

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

**Company Appeal (AT) (Insolvency) No. 1975 of 2024**

**IN THE MATTER OF:**

**Axis Bank Ltd.**

**...Appellant**

**Versus**

**Asset Reconstruction Company (India) Ltd. & Ors.**

**...Respondents**

**Present:**

**For Appellant:**

**Mr. Abhinav Vashisht, Sr. Advocate with Mr. Manmeet Singh, Ms. Bhavika, Deora, Ms. Saru Sharma, Advocates for Axis Bank.**

**Ms. Payal Kabra, Mr. Pranav, Veerashwar Singh Jadaun, Advocates for Intervenor.**

**Mr. Anand Varma & Apoorva Pandey, Advocates for IA 8388.**

**For Respondents:**

**Mr. Ritin Rai, Sr. Advocate with Mr. Aman Gandhi, Mr. Vardaan Bajaj, Mr. Ojasvi Sharma, Advocates for ZEEL, IA 8455.**

**Mr. Nalin Kohli, Sr. Advocate with Ms. Pooja Mahajan, Mr. Karan Vir Khosla, Mr. Anshul Malik, Ms. Nimisha Menon, Mr. Ayushman Arora, Advocates for RP.**

**Mr. Krishnendu Dutta, Sr. Advocate with Mr. Aman Varma, Advocates for R10.**

**Mr. Dhruv Mehta, Sr. Advocate with Mr. Kaustubh Prakash, Ms. Hita Sharma, Ms. Tanya Singh, Mr. Rishabh Chandra, Advocates for R1.**

**Mr. Kunal Tandon, Sr. Advocate with Ms. Aanchal Tandon, Ms. Niti Jain, Mahima Arora, Advocates for Intervenor- Jio Star India.**

**Company Appeal (AT) (Insolvency) No. 1977 of 2024**

**IN THE MATTER OF:**

**Aditya Birla Capital Ltd.**

**...Appellant**

**Versus**

**Asset Reconstruction Company (India) Ltd. & Ors.**

**...Respondents**

**Present:**

**For Appellant:** Mr. Abhijeet Sinha, Sr. Advocate with Mr. Ravitey Chillumuri, Mr. Aseem Chaturvedi, Ms. Mihika Jalan, Ms. Pragya Dahiya, Mr. Siddhant Kumar, Mr. Kunal Parekh, Ms. Heena Kochar, Advocates. Ms. Payal Kabra, Mr. Pranav, Veerashwar Singh Jadaun, Advocates for Intervenor.

**For Respondents:** Ms. Anshula Grover, Vishesh Kalra, Jaiveer Kant, Ms. Smriti Churival, Advocates for R8. Mr. Kaustubh Prakash, Ms. Hita Sharma, Mr. Rishabh Chandra, Ms. Tanya Singh, Advocates for R1. Mr. Nalin Kohli, Sr. Advocate with Ms. Pooja Mahajan, Ms. Arveena Sharma, Mr. Karan Vir Khosla, Mr. Anshul Malik, Ms. Nimisha Menon, Mr. Ayushman Arora, Advocates for RP. Mr. Kunal Tandon, Sr. Advocate with Ms. Aanchal Tandon, Ms. Niti Jain, Ms. Mahima Arora, Advocates for Intervenor- Jio Star India.

**Company Appeal (AT) (Insolvency) No. 1978 & 1979 of 2024**

**IN THE MATTER OF:**

**Rohit Ramesh Mehra Resolution Professional of Siti Networks Ltd.**

**...Appellant**

**Versus**

**Asset Reconstruction Company (India) Ltd. & Ors.**

**...Respondents**

**Present:**

**For Appellant:** Mr. Nalin Kohli, Sr. Advocate with Ms. Pooja Mahajan, Ms. Arveena Sharma, Mr. Karan Vir Khosla, Mr. Anshul Malik, Ms. Nimisha Menon, Mr. Ayushman Arora, Advocates for RP. Ms. Payal Kabra, Mr. Pranav, Veerashwar Singh Jadaun, Advocates for Intervenor.

**For Respondents:** Mr. Krishnendu Dutta, Sr. Advocate with Ms. Anshula Grover, Advocate for R-10. Mr. Kunal Tandon, Sr. Advocate with Ms. Aanchal Tandon, Ms. Niti Jain, Ms. Mahima Arora, Advocates for Intervenor-Star. Mr. Kaustubh Prakash, Ms. Hita Sharma, Mr.

**Rishabh Chandra, Ms. Tanya Singh, Advocates for R1.**

**Company Appeal (AT) (Insolvency) No. 2003 of 2024**

**IN THE MATTER OF:**

**IDBI Bank Ltd.**

**...Appellant**

**Versus**

**Asset Reconstruction Company (India) Ltd. & Ors.**

**...Respondents**

**Present:**

**For Appellant:**

**Mr. Niranjana Reddy, Sr. Advocate with Mr. Abhishek Swaroop, Mr. Anupam Prakash, Mr. Manav Sharma, Mr. G. Bharath Krishna, Advocates for IDBI Bank.  
Ms. Payal Kabra, Mr. Pranav, Veerashwar Singh Jadaun, Advocates for Intervenor.**

**For Respondents:**

**Ms. Anshula Grover, Advocate for R-10.  
Mr. Kunal Tandon, Sr. Advocate with Ms. Aanchal Tandon, Ms. Niti Jain, Ms. Mahima Arora, Advocates for Intervenor-Star.  
Mr. Kaustubh Prakash, Ms. Hita Sharma, Mr. Rishabh Chandra, Ms. Tanya Singh, Advocates for R1.  
Mr. Nalin Kohli, Sr. Advocate with Ms. Pooja Mahajan, Ms. Arveena Sharma, Mr. Karan Vir Khosla, Mr. Anshul Malik, Ms. Nimisha Menon, Mr. Ayushman Arora, Advocates for RP.**

**Company Appeal (AT) (Insolvency) No. 2005 of 2024**

**IN THE MATTER OF:**

**Indusind Bank Ltd.**

**...Appellant**

**Versus**

**Asset Reconstruction Company (India) Ltd. & Ors.**

**...Respondents**

**Present:**

**For Appellant:** Mr. Diwakar Maheshwari, Ms. Pratiksha Mishra, Mr. Vishnu Shriram, Mr. Shreyas Edupuganti, Advocates. Ms. Payal Kabra, Mr. Pranav, Veerashwar Singh Jadaun, Advocates for Intervenor.

**For Respondents:** Ms. Anshula Grover, Advocate for R-10. Mr. Kaustubh Prakash, Ms. Hita Sharma, Mr. Rishabh Chandra, Ms. Tanya Singh, Advocates for R1. Mr. Nalin Kohli, Sr. Advocate with Ms. Pooja Mahajan, Ms. Arveena Sharma, Mr. Karan Vir Khosla, Mr. Anshul Malik, Ms. Nimisha Menon, Mr. Ayushman Arora, Advocates for RP.

**Company Appeal (AT) (Insolvency) No. 2006 of 2024**

**IN THE MATTER OF:**

**RBL Bank Ltd.**

**...Appellant**

**Versus**

**Asset Reconstruction Company (India) Ltd. & Ors.**

**...Respondents**

**Present:**

**For Appellant:** Mr. Diwakar Maheshwari, Ms. Pratiksha Mishra, Mr. Shreyas Edupuganti, Advocates. Ms. Payal Kabra, Mr. Pranav, Veerashwar Singh Jadaun, Advocates for Intervenor.

**For Respondents:** Ms. Anshula Grover, Advocate for R-10. Mr. Nalin Kohli, Sr. Advocate with Ms. Pooja Mahajan, Ms. Arveena Sharma, Mr. Karan Vir Khosla, Mr. Anshul Malik, Ms. Nimisha Menon, Mr. Ayushman Arora, Advocates for RP. Mr. Kaustubh Prakash, Ms. Hita Sharma, Mr. Rishabh Chandra, Ms. Tanya Singh, Advocates for R1.

**Company Appeal (AT) (Insolvency) No. 2192 of 2024**

**IN THE MATTER OF:**

**Asset Reconstruction Company (India) Ltd.**

**...Appellant**

**Versus**

**Rohit Mehra, RP of Siti Networks Ltd. & Ors.****...Respondents****Present:**

**For Appellant: Mr. Nikhil Nayyar, Sr. Advocate with Mr. Kaustubh Prakash, Ms. Hita Sharma, Mr. Rishabh Chandra, Ms. Tanya Singh, Advocates**

**For Respondents: Ms. Anshula Grover, Advocate for R-10.  
Mr. Abhijeet Sinha, Sr. Advocate with Mr. Ravitey Chilumuri, Mr. Aseem Chaturvedi, Ms. Mihika Jalan, Ms. Pragya Dahiya, Mr. Siddhant Kumar, Mr. Kunal Parekh, Ms. Heena Kochar, Advocates for R3.  
Mr. Nalin Kohli, Sr. Advocate with Ms. Pooja Mahajan, Ms. Arveena Sharma, Mr. Karan Vir Khosla, Mr. Anshul Malik, Ms. Nimisha Menon, Mr. Ayushman Arora, Advocates for RP.  
Mr. Manmeet Singh, Ms. Bhavika, Deora, Ms. Saru Sharma, Advocates for Axis Bank.**

## **J U D G M E N T**

**Ashok Bhushan, J.**

All these Appeals have been filed against the same order dated 01.10.2024 passed by the Adjudicating Authority (National Company Law Tribunal) Mumbai Bench, Court No.III in IA No.126 of 2024. All Company Appeals, except Company Appeal (AT) (Insolvency) No.1978 & 1979 of 2024, which have been filed by Rohit Ramesh Mehra, the Resolution Professional of Corporate Debtor, have been filed by Financial Creditors of the Corporate Debtor- 'Siti Networks Ltd.'

2. We need to notice background facts giving rise to these Appeals.

2.1. An application under Section 7 was filed by Indusind Bank Ltd. against 'Siti Networks Ltd.'- (Corporate Debtor) praying for initiation of the

Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor for a default of Rs.148,82,90,236/-. Adjudicating Authority heard the parties and vide order dated 22.02.2023 admitted Section 7 application initiating CIRP against the Corporate Debtor ("Siti Networks Ltd."). Adjudicating Authority by the same order appointed Mr. Rohit Ramesh Mehra as Interim Resolution Professional (IRP). By the same order, Moratorium was also enforced. IRP made publication on 25.02.2023 inviting creditors of the Corporate Debtor to submit their claims with proof on or before 08.03.2023 to the IRP. IRP did receive the claims of Financial Creditors. Against the order dated 22.02.2023 admitting Section 7 application, Company Appeal (AT) (Insolvency) No.274 of 2023- **"Shilpi Asthana vs. Indusind Bank Ltd. & Anr."** was filed in this Tribunal and this Tribunal vide order dated 07.03.2023 stayed the operation of the impugned order. Indusind Bank Ltd. filed Civil Appeal No.1871 of 2023 against the interim order dated 07.03.2023 passed by this Tribunal which Appeal was dismissed on 24.03.2023 by the Hon'ble Supreme Court.

2.2. After the interim order dated 07.03.2023, the IRP handed back the management of the Corporate Debtor to the promoters between 10.03.2023 to 15.03.2023. An account of the Corporate Debtor was maintained with the Axis Bank who was escrow bank of the Corporate Debtor. On 31.03.2023, Axis Bank withdrew an amount of Rs.20 Crores from the Corporate Debtor's account. Apart from Axis Bank, there were several other Financial Creditors including Aditya Birla Finance Limited, IDBI Bank Limited, RBL Bank Ltd., Indusind Bank Ltd., Standard Chartered Bank and Asset Reconstruction Company (India) Limited (ARCIL). A Joint Lenders' Meeting was held on

25.04.2023 in which Axis Bank, ARCIL & other Financial Creditors along with the representatives of the Corporate Debtor participated. In the Joint Lenders' Meeting, company presented the financial summary for the Financial Year 2023. It was stated by the Company in the Joint Lenders' Meeting that on 30.03.2023, Axis Bank has appropriated a sum of Rs.20 Crores towards its own dues which was not approved by the Company or KPMG (ASM Agent). All lenders except Axis Bank took an objection towards the same.

2.3. Again Joint Lenders' Meeting was held on 04.05.2023 in which lenders objected unilateral withdraw of amount by Axis Bank. One of the lenders also suggested to file an IA before the Adjudicating Authority or before the Appellate Tribunal for maintaining the *status quo* to safeguard the business of the Corporate Debtor. It was placed before the Joint Lenders' Meeting that no lender should unilaterally appropriate the funds. On 15.05.2023, Axis Bank again withdrew Rs.23 Crores. On 22.05.2023, ARCIL issued a letter to the Axis Bank to refund the appropriated amounts back to the current account of the Corporate Debtor. Axis Bank continued to withdraw the amount till 05.06.2023. Total amount withdrawn by Axis Bank was more than Rs.143 Crores during the aforesaid period. The Suspended Director- Shilpi Asthana filed an IA No.2340 of 2023 on 18.05.2023 in the Company Appeal (AT) (Insolvency) No.274 of 2023 praying that Axis Bank and Aditya Birla be impleaded as party to the Appeal. It was pleaded in the application that the proposed lenders namely— Axis Bank and Aditya Birla are acting contrary to the orders dated 22.02.2023 and 07.03.2023. A Contempt Application No. 16 of 2023 was filed by Shilpi Asthana for

initiating contempt proceeding. Appropriation of the amounts from the account of the Corporate Debtor was mentioned in the application. An IA No.2321 of 2023 was also filed by ARCIL in the Company Appeal (AT) (Insolvency) No.274 of 2023 seeking impleadment. Contempt Case No.16 of 2023 filed by the Appellant, in Company Appeal was withdrawn with liberty to file some other application. Another IA No.2558 of 2023 was filed by the Appellant in Company Appeal (AT) (Insolvency) No.274 of 2023 seeking direction to the lenders to reverse the illegal transactions dated 31.03.2023, 16.05.2023 and 01.06.2023 and to keep the Corporate Debtor as going concern. In the application, an Additional-Affidavit was filed by the Appellant (Shilpi Asthana) highlighting about the amount appropriated by the Axis Bank and specific direction was sought that lenders be directed to reverse the illegal transaction dated 31.03.2023, 16.05.2023 and 01.06.2023. In the application IA No.2558 of 2023 filed by the Appellant for direction, notices were issued and matter was directed to be listed on 05.06.2023. A reply was also filed by ARCIL in IA No.2558 of 2023 where ARCIL also prayed for direction to prevent Axis Bank from illegal unilateral appropriation of the funds from current account of the Corporate Debtor and prayed for direction to the Axis Bank to refund the entire amount. This Tribunal after hearing the parties on 12.06.2023 directed till the next date, Axis Bank and Aditya Birla Finance Limited not to withdraw any amount from the account of the Corporate Debtor. Appellant (Shilpi Asthana) filed Civil Appeal No.4110 of 2023 challenging the interim order dated 12.06.2023 in the Appeal. Appellant in the Civil Appeal pleaded that the Appellant was entitled to larger ad-interim/ interim reliefs so as to enable

the Company to continue as a going concern. The said appeal came to be heard on 07.07.2023 by the Hon'ble Supreme Court and Hon'ble Supreme Court noticing the fact that application for refund of the payments withdrawn by the Axis Bank is listed before the NCLAT on 10.08.2023, hence, Appeal was not entertained and dismissed.

2.4. Company Appeal (AT) (Insolvency) No.274 of 2023 came to be heard before this Tribunal on 10.08.2023. This Tribunal heard the Company Appeal and by judgment and order dated 10.08.2023 dismissed the Appeal upholding the admission order passed by the Adjudicating Authority dated 22.02.2023. While dismissing the Appeal, all pending applications were also closed. After order dated 10.08.2023, Committee of Creditors (CoC) was constituted and first meeting was held on 01.09.2023. On 11.10.2023, IRP filed an IA No.4844 of 2023 seeking certain directions and clarifications. Challenging the order dated 10.08.2023, Shilpi Asthana, Suspended Director filed Civil Appeal No.5340 of 2023 in which an IA No.170166 of 2023 was also filed by Shilpi Asthana. An Intervention Petition No.57 of 2023 was also filed before the Adjudicating Authority by a Suspended Director Kavita Anand Kapahi. The Asset Reconstruction Company (India) Ltd. (ARCIL) filed an IA No.126 of 2024 on 16.12.2023 seeking direction against Axis Bank and other Financial Creditors to remit the amount back to the account of the Corporate Debtor which was withdrawn during the period 07.03.2023 till 12.06.2023. The Adjudicating Authority heard IA No.4844 of 2023, Intervention Petition No.57 of 2023 and IA No.126 of 2024 and by the common order dated 01.10.2024 allowed the Intervention Petition No.57 of 2023 and IA No. 126 of 2024 and dismissed IA No.4844 of

2023. Consequence of partly allowed IA No.126 of 2024 is that Axis Bank and other lenders who had withdrawn the amount from account of the Corporate Debtor during the period interim order dated 07.03.2024 was in operation are obliged to refund the said amount in the account of the Corporate Debtor. Aggrieved by the order dated 01.10.2024, these Appeals have been filed.

2.5. Company Appeal (AT) (Insolvency) No. 1975 of 2024 filed by the Axis Bank praying for quashing the order dated 01.10.2024 passed by Adjudicating Authority in IA No.126 of 2024. Company Appeal (AT) (Insolvency) No.1977 of 2024- Aditya Birla Capital Ltd., Company Appeal (AT) (Insolvency) No.2003 of 2024- IDBI Bank Ltd., Company Appeal (AT) (Insolvency) No.2005 of 2024- Indusind Bank Ltd. and Company Appeal (AT) (Insolvency) No.2006 of 2024- RBL Bank Limited have also prayed for setting aside the order dated 01.10.2024 passed by the Adjudicating Authority in IA No.126 of 2024.

2.6. Company Appeal (AT) (Insolvency) No.1978 & 1979 of 2024 have been filed by Rohit Ramesh Mehra, the Resolution Professional of the Corporate Debtor. Appellant- Rohit Ramesh Mehra prays for setting aside the observations and findings of the Adjudicating Authority in paragraph 78 of the impugned order dated 01.10.2024 passed in IA No.4844 of 2023.

2.7. Company Appeal (AT) (Insolvency) No.2192 of 2024 has been filed by Asset Reconstruction Company (India) Ltd. seeking setting aside the order dated 01.10.2024 by the Adjudicating Authority insofar as it rejects prayer (g) in IA No.126 of 2024.

