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2023 SCC OnLine NCLAT 2226

In the National Company Law Appellate Tribunal[†]

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

Company Appeal (AT) (Insolvency) No. 1114-1115 of 2023

Tulip Star Hotels Ltd. Through its Authorised Representative and Another ... Appellants;

Versus

Anish Niranjan Nanavaty and Another ... Respondents.

With

Contempt Case (AT) No. 21 of 2023 in Company Appeal (AT) (Ins.) No. 1546 of 2022

Tulip Star Hotels Ltd. Through its Authorised Representative ... Applicant;

Versus

Anish Niranjan Nanavaty ... Respondents/Contemnors.

With

I.A. No. 3022 of 2023 in Company Appeal (AT) (Ins.) No. 1546 of 2022

Tulip Star Hotels Ltd. Through its Authorised Representative ... Applicant;

Versus

Anish Niranjan Nanavaty ... Respondent.

Company Appeal (AT) (Insolvency) No. 1114-1115 of 2023[†], Contempt Case (AT) No. 21 of 2023, Company Appeal (AT) (Ins.) No. 1546 of 2022[†], I.A. No. 3022 of 2023 and Company Appeal (AT) (Ins.) No. 1546 of 2022[†]

Decided on November 21, 2023

Advocates who appeared in this case:

Mr. Virender Ganda, Sr. Advocate with Mr. Raghav Anand, Mr. Ayandeb Mitra, Mr. S.J. Khera, Mr. Rahul Narula, Advocates for Appellant;

Mr. Arun Kathpalia, Sr. Advocate with Mr. Abhishek Swaroop, Mr. Aditya V. Singh, Ms. Shreya Chandhok, Mr. Aditya Dhupar, Advocates for R-1.

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Mr. Ramji Srinivasan, Sr. Advocate with Ms. Ruby Singh Ahuja, Ms. Aakriti Vohra, Ms. Megha Dugar, Advocates for R-2 for Respondents.

Mr. Virender Ganda, Sr. Advocate with Mr. Raghav Anand, Mr. Ayandeb Mitra, Mr. S.J. Khera, Mr. Rahul Narula, Advocates for Appellant;

Mr. Ramji Srinivasan, Sr. Advocate with Ms. Ruby Singh Ahuja, Ms. Aakriti Vohra, Ms. Megha Dugar, Mr. Areez Gazdar, Mr. Kartik, Ms. Namarata Saraogi, Advocates for R-2

Mr. Arun Kathpalia, Sr. Advocate with Mr. Abhishek Swaroop, Mr. Aditya V. Singh, Ms. Shreya Chandhok, Mr. Aditya Dhupar, Advocates for R-1 for Respondents.

Mr. Virender Ganda, Sr. Advocate with Mr. Raghav Anand, Mr. Ayandeb Mitra, Mr. S.J. Khera, Mr. Rahul Narula, Advocates for Appellant;

Mr. Arun Kathpalia, Sr. Advocate with Mr. Abhishek Swaroop, Mr. Aditya V. Singh, Ms. Shreya Chandhok, Mr. Aditya Dhupar, Advocates for R-1 for Respondents.

The Judgment of the Court was delivered by

ASHOK BHUSHAN, CHAIRPERSON:— The Company Appeal (AT) (Ins.) No. 1114-1115 of 2023 had been filed by the Appellant challenging the order dated 21.07.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-2 in MA No. 2886 of 2019 and I.A. No. 3114 of 2022 in CP (IB) No. 532 of 2018 by which order the Adjudicating Authority has allowed MA No. 2886 of 2019 and dismissed I.A. No. 3114 of 2022.

2. I.A. No. 3022 of 2023 has been filed in Company Appeal (AT) (Ins.) No. 1546 of 2022 which Company Appeal was disposed of by judgment and order of this Tribunal dated 22.02.2023. I.A. No. 3022 of 2023 has been filed praying for certain directions. In I.A. No. 3022 of 2023, this Tribunal passed an order on 20.07.2023 issuing notice in the application and directing the Adjudicating Authority to not consider approval of Resolution Plan till next date.

3. Contempt Case (AT) No. 21 of 2023 has been filed by the Appellant praying for initiating contempt proceedings against the Resolution Professional and various Directors and other persons of Asset Reconstruction Company (India) Ltd. alleging wilful disobedience of order dated 20.07.2023 passed by this Tribunal in I.A. No. 3022 of 2023 in Company Appeal (AT) (Ins.) No. 1546 of 2022. In the Contempt Application notices have not been issued and it has been listed along with the Company Appeal (AT) (Ins.) No. 1114-1115 of 2023 and heard together on 30.10.2023.

4. Brief facts necessary to be noticed for deciding Company Appeal (AT) (Ins.) No. 1114-1115 of 2023 as well as I.A. No. 3022 of 2023 in

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Company Appeal (AT) (Ins.) No. 1546 of 2022 and Contempt Case (AT) No. 21 of 2023 are as follows:

i. The Corporate Debtor V. Hotels ltd. entered into Term Loan Agreement on 08.03.2002 with Consortium of lenders consisting of Bank of India, Punjab National Bank, Union Bank of India, Vijaya Bank, Indian Bank and Canara Bank for availing a facility of sum aggregating to INR 129 Crores. The Consortium of Bank agreed on a uniform interest @13.50% at quarterly rest and subsequently converted to monthly rest from 01.04.2003 and interest rate was revised to 12.85% p.a. at monthly rest.

ii. OA No. 114 of 2005 was filed by the Vijaya Bank before Debts Recovery Tribunal (DRT) where interest was claimed @12.85% + 2% as penal interest.

iii. In 2009-10, Bank of India, Punjab National Bank and Union Bank of India and Vijaya Bank assigned their debt in favour of Asset Reconstruction Company (India) Ltd. (ARCIL).

iv. The Corporate Debtor on 10.02.2011 submitted proposal for settlement of Term Loan dues assigned to ARCIL under the SARFAESI Act, 2002. The letter contained offer for settlement of outstanding dues of Bank of India, Punjab National Bank, Union Bank of India and Vijaya Bank for an amount of Rs. 150,75,83,970/-. The Corporate Debtor also offered to pay an interest @22% p.a. at monthly rest w.e.f. 01.07.2010 upto 30.09.2011 as a measure of settlement.

v. In pursuance of letter dated 10.02.2011, ARCIL issued a letter dated 28.02.2011 regarding settlement of dues (Sanction Letter). As per the Sanction Letter, the Corporate Debtor was to pay Rs. 150,75,83,970/- along with accrued interest @ 22% p.a. with compounding at monthly rest from 10.07.2010. As per the terms of settlement Rs. 10 Crore was to be made upfront payment and rest of the amount was to be paid till 31.09.2011.

