

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 1177 of 2023

IN THE MATTER OF:

Kunwer Sachdev,

S/o Late Shri Krishan Lal,

Aged about 60 years

R/o 1625B, The Magnolias, DLF Phase-V, Haryana –
122002

Email : Kunwersachdev@gmail.com

...Appellant

Versus

1. Su-Kam Power Systems Ltd

Registered office at:

100, Vasundhara Enclave, Pitampura,

West Delhi – Delhi – 110034

Email Id: yajanbansal@su-kampower.com

2. Mr. Navraj Mittal,

R/o House No. 1331

Sector – 4 Panchkula, Haryana

Email ID: adv.banibrar@gmail.com

3. Mr. Vishnu Prakash,

R/o House No. 63,

Sector – 6 Panchkula, Haryana

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4. Mr. Ashok Kumar Gupta,

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5. Mr. Yajan Bansal,

R/o House No. 78

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Email Id: adv.banibrar@gmail.com

6. Mr. Raj Kumar Ralhan,

Liquidator,
Flat No. 801, Tower01, Kalypso Court, Sector 128,
Jaypee Greens Wish Town,
Noida, Gautam Buddh Nagar, Uttar Pradesh
Email Id: rajkumarralhan@gmail.com

7. Mr. Rajiv Chakraborty,

Resolution Professional, 1st Floor, 12, Sukhdev Vihar,
New Delhi 110025

Email ID: chakrabortyrajiv72@gmail.com

...Respondents

Present:

For Appellant: Mr. Siddharth Yadav, Sr. Advocate with Mr. Apoorv Agarwal, Mr. Abhay Singla and Mr. Maitreya Sahu, Advocates.

For Respondents: Mr. Krishnendu Datta, Sr. Advocate with Ms. Bani Brar Rustomkhan and Mr. Rajat Sinha, Advocates for R-1 to 5.
Mr. Siddhant Kant and Mr. Nikhil Mathur, Advocates for R-6.

J U D G M E N T

ASHOK BHUSHAN, J:

1. This Appeal by a Suspended Director of the Corporate Debtor has been filed challenging the Order dated 01st May, 2023 by which order I.A. No. 4660 of 2022 filed by Respondent No. 1 for substituting the name of Respondent No. 1 in place of Applicant (Resolution Professional) in I.A. No. 1090 of 2018 has been allowed. The Appellant aggrieved by the said order, has come up in this Appeal.

2. Before we proceed to notice the respective contentions of the parties, it is necessary to notice background facts and sequence of the events leading to passing of the Order dated 01st May, 2023.

3. The Corporate Debtor-Su-Kam Power Systems Ltd. was admitted to Insolvency Resolution Process by Order dated 05th April, 2018 passed on

Section 7 Application filed by the State Bank of India. Resolution Professional invited Expression of Interest. The Appellant as suspended director of the Corporate Debtor also submitted a Resolution Plan. Resolution Professional informed the Appellant that Appellant is ineligible under Section 29A (h) of the Code to submit a Resolution Plan. The Appellant filed an Application being C.A. No. 58(PB)2019 challenging the decision of the Resolution Professional to declare him ineligible which application came to be rejected by the Adjudicating Authority vide Order dated 02nd April 2019. Order of the Adjudicating Authority was challenged by the Appellant before this Tribunal in C.A.(AT) Ins. No. 1498 of 2019 which appeal was also dismissed by this Tribunal vide its order/judgment dated 19.12.2019.