3. We have heard Shri Abhinav Vashisht, Learned Senior Counsel for the Appellant- Axis Bank Ltd., Shri Abhijeet Sinha, Learned Senior Counsel for the Appellant- Aditya Birla Capital Ltd., Shri Niranjan Reddy, Learned Senior Counsel for the Appellant- IDBI Bank Ltd., Shri Gopal Jain, Learned Senior Counsel for the Appellant- Indusind Bank Ltd., Shri Diwakar Maheshwari, Learned Counsel for the Appellant- RBL Bank Ltd. and Shri Nikhil Nayyar, Learned Senior Counsel for the Appellant- ARCIL. We have also heard Shri Nalin Kohli, Learned Senior Counsel with Ms. Pooja Mahajan, Learned Counsel for the Appellant in Company Appeal (AT) (Insolvency) No.1978 & 1979 of 2024. We have heard Shri Dhruv Mehta, Learned Senior Counsel appearing for Respondent- ARCIL in the Appeals, Shri Krishnendu Datta, Learned Senior Counsel for the Promoter, Shri Ritin Rai, Learned Senior Counsel for intervenor- ZEEL. Shri Kunal Tandon, Learned Senior Counsel for Intervenor- Jio Star India. Shri Anand Verma, Learned Counsel for the Intervenor in IA No.8388 of 2024. We have also heard other Learned Counsel appearing for the Intervenors.

4. Submissions which have been advanced by the Axis Bank and other lenders of the Corporate Debtor except ARCIL are common submissions challenging the order dated 01.10.2024 allowing IA No.126 of 2024 filed by ARCIL. The submissions on behalf of the lenders have been led by Counsel for the Axis Bank. Submissions of Counsel for the Axis Bank and all other lenders except ARCIL being common, we shall refer those submissions as submissions of the Appellants. Submissions on behalf of ARCIL have been advanced as Respondent in the Company Appeal of Axis Bank and other

lenders and Appellant in Appeal filed by ARCIL itself. Submissions advanced by ARCIL as Respondent which was led by Shri Dhruv Mehta, Learned Senior Counsel shall be referred to as submissions of the Respondent-ARCIL. Submissions advanced by ARCIL as Appellant in Company Appeal (AT) (Insolvency) No. 2192 of 2024 which submission was made by Shri Nikhil Nayyar, Learned Senior Counsel shall be referred to as submissions of ARCIL as Appellant.

5. Counsel for the Resolution Professional- Shri Rohit Ramesh Mehra has also made submissions whose submissions will be referred to as submissions of Resolution Professional. Submissions advanced by promoters shall be referred to as submissions of promoters.

6. Now we proceed to notice respective submissions of the parties.

7. Learned Counsel for the Appellants (Axis Bank and other lenders) challenging the impugned order submits that the Adjudicating Authority committed error in directing for reversal of the amount which was withdrawn by the Axis Bank and distributed to the other lenders during the period interim order was operating in Company Appeal (AT) (Insolvency) No.274 of 2023. It is submitted that by virtue of interim order dated 07.03.2023 by which operation of the order dated 22.02.2023 was stayed by this Appellate Tribunal, admission order including appointment of IRP and enforcement of Moratorium shall stand stayed/ suspended. Interim order dated 07.03.2023 when stayed the entire order dated 22.02.2023, the order of appointment of IRP as well as order directing for Moratorium shall stand stayed and there shall be no Moratorium in operation after 07.03.2023 so as

to prohibit the Axis Bank to withdraw the amount from the account of the Corporate Debtor. The Adjudicating Authority has committed error in interpreting the interim order dated 07.03.2023. The Moratorium under Section 14 of the IBC is one of the various consequences of an order passed under Section 13 of the IBC. Once a judicial order admitting Section 7 application is stayed, all consequences arising out of such order are suspended. The stay order means complete stay of findings and consequences of the order. In the IBC matters, different kinds of orders are passed by this Tribunal and are not the order only stay of constitution of CoC is provided for. In some interim order only publication of Form G is stayed, however, in the interim order dated 07.03.2023, the entire admission order was stayed. It is submitted that the judgment of this Tribunal in **“Ashok Kumar Tyagi v. Uco Bank & Anr.- CA(AT)(Ins) No. 1323 of 2022”** relied by the Adjudicating Authority does not hold that Moratorium under Section 14 of the IBC continues to operate during the period when a CIRP admission order is stayed. Reliance on judgment of the Hon’ble Supreme Court in **“Shree Chamundi Mopeds Ltd. vs. Church of South India Trust Association, CSI Cinod Secretariat, Madras [1992 3 SCC 1]”** is misplaced. Relying on the judgment of the Hon’ble Supreme Court in **“BPL Limited vs. R. Sudhakar [(2004) 7 SCC 2019]”**, it is submitted that the Hon’ble Supreme Court in the said order held that when the reference order was stayed, all consequential actions, including employee termination, were also stayed. It is submitted that after passing of the interim order dated 07.03.2023, the management of the Corporate Debtor started functioning, acting and performing all duties of management

including participation in Joint Lenders' Meeting and other fora as well as notification to stock exchange. The functioning of the management after the interim order clearly indicated that no Moratorium was operating, hence the lenders rightly in accordance with contractual rights withdrew the amount from the account of the Corporate Debtor. It is submitted that in the Company Appeal (AT) (Insolvency) No.274 of 2023, an application was filed by the promoter praying for reversal of the amount which were withdrawn after 07.03.2023 till 12.06.2023 which application was dismissed by this Tribunal. The principle of *res judicata* shall be applicable and the said issue cannot be allowed to be agitated by ARCIL in IA No.126 of 2024. It is further submitted that before the Hon'ble Supreme Court in the Civil Appeal filed by the Promoter also an IA was filed seeking reversal of withdrawal from the Axis Bank and other Banks which application was also dismissed and not entertained. It is submitted that ARCIL who had filed IA No.126 of 2024 is also estopped from raising any objection with regard to withdrawal of the amount. ARCIL objection was that in event, any amount is withdrawn from the Axis Bank, the same shall be distributed to all lenders including ARCIL. Had ARCIL been also given the amount out of the account of the Corporate Debtor, no objection would have been raised by the ARCIL. ARCIL is also estopped by "issue estoppel" from raising any objection with regard to withdrawal. It is submitted that the order of this Tribunal dated 10.08.2023 having merged with the order of the Hon'ble Supreme Court dismissing the Appeal filed by the Promoter where the IA was filed seeking reversal of the disbursement which was also dismissed, on principle of merger also. Principle of merger being applicable precludes ARCIL or any other party to raise any

question regarding withdrawal of the amount during interim period. It is submitted that all parties acted as there is no Moratorium during the stay period. Interim order passed on 07.03.2023 was absolute and unconditional. It is submitted that principle of restitution is not applicable on the present case. Axis Bank and other lenders rightfully exercised their contractual rights since there was no Moratorium in operation during the stay period, hence, there was no wrongful act on the part of the lenders. Restitution if at all would apply to any benefit that the erstwhile management may have taken on the basis of interim order passed in the Appeal. ARCIL's appeal challenging the non-grant of interest also deserves to be dismissed. Adjudicating Authority has rightly rejected prayer (g) made in the application filed by ARCIL. Accounts were withdrawn from Corporate Debtor's current account where no interest accrues, therefore, there is no question of payment of any interest.

8. Shri Dhruv Mehta, Learned Senior Counsel refuting the submissions made on behalf of the Appellant- ARCIL who has been arrayed as Respondent in all the Appeals filed by lenders submitted that judgment of this Tribunal in **"Ashok Kumar Tyagi"** (supra) which was delivered on 21.11.2022 was the law prevailing at the relevant time which held that stay of the admission order under Section 7 cannot lead to installation of the management. Judgment of **"Ashok Kumar Tyagi"** (supra) was passed prior to initiation of CIRP of the Corporate Debtor, hence, all parties including Axis Bank and other lenders had the benefit of the settled legal position prior to the appropriation. It is submitted that the Adjudicating Authority has rightly relied on the judgment of the Hon'ble Supreme Court in **"Shree**

***Chamundi Mopeds Ltd.***” (supra) where the Hon’ble Supreme Court has laid down that the stay of an order and quashing of an order do not have the same effect. It was held that by stay of the order the order is not quashed it only becomes inoperative. It is submitted that the judgment of this Tribunal in ***“Mukesh Jain Kumar vs. Navin Kumar Upadhyay & Anr [Company Appeal (AT) (Ins) No. 930-931/ 2023], decided on 19.12.2023”*** also clarified that stay means that the IRP cannot take further steps in the CIRP of the Corporate Debtor. However, the action of the IRP of handing back the control and management of the Corporate Debtor to the suspended directors was held not in accordance with law. It is submitted that in event, the submission of the Appellant is accepted that Moratorium shall stand lifted by grant of interim order, the whole purpose and object of the IBC shall become meaningless. Creditors shall be free to initiate enforcement actions under SARFAESI Act, 2002 and enable the suspended management to alienate or siphon off assets of the Corporate Debtor, leaving nothing for resolution of the Corporate Debtor which has never been the object of the IBC. By stay of the order of admission, admission order is temporarily kept in abeyance. Therefore, no party specially the Financial Creditors are permitted to appropriate any funds from the account of the Corporate Debtor. Counsel for the Respondent referring to BLRC Report submits that the Moratorium is a standstill and a calm period during which the creditors cannot take resort to individual enforcement actions. It is submitted that by initiation of CIRP a proceeding **“in rem”** commences, this Tribunal has to give a purposive interpretation to an order staying the CIRP so that interest of all stakeholders in the CIRP can be protected. A literal interpretation to

stay of admission order as suggested by the Appellant, would lead to absurdity and would not serve the purpose behind Section 14 of IBC. The attempt by the Appellants to construe order dated 07.03.2023 to mean that they were free to exercise their contractual rights whereby they could appropriate funds, would lead to irreversible damage on the CIRP. Submission of Counsel for the Appellant that ARCIL is precluded by principle of *res judicata* since the prayer for reversal of the withdrawal as made in Company Appeal (AT) (Insolvency) No.274 of 2023 by IA filed by Suspended Director as well as reply by ARCIL was rejected. The principle of *res judicata* shall be applicable and ARCIL cannot be allowed to re-agitate the issue which was rejected both by this Tribunal as well as the Hon'ble Supreme Court. It is submitted by Shri Mehta that the *res judicata* applies when an issue directly and substantially in issue, is necessarily decided by a Court. The issue of appropriation was never decided by this Tribunal or the Hon'ble Supreme Court. This Tribunal only dismissed the Appeal upholding the admission order. Thus, the issue which is decided was only challenge to admission order. There is no applicability of principle of *res judicata* in the present case. It is submitted that the submission advanced by the Appellant on the ground of "issue estoppel" is also without any basis. No representation was made by ARCIL or any one to the lenders that they can withdraw the amount from the account of the Corporate Debtor. Principle of estoppel is applicable when on the representation one party alters its position to its detriment. In the present case, no representation was made to the Axis Bank and other lenders rather to the contrary objection was raised by ARCIL in the Joint Lenders' Meeting held on 26.04.2023 objecting

withdrawal by Axis Bank from the account of the Corporate Debtor. In fact, all lenders objected to the action of the Axis Bank in withdrawing the amount from the account of the Corporate Debtor which is recorded in Joint Lenders' Meeting dated 25.04.2023. Even the subsequent Joint Lenders' Meeting, other lenders including the ARCIL has objected to the action of the Axis Bank. The doctrine of merger as advanced by the Appellant has no application. Merger does not apply on issue which is not adjudicated in the Appeal. Only issue of debt and default by the Corporate Debtor was decided in the Company Petition by the Adjudicating Authority which was affirmed by this Tribunal.

8.1. Shri Dhruv Mehta further contended that in view of dismissal of Company Appeal on 10.08.2023, any benefit which was taken by lenders under the interim order dated 07.03.2023 has to be reversed by dismissal of the Appeal. Interim order dated 07.03.2023 stood merged with the final order. Lenders were obliged to restore the Corporate Debtor to its original position i.e. by reversing the amount withdrawn during the said period. On the principle of doctrine of restitution, lenders who have withdrawn the amount during the said period which stood annulled by dismissal of the Appeal are liable to restore the benefit taken by them, hence, the order passed by the Adjudicating Authority is in accordance with the doctrine of restitution and needs no interference by this Tribunal.

8.2. Counsel for the Respondent further contended that the Insolvency Commencement Date (ICD) cannot be shifted from 22.02.2023 to 10.08.2023. It is submitted that Counsel for the Resolution Professional has

incorrectly made prayer in the application for shifting the Insolvency Commencement Date. It is submitted that the Resolution Professional has not discharged his duties in accordance with law. Resolution Professional ought not to have handed over the Corporate Debtor to the ex-management after the interim order. In view of the law laid down by this Tribunal in **“Ashok Kumar Tyagi”** (supra) which was prevalent at the relevant time, in event there was any debate and doubt, it was open for the Resolution Professional to file an application before the Adjudicating Authority or the Appellate Tribunal immediately after passing of the interim order to seek further direction with regard to the Corporate Debtor. Resolution Professional abdicated his duties and did nothing and has tried to cover up withdrawal by Axis Bank by praying that Insolvency Commencement Date be changed from 22.02.2023 to 10.08.2023 which is impermissible.

9. Counsel for the Resolution Professional submits that no application was filed either by suspended management or the ARCIL before this Tribunal seeking a direction to handover back the management of the Corporate Debtor to the IRP. Interim order dated 07.03.2023 clearly prohibited the IRP to take any steps in the CIRP which is the law laid down by this Tribunal in **“Ashok Kumar Tyagi”** (supra). IRP cannot be said to have failed in discharge of duties, by virtue of interim order dated 07.03.2023 he was incapable of performing any function. It is submitted that in pursuance of the order dated 22.02.2023, Resolution Professional has made publication inviting claim on 25.02.2023 and immediately after interim order dated 07.03.2023, Shilpi Asthana has informed about the interim order on 09.03.2023 by e-mail. On 10.03.2023, the management

has made public disclosure informing the stock exchange that this Tribunal has granted interim order. On behalf of the management, lenders were informed that the management of the Corporate Debtor is now reinstated and powers of IRP stand suspended. When the very order by which IRP was appointed was stayed, IRP could not have functioned, in proceeding before other authorities it was management who was representing the Corporate Debtor before the TDSAT and the Arbitral Tribunal. Resolution Professional in his application has prayed for change of Insolvency Commencement Date so as to protect the Corporate Debtor from various liabilities which accrued during the period interim order was operating. In various applications which were filed even by Suspended Director, no prayer was made to reinstate the IRP. No Moratorium can be said to be operating after passing of the interim order dated 07.03.2023. During the interim period, the management as well as the Creditors were taking actions, the management of the Corporate Debtor being in place. This Appellate Tribunal as well as the Hon'ble Supreme Court were informed that the Corporate Debtor is being run by the management and not by the IRP. Neither this Tribunal nor the Hon'ble Supreme Court passed any order modifying the interim order dated 07.03.2023 as well as issue any direction to reinstate the IRP. After the order dated 10.08.2023, IRP has taken the management from the Corporate Debtor and has received the updated claims. Resolution Professional never prayed before the Adjudicating Authority that Insolvency Commencement Date should be 10.08.2023. IRP has filed clarification application to clarify the position by the Adjudicating Authority. Observations and findings in paragraph 78 impacts the rights of the Appellant which findings need to be

set aside. Various complaints against the Resolution Professional have been filed by ex-management. IBBI has initiated proceedings which were dropped. Now again complaints have been filed after the order passed by the Adjudicating Authority dated 01.10.2024.

10. Counsel for the Intervenors also raised various submissions with regard to payments made after the commencement of the CIRP to the intervenors/ Operational Creditors.

11. In the present case, we are only to consider challenge of the order dated 01.10.2024 passed in IA No.126 of 2024 as well as IA filed by the Resolution Professional. The submissions raised on behalf of the various intervenors who claimed to be Operational Creditors need no consideration in these Appeals who are to take their remedies in accordance with the IBC before the appropriate forum. We, thus, are of the views that various submissions advanced by Counsel for the Intervenors need no consideration.

12. Before proceeding further, we need to notice prayers made in IA No.126 of 2024 and IA No.4844 of 2023 and the directions issued by the Adjudicating Authority in the order dated 01.10.2024. As noted above, IA No.4844 of 2023 was filed by the IRP on 11.10.2023. In IA No.4844 of 2023, the Resolution Professional has prayed for following reliefs:-

*“a. Allow the present Application;*

*b. Clarify that/ direct that the Unpaid OC Liabilities/ Unpaid Interest Claim (as defined in*

*the Application)/ Unpaid Other Liabilities (as defined in the Application) is to considered for admission/ verification as part of the claims of the respective creditors against the Corporate Debtor (which will then be dealt with under the resolution plan or liquidation, as the case may be, in accordance with the Code); Clarify that/ direct that for the purpose of conducting various CIRP c. related activities under the Code read with the CIRP Regulations, including valuation, conducting transactional audit for avoidance transactions, preparation of Information Memorandum and provisional balance sheet, up-dation of claims etc. the relevant date should be 10 August 2023 (being the date of resumption of CIRP of the Corporate Debtor).*

*d. Any such other or further order(s) which this Hon'ble Adjudicating Authority may deem fit in the present facts and circumstances.”*

13. As noted, IA No.126 of 2024 was filed on 16.12.2023 by ARCIL in which application, following prayers have been made:-

*“(a) Declare that as codified under Section 5(12) of the Insolvency and Bankruptcy Code, 2016, the date of commencement of Corporate Insolvency*

*Resolution Process of the Corporate Debtor is February 22, 2023 and moratorium was in existence / subsistence from February 22, 2023 till August 10, 2023,*

*(b) Declare that the act of withdrawal of monies by Respondent No. 2 namely Axis Bank Limited and transferring the aforesaid monies to the benefit of Respondent Nos. 3 to 6 amounts to violation of moratorium in terms of Section 14(1)(b) of the Insolvency and Bankruptcy Code, 2016;*

*(c) Direct the Resolution Professional to maintain the account of the Corporate Debtor in a bank other than Respondent Nos 2, 4, 5 or 6 so that all future transactions are routed through some other bank and there is no repeated occurrence of illegal withdrawal of monies at the behest of Respondent Nos. 2 to 6,*

*(d) Direct the Resolution Professional to examine the records and books of accounts of the Corporate Debtor in a time bound manner and report to this Hon'ble Tribunal as to the exact amount (whether INR 143.15 Crores or a higher amount as the case may be) having been unlawfully withdrawn by Respondent No. Z namely Axis Bank Limited and distributed with*

*Respondent No. 3 to 6 as well as to any other third-party entity/entities (if any / if at all),*

*(e) Direct the Resolution Professional to examine if such unlawful withdrawal of monies and inaction on part of the Resolution Professional will necessitate re-working on the admitted amounts qua various financial creditors and if yes, then direct the Resolution Professional to re-work upon the amount of admitted claims qua various financial creditors, their revised voting right percentage so that distributions can be made to various financial creditors from the resolution plan or liquidation proceeds, as the case may be, in the right proportion/ quantum/ manner.*

*(f) Direct Respondent Nos. 2 to 6 as well as other third party entity/entities (if any /if at all) to refund/remit back the monies to the CIRP Bank account of the Corporate Debtor to the extent in the proportion as received by each of the aforesaid Respondent;*

*(g) Pass an order directing the Respondents No. 2 to 6 to pay interest at an appropriate rate/percentage as deemed appropriate by this Hon'ble Tribunal on the respective principal*

*amounts withdrawn/received by them in contravention of moratorium;*

*(h) Pass an interim order that the percent voting share qua various financial creditors shall get crystallized subject to outcome of the present Application for the purpose of distributions to be made to various Financial Creditors pursuant to resolution plan(s) submitted by Resolution Applicant(s) in the Corporate Insolvency Resolution Process of the Corporate Debtor,*

*(i) Pass an interim order that till the disposal of this application, this Hon'ble Tribunal will not pronounce its order reserved in the I.A. No. 4844 of 2023 and /or pronounce its order reserved in the IA 4844 of 2023 only after considering the facts and circumstances of the present application;*

*(j) Such further other appropriate order(s) and/or direction(s) and / or declaration(s) and/or clarifications as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case and to serve end of justice.”*

14. Another application was filed for intervention by one of the Suspended Director which was allowed and Suspended Director was permitted to

intervene. There being no challenge to the intervention, nothing more is required to be noted with respect to intervention.