vi. On 29.09.2011, a Modification Agreement was executed between the Corporate Debtor and all other Banks separately where the Corporate Debtor agreed to make payment in two instalments of Rs. 10 Crore on acceptance of Sanction Letter dated 28.02.2011 and balance amount upto 30.09.2011 and in event of default the original liabilities were to stand reinstated with revised rate of interest @22% p.a. compounded with monthly rests from 01.07.2010.

vii. The Corporate Debtor having committed default in complying to the settlement terms, the ARCIL by its letter dated 17.06.2013 revoked the sanctioned settlement agreement. Revocation letter stated that all the monies paid pursuant to the Sanction letters stands forfeited and adjusted towards the total outstanding dues

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of the Corporate Debtor.

viii. After revocation, the ARCIL issued notice under Section 13(2) of the SARFAESI Act to the Corporate Debtor claming aggregate amount of Rs. 235,46,34,381/- together with further interest @22% p.a. compounded at monthly rest. ARCIL filed proceeding under Section 14 of the SARFAESI Act, where Chief Metropolitan Magistrate passed an order dated 03.01.2014.

ix. Aggrieved by the order dated 03.01.2014, the Corporate Debtor filed Securitization Application No. 02 of 2014 before the DRT under Section 17 of the SARFAESI Act, which was dismissed on 23.03.2016. Against dismissal of the Securitization Application, Appeal No. 104 of 2016 was filed by the Appellant before the DRAT. The DRAT dismissed the appeal for failure to make deposit.

x. The Corporate Debtor filed Writ Petition against DRAT order, where the High Court directed the Corporate Debtor to deposit Rs. 30 Crores with Registrar DRT.

xi. An Original Application OA No. 114 of 2005 was filed by the lenders before the DRT where ARCIL was impleaded as Applicant No. 2. ARCIL filed an Amendment application in the OA seeking amendment in the rate of interest as 22% which application was dismissed by the DRT by order dated 23.02.2016. ARCIL challenged the order before the DRAT, which also dismissed the appeal. ARCIL challenged DRAT order before the High Court. The High Court vide judgment dated 19.10.2018 upheld the order of DRAT and rejected the appeal of ARCIL for amendment of rate of interest @22%.

xii. A SLP (C) No. 3175 of 2018 was filed by the ARCIL against order dated 19.10.2018 which petition was dismissed by the Hon'ble Supreme Court by order dated 03.01.2019. The Hon'ble Supreme Court, however, observed that Tribunal shall, if it considers appropriate having regard to the circumstances of the case, decide on the appropriate rate of interest after hearing both sides.

xiii. On 03.04.2018, ARCIL filed Company Petition No. 532 (IB) of 2018 under Section 7 of the I&B Code which application was admitted by the NCLT vide order dated 31.05.2019. By order dated 31.05.2019, the Adjudicating Authority, observed that it shall decide question of rate of interest whether 22% or 14.85% after filing of complete information by the Resolution Professional.

xiv. An MA No. 2886 of 2019 was filed by the Resolution Professional before the Adjudicating Authority requesting determination of rate of interest applicable to the Corporate Debtor. The Resolution Professional filed an Additional Affidavit before the Adjudicating Authority opining that rate of interest has to be 22% p.a.

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xv. Against order of Adjudicating Authority dated 31.05.2019 appeal was allowed by this Tribunal by order dated 11.12.2019 setting aside the admission order. ARCIL filed Civil Appeal No. 84-85 of 2020 before the Hon'ble Supreme Court challenging the NCLAT order. The Hon'ble Supreme Court by order dated 01.08.2022 set aside the NCLAT order and upheld the admission order on account of debt and default.

xvi. The Appellant - Shareholder and Promoter of the Corporate Debtor filed an I.A. No. 3114 of 2022 before the NCLT seeking the stay of CIRP until rate of interest is determined.

xvii. On 08.12.2022, NCLT allowed I.A. No. 3727 of 2022 filed by the Resolution Professional to take on record the updated list of creditors as on 11.12.2022.

xviii. Against the order dated 08.12.2022, Company Appeal (AT) (Ins) No. 1546 of 2022 was filed by the Appellant, which appeal came to be disposed of by this Tribunal by order dated 02.02.2023. In Para 11 of the order of this Tribunal dated 02.02.2023 following was held:

> *"11. We are of the view that the Adjudicating Authority should determine the rate of interest as per its order dated 31.05.2019 before any Resolution Plan reaches at the stage of approval. Determination of rate of interest having bearing on the total claims of the Financial Creditors, the Adjudicating Authority should make a decision regarding the above before any Resolution Plan is approved. The order impugned dated 08.12.2022 is not interfered with, but the said order shall be subject to any order passed by the Adjudicating Authority as indicated above. We dispose of the Appeal accordingly."*

xix. Subsequent to order 02.02.2023, the Adjudicating Authority proceeded to hear application MA No. 2886 of 2019 and I.A. No. 3114 of 2022 and reserved the order on 14.03.2023. The order was not pronounced by the Adjudicating Authority, in the meantime, the CoC proceeded to hold meeting on 29.05.2023, 07.06.2023 and 19.06.2023 and the CoC proceeded to vote on the Resolution Plan. The Appellant filed an I.A. No. 3022 of 2023 before this Tribunal in disposed of Company Appeal No. 1546 of 2022, where following prayer were made:

"PRAYER

In view of the aforementioned facts and circumstances, it is most humbly prayed that this Hon'ble Tribunal may be pleased to:

a) Pass an order(s) directing the quashing/setting aside/recalling of all actions, steps and proceedings

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undertaken by the Resolution Professional and COC in blatant breach, contravention and willful breach of the judgment dated 02.02.2023, inter alia, such as those being:

i. The relevant agendas, decisions, resolutions resolved by the COC in its 25 meeting dated 29.05.2023, which pertain to proceeding with consideration/deliberations of resolution plans, voting upon them, approving resolution plans in terms of Section 30(4) of the Code and issuing letters of intent to the resolution applicants.

ii. The relevant agendas, decisions, resolutions resolved by the COC in its 26th meeting dated 07.06.2023, which pertain to proceeding with consideration/deliberations of resolution plans, voting upon them, approving resolution plans in terms of Section 30(4) of the Code and issuing letters of intent to the resolution applicants.

iii. The relevant agendas, decisions, resolutions resolved by the COC in its 27th meeting dated 19.06.2023, which pertain to proceeding with consideration/deliberations of resolution plans, voting upon them, approving resolution plans in terms of Section 30(4) of the Code and issuing letters of intent to the resolution applicants.

iv. The voting upon the approved plans and choosing of the successful resolution applicant 'Macrotech Developers Limited' by the COC.

v. The letter of intent dated 22.06.2023 issued by the Resolution Professional upon the successful resolution applicant. The acceptance of the said offer by the successful resolution applicant and the deposit of the performance security by the successful resolution professional.

vi. The report that would have been filed by the Resolution Professional before the Hon'ble NCLT, in the subject insolvency proceedings intimating regarding the successful resolution applicant.

