kept pending and till the I.A. No. 673-674/1931 were

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decided. Following is the observations made by the Madras High Court:

> *"On a due consideration of the circumstances in this case, I am of opinion that the suit cannot be dismissed at this stage by reason of the plaintiff's withdrawal from it. Her application for the unconditional dismissal of the suit by reason of the withdrawal cannot now be granted. It depends upon the result of the enquiry which the lower Court has undertaken in respect of I.As 673 and 674 of 1931. The lower Court would have done well, if it kept the plaintiff's petition (I.A. 249 OF 1933) pending till the disposal of the other two petitions. I would set aside the order of the lower Court dismissing I.A. 249 OF 1933 and direct its restoration to file to be disposed of in accordance with the result of the enquiry in I.As 673 and 674 of 1931. As the petitioner has failed in her main contention, she will pay the costs of the 1st respondent in this Civil Revision Petition and bear her own."*

24. The above judgment relates to an Original Proceeding initiated in a suit where intervener was claiming decree in view of the settlement between the parties. The creation of interest under a Rajinama/Compromise was claimed by intervener in the said facts of the case. Hon'ble High Court took the view that I.A. 673 and 674 of 1931 filed by the Intervener need to be first heard before considering the application filed by the Appellant for withdrawal of the suit. When we look to the facts of the present case, I.A. which has been filed by the Applicant for intervention being I.A. No. 2623 of 2021 is being filed and decided before passing any order in the Appeal. Present is a case where the Applicant has not filed any Appeal against the Order passed by the Adjudicating Authority. Issue is that whether he can pray for setting aside the order dated 08.10.2021 without filing an appeal and whether he could successfully oppose the Appellant from withdrawing his Appeal. The Judgment of *Madras High Court* (supra) thus is clearly distinguishable.

25. Now we come to another judgment of Calcutta High Court relied by the Applicant in the matter of "*Lakhinder Samaddar* v. *State of West Bengal*" [2009 SCC OnLine Cal 2016]. In the above case, the Division Bench of the High Court was hearing an Appeal against the Order of Learned Single Judge. The appellant who had filed the Appeal before the Division Bench had filed an Application for impleadment in the writ petition which was dismissed. High Court considered the provisions of Order 23 of the CPC and made following observations in the Judgment:

> *"It is also evident that the right of withdrawal is not a matter of course and it is absolutely Court's discretion and this can only be exercised when the Court records its satisfaction on two eventualities viz the suit (here writ petition) must fail by reason of some formal defect or that there are sufficient grounds for allowing the plaintiff to*

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institute the fresh suit for the subject matter of the suit or part of the claim. There is no other eventuality or situation provided in the said rules for withdrawal of any action. The Legislature in its wisdom has provided the aforesaid restricted provision for withdrawal for the simple reason, in our opinion is that a party cannot go out from the Court after filing a lis, at their own whims, for once a lis is filed it has to be dealt with in appropriate manner by the Court and Court alone. The Learned Trial Judge has nowhere recorded such satisfaction and even there is no prayer that the suit is formally defective or for some other reason fresh action is to be brought. It appears from the judgement and order of the Learned Trial Judge that no leave was prayed for by the petitioner to bring a fresh action nor leave is granted either. According to us if any order is required to be passed for withdrawal the Learned Trial Judge cannot assume jurisdiction unless the application mentions either of the aforesaid two grounds. We have already noted that neither of the two grounds has been mentioned in the said application for withdrawal, we have seen so from the original petition produced before this Court in terms of the earlier order of this Court. We, therefore, are of the view that application for withdrawal has been allowed even without applying the mind and without being satisfied the aforesaid conditions being fulfilled. We find impossibility to uphold the order of withdrawal."

26. Order 23 which came for consideration before the High Court pertains to withdrawal of suit or amending part of claim, the restriction contained in Order 23 for withdrawal were for purpose of object and in the context of Order 23 of the CPC observations as noted above were made by the High Court. It was held that withdrawal cannot be as a matter of course and its Court's discretion. The above judgment which deals especially with Order 23 of the CPC is also distinguishable which cannot be held to be applicable in reference to an Appeal filed under IBC with regard to withdrawal of Appeal filed under Section 61 of the Code.