15. Adjudicating Authority by the impugned order has partly allowed the IA No.126 of 2024. Adjudicating Authority under the heading “Analysis and Findings” has formulated four points of determination. Paragraph 73 of the judgment is as follows:-

*“73. We have given our thoughtful consideration on the submissions made by the parties in all the three captioned applications. After careful analysis of the submissions of the parties, the following points of determination emerge in the present case:*

*I. Whether the Insolvency Commencement Date (ICD) i.e. 22.02.2023 can be changed to a later date owing to the stay of the CIRP Admission Order and Whether the cut-off date for the purpose of CIRP-related activities be taken as 10.08.2023 instead of 22.02.2023?*

*II. Whether moratorium was in subsistence during the stay period i.e. between 07.03.2023 till 10.08.2023?*

*III. Whether the RP was correct in handing over the management and control of the Corporate Debtor back to the suspended directors?*

*IV. Whether the withdrawal and appropriation of monies by the Respondents 2 to 6 during the stay period is tenable in law?”*

16. On Issue No.I i.e. Insolvency Commencement Date, the Adjudicating Authority held that there is no provision to change/ shift the Insolvency Commencement Date which is fixed i.e. the date of admission of the Corporate Debtor into CIRP which is 22.02.2023. Adjudicating Authority has also dealt with the doctrine of *res judicata* in paragraph 76 and in paragraph 76.12 concluded that the applications are not covered by the principle of *res judicata*. In paragraph 76.12 following was observed:-

*“76.12 It is clear from the above that the Hon’ble Supreme Court has held that merely closing a proceeding in a case cannot be construed as a final decision on merits to attract the principle of res judicata under section 11 of CPC. Following the above judgment, we hold that the issues raised in the present applications are not covered by the principle of Res Judicata under section 11 of CPC. Having said this, we are inclined to decide the remaining issues.”*

17. On the Issue No.II i.e. “On subsistence of moratorium during the Stay Period”, Adjudicating Authority came to the conclusion, after referring to the judgments relied by the parties that this Appellate Tribunal while granting interim order dated 07.03.2023 did not intend to suspend Moratorium

imposed under Section 14. In paragraph 77.22, following conclusion is recorded:-

*“77.22 Thus, based on the above discussions, we are satisfied that Hon’ble Appellate Tribunal, even in the absence of any specific directions/ observations while granting the interim stay on 07.03.2023, did not intend to suspend the moratorium imposed under section 14 or the appointment of RP but merely impelled to stay the operation of the CIRP order dated 23.02.2023. This means that the RP was only prevented from taking further steps in respect of the CIRP process of the Corporate Debtor which does not imply that the Corporate Debtor has to be handed over back to the management, and the management of the Corporate Debtor and few of its creditors could have acted against the objectives of the Code.”*

18. On the Issue No.III i.e. “On RP’s conduct of handing over the management of Corporate Debtor back to the suspended directors”, Adjudicating Authority concluded that the Resolution Professional ought not to have handed over the management and control of the Corporate Debtor back to the Suspended Directors without appropriate directions from the Tribunal. In paragraph 78.6, following was observed:-

*“78.6 Thus, in view of the same and also the clear precedence set out in Ashok Kumar Tyagi (supra)*

*which was passed prior to the stay granted in the present matter, the RP ought not to have handed over the management and control of the Corporate Debtor back to the suspended directors without appropriate instructions/ directions from this Tribunal.”*

19. On Issue No.IV i.e. “On withdrawal and appropriation of monies by Respondents 2 to 6”, the Adjudicating Authority held that Moratorium is applicable from 23.02.2023. It was held that since the Appeal stood dismissed, the Moratorium stand applicable from date of Insolvency Commencement Date i.e. 23.02.2023. In paragraphs 79.1 to 79.6, the Adjudicating Authority made following observations:-

*“79.1 All the transactions during the period from 07.03.2023 to 10.08.2023 are subject to the final outcome of the appeal. All parties including the Financial Creditors which withdrew the monies from the account of the corporate debtor were put to notice that insolvency commencement date is 23.02.2023. Mere stay of the order does not amount to wiping off the admission order completely as held by Hon’ble Supreme Court in Shree Chamundi Mopeds (supra).*

*79.2 Being fully aware of the pending proceedings before the Appellate Tribunal, the Financial Creditors took a calculated risk of appropriating the funds of*

*corporate debtor knowing that their actions would be subject to the final outcome of the appeal.*

*79.3 The object of the IBC is to protect the assets of the corporate debtor from all creditors as well as its own management once CIRP is initiated. It is well-settled principle that during insolvency resolution/ liquidation of a company, no creditor shall be paid in priority otherwise than as prescribed under the I&B Code.*

*79.4 In view of the various judgments of Hon'ble Supreme Court and Appellate Tribunal discussed above, the scheme and intent of IBC and the effect of Stay order is clearly laid down and we have no hesitation in holding all transactions undertaken during the period 07.03.2023 to 10.08.2023 were subject to the final outcome of the appeal. As the appeal stood dismissed, the moratorium stands applicable from the date of ICD i.e. 23.02.2023.*

*79.5 Since we had held that moratorium is applicable from 23.02.2023, all transaction during the period from 23.02.2023 to 10.08.2023 are subject to the moratorium under section 14 of IBC. The expenses incurred in the ordinary course of business to protect the Corporate Debtor and to keep it as a going concern would be safeguarded. All other transactions and appropriations would consequently be returned to the*

*corporate debtor for the benefit of all the creditors in accordance with the provisions and intent of the IBC.*

*79.6 In view of our decision that moratorium is applicable from the ICD i.e. 23.02.2023, all consequential actions will follow including on withdrawal and appropriation of monies by the Respondents, and there is no need to deal with other contentions of the Respondents in this regard.”*

20. The Adjudicating Authority recorded its conclusion in Paragraph 83 which is to the following effect:-

*“83. The findings recorded above are summarized as follows:*

*a) Insolvency Commencement Date as defined under section 5(13) of the Code stands fixed at 22.02.2023.*

*b) Since the ICD date cannot be changed, we are unable to agree that even after the dismissal of the appeal, the ICD should be reckoned as 10.08.2023 for CIRP activities. Hence, the application no. 4844/ 2023 is rejected. We hold the ICD remains 23.02.2023 and all CIRP related activities have to be reckoned from that date only.*

*c) Moratorium under section 14 continues to be applicable from 22.02.2023.*

*d) All the transactions and appropriations undertaken during the stay period i.e. between 07.03.2023 till 10.08.2023 shall be reversed and the amounts shall be remitted back to the account of the Corporate Debtor within 4 weeks from today.*

*e) The expenses incurred in the ordinary course of business to protect the Corporate Debtor and to keep it as a going concern would be safeguarded.”*

21. The Adjudicating Authority also dismissed IA No.4844 of 2023 filed by the IRP. In IA No.126 of 2024, following order was passed:-

**“IA/ 126/2024**

*iv. Prayers ‘a’, ‘b’, ‘d’, ‘e’ and ‘f’ being interconnected to each other are allowed;*

*v. Prayer ‘c’ seeking direction to the RP to maintain the account of the Corporate Debtor in a bank other than Respondents 2 to 6 is rejected;*

*vi. Prayer ‘g’ seeking direction to Respondents 2 to 6 to pay interest on the amounts withdrawn is rejected;*

*vii. Thus, IA/ 126/2024 is partly allowed.”*

22. From the submissions made by the Counsel for the parties and materials on record, following are the questions which need to be answered in these Appeals:

- (I) What is the effect and consequences of the interim order dated 07.03.2023 passed by this Tribunal staying the operation of the order of admission dated 22.02.2023?
- (II) Whether *status quo* prevailing prior to passing of the order dated 22.02.2023 shall be restored in view of the interim order dated 07.03.2023?
- (III) What is the effect on the Moratorium which commenced on 22.02.2023 by admitting Section 7 application, on passing of an interim order dated 07.03.2023?
- (IV) Whether application IA No.126 of 2024 filed by ARCIL praying for reversal of the amount withdrawn by Axis Bank and other lenders during the stay period was barred by principle of *res judicata*, issue estoppel and merger?
- (V) Whether on principle of restitution, the lenders who have withdrawn the money from the account of the Corporate Debtor during period of interim stay which came to end on 10.08.2023 when Appeal was dismissed, were obliged to reverse the amount in the account of Corporate Debtor?
- (VI) Whether findings and observations made by the Adjudicating Authority in paragraph 78 against the Resolution Professional deserves to be set aside?
- (VII) Whether order of the Adjudicating Authority dated 01.10.2024 rejecting prayer (g) in IA No.126 of 2024 filed by ARCIL deserves to be dismissed and Axis Bank and other lenders who have

withdrawn the amount from the account of the Corporate Debtor were liable to refund the amount with interest?

**Question Nos.(I), (II) & (III)**

23. The questions to be answered in the Appeals are, the effect and consequences of interim order dated 07.03.2024 passed by this Tribunal in **Company Appeal (AT) (Ins.) No.274 of 2023 – Shilpi Asthana vs. Indusind Bank Ltd. & Anr.** As noted above, Section 7 application was admitted by Adjudicating Authority vide order dated 22.02.2023, which application was filed by one of the Appellant – Indusind Bank Ltd. (Appellant in Company Appeal (AT) (Ins.) No.2005 of 2024). The order dated 22.02.2023, while admitting Section-7 application and initiating CIRP against the CD – Siti Networks Ltd., the Adjudicating Authority appointed Rohit Ramesh Mehra as RP and declared moratorium under Section 14 of the IBC. The Company Appeal (AT) (Ins.) No.274 of 2023 was filed by Shilpi Asthana, Suspended Director of the CD. In the Company Appeal (AT) (Ins.) No.274 of 2023, following interim order was passed by this Tribunal on 07.03.2023:

**“07.03.2023:** *We have heard Counsel for the parties. There are arguable points involved in this appeal.*

*Issue notice. Counsel for the Respondent accepts notice and prays for time to file Reply. Let reply be filed within two weeks. List again on 29<sup>th</sup> March, 2023.*

*In the meantime, operation of the impugned order shall remain stayed.”*

24. The insolvency and bankruptcy are well known concept in this country, which is regulated by two enactments, i.e. Provincial Insolvency Act, 1920 and the Presidency Towns Insolvency Act, 1909. “Insolvency” is defined in Advanced Law Lexicon, 6<sup>th</sup> Edition, Vol.-2 as under:

*“The term “Insolvency” denotes the state of one whose assets are insufficient to pay his debts; or his general inability to pay his debts. But it is, however, frequently used in the more restricted sense to express the inability of a party to pay his debts as they became due in the ordinary course of business. The condition of a person who is unable to pay his debts in full.”*

25. The judgments in the insolvency jurisdiction are, which confers upon or takes away from any person any legal character. Section 41 of the Indian Evidence Act, 1872, declares judgments in the insolvency jurisdiction as relevant. The law regarding insolvency was consolidated by the Insolvency and Bankruptcy Code, 2016. The Preamble of the Code is as follows:

*“An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of*

*India, and for matters connected therewith or incidental thereto.”*

26. Chapter II of the IBC, deal with ‘Corporate Insolvency Resolution Process’. Section 13 of the IBC provides that the Adjudicating Authority, after admission of the application under Section 7 or Section 9 or Section 10, shall, by an order – (a) declare a moratorium for the purposes referred to in Section 14; (b) cause a public announcement of the initiation of CIRP and call for the submission of claims under section 15; and (c) appoint an interim resolution professional in the manner as laid down in section 16. In the present case, after initiation of CIRP against the CD on 22.02.2023, the public announcement was made by the IRP on 25.02.2023. The moratorium was also declared by the same order dated 22.02.2023, prohibiting acts as contemplated in Section 14, sub-section (1) of the IBC. Section 15 of the IBC provides for public announcement of CIRP. When public announcement is made of CIRP, it is announcement to the whole world about the commencement of insolvency against the CD.

27. We need to first notice the nature of proceedings, which commences on admission of an application under Section 7. Suffice it to notice the judgment of the Hon’ble Supreme Court in ***Glas Trust Company LLC vs. Byju Raveendran and Ors. – (2025) SCC OnLine SC 3032***, the Hon’ble Supreme Court in detail elaborated the principles relating to insolvency. In paragraph 39, the Hon’ble Supreme Court has elaborated the guiding principles, which were noticed for deciding the issues which were raised

before the Hon'ble Supreme Court in the Appeal. Paragraph 39 of the judgment is as follows:

*“39. From the above, the following guiding principles emerge, which we must keep in mind while determining the issues raised in the present appeal:*

***39.1.** A significant change brought about by the IBC was the consolidation of the pre-existing fragmented insolvency framework, The aim was to eliminate parallel proceedings by various creditors before different fora, given that all creditors would be a part of a single insolvency process under the IBC;*

***39.2.** The above consolidation also sought to implement the principle of “collective distribution”, where the interests of all stakeholders were considered. CIRP envisaged by the IBC is premised on the principle that each creditor of the same class should receive a share that is proportionate to the debt owed to him;*

***39.3.** IBC must not be used as a tool for coercion and debt recovery by individual creditors. Improper use of the IBC mechanism by a creditor includes using insolvency as a substitute for debt enforcement or attempting to obtain preferential payments by coercing the debtor using insolvency proceedings. That the mechanism under the IBC must not be used as a money recovery mechanism has been reiterated in a consistent line of precedent by this Court;*

***39.4.** The interests of the corporate debtor must be detached from those of its promoters/those who are*

*in management. A “recalcitrant management” [Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353, para 36 : (2018) 1 SCC (Civ) 311 : (2017) 205 Comp Cas 324] must be prevented from taking advantage of undue delays and preventing an inevitable insolvency. In other words, as noted by this Court in Arun Kumar Jagatramka [Arun Kumar Jagatramka v. Jindal Steel & Power Ltd., (2021) 7 SCC 474 : (2021) 14 Comp Cas-OL 231], the economic value of corporate structures is broader than the partisan interests of their management.”*

28. Under the heading “*Nature of proceedings after admission of the application*”, in paragraph 42, it was held that admission of an application is a significant event that alters the nature of the proceedings, once the petition is admitted and CIRP is initiated, the proceedings become *in rem*. Paragraph-42 of the judgment is as follows:

**“42.** *From this scheme of Chapter II IBC, it appears that the admission of an application is a significant event that alters the nature of the proceedings, and the stakeholders involved. Initially, when the petition is filed by the financial creditor, operational creditor or corporate applicant, as the case may be, the proceedings are in personam and the only relevant stakeholders are the applicant creditor and the corporate debtor. However, once the petition is admitted and CIRP is initiated, several significant changes take place, including the transfer of the management of the affairs of the corporate debtor to the IRP, the declaration of the moratorium, and the*

*collation of the claims against the corporate debtor. Therefore, the proceedings now change character — they become in rem and are no longer the preserve of only the applicant creditor and the corporate debtor and even creditors who were not the original applicants, become necessary stakeholders.”*

29. The Hon’ble Supreme Court has also noticed its earlier judgment in **Indus Biotech (P) Ltd. vs. Kotak India Venture (Offshore) Fund – (2021) 6 SCC 436**. In paragraph-43 of the judgment, the Hon’ble Supreme Court extracted paragraph 17 and 26 of the **Indus Biotech** judgment, where it was held that when Adjudicating Authority proceed to admit the application, the proceeding becomes proceeding *in rem* and only course thereafter to be followed is the resolution process under IBC. Paragraph-43 of the judgment in **Glas Trust** is as follows:

*“43. A three-Judge Bench of this Court in Indus Biotech (P) Ltd. v. Kotak India Venture (Offshore) Fund [Indus Biotech (P) Ltd. v. Kotak India Venture (Offshore) Fund, (2021) 6 SCC 436 : (2021) 3 SCC (Civ) 584 : (2021) 226 Comp Cas 178] adjudicated on the question of the stage at which the proceedings under the IBC attain the status of in rem and create third-party rights for all creditors. This Court held that the trigger point is not the filing of the application, but the admission of the application, and observed as follows :*

*“17. The procedure contemplated will indicate that before the adjudicating authority is satisfied as to whether the default has*

*occurred or not, in addition to the material placed by the financial creditor, the corporate debtor is entitled to point out that the default has not occurred and that the debt is not due, consequently to satisfy the adjudicating authority that there is no default. In such exercise undertaken by the adjudicating authority if it is found that there is default, the process as contemplated under sub-section (5) of Section 7 IBC is to be followed as provided under sub-section (5)(a); or if there is no default the adjudicating authority shall reject the application as provided under sub-section (5)(b) to Section 7 IBC. In that circumstance if the finding of default is recorded and the adjudicating authority proceeds to admit the application, the corporate insolvency resolution process commences as provided under sub-section (6) and is required to be processed further. In such event, it becomes a proceeding in rem on the date of admission and from that point onwards the matter would not be arbitrable. The only course to be followed thereafter is the resolution process under IB Code. Therefore, the trigger point is not the filing of the application under Section 7 IBC but admission of the same on determining default.*

*26. ... On admission, third-party right is created in all the creditors of the corporate debtors and will have erga omnes effect. The mere filing of the petition and its pendency before admission, therefore, cannot be*

*construed as the triggering of a proceeding in rem. Hence, the admission of the petition for consideration of the corporate insolvency resolution process is the relevant stage which would decide the status and the nature of the pendency of the proceedings and the mere filing cannot be taken as the triggering of the insolvency process.”*

30. The Hon’ble Supreme Court noticed two significant principles under the scheme of the IBC under Chapter II in paragraph 44, which are as follows:

*“44. In summary, the scheme of the IBC under Chapter II gives rise to two significant principles:*

*44.1. Once the petition is admitted, the proceedings are no longer the preserve of the applicant creditor and the debtor. They now become in rem and all creditors of the corporate debtor become stakeholders in the process; and*

*44.2. Once the petition is admitted, the management of the affairs of the corporate debtor is vested in the IRP and eventually, in the RP. Thus, the corporate debtor no longer exists in the form that it did, before the admission of the petition. Once CIRP is initiated, the interests of the erstwhile management of the corporate debtor must be distinguished from the interests of the corporate debtor”.*

31. It is, thus, well settled that IBC proceedings are proceedings *in rem* after admission of Section 7 application, in contradiction to the proceedings,

which were in *personam* proceedings, when application has been filed for admission of CIRP against the CD.