vii. The Application, filed by the Resolution Professional before the Hon'ble NCLT, Mumbai in the subject insolvency proceedings seeking approval of the Resolution Plan of the successful resolution applicant in terms of Section 31 of the Code.

b) Restrain the RP and the COC from proceeding further in CIRP.

c) Ad-interim and Interim Reliefs in terms of prayer clause (a) and (b) above;

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d) Cost and professional costs be provided for;

e) Pass any or such other Order(s) as this Hon'ble Tribunal may deem fit and appropriate in the facts and circumstances of the case."

xx. In the I.A. No. 3022 of 2023 following order was passed on 20.07.2023:

"ORDER

20.07.2023 : I.A. No. 3022 of 2023: This I.A. has been filed by the Appellants relying on order passed by this Tribunal on 02.02.2023. In order dated 02.02.2023, Para 11 of the order proceeds as follows:"11. We are of the view that the Adjudicating Authority should determine the rate of interest as per its order dated 31.05.2019 before any Resolution Plan reaches at the stage of approval. Determination of rate of interest having bearing on the total claims of the Financial Creditors, the Adjudicating Authority should make a decision regarding the above before any Resolution Plan is approved. The order impugned dated 08.12.2022 is not interfered with, but the said order shall be subject to any order passed by the Adjudicating Authority as indicated above. We dispose of the Appeal accordingly."

Learned counsel for the Appellant submits that the applications which were directed to be decided by the Adjudicating Authority have not yet been decided and order has been reserved on 14.03.2023. However, the CoC proceeded to approve the Resolution Plan and the application is pending before the Adjudicating Authority for approval of the plan.

Issue notice. Respondent may file reply within two weeks. Rejoinder within two weeks thereafter.

In the meantime, we direct the Adjudicating Authority not to proceed to consider approval of resolution plan, till the next date.

We make it clear that this order shall not be read to mean that the Adjudicating Authority may not proceed in the orders which have already been reserved.

List this application on 24.08.2023."

xxi. Meanwhile, Contempt Case (AT) No. 21 of 2023 was filed by the Appellant on 10.07.2023 praying for initiating contempt proceedings for violation of the order dated 02.02.2023.

xxii. After order dated 20.07.2023, the Adjudicating Authority on 21.07.2023 delivered order in MA No. 2886 of 2019 and I.A. No. 3114 of 2022. The Adjudicating Authority by the impugned order decided the rate of interest @ 22% p.a. MA No. 2886 of 2019 filed

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by the Resolution Professional for determination of rate of interest was allowed and I.A. No. 3114 of 2022 filed by the Appellant was rejected. Appellant aggrieved by the order dated 21.07.2023 has filed Company Appeal (AT) (Ins.) No. 1114-1115 of 2023.

5. We have heard Shri Virender Ganda, learned senior counsel appearing for the Appellant, Shri Arun Kathplaia, learned senior counsel has appeared on behalf of the Resolution Professional. Shri Ramji Srinivasan, learned senior counsel has appeared for ARCIL (Financial Creditor).

6. Shri Virender Ganda, learned senior counsel for the Appellant submits that order passed by the Adjudicating Authority dated 21.07.2023 determining the rate of interest as 22% p.a. is wholly erroneous and against the settled issues pertaining to determination of rate of interest by the DRAT as well has the Bombay High Court. It is submitted that the DRAT in its order dated 17.05.2016 in Appeal No. 104 of 2016 has held that interest could not be charged @22% p.a. at monthly rest from 01.07.2010 to 30.06.2013 since the ARCIL has by letter dated 17.06.2013 has revoked the settlement. It is submitted that order passed by DRAT directed Corporate Debtor to deposit 25% of the amount so calculated. It is further submitted by Shri Ganda that in the OA filed before the DRT rate of interest was 14.85% and application was filed for amendment of rate of interest to 22% which was rejected by DRT as well as by DRAT, against which ARCIL has filed Writ Petition No. 904 of 2018 which too was dismissed by the Hon'ble Bombay High Court by order dated 19.10.2018. The High Court in its judgment has clearly held that the ARCIL has revoked the settlement dated 28.02.2011 by letter dated 17.06.2013, there is no question of enforcement of rate of interest @22% by carrying out amendment in Original Application. It is submitted that having the aforesaid observation made issue of rate of interest which was claimed by the ACRIL from 01.07.2010 to 30.06.2013 stood determined and the Adjudicating Authority in the impugned order without adverting to the consequence and impact of the order of the DRAT and Hon'ble High Court has effected the rate of interest @22% which is erroneous and unsustainable. Shri Ganda further submitted that the Resolution Professional has not conducted the CIRP proceedings in accordance with law. The Resolution Professional has himself filed an application before the Adjudicating Authority being MA No. 2886 of 2019 seeking direction to determine the rate of interest which application was never pressed by the Resolution Professional and Resolution Professional collated and verified claim of ARCIL @22% interest rate and inflated the claim of ARCIL without determination. The Resolution Professional proceeded to admit claim without determination of rate of interest which was essential for determining the claim of ARCIL which was filed

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in the CIRP of the Corporate Debtor. The Resolution Professional has unduly helped the Financial Creditor by not pressing for determination of rate of interest by the Adjudicating Authority. The Resolution Professional has also wrongly reflected the rate of interest as 22% in the Balance Sheet prepared whereas rate of interest was only 14.85%. It is submitted that the Adjudicating Authority itself by its order dated 31.05.2019 has directed that rate of interest shall be determined by the Adjudicating Authority which order was not complied and before aforesaid determination the CIRP was wrongly proceeded by the Resolution Professional. It is submitted that the order dated 21.07.2023 determining the rate of interest @22% is unfair and unreasonable had at relevant time rate of interest would have been determined, Appellant would have been in condition to settle the outstanding dues. It is submitted that the Resolution Professional was also obliged to determine correct amount of debt after adjusting the amounts already paid by the Corporate Debtor which was also not done. It is submitted that the Resolution Professional has withdrawn the Appeal which was filed before the DRAT being Appeal No. 104 of 2016, which was filed by the Corporate Debtor on 28.10.2022 along with amount deposited and accumulated interest to the extent of Rs. 51,03,39,938/-. It is submitted that the Resolution Professional has misconducted itself in not proceeding in the CIRP after first determining the rate of interest. Shri Ganda further submitted that occasion to charge interest @22% does not arise since the settlement dated 28.02.2011 which is basis of 22% interest was revoked by ARCIL by letter dated 17.06.2013 and after revocation of Settlement Agreement, ARCIL cannot charge 22% interest on the dues of the Corporate Debtor. When the Settlement Agreement dated 28.02.2011 is revoked, the Modification Agreement dated 29.09.2011 also loses its importance.

