

Edelweiss Asset Reconstruction ... vs Mr. Anuj Jain & Ors on 4 July, 2023

Author: Ashok Bhushan

Bench: Ashok Bhushan

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Company Appeal (AT) (Insolvency) No.517 & 518 of 2023

[Arising out of orders dated 31.03.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench in LA. No.1311/2022 and I.A. No. 1143/2022 in C.P No. 2915/IBC/MB/2019]

IN THE MATTER OF:

Edelweiss Asset Reconstruction Company Ltd.
Having its office address at
Edelweiss House, Off CST Road,
Kalina, Mumbai- 400098.

...Appellant

Vs.

Mr. Anuj Jain, Resolution Professional
Of Ballarpur Industries Ltd.
8th Floor, Building No. 10.
DLF Cyber City, Phase II,
Gurgaon, Haryana- 122002.

Committee of Creditors
Of Ballarpur Industries Ltd.
Through IDBI Bank
IDBI Tower, World Trade Centre Complex,
Cuffe Parade, Colaba, Mumbai- 400005.

Finquest Financial Solutions Private Limited
Having its registered office at
02, Boston House, 6th Floor,
Suren Road, Andheri (E),
Mumbai 400093.

...Respondents

Present:

For Appellant: Mr. Arun Kathpalia & Mr. Krishnendu Dutta, Sr.
Advocates with Mr. Aditya Vashisth, Mr. Atul
Sharma, Mr. Anand Singh Senger, Advocates.

For Respondents: Mr. Ashish Dholakia, Sr. Advocate, Mr. Ramakant
Rai, Mr. Somesh Srivastava, Mr. Yashish Chandra,
Advocates for R-1.

Mr. Ankur Mittal, Mr. Ateendra Saumya Singh,

Advocates for COC/ R-2.
Mr. Krishnan Venugopal, Sr. Advocate with Ms.
Supriya Majumdar, Ms. Kirti Gupta, Mr. Kaustubh
Prakash, Advocates for SRA/R-3.

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JUDGMENT

ASHOK BHUSHAN, J.

The Appellants by these two Appeals have challenged two orders passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-III dated 31.03.2023. By first order dated 31.03.2023, I.A. No. 1311/2022 filed by the Appellant in C.P No. 2915/IBC/MB/2019 has been rejected and by the second order of the same date i.e. 31.03.2023, I.A. No. 1143/2022 filed by the Resolution Professional for approval of the Resolution Plan has been approved and the Resolution Plan submitted by Respondent No.3 has been approved by the Adjudicating Authority. Appellant aggrieved by the aforesaid orders has come up in these Appeals. The brief facts of the case giving rise to these Appeals are:

i. Yes Bank Ltd. Granted a term loan of INR 150 Crores (Term Loan

- I) to BILT Graphic Paper Products Ltd. (BGPPL/Principal Borrower) on 01.09.2015. A second term loan of INR 250 Crore (Term Loan - II) was granted to BGPPL on 04.05.2016.

ii. Security for the loans was entrusted in favour of the Security Trustee namely Vistara ITCL (India) Ltd. Ballarpur Industries Limited (Corporate Debtor) in order to secure the loan facility availed by BGPPL created a mortgage with exclusive charge in favour of the Security Trustee on Industrial Complex and Land admeasuring 621 acres situated at Choudwar, Orissa.

Company Appeal (AT) Insolvency No. 517 & 518 of 2023 iii. MOU on 22.06.2016 for Term Loan-II was executed. The Corporate Debtor - Ballarpur Industries Limited also executed Corporate Guarantee by Guarantee Agreement dated 22.06.2016 in favour of the Security Trustee for due repayment in respect of Term Loan- II for an amount of INR 250 Crores.

iv. On 30.09.2016, Yes Bank assigned its debt and underlying securities in respect of the BGPPL in favour of Edelweiss Asset Reconstruction Company Ltd. (EARCL).

v. On an application filed under Section 7 by Finquest Financial Solutions Pvt. Ltd., CIRP was initiated by the Adjudicating Authority vide order dated 17.01.2020 against the Corporate Debtor.

vi. On 23.01.2020, public announcement was made by the IRP inviting claims from the creditors.

vii. On 05.02.2020, Appellant filed its claim in Form C as a Secured Financial Creditor claiming an amount of INR 133,24,05,045/-.

The claim filed by the Appellant relate to Term Loan-II of INR 250 Crores. Corporate Guarantee dated 22.06.2016 was relied in the claim form. Details of securities charged were also mentioned in the form.

viii. On 19.10.2020, the Resolution Professional rejected the claim of the Appellant informing that there is no default by the Principal Company Appeal (AT) Insolvency No. 517 & 518 of 2023 Borrower i.e. BGPPL, hence, claim of the Appellant was placed in the category of 'Other Creditors' being a Secured Creditor.

ix. On 24.12.2020, final list of creditors was issued, under which against the claimed amount of INR 133,24,05,045/-, claim filed by the Appellant was classified as 'Other Creditors' at notional value of INR 1.

x. The Appellant neither challenged the rejection of claim as Financial Creditor nor challenged the notional value of Re.1 allotted to the claim.

xi. In the CIRP process of the Corporate Debtor, Resolution Plan submitted by Respondent No.3 was approved on 14.04.2022 with 88% voting share of the CoC.

xii. The Resolution Professional filed an I.A. No. 1143 of 2022 before the Adjudicating Authority seeking approval of the Resolution Plan.

xiii. On 03.05.2022, public notice was issued by the Resolution Professional placing the contents of the Resolution Plan of the Corporate Debtor with respect to treatment of land admeasuring 621 acres situated at Choudwar, District Cuttack, Orissa.

xiv. The notice mentioned that Finquest Financial Solutions Pvt. Ltd.

has emerged as Successful Resolution Applicant of the Corporate Debtor, whose Resolution Plan envisages sale of this land and Company Appeal (AT) Insolvency No. 517 & 518 of 2023 proceeds shall be provided to the Financial Creditors - members of the CoC of the Corporate Debtor. The Appellant who has secured interest in the aforesaid asset and who had already filed a claim in the CIRP and his claim was admitted in the category of 'Other Creditors' with nominal value of Re.1, filed an I.A. No. 1131 of 2022 praying for rejection of the revised Resolution Plan submitted by

Finquest Financial Solutions Pvt. Ltd. with other prayers.