4. On the basis of audit report, the Resolution Professional filed an I.A. No. 1090 of 2018 under Section 43, 45 and 66 of the Code against 28 Respondents in which the Appellant was also Respondent No. 25. No plan having been approved in the CIRP, the Adjudicating Authority passed an order dated 03rd April, 2019 directing for liquidation of the corporate debtor. In the Liquidation, the Liquidator issued public announcement inviting expression of interest for acquisition of the corporate debtor as a going concern. In pursuance of e-auction, a bid of Rs. 49.95 Crores was submitted by Respondent No. 2 to 5 which being the highest bid was accepted by the Corporate Debtor. Respondent No. 2 to 5 the Successful Auction Purchaser submitted an acquisition plan providing for method of acquisition of the corporate debtor which acquisition plan came to be

approved by the Adjudicating Authority vide order dated 11th May, 2022. In the said proceeding I.A. No. 672/2021 was filed by the Appellant Ex-Promoter to reject the application praying for approval of the acquisition, the Adjudicating Authority by its order allowed the application approving the acquisition plan and rejected the application filed by the Appellant. Appellant aggrieved by the order dated 11th May, 2022 filed C.A.(AT) Ins. No. 673 of 2022 challenging the order dated 11th May, 2022 which Appeal was dismissed by this Tribunal vide order dated 03.02.2023. Order of this Tribunal dated 03.02.2023 was also questioned by a Civil Appeal 13873/2023 before the Hon'ble Supreme Court which was also dismissed by the Hon'ble Supreme Court by its order and judgment dated 07th August, 2023.

5. The Application which was filed by Respondent No. 1 for substituting its name in place of the Resolution Professional came to be allowed by the Impugned Order substituting name of the Respondent No. 1 the Successful Auction Purchaser which order is under challenge in this Appeal.

6. We have heard Mr. Siddharth Yadav, Sr. Advocate appearing for the Appellant and Mr. Krishnendu Datta, Sr. Advocate appearing for the Respondents. Appellant as well as Respondents have filed Compilation of Judgments and Orders which were taken on record.

7. Learned Sr. Counsel for the Appellant challenging the Order impugned contends that Successful Auction Purchaser cannot be allowed to pursue the avoidance application which is not in accordance with the scheme of IBC and the Regulation framed thereunder. It is further

submitted that IBC as well as Regulations provide only the Resolution Professional and Liquidator to prosecute the avoidance application, avoidance application cannot be allowed to be prosecuted by Successful Auction Purchaser, permitting to pursue the application by a Successful Auction Purchaser is unjust enrichment which is not permissible, the benefit arising out of avoidance application cannot be available to Successful Auction Purchaser. It is submitted that the order passed by the Adjudicating Authority is unreasoned order and deserves to be set aside on this ground alone. It is further submitted that issue which is involved in the present case is pending before the Hon'ble Supreme Court in C.A. No. 1632-1634 of 2022, **“Piramal Capital and Housing Finance Limited Vs. 63 Moons Technologies Limited”**.

8. Learned Sr. Counsel for the Respondents refuting the submissions of Learned Sr. Counsel for the Appellant submits that Appellant as Suspended Director has no locus to challenge the Impugned Order by which order only permitted the substitution of Respondent No. 1 in place of Resolution Professional who had earlier filed the avoidance application. It is submitted that the Appellant by several proceedings have been challenging every stage of liquidation which challenge were repelled upto the Hon'ble Supreme Court and the Appellant cannot be said to be aggrieved by the Order by which Respondent No. 1 has been substituted in place of Resolution Professional to prosecute the avoidance application. It is submitted that acquisition plan itself contemplated that Successful Auction Purchaser shall pursue the avoidance application after approval of the

acquisition plan, the order approving the acquisition plan dated 11th May, 2022 was challenged by the Appellant before this Tribunal as well as before the Hon'ble Supreme Court which all were dismissed hence the provision of acquisition plan permitting Respondent No. 1 to prosecute the avoidance application has become final and cannot be questioned. It is submitted that the Appellant is Respondent in avoidance application. It is submitted that the Judgment of this Tribunal in '63 Moons Technologies Ltd.' which is pending consideration before the Hon'ble Supreme Court arose out of approval of the resolution plan and the issue which is sought to be raised in this Appeal is not involved in the said Judgment hence the pendency of Civil Appeal 1632-1634 of 2022 before the Hon'ble Supreme Court has no relevance in the present case.