27. Next judgment relied by the Applicant is of Hon'ble Supreme Court in the matter of "*Bhagwati Development Pvt. Ltd.* v. *Peerless General Finance Investment Company Ltd.*" [(2013) 5 SCC 455]. In the above case, the Appeal was filed against Order of Calcutta High Court by which High Court rejected the claim of the Appellant to maintain the Company Petition filed under Section 397, 398 and 399 of Companies Act, 1956. The facts of the case have been noted in paragraph 1-4 which are to the following effect:

"1. These appeals have been preferred against the judgment and final order dated 24.11.2003 passed by High Court of Calcutta in Bhagwati Developers (P) Ltd. *v.* Peerless General Finance & Investment Co. Ltd. *by way of which the High Court rejected the*

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claim of the appellant to maintain the company petition filed under Sections 397 and 398 of the Companies Act, 1956 (hereinafter referred to as "the 1956 Act").

2. *The facts and circumstances giving rise to these appeals are that : Shri S.K. Roy (Respondent 2) issued and allotted 30,000 shares of Respondent 1 Company to himself and his relatives, and being the majority shareholder therein, hence acquired control over the respondent company.*
3. *Shri Ajit Kumar Cahtterjee (3.66% shares) and Shri Arghya Kusum Chatterjee (1.01% shares) filed Company Petition No. 222 of 1991 under Sections 37 and 398 of the 1956 Act, before the High Court of Calcutta with the consent of M/s. Bhagwati Developers Pvt. Ltd. (4.78% shares) (hereinafter referred to as "the appellant") and shri R.L. Gaggar(7.61% shares), alleging mismanagement and oppression.*
4. *Respondent 2 contested the said company petition by raising the preliminary issue of maintainability, stating that the valid shares held by the petitioners and consenting parties therein, were valued at less than 10% of the total shareholding, and thus, the petition itself was not maintainable. The Company Court Judge vide order dated 13-1-1992/14-1-1992, dismissed the said company petition as not maintainable, allowing the aforementioned preliminary objection, without entering into the merits of the case"*

28. For purpose of recalling the Order of dismissal of the Appeals and for transposition of Chatterjee brothers before the Division Bench as *pro forma* respondents whilst substituting the appellant as the sole appellant was the prayer which application was dismissed by the Division Bench vide Order dated 02-02-1995 against which Order, SLP 19193 and 19217 of 1995 was filed before the Hon'ble Supreme Court which appeals were disposed of vide Judgment and order dated 26th April, 1996 permitting the Appellant to prefer an independent appeals challenging the judgment of Learned Single Judge. Paragraph 7 of the Judgment has noticed following:

"7. Aggrieved, the appellant preferred SLPs (C) Nos. 19193 and 19217 of 1995 before this Court, challenging the order dated 2-2-1995. This Court entertained the said petitions, granted leave, and disposed of the appeals vide judgment and order dated 26-4-1996, observing that the appellant may prefer independent appeals, challenging the judgment and order dated 13-1-1992/14-1-1992, passed by the learned Single Judge, further stating that if such an appeal was in fact filed, the same would not be dismissed by the Division Bench on grounds of limitation or locus standi. However, it

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would be open for Respondent 2 to contend, that the ground upon which the Company Court Judge had dismissed the company petition, was indeed just i.e. the respondent could defend the order passed by the Company Court Judge. Further, the effect of withdrawal of the appeals by Chatterjee brothers on the appeals filed by the Appellant, would also be examined. Additionally, the dismissal of the appeals as withdrawn, preferred by Chatterjee Brothers, would not come in the way of the appellant raising such contentions as are permissible and available to it in law. This Court disposed of the said appeals without expressing any opinion on merit."