32. As noted above, by interim order dated 07.03.2023, operation of the order dated 22.02.2023 was stayed by this Tribunal. The Black's Law Dictionary, 6<sup>th</sup> Edition defines the word 'stay' in following words:

*“Stay, v. To stop, arrest, or forbear. To “stay” an order or decree means to hold it in abeyance, or refrain from enforcing it.”*

*“A “stay” does not reverse, annul, undo or suspend what already had been done or what is not specifically stayed nor pass on the merits of orders of the trial court, but merely suspends the time required for performance of the particular mandates stayed, to preserve a status quo pending appeal. Reed v. Rhodes, D.C. Ohio, 472 F. Supp. 603, 605.”*

33. When an interim order was passed on 07.03.2023, the order dated 22.02.2023 admitting CIRP was kept in abeyance. The first question which needs to be noticed is, as to whether by stay of the order dated 22.02.2023, the nature of proceedings, which were kept in abeyance has been changed from *in rem* proceedings. As noted above, proceedings became *in rem* proceedings from 22.02.2023, when Section 7 application was admitted. Thereafter, publication was also made on 25.02.2023, notifying the whole world, the announcement of insolvency proceedings and the nature and character of the CD that it has become insolvent was publicized. What is the consequence of stay order passed on 07.03.2023, both the parties have advanced their diametrically opposite submission. The Appellants

contended that after passing of the stay order on 07.03.2023, the admission order appointing IRP and starting moratorium, all were stayed and no moratorium shall be operative after 07.03.2023, so as to prohibit Axis Bank and other lenders to withdraw the amount from the account of the CD. On the contrary, the submission made by ARCIL is that by stay of the order of admission on 07.03.2023, the freeze, which was imposed on 26.02.2023 is not withdrawn and the Axis Bank and other lenders could not have withdrawn the amount of more than Rs.143 crores from the accounts of the CD, period during which interim order was operative.

34. Learned Counsel for both the parties have relied on various judgments of the Hon'ble Supreme Court and this Tribunal, which we need to notice for answering the question.

35. The most celebrated judgment of the Hon'ble Supreme Court referred and relied by learned Counsel for the ARCIL and other parties, i.e., ***Shree Chamundi Mopeds Ltd. vs. Church of South India Trust Association, CSI Cinod Secretariat, Madras (1992) 3 SCC 1***. In this case, the Appellant Company committed default in payment of rent of the premises belonging to the Church of South Indian Trust Association. A notice under Section 434 of the Companies Act, 1956 was issued to the Appellant and thereafter the petition was filed in the High Court of Karnataka for winding up of the Company. While the Company Petition was pending, the Appellant claiming that it has become a sick industrial company, filed a reference under Section 15(1) of the Sick Industrial Companies (Special Provisions)

Act 1985 (“1985 Act”). The Board passed an order on April 26, 1990, opining that opinion to wind up of the Company may be forwarded to High Court of judicate at Karnataka for further necessary action under the law. An Appeal was filed by the Appellant Company before the Appellate Authority for Industrial and Financial Reconstruction, which came to be dismissed on 26.04.1990. The Appellant Company filed a Writ Petition (Civil) No. 594 of 1991 in the High Court of Delhi, in which notice was issued by the High Court on 10.05.1991 and meanwhile operation of the order of Appellate Authority dated 07.01.1991 was stayed. The winding up petition was taken up by the Karnataka High Court and was allowed on 14.08.1991. The Appeal against the order of Single Judge was also dismissed. Civil Appeal No.126 of 1992 was filed by the Appellant Company, challenging the order of Karnataka High Court. The Respondents initiated proceedings for eviction of the Appellant Company under Section 21(1) of the Karnataka Rent Control Act, 1961. In the said proceedings, the Appellant Company moved an application under Section 151 of the CPC for stay of the said proceedings on the ground that Appellant Company has been declared as sick industrial company and in view of Section 22 of the 1985 Act, no proceedings against the Company can be initiated. The said application of the Appellant Company was rejected by the Additional Small Causes Judge, Bangalore and allowed the eviction petition filed by the Respondents. The Appellant Company filed a Writ Petition, which was converted into a Revision Petition and was dismissed by the High Court of Karnataka on 15.03.1991. It was held that stay order, which was passed by the Delhi High Court in Writ Petition did not entitle the Appellant Company

to invoke the protection under Section 22 of the Act. Civil Appeal No.2553 of 1991 was filed by the Appellant Company against the order of the Karnataka High Court. Two questions that arose for consideration before the Hon'ble Supreme Court have been noticed in paragraph 6 of the judgment, which are to the following effect:

- “(1) What is the effect of the order passed by Delhi High Court dated February 21, 1991 staying the operation of the order dated January 7, 1991 passed by the Appellate Authority? Does it mean that after the passing of the said order by the High Court, the proceedings under the Act should be treated as pending and, if so, before which authority?*
- (2) Are the proceedings instituted by a landlord for eviction of a tenant who is a sick company from the premises let out to it, required to be suspended under Section 22(1) of the Act?”*

36. Section 22 under which suspension of legal proceedings was claimed has been noticed in paragraph 8 of the judgment. In paragraph 8 of the judgment, following has been observed:

*“8. Sub-section (1) of Section 22 which alone has relevance to these questions provides as under:*

*“22. Suspension of legal proceedings, contracts, etc.—(1) Where in respect of an industrial company, an inquiry under Section 16 is pending or any scheme referred to under Section 17 is under preparation or consideration or a sanctioned scheme is under*

*implementation or where an appeal under Section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority.”*

37. Hon’ble Supreme Court held that the proceedings before the Board under Sections 15 and 16 of the 1985 Act had been terminated by order of the Board dated 26.04.1990 and the appeal filed was also dismissed. No proceedings were pending either before the Board or before the Appellate Authority on February 21, 1991 when Delhi High Court passed the interim order staying the operation of the Appellate Authority. It was held that the said stay order of the High Court cannot have the effect of reviving the proceedings, which had been disposed of by the Appellate Authority. The Hon’ble Supreme Court held that while considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. It was held that **quashing of an order results in the restoration of the position as it stood on the date of the passing of the order, which have**

**been quashed and the stay of operation of an order does not, however, lead to such a result.** In paragraph-10 of the judgment, following has been laid down:

*“10. In the instant case, the proceedings before the Board under Sections 15 and 16 of the Act had been terminated by order of the Board dated April 26, 1990 whereby the Board, upon consideration of the facts and material before it, found that the appellant-company had become economically and commercially non-viable due to its huge accumulated losses and liabilities and should be wound up. The appeal filed by the appellant-company under Section 25 of the Act against said order of the Board was dismissed by the Appellate Authority by order dated January 7, 1991. As a result of these orders, no proceedings under the Act were pending either before the Board or before the Appellate Authority on February 21, 1991 when the Delhi High Court passed the interim order staying the operation of the order of the Appellate Authority dated January 7, 1991. The said stay order of the High Court cannot have the effect of reviving the proceedings which had been disposed of by the Appellate Authority by its order dated January 7, 1991. While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however,*

*lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending. We are, therefore, of the opinion that the passing of the interim order dated February 21, 1991 by the Delhi High Court staying the operation of the order of the Appellate Authority dated January 7, 1991 does not have the effect of reviving the appeal which had been dismissed by the Appellate Authority by its order dated January 7, 1991 and it cannot be said that after February 21, 1991, the said appeal stood revived and was pending before the Appellate Authority. In that view of the matter, it cannot be said that any proceedings under the Act were pending before the Board or the Appellate Authority on the date of the passing of the order dated August 14, 1991 by the learned Single Judge of the Karnataka High Court for winding up of*

*the company or on November 6, 1991 when the Division Bench passed the order dismissing O.S.A. No. 16 of 1991 filed by the appellant-company against the order of the learned Single Judge dated August 14, 1991. Section 22(1) of the Act could not, therefore, be invoked and there was no impediment in the High Court dealing with the winding up petition filed by the respondents. This is the only question that has been canvassed in Civil Appeal No. 126 of 1992, directed against the order for winding up of the appellant-company. The said appeal, therefore, fails and is liable to be dismissed.”*

38. The judgment of the Hon'ble Supreme Court in ***Madras Petrochem Ltd. and Anr. Vs. Board for Industrial and Financial Reconstruction and Ors. – (2016) 4 SCC 1*** has followed and reiterated the proposition laid down in ***Shree Chamundi Mopeds*** (supra). It is useful to notice paragraph-3 of the judgment, which is as follows:

*“3. Despite efforts by the operating agency to attempt to revive the Company, all such efforts failed, and ultimately, on 30-4-2001, BIFR, on the basis of the recommendation of the operating agency, formed a prima facie opinion that Appellant 1 Company should be wound up under Section 20(1) of the Sick Industrial Companies (Special Provisions) Act, 1985. On 27-7-2001, BIFR confirmed its prima facie opinion after noting that Appellant 1 Company had been enjoying protection under the Sick Industrial Companies (Special Provisions) Act, 1985 for the last 12 years. There being no acceptable viable rehabilitation proposal after the failure of two*

*schemes, Appellant 1 Company was not likely to make its net worth exceed its accumulated losses, and therefore, BIFR recommended to the High Court of Bombay that the said Company be wound up. On 4-2-2002, Appellant 1's challenge to the BIFR order was dismissed by AAIFR.”*

39. After the aforesaid order of the BIFR and AAIFR, ICICI Bank issued a notice under Section 13(2) of the SARFAESI Act, 2002 to the Company. Writ Petition was filed challenging the order of AAIFR dated 04.02.2002 before the Delhi High Court. The Delhi High Court by its interim order on 07.01.2024, stayed both the orders, i.e. order of AAIFR dated 04.02.2002 and BIFR dated 25.07.2001. The Writ Petition filed by the Appellant was dismissed as infructuous by the Delhi High Court, against which an Appeal was filed, which came for consideration before the Hon'ble Supreme Court. The Hon'ble Supreme Court relied on the judgment of the **Shree Chamundi Mopeds** in paragraph-46, which is as follows:

*“46. Shri Sundaram is also correct when he refers to the judgment of this Court in Shree Chamundi Mopeds Ltd. v. Church of South India Trust Assn. [Shree Chamundi Mopeds Ltd. v. Church of South India Trust Assn., (1992) 3 SCC 1] In the said judgment, this Court has held : (SCC pp. 9-10, para 10)*

*“10. In the instant case, the proceedings before the Board under Sections 15 and 16 of the Act had been terminated by order of the Board dated 26-4-1990 whereby the Board, upon consideration of the facts and material before*

*it, found that the appellant Company had become economically and commercially non-viable due to its huge accumulated losses and liabilities and should be wound up. The appeal filed by the appellant Company under Section 25 of the Act against the said order of the Board was dismissed by the appellate authority by order dated 7-1-1991. As a result of these orders, no proceedings under the Act were pending either before the Board or before the appellate authority on 21-2-1991 when the Delhi High Court passed the interim order staying the operation of the appellate authority dated 7-1-1991. The said stay order of the High Court cannot have the effect of reviving the proceedings which had been disposed of by the appellate authority by its order dated 7-1-1991. While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the appellate authority is quashed and the matter is remanded, the*

*result would be that the appeal which had been disposed of by the said order of the appellate authority would be restored and it can be said to be pending before the appellate authority after the quashing of the order of the appellate authority. The same cannot be said with regard to an order staying the operation of the order of the appellate authority because in spite of the said order, the order of the appellate authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending. We are, therefore, of the opinion that the passing of the interim order dated 21-2-1991 by the Delhi High Court staying the operation of the order of the appellate authority dated 7-1-1991 does not have the effect of reviving the appeal which had been dismissed by the appellate authority by its order dated 7-1-1991 and it cannot be said that after 21-2-1991, the said appeal stood revived and was pending before the appellate authority. In that view of the matter, it cannot be said that any proceedings under the Act were pending before the Board or the appellate authority on the date of the passing of the order dated 14-8-1991 by the learned Single Judge of the Karnataka High Court for winding up of the company or on 6-11-1991 when the Division Bench passed the order dismissing OSA No. 16 of 1991 filed by the appellant Company against the order of the learned Single Judge dated 14-8-1991. Section*

*22(1) of the Act could not, therefore, be invoked and there was no impediment in the High Court dealing with the winding up petition filed by the respondents.”*

40. The Hon’ble Supreme Court held that the stay order of the Delhi High Court could not have the effect of reviving the proceedings, which had been disposed of by the appellate authority.

41. The learned Counsel for the Appellant has relied on judgment of the Hon’ble Supreme Court in ***BPL Ltd. & Ors. Vs. R. Sudhakar and Ors. – (2004) 7 SCC 2019***. In ***BPL Ltd.***, the question which came for consideration has been noticed in paragraph 2 of the judgment, which is as follows:

*“2. The short and straight question which arises for consideration is “whether a dispute is said to be pending before an Industrial Tribunal for the purpose of the proviso to Section 33(2)(b) of the Industrial Disputes Act, 1947 (for short ‘the Act’) during the period when operation of the order of reference of dispute itself remained stayed”.*

42. In the above case, a dispute was raised by workmen. The Government made a reference to the Industrial Tribunal, Bangalore by an order dated 26.02.1999. The workmen not being satisfied with the order of reference, filed a Writ Petition No.7355 of 1999 in the High Court, seeking a mandamus to the State Government for referring some more points/ disputes raised by them. The learned Single Judge of the High Court on 11.03.1999 while issuing notice passed an interim order, staying the

operation of the order dated 26.02.1999. Learned Counsel for the Respondent has relied on paragraphs 11 and 13 of the judgment, where the Court referring to the judgment of the Hon'ble Supreme Court in **Shree Chamundi Mopeds**, observed following in paragraph 12:

“ xxx xxx xxx

*In that view this Court held that it cannot be said that any proceedings under the Act were pending before the Board or the Appellate Authority on the date of passing the order dated 14-8-1991 by the learned Single Judge of the Karnataka High Court for winding up of the Company or on 6-1-1991 when the Division Bench passed the order dismissing OSA No. 16 of 1991 filed by the Company and, therefore, there was no impediment in the High Court dealing with the winding-up petition filed by the respondents.”*

43. In paragraph 13, the Hon'ble Supreme Court took the view that in the case on hand the situation is entirely different. The Tribunal gets jurisdiction only on reference made by the Government and when the operation of the very order of reference was stayed, the question of dispute pending before the Tribunal did not arise. In paragraph 13, following was held:

*“13. In the case on hand the situation is entirely different. The Tribunal gets jurisdiction only on reference made by the Government. When the operation of the very order of reference was stayed, the question of dispute pending before the Tribunal*

*did not arise inasmuch as the reference order itself stood suspended. So long as stay order was operating, it could not be said that the dispute was pending before the Tribunal. Admittedly, when workmen were dismissed from service stay order was operating. Learned Single Judge as well as the Division Bench of the High Court have proceeded on a wrong footing relying upon the decision of this Court in Shree Chamundi Mopeds Ltd. [(1992) 3 SCC 1 : (1992) 2 SCR 999] that the order of reference was not wiped out by virtue of staying of the operation of order of reference. It is not the question as to whether the order of reference is wiped out but the question is what is the effect of the staying of the operation of order of reference itself. Once the operation of the order of reference is stayed, there is no question of dispute pending before the Tribunal so long as the said order remains in operation because reference precedes dispute. To put it differently, dispute could come up for adjudication by the Tribunal pursuant to the order of reference only. If in a pending proceeding operation of order is stayed pending disposal of the main matter such as an appeal or revision, obviously the impugned order does not get quashed or wiped out. It only remains suspended. But the position is different in this case, as already stated above. It was not a case where the dispute was pending and only further proceedings were stayed. When the order of reference itself was stayed the Tribunal did not have the jurisdiction to pass any further order. As such the question of either the management making an application under the proviso to Section 33(2)(b) or the Tribunal passing an order on such application would*

*not arise. In case any tribunal proceeds to pass an order in spite of stay of the operation of the order of reference by the High Court it may amount to contempt of the order of the High Court. In case of some grave misconduct the management cannot afford to sit idle or simply wait to take action, particularly, when stay of the operation of the order of reference is obtained at the instance of the Union on behalf of the workmen. The case of Shree Chamundi Mopeds Ltd. [(1992) 3 SCC 1 : (1992) 2 SCR 999] is quite distinguishable and it is on the facts of that case. Even in that case it is stated that the order of stay did not amount to revival of appeal or proceeding.”*

44. The judgment of the Hon’ble Supreme Court in **BPL Ltd.** (supra) was noticed by the Hon’ble Supreme Court in **Madras Petrochem Ltd.** and it was held that the facts in BPL Ltd. judgment was delivered in different context of Section 33(2) of the Industrial Disputes Act, 1947 and have no direct bearing on the facts, which are before consideration, which are covered directly by the judgment of the Hon’ble Supreme Court in **Shree Chamundi Mopeds**. Paragraph 48 of the **Madras Petrochem Ltd.** is as follows:

*“48. However, Shri Sreekumar referred to three judgments in support of the proposition that interim orders preserve the status quo and that, therefore, the interim order of stay has to be obeyed during the pendency of the writ petition. For this purpose, he cited Kihoto *Hollohan v. Zachillhu* [Kihoto *Hollohan v. Zachillhu*, 1992 Supp (2) SCC 651], Ravi S. Naik v. Union of India [Ravi S. Naik v. Union of*

*India, 1994 Supp (2) SCC 641] and BPL Ltd. v. R. Sudhakar [BPL Ltd. v. R. Sudhakar, (2004) 7 SCC 219] . Each of these judgments was delivered in different contexts. The first judgment of Kihoto Hollohan [Kihoto Hollohan v. Zachillhu, 1992 Supp (2) SCC 651] was delivered in the context of landslide changes that would have taken place had a stay order not been passed in the context of the Tenth Schedule to the Constitution of India, which was enacted to remedy the evil of defection. The second judgment, namely, Ravi S. Naik [Ravi S. Naik v. Union of India, 1994 Supp (2) SCC 641] was also delivered in the same context and the third judgment was delivered in the context of Section 33(2)(b) of the Industrial Disputes Act, 1947. None of these judgments has any direct bearing on the facts before us, which can be said to be covered directly by the judgment in Shree Chamundi Mopeds Ltd.”*

45. We need to notice now the judgment of this Tribunal in **Ashok Kumar Tyagi vs. UCO Bank & Anr. – Company Appeal (AT) (Ins.) No.1323 of 2022** and **Mukesh Kumar Jain – Company Appeal (AT) (Ins.) No.930-931 of 2023**, which have been referred and relied by both the parties.