9. We have considered the submissions of Learned Sr. Counsel for the parties and have perused the record. We have also perused the Judgments and Orders which were brought on record by both the parties by their respective compilation of judgments.

10. The Appellant who is ex-promoter of the Corporate Debtor has submitted a Resolution Plan in Corporate Insolvency Resolution Process and was declared ineligible by the Resolution Professional which order was upheld by the Adjudicating Authority by its order dated 02nd April, 2019 which order was affirmed by the Appellate Tribunal on 31st October, 2019. In the Liquidation Proceedings also, the Appellant has challenged the order approving the acquisition plan order dated 11th May, 2022. Before the Adjudicating Authority, the Appellant has also filed an application to

oppose the acquisition plan. In the Liquidation Proceedings also, the EoI submitted at the instance of the promoter was not accepted and further the highest bid submitted by Respondent No. 2 to 5 was accepted. In the Application filed by the Liquidator to approve the e-auction in favour of Respondent No 2 to 5, Appellant also filed an application praying for rejection of the Application. In the said proceedings, the Adjudicating Authority had made following observations:

“In any event, we find that the ex-promoter has no locus standi to participate or agitate in this proceeding or submit a settlement proposal at this stage, in view of the finding of this Adjudicating Authority, Hon’ble NCLAT and Hon’ble Supreme Court, wherein it was held that, the ex-promoter has become ineligible in terms of Section 29A(h) of the Code as well as proviso to sub section (f) of Section 35 of the Code.”

11. In the Appeal itself, the Appellant has come up with the case that in the acquisition plan, it was successful auction purchaser who was to get the benefit of avoidance application. In the Appeal in paragraph 9.8, following grounds have been urged by the Appellant:

“9.8 BECAUSE in the Acquisition Plan, which was approved by the Hon’ble NCLT, specific provision was made by the Auction Purchasers to grab the proceeds from pending applications relating to preferential transactions which is in the teeth of the intent and objects of the Code as the benefit ought to go to the CoC.”

12. The Appellant’s case itself in the Appeal is that Successful Auction Purchaser under the acquisition plan has been provided to take benefit of

avoidance application. When the acquisition plan submitted by the Respondent No. 2 to 5 has been approved by the Adjudicating Authority and the Appeal filed by the Appellant before this Tribunal as well as before the Hon'ble Supreme Court has been dismissed as noticed above, we fail to see how the Appellant can now challenge the application filed by the Successful Auction Purchases by which Respondent No. 1 had prayed for substituting the name of Respondent No. 1 in place of Resolution Professional who has earlier filed the avoidance application.

13. Learned Counsel for the Appellant submitted that under the scheme of Code it is the liquidator and resolution professional who are entitled to prosecute the application. When we look into the provisions of the Code, Section 43, 45, 46, it is clear that it is the Resolution Professional or Liquidator who are empowered to come to opinion and file an application for avoidance of the transaction. In the present case, it is admitted fact that avoidance application was filed by the Resolution Professional. Learned Counsel for the Appellant has referred to Section 36(3)(f) of the Code which provides for liquidation assets. Section 36(1)(2)(3)(f) is as follows:

“36. (1) For the purposes of liquidation, the liquidator shall form an estate of the assets mentioned in sub-section (3), which will be called the liquidation estate in relation to the corporate debtor.

(2) The liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors.

(3) Subject to sub-section (4), the liquidation estate shall comprise all liquidation estate assets which shall include the following:-

.....

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

14. The above provision makes it clear that any assets or their value recovered through proceedings for avoidance of transactions shall form the liquidation estate. There can be no dispute to this legal position that proceeds of the avoidance application are part of the liquidation estate.

15. The question which has been raised by the Appellant in the present case is as to whether the Successful Auction Purchaser can prosecute the avoidance application after approval of the acquisition plan. There is no issue that proceeds out of avoidance application are not part of Liquidation Estate.

16. Learned Counsel for the Appellant has also relied on regulation 44A of IBBI (Liquidation Process) Regulation, 2016. Regulation 44A has been inserted by notification dated 16th September, 2022. Regulation 44A is as follows:

“44A Treatment of avoidance of transaction.