7. Shri Arun Kathpalia, learned senior counsel for the Resolution Professional submits that the order dated 17.05.2016 of the DRAT was in context of pre-deposit and the said order cannot be read as determination of rate of interest. Pre-deposit was not made by the Corporate Debtor and appeal was dismissed on 05.04.2017. In order of the High Court dated 25.04.2017 clarification was made by the High Court that all contentions of both the parties are left open. Further, the Hon'ble Supreme Court vide its order dated 03.01.2019 has kept the determination of rate of interest at large. Hence, neither the order of DRAT nor Bombay High Court, on which reliance has been placed by the Appellant, finally determine the rate of interest. The issue pertaining to the rate of interest having never been decided there is no question of pressing principle of res-judicata. The Adjudicating Authority by the impugned order dated 21.07.2023 has rightly came to the conclusion

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that rate of interest is 22%. The Settlement dated 28.02.2011 was entered on the offer made by the Appellant himself who offered to pay 22% rate of interest with effect from 01.07.2010. The Corporate Debtor has taken benefit of agreement dated 28.02.2011, he cannot deny the liability to pay interest @22%. Having taken benefit of the Settlement, the Corporate Debtor cannot approbate and reprobate. Under the Settlement extension was granted by ARCIL to the Corporate Debtor for about two years. The Modification Agreement dated 29.09.2011 clearly contemplate that in event of default the Corporate Debtor shall be liable to pay rate of interest @22% w.e.f. 01.07.2010. The Adjudicating Authority has rightly determined the rate of interest by order dated 21.07.2023. Shri Kathpalia has submitted that the Resolution Plan itself contemplates determination of the claim of ARCIL both on the basis of rate of interest of 14.85% and 22%. Hence, whatsoever rate of interest is finally determined in the proceedings that can be given effect to in the Resolution Plan.

8. Shri Ramji Srinivasan, learned senior counsel appearing for the ARCIL contended that the Corporate Debtor having committed to pay interest @22% from 01.07.2010, he cannot now turn round. He has referred to Clause 8 of the Modification Agreement dated 29.09.2011. The Corporate Debtor always agreed to pay interest @22% p.a. compounded at monthly rest. OA No. 114 of 2005 filed by original lender in which Amendment Application was filed by the ARCIL in the year 2016 seeking rate of interest of 22%, which was rejected. The order refusing amendment was upheld by DRAT and High Court, the consequence that the amendment was never allowed, cannot lead to the conclusion that rate of interest of 22% was decided in the said proceedings. Coming to the order of High Court dated 19.10.2018, Shri Ramji Srinivasan has referred to order of Hon'ble Supreme Court dated 03.01.2019 that the question of determination of rate of interest was left open to be decided by the Adjudicating Authority. Hence, final determination by DRAT was also not there. The Resolution Professional has already filed an application for determination of rate of interest being MA No. 2886 of 2019. Resolution Plan was approved by the CoC on 22.06.2023 and the application has already been filed for approval of Resolution Plan before the Adjudicating Authority. Any order passed by this Tribunal in Company Appeal (AT) (Ins.) No. 1114-1115 of 2023 has to be given effect to.

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

10. The Adjudicating Authority while admitting Section 7 application filed by the ARCIL, in Para 40 has already observed that whether 22% can be treated as rate of interest or charging 14.85%, it shall be decided by the Bench on filing complete information by the Resolution

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Professional. Para 40 of the order has already been noticed and extracted by this Tribunal in its order dated 02.02.2023. The Adjudicating Authority has now determined the rate of interest by the impugned order dated 21.07.2023 holding the rate of interest as 22%. The main question thus which need to be considered is whether the rate of interest applicable for determining the claim of the ARCIL in CIRP proceeding is 22% or the rate of interest has to be 14.85%. We, at this stage, may recapitulate the Settlement Agreement dated 28.02.2011, the Modification Agreement dated 29.09.2011 and Revocation Letter dated 17.06.2013.

11. The letter dated 28.02.2011 which was on Settlement of dues (Sanction Letter), provides as follows:

"BG3/70/7Y13/13979 February 28, 2011 V Hotels Ltd
Chandar Mukhi
Narimen Point
Mumbai-400 021
Kind Attn : Mr. A.S. Ananthraman, CFO
Dear Sir,
Re : Settlement of dues (Sanction Letter)

We, Asset Reconstruction Company (India) Limited, in our capacity as trustees of Arcil-V Hotels Ltd-Trust, Arcil-V Hotels Limited-II Trust, Arcil-V Hotels Limited-III Trust and Arcil-V Hotels Limited-IV Trust (collectively referred to as Arcil) refer to your letter dated February 10, 2011 for settlement of dues and the subsequent discussions you had from time to time, with us in this regard. We now write to inform you that having considered your request, we are agreeable for settlement of dues of V Hotels Limited (hereinafter referred to as 'the Borrower') acquired by Arcil from Bank of India (BOI), Punjab National Bank (PNB), Union Bank of India (UBI) and Vijaya Bank (hereinafter collectively referred to as 'Lender') as set out in the Annexure hereto and subject to the, terms and conditions set out therein, which is deemed to be part of this Sanction Letter

Kindly note that in the event of default of any of the terms and conditions given in the Annexure, Arcil reserves the right to cancel, reduce, suspend or modify any or the entire aforesaid settlement of dues and/or vary the terms and conditions thereof. The other terms and conditions of the diverse original loan agreements executed by the Borrower with the Lender shall without limitation apply mutatis mutandis hereto save and except the rate of Interest which shall be applicable at the rate of 22% p.a. with compounding at monthly rests from July 01, 2010 with the revised repayment schedule as if the same are reproduced herein in extension.

This letter is being issued to you in duplicate. Kindly have the

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duplicate copy of the letter signed by any of the Directors duly authorized in that behalf supported by relevant resolutions passed by the Board of Directors of the Borrower and Guarantors in this regard including the change in rate of interest and revised repayment schedule. Thereafter, you should retain the original and return the duplicate copy of this letter to Arcil.

Please note the aforesaid approval for sentiment will be effective only upon Borrower providing/entering into appropriate agreements with Arcil, as required and compliance of this Sanction Letter,

Yours faithfully,

Agreed and Accepted For V. Hotels Limited

Satish Kumar Gupta A.S. Anantharaman

Senior Vice President Chief Financial Officer

& Group Head

Guarantors:

1.

2.

3."

12. Terms and conditions of settlement were incorporated in Annexure to letter dated 28.02.2011. Para 1.1 and 1.2 of Annexure is as follows:

"1.1) Conditions Precedent : The Settlement shall be subject to fulfilment of the conditions precedent being:

a) Confirm and undertake to pay Rs. 150,75,83,970/- along with accrued Interest at the rate of 22% pa. with compounding at monthly rests from July 01, 2010 till September 30, 2011 under this Settlement Terms as per Schedule I;

b) Pay Rs. 10 crore-upfront payment to be paid upon issuance of this latter (the upfront payment will be adjusted against the Settlement amount as mentioned in clause 1.1(a) above); and

c) VHL/Promoters/Guarantors shall execute and submit the Board resolutions of the Barrower and Guarantor(s) to give effect to the Settlement Terms herein, to the satisfaction of Arcil/Arcil Trust.