29. The Appeal which was filed with the leave of the Hon'ble Supreme Court dated 26.04.1996 came to be dismissed by the Judgment of the Calcutta High Court dated 24.11.2003 which was assailed before the Supreme Court in the above case. In the above background of the facts, Hon'ble Supreme Court laid down following in paragraph 27 of the Judgment:

"27. In our humble opinion, the Division Bench has gravely erred in taking the aforesaid view, as the same renders the order of this Court dated 26.04.1996 a nullity. This Court had passed the order after hearing the present respondents on the basis of suggestions made and concessions offered by them. It was in fact suggested by the Learned Counsel appearing on behalf of the respondents, that if the appellant prefers such appeals in the High Court even now, the respondents shall not raise any objection on the ground of limitation, and that they would not also object on the ground of the locus standi of the consenting shareholders. Thus, the same makes it clear the right of maintenance of an appeal against the judgment of the learned Single Judge dated 2-2-1995 was in fact an offer made by the respondents themselves, with a further undertaking being provided by them with respect to the question of limitation and locus standi of the appellant, stating that the same would not be raised. What was granted to them was only permission to raise the contention that as on the date of actual filing of the company petition before the Company Court Judge, the petitioners along with the consenting parties, had 10 % shareholding out of the total stakeholding of the company."

30. It is relevant to notice that in the above case Appeal which was filed was with leave of the Hon'ble Supreme Court which was erroneously rejected by the Calcutta High Court disregarding order of the Supreme Court dated 26.04.1996. Above judgment of the Hon'ble Supreme Court is clearly on facts of its own and has no application in the present case before us.

31. Another judgment of the Hon'ble Supreme Court relied on by the

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Applicant is Judgment of the Supreme Court in "*R. Dhanasundari Alias R. Rajeswari* v. *A.N. Umakanth*, [(2020) 14 SCC 1]. In the above case, the facts have been noticed in paragraph 2.1. to 2.7 which is as follows:

> *"(2.1) The civil suit in question was originally instituted in the Court of the Principal Subordinate Judge, Chengalpattu by A.C. Nataraja Mudaliar (original plaintiff) against A.V. Manoharan (defendant No. 1 - respondent No. 1 herein) and R. Dhanasundari @ R. Rajeshwari (defendant No. 2 - appellant herein) for cancellation of the sale deed dated 23.03.1985, which was executed by defendant No. 1 in favour of defendant No. 2. This suit was initially registered as O.S. No. 122 of 1989.*
>
> *(2.2) The assertions in the plaint had been that the suit schedule property was purchased in the name of a partnership firm M/s South India Engineering Works of which, the plaintiff and the defendant No. 1 were the partners; and that the said firm was dissolved by a deed of dissolution dated 22.05.1971 whereby, the defendant No. 1 A.V. Manoharan was relieved of the assets and liabilities of the firm and the suit schedule property vested with the plaintiff A.C. Nataraja Mudaliar. It was alleged that the defendant No. 1 A.V. Manoharan, despite having relinquished the rights in the suit property, sold the same to the defendant No. 2 under the impugned sale deed dated 23.03.1985.*
>
> *(2.3) During pendency of this suit, the original plaintiff A.C. Nataraja Mudaliar expired on 19.05.1988 leaving behind 3 sons and 4 daughters as his legal representatives, who were impleaded as plaintiff Nos. 2 to 8 in the suit. One of the sons of the original plaintiff namely, A.N. Umakanth (plaintiff No. 5-respondent No. 1 herein) was extended power of attorney by his siblings.*
>
> *(2.4) The suit was decreed ex parte in the year 1995 but later on, the ex parte decree was set aside and the suit was restored to the original number. However, in the interregnum, the respondent No. 1 A.N. Umakanth, the power of attorney holder of all the legal representatives of the original plaintiff, sold the suit property to three persons, namely Ramasamy, Dhanam Ramasamy and Venkatasubramanian (respondent Nos. 2 to 4 herein) through a registered sale deed dated 04.07.1995. In view of this transaction, upon restoration of the suit, the said purchasers moved an application (IA No. 135 of 2002) for being impleaded as plaintiffs. This application was allowed on 21.06.2002 and thereby, the said purchasers were allowed to join the suit as plaintiffs Nos. 9 to 11.*
>
> *(2.5) However, the other plaintiffs (Nos. 2 to 4 and 6 to 8) took exception to the aforesaid transaction of sale by the plaintiff No. 5; they revoked his power of attorney and moved an application (IA No.*

