

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI**

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (INS) No. 332 of 2023

**(Under Section 61 of the Insolvency and Bankruptcy Code, 2016,
read with Rule 22 of the NCLAT Rules, 2016)**

**(Arising out of the 'Impugned Order' dated 25.05.2023 in
IA No. 399 / BB / 2020 in CP (IB) No. 189/BB/2018, passed by the
'Adjudicating Authority', (National Company Law Tribunal',
Bengaluru Bench)**

In the matter of:

ESSEL FINANCE ADVISORS AND
MANAGERS LLP

Having Registered Office at
A Wing, 18th Floor, Marathon Futurex,
N.M. Joshi Marg,
Lower Parel,
Mumbai – 400013
Email: Vishnu.rathore@esselfinance.com
Represented by its Authorized Signatory
Mr. Vishnu Prakash Rathore

.... Appellant

V.

MR. PANKAJ SRIVASTAVA
LIQUIDATOR

For M/s. Samruddhi Realty Limited
Having its Office at:
No, 29, 1st Floor, SN Complex,
14th Main Road, E-Block Extension,
Sahakara Nagar,
Bengaluru – 560092

.... Respondent No. 1

ASSETS CARE AND
RECONSTRUCTION ENTERPRISE
LTD. (ACRE)
Having Registered Office at:
2nd Floor, Mohan Dev Building,
13, Tolstoy Marg,

New Delhi – 110001
Having Branch Office at:
B1504, One BKC, G-Block,
Bandra Kurla Complex,
Mumbai – 400051

.... Respondent No. 2

Phoenix ARC Private Limited
Having its Office at:
No. 22, ``Kotak House'',
4th Floor, M.G. Road,
Bangalore – 560001
Email: Pradeep.mensadi@kotak.com

.... Respondent No. 3

Present:

For Appellant : Mr. V.V. Sivakumar & Mr. SR. Tejas, Advocates

For Respondent No. 1 : Mr. Abhishek Anand, Advocate for R1

J U D G M E N T
(Hybrid Mode)

Justice M. Venugopal, Member (Judicial):

Introduction:

The Appellant has preferred the instant Comp. App (AT) (CH) (INS.) No. 332 of 2023, on being dissatisfied with the `Impugned Order`, dated 25.05.2023 in IA No. 399 / BB / 2020 in CP (IB) No. 189/BB/2018 (Filed by the `Respondent No. 1 / Appellant`), under Section 9 of the I & B Code, 2016, passed by the `Adjudicating Authority`, `National Company Law Tribunal`, Bengaluru Bench, Bengaluru.

2. The 'Adjudicating Authority', 'National Company Law Tribunal', Bengaluru Bench, while passing the 'Impugned Order', dated 25.05.2023 in IA No. 399 / BB / 2020 in CP (IB) No. 189 / BB / 2018 (Filed by the 'Respondent No. 1 / Appellant'), under Section 9 of the I & B Code, 2016, among other things, at Paragraph Nos. 12 to 16, had observed the following:

12. *"Moreover on perusal of the relationship note sent by the Respondent No.1 to Liquidator which is attached along with the rejoinder it is seen that Respondent No. 1 had invested up to Rs. 55 crores by subscribing to 5500 redeemable secured non-convertible debentures of Rs. 1,00,000/- each. Accordingly, respondent No. 1 falls within the purview of ' financial institution' as mandated under section 45 (i) (c) (i) and 45 (I) (c) (ii) of Reserve Bank of India Act, 1934.*

13. *It is pertinent to point out that there has been no objection filed on behalf of respondent No. 2, and accordingly this Tribunal forfeited the right to file objection on 25.08.2022. Further, on perusal of the documents submitted by the Liquidator it is seen that respondent No. 2 vide email dated 17.04.2020 has informed that the charge over the properties of the Corporate Debtor will not be relinquished to the Liquidation Estate and it will proceed under the SARFAESI Act for the sale of properties of the Corporate Debtor. Further, vide email dated 18.06.2020 respondent No. 2 gave assurance to the Liquidator to pay the Liquidation Process costs of the Corporate Debtor. The said email has been found attached along with the petition.*

14. *It is seen from the submissions made by the Liquidator that he had vide letter dated 26.08.2020 informed respondent No. 3 to pay the their share of Liquidation Cost of Rs. 36,74,771/- , which included the approved liquidation cost of Rs. 6,68,898/- and Liquidator's Fee of Rs. 30,05,873/-. However, it is seen that respondent No. 3 has submitted its intention to opt out of the Liquidation process and to deal with the secured assets as per Section 52 of Insolvency and Bankruptcy Code. It is pertinent to note that both the Liquidator and 3rd respondent admit regarding the payment of Liquidation Cost of Rs. 6,68,898/-. However, the Liquidator contented that an amount of Rs. 30,05,873/- towards the Liquidator's fee is still pending. In this connection it is relevant to mention here that in the written submission, the respondent No. 3 has explained that they have filed a Writ Petition challenging the constitutional validity of Regulation 2A and 21A of The Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. However, the same is not relevant here, and the Respondent No. 3 are directed to pay the portion of the Liquidator's fees which is pending against them.*

15. *The Hon'ble NCLAT, New Delhi, in the case of "State Bank of India v. Navjit Singh", dated 16.03.2022 Company Appeal (AT) (Insolvency) No. 151 of 2022 held that, even if the secured creditor proceeds to realise its security interest it is liable to pay fee as contemplated under*

Regulation 21 A (2)(a). Further, Hon'ble NCLAT in the case of "Small Industries Development Bank of India v. Shri Vijender Sharma" dated 02.11.2022, in Company Appeal (AT) (Insolvency) No. 1027 of 2021, held that compliance of regulations 2(ea), 2-A, 21-a and 37 of the Liquidation Process Regulations and Section 52/53 of the IBC are absolutely necessary even if the secured creditor proceeds to realise its security interest.

16. Accordingly considering the facts and circumstance of the case and in light of the judgment cited supra this tribunal is of the considered opinion that the Respondent 1, 2 and 3 have to defray their portion of Liquidation Process Costs in terms of Regulation 2A of the IBBI (Liquidation Process) Regulations, 2016."

and disposed of the IA No. 399 / BB / 2020 in CP (IB) No. 189 / BB / 2018 accordingly.

Appellant's Submissions:

3. The Learned Counsel for the Appellant submits that the Appellant / 1st Respondent in IA No. 399 / BB / 2020 in CP (IB) No. 189 / BB / 2018, on 25.05.2023 was called upon to contribute their portion of 'Liquidation Process Costs', when such costs are neither due nor payable from the Appellant as the Appellant has chosen to opt out of the 'Liquidation Process', to realise its 'Security Interest'.

4. According to the Appellant, it is representing 'Debenture Holders', who are 'Secured Financial Creditors', and neither the 'Appellant' nor the 'Debenture Holders', are 'Financial Institutions', and as per Regulation 2A of the IBBI (Liquidation Process) Regulations, 2016, the 'Appellant', cannot be called upon to pay these 'Liquidation Costs', let alone to pay these 'costs upfront'.

5. The Learned Counsel for the Appellant contends that the 'Appellant', is not a Financial Creditor, who is a 'Financial Institution', as defined under Section 3(14) of the I & B Code, 2016, and Section 45-I of the Reserve Bank of India Act, 1934 and that neither the 'Appellant' nor the 'Debenture Holders' (for whom, it is the 'Investment Manager' or 'Financial Creditors'), who are 'Financial Institutions', hence, not liable to contribute to any 'Sums', towards 'Liquidation Costs'.

6. The Learned Counsel for the Appellant submits that the 'Appellant', is an 'Investment Manager', established by the 'Essel Group', to undertake 'Fund Management Activities', and investments in 'Funds', on behalf of Persons/Entities, whose Funds it manages. Furthermore, the Appellant, primarily invests in 'Secured and Redeemable Non-convertible Debenture Instruments', on behalf of certain 'Debenture Holders', such as , 'India Asset Growth Fund', 'India Asset Growth Fund-II, Eduskill Realtors LLP and Elegant Marbles & Granite Industries Limited (hereinafter referred to as the 'Debenture Holders').

7. It is the version of the Appellant that it entered into 'Debenture Subscription Agreements', dated 30.09.2016 (3 Nos. – Series A, Series B and Series C) with the 'Corporate Debtor' for the subscription of 7,500 (Seven Thousand Five Hundred) senior, secured, unlisted, redeemable, non-convertible debentures with a face value of Rs.1,00,000/- (Rupees One Lakh Only) each, aggregating to Rs.75,00,00,000/- (Rupees Seventy Five Crores Only).

8. The Learned Counsel for the Appellant points out that the main CP (IB) No. 189 / BB / 2018, under which, the Impugned Order in IA No. 399 / BB / 2020, was passed, was filed by Moonbeam Advisory Pvt. Ltd. as the 'Operational Creditor', under Section 9 of the 'Code', against 'M/s. Samruddhi Realty Limited' ('Corporate Debtor'), for initiating 'Corporate Insolvency Resolution Process', against the 'Corporate Debtor', which came to be admitted by the 'Adjudicating Authority' / 'NCLT', vide its 'Order', dated 16.04.2019. Later, the 'Committee of Creditors' of the 'Corporate Debtor', was constituted. After several Meetings held by the 'Committee of Creditors', it was decided by the 'Committee of Creditors', that no 'Resolution', was possible for the 'Corporate Debtor'.

9. The Learned Counsel for the Appellant, brings to the notice of this 'Tribunal' that the maximum period, permitted by the 'Adjudicating Authority', for the 'Corporate Insolvency Resolution Process', got expired on 17.02.2020 and in IA No. 116 / 2020, filed by the 'Resolution Professional' of the 'Corporate Debtor', the 'Adjudicating Authority' / 'Tribunal', was pleased to pass an 'Order', dated 13.03.2020 for Liquidation of the 'Corporate Debtor' and the '1st Respondent', was appointed as the 'Liquidator'. As a matter of fact, the Appellant has while being on the 'Committee of Creditors', contributed various Sums (to the tune of approximately INR Rs. 18 Lakhs), towards 'CIRP costs', but till date, not received its 'Share of Reimbursement' of those costs.

10. It is projected on the side of the Appellant that the 1st Respondent, after being appointed as 'Liquidator', by this 'Tribunal', through an 'Order', dated 13.03.2020, issued Public Announcement in Form B of Schedule II of the Liquidation Process Regulations, calling for 'submission of the Claims', on or before 17.04.2020. The Appellant, acting on behalf of the 'Debenture Holders', filed its 'Claim', dated 17.04.2020, in Form D of Schedule II, wherein the 'Appellant', has specifically mentioned that it is not relinquishing its 'Security Interest', and that it chose to stand outside the 'Liquidation Estate', and realise its 'Security Interest', in the 'Assets' of the 'Corporate Debtor', on its own, as mentioned in Section 52 of the Code. After the receipt of various 'Claim Forms', the '1st Respondent / Liquidator', has complied with the 'Consolidated Lists of Creditors', and published it, on the 'Website' of the 'Corporate Debtor'.