1.2) Effective Date : The settlement shall be effective upon receipt of the entire amount as per the Schedule I and will be subject to the terms and conditions contained herein.

It is verified that failure of the Borrower/Guarantors to comply with the conditions precedent shall entitle Arcil to forfeit all moneys paid till then, if any towards the outstanding dues of the Borrower

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and shall be entitled to recover its contractual dues and all original liabilities stand reinstated and the Borrower/Guarantor will be also liable to pay revised Interest at the rate of 22% p.a. with compounding at monthly rests from July 01, 2010 and as applicable from time to time, till receipt of entire settlement amount as aforesaid by Arcil without further notice."

13. A modification of agreement was entered on 29.09.2011 between the Corporate Debtor and the lenders. The Modification Agreement at Clause 3 records the terms and conditions for payment as contained in Settlement Agreement dated 28.02.2011. Clause 8 on which the Respondent has placed much reliance provides as follows:

"8. In the event of default, all the original liabilities shall stand reinstated and the terms and conditions of loan agreements and other financing documents together with revised rate of interest of @ 22% per annum compounded with monthly rests from July 01, 2010 shall be reinstated and shall continue to remain in full force and effect and Arcil shall be at liberty to take any action for recovery of its dues under any other law or contract."

14. Now, we may also look into Revocation Letter dated 17.06.2013. The Revocation Letter dated 17.06.2013 provides as follows:

"BG/VN/FY14/1062 June 17, 2013

V Hotels Ltd

Chandar Mukhi

Narimen Point

Mumbai-400 021

Kind Attn : Mr. A.S. Ananthraman, CFO

Dear Sir,

Re : Revocation of sanctioned settlement

We refer to our sanction letter No. BG3/PQ/FY 11/13979 dated February 28, 2011 and subsequent extensions letters BGIII/VN/FY12/8835A dated December 30, 2011, BGIII/VN/FY13/4051 dated August 6, 2012 and BGIII/VN/FY14/891 dated May 29, 2013, (hereinafter collectively referred to as the "Sanction Letters") for settlement of dues of V Hotelss Limited (VHL) acquired by Arcil in its capacity as trustees of Arcil-V Hotels Ltd. Trust, Arcil-V Hotels Limited-II Trust, Arcil-V Hotels Limited-III Trust and Arcil-V Hotels Limited-IV Trust, from Bank of Indla, Punjab National Bank, Union Bank of India, Vijaya Bank respectively.

As per the terms and conditions of the Sanction Letters, VHL was required to make payments of settlement amount as stipulated in the last extension letter dated May 29, 2013 to Arcil. However, VHL failed to make payment of Rs. 17.50 crore due on April 30, 2013 despite reminder letter BGIII/VN/FY14/636 dated May 10, 2013 and

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also defaulted in payment of Rs. 17.50 crore due on May 31, 2013.

VHL has defaulted in making payments of settlement amount in accordance with the terms and conditions stipulated in the Sanction Letters, Arcil hereby revokes the sanctioned settlement. All the monies paid till date pursuant to the Sanction Letters stands forfeited and adjusted against the total outstanding dues of VHL.

Yours faithfully,

Manesh Chakraborty Head Business Group III"

15. After noticing the above relevant documents, we now proceed to look into the order of DRAT and order of Bombay High Court on which much reliance has been placed by Shri Ganda. Shri Ganda submits that the said orders finally determine rate of interest as not being 22%, which order is binding on the ARCIL and the ARCIL cannot make any contention to the contrary. We may first look into the order of DRAT dated 17.05.2016 filed by the Corporate Debtor which order was passed in a Waiver Application under Section 18 of the SARCAESI Act, 2002. While considering amount to be deposited by the Corporate Debtor, the DRAT directed that the computation of interest shall not be 22% from 01.07.2010 since the settlement was already revoked on 17.06.2013. It is useful to quote following observations:

"In the present case, the respondents-Financial Institutions had issued a demand notice dated 10.07.2013 under section 13(2) of the SARFAES! Act, 2002 for a sum or Rs. 2,35,45,34,3817-against the loan taken by the appellant from four Banks as mentioned in the said notice. While calculating this amount, the respondents have charged the Interest 22% per annum with compounding at monthly rests from 1.7.2010 to 30.06.2013. Since the respondents vide letter dated 17.06.2013 revoked the Settlement dated 28.02.2011 between the parties, I deem it just and proper to direct that while calculating the demand amount on 10.07.2013 which according to the respondents comes to Rs. 2,35,46,34,381/-, the interest should be charged 14.85% per annum with monthly rests from 1.7.2010 to 30.06.2013 instead of 22% per annum. It is also directed that after calculating the debt due towards the appellant @ 14.85% per annum with monthly rests for the said period as mentioned, a sum of Rs. 25.00 crores is also to be reduced which has been paid by the appellant on 25.02.2014 after issuance of the demand notice dated 10.07.2013 in pursuance of the order of the Tribunal below.

In view of the law laid down in Narayan Chand-Ghosh *v.* UCO Bank *(supra) and the vision of section 18(1) of the SARFAEST Act, 2002, 1 deem it just and proper to direct that for entertaining the present appeal, the appellant shall deposit 25% of the amount as directed in the preceding paragraph of this order as debt due payable by the appellant within a month from the data of this order,*

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which is a mandatory requirement, in the form of demand draft in the name of the Registrar, DRAT, Mumbai, who shall keep the same in the FDR in the Nationalized Bank for a period of six months in auto renewal scheme so that the same can fetch the prevailing rate of Interest of the Bank.

Heard the learned counsels for the parties in the Interim relief prayed by the appellant.

In the facts and circumstances of the present case and in the interest of justice, I deem it just and proper to direct that the respondents-Financial Institution shall not take any coercive steps against the appellant till the next date.

It is made clear that if the appellant falls to deposit the mandatory pre-deposit amount as directed above within a period of one month from today, the interim order shall stand automatically vacated.

List this case for further hearing 28.06.2016 as jointly prayed."

16. An MA was filed for review/clarification of the order. There was delay in filing the application which was not condoned by the DRAT. Application was filed by the ARCIL that deposit having not been made by the Appellant appeal should be dismissed and the Appeal was dismissed by the DRAT, against which order Writ Petition (L) No. 1046 of 2017 and Writ Petition (L) No. 1100 of 2017 was filed by the Corporate Debtor. In Para 6 and 7 of the order of the High Court following was held:

"6. Having heard both sides on this point, and since the Petition is not being pressed, we direct that the sum of Rs. 34 crores should be deposited in installments and as stipulated by Mr. Chinoy. The 1" installment shall be deposited by 13th May, 2017 in the sum of Rs. 10 crores. Thereafter, every week, a sum of Rs. 2.4 crores should be deposited so as to make up the total of Rs. 34 crores.