The liquidator shall, on the advice of the consultation committee, provide in the application along with the final report filed under regulation 45 for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the dissolution or closure of liquidation process and the manner in which the proceeds, if any, from such proceedings shall be distributed.”

17. The Regulation 44A deals with treatment of transaction avoidance which itself contemplates that there can be a position regarding prosecution of avoidance application even after resolution or closure of liquidation process and the manner in which the proceeds, if any, from such proceedings shall be distributed. Regulation 44A relied on by Learned Counsel for the Appellant does not support his submission that avoidance application cannot be pursued by Successful Auction Purchaser.

18. Learned counsel for the Appellant has also relied on Insolvency Law Committee Report submitted on 20th February, 2020. Appellant has relied on Chapter III of the Report containing the Heading “Chapter 3: Recommendations regarding actions against avoidance transactions and improper trading in the Corporate Insolvency Resolution and Liquidation Process.”

19. Paragraph 2 of the Report deals with filing of application to avoid transaction application etc. Paragraph 2.1, 2.2, 2.3 and 2.4 is as follows:

“2. FILING OF APPLICATIONS TO AVOID TRANSACTIONS, ETC.

2.1. The Code currently allows only the insolvency professional to file applications against improper trading or to avoid transactions, other than in the case of undervalued transactions, in which case applications may also be filed by a creditor, member or partner of the corporate debtor if the resolution professional or liquidator fails to do so. There may be scenarios where the insolvency professional fails to file these applications actions due to reasons like lack of time, lack of funding, etc.

2.2. Various jurisdictions adopt distinct approaches regarding the right to file such applications. For instance, some jurisdictions solely allow the insolvency practitioner to file such actions whereas other jurisdictions also allow creditors to file. This is evident from the discussion in the UNCITRAL Guide captured below:

“Where the insolvency representative has the sole power to commence avoidance proceedings and, based on the balance of the considerations discussed above (i.e. for reasons other than negligence, bad faith or omission), decides not to commence proceedings in respect of certain transactions, insolvency laws adopt different approaches to the conduct and funding of those proceedings... As to the conduct of those proceedings, some laws permit a creditor or the creditor committee to require the insolvency representative to initiate an avoidance proceeding where it appears to be beneficial to the estate to do so or also permit a creditor itself or the creditor committee to commence proceedings to avoid these transactions, where other creditors agree.”
(Emphasis Supplied)

2.3. In light of the above, the Committee discussed that it may be beneficial to allow creditors (individual or in groups) and the CoC to file applications in case the insolvency professional fails to do so. In this regard, creditors should first approach the resolution professional or the liquidator to file an application. After this, if the resolution professional or liquidator then fails to file an application, then the creditor or the CoC may file the application itself.

2.4. The Committee also considered if the successful resolution applicant should be permitted to file such applications. However, it was agreed that this would possibly result in the resolution applicant being entitled to a return that was not factored in at the time of submitting their bid. Therefore, the Committee decided that the resolution applicant should not be permitted to file applications against improper trading or applications to avoid transactions.”

20. The above report only provides that in event the Resolution Professional or Liquidator fail to file the avoidance application, the application can be filed by the creditors or the CoC. The report further stated that Successful Resolution Applicant cannot be allowed to file avoidance application. There cannot be any quarrel to the recommendations made in the Report. In the present case it is not a case that avoidance application has been filed by the Successful Auction Purchaser. The Applications were filed by the Resolution Professional well within time hence the above report does not in any manner help the Appellant.