11. According to the Appellant, the primary duty of the 'Liquidator', under I & B Code, 2016, is to maximise the 'Value of the Assets', and Balance the interests of all 'Stakeholders', in a time bound manner. However, the '2nd Respondent', had failed to perform its duties, as mentioned under Section 35 of the Code. A total of 364 Claims were received (after the Public Announcement was made), to the tune of INR 511,522,76,009/- of which, 348 Claims to the tune of INR 413,93,51,268/- were admitted. However, Claims amounting to INR 79,54,72,801/- were rejected, and 'Claims', to an extent of INR 17,92,21,035 were classified, as being under 'Verification', as on 11.01.2021.

There are no 'Auction Notices', published by the 1st Respondent / Liquidator, nor have any recoveries have been made by the 'Liquidator'.

12. The Appellant's repeated requests to the Liquidator to furnish the details of recoveries made fell into deaf ears and this indicates that from March 2020 namely, the 'Commencement of Liquidation', the '1st Respondent / Liquidator', had not made any recoveries, which reflects on the incompetence and inability of the '1st Respondent', in handling the 'Liquidation Process' of this magnitude.

13. The 1st Respondent / Liquidator, according to the Appellant, had failed to assist and co-operate with the 'Secured Creditors' (who stood outside the 'Liquidation Estate'), in realising their 'Security Interest'. In fact, the Appellant had identified a suitable Buyer for the immovable property owned by the Corporate Debtor in Survey Nos. 256/2, 256/3, and 256/4 of Kaduvathi Village, Nandi Hobli, Chikkaballapura Taluk & Chikkaballapura District (hereinafter referred to as the 'Song of Winds Project'), which was mortgaged in favour of the 'Appellant' and the 'Debenture Trustee', along with 'Development Rights' and its 'Share of Unsold Stocks'.

14. The Appellant had intimated the Liquidator / 1st Respondent through Letter dated 27.10.2021 and sought the assistance of the Liquidator in ensuring that there is a smooth transfer of the Mortgage Properties to identify the Buyer

at the earliest and no reply was received from the 1st Respondent / Liquidator to this letter and this non-cooperative and a lackadaisical attitude of the 1st Respondent / Liquidator has not only stalled the Transaction Process, but also, impleaded the whole process, undertaken by the 'Appellant' for taking possession of selling and disposing off the 'Securities', exclusively created in their favour.

15. According to the Appellant, it preferred an Application, in IA No. 178 / 2022, seeking appropriate directions against the Liquidator, under Section 52(5) of the I & B Code, 2016, which is still pending adjudication. Since, the Liquidator had acted in complete breach of fiduciary obligations to the Corporate Debtor and had failed to protect the interests of the 'Corporate Debtor', and its 'Creditors'.

16. The Appellant had filed an Interlocutory Application, seeking replacement of 'Liquidator' of the 'Corporate Debtor', and an 'Application', seeking replacement of the 'Liquidator' of the Corporate Debtor and removal of '1st Respondent / Liquidator', and the said Application is numbered as IA No. 472 / 2022, before the 'Adjudicating Authority / Tribunal', and is still pending adjudication.

17. The Learned Counsel for the Appellant points out that in view of the Prayer, as formulated by the Liquidator himself in IA No. 399 / BB / 2020, the

subsequent arguments relating to the applicability of Regulation 21A of the IBBI (Liquidation Process), Regulations are of no avail and not relevant for the purpose of adjudicating, in the present 'Appeal'.

18. According to the Appellant, only those who are both (a) Financial Creditor and (b) Financial Institutions, as defined in the I & B Code, 2016, may be called upon by the 'Liquidator', to contribute the 'Liquidation Costs', under certain circumstances.

19. It is the stand of the Appellant that it is only the 'Financial Creditors', who are 'Financial Institutions', in terms of Regulation 2A of the IBBI Liquidation Process Regulations, it is only the 'Financial Creditors', who are 'Financial Institutions', who may be called upon, by the 'Liquidator', to contribute the excess of the 'Liquidation Costs', over the 'Liquids Assets' of the 'Corporate Debtor', in proportion to the 'Financial Debts', owed to them, by the 'Corporate Debtor'.

20. The Learned Counsel for the Appellant submits that the term 'Financial Institution, is defined under Section 3(14) of the I & B Code, 2016, which reads as under:

"3(14) 'financial institution' means

(a) a scheduled bank;

(b) financial institution as defined in Section 45-1 of the Reserve Bank of India Act, 1934;

(c) *public financial institution as defined in clause (72) of Section 2 of the Companies Act, 2013; and*

(d) *such other institution as the Central Government may by notification specify as a financial institution.*”

(II) *Section 45-I of the RBI Act, 1934, clearly mentions that a ‘Financial Institution’, is a ‘Non-Banking Institution’, which carries on as its business various activities among other things including Financing, whether by way of making Loans or Advances or Acquisition of Shares, Stocks, Bonds, Debentures or Securities, issued by a ‘Local Authority’, etc.’”*

21. According to the Appellant, an ‘Entity’, to fall within the definition of ‘Financial Institution’, under 45-I of the RBI Act, 1934, it should be a ‘Non-Banking Institution’, and should carry on as its Business or part of its Business, any of the various activities specified in Section 45-I. Further, the term ‘Non-Banking Institution’, is defined in Section 45-I (e) of the RBI Act, as a ‘Company’, ‘Corporation’ or a ‘Co-operative Society’.

22. The functions performed by the Appellant and the Debenture Holders it represents are set out below, will indicate that the ‘Appellant’, the ‘Debenture Holders’, cannot qualify to be considered as ‘Financial Institutions’.

<i>Entity Name</i>	<i>Entity Kind</i>	<i>Nature of Functions</i>	<i>Relevant Annexures</i>
<i>Essel Finance Advisors and Managers LLP</i>	<i>Limited Liability Partnership under the LLP Act, 2008</i>	<i>Scheme Sponsor and Investment Manager for India Asset Growth Fund and India Asset Growth Fund II, undertaking fund management activities and investments in funds on behalf of persons/entities whose funds it manages.</i>	<i>Claim Form Annexure – G (Pg 121) Relationship Note Annexure – U (Pg 30 of rejoinder)</i>

<i>India Asset Growth Fund</i>	<i>Alternative Investment Fund registered by SEBI</i>	<i>Category-II Alternative Investment Fund registered with SEBI and regulated by SEBI AIF Regulations, primarily investing in senior, secured, unrated, unlisted and redeemable non-convertible debenture instruments.</i>	<i>Certificate of Registration Annexure-K (Pg 185)</i> <i>Relationship Note Annexure – U (Pg 30 of rejoinder)</i>
<i>India Asset Growth Fund II</i>	<i>Alternative Investment Fund registered by SEBI</i>	<i>Category-II Alternative Investment Fund registered with SEBI and regulated by SEBI AIF Regulations, primarily investing in senior, secured, unrated, unlisted and redeemable non-convertible debenture instruments.</i>	<i>Certificate of Registration Annexure-L (Pg 185)</i> <i>Relationship Note Annexure – U (Pg 30 of rejoinder)</i>
<i>Eduskill Realtors LLP</i>	<i>Limited Liability Partnership under the LLP Act, 2008</i>	<i>Engages in businesses like owning and developing real estate assets and business of owning, running and managing schools, colleges, etc.</i>	<i>LLP Agreement – Annexure – I (Pg 14) Cl. 5</i>
<i>Elegant Marbles & Grani Industries Limited</i>	<i>Company registered under the Companies Act, 1956</i>	<i>Main objects relate to engaging in the business of minerals of all descriptions like marble, granite, etc. and ancillary activities relating to the said business of minerals.</i>	<i>Memorandum of Association (MoA) – Annexure-J (Pg 175) Refer Cl. III.A</i>

14. It is evident from the table produced above that the Appellant, Eduskill Realtors LLP, India Asset Growth Fund and India Asset Growth Fund II are neither a company, corporation or a cooperative society. Therefore, they cannot by any stretch of imagination be construed to be "non-banking institution".

15. Further, even though Elegant Marbles & Granite Industries Limited is a company and may be termed as a "non-banking institution", it is not in the business of financing and in fact, is mainly in the business of minerals as is set out in the main clauses of memorandum of association. Therefore, Elegant Marbles & Granite Industries Limited also cannot come within the meaning of a

financial institution. Even the provisions of Clauses 8 and 10 of the Ancillary Objects of the MoA as pointed out by the Learned Counsel for the Liquidator does not aid their argument since Clause 8 is relatable to 'business which the company is authorized to carry on..' and Clause 10 pertains to issue of debentures by the company and not subscription of debentures.'

23. According to the Appellant, Eduskill Realtors, LLP, India Asset Growth Fund and India Asset Growth Fund-II are neither a Company, a Corporation or a Co-operative Society. They cannot, by any stretch of imagination, be construed to be 'Non-Banking Institution'.

24. The Learned Counsel for the Appellant contends that even though the Elegant Marbles and Granite Industries Limited is a Company and may be termed as a 'non-banking institution', it is not in the business of Financing and in fact, is mainly in the business of Minerals as is set out in the main 'Clauses of the Memorandum of Association'. As such, Elegant Marbles and Granite Industries Limited, also cannot come within the meaning of a 'Financial Institution'.

25. According to the Appellant, even the provisions of Clauses 8 & 10 of the 'Ancillary Objects of the MOA', as pointed out by the Learned Counsel for the 'Liquidator', does not aid their arguments, since Clause 8 is relatable to the 'business', which the Company is authorized to 'carry on', and Clause 10 pertains to 'Issue of Debentures', by the 'Company', and not the 'Subscription of Debentures'.

26. The Learned Counsel for the Appellant points out that neither the 'Appellant' nor the 'Debenture Holders', it acts on behalf of the fall within the definition of Non-banking Institution, under Section 45-I(e) of the RBI Act and hence, not liable to contribute towards 'Liquidation Costs'.

27. The Learned Counsel for the Appellant points out that the 'Committee of Creditors', in their '12th Meeting', that took place on 13.02.2020 has explicitly stated that 'Liquidation Costs', are to be met by the 'Financial Creditors', being 'Financial Institutions', as per 'Regulations 2A of the Liquidation Process Regulations'.

28. According to the Appellant, the 1st Respondent / Liquidator, through a Letter dated 07.04.2020, has accepted that the Appellant, is not a 'Financial Creditor', who is a 'Financial Institution', is therefore, not liable to pay the 'Liquidation Costs'. In fact, the 1st Respondent / Liquidator, cannot be permitted to backtrack from the stand taken by it, without cogent evidence and explanation to submit the same.