7. In the event of default in depositing the sum of Rs. 10 crores as directed above, or any such installment of Rs. 2.4 crores, which is a weekly sum thereafter, would result in the protection granted by this Court coming to an end forthwith. Thereafter, the orders passed by the DRAT on 17 May, 2016 and 11 April, 2017 would both stand and uninterfered with. In the event the amount is deposited by 31 July, 2017, the DRAT shall restore the appeal to its file for hearing on merits and in accordance with law. We clarify that all contentions of both sides, as far as the merits are concerned, are kept open. We clarify that all observations and findings in the earlier orders of the DRAT are tentative and prima facie and shall not prejudice the claim and case of both sides. Needless to clarify that the DRAT then to endeavor to dispose of the appeal as expeditiously as possible and

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within a period of three (03) months after its revival and restoration."

17. When we look into the observation of the High Court contained in Para 7, it is clear that all contentions of both the parties, as far as the merits, were left open and the earlier orders passed by the DRAT were held to be tentative and prima facie. Hence, we find support to the submission of counsel for the Respondent that there is no final determination of the rate of interest in the said proceeding under Section 18 of the SARFAESI Act.

18. Now, we come to the second proceedings on which reliance has been place by Shri Ganda i.e. the proceedings emanating from Application for Amendment filed by ARCIL for amending the rate of interest in the OA, which was filed by the lender. In OA No. 114 of 2005, the application filed by the ARCIL for amending the rate of interest as 22% from 14.85% was rejected by the DRT which order was also affirmed by the DRAT. Writ Petition was filed by ARCIL against the order passed by the DRAT and DRT rejecting the Amendment Application. In the said Writ Petition, the Hon'ble High Court has made observations in Para 22 and 23, which has been relied by learned counsel for the Appellant:

"22. Bare reading of the Application made by the Petitioners for amendment shows that same is based on the sanction letter dated 28.02.2011 by which the Respondents agreed to settle the dues by OTS, wherein they agreed to pay interest @ 22% pa. On the basis of the said sanction letter, the Petitioners as well as the Respondents entered into modification of agreement dated 29.09.2010, Bare reading of the said modification of agreement, shows that the same is based on sanction letter dated 28.02.2011. Clause 3 of the said modification agreement dated 29.09.2011 reads thus:

"3. The borrower expressly agrees and undertakes that outstanding of the Loans acquired by Arcil from Punjab National Bank along with outstanding of the loans acquired by Arcil under various trust Arcil - V. Hotels Ltd. Trust, Arcil-V Hotels Ltd. II Trust, Arcil-V Hotels Ltd. - III Trust and Arcil-V Hotels Ltd. IV Trust from Bank of India, Punjab National Bank, Union Bank of India and Vijaya Bank respectively, are now rescheduled IN TWO INSTALLMENTS AS UNDER in terms of terms of settlement letter dated 28.02.2011, aggregates as under:

a. Rs. 10 Crores on acceptance of sanction letter dated February 28, 2011.

b. On September 30, 2011, the balance amount after adjusting the said Rs. 10 crores from the aggregate amount of Rs. 150.76 crores to be paid along with interest 22% per annum compounded at monthly rests from July 1, 2010."

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23. Once the sanction letter itself is revoked by the Petitioner by their revocation of sanction letter dated 17.06.2013, there is no question of enforcement of the same by carrying out amendment in Original Application. These facts were considered by the authorities below at the time of rejecting the Petitioner's Application for amendment."

19. It is relevant to notice that against the order passed by Hon'ble High Court dated 19.10.2018, SLP (C) No. 3175 of 2018 was filed by the ARCIL, in which the Hon'ble Supreme Court passed following order on 03.01.2019:

"ORDER

We have heard learned Senior Counsel appearing for the parties perused the record.

We see no reason to interfere with the impugned order passed by the High Court except to clarify that the Tribunal shall, if it considers appropriate having regard to the circumstances of the case, decide on the appropriate rate of interest after hearing both sides.

In view of the above, the instant special leave petition is disposed of.

Pending interlocutory applications, if any, stand disposed of."

20. When we look into the observations of the High Court as extracted above, it is clear that the High Court expressed its opinion that Amendment Application which was filed by the ARCIL for 22% interest was based on the Sanction Letter dated 28.02.2011. The High Court observed that when the Sanction Letter was itself revoked on 17.06.2013, there is no question of enforcement of rate of interest of 22% by carrying out amendment in the Original Application. The said observation made by the High Court fully support the submission raised by counsel for the Appellant. We, however, cannot lose sight of the fact that the Hon'ble Supreme Court by order dated 03.01.2019 while dismissing the SLP, clarified that the Tribunal shall, if it considers appropriate having regard to the circumstances of the case, decide on the appropriate rate of interest after hearing both sides. Thus, the determination of rate of interest was left open to the Tribunal after hearing both the sides. In view of the order of the Hon'ble Supreme Court dated 03.01.2019, we are satisfied that order of the High Court dated 19.10.2018 in view of the order of the Hon'ble Supreme Court, cannot be held that issue of interest has become res judicata and finalised. More so, observation of the Hon'ble Supreme Court in order dated 03.01.2019 were with regard to determination of rate of interest by DRAT. We having found that in view of the clarification issued by Hon'ble Supreme Court and the finding of the High Court, the determination of rate of interest was to be done by the DRT and

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obviously the rate of interest can be determined by the NCLT in proceedings under Section 7, more so, when NCLT in order dated 31.05.2019 in Para 40, while admitting the Section 7 application observed that rate of interest is to be determined. We also by our order dated 02.02.2023 had held that the Adjudicating Authority should determine the rate of interest as per its order dated 31.05.2019 before any Resolution Plan reaches stage of approval. Para 11 of the order dated 02.02.2023 as already been extracted above.

21. Now we come to the order impugned dated 21.07.2023 passed by the Adjudicating Authority which is impugned in Company Appeal (AT) (Ins.) No. 114-115 of 2023. The Adjudicating Authority after noticing the submissions of parties has noticed the letter dated 10.02.2011 submitted by the Corporate Debtor, Settlement Agreement as well as Modification Agreement dated 29.09.2011, has made observation with regard to orders passed by DRAT and Hon'ble Bombay High Court and has also noticed the order of Hon'ble Supreme Court dated 03.01.2019. We have already observed that orders passed by the DRAT and Bombay High Court, as noted above, cannot be treated to be any final determination of rate of interest. The order of the Adjudicating Authority rest on the Affidavit of Resolution Professional dated 18.09.2019 as well as Modification Agreement dated 29.09.2011. In Paras 27 and 28 of the judgment of the Adjudicating Authority while noticing the Modification Agreement has made following observation:

"27. Further the Modification Agreement dated 29.09.2011 also stipulated that the Corporate Debtor is required to pay the outstanding amount along with 22% interest. Further it is also observed and noted that the Modification Agreement has not been referred in the revocation letter dated 17.06.2013 nor the Financial Creditor has any point of time cancelled or revoked the Modification Agreement. The relevant clause of the Modification Agreement specifying the rate of interest in the event of default is as under:—