xv. The Adjudicating Authority issued notice on the application filed by the Appellant. A reply was filed by the Resolution Professional to the I.A. No. 1131 of 2022 refuting the claim of the Appellant/Applicant. In the reply, the Resolution Professional submitted that object of the IBC is to promote the resolution and not liquidation of the Corporate Debtor. In the reply filing of claim of the Appellant in Form C was mentioned. It was submitted that there was not default of BGPPL and the claim of the Appellant was admitted at notional value of Re.1 in the category of 'Other Creditors'. The Corporate Guarantee given by the Corporate Guarantor has not been invoked. Reply further states that revised Resolution Plan seeks to extinguish the security interest of the Appellant in the immovable asset.

xvi. The Adjudicating Authority after hearing the parties, by order dated 31.03.2023 rejected the I.A. No. 1131 of 2022 filed by the Appellant and by another order of the same date allowed I.A. No. Company Appeal (AT) Insolvency No. 517 & 518 of 2023 1143 of 2022 filed by the Resolution Professional and approved the Resolution Plan. Aggrieved by the aforesaid two orders these Appeals have been filed.

2. We have heard Shri Arun Kathpalia, learned senior counsel for the Appellant, Shri Ashish Dholakia, learned counsel appearing for Respondent No.1 - Resolution Professional, Shri Ankur Mittal, learned counsel for the Respondent No.2 - CoC and Shri Krishnan Venugopal, learned senior counsel appearing for the Respondent No.3 - Successful Resolution Applicant.

3. Shri Arun Kathpalia, learned counsel appearing for the Appellant submits that the Appellant having security interest in the immovable asst of the Corporate Debtor i.e. Choudwar Lad, Orissa, the said land cannot be sold extinguishing the security interest of the Appellant by the Resolution Plan. The Corporate Debtor has given Corporate Guarantee for Term Loan-II. Shri Kathpalia submitted that the claim of the Appellant as Secured Creditor is fully covered by the judgment of Hon'ble Supreme Court in "(2022) 1 SCC 401, Jaypee Kensington Boulevard Apartments Welfare Association and Ors. vs. NBCC (India) Ltd. & Ors." where the Hon'ble Supreme Court held that the security interest held by a third-party creditor cannot be set aside through the ipse dixit of a Resolution Applicant. It is submitted that the Resolution Plan in the aforesaid case, which extinguished the security interest for the land of 100 acres was disapproved by the Supreme Court and extinguishment of security interest was set aside. The claim of the Appellant is fully covered by the said judgment. The Adjudicating Authority committed error in dismissing the I.A. No. 1311 of 2022 filed by the Appellant. The case Company Appeal (AT) Insolvency No. 517 & 518 of 2023 of "Jaypee Kensington" is identical to the facts of the present case. The judgment of "Jaypee Kensington" is complete answer to every issue raised before the Adjudicating Authority. The security interest of the Appellant has to be protected. In event, the security interest of the Appellant is auctioned, the protections of the Appellant shall come to an end. The security interest of the Appellant has not been discharged in any know process of law. The Appellant has right to realize its security. Learned counsel for the Appellant although submitted that as on date no default has been committed by the Principal Borrower i.e. BGPPL in repayment of loan, default may come in future leaving the Appellant unprotected. Learned counsel for the Appellant has placed reliance on

judgment of Hon'ble Supreme Court in "M/s. Vistra ITCL (India) Ltd. and Ors. vs. Mr. Dinkar Venkatasubramanian and Anr., Civil Appeal No. 3606 of 2020, decided on 04.05.2023". Learned counsel submit that "Vistra ITCL (India) Ltd." was a case where security interest of the Appellant - M/s Vistra ITCL (India) Ltd. was sought to be relinquished. The Hon'ble Supreme Court held that the Appellant shall be entitled to be treated as a secured creditor and directed the Successful Resolution Applicant to protect the security interest of Vistra ITCL over the pledged shares under Section 52 of the Code. It is submitted that the case of "Vistra ITCL (India) Ltd." fully support the submission of the Appellant.

4. Shri Ashish Dholakia, learned senior counsel appearing for the Resolution Professional refuting the submission of learned counsel of the Appellant contends that the case of the Appellant is clearly distinguishable from the judgment of Hon'ble Supreme Court in "Jaypee Kensington"

Company Appeal (AT) Insolvency No. 517 & 518 of 2023 (Supra). It is submitted that in the present case, Appellant has filed its claim in Form 'C' as Financial Creditor which was rejected by the Resolution Professional. The Corporate Debtor has given corporate guarantee for loan which was advanced by Yes Bank to the Corporate Debtor and there is no default in the repayment of loan by the Principal Borrower i.e. BGPPL, hence, the Resolution Professional has assigned the notional value of Re.1 only. The security interest of the Appellant can very well be modified and all assets of the Corporate Debtor can be sold whether subject to any security interest or not. Relying on Regulation 37 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as 'CIRP Regulation, 2016'), it is submitted that there is no distinction under Regulation 37 with regard to Financial Creditor and Secured Creditor. If the argument of the Appellant is accepted, the security interest of the Financial Creditor can be sold but the security interest of the Appellant cannot be sold, which cannot be the intent of the process of the I&B Code. Appellant can have no higher rights than the Financial Creditors. The Financial Creditors in the Resolution Plan takes a haircut whereas the Appellant is contending that he may be given full value of security interest, which is impermissible. Judgment of "Jaypee Kensington" (Supra) is not an authority for the purpose that the security interest cannot be extinguished for the third-party security holder.

The judgment of "Vistra ITCL (India) Ltd." (supra) relied by the Appellant is the judgment where the Hon'ble Supreme Court has exercised its jurisdiction under Article 142 of the Constitution and said judgment cannot be said to be a judgment laying down law under Article 141 of the Constitution. The Company Appeal (AT) Insolvency No. 517 & 518 of 2023 Appellant never challenged the allocation of notional value of Re.1 to the claim of the Appellant nor it challenged rejection of the claim as Financial Creditor.

5. Shri Ankur Mittal, learned counsel for appearing for the CoC submits that with regard to Term Loan-I, no claim was filed by the Appellant and Appellant had filed claim only with regard to Term Loan-II on 19.10.2022. The Resolution Professional rejected the claim of the Appellant as Financial Creditor which rejection was never challenged. The Resolution Professional allocated notional value

of Re.1 to the Appellant, which also was never challenged. In "Vistra ITCL (India) Ltd." case, which has been relied by the Appellant, there is challenge to non-inclusion of Appellant in the CoC.