29. The Learned Counsel for the Appellant contends that the Paragraph 12 of the 'Impugned Order', as relied on the relationship note Annexure-U (Page 30 of the Rejoinder), and merely stated that the Appellant is a 'Financial Institution', as it invested upto Rs.55 Crores, by subscribing to '5500 Redeemable Secured Non-Convertible Debentures'. In fact, in the 'Impugned

Order’, there is not even a whisper, as to how the ‘Appellant’ or the ‘Debenture Holders’, fall within the definition of ‘Financial Institution’, and in short, the ‘findings’, in the ‘Impugned Order’, are not supported by any reasons, whatsoever and deserves to be set aside.

30. The Learned Counsel for the Appellant points out that the ‘upfront contribution’, liable to be made as per Regulation 2A of the IBBI Liquidation Process Regulations, was applicable to ‘Institutional Financial Creditors’, only. Hence, only ‘Financial Creditors’, who are ‘Financial Institutions’, were called upon to pay these ‘Expenses’, as it would prove ‘burdensome’ otherwise. Hence, any endeavour, by the ‘Liquidator’, to fasten this ‘Liability’ on ‘Financial Creditors’, who are not ‘Financial Institutions’, would defeat the purpose of the enactment and would cause hardship to this ‘Class of Financial Creditors’.

31. According to the Appellant, Section 52 & 53 of the I & B Code, 2016, make it amply clear that ‘Secured Financial Creditors’, choosing to ‘opt out of the Liquidation Process’, may enforce, realise, settle, compromise or deal with ‘Secured Asset’, in accordance with ‘Law’. When that being the case, any ‘Demand’, by the ‘Liquidator’, towards ‘Liquidation Costs’, as a ‘pre-condition’, to grant permission, to opt out of the ‘Liquidation Process’, runs counter, to the ‘Scheme’ of the I & B Code, 2016.

32. The Learned Counsel for the Appellant points out that the calculation of Liquidation Costs, provided by the 'Liquidator', is not as per what is permitted under the Code and applicable Regulations. Further, the 'Appellant', continues to stand outside the 'Liquidation Estate' and enforce its 'Security Interest', on its own. Resultantly, the Liquidator, cannot be permitted to treat the 'Security Interest' of the Appellant, as part of the 'Liquidation Estate'.

33. The Learned Counsel for the Appellant, while summing up, prays for allowing of the instant 'Appeal', by setting aside the 'Impugned Order', dated 25.05.2023 in IA No. 399 / BB / 2020 in CP (IB) No. 189 / BB / 2018, passed by the 'Adjudicating Authority', National Company Law Tribunal', Bengaluru Bench.

1st Respondent / Liquidator's Contentions:

34. The Learned Counsel for the 1st Respondent / Liquidator submits that the 'Adjudicating Authority' / 'Tribunal', while passing the 'Impugned Order', in IA No. 399 / BB / 2020 in CP (IB) No. 189 / BB / 2018, had adhered to the provisions of the I & B Code, 2016, and the Liquidation Regulations, by taking into consideration the 'Order' of this 'Tribunal', dated 16.03.2022, in State Bank of India V. Navjit Singh (vide Comp. App (AT) (INS) 151 of 2022), wherein at Paragraph 6, it is observed as under:

6. ``We have considered the submissions of Learned Counsel for the parties and perused the record. In so far as the claim of the Appellant is concerned of Rs. 29,34,54,879.59/- it has been admitted by the Liquidator the said claim is the claim admitted in the Liquidation Process and no further adjudication was called for with regard to the said claim. In the present case, the admission of the claim is not sought to be challenged by State Bank of India. In so far as the payment of Liquidator's Fee in paragraph 13 as noted above, Adjudicating Authority has disposed of the application with the direction to make payment of Liquidator's Fee and ensure compliance of Regulations 2(ea), 2A, 21A, 37 of the Liquidation Regulations and Section 52/53 of the Code. The order passed by the Adjudicating Authority does not warrant any interference. What was directed was as per Liquidation Regulation 21A as extracted in Paragraph 10 of the Judgment from which it is clear, even if the secured creditor proceeds to realise its security interest it is liable to pay fee as contemplated under Regulation 21A(2)(a). The Adjudicating Authority has only directed the Applicant to follow the regulations as noted in paragraph 13. Company Appeal (AT) (Insolvency) No. 151 of 2022.``

35. The Learned Counsel for the 1st Respondent / Liquidator points out that the Appellant falls under the category of 'Financial Institution', as per Section 3 (14) (b) of the I & B Code, 2016, read with Section 45-I (c) of Reserve Bank of India Act, 1934, and the same reads as under:

``3. In this Code, unless the context otherwise requires.-

(14) ``financial institution`` means-

(b) financial institution as defined in section 45-I of the Reserve Bank of India Act, 1934;

45-I. Definitions

(c) ``financial institution`` means any non-banking institution which carries on as its business or part of its business any of the following activities, namely:-

(i) the financing, whether by way of making loans or advances or otherwise, of any activity other than its own;

(ii) the acquisition of shares, stock, bonds, debentures or securities issued by a Government or local authority or other marketable securities of a like nature:’’

36. The Learned Counsel for the 1st Respondent / Liquidator points out that the ‘Non-Banking Institution’, is defined as under:

45-I e) "non-banking institution" means a company, corporation or co-operative society;

f) "non-banking financial company" means-

i) a financial institution which is a company;

(ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner;

(iii) such other non-banking institution or class of such institutions, as the Bank may, with the previous approval of the Central Government and by notification in the Official Gazette, specify. ’’

37. According to the 1st Respondent, the Appellant has filed a ‘Claim’ on behalf of the Eduskill Realtors LLP, which is a ‘Limited Liability Partnership’ as well as Elegant Marbles and Granite Industries which is a Private Limited and hence, the question of them being non-banking financial institution will not arise. Further, the Learned Counsel for the 1st Respondent / Liquidator proceeds to point out that the Appellant was the Member of the ‘Committee of Creditors’ of the ‘Corporate Debtor’, on the basis of Investment made of Rs.55 Crores, by subscribing `5500 Redeemable Secured Non-Convertible Debentures of

Rs.1,00,000 and had 79.82% Share of Financial Institutions, for funding the estimated 'Liquidation Costs'.

38. The Learned Counsel for the 1st Respondent submits that in terms of regulation 21A of the IBBI (Liquidation Process) Regulations, 2016, 'Secured Creditors', who do not relinquish their 'Security Interest', in the 'Liquidation Estate', is mandated to pay the amount, as payable under Clause (a) and sub-clause (i) of clause (b) of sub-section (1) of Section 53 of the Code, which would also include the Appellant herein.

39. The Learned Counsel for the 1st Respondent / Liquidator, adverts to Section 21A of the IBBI (Liquidation Process) Regulations, 2016, which reads as under:

"21-A. Presumption of security interest.-

(1)A secured creditor shall inform the liquidator of its decision to relinquish its security interest to the liquidation estate or realise its security interest, as the case may be, in Form C or Form D of Schedule II:

(2) Where a secured creditor proceeds to realise its security interest, it shall pay –

(a) as much towards the amount payable under clause (a) and sub-clause (i) of clause (b) of sub-section (1) of section 53, as it would have shared in case it had relinquished the security interest, to the liquidator within ninety days from the liquidation commencement date; and

(b) the excess of the realised value of the asset, which is subject to security interest, over the amount of his claims admitted, to the liquidator

within one hundred and eighty days from the liquidation commencement date:

(3) Where a secured creditor fails to comply with sub-regulation (2), the asset, which is subject to security interest, shall become part of the liquidation estate.”

40. The Learned Counsel for the 1st Respondent / Liquidator, takes a plea that no provision of the I & B Code, 2016 or Regulation, provides ‘for an enlargement of time’, to pay the ‘Liquidation Costs’, when the ‘Secured Creditor’, exercise its right, under Section 52 of the Code.

41. The Learned Counsel for the 1st Respondent / Liquidator, refers to the Judgment dated 02.11.2022 in Small Industries Development Bank of India (SIDBI) V. Shri. Vijender Sharma (vide Comp. App (AT) (INS) 1027 of 2021), wherein, at Paragraphs 19 & 21, it is observed as under:

19. “On the basis of detailed discussion in the aforementioned paragraphs, it becomes abundantly clear that the Resolution Professional was following the procedure as set out in the Liquidation Process Regulations with regard to the disposal of secured assets, including the HSIIDC Bawal Property in which SIDBI has expressed its intent to realise its security interest. It also becomes clear that due to misinterpretation and lack of proper understanding of the procedure, SIDBI was unable to follow the requirements as was being communicated to him by the liquidator and, hence the liquidator had to approach the Adjudicating Authority thrice in the course of liquidation to seek necessary directions qua the Appellant. We also find that such difficulties being faced by the liquidator were being brought to the knowledge of the Stakeholders’ Consultation Committee and necessary directions for further actions were being obtained by the liquidator.

21. It thus becomes quite clear that compliance of regulations 2(ea), 2-A, 21-A and 37 of the Liquidation Process Regulations and Section 52/53 of the IBC are absolutely necessary even if the secured creditor proceeds to realise its security interest.’’

42. The Learned Counsel for the 1st Respondent / Liquidator, adverts to the decision in DBS Bank India Limited v. Kuldeep Verma, Liquidator of Eastern Gases Limited, vide Comp. App (AT) (INS) No. 1048 of 2022, wherein, at Paragraph No. 2, it is observed as under:

2. ``Brief facts of the case necessary to be noted for deciding this Appeal are:-

(iii) The Appellant informed the Liquidator on 08.04.2019 about its decision to realize its security interest as per Section 52 (i)(b) of the Code in respect of long term loan by remaining outside the liquidation process to realize its debts. Liquidator agreed to hand over possession of assets to the Appellant. Appellant informed the Liquidator that realization of security interest would happen at a rate of Rs. 14.44 Crore. The liquidator informed the Appellant that no person has approached the liquidator willing to buy the assets at price higher than the price intimated by the Appellant. Sale of the assets took place on 22.10.2020. Sale proceeds were received by the Appellant. Appellant informed the completion of sale process. Liquidator enquired about the calculation of the amount realized from the sale of the exclusively charged assets. In meeting of the Stakeholders Committee held on 13.09.20, Appellant informed that it is entitled to retain the interest amount till the date of distribution to recover its debt and not only the amount at the time of filing of the claim in Form-D. Liquidator filed I.A. No. 883 of 2021, seeking following directions:

"i. Necessary direction upon the Respondent to pay a sum of Rs. 1.84 crores to the Liquidation estate on account of the excess realized moneys as per Section 52(7) of the Code;

ii. Necessary direction of interest @12% should be paid by the respondent on the withheld amount of Rs. 1.84 crores from 1st April, 2021 till the date of payment of this amount by the Respondent to the Liquidator Estate."