21. In the present case, we are concerned with the only issue as to whether Successful Auction Purchaser can pursue the avoidance application. The question as to whether the Successful Resolution Applicant can be allowed to prosecute the application came for consideration before this Tribunal in **C.A.(AT) Ins. No. 437 of 2023, Kapil Wadhawan Vs. Piramal Capital & Housing Finance Ltd. & Ors. 2023 SCC OnLine Nclat 228**. In the above case also, Successful Resolution

Applicant filed an application for substituting its name in place of Administrator/Resolution Professional which was allowed by the Adjudicating Authority. The Suspended Director of the Corporate Debtor had challenged the Order in this Tribunal. This Tribunal after considering the respective submissions, provisions of the Code as well as Regulations and the Judgment of Delhi High Court in **TATA Steel BSL Limited Vs. Venus Recruiter Pvt. Ltd., 2023 1 HCC DEL 301** laid down following in paragraph 21 and 26:

“21. Another submission which has been pressed by the learned Counsel for the Appellant is that Successful Resolution Applicant cannot pursue the avoidance applications and if at all, the avoidance applications can be pursued, it could have been only by the RP and that in the present case the Administrator. It is submitted that RP is persona designate, whose jurisdiction cannot be delegated to any other person. The present is not a case where Successful Resolution Applicant is exercising any delegated powers of RP/ Administrator. In the present case, Resolution Plan envisages and specifically provides for pursuing of the applications by the Successful Resolution Applicant. The Successful Resolution Applicant is not exercising any delegated powers of RP, hence, the argument that RP being persona designate, has no relevance in the present case. The Adjudicating Authority in the present case has substituted the Piramal - Successful Resolution Applicant relying on provisions of the Resolution Plan. The Adjudicating Authority while approving the Resolution Plan vide its order dated 07.06.2021 has noted the provisions of the Plan, which

empowers the Resolution Applicant to pursue the avoidance application. In order passed by the Adjudicating Authority dated 07.06.2021, following has been stated:

“i. Under [Section 2.13.2](#) of Part A of the Resolution Plan, the Successful Resolution Applicant has provided that it intends to pursue, on a best efforts basis, the application(s) filed by the Administrator before this Hon'ble Tribunal in respect of these Avoidance Transactions (as defined in the Resolution Plan). Any positive monetary recovery received by the Corporate Debtor as a result of orders passed in relation to the Avoidance Transactions shall be distributed, net of costs and expenses (including taxes), to the Financial Creditor pro rata to the extent the Financial Debt for Financial Creditors, provided that, the CoC may in its discretion adopt a different manner of distribution (which may take into account the order of priority amongst Financial Creditors as laid down in Section 53(1) of the Code) and such decision of the CoC shall be accepted by the Successful Resolution Applicant, subject to there being no change in the Total Resolution Amount.

ii. Under [Section 2.13.3](#) of Part A of the Resolution Plan, the Successful Resolution Applicant ascribes value of INR 1 in respect of any transactions that may be avoided/ set aside by this Hon'ble Tribunal in terms of Section 66 of the Code. Accordingly, any positive recovery as a result of reversal of transactions avoided or set aside by this Hon'ble Tribunal in terms of Section 66 of the Code would accrue to the sol benefit of the Successful Resolution Applicant. All the costs and expenses incurred or to

be incurred towards litigation pertaining to Section 66 of the Code shall be to the account of the Successful Resolution Applicant.”

*“26. As noted above, the present Appeals have been filed by the Ex- Promoter of the Dewan Housing Finance Corporation Finance Limited and allegation regarding fraudulent transactions were against the Ex- Promoters including the Appellant. The object of continuing the avoidance applications, even after the CIRP is the discovery of dubious transactions and permitting such preferential undervalued and fraudulent transactions to continue, will be depriving the benefit of such transactions to the creditors, which is not the intent of the statutory scheme. The submission advanced on behalf of Union of India questioning the interpretation of learned single Judge in **Venus Recruiter Pvt. Ltd.** was accepted by the Division Bench and in paragraph 89 of the judgment, following has been observed:*

“89. The concern of Union of India is that if the interpretation of the learned Single Judge is accepted then persons who were responsible for the corporate debtor to go into liquidation because of unscrupulous transactions will get away with their deeds. The submission that the scheme of IBC is not purely commercial in nature and the purpose of the Act which is also to ensure that public money is brought back into the system is not unfounded.””