6. Shri Krishnan Venugopal, learned senior counsel appearing for the Successful Resolution Applicant refuting the submission of learned counsel for the Appellant contends that the Code permit resolution of the Corporate Debtor. The Appellant only having a security interest is not interested in resolution of the Corporate Debtor. There is no default committed by the Principal Borrower, the Appellant cannot be permitted to secure himself in unlikely default of the Principal Borrower. Acceptance of argument of the Appellant shall lead to hydra head propping which is not permissible. The provisions of Section 52 and 53 of the I&B Code cannot be dragged in CIRP process. Even the Financial Creditor is not entitled of full value of its security but only full value of its debt. Shri Venugopal has also referred to various clauses of UNCITRAL Guidelines. Appellants are contending that their security interest be kept out of the CIRP and they may be allowed to realize their entire security interest, which is not in accordance with the Scheme of Company Appeal (AT) Insolvency No. 517 & 518 of 2023 I&B Code. The judgment of "Vistra ITCL (India) Ltd." (supra) was a case where the Hon'ble Supreme Court has exercised its jurisdiction under Article

142. The Appellants are claiming status higher than Financial Creditor. Appellant cannot be held to be Financial Creditor in the light of judgment of the Hon'ble Supreme Court in "Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. vs. Axis Bank Ltd. & Ors., (2020) 8 SCC 401". The court does not differentiate between security interest of secured Financial Creditor or third party Secured Creditor. Learned senior counsel has also placed reliance on Regulation 37. He has also relied on Section 14(1)(c) of the Code and submitted that under Section 14(1)(c), the expression used is "any security interest", which is not qualified by any words. Therefore, any security interest being of Secured Financial Creditor or third party Secured Creditor cannot be enforced. It cannot be said that a third-party security holder shall remain out of CIRP. A third party Secured Creditor cannot say that he is not bound by the plan. The Code does not recognize any separate right of third party Secured Creditor. If the Appellant is allowed to realize its security, it shall be against the Code. The Principal Borrower is a profit bearing company and it is serving its loan, Yes Bank or its Assignee can ask BGPPL for additional security as has been rightly observed by the Adjudicating Authority. The Appellants are fully protected.

7. Shri Arun Kathpalia, learned counsel for the Appellant, in his rejoinder reiterated his submissions. It is submitted that the judgment of Hon'ble Supreme Court in "Jaypee Kensington" is identical on facts. It is further submitted that judgment of Hon'ble Supreme Court in "Vistra ITCL Company Appeal (AT) Insolvency No. 517 & 518 of 2023 (India) Ltd." is judgment not in exercise of Article 142 of Constitution of India. The security interest of the Appellant has to be protected. Appellant has right to realize its security. The security interest of the Appellant cannot be lost. There is no unjust enrichment on the part of the Appellant. Clause 11 of the Loan Agreement gives additional right to the Lender but it does not affect any security.

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

9. Before we proceed to consider the rival submissions of counsel for the parties, it is necessary to notice few provisions of the I&B Code and CIRP Regulations, 2016, which delineates the Scheme of the Code. Section 3(31) of the Code defines 'security interest' in following words:

"3(31). "security interest" means right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person:

Provided that security interest shall not include a performance guarantee;"

10. After admission of application under Section 7, moratorium is declared under Section 13. Section 14 Sub-section (1) Sub-clause (c) which is relevant in the present case, is as follows:

Company Appeal (AT) Insolvency No. 517 & 518 of 2023 "14. (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:--

X..X..X

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;"

11. Section 18 deals with 'duties of the Resolution Professional. In duties of the Resolution Professional under Section 18 Sub-section (1) IRP has to take control and custody of any asset over which the Corporate Debtor has ownership rights. Section 18(f), which is relevant, is as follows:

"18. The interim resolution professional shall perform the following duties, namely:--

X..X..X

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including--

(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

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(ii) assets that may or may not be in possession of the corporate debtor;

(iii) tangible assets, whether movable or immovable;

(iv) intangible assets including intellectual property;

(v) securities including shares held in any

subsidiary of the corporate debtor, financial instruments, insurance policies;

(vi) assets subject to the determination of ownership by a court or authority;"

12. Section 52 provides for Secured Creditor in liquidation proceedings, which is to the following effect:

"52. (1) A secured creditor in the liquidation proceedings may--

(a) relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator in the manner specified in section 53; or

(b) realise its security interest in the manner specified in this section."

13. Section 53 provides for 'distribution of asset'. CIRP Regulation 2016 provides for mode and manner of filing claims by Financial Creditor, Operational Creditor and Other Creditors. Regulation 37 deals with 'Resolution Plan' which we shall notice hereinafter. Company Appeal (AT) Insolvency No. 517 & 518 of 2023

14. From the submissions of the parties and materials on record following facts are undisputed:

(i) The Term Loan facility was extended by Yes Bank to BGPPL, the Principal Borrower. The Corporate Debtor created a charge on its immovable property by mortgaging the immovable property at Choudwar, Orissa for securing Term Loan-I and Term Loan-II. A corporate guarantee was also executed by the Corporate Debtor to secure Term Loan-II on 22.06.2016.

(ii) The Principal Borrower has not committed any default in repayment of its loan to the Financial Creditor.

(iii) In response to the public announcement by the IRP, the Appellant filed its claim on 05.02.2020 in Form 'C' for an amount of INR 133,24,05,045/-. The Resolution Professional on 19.10.2020 communicated to the Appellant that since there is no default by Principal Borrower, the Appellant's claim cannot be accepted as Financial Creditor and Appellant's claim is categorized in the category of 'Other Creditors'.

(iv) In the final list of creditors issued on 24.12.2020, Appellant was placed in the category of 'Other Creditors' and against the claim of INR 133,24,05,045/-, a notional value of Re.1 was allocated to the Appellant.

(v) Appellant never challenged the rejection of its claim as Financial Creditor and categorisation of Appellant as 'Other Creditors' with notional value of Re.1.

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(vi) The Appellant's security was taken cognizance in the CIRP process and the list of creditors published by the Resolution Professional indicated the security of Appellant and also allocated notional value of Re.1 against the claim.