(iv) The Adjudicating Authority after hearing both the parties had allowed the I.A. No. 883 of 2021. Following order has been passed in paragraph 9:

"For the foregoing reasons, we allow this IA and direct the respondent bank to pay an amount of Rs. 1.84 crores to the liquidation estate along with interest @6% on this amount from 1st of April, 2021, till the date of its actual payment by the respondent to the liquidation estate. IA 883/KB/2021 is disposed of and CP No. 482/KB/2017 is listed for progress report on 29 August, 2022."

“20. We have noticed above that statutory scheme provides submission of claim on a liquidation commencement date which is a fixed connotation. When a statute provides for liquidation commencement date as a date up to which claims can be filed and proved, no claim thereafter can be entertained by the Liquidator. The amount of interest which was retained by the Appellant claiming to be interest in addition to the claim as filed by it in Form D till the date of realization of receipt of the sale, cannot be permitted to be retained by the Appellant and the Adjudicating Authority has rightly passed the order allowing application filed by the Liquidator to hand over the additional amount to the Liquidator. Learned Counsel for the Appellant submits that out of Rs. 1.84 Crores, amount of Rs. 20 Lakhs have already been paid.”

43. The Learned Counsel for the 1st Respondent / Liquidator contends that the instant ‘Appeal’, is filed without applying for the ‘Certified Copy’ of the ‘Impugned Order’, and no explanation is given on behalf of the Appellant. In this regard, the Learned Counsel for the 1st Respondent, refers to the Judgment

dated 22.10.2021 of the Hon'ble Supreme Court (vide Civil Appeal No. 3327 / 2020) in the matter of V. Nagarajan v. SKS Ispat and& Power Limited & Ors., wherein it is held that the 'Aggrieved Party', is expected to exercise due diligence and apply for a 'Certified Copy', upon 'Pronouncement of the Order', it seeks to assail and the relevant Paragraph 21 of the aforesaid Judgment, reads as under:

21. ``..... must be based on a harmonious interpretation of the applicable legal regime, given that the IBC is a Code in itself and has overriding effect. Sections 61(1) and (2) of the IBC consciously omit the requirement of limitation being computed from when the "order is made available to the aggrieved party", in contradistinction to Section 421(3) of the Companies Act. Owing to the special nature of the IBC, the aggrieved party is expected to exercise due diligence and apply for a certified copy upon pronouncement of the order it seeks to assail, in consonance with the requirements of Rule 22(2) of the NCLAT Rules. Section 12(2) of the Limitation Act allows for an exclusion of the time requisite for obtaining a copy of the decree or order appealed against. It is not open to a person aggrieved by an order under the IBC to await the receipt of a free certified copy under Section 420(3) of the Companies Act 2013 read with Rule 50 of the NCLT and prevent limitation from running. Accepting such a construction will upset the timely framework of the IBC. The litigant has to file its appeal within thirty days, which can be extended up to a period of fifteen days, and no more, upon showing sufficient cause. A sleight of interpretation of procedural rules cannot be used to defeat the substantive objective of a legislation that has an impact on the economic health of a nation. ''

44. The Learned Counsel for the 1st Respondent / Liquidator, refers to Paragraph 19 of the Hon'ble Supreme Court of India Judgement dated

22.10.2021, in V. Nagarajan V. SKS ISPAT Power Limited & Ors. (vide Civil Appeal No. 3327 / 2020), wherein, it is observed as under:

19. ``.....The import of Section 12 of the Limitation Act and its explanation is to assign the responsibility of applying for a certified copy of the order on a party. A person wishing to file an appeal is expected to file an application for a certified copy before the expiry of the limitation period, upon which the "time requisite" for obtaining a copy is to be excluded. However, the time taken by the court to prepare the decree or order before an application for a copy is made cannot be excluded. If no application for a certified copy has been made, no exclusion can ensue. In fact, the explanation to the provision is a clear indicator of the legal position that the time which is taken by the court to prepare the decree or order cannot be excluded before the application to obtain a copy is made. It cannot be said that the right to receive a free copy under Section 420(3) of the Companies Act obviated the obligation on the appellant to seek a certified copy through an application.``

45. The Learned Counsel for the 1st Respondent / Liquidator, while winding up, submits that the 'Impugned Order', dated 25.05.2023, in IA No. 399 / BB / 2020 in CP (IB) No. 189 / BB / 2018, passed by the 'Adjudicating Authority / NCLT', Bengaluru Bench, in observing that the 'Respondent Nos. 1, 2 & 3', have to defray their portion of 'Liquidation Process Costs', in terms of Regulation 2A of the IBBI (Liquidation Process) Regulations, 2016, is free from any legal infirmities.

Evaluation:

46. Before the 'Adjudicating Authority' / 'NCLT', Bengaluru Bench, the '1st Respondent / Liquidator / Petitioner', had filed IA No. 399 / BB / 2020 in

CP (IB) No. 189 / BB / 2018 (under Regulation 2A, read with Regulation 4, 21A (2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, and read with Rule 11 of NCLT Rules, 2016, praying for issuance of `appropriate directions`, to the Respondents, to forthwith defray their portion of `Liquidation Process` costs, in terms of Regulation 2A of the IBBI (Liquidation Process) Regulations, 2016, as already approved in the `12th Meeting` of the `Committee of Creditors` and the `Liquidator Fee`, in terms of the provisions of the I & B Code, 2016, and to allow the `Application`.

47. According to the 1st Respondent / Liquidator of M/s. Samruddhi Realty Limited, the `Adjudicating Authority / Tribunal`, on 16.04.2019 was pleased to admit the CP (IB) No. 189 / BB / 2018, filed on behalf of the `Operational Creditor / M/s. Moonbeam Advisory Private Limited`, against the `Corporate Debtor`, for initiating the `CIRP`, under Section 9 of the I & B Code, 2016.

48. As a matter of fact, in view of the rejection of the `Resolution Plan`, by the Members of the `Committee of Creditors`, and in view of the `CIRP` Period, expiring on 17.02.2020, the `Resolution Professional`, preferred an `Application`, in IA No. 1116 of 2020, as per Section 33(1) of the Code, seeking `Liquidation of the `Corporate Debtor`. The `Adjudicating Authority / Tribunal`, by an Order dated 13.03.2020, passed an `Order of Liquidation`, for the `Corporate Debtor`. Also that, the `Adjudicating Authority`, had appointed

the 1st Respondent / Liquidator as 'Liquidator', through an 'Order' dated 13.03.2020.

49. The 'Adjudicating Authority' / 'NCLT', on 13.03.2020, had passed the 'Order', as under:

''In view of the above facts and circumstances of the case, the Adjudicating Authority, by exercising powers conferred on it. U/s. 33 of the IBC 2016. IA No. 116 / 2020 in CP (IB) No. 189 / BB / 2018 is hereby disposed of with following directions:

1. We hereby order that M/s. Samruddhi Realty Ltd. Respondent / Corporate Debtor to be liquidated in the manner as laid down in Chapter III (Liquidation Process) Part II of the Code.

2. We hereby appointed Pankaj Srivastava, IP, Bearing Reg. No. IBBI/IPA- 001/IP-P00245/2017-18/1047 as Liquidator subject to the terms and conditions to be agreed upon the parties in the light of the extant provisions of the IBBI. ''

50. It comes to be known that the 1st Respondent / Liquidator, as per Regulation 12 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, made a Public Announcement in FORM – B of the Schedule – II on 17.03.2020 in Deccan Herald and Prajavani and stipulated the last date of submission of Claim as 17.04.2020.

51. The Respondents, filed their 'Claims' in prescribed FORM – D as the 'Financial Creditors' with the 1st Respondent / Liquidator. During the 'CIRP', the Respondents were the 'Financial Creditors', constituting the 'Committee of Creditors'. Before the 'Liquidation Order', being passed by the 'Adjudicating Authority / Tribunal', in the '12th Meeting' of the 'Committee of Creditors', convened on 13.02.2020, the 'Committee of Creditors', had approved a sum of Rs.98,77,020/- (for twelve months), to be contributed to the 'Liquidation Cost Account' and the following are details:

<i>Resolution For Approval of Liquidation Costs</i>	<i>“RESOLVED THAT Regulation 2A of IBBI (Liquidation Process) Regulations, 2016, it is hereby approved to contribute the excess of the liquidation costs over the liquid assets of the corporate debtor, as estimated by the liquidator, in proportion to the financial debts owed to the lenders by the Corporate Debtor and the contributions shall be deposited in a designated escrow account to be opened and maintained in a scheduled bank, within seven days of the passing of the liquidation order as given below:</i>	
	<i>Particulars</i>	<i>Amount (INR)</i>
	<i>Liquidator & Support Team</i>	<i>As per Fee agreed at CoC / Regulation</i>
	<i>Legal Counsel Fees</i>	<i>19,11,600</i>
	<i>MCA filing fees & professional charges (Liquidation status and FY 19, FY 20 financials)</i>	<i>1,02,900</i>
	<i>Auditor Fees Receipts and Payments account</i>	<i>70,800</i>
	<i>OPE for Liquidator and team</i>	<i>12,00,000</i>
	<i>Statutory Audit Fees for FY 20</i>	<i>8,26,000</i>
	<i>Website Charges and Maintenance</i>	<i>1,80,000</i>
	<i>Public Announcement of Liquidation</i>	<i>6,50,000</i>
	<i>Sub-Total (A)</i>	<i>49,41,300</i>
	<i>Operational Costs</i>	
	<i>Salaries & Consultant Fees</i>	<i>31,56,000</i>
	<i>Corporate Office Rent & Maintenance</i>	<i>14,16,000</i>
	<i>Other admin overheads</i>	<i>3,63,720</i>

	<i>Sub-Total (B)</i>	<i>49,35,720</i>
	<i>TOTAL (A + B)</i>	<i>98,77,020</i>

52. Indeed, the 'Committee of Creditors', during 'CIRP', comprised of the following 'Financial Creditors', having Voting Share, as under:

	<i>Amount Claimed</i>	<i>Admitted Claim</i>	<i>Share of Financial Institutions for funding Liquidation Costs</i>	
<i>Name of Creditor</i>	<i>(in INR Crore)</i>	<i>(in INR Crore)</i>	<i>%</i>	<i>Amount</i>
<i>Essel Finance Advisors & Managers LLP</i>	<i>89.9</i>	<i>84.15</i>	<i>79.82</i>	<i>78,83,441</i>
<i>Phoenix ARC Pvt Ltd</i>	<i>7.22</i>	<i>7.14</i>	<i>6.77</i>	<i>6,68,898</i>
<i>Indiabulls Housing Finance Ltd</i>	<i>15.83</i>	<i>14.14</i>	<i>13.41</i>	<i>13,24,680</i>
			<i>100%</i>	<i>98,77,020</i>

53. According to the 1st Respondent / Liquidator, the 'Liquidator', in terms of Regulation 2A of the IBBI (Liquidation Process) Regulations, 2016, may call upon the 'Financial Creditors', to contribute the 'excess Liquidation Costs', and as per Regulation 2A of the IBBI (Liquidation Process) Regulations 2016, read with the Approval of the 'Committee of Creditors', through an 'email dated 02.04.2020', the Petitioner / 1st Respondent / Liquidator, had sought for the remittance of a Sum of Rs.78,83,441/-, being the Share of the 1st Respondent / Appellant, towards the 'Liquidation Costs', in the account of the 'Liquidation Costs Account' of the 'Corporate Debtor', from the 1st Respondent / Appellant,

being a 'Financial Creditor', and also a 'Financial Institution', which was duly approved in the '12th Committee of Creditors Meeting'.