"8. In the event of default, all the original liabilities shall stand reinstated and the terms and conditions of loan agreement and other financing documents together with revised rate of interest of @22% annum compounded with monthly rest from July 01 2010, shall be reinstated and shall continue to remain force……

28. Hence, on the basis of the Modification Agreement, which continues to bind the parties, the Financial Creditor is entitled to the outstanding dues along with the Applicable rate of interest at the rate of 22% p.a. compounding rests monthly. Further the issue in the proceedings pending before the DRT, DRAT, Hon'ble High Court of Bombay and Supreme Court, was with regards to whether or not the Financial Creditor can amend the pleading in the Original Application filed before the DRT. The issue of Settlement Agreement,

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Modification Agreement was not even a fact in issue before the aforesaid Courts. The Hon'ble Supreme Court vide its Order dated 03.01.2019 has also ordered that the rate of interest may be decided by the Tribunal."

22. The reason for the Adjudicating Authority for taking the decision for rate of interest as 22% essentially rest on the letter of the Corporate Debtor dated 10.02.2011, Sanction Letter dated 28.02.2011 and Modification Agreement dated 29.09.2011 as well as the Revocation Letter dated 17.06.2013. We now again revert to the aforesaid letters to find out the true import of the decision of the Adjudicating Authority. There is no dispute that the Corporate Debtor himself submitted the letter dated 10.02.2011 offering to pay 22% interest from 01.07.2010. According to the Corporate Debtor the offered settlement amount was Rs. 150.76 Crore along with rate of interest w.e.f. 01.07.2010. Sanction Letter dated 28.02.2011 accepted the offer of settlement and as per the terms and conditions of the settlement, the Corporate Debtor has confirmed and acknowledged to pay Rs. 150,75,83,970/- along with accrued interest @22% with compounding at monthly rest from 01.07.2010 till 30.09.2011. After Settlement Agreement dated 28.10.2011 extension was granted by ARCIL for payment upto May, 2013. Settlement Agreement has also noticed due amounts payable to respective lenders as on 30.06.2010. What is the consequence of Revocation Letter dated 17.06.2013 on the rate of interest of 22% is the question which has arisen for consideration.

23. In the Revocation Letter dated 17.06.2013, ARCIL said that since the VHL has defaulted in making payments of settlement amount in accordance with the terms and conditions stipulated in the Sanction Letter, ARCIL hereby revokes the sanctioned settlement. All the monies paid till date pursuant to the Sanction Letters stands forfeited and adjusted against the total outstanding dues of VHL. Thus, Sanction Letter dated 28.02.2011, indicates that Corporate Debtor consented to pay interest @22% from 01.07.2010 in lieu of concessions granted by ARCIL. Much reliance has been placed by the Adjudicating Authority on Clause 8 of the Modification Agreement, which is as follows:

"8. In the event of default, all the original liabilities shall stand reinstated and the terms and conditions of loan agreements and other financing documents together with revised rate of interest of @ 22% per annum compounded with monthly rests from July 01, 2010 shall be reinstated and shall continue to remain in full force and effect and Arcil shall be at liberty to take any action for recovery of its dues under any other law or contract."

24. The Modification Agreement dated 29.09.2011 was a modification of Sanction Letter dated 28.02.2011. Modification Agreement Para 3, 4 and 5 states as follows:

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"3. The Borrower expressly agrees and undertakes that outstanding of the Loans acquired by Arcil from Punjab National Bank along with outstanding of the loans acquired by Arcil under various trust Arcii-V. Hotels Ltd. Trust, Arcil-V. Hotels Ltd. 11-Trust, Arcil-V. Hotels Ltd. - III-Trust and Arcil-V. Hotels Ltd. - IV-Trust from Bank of India, Punjab National Union Bank of respectively, are now rescheduled IN TWO INSTALIMENTS Dank, India and Vijaya Bank AS UDNER in terms of terms of settlement letter dated 28.02.2011, aggregates as under:

a. Rs. 10 crores on acceptance of sanction letter dated February 28, 2011.

b. On September 30, 2011, the balance amount after adjusting the said Rs. 10 crores from the aggregate amount of Rs. 150.76 crores to be paid along with interest @ 22% per annum compounded at monthly rests from July 4, 2010.

4. The Borrower has paid Rs. 10 crores and shall arrange and ensure to repay the balance amount after adjusting Rs. 10 crores from the aggregate amount of Rs. 150.76 crores together with the interest @ 22% per annum compounded with monthly rests from July 01, 2010 upto 30th September, 2011 on or before the abovesaid due date i.e. 30th September, 2011 without fail.

5. Notwithstanding anything herein or in the financing documents contained, the Loans shall become forthwith due and payable by the Borrower to Arcil and Arcil will be entitled to enforce its securities upon the happening of any of the following events, namely:—

(a) Installment being unpaid upon due for payment thereof;

(b) Any interest arrears; remaining unpaid and/or in

c) The Borrower's committing any breach or default in the performance or observance of these presents and/or the financing documents or any other term or condition relating to the Loans:

(d) The Borrower's committing insolvency : any set of

(e) Execution or distress being enforced or levied against the whole or any part of the Borrower's property/ies;

(f) The Borrower's going into liquidation:

(g) A Receiver being appointed in respect of the whole or any part of the property/ies of the Borrower:

(h) The Borrower of ceasing, or threatening to cease, to carry on business;

(i) The occurrence of any circumstances which is prejudicial to or impair, imperils or depreciates or is likely to prejudice impair, imperial or depreciate the security given to Bank/Arcil; and

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(j) The occurrence of any event of circumstance which would or is likely to prejudicially or adversely affect in any manner the capacity of the Borrower to repay the Loans.

On the question whether any of the above events has happened, the decision of Arcil shall be conclusive and building on the Borrower."

25. Emphasis has been laid by learned counsel for the Respondent is that what was revoked by the letter dated 17.06.2013 was only Sanction Letter dated 28.02.2011 and Modification Agreement dated 29.09.2011 was not revoked. When the Sanction Letter dated 28.02.2011 which for the first time provided for rate of interest of 22% p.a. with compounding at monthly rest from 01.07.2010 itself was revoked, we fail to see now Modification Agreement dated 29.09.2011 shall be operative. Modification Agreement dated 29.09.2011 is nothing but modification agreement in continuation of the Sanction Letter dated 28.02.2011 and when the original sanction letter itself was revoked, modification of agreement cannot survive. The Hon'ble Bombay High Court has also noted above in its order dated 19.10.2018. The High Court in its order dated 29.10.2018 has held that once the Sanction Letter itself is revoked by ARCIL by their revocation of sanction letter dated 17.06.2013, there is no question of enforcement of the same by carrying out amendment in Original Application.