15. Appellant filed I.A. No. 1311 of 2022 after the public notice issued by Resolution Professional dated 03.05.2022, which made public the contents of the Resolution Plan that Choudwar land of 621 acres is proposed to be sold under Resolution Plan. In I.A. No. 1311 of 2022 prayers made by the Appellant are as follows:

"PRAYER In light of the above facts and circumstances, this Hon'ble Tribunal may kindly be pleased to:

(a) Pass ad-interim ex-parte order staying the proceedings in respect of approval of Revised Resolution Plan submitted by Finquest u/S.30(1) of IBC and the sale of the Immovable Asset exclusively charged in favour of the Applicant/ Secured Creditor, until adjudication of the present Application;

(b) Pass necessary orders rejecting the revised resolution plan submitted by Finquest Financial Solutions Private Limited by declaring Finquest Financial Solutions Private Limited to be ineligible to be the Resolution Applicant of the Corporate Debtor in terms of Section 29A of the IBC and the said Resolution Plan is contrary to the provisions of IBC;

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(c) Pass necessary orders prohibiting the sale of the Immovable Asset exclusively charged in favour of the Applicant/ Secured Creditor sitting outside the CoC, as per the terms of the Resolution Plan, in view of the Hon'ble Supreme Court judgment in the matter of Jaypee Kensington Boulevard Apartments Welfare Association & Ors. vs. NBCC (India) Ltd. & Ors. (Civil Appeal No. 3395 of 2020);

(d) Pass necessary orders allowing the Applicant /Secured Creditor to enforce its exclusively charged security interest on the Immovable Asset outside the CIRP of the Corporate Debtor, as the same cannot be annulled/extinguished or included in terms of the Resolution Plan of the Corporate Debtor to the detriment of the Applicant/ Secured Creditor, as per the observations and findings of

the Hon'ble Supreme Court in the matter of Jaypee Kensington Boulevard Apartments Welfare Association & Ors. vs. NBCC (India) Ltd. & Ors, (Civil Appeal No. 3395 of 2020);

(e) Direct the initiation of Liquidation proceedings of the Corporate Debtor in terms of the IBC in view of the order allowing prayer (b);

(f) Pass any such other or further orders as this Hon'ble Tribunal may deem fit and proper in the interest of justice."

16. The Resolution Professional did not accept the claim of Appellant as Financial Creditor rightly. Law in this context is well settled. We may refer to judgment of Hon'ble Supreme Court in "Anuj Jain, Interim Resolution Company Appeal (AT) Insolvency No. 517 & 518 of 2023 Professional for Jaypee Infratech Ltd. vs. Axis Bank Ltd. & Ors., (2020) 8 SCC 401" where the Hon'ble Supreme Court had occasion to consider the role and status of Financial Creditor and a Creditor who has only security interest. Para 50, 50.1, 50.2 and 51 are as follows:

"50. A conjoint reading of the statutory provisions with the enunciation of this Court in Swiss Ribbons (supra), leaves nothing to doubt that in the scheme of the IBC, what is intended by the expression 'financial creditor' is a person who has direct engagement in the functioning of the corporate debtor; who is involved right from the beginning while assessing the viability of the corporate debtor; who would engage in restructuring of the loan as well as in reorganisation of the corporate debtor's business when there is financial stress. In other words, the financial creditor, by its own direct involvement in a functional existence of corporate debtor, acquires unique position, who could be entrusted with the task of ensuring the sustenance and growth of the corporate debtor, akin to that of a guardian. In the context of insolvency resolution process, this class of stakeholders namely, financial creditors, is entrusted by the legislature with such a role that it would look forward to ensure that the corporate debtor is rejuvenated and gets back to its wheels with reasonable capacity of repaying its debts and to attend on its other obligations. Protection of the rights of all other stakeholders, including other creditors, would obviously be concomitant of such resurgence of the corporate debtor.

Company Appeal (AT) Insolvency No. 517 & 518 of 2023 50.1. Keeping the objectives of the Code in view, the position and role of a person having only security interest over the assets of the corporate debtor could easily be contrasted with the role of a financial creditor because the former shall have only the interest of realising the value of its security (there being no other stakes involved and least any stake in the corporate debtor's growth or equitable liquidation) while the latter would, apart from looking at safeguards of its own interests, would also and simultaneously be interested in rejuvenation, revival and growth of the corporate debtor. Thus understood, it is clear that if the former i.e., a person having only security interest over the assets of the corporate debtor is also included as a financial creditor and thereby allowed to have its say in the processes contemplated by Part II of the Code,

the growth and revival of the corporate debtor may be the casualty. Such result would defeat the very objective and purpose of the Code, particularly of the provisions aimed at corporate insolvency resolution.

50.2. Therefore, we have no hesitation in saying that a person having only security interest over the assets of corporate debtor (like the instant third party securities), even if falling within the description of 'secured creditor' by virtue of collateral security extended by the corporate debtor, would nevertheless stand outside the sect of 'financial creditors' as per the definitions contained in subsections (7) and (8) of Section 5 of the Code. Differently put, if a corporate debtor has given its property in mortgage to secure the debts of a third party, it may lead to a mortgage debt and, therefore, it may fall within the definition of 'debt' under Section Company Appeal (AT) Insolvency No. 517 & 518 of 2023 3(10) of the Code. However, it would remain a debt alone and cannot partake the character of a 'financial debt' within the meaning of Section 5(8) of the Code.

The respondent mortgagees are not the financial creditors of corporate debtor JIL

51. Indisputably, the debts in question are in the form of third party security; said to have been given by the corporate debtor JIL so as to secure the loans/advances/facilities obtained by JAL from the respondent-lenders. Such a 'debt' is not and cannot be a 'financial debt' within the meaning of Section 5(8) of the Code; and hence, the respondent-lenders, the mortgagees, are not the 'financial creditors' of the corporate debtor JIL."

17. A Financial Creditor who is part of the CoC has important role to play in the reorganisation and insolvency resolution of the Corporate Debtor. The Creditor who has only security interest is only interested in his security interest and have no interest in revival of the Corporate Debtor. The aforesaid is clear from the prayers made in I.A. No. 1311 of 2022, where one of the prayers made by the Appellant is to put the Corporate Debtor into liquidation.