46. In **Ashok Kumar Tyagi**, a Section 7 application filed by UCO Bank was admitted against the CD. An appeal was filed in this Tribunal, in which initially an order was passed on 04.11.2022, directing the IRP to not constitute the CoC. However, by a subsequent order dated 07.11.2022, the impugned order dated 28.10.2022 was stayed. The Appellant, i.e., Suspended Director filed an IA No.4291 of 2022 praying for various

directions, which came up for consideration in the above order. Learned Counsel for the Appellant submits that in the above judgment, this Tribunal placed reliance in **Shree Chamundi Mopeds** and in paragraph 12 observed following:

*“12. The Order passed on 07.11.2022 has already been noticed as extracted above. The moot question to be answered is the consequence and effect of the Order dated 07.11.2022. Whether by strength of the Order dated 07.11.2022, the Corporate Debtor is entitled to be restored and be permitted to function as it was functioning prior to 28.10.2022. The issue is no longer res Integra. Hon'ble Supreme Court has occasion to consider the effect and consequence of an Interim Order passed by a Court in “Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association [(1992) 3 SCC 1]”. In paragraph 10 of the Judgment, following has been laid down:*

*“10.....The appeal filed by the appellant-company under Section 25 of the Act against said order of the Board was dismissed by the Appellate Authority by order dated January 7, 1991. As a result thereof no proceedings under the Act were pending either before the Board or before the Appellate Authority on February 21, 1991 when the Delhi High Court passed the interim order staying the operation of the Appellate Authority dated January 7, 1991. The said stay order of the High Court cannot have the effect of reviving the proceedings which had been disposed of by the Appellate Authority by its order dated January 7, 1991.*

*While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending.....”*

47. Another judgment relied by this Tribunal in the above case was judgment of Hon'ble Supreme Court in the **State of U.P. vs. Prem Chopra –**

**(2022) SCC OnLine SC 1770.** This Tribunal also considered the judgment of the Hon'ble Supreme Court in **BPL Ltd vs. R. Sudhakar**. This Tribunal held that difference between stay of an order and quashing of any order are well settled. It was held that in event of the stay of admission of Section 7 Application, the CD is allowed to function and position as was existing prior to 28.10.2022 is restored, there shall be no difference in staying an order and quashing of an order. In paragraphs 18 and 19, following were directed:

*“18. The difference between stay of an Order and quashing of any Order are well settled as noticed above. In event on the stay of the admission of Section 7 Application, the Corporate Debtor is allowed to function and position as was existing prior to 28.10.2022 is restored, there shall be no difference in staying an Order and quashing of an Order. What the Appellants are asking/praying is restoration of the position as was prior to admission of Section 7 Application. We can not accept such request made by the Appellant. The Admission Order of Section 7 Application has only been stayed and not quashed thus the Corporate Debtor can not be permitted to function as it was functioning prior to 28.10.2022.*

*19. However, in view of the stay of the Order dated 28.10.2022, the IRP can not carry on any functions since the IRP was appointed by the same order and by stay of the Order, no further action can be taken by the IRP in pursuance of the Order dated 28.10.2022. The Order dated 28.10.2022 has become inoperative in view of the Interim Order of*

*this Tribunal dated 07.11.2022. Hence the Appellant is right in his submission that IRP can not discharge any function after the Impugned Order dated 07.11.2022.”*

48. Further, this Tribunal also dealt with as to how the day-to-day functioning of the Tea Gardens to be carried on and for that directions were issued in paragraph 20.

49. Another judgment which has been relied by learned Counsel for the parties is ***Mukesh Kumar Jain vs. Navin Kumar Upadhyay and Anr. (2023) SCC OnLine NCLAT 2359***. In the above case two sets of Company Appeals were filed. One by the RP and another by Suspended Director of the CD. The Appeals were filed challenging the order dated 30.05.2023 passed by Adjudicating Authority, by which the Adjudicating Authority issued various directions. The Adjudicating Authority referring to the interim order dated 25.02.2022 passed by Hon'ble Supreme Court, where CIRP has been stayed by the Hon'ble Supreme Court, held that RP could not have taken any action. The RP was directed to hand over the management of the CD to the Promoters, which order was under challenge in the Appeal. The RP in the Appeal relied on judgment of this Tribunal in ***Ashok Kumar Tyagi vs. UCO Bank*** and contended that in view of the said judgment, the Adjudicating Authority could not have directed the management to be reinstated. This Tribunal referring to its earlier judgment in ***Ashok Kumar Tyagi*** held that ***Ashok Kumar Tyagi***'s case did not lay down any proposition that if an order initiating CIRP has been stayed, the result would

be to hand over the CD to the ex-management of the CD. In paragraphs 12 and 13 of the judgment, following were laid down:

*“12. The Adjudicating Authority took the view that in view of the stay of the CIRP of the Corporate Debtor by order dated 25.02.2022 passed by the Hon'ble Supreme Court, the Resolution Professional cannot continue and his all actions are without jurisdiction. Direction was issued to the Resolution Professional to handover the management of the Corporate Debtor to the CEO/Management of the Corporate Debtor, which has been impugned in the present Appeals. The judgment of this Tribunal in ‘Ashok Kumar Tyagi’ (supra) on which reliance has been placed by the Adjudicating Authority does not lay down any proposition that when order of initiating CIRP has been stayed, the result would be to handover the Corporate Debtor to the ex-management by Resolution Professional. In ‘Ashok Kumar Tyagi’ (supra), this Tribunal noticed the difference between stay of an order and quashing of an order. In ‘Ashok Kumar Tyagi’ (supra) this Tribunal placed reliance on the judgment of the Hon'ble Supreme Court in “Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association- [(1992) 3 SCC 1]”. In ‘Ashok Kumar Tyagi’ (supra), in paragraph 18, following proposition has been laid down:—*

*“18. The difference between stay of an Order and quashing of any Order are well settled as noticed above. In event on the stay of the admission of Section 7 Application, the Corporate Debtor is allowed to function and position as was existing prior to 28.10.2022 is*

*restored, there shall be no difference in staying an Order and quashing of an Order. What the Appellants are asking/praying is restoration of the position as was prior to admission of Section 7 Application. We can not accept such request made by the Appellant. The Admission Order of Section 7 Application has only been stayed and not quashed thus the Corporate Debtor can not be permitted to function as it was functioning prior to 28.10.2022.”*

**13.** *The judgment of ‘Ashok Kumar Tyagi’ (supra) of this Tribunal does not support the order of the Adjudicating Authority that in view of the stay of CIRP, Resolution Professional has to handover charge of the Corporate Debtor. Any such result of stay of the CIRP shall be disastrous since if the management against whom the CIRP has been initiated is handed over the charge, it is prone to misuse the assets and the assets shall be diminished, which may adversely affect the creditors of the Corporate Debtor. In view of the stay of the CIRP, it is true that the Resolution Professional cannot take any further steps in the CIRP of the Corporate Debtor and has to stay his hand from proceeding any further in the CIRP and await the order of the Appellate Court. The direction to the Resolution Professional in the impugned order to handover the Corporate Debtor to the ex-management is wholly unjustified and has to be set aside.”*

50. From the above, it is clear that judgment of this Tribunal in **Mukesh Kumar Jain** again reiterated the proposition laid down in **Ashok Kumar Tyagi**'s case.

51. Learned Counsel appearing for the Appellant submitted that the judgment in **Ashok Kumar Tyagi** had clearly laid down that after staying of the admission order, the IRP cannot function. There cannot be any dispute to the proposition laid down by this Tribunal in **Ashok Kumar Tyagi**, that after stay of the admission order, IRP cannot discharge any function. Learned Counsel for the Appellant relied on order of the Hon'ble Supreme Court dated 03.09.2024 passed in **Civil Appeal No.2661 of 2022 – Shobori Ganguli vs. Amit Goel & Ors.** According to the Appellant in the above case, the Hon'ble Supreme Court directed that RP could not have interfered in the functioning of the Company. Civil Appeal No.2661 of 2022 was filed by Suspended Director, in which Appeal initially the Hon'ble Supreme Court had passed an order on 25.02.2022 staying the CIRP and in the said Appeal on various IAs order dated 03.09.2024 was passed by the Hon'ble Supreme Court, which order is as follows:

“C.A. No.2661/2022

1. *The parties agree that the matter be referred to mediation. The parties also agree on the name of Ms. Liz Mathew, learned senior counsel, as Mediator.*
2. *The dispute is therefore referred to mediation before Ms. Liz Mathew, learned Senior Counsel. The parties to appear before the learned Mediator on 07.09.2024, as per her convenience. The learned Mediator will determine her fee, which shall be*

*shared equally by the appellant in C.A. No.2661/2022 and Respondent No.3 on the one part and the Respondent No.1 on the other part.*

*3. We further find that the interim order passed by this Court on 25.02.2022 would mean that the affairs of the company would be run by the appellant and Respondent No.3.*

*4. We further clarify that the Resolution Professional (for short, 'RP') would not interfere in the functioning of the company. The appellant and Respondent No.3 shall deposit an amount of Rs.1,56,00,000/- in the Registry of this Court within a period of six weeks from today. On such deposit being made, the same shall be kept in a fixed deposit account, initially for a period of three months with auto renewal facility.*

*5. It is further clarified that until further orders are passed by this Court, the parties shall not pursue any other proceedings against each other including criminal proceedings.*

*6. At this stage, Shri Aman Lekhi, learned senior counsel, has placed on record one E-mail purportedly addressed by the Respondent No.3.*

*7. When the parties are before this Court for redressal of their grievance, it is expected of them that they should not use other platforms. We, therefore, direct the parties not to precipitate the matter and exercise restraint while using social platforms for ventilating their grievance.*

*8. List after six weeks."*

52. Learned Counsel for the Appellant contended that the Hon'ble Supreme Court held that in view of the interim order dated 25.02.2022 passed by it, the affairs of the company would be run by the Appellant and Respondent No.3 and further directed the RP not to interfere in the functioning of the company. The submission of learned Counsel for the Appellant is that Hon'ble Supreme Court has interpreted the interim order passed on 25.02.2023 that affairs of the Company will be managed by the Suspended Director, hence, it cannot be said that after order of admission of Section 7 application, which order is stayed, the management cannot come back in operation. The interim order passed by the Hon'ble Supreme Court on 25.02.2024 is as follows:

*“Issue notice.*

*There shall be stay of the following in the meanwhile:*

- 1. Corporate Insolvency Resolution Process of the Respondent No.2; and*
- 2. Judgment and final order dated 16.12.2021 passed by the NCLAT in company Appeal (AT) (insolvency) No. 128/2021.”*

53. The interim order passed by the Hon'ble Supreme Court was in a particular facts and situation, where the Hon'ble Supreme Court clearly directed stay of the CIRP of the CD and has clarified the interim order dated 25.02.2022 by a subsequent order dated 03.09.2024, that RP would not interfere in the functioning of the Company and the interim order dated 25.02.2022 would mean that affairs of the Company would be run by the

Suspended Director and Respondent No.3 to the Appeal. The interim order dated 25.02.2022 of the Hon'ble Supreme Court has its own directions, which were clarified on 03.09.2024. From the interim order dated 25.02.2022 and subsequent order dated 03.09.2024, no ratio can be said to be laid down, as contended by learned Counsel for the Appellant.

54. Learned Counsel for the Appellant has also relied on judgment of the Hon'ble Supreme Court in **Mars Remedies Pvt. Ltd. vs. BDH Industries Ltd.**, decided on 02.05.2023 in **Civil Appeal No.5170 of 2022**. Learned Counsel for the Appellant submitted that even after the stay on the CIRP of the CD, the Hon'ble Supreme Court permitted Intervenor to pursue his Section 7 application, which clearly means that there was no moratorium, after stay of the CIRP of the CD. It is useful to notice the order of the Hon'ble Supreme Court dated 02.05.2023, which is as follows:

*“IA No. 50067/2023 - This is an application for intervention filed by an unfortunate financial creditor. The financial creditor is seeking to intervene in the main appeal filed by the corporate debtor against the order of admission passed in another Corporate Insolvency Resolution Process (CIRP) initiated by another financial creditor.*

*We have heard the learned Senior counsel for the applicant seeking to intervene, the learned counsel appearing for the appellant in the main appeal who is the corporate debtor and the learned counsel appearing for the financial creditor who initiated the CIRP and who is arrayed as the respondent in the Civil Appeal.*

*The respondent in the main Civil Appeal, filed a petition in CP(IB) NO.804/2019 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short “IBC”) against the appellant in the main appeal. The NCLT (National Company Law Tribunal) dismissed the application. But NCLAT (National Company Law Appellate Tribunal) allowed the application, forcing the corporate debtor to come up with the above main appeal being C.A. No.5170/2022.*

*In the above appeal, C.A. No.5170/2022, this Court passed an order on 26.09.2022 directing the issue of notice and also staying further proceedings in C.P.(IB) No.804/2019. The appeal is yet to be heard finally.*

*In the meantime, another financial creditor of the appellant in the main Civil Appeal has come up with the application for intervention, with a very peculiar grievance. The grievance of the intervenor is that the corporate debtor defaulted in payment of certain amount, forcing him to independently file an application under Section 7 IBC, in CP(IB) No.300/2020. The said application was dismissed by the NCLT, but the said order reversed by the NCLAT. As against the said order, the very same Corporate Debtor came up with a Civil Appeal No.4823/2022. But the said appeal was dismissed as withdrawn on 01.08.2022.*

*In other words, the order passed by NCLAT on the application of the proposed intervenor under Section 7 IBC attained finality.*

*But in the meantime, the other proceedings initiated by the respondent in the above Civil Appeal*

*reached this Court and an interim stay was granted. On account of the stay so granted, the NCLT has now passed an order dated 12.01.2023 in the intervenor's own application under Section 7 IBC. It is better to reproduce the order passed by the NCLT. It reads as follows:*

*“Hence, we are of the considered view that the present application cannot be considered at this stage. However, the present applicant can avail the remedy of restoring the main application subject to the outcome of the appeal before Hon'ble Supreme Court in CP(IB) 804/2019.”*

*As a result of the above order, the proposed intervenor is stuck. The CIRP initiated at the behest of the respondent in the above Civil Appeal is put on hold by this Court and the CIRP initiated by the proposed intervenor is put on hold by the NCLT. Therefore the intervenor is caught in the middle and hence he seeks appropriate directions.*

*The main contention of the corporate debtor who is the appellant in the above main appeal is that there cannot be two CIRPs simultaneously going on against the same debtor. The said contention is legally well-founded. But today, both CIRPs are on hold. This is despite the fact that the order passed in favour of the proposed intervenor in his own application under Section 7 IBC, by the NCLAT has attained finality and there is no impediment for the CIRP initiated by the proposed intervenor to proceed further.*

*It is understandable that if the CIRP initiated by the respondent in the above civil appeal is on track. If it is not on track, at least the other CIRP should be allowed to proceed. The Corporate Debtor cannot be allowed to have benefit of the best of both the worlds.*

*Therefore the intervention application is disposed of clarifying that the intervenor may again move an application before the NCLT for restoration and the NCLT shall pass fresh orders keeping in mind the above observations.*

*The appeal may be listed for hearing in July, 2023.”*

55. The above order was passed by the Hon'ble Supreme Court in peculiar facts and circumstances of the case noticed in the order itself. Liberty was granted to the Intervenor to move an application before the NCLT for restoration of the proceeding. The Hon'ble Supreme Court had also accepted the contention of the Appellant that there cannot be two CIRPs simultaneously going against the same debtor, which argument was held to be well-founded, but in view of the fact that both CIRPs were on hold, the liberty to the Intervenor to revive his proceedings were granted in the facts and situation as noticed in the order. We, thus, are of the view that the said judgment does not support the submission of the Appellant that after the stay of the order of admission, enforcement actions can be taken by the Financial Creditors against the CD.