26. It is further relevant to notice that Revocation Letter dated 17.06.2013 does not confine only to Sanction Letter but refers to extension letters granting extension of time till May 31, 2013 to make deposits. The Modification Agreement dated 29.09.211 was nothing but reiteration of last day of deposit i.e. 30.09.2011 as per Sanction Letter 28.02.2011. When extensions were granted to deposit beyond 30.09.2011, the Modification Agreement was also effected by extensions and when vide Revocation Letter dated 17.06.2013, Sanction Letter dated 28.02.2011 along with extensions were revoked the Modification Agreement dated 29.09.2011 cannot survive to be enforced by ARCIL.

27. We have already held that there is no final determination of the rate of interest and the observations made by the Hon'ble High Court were on the basis of Revocation Letter dated 17.06.2013. The Financial Creditor has sanctioned the settlement of dues on fulfilment of terms as condition precedent as contained in letter dated 28.02.2011 that Rs. 10 Crore was to be made upfront payment and rest of the amount was to be paid till 31.09.2011. The said settlement was granted on the condition that w.e.f. 01.07.2010 rate of interest shall be @22% p.a. When the Settlement Agreement dated 28.02.2011 itself was revoked on 17.06.2013, the offer of the Corporate Debtor to pay interest @22% p.a. from 01.07.2010 cannot be enforced and the Modification

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Agreement dated 29.09.2011 has to be treated as modification in the same Sanction Letter dated 28.02.2011 and Modification Agreement cannot survive independently from Sanction Letter 28.02.2011. Modification Agreement itself has referred to Sanction Letter dated 28.02.2011, where terms and conditions which also have been reiterated in the Modification Agreement were noted.

28. We, thus, are of the view that the Adjudicating Authority has not correctly appreciated the consequence of the Revocation Letter dated 17.06.2013. By Revocation Letter dated 17.06.2013, the Settlement Agreement dated 28.02.2011 which provided for 22% rate of interest from 01.07.2010 came to an end. The Financial Creditor on the one hand revokes the Settlement Agreement and on the other hand wants to enforce 22% rate of interest which was agreed by Sanction Letter dated 28.02.2011. We, thus, are of the view that 22% rate of interest cannot be charged by the Financial Creditor and the determination of rate of interest by the Adjudicating Authority by the impugned order dated 21.07.2023 is erroneous and unsustainable.

29. The determination of the rate of interest was very much contemplated by the Adjudicating Authority in the admission order dated 31.05.2019 itself. Unfortunately, the determination could not take place by the Adjudicating Authority till 21.07.2023 and before that CIRP proceeded too far. The Resolution Professional ought to have taken steps for determination of rate of interest as that has direct nexus with the claim admitted in the CIRP and which are to be taken in the Resolution Plan. Without determination of the rate of interest, the Committee of Creditors proceeded to approve the Resolution Plan and application has been filed before the Adjudicating Authority for approval of Resolution Plan.

30. One more submissions which was advanced by Shree Ganda was that under the order of the Adjudicating Authority dated 31st May, 2019, the debt owed to the Corporate Debtor was also to be determined but the Adjudicating Authority in the Impugned Order has not determined the debt. The debt which was owed to the Corporate Debtor is to be reflected in the aggregate of claims which has been admitted by Resolution Professional in accordance with the Code and the CIRP, Regulations, 2016. The Correct amount of claim of ARCIL was dependent on determination of the rate of interest. The Resolution Professional has admitted the claim on the basis of rate of interest @22%. In view of the decision which we have taken in this Appeal, the rate of interest which can be charged by the ARCIL is only 14.85%. Hence, the entire admitted claim of ARCIL required redetermination with regard to which we are passing appropriate directions in this Appeal.

31. Learned Counsel for the Appellant submitted that the amount

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deposited by the Corporate Debtor from time to time has not been taken into consideration. We may notice that the amount deposited by the Corporate Debtor after Sanction Letter dated 28.02.2011 was forfeited and adjusted against the amount due by virtue of Revocation Letter dated 17.06.2013.

32. One more submission which was made by Mr. Ganda that the Resolution Professional has withdrawn the Appeal which was filed by the Corporate Debtor in which the amount was deposited by the Corporate Debtor which amount was also withdrawn by the Resolution Professional. After withdrawal of the Appeal, the amount which was deposited in Appeal No. 104 of 2016 before the DRAT was amount deposited by the Corporate Debtor which could not be given to ARCIL and was lying in the Court which ultimately was permitted to be withdrawn by the Resolution Professional. Hence, the said amount has to be come into the kitty of the Corporate Debtor. We are, thus, of the view that redetermination of claim of ARCIL as directed by this order shall also lead to determination of the correct amount of debt which was owed by the Corporate Debtor. It goes without saying that entitlement of ARCIL as per the Resolution Plan has to be in accordance with its admitted debt which factor need to be noted by the Resolution Applicant and to be included in the Addendum as hereinafter directed by this order.

33. In the facts of the present case, we are of the view that the Resolution Professional may re-verify the claim of the ARCIL as per the rate of interest of 14.85% within two weeks and submit it before the CoC as well as to the Successful Resolution Applicant who shall prepare an Addendum to be placed before the CoC within a period of two weeks thereafter. The Resolution Professional should compute the claim of the ARCIL on the basis of rate of interest as indicated above. The Addendum after approval, if any, be placed before the Adjudicating Authority to be considered along with the application for approval of the Resolution Plan. The Resolution Plan which has been submitted before the Adjudicating Authority for approval shall be considered along with the Addendum as directed above. The Resolution Professional as well as CoC to complete the process, as indicated above, within a period of 60 days from today. Extension in CIRP process is granted for further 60 days from today to complete the process as directed above.

34. The Company Appeal (AT) (Ins.) No. 1114-1115 of 2023 is allowed, the order dated 21.07.2023 passed by the Adjudicating Authority is set aside and MA No. 2886 of 2019 is decided as indicated above.

35. In view of our above decision in Company Appeal (AT) (Ins.) No. 1114-1115 of 2023, no further order is required to be passed in I.A. No. 3022 of 2023 in Company Appeal (AT) Insolvency No. 1546 of

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2022, which stands closed.

36. In Contempt Case (AT) No. 21 of 2023, we have not yet issued notice. In view of the order passed in Company Appeal (AT) (Ins.) No. 1114-1115 of 2023, Contempt Case (AT) No. 21 of 2023 is also closed.

37. Parties shall bear their own costs.

———

† Principal Bench New Delhi

† Arising out of order dated 21.07.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench in MA No. 2886 of 2019 and I.A. No. 3114 of 2022 in CP (IB) No. 532 of 2018

† Arising out of order dated 31.05.2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench in CP (IB) No. 532/IBC/NCLT/MB/MAH/2018

† Arising out of order dated 31.05.2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench in CP (IB) No. 532/IBC/NCLT/MB/MAH/2018

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