18. When we look into the Scheme of I&B Code, after moratorium is declared, there is prohibition on enforcement of any security interest created by the Corporate Debtor in respect of its property. The prohibition from enforcement of any security interest by one or other creditor including Secured Financial Creditor or third party Secured Creditor is for a purpose and object. Unless the prohibition is imposed, all assets of the Corporate Debtor shall not be available for revival and maximisation of the value of the Company Appeal (AT) Insolvency No. 517 & 518 of 2023 Corporate Debtor, which is principal/primary objective of the I&B Code. Financial Creditor who is part of the CoC is prohibited from enforcing any security interest. A third-party security holder like Appellant is equally bound by the provision of Section 14(1)(c) and cannot claim any enforcement of security interest in the CIRP.

19. The Hon'ble Supreme Court in "Committee of Creditors of Essar Steel India Limited Through Authorised Signatory vs. Satish Kumar Gupta & Ors., (2020) 8 SCC 531" while considering the

provisions of Section 30, 50, 52 and 53 of the Code has held that provision of Section 53 cannot be applicable in the insolvency resolution process and the said provision is applicable only during liquidation. Equally Section 52 of the Code is applicable only in the liquidation proceeding. In Para 145 of the judgment following was held:

"145. The other argument of Shri Sibal that Section 53 of the Code would be applicable only during liquidation and not at the stage of resolving insolvency is correct. Section 30(2)(b) of the Code refers to Section 53 not in the context of priority of payment of creditors, but only to provide for a minimum payment to operational creditors. However, this again does not in any manner limit the Committee of Creditors from classifying creditors as financial or operational and as secured or unsecured. Full freedom and discretion has been given, as has been seen hereinabove, to the Committee of Creditors to so classify creditors and to pay secured creditors amounts which can be based upon the value of their security, which they would Company Appeal (AT) Insolvency No. 517 & 518 of 2023 otherwise be able to realise outside the process of the Code, thereby stymying the corporate resolution process itself."

20. We may also notice, at this stage, the provisions of Regulation 37 of the CIRP Regulation, 2016, which provides as follows:

"37. Resolution plan. - A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximization of value of its assets, including but not limited to the following:-

(a) transfer of all or part of the assets of the corporate debtor to one or more persons;

(b) sale of all or part of the assets whether subject to any security interest or not;

[(ba) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;]

(c) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;

[(ca) cancellation or delisting of any shares of the corporate debtor, if applicable;]

(d) satisfaction or modification of any security interest;

(e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;

(f) reduction in the amount payable to the creditors;

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(g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;

(h) amendment of the constitutional documents of the corporate debtor;

(i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;

(j) change in portfolio of goods or services produced or rendered by the corporate debtor;

(k) change in technology used by the corporate debtor; and

(l) obtaining necessary approvals from the Central and State Governments and other authorities.]
[(m) sale of one or more assets of corporate debtor to one or more successful resolution applicants submitting resolution plans for such assets;

and manner of dealing with remaining assets.]"

21. The regulations are framed under Section 240 of the Code which are consistent with the Code to carry out the provisions of the Code. Regulation 37, thus, is provision of the Code which is consistent to the Code and to carry out the provision of the Code. Regulation 37 Sub-clause (b) indicate that resolution plan shall provide for sale of all or part of the assets whether subject to any security interest or not. The use of expression 'subject to any security interest or not' makes it clear that the assets of the Corporate Debtor can be dealt with in the resolution plan whether it is subject to any Company Appeal (AT) Insolvency No. 517 & 518 of 2023 security interest or not. The existence of security interest in assets of Corporate Debtor does not preclude the assets to be dealt with or sold in the resolution plan. The argument of the Appellant that security interest contained by the Appellant in the asset of the Corporate Debtor cannot be dealt with in the plan is clearly contrary to the scheme delineated under Regulation 37. Further, Sub-clause (d) permit the resolution plan to contain provision for satisfaction or modification of any security interest. Thus, as per scheme of Regulation 37, security interest in assets of the Corporate Debtor can be dealt with, modified, satisfied and there is no exclusion to the resolution plan with regard to dealing of the security interest.

22. The above can be explained by taking example of a Financial Creditor. Financial Creditors may also have security interest in the assets of the Corporate Debtor. Section 30 of the Code, as amended from time to time, provides for payment to Operational Creditor(s) as well as dissenting Financial Creditor(s), which payment shall not be less than the amount which they are entitled to receive under Sub-section (1) of Section 53 in event of liquidation of the Corporate Debtor. Insolvency resolution process and liquidation are two different concepts with two different consequences.

When in the insolvency resolution process claim of Financial Creditors are dealt with, there is no cap to the effect that they are entitled to receive the amount equivalent to their debt which is owed by the Corporate Debtor. Thus, despite Financial Creditor having security interest in the assets of the Corporate Debtor, they can be dealt with in the resolution plan in any manner as per the commercial wisdom of the CoC. When the security interest of Financial Creditor can be Company Appeal (AT) Insolvency No. 517 & 518 of 2023 dealt with in the resolution plan in any manner, we fail to see that how a third party having security interest in the assets of the Corporate Debtor can claim any higher status or different status from the Financial Creditor.

23. Now we come to the judgment of Hon'ble Supreme Court in "(2022) 1 SCC 401, Jaypee Kensington Boulevard Apartments Welfare Association and Ors. vs. NBCC (India) Ltd. & Ors.", which is the sheet anchor of the argument of learned counsel for the Appellant. Brief outline and sketch of the case in "Jaypee Kensington" has been noticed in Para 5 and its various sub-paragraphs. The Corporate Debtor - 'JIL' had executed mortgage on its land to secure the loan extended by Lender to 'JAL'. In the insolvency resolution process of 'JIL', Lender filed claim as Financial Creditor which was not accepted. The Lender have also mortgage of land equivalent to 100 acres which mortgage was created by 'JIL', the Corporate Debtor to secure the loan extended to 'JAL'. In the above factual situation, resolution plan in the aforesaid case was approved, where plan contemplate extinguishment of security interest of lender in 100 acres land. Plan approval order was challenged by the Lender and ultimately matter came before the Hon'ble Supreme Court. In Para 16, the grounds of challenge by the Lender being ICICI Bank have been noticed, which are to the following effect:

"16. The directions issued by NCLT in modification of the resolution plan in regard to the claim of this bank for payment, in its capacity as the dissenting financial creditor of JIL, is one of the major grounds of challenge by the persons/entities standing in favour of the resolution plan in question. This bank has also Company Appeal (AT) Insolvency No. 517 & 518 of 2023 objected to the clauses in the resolution plan in regard to the treatment of the said sum of INR 750 crores. In its another capacity as the lender of JAL and having mortgage over the land of JIL in security of such lending to JAL, this bank has levied another challenge to the resolution plan in regard to the release of its security interest. This bank had challenged the said order dated 03.03.2020 before NCLAT in Company Appeal (AT) (Insolvency) Diary No. 21936 of 2020 and has moved Transfer Petition (C) Diary No. 20274 of 2020 in this Court, seeking transfer of its appeal before NCLAT for analogous hearing with the present batch of matters."