54. The 1st Respondent / Appellant, through an email dated 03.04.2020, had informed the 1st Respondent / Petitioner / Liquidator, that 'they are not liable to pay the 'Liquidation Costs', as they do not fall under the category of 'Financial Institutions'.

55. According to the 1st Respondent / Liquidator, the Respondents are 'Financial Institution', falling within the meaning of the term, 'Financial Institution', and Section 2 (14) of the I & B Code, 2016, defines a 'Financial Institution', as under:

(14) ``financial institution'' means-

(a) a scheduled bank;

(b) financial institution as defined in section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);

(c) public financial institution as defined in clause (72) of section 2 of the Companies Act, 2013 (18 of 2013); and

(d) such other institution as the Central Government may by notification specify as a financial institution.''

56. Continuing further, according to the 1st Respondent / Liquidator, the 'Financial Institution', is defined as per Section 45-I of the RBI Act, 1934, which reads as under:

“(c) “financial institution” means any non-banking institution which carries on as its business or part of its business any of the following activities, namely:--

(i) the financing, whether by way of making loans or advances or otherwise, of any activity other than its own;

(ii) the acquisition of shares, stock, bonds, debentures or securities issued by a Government or local authority or other marketable securities of a like nature;

(iii) letting or delivering of any goods to a hirer under a hire-purchase agreement as defined in clause (c) of section 2 of the Hire-Purchase Act, 1972.

(iv) the carrying on of any class of insurance business;

(v) managing, conducting or supervising, as foreman, agent or in any other capacity, of chits or kuries as defined in any law which is for the time being in force in any State, or any business, which is similar thereto;

(vi) collecting, for any purpose or under any scheme or arrangement by whatever name called, monies in lump sum or otherwise, by way of subscriptions or by sale of units, or other instruments or in any other manner and awarding prizes or gifts, whether in cash or kind, or disbursing monies in any other way, to persons from whom monies are collected or to any other person, [but does not include any institution, which carries on as its principal business,--

(a) agricultural operations; or

(aa) industrial activity; or]

(b) the purchase, or sale of any goods (other than securities) or the providing of any services; or

(c) the purchase, construction or sale of immovable property, so, however, that no portion of the income of the institution is derived from the financing of purchases, constructions or sales of immovable property by other persons;]”

57. According to the 1st Respondent / Liquidator, the 'Respondents', are well within the meaning of the term 'Financial Institutions', and hence, is liable to

pay the 'Liquidation Process Costs', as per Regulation 2A of the Liquidation Process Regulation, 2016.

58. The 1st Respondent / Liquidator through emails dated 02.04.2020 and 07.04.2020, had sought remittance towards the 'Liquidation Costs', as stipulated under Liquidation Process Regulations, 2016, in the 'account of the Liquidation Costs Account of the Corporate Debtor', from the 2nd Respondent / India Bulls Asset Reconstruction Company, being the 'Financial Creditor' and the 'Financial Institution' of the 'Corporate Debtor'.

59. The 2nd Respondent / India Bulls Asset Reconstruction Company Limited, sent its 'updated Claim', through an 'email', dated 17.04.2020, pursuant to the 'commencement of Liquidation of the Corporate Debtor' and further, informed the Petitioner / 1st Respondent / Liquidator that a 'hard copy of the Claim Form', shall be submitted, once 'Lock Down', is lifted.

60. Furthermore, through an email dated 17.04.2020, the 2nd Respondent / India Bulls Asset Reconstruction Company Limited had informed the 1st Respondent / Petitioner / Liquidator that being a 'Financial Creditor' the 2nd Respondent have an exclusive 'Charge' / 'Mortgage', over the 'properties' of the 'Corporate Debtor'. Also that, the 2nd Respondent / India Bulls Asset Reconstruction Company Limited, had informed that the 'Charge', over the Property, will not be relinquished to the 'Liquidation Estate', and they will

proceed under SARFAESI Act 2002, for the `Sale of the Properties of the Corporate Debtor`.

61. Apart from the above, the 2nd Respondent, had informed the 1st Respondent / Petitioner that any `excess proceeds`, from the Property of the `Corporate Debtor`, will be paid to the Petitioner / 1st Respondent and the `Relinquishment Letter`, will be provided, after the `Lock Down`, is lifted.

62. The 1st Respondent / Petitioner had informed the 2nd Respondent / India Bulls Asset Reconstruction Company Limited, through an email dated 21.04.2020 that as per Regulation 21A (2) of the Liquidation Process Regulations, 2016, the 2nd Respondent / India Bulls Asset Reconstruction Company Limited, has to pay the `Liquidation Costs`, as approved during the `CIRP`, by the `Committee of Creditors`.

63. Besides this, the 1st Respondent / Petitioner, through an `email`, dated 03.06.2020. had again informed the 2nd Respondent / India Bulls Asset Reconstruction Company Limited, to send a communication for `opting out of the Liquidation Process of the Corporate Debtor` and further informed, that the `permission` for `opting out of the Liquidation Process`, will only be granted, after the due fulfilment of the requirements, under the I & B Code 2016 and Regulations, thereunder. In fact, the 1st Respondent / Petitioner / Liquidator, had again requested the 2nd Respondent / India Bulls Asset Reconstruction Company

Limited, to remit their 'Share of Liquidation Process Costs', to an extent of Rs. 3,93,09,894/-.

64. It transpires that the 2nd Respondent / India Bulls Asset Reconstruction Company Limited, through an 'email', dated 18.06.2020, had sought documents for costs incurred during the 'Liquidation Process' of the 'Corporate Debtor', and gave an assurance to pay the 'Liquidation Process Costs' of the 'Corporate Debtor'.

65. That apart, the 1st Respondent / Petitioner, had requested the 3rd Respondent / Phoenix ARC Private Limited, through an email dated 17.06.2020, to provide the communication to 'opt out of the Liquidation Process' of the 'Corporate Debtor', in the prescribed format and the 1st Respondent / Liquidator / Petitioner, had requested the 3rd Respondent / Phoenix ARC Private Limited, to pay the 'Liquidation Process costs', as per the provisions of the Code. In fact, the 3rd Respondent / Phoenix ARC Private Limited, through an 'email', dated 19.06.2020, had submitted their 'Claim', in the prescribed format along with an affidavit in support and informed the 1st Respondent / Petitioner / Liquidator that the same was sent through 'Courier', as well to the 1st Respondent / Petitioner.

66. Indeed, the 3rd Respondent / Phoenix ARC Private Limited, through an 'email', dated 23.06.2020, had informed the 1st Respondent / Petitioner /

Liquidator, that the 'Sale Proceeds', as per Section 53(1)(a), the 'Liquidation Process Costs', shall be recovered from the 'Sale Proceeds' of the 'Assets' and also that Regulation 2A of the Liquidation Process Regulations, 2016, apply to the Financial Institutions. Besides that, the 3rd Respondent / Phoenix ARC Private Limited, had stated that they wished to 'opt out of the Liquidation', however, they being an 'ARC', they are not liable to pay 'Liquidation Process Costs'.

67. Indeed, because of the 'Lock Down', in the meanwhile, the 1st Respondent / Petitioner / Liquidator, had filed an IA No. 277 / 2020, seeking exclusion of period from 25.03.2020 to 22.07.2020, from the 'Liquidation Process Period', and that the 'Adjudicating Authority' / 'Tribunal', through an 'Order', dated 21.08.2020, was pleased to exclude the period from 25.03.2020 to 22.07.2020, from the 'Liquidation Process Period'.

68. Through a letter dated 26.08.2020, the 1st Respondent / Petitioner / Liquidator, had informed the Appellant / 1st Respondent, and 'their respective Share of Liquidation Costs of Rs.1,91,96,224/-' (Rupees One Crore Ninety One Lakhs Ninety Six Thousand Two Hundred and Twenty Four Only), which includes the approved Liquidation Costs and Liquidation Fee) and further requested to remit their respective Share, as a whole or at least 30% within 5 days from the issuance of the Letter.

69. In reality, the 1st Respondent, through a letter dated 26.08.2020, had provided the Liquidator's Fee Estimate, as per Regulation 4(2)(b) of the Liquidation Process Regulations, 2016, which runs as follows:

<i>Amount of Realization</i>	<i>7 to 12 Months</i>			<i>145.00</i>	
		<i>From</i>	<i>To</i>	<i>Net</i>	<i>Fees</i>
<i>On the first 1 crore</i>	<i>3.75</i>	<i>-</i>	<i>1.00</i>	<i>1.00</i>	<i>0.04</i>
<i>On the next 9 crores</i>	<i>2.80</i>	<i>1.00</i>	<i>9.00</i>	<i>8.00</i>	<i>0.22</i>
<i>On the next 40 crores</i>	<i>1.88</i>	<i>10.00</i>	<i>40.00</i>	<i>30.00</i>	<i>0.56</i>
<i>On the next 50 crores</i>	<i>0.94</i>	<i>40.00</i>	<i>50.00</i>	<i>10.00</i>	<i>0.09</i>
<i>On further sums realized</i>	<i>0.19</i>	<i>50.00</i>	<i>145.00</i>	<i>95.00</i>	<i>0.18</i>
<i>Sub-total</i>					<i>1.10</i>
<i>Amount Distributed to Stakeholders</i>	<i>7 to 12 months</i>			<i>145.00</i>	
		<i>From</i>	<i>To</i>	<i>Net</i>	<i>Fees</i>
<i>On the first 1 crore</i>	<i>1.88</i>	<i>-</i>	<i>1.00</i>	<i>1.00</i>	<i>0.02</i>
<i>On the next 9 crores</i>	<i>1.40</i>	<i>1.00</i>	<i>9.00</i>	<i>8.00</i>	<i>0.11</i>
<i>On the next 40 crores</i>	<i>0.94</i>	<i>10.00</i>	<i>40.00</i>	<i>30.00</i>	<i>0.28</i>
<i>On the next 50 crores</i>	<i>0.48</i>	<i>40.00</i>	<i>50.00</i>	<i>10.00</i>	<i>0.05</i>
<i>On further sums realized</i>	<i>0.10</i>	<i>50.00</i>	<i>145.00</i>	<i>95.00</i>	<i>0.10</i>
<i>Sub-total</i>					<i>0.56</i>
<i>TOTAL FEES</i>					<i>1.66</i>

70. It is evident that the 1st Respondent / Petitioner, through a letter dated 26.08.2020, had informed the 2nd Respondent / India Bulls Asset Reconstruction Company Limited that their `respective Share of Liquidation Costs of Rs.35,64,024/-', which includes the `approved Liquidation Costs and

Liquidation Fee’, and further, requested to ‘remit their respective Share as a whole’ or ‘at least 30%’, within ‘5 days, from the issuance of the Letter’.