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468 of 2003) for transposition of the plaintiff No. 5 and his purchasers (plaintiff Nos. 9 to 11) as defendants. This application was allowed on 25.06.2003 and, accordingly, the plaintiff No. 5 and plaintiff Nos. 9 to 11 were transposed as defendants 3 to 6 in this suit.

(2.6) Thus, at and until the given juncture, the proceedings and developments had been that in the civil suit for cancellation of sale deed executed by the defendant No. 1 in favour of the defendant No. 2, the original sole plaintiff had expired; his legal representatives came on record as plaintiff Nos. 2 to 8 with plaintiff No. 5 being the power of attorney holder of the other plaintiffs; the suit was decreed ex parte and the said attorney sold the suit property to three persons; when the ex parte decree was set aside and the suit was restored to its number, the said purchasers came on record as plaintiff Nos. 9 to 11; and later on, the said seller and purchasers (plaintiff Nos. 5 and 9 to 11) were transposed as defendant Nos. 3 to 6. At this juncture and with such change of complexion, the suit was transferred to the file of District Munsif Court, Chengalpattu and was renumbered as O.S. No. 219 of 2004.

(2.7) After having, thus, been transferred and renumbered with addition and transposition in the array of parties, the suit in question proceeded in trial but, when the matter reached the stage of cross-examination of the defendants' witness DW-3, the plaintiffs filed a memo seeking permission to withdraw the suit, for the matter having been settled with the defendant Nos. 1 and 2. Though the defendant Nos. 1 and 2 did not oppose the prayer so made by the plaintiffs but then, the defendants 3 to 6 (who were transposed as defendants from their earlier position as plaintiffs) filed objections to the memo for withdrawal and also filed the application (IA No. 153 of 2005) under Order XXIII Rule 1-A read with Order I Rule 10 CPC with the prayer that they be transposed as plaintiff Nos. 2 to 5 in this suit."

32. Hon'ble Supreme Court in the said Judgment, laid down following in paragraph 7 to 11:

"7. Having bestowed anxious consideration to the rival submissions and having examined the record with reference to the law applicable, we are clearly of the view that on the facts and in the circumstances of this case, upon the existing plaintiffs seeking permission to withdraw under Order XXIII Rule 1 CPC, the defendant Nos. 3 to 6 have rightly been allowed to be transposed as plaintiffs under Order XXIII Rule 1-A read with Order I Rule 10 CPC and to continue with the suit, as originally filed against the defendant Nos. 1 and 2.

8. The law of procedure relating to the parties to a civil suit is

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essentially contained in Order I of the Code of Civil Procedure, dealing with various aspects concerning joinder, non-joinder and mis-joinder of parties. Rule 10 of Order I specifically provides for addition, deletion and substitution of parties; and the proposition for transposition of a party from one status to another, by its very nature, inheres in sub-rule (2) of Rule 10 of Order I CPC that reads as under:—

> *"10(2) Court may strike out or add parties. - The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appeared to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who or to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit be added."*

9. On the other hand, the law of procedure in relation to withdrawal and adjustment of suits is contained in Order XXIII of Code of Civil Procedure. As per Rule 1 thereof, a plaintiff may seek permission for withdrawal of suit or abandonment of a part of claim. Rule 1-A thereof 1 deals with an eventuality where the plaintiff withdraws his suit or abandons his claim but a pro forma defendant has a substantial question to be decided against the co-defendant. This Rule 1-A of Order XXIII CPC reads as under:—