24. Points of determination have been framed by the Hon'ble Supreme Court in Para 18. In Para 18.11(K)(i) following issue was noticed:

"18.11(K) (i) As to whether Clause 23 of Schedule 3 of the resolution plan providing for extinguishment of security interest of lenders of JAL could not have been approved by the Adjudicating Authority?"

25. Point (K) was dealt by the Hon'ble Supreme Court in Paras 248 to 261, which discussion is relevant in the present case. Several paragraphs with regard to discussion on point (K) have been relied by learned counsel for both the parties in the present case. In Para 251 of the judgment, the Hon'ble Supreme Court noticed the relevant Clause 23 of Schedule 3 in the plan, which is to the following effect:

"251. In the resolution plan, apart from various stipulations in regard to the land of JIL and creation of Company Appeal (AT) Insolvency No. 517 & 518 of 2023 two SPVs with transfer of certain parcels of land, the resolution applicant stated in Clause 23 of Schedule 3 relating to 'reliefs and concessions' as under: -

"23. The JAL Lenders Mortgaged Land shall continue to be vested in the Corporate Debtor free of any mortgage, charge and encumbrance.""

26. The Hon'ble Supreme Court has further held that with regard to mortgage of 100 acres, the Adjudicating Authority does not render any specific decision, which has been noticed in Para 253 in following words:

"253. To put it in clear terms, the net outcome of the propositions, proceedings and findings noticed in the preceding paragraphs is as follows: 858 acres of JIL's land was mortgaged with the lenders of JAL; in the resolution plan, NBCC sought the relief that such land shall continue to remain vested in the corporate debtor JIL free from any mortgage, charge and encumbrance; 758 acres, out of this 858 acres, of land got released from mortgage in terms of the judgment in Anuj Jain (supra); 100 acres of land, being 'Tappal Property 1', however, continued to remain under mortgage with ICICI Bank; and, as regards this mortgage, ICICI Bank was not recognised as a financial creditor of JIL even if falling in the category of secured creditors; the Adjudicating Authority has not rendered any specific decision as regards such mortgaged land and as regards the relief claimed by the resolution applicant while assuming that the entire matter stands concluded with the judgment of this Court dated 26.02.2020 in Anuj Jain (supra)."

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27. The Hon'ble Supreme Court held that even though the Lender cannot be treated as a Financial Creditor, they are holder of security in form of mortgage cannot be denied. In Para 259.3, the Hon'ble Supreme Court held that security created over the land could not have been annulled in the manner as suggested in the plan. Paras 259.1, 259.2, 259.3, 260 and 261 are as follows:

"259.1. This bank appears right in its contention that when the security in question was not even taken up as a part of the resolution process, it could not have been extinguished on the ipse dixit of the resolution applicant. Unfortunately, Adjudicating Authority totally missed out the real issue before it in regard to this mortgage transaction because, in the order as originally passed on 03.03.2020, the

Adjudicating Authority assumed that all the mortgages in favour of the lenders of JAL (covering the entire 858 acres of JIL land) were annulled by this Court in Anuj Jain (supra) as avoidance transactions. Of course, in the corrigendum dated 17.03.2020, the Adjudicating Authority rectified the error of the figure '858', as occurring in paragraph 128 of the original order dated 03.03.2020, and corrected it to '758' but, did not examine the consequences thereof. In other words, while making the correction on 17.03.2020, the Adjudicating Authority failed to advert to the relevant question as to what would be the proper order as regards the remaining 100 acres of land, if only 758 acres was released in terms of the judgment in Anuj Jain (supra).

Company Appeal (AT) Insolvency No. 517 & 518 of 2023 259.2. The fact that the Adjudicating Authority dealt with this segment rather cursorily is yet further seen from the part of the table reproduced hereinabove where, while making reference to the mortgages in favour of the lenders of JAL, an incorrect cross-

reference was made to Clause 1 of Schedule 3 of the resolution plan. This error was also corrected in the order dated 17.03.2020 and correct reference was made to Clause 23 of Schedule 3 but, again, the implication of this correction totally escaped the attention of the Adjudicating Authority.

259.3. As noticed, in the said Clause 23, a fleeting suggestion on the part of the resolution applicant had been that 'JAL lenders mortgaged land shall continue to be vested in the corporate debtor free from any mortgage, charge and encumbrance'. The Adjudicating Authority dealt with the said clause of the resolution plan in an equally cursory manner by observing that the point was not clear but, if it was referring to the land mortgaged with the lenders of JAL, the issue had already been decided by the Supreme Court and need not be reiterated. In this entire process of mistakes/errors (might be accidental) and corrections as also cursory observations, the Adjudicating Authority totally missed out that one transaction relating to 100 acres of land, being 'Tappal Property 1', remained unaffected by the judgment in Anuj Jain (supra); and that the security creating over this land could not have been annulled in the manner suggested in the plan.

260. It cannot be denied that the claim of ICICI Bank pertaining to the said mortgage over 100 acres of land Company Appeal (AT) Insolvency No. 517 & 518 of 2023 was not reckoned in the CIRP of JIL and without any specific provision in that regard, the resolution applicant merely suggested by way of the Clause 23 of Schedule 3 as if such mortgage shall stand annulled and the land shall vest in the corporate debtor free from any encumbrances. To say the least, the said Clause 23 does not appear to be standing in conformity with any principal of law for discharge of a security interest, particularly of a third party who is not included in the insolvency resolution process of a corporate debtor. We would hasten to make it clear that the capacity of ICICI Bank in relation to the said mortgage of 100 acres of land of 'Tappal Property 1' is entirely different than its status as the dissenting financial creditor of JIL, to the extent JIL directly owed a financial debt to it. Those aspects pertaining to its capacity as dissenting financial creditor, to the extent of its share of financial debt, have already been discussed in Point D hereinbefore.