56. Learned Counsel for the Appellant has also relied on the order of the Hon'ble Supreme Court in ***Chitra Sharma and Ors. Vs. Union of India***

**and Ors., Writ Petition (Civil) No.744 of 2017** dated 11.09.2017. It is submitted that initially the Hon'ble Supreme Court had stayed the order passed by NCLT, admitting Section 7 application, but in an application for vacating/ modification, the Hon'ble Supreme Court issued further directions on 11.09.2017. Directions of the Hon'ble Supreme Court issued on 11.09.2017 are as follows:

*“The present interlocutory application has been filed by the IDBI Bank Limited in the special leave petitions which have been registered as SLP(C)Nos.24001 & 24002/2017.*

*This is an application for vacating/ modification of the order dated 04.09.2017. On that day, this Court while issuing notice, had passed the following order:*

*“In the meantime the impugned order(s) passed by the National Company Law Tribunal, Allahabad shall remain stayed until further orders.*

*A copy of the special leave petition be served on the office of learned Attorney General for India. All applications for impleadment/intervention stand allowed.”*

*Mr.K.K.Venugopal, learned Attorney General for India appearing for respondent Nos.1 and 2 submitted that the order passed by this Court on 04.09.2017 needs to be vacated or modified because the consequence of the stay would be that the Management of respondent No.3 – Jaypee Infratech Ltd. would stand restored. This was not a consequence intended by this Court. It is urged by*

*him that if the erstwhile Management of the said company continues, it will affect the rights of the creditors and the consumers as well.*

*In the course of the hearing, we have been informed that after the order of stay was passed by this Court, the Interim Resolution Professional (IRP) has handed over records to respondent No.3 – Jaypee Infratech Ltd. (“JIL”). It is submitted by Mr.K.K.Venugopal, learned Attorney General that some time should be granted to the IRP to formulate at least a preliminary scheme so that the interest of all stakeholders is protected. He has also shown his concern for the interest of the home buyers.*

*Dr.Abhishek Manu Singhvi, learned Senior Counsel appearing for IDBI Bank Limited – (respondent No.6 in the writ petition) submits that under the statutory scheme, the IRP has to take over otherwise the letter and spirit of the Act is likely to be affected.*

*Learned counsel appearing for the home buyers, in contra, submits that they belong to the lower and middle income group and have invested life savings with JIL and with its holding company, Jai Prakash Associates Ltd.(“JAL”). It has been assiduously urged that the investments of flat purchasers are with JIL and JAL and, therefore, the interest of the purchasers may be protected. It is also argued that if the IRP is restored, there should be a representative from the home buyers or this Court may appoint someone on this Committee of Creditors and espouse the interests of the home buyers.*

*Having heard learned counsel for the parties at length, in modification of the order dated 04.09.2017, we issue the following directions:*

*a) The IRP shall forthwith take over the Management of JIL. The IRP shall formulate and submit an Interim Resolution Plan within 45 days before this Court. The Interim Resolution Plan shall make all necessary provisions to protect the interests of the home buyers;*

*b) Mr. Shekhar Naphade, learned senior counsel along with Ms. Shubhangi Tuli, Advocate-on-Record, shall participate in the meetings of the Committee of Creditors under Section 21 of the Insolvency and Bankruptcy Code, 2016 to espouse the cause of the home buyers and protect their interests;*

*c) The Managing Director and the Directors of JIL and JAL shall not leave India without the prior permission of this Court;*

*d) JAL which is not a party to the insolvency proceedings, shall deposit a sum of Rs.2,000 crores (Rupees two thousand crores) before this Court on or before 27.10.2017. For the said purpose, if any assets or property of JAL have to be sold, that should be done after obtaining prior approval of this Court. Any person who was a Director or Managing Director of JIL or JAL on the date of the institution of the insolvency proceedings against JIL as well as the present Directors/Managing Director shall also not*

*leave the country without prior permission of this Court. The foregoing restraint shall not apply to nominee Directors of lending institutions (IDBI/ICICI/SBI);*

*e) All suits and proceeding instituted against JIL shall in terms of Section 14(1)(a) remain stayed as we have directed the IRP to remain in Management.*

*Be it clarified that we have passed this order keeping in view the provisions of the Act and also the interest of the home buyers.*

*I.A.stands disposed of accordingly.*

*The matter be listed at 2.00 P.M. on 13.11.2017.*

*The prior date given by this Court i.e. 10.10.2017 stands cancelled.”*

57. It is submitted that the Hon’ble Supreme Court subsequently modified the interim order and directed moratorium to come into force. Hence, it cannot be said that by an earlier order dated 04.09.2017, staying the admission order, same result would have been achieved.

58. The order of the Hon’ble Supreme Court in **Chitra Sharma**, does not lay down any proposition of law as contended by the Appellant. The Hon’ble Supreme Court never intended that by virtue of the stay order dated 04.09.2017, the management of the CD would stand reinstated. Considering the submissions of the parties that modification order was issued by the Hon’ble Supreme Court and both the orders, the interim order dated 04.09.2017 and subsequent orders were in facts of the insolvency of

the CD – Jaypee Infratech Ltd., were on its own facts and from the said order, no ratio can be read as contended by the Appellant.

59. Learned Counsel for the Appellant has placed reliance on a judgment of the Hon'ble Supreme Court in **V.P. Sheth vs. State of M.P. and Ors. – (2004) 13 SCC 767** to support his contention that judgment of the Hon'ble Supreme Court in **Shree Chamundi Mopeds** case is distinguishable. In **V.P. Sheth's** case, the Appellant was compulsorily retired vide order dated 04.01.1989. Compulsory retirement was challenged before the Central Administrative Tribunal ("**CAT**"), which set aside the compulsory retirement. Special Leave Petition was filed in the Hon'ble Supreme Court and order of the CAT was stayed. Ultimately by order dated 11.01.1994 the Hon'ble Supreme Court set aside the order of the CAT. During operation of the interim order, prosecution was launched against the Appellant for offences under Section 13(1)(1) read with Section 13(2) of the Prevention of Corruption Act, 1998 and Section 120-B of the Penal Code. The Appellant challenged the prosecution on the ground that in the absence of sanction under Section 19 of the Prevention of Corruption Act, 1988, the prosecution could not proceed. Reliance was placed on the interim order. In the above reference, the Hon'ble Supreme Court held that as the order of the CAT was not operative, the order of compulsory retirement remains in force and therefore, no sanction was required. In paragraphs 7 and 8 following was held:

*“7. Before us, it has been urged that in the absence of sanction under Section 19 of the Prevention of Corruption Act, 1988, the prosecution could not*

*proceed. It is submitted that on the day prosecution was launched, the order of compulsory retirement had been set aside by CAT. It is submitted that even though this Court had granted an interim stay, the order of CAT had not been quashed. It is submitted that the effect was that the appellant continued to be in service. In support of this submission, reliance is placed upon the case of Shree Chamundi Mopeds Ltd. v. Church of South India Trust Assn. [(1992) 3 SCC 1] wherein it has been held that the effect of an interim stay is that the original order does not get quashed but that order would not be operative and may get restored.*

**8.** *We are unable to accept this submission. As has been held in Chamundi Mopeds case [Union of India v. V.P. Seth, 1994 SCC (L&S) 1052 : (1994) 27 ATC 851] the effect of stay is that the order is not operative. As the order of CAT is not operative, the order of compulsory retirement remains in force. Of course if the appeal was dismissed, the order of CAT would have got restored. But at the time prosecution was launched, it was the order of compulsory retirement which was effective. Therefore no sanction was required under Section 19 of the Prevention of Corruption Act, 1988. In any event this Court finally quashed the order of CAT. This Court held that the appellant had been compulsorily retired with effect from 10-1-1989. As the appellant had retired with effect from 10-1-1989, on the day prosecution was launched, no sanction was required.”*

60. The above judgment relied by learned Counsel for the Appellant is clearly distinguishable. The compulsory retirement was made on 04.01.1989 was set aside by CAT, which order was stayed by the SC. Hence, compulsory retirement remained in force. The above judgment is clearly distinguishable and was on its own facts and does not help the Appellant.

61. Another judgment relied by the Appellant is judgment of the Hon'ble Supreme Court in ***Indira Nehru Gandhi (Smt.) vs. Shri Raj Narain and Anr. – (1975) 2 SCC 159***. The above case arose out of an order of Allahabad High Court allowing election petition against the Appellant. A statutory appeal was filed in the Hon'ble Supreme Court, where the Hon'ble Supreme Court held that right to appeal is statutory, the power to stay is discretionary. It was held that power of the Court must rise to the occasion, if justice, in its larger connotation, is the goal. Reliance has been placed on paragraphs 2, 23 and 24 of the judgment. The Hon'ble Supreme Court in the above order, stayed the order of the High Court with certain conditions as noted in paragraph 24. The order passed by the Hon'ble Supreme Court in the above case was on its own facts. The observations in paragraph 24 were made in reference to the finding of corrupt practices. The Court held that finding being stayed, the disqualification shall be ipso jure remains in abeyance. The above judgment, which arose out of an election petition was on its own facts and is clearly distinguishable.

62. Learned Counsel for Respondent No.1 has also referred to the Report of the Bankruptcy Law Reforms Committee as well as Notes on Clauses of

IBC. In Clause 14 of the Notes on Clauses, which is now Section 14 of the IBC, following was stated:

*“Clause 14 describes the effect of the moratorium. The purposes of the moratorium include keeping the corporate debtor's assets together during the insolvency resolution process and facilitating orderly completion of the processes envisaged during the insolvency resolution process and ensuring that the company may continue as a going concern while the creditors take a view on resolution of default. This also ensures that multiple proceedings are not taking place simultaneously and helps obviate the possibility of potentially conflicting outcomes of related proceedings. This also ensures that the resolution process is a collective one.*

*The order under this Clause 14 inter alia, prohibits the institution or continuation of suits or any legal proceedings against the corporate debtor, the disposal of any assets of the corporate debtor and debt enforcement actions under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The moratorium on initiation and continuation of legal proceedings, including debt enforcement action ensures a stand-still period during which creditors cannot resort to individual enforcement action which may frustrate the object of the corporate insolvency resolution process. The prohibition on disposal of the corporate debtor's assets would ensure that the corporate debtor or its management is not able to transfer its assets, thereby stripping the corporate debtor of value*

*during the corporate insolvency resolution process. The moratorium also extends to recovery of any property occupied by or in possession of the corporate debtor. It also prevents the termination of a contract that provides for supply of such essential goods and services as may be specified. Access to certain goods and services during the insolvency resolution process may be important for ensuring orderly completion of the proceedings. However, the costs for such goods or services will have to be paid in priority to other costs as part of a resolution plan or during distribution of assets, in case the corporate debtor goes into liquidation.*

*Clause 14 also prescribes the period for which the moratorium will be in effect. The moratorium will continue to be in effect till the completion of the corporate insolvency resolution process or the approval of a resolution plan by the adjudicating authority or the resolution of the committee of creditors to liquidate the corporate debtor, whichever is earlier.*

*The Central Government has been given the power to notify transactions (in consultation with the appropriate financial sector regulators), which will be exempted from the moratorium in the interest of smooth functioning of the financial markets.”*

63. Learned Counsel for the ARCIL emphasized that it was contemplated that there shall be moratorium on initiation and continuation of legal proceedings, including debt enforcement, which shall stand-still, during which creditors cannot resort to individual enforcement action. The Report



*scheme under its own supervision. However, when it comes to any clash between Mhada Act and the Insolvency Code, on the plain terms of Section 238 of the Insolvency Code, the Code must prevail. This is for the very good reason that when a moratorium is spoken of by Section 14 of the Code, the idea is that, to alleviate corporate sickness, a statutory status quo is pronounced under Section 14 the moment a petition is admitted under Section 7 of the Code, so that the insolvency resolution process may proceed unhindered by any of the obstacles that would otherwise be caused and that are dealt with by Section 14. The statutory freeze that has thus been made is, unlike its predecessor in the SICA, 1985 only a limited one, which is expressly limited by Section 31(3) of the Code, to the date of admission of an insolvency petition up to the date that the adjudicating authority either allows a resolution plan to come into effect or states that the corporate debtor must go into the liquidation. For this temporary period, at least, all the things referred to under Section 14 must be strictly observed so that the corporate debtor may finally be put back on its feet albeit with a new management.”*

65. We need to notice one more judgment of the Hon'ble Supreme Court, which is in **Civil Appeal No.2417 of 2022 – State of U.P. through Secretary and Ors. Vs. Prem Chopra** decided on 25.03.2022. In the above case, the effect and consequence of stay granted by the High Court on demand issued by Excise Department came for consideration. Against the demand issued by Excise Department, a Writ Petition was filed by the Respondent, where an interim order was granted. License fee was paid by

the Respondent, but the notice was issued for payment of interest, which was challenged by the Respondent in the High Court by filing a Writ Petition. The High Court held that demand for interest was not justified, since the Respondent was under protection of interim order. In the above context, against the order passed by the High Court allowing the Writ Petition, Appeal was filed by the State of U.P., in which case, the Hon'ble Supreme Court had occasion to consider the effect of an interim order. The Hon'ble Supreme Court relied on its earlier judgment in **Shree Chamundi Mopeds** and in paragraphs 18 and 19 laid down following:

*“(18) When the interim order was in force, the recovery of license fee was temporarily suspended. The restraint was only against the Department not to recover the license fee. There was no prohibition for the respondent to deposit the balance of license fee. It is to be stated here that the High Court has not quashed the demand of license fee made by the appellants. There is a difference between stay of operation of an order and quashing of an order which has been explained by this Court in **Shree Chamundi Mopeds Ltd. V. Church of South India Trust Association CSI CINOD Secretariat, Madras** as under:*

*“While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence.”*

(19)

*Following the said decision, this Court in **Kanoria Chemicals and Industries Ltd. and Others v. U.P. State Electricity Board and Others**, has held that an order of stay which is granted during the pendency of a writ petition/suit or other proceeding comes to an end with the dismissal of the substantive proceedings and it is the duty of the court in such cases to put the parties in the same*

position that they would have been in but for the interim order of the court. In that case, this Court rejected the contention that when the operation of the notification itself was stayed, no surcharge could be demanded upon the amount withheld. It was held thus:

“11. .... Holding otherwise would mean that even though the Electricity Board, who was the respondent in the writ petitions succeeded therein, yet deprived of the late payment surcharge which was due to it under the tariff rules/regulations. It would be a case where the Board suffers prejudice on account of the orders of the court and for no fault of its. It succeeds in the writ petition and yet loses. The consumer files the writ petition, obtains stay of operation of the notification revising the rates and fails in his attack upon the validity of the notification and yet he is relieved of the obligation to pay the late payment surcharge for the period of stay, which he is liable to pay according to the statutory terms and conditions of supply — which terms and conditions indeed form part of the contract of supply entered into by him with the Board. We do not think that any such unfair and inequitable proposition can be sustained in law.

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It is equally well settled that an order of stay granted pending disposal of a writ petition/suit or other proceeding, comes to an end with the dismissal of the substantive proceeding and that it is the duty of the court in such a case to put the parties in the same position they would have been but for the interim orders of the court. Any other view would result in the act or order of the court prejudicing a party (Board in this case) for no fault of its and would also mean rewarding a writ petitioner in spite of his failure. We do not think that any such unjust consequence can be countenanced by the courts. As a matter of fact, the contention of the consumers herein, extended logically should mean that even the enhanced rates are also not payable for the period covered by the order of stay because the operation of the very notification revising/enhancing the tariff rates was stayed. Mercifully, no such argument was urged by the appellants. It is understandable how the enhanced rates can be said to be payable but not the late payment surcharge thereon, when both the enhancement and the late payment surcharge are provided by the same notification — the operation of which was stayed.”

66. The Hon'ble Supreme Court held that the order, which has been stayed would not be operative from the date of passing of the stay order. However, it does not mean that the stayed order is wiped out from the existence, unless it is quashed. In paragraph 24, following was laid down:

*“(24) From the above discussion, it is clear that imposition of a stay on the operation of an order means that the order which has been stayed would not be operative from the date of passing of the stay order. However, it does not mean that the stayed order is wiped out from the existence, unless it is quashed. Once the proceedings, wherein a stay was granted, are dismissed, any interim order granted earlier merges with the final order. In other words, the interim order comes to an end with the dismissal of the proceedings. In such a situation, it is the duty of the Court to put the parties in the same position they would have been but for the interim order of the court, unless the order granting interim stay or final order dismissing the proceedings specifies otherwise. On the dismissal of the proceedings or vacation of the interim order, the beneficiary of the interim order shall have to pay interest on the amount withheld or not paid by virtue of the interim order.”*

67. Another submission which has been advanced by learned Counsel for the Appellant is that there can be no fetter in the jurisdiction of the Appellate Tribunal in granting an interim order. The Appellate Tribunal exercises the same jurisdiction, which is exercised by the Adjudicating Authority. Learned Counsel for the Appellant has relied on judgment of the

Federal Court in **Lachmeshwar Prasad Shukul and Ors. Vs. Keshwar Lal Chaudhuri and Ors. – (1940) SCC OnLine FC 10**. In the above judgment, the Hon'ble Supreme Court had occasion to consider the power of the Appellate Court, where it was held that Appellate Court exercises same power, which is exercised by the Court of original jurisdiction.

68. There can be no two opinions to the law laid down by the Federal Court in the above judgment. No fetter can be read in exercise of jurisdiction by the Appellate Tribunal. The Appellate Tribunal in appropriate case can direct handing over the management to Promoters as noticed in the order of **Shobori Ganguli** (supra). The Appellate Court can exercise jurisdiction akin to mandatory injunction to restore *status qua ante*, but the order should be couched to that effect. The interim order dated 07.03.2023 is not in the nature of mandatory injunction to restore the *status qua ante*. Although, even if the Appellate Tribunal by an interim order in appropriate case can restore the *status qua ante*, but by an interim order, the nature of proceedings, which after admission of Section 7 application have become *in rem*, cannot be changed.

69. Having noticed the judgments of the Hon'ble Supreme Court and this Tribunal, which have been referred by the parties, we come to the following conclusion:

- (i) After admission of Section 7 application on 22.02.2023, by which CIRP commenced against the CD, the proceeding became proceedings *in rem*. The nature of which proceedings shall

continue to be proceedings *in rem*, even though admission order dated 22.02.2023 was stayed by this Tribunal on 07.03.2023.

- (ii) On passing of interim order dated 07.03.2023, the admission order appointing IRP and order declaring moratorium were kept in abeyance but shall not be treated to have been quashed by passing interim order on 07.03.2023.
- (iii) The effect of interim order dated 07.03.2023 is not to revive the state of affairs, which were prevailing before the date 22.02.2023, when order of admission was passed by Adjudicating Authority under Section 7.

70. In view of the foregoing discussions and conclusions, we answer Question Nos.(I), (II) and (III) in following manner:

Answer to Question : The effect and consequences of the  
No.(I) interim order dated 07.03.2023 passed by this Tribunal, staying the operation of the admission order dated 22.02.2023 shall be that the order dated 22.02.2023 shall be treated to have been kept in abeyance, but shall not be treated to have been quashed.

Answer to Question : On passing of the interim order dated  
No.(II) 07.03.2023, staying the admission order dated 22.02.2023, the status quo prevailing prior to passing of the order dated 22.02.2023, shall not be revived.