71. The 1st Respondent / Liquidator, had provided the ‘Liquidator’s Fee Estimate’, as per Regulation 4 (2)(b) of the Liquidation Process Regulations, 2016, which runs as under:

<i>Amount of Realization</i>	<i>7 to 12 Months</i>			<i>145.00</i>	
		<i>From</i>	<i>To</i>	<i>Net</i>	<i>Fees</i>
<i>On the first 1 crore</i>	<i>3.75</i>	<i>-</i>	<i>1.00</i>	<i>1.00</i>	<i>0.04</i>
<i>On the next 9 crores</i>	<i>2.80</i>	<i>1.00</i>	<i>9.00</i>	<i>8.00</i>	<i>0.22</i>
<i>On the next 40 crores</i>	<i>1.88</i>	<i>10.00</i>	<i>40.00</i>	<i>30.00</i>	<i>0.56</i>
<i>On the next 50 crores</i>	<i>0.94</i>	<i>40.00</i>	<i>50.00</i>	<i>10.00</i>	<i>0.09</i>
<i>On further sums realized</i>	<i>0.19</i>	<i>50.00</i>	<i>145.00</i>	<i>95.00</i>	<i>0.18</i>
<i>Sub-total</i>					<i>1.10</i>
<i>Amount Distributed to Stakeholders</i>	<i>7 to 12 months</i>			<i>145.00</i>	
		<i>From</i>	<i>To</i>	<i>Net</i>	<i>Fees</i>
<i>On the first 1 crore</i>	<i>1.88</i>	<i>-</i>	<i>1.00</i>	<i>1.00</i>	<i>0.02</i>
<i>On the next 9 crores</i>	<i>1.40</i>	<i>1.00</i>	<i>9.00</i>	<i>8.00</i>	<i>0.11</i>
<i>On the next 40 crores</i>	<i>0.94</i>	<i>10.00</i>	<i>40.00</i>	<i>30.00</i>	<i>0.28</i>
<i>On the next 50 crores</i>	<i>0.48</i>	<i>40.00</i>	<i>50.00</i>	<i>10.00</i>	<i>0.05</i>
<i>On further sums realized</i>	<i>0.10</i>	<i>50.00</i>	<i>145.00</i>	<i>95.00</i>	<i>0.10</i>
<i>Sub-total</i>					<i>0.56</i>
<i>TOTAL FEES</i>					<i>1.66</i>

72. The 1st Respondent / Petitioner / Liquidator, had informed the 3rd Respondent / Phoenix ARC Private Limited, through letter dated 26.08.2020, their ‘respective Share of Liquidation Costs of Rs.36,74,771/-’, (which includes,

the `approved Liquidation Costs and Liquidator Fee`) and requested to `remit their respective Share as a whole` or `at least 30%` within `5 days, from the issuance of the Letter`. In fact, the 1st Respondent / Petitioner / Liquidator, had provided the Liquidator's Fee Estimate, as per Letter dated 26.08.2020, as per Regulation 4(2)(b) of the Liquidation Process Regulations, 2016.

73. Later, the 3rd Respondent / Phoenix ARC Private Limited, on 09.09.2020, had `paid the pro-rata Share of the Approved Liquidation Costs of Rs.6,68,898/- , to the 1st Respondent / Petitioner, but, a Sum of Rs.30,05,873/-, towards the Liquidator's Fee is still pending`.

74. According to the 1st Respondent / Petitioner / Liquidator, the `Respondents`, had completely failed to `remit their portion of the Liquidation Process Costs`, and the `Liquidator's Fee`, as per provisions of the I & B Code, 2016 and Regulations, made thereunder, which as per Regulation 2A(2), are required to be deposited within 7 days from the `commencement of the Liquidation Process`.

75. It is represented on behalf of the 1st Respondent / Petitioner / Liquidator that `any delay`, in depositing the `Liquidation Costs` by the `Respondents`, is delaying the `Liquidation Process` and the `Liquidator`, is unable to perform his duties, as mandated under the I & B Code, 2016.

76. Also that, because of the 'inaction of the Respondents', by not defraying 'their portion of 'Liquidation Process Costs', which were duly approved in the '12th Meeting of Committee of Creditors', is creating hurdle in the 'Liquidation Process' of the 'Corporate Debtor' and hindering the 1st Respondent / Petitioner / Liquidator, to discharge his duties, as per the I & B Code, 2016.

77. Hence, the IA No. 399 / BB / 2020 in CP (IB) No. 189 / BB / 2018 is filed in a 'Bona fide' manner, and in the 'interest of Justice', the said Application, may be allowed by issuing necessary directions to the Respondents, to forthwith defray the portion of 'Liquidation Process costs', as per 'Regulation 2A of the IBBI (Liquidation Process) Regulations'.

Appellant / 1st Respondent's Objections:

78. The Appellant / 1st Respondent (M/s. Essel Finance Advisors & Managers LLP) in its Objection Statement, before the 'Adjudicating Authority' / 'Tribunal', in IA No. 399 / BB / 2020 in CP (IB) No. 189 / BB / 2018, had mentioned that in terms of Regulation 2A of the Liquidation Process Regulations, it is only the 'Financial Creditors', who are 'Financial Institutions', who may be called upon by the 'Liquidator', to contribute the 'excess of the Liquidation Costs', over the 'Liquid Assets' of the 'Corporate Debtor', in proportion to the 'Financial Debt', owed to them, by the 'Corporate Debtor'.

79. The clear cut stand of the Appellant / 1st Respondent, before the 'Adjudicating Authority' / 'Tribunal', is that 'Financial Institution', as per Section 3 (14) of the I & B Code, 2016, and hence, is not liable to contribute towards 'Liquidation Costs', as per Regulation 2A of the Liquidation Process Regulations.

80. The other contention of the Appellant / 1st Respondent, before the 'Adjudicating Authority' / 'Tribunal' in IA No. 399 / BB / 2020 in CP (IB) No. 189 / BB / 2018 is that for an 'Entity', to come within the definition of 'Financial Institution', under Section 45-I of the Reserve Bank of India Act, 1934, it ought to be a 'Non-banking Institution', and 'ought to 'carry on', as its 'business' or 'part of its business', any of the various activities mentioned in Section 45-I.

81. Furthermore, according to the Appellant / 1st Respondent, it is a 'Scheme Sponsor' and 'Investment Manager', which acts for the 'benefit of the 'Debenture Holders' and its 'Nominee'. In fact, the Appellant / 1st Respondent is an 'Limited Liability Partnership', set up under the LLP Act, 2008 and hence, the Appellant / 1st Respondent cannot be construed, by any stretch of imagination to be a 'Non-Banking Institution', as defined under Section 45-I of the Reserve Bank of India Act, 1934.

82. The Appellant / 1st Respondent, before the 'Adjudicating Authority' / 'Tribunal', that none of the 'Debenture Holders' Viz. India Asset Growth Fund, India Asset Growth Fund – II, Eduskill Realtors LLP and Elegant Marbles and Granites Industries Limited, also fall within the definition of the 'Financial Institution', as per Section 45-I of the Reserve Bank of India Act, 1934. Therefore, it is contended on behalf of the Appellant / 1st Respondent that as per Section 3 (14) of the Code, they are 'not liable to contribute to the Liquidation Costs'.

83. The submission of the Appellant / 1st Respondent in the instant 'Appeal', before this 'Tribunal' is that the 'main object and nature of the business of Eduskill Realtors LLP and Elegant Marbles and Granites Industries Limited', will establish that the 'Business Activities', carried out by the 'Debenture Holders', do not fall within the nature of the business activities, covered as per Section 45-I of the Reserve Bank of India Act, 1934.

84. According to the Appellant / 1st Respondent, since it is a 'Limited Liability Partnership', it does not fall within the ambit of 'Non-Banking Institution', as mentioned in Section 45-I of the RBI Act, 1934. Also that, the Appellant / 1st Respondent, had clarified that it is not a 'Financial Creditor', who are 'Financial Institution' and therefore, are 'not liable to contribute any sums', towards 'Liquidation Costs'.

85. The prime contention advanced on behalf of the Appellant / 1st Respondent is that on 13.02.2020, the `Committee of Creditors`, in their 12th Meeting, had explicitly stated that `Liquidation Costs`, are to be met by the `Financial Creditors`, being `Financial Institution`, as per Regulation 2A of the Liquidation Process Regulations, vide Annexure-M, Page 187 of the `Appeal Paper Book of the Appellant`. Besides this, through a letter dated 07.04.2020, the 1st Respondent / Liquidator had accepted that the `Appellant`, is not a `Financial Creditor`, who is a ``Financial Institution` and he is not liable to pay `Liquidation Costs`. Therefore, a stand is taken on behalf of the Appellant that the 1st Respondent / Liquidator / Petitioner cannot be permitted to backtrack from the stand taken by it, without cogent evidence and explanation to substantiate the same (vide Annexure P – Page 199 of the Appeal Paper Book of the Appellant).

86. The Learned Counsel for the Appellant, before this `Tribunal`, submits that the `Impugned Order`, is not a `Speaking Order` and the `Adjudicating Authority` / `Tribunal`, had failed to consider that the `Appellant`, has Business or part of its Business, does not carry any of the activities mentioned in Section 45-I of the RBI Act, 1934.

87. The prime contention of the Appellant, is that when the `pre-condition of being a Financial Institution`, was not satisfied, the `Appellant`, cannot be called upon, to contribute towards `Liquidation Costs`.

88. The Learned Counsel for the Appellant points out that the 'Impugned Order' of the 'Adjudicating Authority' / 'Tribunal', calls upon the 'Appellant', being a 'Financial Creditor', who is not a 'Financial Institution', to pay 'upfront Liquidation Costs', when such contribution / sums by 'Secured Creditors', who stand outside the 'Liquidation Estate', are not even contemplated, under the I & B Code, 2016.