261. For what has been discussed above, neither the said Clause 23 of Schedule 3 of the resolution plan relating to 'reliefs and concessions' could be approved nor the order of the Adjudicating Authority in this regard."

28. Learned counsel for the Respondent submitted that the case of the Supreme Court in "Jaypee Kensington" is clearly distinguishable from the present case. In the above case, the security interest was not taken as part of the resolution process. Learned counsel for the Respondent referred to Para 259.1, where it was noted that security in question was not taken as part of the resolution process. It is submitted that since the security interest Company Appeal (AT) Insolvency No. 517 & 518 of 2023 was not taken as part of the resolution process, it could not have been extinguished. Whereas in the present case, security interest of the Appellant was part of the resolution process, hence, can very well be extinguished.

29. From the facts of the present case, it is clearly noticeable that security interest of the Appellant was part of the CIRP process since the Appellant has filed its claim on 05.02.2020 in Form 'C' and its claim although was rejected as Financial Creditor but was accepted as 'Other Creditor' with notional value of Re.1. The Resolution Professional has communicated to the Appellant on 19.10.2020 that since no default has been committed by the Principal Borrower against its claim of Rs.133 Crore and odd, nominal value of Re.1 only is admitted. It is also noticeable that the Appellant at no point of time challenged the admission of its claim by Resolution Professional as 'Other Creditor'. The main distinguishing feature of present case with that of "Jaypee Kensington" is that in "Jaypee Kensington" security interest of the Lender of that case was not part of the CIRP process but in the present case same was part of the CIRP process.

30. When any asset including security interest in the asset is part of the CIRP process, there is no constraint or prohibition in I&B Code or Regulations to deal with the said asset including a security interest. The observation of the Hon'ble Supreme Court in "Jaypee Kensington" was observation in the facts of that case. In the aforesaid background the Hon'ble Supreme Court held that security created in the land could not have been annulled in the manner suggested in the plan. The plan in the aforesaid case in Clause 23 of Schedule 3 provided that the mortgaged land shall continue Company Appeal (AT) Insolvency No. 517 & 518 of 2023 to be vested in the Corporate Debtor free of any mortgage or charge or encumbrance.

31. As noted above, in the present case, the Appellant filed its claim and their claim came to be dealt with in the Resolution Plan. In the Jaypee Kensington's case Lenders were outside the CIRP. In Para 259.1, as noted above following was held by the Hon'ble Supreme Court:

"This bank appears right in its contention that when the security in question was not even taken up as a part of the resolution process, it could not have been extinguished on the ipse dixit of the resolution applicant."

32. Thus, basis of the judgment is when security interest is not part of the CIRP it could not have been extinguished. As noted above, in the present case, claim was filed by the Appellant and Appellant was part of the CIRP process, hence, their security interest can very well be dealt with in

the resolution plan. The scheme as delineated by Regulation 37 of CIRP Regulations, 2016 fully support our view.

33. The Appellant has next relied Hon'ble Supreme Court judgment in "Vistra ITCL (India) Ltd." (supra). In the above case also Amtek Auto Limited (Corporate Debtor) has pledged its shares for loan facility availed by two group companies i.e. Brassco Engineers Ltd. and WLD Investments Pvt. Ltd. In the insolvency proceeding of the Corporate Debtor, claim was filed by M/s Vistra ITCL (India) Ltd., the Security Trustee in Form 'C', which claim was rejected. Resolution Plan was approved. Thereafter, an application was Company Appeal (AT) Insolvency No. 517 & 518 of 2023 filed claiming right on the basis of pledged shares. I.A. No. 62 of 2020 as well as Appeal having been dismissed, Appeal was filed before the Hon'ble Supreme Court. Hon'ble Supreme Court in the above case, noticed the judgment of "Anuj Jain vs. Axis Bank Ltd." (supra). Hon'ble Supreme Court in Para 9 noticed the issues raised and observed that two-fold answers can be given to the problem. First was to treat the Secured Creditor as a Financial Creditor, which according to the judgment of the Hon'ble Supreme Court may require reference to a larger bench. Hence, the Hon'ble Supreme Court proceeded to the Second option under which the Hon'ble Supreme Court held that Appellant was entitled to retain the security interest in the pledged shares, which means was entitled to retain the security proceeds on the sale of the said pledged shares. In Para 9 following was held:

"9. Thus, we are presented with a difficult situation, wherein, Appellant No.1 - Vistra, a secured creditor, is being denied the rights under Section 52 as well as Section 53 of the Code in respect of the pledged shares, whereas, the intent of the amended Section 30(2) read with Section 31 of the Code is too contrary, as it recognises and protects the interests of other creditors who are outside the purview of the CoC. To our mind, the answer to this tricky problem is twofold. First is to treat the secured creditor as a financial creditor of the Corporate Debtor to the extent of the estimated value of the pledged share on the date of commencement of the CIRP. This would make it a member of the CoC and give it voting rights, equivalent to the estimated value of the pledged shares. However, this may require re consideration of the dictum and Company Appeal (AT) Insolvency No. 517 & 518 of 2023 ratio of Anuj Jain (supra) and Phoenix ARC (supra), which would entail reference to a larger bench. In the context of the present case, the said solution may not be viable as the resolution plan has already been approved by the CoC without Appellant No. 1 Vistra being a member of the CoC. Therefore, we would opt for the second option. The second option is to treat the Appellant No. 1 - Vistra as a secured creditor in terms of Section 52 read with Section 53 of the Code. In other words, we give the option to the successful resolution applicant - DVI (Deccan Value Investors) to treat the Appellant No.1 - Vistra as a secured creditor, who will be entitled to retain the security interest in the pledged shares, and in terms thereof, would be entitled to retain the security proceeds on the sale of the said pledged shares under Section 52 of the Code read with Rule 21A of the Liquidation Process Regulations. The second recourse available, would be almost equivalent in monetary terms for the Appellant No. 1 Vistra, who is treated it as a secured creditor and is held entitled to all rights and obligations as applicable to a secured creditor under Section 52 and 53 of the Code. This to our

mind would be a fair and just solution to the legal conundrum and issue highlighted before us."