Answer to Question : On passing of the interim order dated  
No.(III) 07.03.2023, staying the admission order, the moratorium, which commenced on

22.02.2023, shall be kept in abeyance, but shall not be treated to be quashed, however, the nature of proceedings, i.e. proceedings *in rem* shall continue to be the same, even after the stay order dated 07.03.2023.

**Question No. (IV)**

71. The submission which has been advanced by the counsel for the appellant is that the application I.A.126/2024 filed by ARCIL deserves to be dismissed since it was barred by principle of *res judicata*. *Res judicata* has been pleaded on two counts firstly in Comp. App. (AT) (Ins.) No.274/2023, the promoters have filed the I.A. praying for reversal of amount withdrawn by Axis Bank and other lenders. ARCIL had also filed a reply to the I.A. filed by the RP, in which reply ARCIL has also made prayers praying for seeking a direction for reversal of the amount withdrawn by the Axis Bank and the lenders. Issue of reversal of withdrawal of the amount was categorically raised before this Tribunal and I.A. No.2882/2023 by Shilpi Asthana the promoter in the company appeal seeking reversal of INR 143 crore appropriated by Axis Bank and to declare the withdrawal as illegal the Comp. App. (AT) (Ins.) No.274/2023 was dismissed by this Tribunal on 10.08.2023 and while dismissing the company appeal all applications including applications praying for reversal of the amount of Rs.143 crore were closed. The dismissal of application seeking reversal before this Tribunal in Comp. App. (AT) (Ins.) No.274/2023 having been refused and rejected. The said issue could not have been raised by ARCIL in I.A. 126/2024 and the application I.A.126/2024 was allowed by the adjudicating

authority overruling the objections by the lenders on *res judicata* which decision of the adjudicating authority is unsustainable.

72. It is further submitted that Shilpi Asthana has filed Civil Appeal challenging the order dated 10.08.2023 passed by this Tribunal, in the said appeal, appellant Shilpi Asthana had prayed to the Hon'ble Supreme Court that direction be issued to reverse the amount appropriated by Axis Bank and other lenders. Hon'ble Supreme Court having dismissed the appeal on 01.09.2023, the principle of *res judicata* shall be attracted.

73. Learned counsel for the appellant has contended that ARCIL was also precluded to file I.A.126/2024 on the principle of "Issue Estoppel". The ARCIL having already raised similar plea before this Tribunal in reply dated 09.06.2023 to the Interim Application No.2558/2023 filed in Company Appeal (AT) (Ins.) No. 274/2023 where ARCIL sought refund of the amount read with Intervention Application No.2321/2023 filed by the ARCIL, this Tribunal vide order dated 10.08.2023 dismissed the appeal filed by Suspended Director and close all the applications, thus ARCIL by order dated 10.08.2023 is now estopped from preferring any further application before the adjudicating authority. The proceedings before this Tribunal for refund of the amount having attained finality the ARCIL on principle of 'Issue Estoppel' is precluded from re-agitating the said issue by filing I.A. No.126/2024.

74. Learned counsel for the appellant had also relied on Principle of Merger. It is submitted that Hon'ble Supreme Court having exercised its appellate jurisdiction deciding the appeal on merit, the Doctrine of Merger

and finality applies, issue of appropriation of fund stands conclusively adjudicated. Reliance has been placed by the appellant on the judgment of the Hon'ble Supreme Court in the matter of '**Kunhayammed & Ors.**' Vs. '**State of Kerala & Anr.**,' reported in [(2000) 6 SCC 359].

75. Learned counsel for the ARCIL have refuted the above submissions, which submissions we have already noticed in detail. Now we proceed to consider the objection raised by the appellant to the maintainability of I.A. No.126/2024 on principle of *Res Judicata*, Issue Estoppel and Merger as noted above.

### **Res Judicata**

76. The *res judicata* is pleaded by the appellant on basis of final order dated 10.08.2023 passed by this Tribunal in Comp. App. (AT) (Ins.) No.274/2023. The submission as noted above is that applications which were filed in the said company appeal by promoter as well as by the ARCIL for reversal of the amount withdrawn and appropriated by Axis Bank and other lenders stood rejected in the final order dated 10.08.2023, hence rejection of the applications, where prayer for reversal of the amount was sought shall operate as *res judicata*.

77. We need to first notice the judgment of this Tribunal dated 10.08.2023, where while dismissing the company appeal by judgment dated 10.08.2023, this Appellate Tribunal also closed the various applications as noted above. Copy of judgment dated 10.08.2023 is filed as Annexure – 31 to the Comp. App. (AT) (Ins.) No.1975/2024. A perusal of the judgment dated 10.08.2023 indicate that the challenge raised by Suspended Director

to the order dated 22.02.2023 admitting Section 7 application filed by IndusInd Bank was considered. The facts of the application filed by the financial creditors under Section 7 and the submission raised by the appellant i.e., Suspended Director and submission raised by the financial creditor has been noticed from paragraphs 1 to 12. This Tribunal from paragraphs 13 to 29 of the judgment has devoted on consideration of the respective submissions of the parties in reference to the order dated 22.02.2023 and challenge mounted by the appellant to the said order admitting the Section 7 application. It is useful to notice paragraphs 28 to 30 of the judgment, which are as follows:

*“28. In this view of the above, even the third contention raised by the Appellant, to take the date of NPA as the date of default, cannot be accepted.*

*29. As a consequence of the aforesaid discussion, all the points raised by the Appellant, in order to bring the date of default within the ambit of Section 10A of the Code fails and as a result thereof, all the contentions of the Appellant are hereby rejected.*

*30. No other point has been raised.”*

78. In paragraph 30 Court has observed that “no other point has been raised”. Operative order is contained in paragraph 31. Paragraph 31 of the judgment is as follows:

*“31. In view of the aforesaid facts and circumstances, the present appeal is found to be without any merit and the same is hereby dismissed, though, without any order as to costs.”*

79. In the above paragraph 31, where this Tribunal held that appeal is found to be without any merit and dismissed. Last line observed:

“With the *dismissal* of the appeal, all the pending applications in this appeal are hereby closed”.

80. Thus, the closure of all applications including the applications filed by promoters seeking a direction for reversal of the amount withdrawn by Axis Bank and other lenders as well as applications for intervention filed by ARCIL and reply filed by ARCIL to the application as noted above and all other pending applications was closed by last sentence as noted above. The above judgment of this Tribunal clearly indicate that all applications had been closed as consequence of dismissal of the appeal. There is no adjudication and any finding on any of the applications either filed by the promoter or by ARCIL where reversal of amount withdrawn and appropriated by Axis Bank and other lenders was prayed for.

81. The question to be answered is as to whether the closure of the above application by the judgment dated 10.08.2023 should operate *res judicata* for filing any application before NCLT praying for reversal of the amount withdrawn and appropriated by Axis Bank. The principles of *res judicata* are well settled.

82. We need to notice the judgment of the Hon'ble Supreme Court in '***Ebix Singapore Pvt. Ltd.' Vs. 'Committee of Creditors of Educomp Solutions Ltd. & Anr.'*** reported in [(2022) 2 SCC 401] which judgment arose out of insolvency proceedings under the IBC, where principle of *res judicata* was noticed and elaborated. The Hon'ble Supreme Court under

heading “K.1.1 *Res Judicata*” has noticed and elaborated the principles of *res judicata* in paragraph 178 after noticing Section 11 of the Code of Civil Procedure, 1908. In paragraph 179 & 181, Hon’ble Supreme Court laid down following:

**“179.** *In Satyadhyan Ghosal v. Deorajin Debi [Satyadhyan Ghosal v. Deorajin Debi, (1960) 3 SCR 590 : AIR 1960 SC 941] , a three-Judge Bench of this Court, speaking through K.C. Das Gupta, J. explained the doctrine of res judicata in the following terms : (AIR p. 943, para 7)*

*“7. The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter — whether on a question of fact or a question of law — has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of res judicata is embodied in relation to suits in Section 11 of the Code of Civil Procedure; but even where Section 11 does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct.”*

*From the above extract, it is clear that while res judicata may have been codified in Section 11, that does not bar its application to other judicial proceedings, such as the one in the present case.*

*181. In a judgment of this Court in Sheodan Singh v. Daryao Kunwar [Sheodan Singh v. Daryao Kunwar, (1966) 3 SCR 300 : AIR 1966 SC 1332], a four-Judge Bench of this Court elaborated on the various conditions which must be satisfied before the doctrine of res judicata can apply in a given case. K.N. Wanchoo, J. speaking for the Court, held : (AIR p. 1334, para 9)*

*“9. A plain reading of Section 11 shows that to constitute a matter res judicata, the following conditions must be satisfied, namely—*

*(i) The matter directly and substantially in issue in the subsequent suit or issue must be the same matter which was directly and substantially in issue in the former suit;*

*(ii) The former suit must have been a suit between the same parties or between parties under whom they or any of them claim;*

*(iii) The parties must have litigated under the same title in the former suit;*

*(iv) The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised; and*

*(v) The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the first suit.”*

*(emphasis supplied)*

83. One of the ingredients which has noticed by the Hon'ble Supreme Court in above judgment is that the matter is heard and finally decided by the Court in the first suit. Hon'ble Supreme Court further noticed that matter must have been heard on merits and finally decided. Another judgment of the Hon'ble Supreme Court has been noticed where it has been laid down "to attract the doctrine of *res judicata* it must be conscious adjudication of an issue". In paragraphs 183, 185 & 186, following was laid down:

*"183. The meaning of the phrase "heard and finally decided" was considered by a judgment of a two-Judge Bench of this Court in Krishan Lal v. State of J&K [Krishan Lal v. State of J&K, (1994) 4 SCC 422 : 1994 SCC (L&S) 885] , where it was held that the matter must have been heard on merits to have been "heard and finally decided". B.L. Hansaria, J. speaking for the Court, held : (SCC pp. 428-29, para 12)*

*"12. Insofar as the second ground given by the High Court — the same being bar of *res judicata* — it is clear from what has been noted above, that there was no decision on merits as regards the grievance of the appellant; and so, the principle of *res judicata* had no application. The mere fact that the learned Single Judge while disposing of Writ Petition No. 23 of 1978 had observed that:*

*'This syndrome of errors, omissions and oddities, cannot be explained on any hypothesis other than the*

*one that there is something fishy in the petitioner's version....'*

*which observations have been relied upon by the High Court in holding that the suit was barred by res judicata do not at all make out a case of applicability of the principle of res judicata. The conclusion of the High Court on this score is indeed baffling to us, because, for res judicata to operate the involved issue must have been "heard and finally decided". There was no decision at all on the merit of the grievance of the petitioner in the aforesaid writ petition and, therefore, to take a view that the decision in earlier proceeding operated as res judicata was absolutely erroneous, not to speak of its being uncharitable."*

*(emphasis supplied)*

*185. Another two-Judge Bench of this Court, in its judgment in Erach Boman Khavar v. Tukaram Shridhar Bhat [Erach Boman Khavar v. Tukaram Shridhar Bhat, (2013) 15 SCC 655 : (2014) 5 SCC (Civ) 387] , has held that the doctrine of res judicata can only apply when there has been a conscious adjudication of the issue on merits. Dipak Misra, J. speaking for the Court, held : (SCC p. 673, para 39)*

*"39. From the aforesaid authorities it is clear as crystal that to attract the doctrine of res judicata it must be manifest that there has been a conscious adjudication of an issue. A plea of res judicata cannot be taken aid of unless there is an expression of an opinion on the merits. It is well settled in law that principle of res judicata is applicable between the two stages of the same litigation but the question or issue*

*involved must have been decided at earlier stage of the same litigation.”*

*(emphasis supplied)*

*186. Res judicata cannot apply solely because the issue has previously come up before the court. The doctrine will apply where the issue has been “heard and finally decided” on merits through a conscious adjudication by the court. In the present case, the NLCT’s order dismissing the first withdrawal application makes it clear that it had only considered only that part of Prayer (iv) which related to re-evaluation of the resolution plan, possibly because Ebix had hoped to re-evaluate the resolution plan on the basis of the information received as a consequence of Prayers (i) and (ii) and those prayers were rejected since such information was not available.”*

84. The principle thus firmly established is that for applying the plea of *res judicata* there has to be a conscious adjudication and matter directly and substantially issue is heard and finally decided. In the Comp. App. (AT) (Ins.) No.274/2023 challenge was made by the Suspended Director to the admission of Section 7 application filed by the financial creditor and as noticed above the entire judgment is devoted to consideration of grounds for challenging the order of admission of Section 7 application. No other issue was noticed, heard or decided. The applications which were filed in the appeal seeking reversal of amount withdrawn by Axis Bank and other Bank were not even considered on merit or decided and as noted above application were closed on account of dismissal of the appeal. When all

applications have been closed without reference or any adjudication of any application, we fail to see that how the principle of *res judicata* can be pressed by the appellant against the ARCIL.

85. Learned counsel for the appellants have placed reliance on the judgment of the Hon'ble Supreme Court in '**Jamia Masjid' Vs. 'Sh. K.V. Rudrappa'** reported in [(2022) 9 SCC 225], where Hon'ble Supreme Court had occasion to consider the principles of *res judicata*. Reliance has been placed on paragraph 43 of the judgment where Hon'ble Supreme Court had occasion to consider the expression "directly and substantially issued", which is as follows:

*"43. The locus classicus on the point of determining if an issue was "directly and substantially" decided in the previous suit is the decision of M. Jagannadha Rao, J. (writing for a two-Judge Bench) in Sajjadanashin Sayed Md. B.E. Edr. v. Musa Dadabhai Ummer [Sajjadanashin Sayed Md. B.E. Edr. v. Musa Dadabhai Ummer, (2000) 3 SCC 350] . During the course of the judgment, the Court analysed the expression "directly and substantially in issue" in Section 11 and laid down the twin test of essentiality and necessity : (SCC pp. 357 & 359-60, paras 12 & 18-19)*

*"12. It will be noticed that the words used in Section 11CPC are "directly and substantially in issue". If the matter was in issue directly and substantially in a prior litigation and decided against a party then the decision would be res judicata in a subsequent proceeding. Judicial decisions have however held that if a matter was only "collaterally or incidentally" in*

*issue and decided in an earlier proceeding, the finding therein would not ordinarily be res judicata in a latter proceeding where the matter is directly and substantially in issue.*

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18. *In India, Mulla has referred to similar tests (Mulla, 15th Edn., p. 104). The learned author says : a matter in respect of which relief is claimed in an earlier suit can be said to be generally a matter “directly and substantially” in issue but it does not mean that if the matter is one in respect of which no relief is sought it is not directly or substantially in issue. It may or may not be. It is possible that it was “directly and substantially” in issue and it may also be possible that it was only collaterally or incidentally in issue, depending upon the facts of the case. The question arises as to what is the test for deciding into which category a case falls? One test is that if the issue was “necessary” to be decided for adjudicating on the principal issue and was decided, it would have to be treated as “directly and substantially” in issue and if it is clear that the judgment was in fact based upon that decision, then it would be res judicata in a latter case (Mulla, p. 104). One has to examine the plaint, the written statement, the issues and the judgment to find out if the matter was directly and substantially in issue (Isher Singh v. Sarwan Singh [Isher Singh v. Sarwan Singh, AIR 1965 SC 948] and Syed Mohd. Salie Labbai v. Mohd. Hanifa [Syed Mohd. Salie Labbai v. Mohd. Hanifa, (1976) 4 SCC 780] ). We are of the view that the above summary in Mulla is a correct statement of the law.*

19. We have here to advert to another principle of caution referred to by Mulla (p. 105):

*‘It is not to be assumed that matters in respect of which issues have been framed are all of them directly and substantially in issue. Nor is there any special significance to be attached to the fact that a particular issue is the first in the list of issues. Which of the matters are directly in issue and which collaterally or incidentally, must be determined on the facts of each case. A material test to be applied is whether the court considers the adjudication of the issue material and essential for its decision’.*

86. It is not necessary for us to enter into the issue as to whether the question of reversal of amount withdrawn by Axis Bank was directly and substantially in issue since we have already held that no such issue was finally considered or decided by this Tribunal in judgment dated 10.08.2023. We, thus do not find any substance in the submission of the appellant on I.A.126/2024 was barred by principle of *res judicata*.

87. Coming to the submission of the appellant relying on the order passed by the Hon’ble Supreme Court on 01.09.2023 which was passed in the appeal filed by Suspended Director challenging the order dated 12.06.2023 passed by this Tribunal where limited interim order was passed. Hon’ble Supreme Court in its order dated 01.09.2023 did not decide any issue pertaining to reversal of withdrawal of the amount noticing that the applications are pending before the NCLAT, hence nothing can be read in the order dated 01.09.2023 which may attract the principle of *res judicata*.

Insofar as the appeal filed by the Suspended Director in Civil Appeal No.5340/2023 challenging the order dated 10.08.2023 of this Tribunal even though on the grounds of the appeal various issues were raised. In Civil Appeal No.5340/2023, Hon'ble Supreme Court dismissed the same by order dated 01.09.2023 which order is as follows:

*“We do not find any good ground and reason to interfere with the impugned judgment and hence, the present appeal is dismissed.*

*Pending application(s), if any, shall stand disposed of.”*

88. The above judgment of the Hon'ble Supreme Court indicate that order dated 10.08.2023 passed by this Tribunal dismissing the Comp. App. (AT) (Ins.) No.274/2023 by Shilpi Asthana was affirmed. What Hon'ble Supreme Court said that no grounds have been made out to interfere in the impugned order. No other issue was considered or decided by the Hon'ble Supreme Court hence on the basis of the said judgment also it cannot be contended that any principle of *res judicata* will apply by prohibiting the ARCIL to file I.A. No.126/2024. We thus do not find any substance in the submission of the appellant on the ground of doctrine of *res judicata*.

### **Issue Estoppel**

89. The Issue Estoppel is sought to be raised against the ARCIL by the appellant on the ground that ARCIL having raised the issue of reversal of amount withdrawn by Axis Bank in the Comp. App. (AT) (Ins.) No. 274/2023

and which relief was not considered the said order estops the ARCIL from re-agitating the issue.