89. The Learned Counsel for the Appellant, points out that the 'Adjudicating Authority' / 'Tribunal', had failed to consider the repercussions of the 'Impugned Order', in as much as the 'Secured Financial Creditors', who 'opt out of the Liquidation Process', are 'liable to pay Exorbitant Liquidation Costs', before even realising their interest, in their 'Secured Assets' and in any event, the 'Impugned Order' is liable to interfered with by this 'Tribunal', in 'Appeal', by setting aside the same, to 'secure the ends of Justice'.

90. Dealing with the plea of the Appellant, the 'Impugned Order', made in IA No. 399 / BB / 2020 in CP (IB) No. 189 / BB / 2018, passed by the 'Adjudicating Authority' / 'Tribunal', Bengaluru Bench, is a 'non-speaking' and 'unreasoned' one, this 'Tribunal', points out that the 'Adjudicating Authority' / 'Tribunal', in the 'Impugned Order' dated 25.05.2023 in IA No. 399 / BB / 2020 in CP (IB) No. 189 / BB / 2018, had dealt with the main contention raised by the Appellant / 1st Respondent that it does not fall within the category of 'Financial Institution', mentioned about the relationship note,

sent by the Appellant / 1st Respondent to the 1st Respondent / Liquidator / Petitioner, which was attached along with the 'Rejoinder', etc., and also pointed out that there was no objection filed on behalf of the 2nd Respondent and that the 'Adjudicating Authority' / 'Tribunal', had 'forfeited the right to file objection on 25.08.2022. Moreover, the 'Adjudicating Authority' / 'Tribunal', in Paragraph 13 of the 'Impugned Order', had observed that *'further, on perusal of the documents submitted by the Liquidator it is seen that Respondent No. 2 vide email dated 17.04.2020 has informed that the charge over the properties of the Corporate Debtor will not be relinquished to the Liquidation Estate and it will proceed under the SARFAESI Act for the sale of properties of the Corporate Debtor. Further, vide email dated 18.06.2020 Respondent No. 2 gave assurance to the Liquidator to pay the Liquidation Process costs of the Corporate Debtor. The said email has been found attached along with the Petition'*.

91. The 'Adjudicating Authority' / 'Tribunal', in the 'Impugned Order', at Paragraph No. 14, had mentioned that *'in this connection, it is relevant to mention here that in the Written Submission, the Respondent No. 3 has explained that they have filed a Writ Petition, challenging the constitutional validity of Regulation 2A and 21A of The Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. However, the same is not relevant here, and the Respondent No. 3 are directed to pay the portion of the Liquidator's fees which is pending against them'* and by referring to the

decision of this 'Tribunal', in State Bank of India V. Navjit Singh dated 16.03.2022 (vide Comp. App (AT) (INS) No. 151 of 2022), wherein it was held that *'even if the Secured Creditor proceeds to realise its Security Interest it is liable to pay fee as contemplated under Regulation 21 A(2)(a). Further, Hon'ble NCLAT in the case of 'Small Industries Development Bank of India v. Shri Vijender Sharma', dated 02.11.2022, in Company Appeal (AT) (Insolvency) No. 1027 of 2021, held that compliance of regulations 2 (ea), 2-A, 21-a and 37 of the Liquidation Process Regulations and Section 52/53 of the IBC are absolutely necessary even if the Secured Creditor proceeds to realise its Security Interest'*, and opined that the Respondent Nos. 1, 2 & 3 were to defray their portion of 'Liquidation Process Costs', in terms of Regulations 2A of the IBBI (Liquidation Process) Regulations, 2016, and the IA No. 399 / BB / 2020 in CP (IB) No. 189 / BB / 2018, was 'disposed of', accordingly.

92. It is not out of place for this 'Tribunal', to make a significant mention that 'reasons' are the 'Heart & Soul' of an 'Order', passed by an 'Adjudicating Authority' / 'Tribunal'. A 'reasoned Order', will have an 'appearance of Justice'. An 'unreasoned Order', may be 'valid', from the point of view of an 'Aggrieved Person'.

93. A cursory perusal of the 'Impugned Order', as referred to Supra, makes it candidly clear that the 'Impugned Order', is not an 'unreasoned' one, but, a

`speaking and a reasoned Order'. Therefore, the `contra plea', taken on behalf of the `Appellant', is `not acceded to', by this `Tribunal'.

94. The Appellant in the present `Appeal' as well as in the `Claim Form', had preferred a `Claim', on behalf of Eduskill Realtors LLP, which is a `LLP' as well as `Elegant Marbles & Granite Industries Limited' and therefore, they being a `Non-Banking Financial Institution', may not `arise', in this considered opinion of this `Tribunal'.

95. The Appellant / 1st Respondent / Essel Finance Advisors & Managers LLP, had invested upto Rs.55 Crores by subscribing to `5500 Redeemable Secured Non-Convertible Debentures of Rs. 1 Lakh each' and therefore, the `Appellant / 1st Respondent', comes within the ambit of `Financial Institution', as per Section 45(i)(c)(i) and 45(I)(c)(ii) of Reserve Bank of India Act, 1934.

96. It must be borne in mind when a `Secured Creditor', exercise its right as per Section 52 of the I & B Code, 2016, there is no provision in the I & B Code, 2016 or Regulation, which provides for `extension of time', to pay the `Liquidation Costs'. Also that, it is quite clear from the Regulation 21A of the Liquidation Process Regulations, 2016, that the `Secured Creditors', who do not relinquish their `Security Interest', in the `Liquidation Estate' is required to pay the Sum as payable under clause (a) and sub-clause (i) of clause (b) of sub-section (1) of Section 53 of the Code, which includes the `Appellant'.

97. In the present case, even though the 'Appellant', has taken a plea that it and the 'Debenture Holders', it represents are not 'Financial Institutions' and not liable to 'pay the Liquidation Costs', being a 'Member' of the 'Committee of Creditors' of the 'Corporate Debtor', on the basis of 'Investment', made of Rs.55 Crores, by subscribing 5500 Redeemable Secured Non-Convertible Debentures of Rs.1,00,000/- etc., it is one of the 'Financial Creditors' and being a 'Financial Institution', in the considered opinion of this 'Tribunal', is liable to pay the 'Liquidation Costs', as per the I & B Code, 2016. Even as per 'Regulation 2A of the Liquidation Process Regulations, 2016', the Appellant as a 'Financial Creditor' and also a 'Financial Institution', is required to pay the 'Liquidation Process Costs', in the event such 'Financial Creditor', exercising its right to enforce its 'Security', in the teeth of the ingredients of Section 52 of the I & B Code, 2016. Continuing further, it must be borne in mind that there is nothing in the I & B Code, 2016 or the Regulation, which provides for extension / elongation of time, to pay the 'Liquidation Costs', especially when the exercise of right by the 'Secured Creditor' is pressed into service, in terms of the 'Code'.

98. The Learned Counsel for the 1st Respondent / Liquidator / Petitioner points out that the instant 'Appeal', is filed without the 'certified copy' of the 'Impugned Order', made in IA No. 399 / BB / 2020 in CP (IB) No. 189 / BB /

2018, dated 25.05.2023 and the Appellant has not given any reason for the same.

99. The Learned Counsel for the 1st Respondent / Liquidator / Petitioner, refers to the Judgment of Hon'ble Supreme Court in V. Nagarajan v. SKS Ispat & Power Ltd. & Ors. (vide Civil Appeal No. 3327 / 2020 dated 22.10.2021), wherein, at Paragraph 21, it is observed as under:

21. ``..... must be based on a harmonious interpretation of the applicable legal regime, given that the IBC is a Code in itself and has overriding effect. Sections 61(1) and (2) of the IBC consciously omit the requirement of limitation being computed from when the “order is made available to the aggrieved party”, in contradistinction to Section 421(3) of the Companies Act. Owing to the special nature of the IBC, the aggrieved party is expected to exercise due diligence and apply for a certified copy upon pronouncement of the order it seeks to assail, in consonance with the requirements of Rule 22(2) of the NCLAT Rules. Section 12(2) of the Limitation Act allows for an exclusion of the time requisite for obtaining a copy of the decree or order appealed against. It is not open to a person aggrieved by an order under the IBC to await the receipt of a free certified copy under Section 420(3) of the Companies Act 2013 read with Rule 50 of the NCLT and prevent limitation from running. Accepting such a construction will upset the timely framework of the IBC. The litigant has to file its appeal within thirty days, which can be extended up to a period of fifteen days, and no more, upon showing sufficient cause. A sleight of interpretation of procedural rules cannot be used to defeat the substantive objective of a legislation that has an impact on the economic health of a nation.’’

100. The Learned Counsel for the 1st Respondent / Liquidator / Petitioner, adverts to the Paragraph 19 of the Judgment of Hon'ble Supreme Court in the aforesaid V. Nagarajan's case, wherein, it is observed as under:

19. ``.....The import of Section 12 of the Limitation Act and its explanation is to assign the responsibility of applying for a certified copy of the order on a party. A person wishing to file an appeal is expected to file an application for a certified copy before the expiry of the limitation period, upon which the “time requisite” for obtaining a copy is to be excluded. However, the time taken by the court to prepare the decree or order before an application for a copy is made cannot be excluded. If no application for a certified copy has been made, no exclusion can ensue. In fact, the explanation to the provision is a clear indicator of the legal position that the time which is taken by the court to prepare the decree or order cannot be excluded before the application to obtain a copy is made. It cannot be said that the right to receive a free copy under Section 420(3) of the Companies Act obviated the obligation on the appellant to seek a certified copy through an application.’’

101. At this stage, this ‘Tribunal’, aptly points out Rule 22 (1), (2) & (3) of the NCLAT Rules, 2016, which reads as under:

``22. Presentation of appeal.-

(1) Every appeal shall be presented in Form NCLAT-1 in triplicate by the appellant or petitioner or applicant or respondent, as the case may be, in person or by his duly authorised representative duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same.

(2) Every appeal shall be accompanied by a certified copy of the impugned order.

(3) All documents filed in the Appellate Tribunal shall be accompanied by an index in triplicate containing their details and the amount of fee paid thereon.’’

102. As a matter of fact, it is only the time required if the 'Application', is made that can be excluded as a time requisite, as per decision in Umda V. Rupchand AIR 1929 Nag. 1 (FB). Further, the burden to show that no party of the delay was due to his latches is on 'Applicant' or 'Appellant', as per decision in Sitaram v. Chamali Bai AIR 1969 MP 310. The time requisite for securing the copy is not only applicable to cases where the Applicant is required to obtain 'Copy', at its own instance, but also, to cases where under the Statute is entitled to get the copy from the 'Authority'. In such case also, is entitled to the exclusion for the period taken for obtaining the particular copy, which is annexed with the 'Memorandum of Appeal', as per decision in Manager M.C.C.P. V. Bai 1986 (2) CCC 9 (MP).