34. In the aforesaid judgment the Hon'ble Supreme Court has noticed provisions of Section 52, Section 53 and Section 30 of the Code. The submission which has been pressed by learned counsel for the Respondent is that the judgment of the Hon'ble Supreme Court in "Vistra ITCL (India) Ltd." is judgment of the Supreme Court where Hon'ble Supreme Court has exercised its jurisdiction under Article 142 of the Constitution. Observation Company Appeal (AT) Insolvency No. 517 & 518 of 2023 of the Hon'ble Supreme Court in Para 9 that "This to our mind would be a fair and just solution to the legal conundrum and issue highlighted before us.", indicate that the solution which was followed by Supreme Court was in the facts of the said case and observation of the Hon'ble Supreme Court in Para 9 cannot be read as laying law within meaning of Article 141.

35. A third-party security interest holder is entitled to retain the security proceeds on the land of security interest under Section 52 of the Code. As noted above, Section 52 and 53 becomes applicable only in Liquidation Proceeding and reference of Section 53 under Section 30(2) is for the purpose of computing the payment to Operational Creditors and dissenting Financial Creditors to which they may be entitled under Section

53.

36. We, thus, accept the submission of learned counsel for the Respondent that judgment of Hon'ble Supreme Court in "Vistra ITCL (India) Ltd." and direction issued in Para 9 have been in exercise of Article 142. Learned counsel for the Respondent has placed reliance on judgment of Hon'ble Supreme Court in "State of Punjab & Ors. vs. Rafiq Masih, (2014) 8 SCC 883", where Hon'ble Supreme Court dealing with Article 141 and 142 of the Constitution of India enumerated the principles in Paras 8 and 11, which are to the following effect:

"8. In our view, the law laid down in Chandi Prasad Uniyal's case, no way conflicts with the observations made by this Court in the other two cases. In those decisions, directions were issued in exercise of the Company Appeal (AT) Insolvency No. 517 & 518 of 2023 powers of this Court under Article 142 of the Constitution, but in the subsequent decision this Court under Article 136 of the Constitution, in laying down the law had dismissed the petition of the employee. This Court in a number of cases had battled with tracing the contours of the provision in Article 136 and 142 of the Constitution of India.

Distinctively, although the words employed under the two aforesaid provision speak of the powers of this Court, the former vest a plenary jurisdiction in supreme court in the matter of entertaining and hearing of appeals by granting special leave against any judgment or order made by a Court or Tribunal in any cause or matter. The powers are plenary to the extent that they are paramount to the limitations under the specific provisions for appeal contained in the Constitution or other laws. Article 142 of the Constitution of India, on the other hand is a step ahead of the powers

envisaged under Article 136 of the Constitution of India. It is the exercise of jurisdiction to pass such enforceable decree or order as is necessary for doing 'complete justice' in any cause or matter.

11. Article 136 of the Constitution of India was legislatively intended to be exercised by the Highest Court of the Land, with scrupulous adherence to the settled judicial principle well established by precedents in our jurisprudence. Article 136 of the Constitution is a corrective jurisdiction that vest a discretion in the Supreme Court to settle the law clear and as forthrightly forwarded in the case of Union of India v. Karnail Singh, it makes the law operational to make it a binding precedent for the future instead of Company Appeal (AT) Insolvency No. 517 & 518 of 2023 keeping it vague. In short, it declares the law, as under Article 141 of the Constitution."

37. It has categorically held by the Hon'ble Supreme Court in the above judgment that Article 142 of the Constitution is supplementary in nature and cannot supplant the substantive provisions, though they are not limited by the substantive provisions in the statute. It is a power that gives preference to equity over law. Differentiation in Article 141 and 142 has been noticed. Following has been observed in Para 12:

"12.This Court on the qui vive has expanded the horizons of Article 142 of the Constitution by keeping it outside the purview of Article 141 of the Constitution and by declaring it a direction of the Court that changes its complexion with the peculiarity in the facts and circumstances of the case."

38. We, thus, are of the view that judgment of Hon'ble Supreme Court in "Vistra ITCL (India) Ltd." is in facts of the said case. The Appellant in the present case cannot rely on the said judgment as a declaration of law within the meaning of Article 141 of the Constitution of India.

39. Learned counsel for the Respondent has relied on the Loan Agreement dated 04.05.2016, where Clause 11 provides as follows:

"11. If at any time the value of the said securities falls so as to create a deficiency in the margin requirement specified by the Bank from time to time or if there is an excess over the Loan amount, the Borrower shall within seven days of notice from the Bank, deposit Company Appeal (AT) Insolvency No. 517 & 518 of 2023 with the Bank additional security in the form of cash or such other securities which may be acceptable to the Bank, failing which the Bank may at its discretion sell, dispose off or realise any or all of the said securities without being liable for any loss or damage or diminution in value sustained thereby."

40. Said clause has been provided in the Agreement to protect the Lender in case of security falls so as to create a deficiency in the margin requirement specified by the Bank from time to time. A case where security is lost or extinguished is also a case where right given to the Lender under Clause 11 can be exercised. More so, when there is no default by the Principal Borrower in the present case

and there is no actual loss suffered by the Appellant in any manner, in the present case when security interest of the Appellant has been extinguished by the Resolution Plan it was always open for the Appellant to ask the Principal Borrower to furnish additional security to protect the interest of the Lender. Clause 11 can very well be utilized by the Appellant to protect their interest. The Adjudicating Authority by passing the impugned order did not commit any error in rejecting I.A. No. 1311 of 2022. None of the reliefs claimed in the I.A. could have been granted to the Appellant as per the scheme of the I&B Code. The Adjudicating Authority has rightly held that for extinguishment of security interest of the Appellant no prior consent of the Appellant was required. We, thus, do not find any error in the order of the adjudicating Authority rejecting I.A. No. 1311 of 2022.

41. When we uphold the order dated 31.03.2023 rejecting objection raised by the Appellant by I.A. No. 1311 of 2022, there is no other ground Company Appeal (AT) Insolvency No. 517 & 518 of 2023 urged in the present Appeals to interfere with order dated 31.03.2023 approving the Resolution Plan of Respondent No.3. The order dated 31.03.2023 of the Adjudicating Authority approving the Resolution Plan is also to be upheld.

42. In view of the foregoing discussion, in conclusion, we do not find any error in the impugned orders passed by the Adjudicating Authority. There are no merit in both the Appeals. Both the Appeals are dismissed.

[Justice Ashok Bhushan] Chairperson [Naresh Salecha] Member (Technical) NEW DELHI 4th July, 2023 Archana Company Appeal (AT) Insolvency No. 517 & 518 of 2023