22. It is to be noted that against the order of this tribunal dated 15th May, 2023, Civil Appeal has been filed being Civil Appeal vide diary no. 25822 of 2023 where Hon’ble Supreme Court on 06.09.2023 passed following order:

“Delay in re-filing is condoned.

Our attention is drawn to the orders dated 07.07.2023 and 14.08.2023 passed in SLP (C) Nos. 10331-10332/2023 titled “Tata Steel Ltd. v. Venus Recruiter Private Limited & Ors.” and in SLP (C) D. No. 15256/2023 titled “Venus Recruiter Private Limited v. Tata Steel BSL Limited & Ors.”, respectively.

Issue notice and tag with SLP (C) Nos. 10331-10332/2023 and SLP (C) D. No. 15256/2023.

Ms. Chitra Rentala, learned counsel, who is present in Court on advance notice/caveat, waives service and accepts notice on behalf of the respondent No.1 – Piramal Capital and Housing Finance Limited.

Notice will be served by all modes, including dasti, to all unrepresented respondents on steps being taken within a period of ten days from today.

Notwithstanding pendency of the present appeal, proceedings under Sections 43 to 66 of the Insolvency and Bankruptcy Code, 2016 can continue.”

23. The Judgment of this Tribunal dated 15th May, 2023 thus has not been stayed rather the Hon’ble Supreme Court has permitted the Application under Section 43 and 46 to go on.

24. The Judgment of this Tribunal in “Kapil Wadhawan” has categorically held that Successful Resolution Applicant can be allowed to prosecute the avoidance application, the same analogy shall be applicable with regard to prosecution by the Successful Auction Purchaser in liquidation estate when the asset of the corporate debtor has been sold as a going concern and acquisition plan submitted by Successful Auction Purchaser has been approved by the Adjudicating Authority. We have already noticed that in

the acquisition plan it is Successful Auction Purchaser who has been provided to take benefit of avoidance application which approval has become final.

25. Learned Counsel for the Appellant has further contended that order impugned does not contain any reason hence the said order deserves to be set aside on this ground alone. Learned Counsel for the Appellant has placed reliance on Judgment **2010 4 SCC 785, Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing Kota Vs. Shukla and Brothers**. Hon'ble Supreme Court in the said judgment has held that order passed by the administrative body and tribunals must contain a reason. In paragraph 10 to 12 of the judgment, following has been laid down:

“10. The increasing institution of cases in all Courts in India and its resultant burden upon the Courts has invited attention of all concerned in the justice administration system. Despite heavy quantum of cases in Courts, in our view, it would neither be permissible nor possible to state as a principle of law, that while exercising power of judicial review on administrative action and more particularly judgment of courts in appeal before the higher Court, providing of reasons can never be dispensed with. The doctrine of audi alteram partem has three basic essentials. Firstly, a person against whom an order is required to be passed or whose rights are likely to be affected adversely must be granted an opportunity of being heard. Secondly, the concerned authority should provide a fair and transparent procedure and lastly, the authority concerned must apply its mind and dispose of

the matter by a reasoned or speaking order. This has been uniformly applied by courts in India and abroad.

11. The Supreme Court in the case of S.N. Mukherjee v. Union of India [JT 1990 (3) SC 630: 1990 (4) SCC 594], while referring to the practice adopted and insistence placed by the Courts in United States, emphasized the importance of recording of reasons for decisions by the administrative authorities and tribunals. It said ‘administrative process will best be vindicated by clarity in its exercise’. To enable the Courts to exercise the power of review in consonance with settled principles, the authorities are advised of the considerations underlining the action under review. This Court with approval stated:

“11.....the orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained.”