> *"23.(1-A). When transposition of defendants as plaintiff may be permitted.- Where a suit is withdrawn or abandoned by a plaintiff under Rule 1, and a defendant applies to be transposed as a plaintiff under Rule 10 of Order 1, the Court, shall, in considering such application, have due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendants."*

10. It remains trite that the object of Rule 10 of Order I CPC is essentially to bring on record all the persons who are parties to the dispute relating to the subject matter of the suit so that the dispute may be determined in their presence and the multiplicity of proceedings could be avoided. This Court explained the principles, albeit in a different context, in the case of Anil Kumar Singh *v.* Shivnath Mishra : *(1995) 3 SCC 147 in the following:—*

> *"7. ….. The object of the rule is to bring on record all the persons who are parties to the dispute relating to the subject-matter so that the dispute may be determined in their presence at the same time without any protraction, inconvenience and to avoid multiplicity of proceedings."*

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> *11. As per Rule 1-A ibid., in the eventuality of plaintiff withdrawing the suit or abandoning his claim, a pro forma defendant, who has a substantial question to be decided against the co-defendant, is entitled to seek his transposition as 1 Inserted by the Amendment Act No. 104 of 1976 plaintiff for determination of such a question against the said co-defendant in the given suit itself. The very nature of the provisions contained in Rule 1-A ibid. leaves nothing to doubt that the powers of the Court to grant such a prayer for transposition are very wide and could be exercised for effectual and comprehensive adjudication of all the matters in controversy in the suit. The basic requirement for exercise of powers under Rule 1-A ibid. would be to examine if the plaintiff is seeking to withdraw or to abandon his claim under Rule 1 of Order XXIII and the defendant seeking transposition is having an interest in the subject-matter of the suit and thereby, a substantial question to be adjudicated against the other defendant. In such a situation, the pro forma defendant is to be allowed to continue with the same suit as plaintiff, thereby averting the likelihood of his right being defeated and also obviating the unnecessary multiplicity of proceedings."*

33. The above case does not help the applicant in the facts of the present case. In the above case also Defendant No. 3 to 6 were transposed as plaintiff as per provision of order 23 rule 1-A of the CPC.

34. The conditions for transposition being satisfied, the Hon'ble Supreme Court upheld the Order of the transposition. Present is not a case where there is any case for any transposition nor principles applicable in Order 23 Rule 1-A are attracted which permits the transposition of defendant as plaintiffs, the above judgment in the present case, does not help the applicant in any manner.

35. Learned Counsel for the Appellant has relied on Judgment of the Hon'ble Supreme Court in Civil Appeal No. 5909 of 2021 "*Acharya Tejendraprasadji Devendraprasadji* v. *The Charity Commissioner*". In the above case, against a decree passed by City Civil Court framing scheme for administration of the temple, appeals were filed in the High Court. Applications were filed by the Appellants to withdraw the Appeals which were dismissed by the High Court. Withdrawal was opposed by the intervener and order of the High Court was challenged before the Hon'ble Supreme Court. SLP were withdrawn setting aside the Judgment of the High Court. When the Appeal again was listed before the Gujarat High Court, High Court refused to terminate the proceedings on the basis of withdrawal as prayed by the Appellant. Against the subsequent order dated 05.03.2015 of the High Court, Appeals were filed. The view of the High Court that Appeals can not be terminated permitting the withdrawal of the Appeals since rights of 3rd

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parties have also been involved, was not approved. Paragraph 12-13, following was held:

> *"12. It is against the aforesaid order dated 05.03.2015 of the High Court refusing to terminate the proceedings on the basis of the withdrawal of the first appeals, that the appellant have come up with the above appeals.*
>
> *13. The view taken by the High Court in its order dated 05.03.2015 is that the proceedings in the appeals can not be terminated merely because of the withdrawal of the appeals by the appellants, since the rights of 3rd parties are also involved. But such a view may not be correct due to the following reasons:*
>
> *(i) This Court, by its order dated 22.11.2013, which we have extracted above, has permitted in no uncertain terms, the withdrawal of the appeals. Thereafter it is not open to the High Court to proceed with the hearing of the appeals.*
>
> *(ii) The procedure sought to be adopted by the High Court, namely to hear the appeals in the interest of third parties, despite the appellants seeking to withdraw them, is possible only in two circumstances namely (a) when there are cross objection, which can independently proceed in terms of Order XLI Rule 22(4) CPC; or (b) when a transposition takes place in terms of Order XXIII Rule 1A CPC. In this case, there were no cross objections and hence Order XLI Rule 22(4) has no application. There was also no transposition and hence 3rd parties cannot seek to continue the appeals;*
>
> *(iii) Proceedings for the framing of a Scheme for the administration of a Trust are no doubt proceedings in rem. Therefore, up to the stage of passing of the final decree approving a Scheme, even 3rd Parties are entitled to intervene and object to the whole or part of the Scheme. But once the final decree approving the Scheme is passed, any person objecting to the final decree should independently file an appeal and cannot ride piggyback on the appellants' shoulders. If they choose to do so they have to fall once the appellants withdraw the appeals;*
>
> *(iv). In any case it was the appellants before the High Court who have given an undertaking to this Court at the time of hearing of SLP© No. 27929 of 2012 that they shall not move the Charity Commissioner for modification or variation of the Scheme. Such an undertaking is not binding on third parties. Therefore, it is not as though the rights of 3rd party intervenors are completely obliterated. They always have their own remedies in Law and they cannot insist upon their grievance*

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being addressed to in the appeals filed by the appellants herein."

36. Hon'ble Supreme Court in the above case has observed that any person objecting the final decree had to independently file an Appeal. In the present case, Order dated 08.10.2021 has not been challenged by the SREI Equipment Finance Ltd. who has sought intervention. The judgment of the Hon'ble Supreme Court relied on by the Appellant do support the contention of the Appellant. Hon'ble Supreme Court has held that 3rd parties including interveners have their own remedies in law and they cannot insist upon their grievance being addressed in the appeals filed by the Appellants herein.

37. We also refer to one Judgment of the High Court of Madhya Pradesh reported in 2014 SCC OnLine MP 2103 "*Jeevan Singh Chhatwal* v. *Bank of Baroda*" MP High Court has also observed that intervener could not claim any relief for himself in paragraph 5 of the Judgment where following has been held:

"5. The applicant herein admittedly was an intervenor in MA. No. 1153/1999 and they were claiming their right to the property by virtue of the auction held in their favour at the instance of Sales Tax Department as already indicated hereinabove. An intervenor cannot claim any relief or decree for himself in the capacity of an intervenor in the appeal under Order 21 Rule 58 CPC, that being the legal position. It is clear that in M.A. No. 1153/1999, the applicant as an intervenor could not claim any relief for himself, accordingly, even if this application is allowed and the appeal proceedings under Order 21 Rule 58 are restored the intervenor cannot get any benefit as he cannot claim any relief for himself. Hat being so no useful purpose would be served in considering the question of review at the instance of the applicant an intervenor for the reasons as are indicated hereinabove."

38. In view of the fore-going discussions, we are of the considered opinion that at the instance of intervener, the order passed by the Adjudicating Authority dated 08.10.2021 cannot be set aside. We although have permitted the applicant to intervene in the Appeal but are unable to grant any relief to intervention as prayed in the Application. We are thus of the view that prayer of the appellant-Indiabulls Housing Finance Ltd. to withdraw the Appeal is to be allowed and the Appeal is to be dismissed as withdrawn.

39. Company Appeal (AT) Ins. No. 880 of 2021 is thus dismissed as withdrawn and I.A. No. 2623 of 2021 is rejected.

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† Principal Bench at New Delhi

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‡ Arising out of Order dated 08.10.2021 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Court No. -1) in I.A. No. 1921 of 2021 in CP(IB) No. 494/MB/2019

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