103. Rule 50 of the NCLT Rules, 2016, provides that the 'Registry', shall send the 'Certified Copy' of 'Final Order', passed to the 'Parties' concerned 'Free of Cost' and the 'Certified Copies', may be made available with costs, as per 'Schedule of Fees', in all other cases.

104. In the decision of Hon'ble Supreme Court of India in State of Uttar Pradesh v. Maharaj Narain, reported in AIR 1968 SC at Page 960, it is held that the 'time requisite', for obtaining a copy is to be ascertained from the copy actually filed along with the 'Memorandum'.

105. It is worth for this 'Tribunal', to make a useful reference to the decision of the Hon'ble Supreme Court of India, in Lala Balmukund V. Lajwanti, reported in AIR 1975 SC 1089, wherein, it is observed as under:

“In our opinion, the expression "time requisite" as used in s. 12(2) in the phrase in question, means all the time counted from date of the pronouncement of the judgment (the same being under Or. 20, r. 7, CPC, the date of the decree) which would be properly required for getting a copy of the decree, including the time which must ex-necessitate elapse in the circumstances of the particular case, before a decree is drawn up and signed. If any period of the delay in preparing the decree was attributable to the default or negligence of the appellant, the latter shall not be entitled to the exclusion of such period under s. 12(2) of the Limitation Act, 1908.”

106. According to the Appellant, it is representing the 'Debenture Holders', who are secured 'Financial Creditors' and further, while being on the 'Committee of Creditors', had contributed various Sums (to the tune of approx. INR 18 Lakhs), towards 'Corporate Insolvency Resolution Process costs', etc.

107. It is the version of the Appellants (Petitioners in IA No. 1007 / 2023) that the copy of the 'Impugned Order' in IA No. 399 / BB / 2020 in CP (IB) No. 189 / BB / 2018, was passed on 25.05.2023 and the same was uploaded on the 'Adjudicating Authority / Tribunal's Website and further, the Appellants, have accessed the 'Impugned Order' on 29.05.2023 and seek 'Leave', to produce a copy of the 'Impugned Order', as uploaded on the Website of the 'Adjudicating Authority' / 'Tribunal', and undertakes to apply for and obtain a 'Certified

Copy' of the 'Impugned Order', if and when, directed by this 'Appellate Tribunal'.

108. It is to be remembered that the Rule 14 of the NCLAT Rules, 2016, enjoins the 'Appellate Tribunal', under the caption 'power to exempt', to exempt the 'Parties', from compliance with any requirement of these 'Rules', and may give such directions in matters of practice and procedure, as it may consider just and expedient on the Application, moved in this behalf to render 'substantial justice'. The 'discretionary waiver', is not an automatic exception, but, an 'Application', is to be moved on behalf of the 'concerned Petitioners', ofcourse, showing 'sufficient cause' and in this regard, the 'Appellate Tribunal', is to exercise its 'subjective discretion', in a 'judicious manner', by applying its thinking mind, in the considered opinion of this 'Tribunal'.

109. Admittedly, in the instant case on hand, the Appellants, have not filed any 'Interlocutory Applications', seeking to exempt them, from filing the 'Certified Copy' of the 'Impugned Order', passed by the 'Adjudicating Authority' / 'Tribunal', dated 25.05.2023 in IA No. 399 / BB / 2020 in CP (IB) No. 189 / BB / 2018. In this connection, this 'Tribunal', aptly points out that Rule 22(2) of NCLAT Rules, 2016, in a 'crystalline manner', provides for the 'accompaniment of a 'Certified Copy' of the 'Impugned Order', in every 'Appeal'.

110. It is not out of place for this `Court' / `Tribunal', to make a pertinent mention that in the decision of the Hon'ble Supreme Court of India in *Sagufa Ahmed v. Upper Assam Plywood Products (P) Limited*, reported in (2021), 2 SCC at Page 317, it is clarified that the `Statutory Mandate' of a `Free Copy', is not to enable litigants to take two bites at the apple, where they could compute limitation from either when the `Certified Copy', is received on the litigant's `Application' or received as a `Free Copy', from the `Registry' – whichever is later'.

111. Also that, it cannot be overlooked that the obligation of the Appellants / Petitioners, to obtain a `Certified Copy' of the `Impugned Order', through an `Application', and to annexe the same with the `Appeal' is a `mandatory' one, in terms of Rule 22(2) of the NCLAT Rules, 2016, in the considered opinion of this `Tribunal'.

112. Earlier, the Petitioners / Appellants in IA No. 1007 of 2023 in Comp. App (AT) (CH) (INS) No. 332 of 2023, sought to condone the purported delay of 11 days (according to them), but, according to the `Office of the Registry', the delay comes to 14 days and this `Tribunal', had allowed the IA No. 1007 / 2023 on 24.01.2024, by directing the `Appellants', to pay a Costs of Rs.3,000/-, to the `Prime Minister's Relief Fund', to be paid by them, within two weeks from 24.01.2024. The `Appellants', have paid the said Costs of Rs.3,000/-.

113. The obligation of the 'Affected / Aggrieved Party', to exercise due diligence and to apply for a 'Certified Copy', upon 'Pronouncement of the Order', it decides to challenge in tune with the requirement of Rule 22(2) of the NCLAT Rules, 2016, is because of the special character of the I & B Code, 2016.

114. To put it succinctly, the filing of a 'Certified Copy' ('Paid Cost Copy'), is not an empty ritualistic formality, in the considered opinion of this 'Tribunal'. It cannot be gainsaid that only when the 'Petitioner / Appellant / Aggrieved Party', applies within the 'prescribed period of Limitation', as envisaged, under Section 61 (2) of the 'Code', the time taken to secure the 'Certified Copy', will be excluded from the 'Computation of Period of Limitation'.

115. In the present case on hand, before this 'Tribunal', the Appellants in Comp. App (AT) (CH) (INS) No. 332 of 2023, had furnished the 'Free of Cost Copy' of the 'Impugned Order', dated 25.05.2023, passed by the 'Adjudicating Authority' / 'NCLT', Bengaluru Bench, in IA No. 399 / BB / 2020 in CP (IB) No. 189 / BB / 2018 ('Certified' to be 'True Copy' of the 'Original').

116. In terms of Rule 22(2) of the NCLAT Rules, 2016, a 'Certified Copy' of the 'Impugned Order', shall accompany every 'Appeal' to be filed, before the 'Office of the Registry'. Only in a 'Paid Certified Copy', by an 'Aggrieved Party', the details Viz. when the Application for Certified Copy of the

Impugned Order was made by the 'Applicant', when it was made ready, when it was handed over / taken delivery, etc., will find a place, ofcourse, duly signed by the Deputy / Asst. Registrar of the 'Adjudicating Authority' / 'Tribunal'.

117. The instant Comp. App (AT) (CH) (INS) No. 332 of 2023, filed by the 'Appellants' are concerned, the copy of the 'Impugned Order', was accessed by them and made available to their knowledge on the Official Website of the 'Adjudicating Authority' / 'Tribunal', on 29.05.2023. As a matter of fact, the instant 'Appeal', came to be filed on 08.07.2023, through efilng, before the 'Office of the Registry'.

118. In so far as the Appellants are concerned, since they have not applied for the 'Certified Copy' of the 'Impugned Order', the 'Invocation of Section 12 of the Limitation Act, 1963', which specifies that 'time requisite for obtaining the copy of the 'Order', appealed shall be excluded, does not arise on any score.

119. The fact of the matter is, that in respect of the 'Appellants / Petitioners', since no Application for securing a 'Certified Copy' of the 'Impugned Order' was made, on their behalf, no exclusion of 'time requisite', as per Section 12 of the Limitation Act, 1963, will ensue in their favour, as opined by this 'Tribunal', in a clear cut manner.

120. Considering the fact that the `Appellants`, have averred in Paragraph 6 of the `Memorandum of Appeal`, under the caption `Limitation` that a copy of the `Order`, was accessed by them and made available to their knowledge on the Official Website of the `Adjudicating Authority` / `Tribunal`, on 29.05.2023, and the instant `Appeal`, came to be filed on 08.07.2023 and the `delay of purported 11 days` (according to the `Appellants / Petitioners`) and according to the `Registry`, it is 14 days, being condoned in IA No. 1007 / 2023 in the instant `Appeal`, on 24.01.2024, it is held by this `Tribunal` that the filing of the `Certified Copy` of the `Impugned Order`, is to accompany the instant `Appeal`, mandatorily (unless an `Exemption Application`, being filed by the `Party`, seeking it, to exempt from filing of the `Impugned Order` and `appropriate Orders`, for allowing the said `Application`, being obtained thereon, from this `Appellate Tribunal`), and in the present case, even though, as per Rule 14 of the NCLAT Rules, 2016, `no exemption`, is sought for, by the `Appellants / Petitioners`, by an `Application`, to file the `Certified Copy` of the `Impugned Order`, by `not exhibiting any sufficient cause`, yet this `Tribunal`, at the final stage of the disposal of the instant `Appeal`, keeping in mind of the `substantive objective` of the `I & B Code`, 2016, exercising its inbuilt and an inherent power, directs the `Appellants`, to file the `Certified Copy` of the `Impugned Order`, within two weeks, from the `date of Pronouncement of this Judgment`, for meeting the `ends of Justice`, and to prevent an `Aberration of Justice`, and answers accordingly.

121. Be that as it may, in the light of detailed foregoing deliberations, this `Tribunal`, on a careful consideration of respective contentions, advanced on either side, and considering the entire conspectus of the attendant facts and circumstances of the instant case, in an encircling manner, comes to an irresistible conclusion that the `Impugned Order`, dated 25.05.2023 in IA No. 399 / BB / 2020 in CP (IB) No. 189 / BB / 2018, passed by the `Adjudicating Authority` / `NCLT`, Bengaluru Bench, in directing the `Appellants`, `1st Respondent` and `two other Respondents`, to `Defray their portion of Liquidation Process Costs`, is free from any legal infirmities. Viewed in that perspective, the instant `Appeal`, is devoid of merits and it fails.

Result:

In fine, the instant Comp. App (AT) (CH) (INS.) No. 332 / 2023, is `Dismissed`. No costs. The connected pending `Interlocutory Applications`, if any, are closed.

**[Justice M. Venugopal]
Member (Judicial)**

**[Ajai Das Mehrotra]
Member (Technical)**

15/03/2024

SR / TM

Comp. App (AT) (CH) (INS) No. 332 / 2023