12. In exercise of the power of judicial review, the concept of reasoned orders/actions has been enforced equally by the foreign courts as by the courts in India. The administrative authority and tribunals are obliged to give reasons, absence whereof could render the order liable to judicial chastise. Thus, it will not be far from absolute principle of law that the Courts should record reasons for its conclusions to enable the appellate or higher Courts to exercise their jurisdiction appropriately and in accordance with law. It is the reasoning alone, that can enable a higher or an appellate court to appreciate the controversy in issue in its correct perspective and to hold whether the reasoning recorded by the Court whose order is impugned, is sustainable in law and whether it has adopted the correct legal approach. To sub-serve the purpose of justice

delivery system, therefore, it is essential that the Courts should record reasons for its conclusions, whether disposing of the case at admission stage or after regular hearing.”

26. There can be no dispute to the preposition laid down by the Hon'ble Supreme Court in the above case. In the present case, the Adjudicating Authority while allowing the application has observed “in view of the averments made, the prayer is allowed and I.A. No. 4660 of 2022 stands disposed of”. The application which was filed by the Respondent No. 1 being I.A. No. 4660 of 2022 contained the facts and earlier orders, the application being 4660 of 2022 was a consequential application to substitute the name of Respondent No. 1 in place of Resolution Professional to prosecute the avoidance application. The acquisition plan which contained the provision that Successful Auction Purchaser shall pursue the Application has already been approved. We have to look into the earlier proceedings as noted above along with the order dated 01st May, 2023 to find out the reasons for allowing the Application to substitute the name of Respondent No. 1. It is true that when we look into the order dated 01st May, 2023, no detailed reasons are contained but since the Adjudicating Authority has referred to the averments made in the Application and as observed above the Application was only for substitution, we are of the view that order dated 01st May, 2023 cannot be interfered with in this Appeal on the above ground.

27. Lastly, learned counsel for the Appellant has submitted that issue raised in this Appeal is pending before the Hon'ble Supreme Court in Civil

Appeal No. 1632-1634 of 2022, **Piramal Capital and Housing Finance Limited Vs. 63 Moons Technologies Limited**. The Judgment of this Tribunal in 63 Moons Technologies Ltd. has been brought on record by the Appellant in its Compilation which is a judgment of this tribunal in C.A.(AT) Ins. No. 454 of 2021, “63 Moons Technologies Ltd. Vs. The Administrator of Dewan Housing Finance Corporation Limited and Ors.”. The said appeal was filed against order dated 07th June, 2021 where the Adjudicating Authority had passed an order with regard to Resolution Plan. This Tribunal ultimately in the said order allowed the Appeal and Resolution Plan was sent back to the CoC for reconsideration in the Appeal. Order permitting SRA to appropriate recoveries was set aside. Against the said order, the Civil Appeal No. 1632-1634 of 2022 was filed before the Hon’ble Supreme Court where Hon’ble Supreme Court has passed an order on 11th April, 2022 staying the operation of the Impugned Order of NCLAT. Hon’ble Supreme Court has passed following order:

*“C.A. Nos. 1632-1634/2022, C.A. Nos. 1707-1712/2022,
D.NO. 6667/2022 & C.A. No. 2567 of 2022*

- 1. Heard learned senior counsel for the parties.*
- 2. The application for permission to file the appeal is allowed.*
- 3. Admit.*
- 4. List these matters on 10.05.2022 for final disposal.*
- 5. In the meantime, operation of the impugned order passed by the National Company Law Appellate Tribunal shall remain stayed.*
- 6. The parties are directed to complete the pleadings and file compilation of relevant documents, in the meanwhile.”*

28. The issue as to whether the Successful Auction Purchaser can prosecute the avoidance application in place of Resolution Professional by substituting its name was not subject matter of the issue in the aforesaid case of 63 Moons Technologies Ltd. hence we are of the view that on the ground that civil appeal is pending before the Hon'ble Supreme Court, hearing of the matter need not be deferred.

29. In view of the fore-going discussions, we are of the view that no grounds have been made out at the instance of the Appellant to interfere with the order impugned. The Appeal is devoid of any merit and the same is dismissed, accordingly.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

New Delhi
10th November, 2023

Basant B.