90. Learned counsel for the appellant has relied on the judgment of the Hon'ble Supreme Court in the matter of '**Hope Plantations Limited' Vs. 'Taluk Land Board, Peermade & Anr.'**' reported in [(1999) 5 SCC 590], where by dealing with *res judicata* and Issue Estoppel, Hon'ble Supreme Court laid down following in paragraph 26:

*"26. ...These two aspects are "cause of action estoppel" and "issue estoppel". These two terms are of common law origin. Again, once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that the issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to, as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits between the same parties in which the same issue arises. Section 11 of the Code of Civil Procedure contains provisions of res judicata but these are not exhaustive of the general doctrine of res judicata. Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice."*

91. We have already held that there is no applicability of principle of *res judicata* in the application filed by ARCIL. The submission of the appellant

that issue was raised by the ARCIL and before this Tribunal and the Tribunal rejected the application hence ARCIL cannot re-agitate the issue had already been rejected by us holding that no principle of *res judicata* will apply. Present is not a case of any estoppel by conduct of the ARCIL. The submission was also sought to be raised by the appellant that had ARCIL be given also the amount due to ARCIL by the Axis Bank, ARCIL could not have filed any application for reversal of the amount and ARCIL filed the application only because although Axis Bank and other lenders appropriated the amount from the account of the corporate debtor but ARCIL was not given his due shares. Appellant submitted that this is another reason due to which ARCIL's application need no consideration.

92. While noticing the facts of the case, we have noted that after the interim order was passed on 07.03.2023 first Joint Lenders Meeting was held on 25.04.2023 where ARCIL, Axis Bank, other lenders and representatives of corporate debtor participated. When financial summary of the company was presented before the JLM and company updated that on 30.03.2023 Axis Bank had appropriated the sum of Rs.30 crore towards its own dues. All lenders raised objection towards the same. It is useful to notice the following part of JLM meeting:

*"...During presenting the financial summary for FY 2023, Company updated that on March 30, 2023, Axis bank had appropriated a sum of INR 20 crs towards its own dues. The same was neither approved by company or KPMG (ASM agent). This was done as presently all transaction of the company are routed through Axis Bank account only.*

*o All lenders (except Axis Bank) took an objection towards the same.*

*o Lenders (except Axis Bank) stated that Axis Bank is maintaining the account on behalf of all the lenders and all banks have pro-rata charge on the funds. ASM also confirmed that their appointment was made on behalf of all lenders by Axis Bank. Previous minutes of JLM also confirmed as such.*

*o Company stated that on one hand it is not able to make payment of statutory dues and operational creditors which are necessary for survival of the business and on the other hand one of the lender it taking preferential payment over such dues and other lenders.”*

93. In another JLM meeting which took place on 04.05.2023 where ARCIL has opined that lender should put an intervention application before the NCLT & NCLAT for maintaining the status quo for safe guarding business of company. It is useful to notice following discussions among lenders which is recorded in JLM meeting:

*“...Thereafter, KPMG and the company excused themselves and lenders had a discussion among themselves on the following issues:*

*1. Indus Ind informed that hearing on its CIRP application against the company has been postponed to May 12, 2023 before NCLAT.*

*2. Arcil once again stated that a viable solution needs to be arrived at operational creditor issue including ZEEL. It suggested that all payment except related*

*party dues may be released for continuation of the business.*

*3. Arcil opined that lenders should put an intervention application in NCLT/ NCLAT for maintaining the status quo for safeguarding the business of the company.*

*4. ASM extension and cash flows matters needs to be addressed immediately. The lenders (other than Axis Bank) raised the issue of extension of KPMG as ASM agent without other lenders consent. Axis Bank reiterated that he has all the right to appoint ASM on its own as it is not consortium banking arrangement.*

*5. All lenders once again requested Axis bank to not to unilaterally appropriate any further funds from current account and/or fixed deposit of the company towards its dues as all lenders have charge over the cash flows of the company.*

*6. Axis bank once again informed that it is not holding account on behalf of other lenders have all the right to set off the funds against its dues as per their loan documentation.*

*7. All other lenders (except Axis Bank) have a view that noted in previous JLM minutes and agreed by Axis Bank, it holds account on behalf of all lenders. Accordingly company started routing all transaction through Axis Bank. Post failure of implementation of restructuring scheme all lenders were free to take legal actions against the company wrt to legal remedies available with them and not appropriation of funds from current account maintained with Axis Bank on behalf of lenders.*

8. Axis bank did not agree to it and said it will not comment/ assure on not appropriating funds. As he has no permission as of now from its management on this. He will abide to its management decision and what is allowed in its loan documentation.

9. All lenders (except Axis Bank) took strong objection to this. The amount lying in FDs and current account is charged to all the lenders and is not exclusively charged to Axis and cannot be appropriated. Lenders stated that in case Axis Bank any further appropriates unilaterally, other lenders will take legal action including NCLT. They will also report this to RBI all such issue.

10. Lenders have also deliberated on the amount of Rs. 20 crore withdrawn by Axis Bank in March 2023 without consent/ approval of the lenders and lenders decided to initiate legal against the Axis Bank and same also to report to report to RBI, If Rs. 20 crore are not credited back to the current account of the company.

11. IDBI Bank informed that, no further debits in the Axis Bank accounts should be allowed without concern of all the lenders. If so then the same will be at the cost of Axis Bank.

12. Axis bank stated if such was the issue then why all lenders have appropriated INR 71 crs in last 3 years including INR 6 crs by IDBI in FY 2023.

13. IDBI clarified that it has appropriated INR 6 crs in FY 2023 as it was margin money provided by borrower against BGs issued by IDBI and these funds were exclusively charged to IDBI.

*14. Axis Bank to come back by May 10, 2023 and accordingly next steps to be decided thereafter.”*

94. The adjudicating authority in the impugned order has noted the details of the withdrawal made by the Axis Bank from the corporate debtor’s account. While noticing the submission of the ARCIL, details of amount withdrawn by different lenders totalling to Rs.143.15 crore, following was noticed in paragraph 23:

“23. It is submitted by ARCIL that there was an escrow account whereby Axis Bank (**Respondent 2/R-2**) was acting as Escrow Bank and certain amounts were lying in the credit of the Corporate Debtor. However, during the stay period, all the monies were illegally withdrawn and distributed/ appropriated by Axis Bank from the account of the Corporate Debtor and transferred to various other financial creditors i.e. Aditya Birla Finance Limited (**Aditya Birla/Respondent 3/R-3**), IDBI Bank Limited (**IDBI/Respondent 4/ R-4**), RBL Bank Limited (**RBL/Respondent 5/ R – 5**), and IndusInd Bank Limited (IndusInd/Respondent/R-6). The details of the same are stated below:

Sr. No.	Date of Transaction	Details of Amount Withdrawn from the Account of the Corporate Debtor		
		Withdrawn by	Transferred to Benefit of	Amount Withdrawn (Rs. in crores)
1	31.03.2023	Axis Bank	Axis Bank	20.00
2	15.05.2023		Axis Bank	23.00
3	01.06.2023		IDBI Bank	6.36 crores
4	01.06.2023		IDBI Bank	16.91 crores
5	01.06.2023		IndusInd Bank	4.64 crores
6	01.06.2023		IndusInd Bank	12.45 crores
7	01.06.2023		RBL Bank	12.45 crores
8	01.06.2023		Axis Bank	27.63 crores

9	02.06.2023		RBL Bank	4.69 crores
10	05.06.2023		Aditya Birla Finance Ltd.	15 crores
		Total		143.15

95. Learned counsel for the ARCIL has also relied on the judgment of the Hon'ble Supreme Court in the matter of **'Tata Iron & Steel Co. Ltd.' Vs. 'Union of India'** reported in [(2001) 2 SCC 41], where Hon'ble Supreme Court had occasion to consider the concept of estoppel by conduct. Hon'ble Supreme Court held that plea of estoppel by conduct can only be said to be available in the event of there being precise and unambiguous representation and on that score there is alteration of position or status. In paragraph 22, following was laid down:

*"22. A bare perusal of the same would go to show that the issue of an estoppel by conduct can only be said to be available in the event of there being a precise and unambiguous representation and on that score a further question arises as to whether there was any unequivocal assurance prompting the assured to alter his position or status. The contextual facts however, depict otherwise. Annexure 2 to the application form for benefit of price protection contains an undertaking to the following effect:*

*"We hereby undertake to refund to EEPC Rs ... the amount paid to us in full or part thereof against our application for price protection. In terms of our application dated against exports made during ... In the case any particular declaration/certificate furnished by us against our above-referred to claims are found to be incorrect or any excess payment is determined to have been made due to*

*oversight/wrong calculation etc. at any time. We also undertake to refund the amount within 10 days of receipt of the notice asking for the refund, failing which the amount erroneously paid or paid in excess shall be recovered from or adjusted against any other claim for export benefits by EEPC or by the licensing authorities of CCI & C.”*

*and it is on this score it may be noted that in the event of there being a specific undertaking to refund for any amount erroneously paid or paid in excess (emphasis supplied), question of there being any estoppel in our view would not arise. In this context correspondence exchanged between the parties are rather significant. In particular letter dated 30-11-1990 from the Assistant Development Commissioner for Iron & Steel and the reply thereto, dated 8-3-1991 which unmistakably record the factum of non-payment of JPC price.”*

96. The present is not a case where there was any such representation by ARCIL to the Axis Bank to withdraw the amount from the corporate debtor's account rather ARCIL has objected which is recorded in the minutes of the JLM dated 25.04.2023.

97. When the objections were raised by lenders especially by ARCIL objecting to the Axis Bank withdrawal from the account of the corporate debtor, no Principle of Estoppel or Issue Estoppel can be pressed against the ARCIL.

## **Merger**

98. Now coming to the submission on Merger that by dismissal of civil appeal by the Hon'ble Supreme Court against the order dated 10.08.2023 on Principle of Merger finality to be attached. There can be no issue with respect to the fact that order of adjudicating authority dated 22.02.2023 merged in the order of this Tribunal dated 10.08.2023 dismissing the appeal and further order passed by the Hon'ble Supreme Court dated 01.09.2023 dismissing the appeal filed by Suspended Director challenging the order dated 10.08.2023 Principle of Merger is applicable.

99. The judgment of the Hon'ble Supreme Court in the matter of **'Kunhayammed & Ors.' Vs. 'State of Kerala & Anr.'** reported in [(2000) 6 SCC 359], has been referred to, where Hon'ble Supreme Court had occasion to consider the Doctrine of Merger. In the above case, Hon'ble Supreme Court had occasion to consider the cases where Principle of Merger will be applicable with respect to Article 136 i.e., effect from grant/dismissal of SLP.

100. In the present case, the statutory appeal was filed under Section 62 of the IBC against the order dated 10.08.2023 which has been dismissed by the Hon'ble Supreme Court on 01.09.2023. There can be no denial that order of this Tribunal stand merged with the order of the Hon'ble Supreme Court. But merger is only of the judgment of this Tribunal where appeal filed by Suspended Director challenging the admission of Section 7 was rejected. We fail to see that how the case of appellant can be benefitted by the Doctrine of Merger in present case. Applying the Doctrine of Merger in

the present case, the application I.A. 126/2024 cannot be said to be barred in any manner.

101. We thus answer Question No. IV in following manner:

Application I.A.126/2024 filed by ARCIL praying for reversal of the amount withdrawn by Axis Bank and other lenders during the stay period was not barred by principle of *Res Judicata*, Issue Estoppel or Merger.

**Question No. (V)**

102. The submission which has been pressed by the learned counsel for the ARCIL is that Comp. App. (AT) (Ins.) No. 274/2023 having been dismissed on 10.08.2023 by this Tribunal, interim order dated 07.03.2023 passed in the appeal stand merged with the final order of dismissal and the benefit taken by any of the parties has to be returned. It is submitted that Axis Bank and other lenders by taking advantage of the interim order dated 07.03.2023 withdrew the amount from the account of the corporate debtor, which interim order having ultimately come to end by dismissal of the appeal, the party has to be compensated i.e., the corporate debtor has to be refunded the amount withdrawn from its account.

103. The Doctrine of Restitution is based on the *latin legal maxim* “*actus curiae neminem gravabit*”. The Hon’ble Supreme Court in ‘**South Eastern Coalfields Ltd.’ Vs. ‘State of M.P. & Ors.’** reported in [(2003) 8 SCC 648] had occasion to consider the Principle of Restitution. In paragraph 26, following has been laid down:

“26. In our opinion, the principle of restitution takes care of this submission. The word “restitution” in its

*etymological sense means restoring to a party on the modification, variation or reversal of a decree or order, what has been lost to him in execution of decree or order of the court or in direct consequence of a decree or order (see Zafar Khan v. Board of Revenue, U.P. [1984 Supp SCC 505 : AIR 1985 SC 39] ) In law, the term “restitution” is used in three senses: (i) return or restoration of some specific thing to its rightful owner or status; (ii) compensation for benefits derived from a wrong done to another; and (iii) compensation or reparation for the loss caused to another. (See Black's Law Dictionary, 7th Edn., p. 1315). The Law of Contracts by John D. Calamari & Joseph M. Perillo has been quoted by Black to say that “restitution” is an ambiguous term, sometimes referring to the disgorging of something which has been taken and at times referring to compensation for injury done:*

*“Often, the result under either meaning of the term would be the same. ... Unjust impoverishment as well as unjust enrichment is a ground for restitution. If the defendant is guilty of a non-tortious misrepresentation, the measure of recovery is not rigid but, as in other cases of restitution, such factors as relative fault, the agreed-upon risks, and the fairness of alternative risk allocations not agreed upon and not attributable to the fault of either party need to be weighed.”*

*The principle of restitution has been statutorily recognized in Section 144 of the Code of Civil Procedure, 1908. Section 144 CPC speaks not only of a decree being varied, reversed, set aside or modified*

*but also includes an order on a par with a decree. The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of a final decision going against the party successful at the interim stage. Unless otherwise ordered by the court, the successful party at the end would be justified with all expediency in demanding compensation and being placed in the same situation in which it would have been if the interim order would not have been passed against it. The successful party can demand (a) the delivery of benefit earned by the opposite party under the interim order of the court, or (b) to make restitution for what it has lost; and it is the duty of the court to do so unless it feels that in the facts and on the circumstances of the case, the restitution far from meeting the ends of justice, would rather defeat the same. Undoing the effect of an interim order by resorting to principles of restitution is an obligation of the party, who has gained by the interim order of the court, so as to wipe out the effect of the interim order passed which, in view of the reasoning adopted by the court at the stage of final decision, the court earlier would not or ought not to have passed. There is nothing wrong in an effort being made to restore the parties to the same position in which they would have been if the interim order would not have existed.”*

104. It shall be sufficient to notice Constitution Bench judgment of the Hon’ble Supreme Court in the matter of **‘Indore Development Authority’**

**Company Appeal (AT) (Insolvency) Nos. 1975, 1977, 1978 & 1979, 2003, 2005, 2006 & 2192 of 2024**

**Vs. ‘Manoharlal & Ors.’** reported in [(2020) 8 SCC 129]. Hon’ble Supreme Court in the above judgment had occasion to consider the principle it was held that if any interim order made is available during the pendency of the litigation, they are subject to final decision and in case the matter is dismissed as without merit, interim order automatically dissolved. In paragraphs 320 & 323, following was laid down:

*“320. The maxim actus curiae neminem gravabit is founded upon the principle due to court proceedings or acts of court, no party should suffer. If any interim orders are made during the pendency of the litigation, they are subject to the final decision in the matter. In case the matter is dismissed as without merit, the interim order is automatically dissolved. In case the matter has been filed without any merit, the maxim is attracted commodum ex injuria sua nemo habere debet, that is, convenience cannot accrue to a party from his own wrong. No person ought to have the advantage of his own wrong. In case litigation has been filed frivolously or without any basis, iniquitously in order to delay and by that it is delayed, there is no equity in favour of such a person. Such cases are required to be decided on merits. In Mrutunjay Pani v. Narmada Bala Sasmal [Mrutunjay Pani v. Narmada Bala Sasmal, AIR 1961 SC 1353], this Court observed that : (AIR p. 1355, para 5)*

*“5. ... The same principle is comprised in the Latin maxim commodum ex injuria sua nemo habere debet, that is, convenience cannot accrue to a party from his*

*own wrong. To put it in other words, no one can be allowed to benefit from his own wrongful act.”*

*323. In GTC Industries Ltd. v. Union of India [GTC Industries Ltd. v. Union of India, (1998) 3 SCC 376] , it was observed that while vacating stay, it is the court's duty to account for the period of delay and to settle equities. It is not the gain which can be conferred. In Jaipur Municipal Corpn. v. C.L. Mishra [Jaipur Municipal Corpn. v. C.L. Mishra, (2005) 8 SCC 423] , it has been observed that interim order merges in the final order, and it cannot have an independent existence, cannot survive beyond final decision. In Ram Krishna Verma v. State of U.P. [Ram Krishna Verma v. State of U.P., (1992) 2 SCC 620] , reliance was placed on Grindlays Bank Ltd. v. CIT [Grindlays Bank Ltd. v. CIT, (1980) 2 SCC 191 : 1980 SCC (Tax) 230] . It was held that no one could be permitted to suffer from the act of the court and in case an interim order has been passed and ultimately petition is found to be without merit and is dismissed, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised.”*

105. Principle of Restitution was considered in detail. In paragraph 335 elaborating the Principle of Restitution, following was laid down:

*“335. The principle of restitution is founded on the ideal of doing complete justice at the end of litigation, and parties have to be placed in the same position but for the litigation and interim order, if any, passed in the matter. In South Eastern Coalfields Ltd. v. State of*

*M.P. [South Eastern Coalfields Ltd. v. State of M.P., (2003) 8 SCC 648] , it was held that no party could take advantage of litigation. It has to disgorge the advantage gained due to delay in case lis is lost. The interim order passed by the court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of a final order going against the party successful at the interim stage. Section 144 of the Code of Civil Procedure is not the fountain source of restitution. It is rather a statutory recognition of the rule of justice, equity and fair play. The court has inherent jurisdiction to order restitution so as to do complete justice. This is also on the principle that a wrong order should not be perpetuated by keeping it alive and respecting it. In exercise of such power, the courts have applied the principle of restitution to myriad situations not falling within the terms of Section 144 CPC. What attracts applicability of restitution is not the act of the court being wrongful or mistake or an error committed by the court; the test is whether, on account of an act of the party persuading the court to pass an order held at the end as not sustainable, resulting in one party gaining an advantage which it would not have otherwise earned, or the other party having suffered an impoverishment, restitution has to be made. Litigation cannot be permitted to be a productive industry. Litigation cannot be reduced to gaming where there is an element of chance in every case. If the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim*

*order. This Court observed in South Eastern Coalfields [South Eastern Coalfields Ltd. v. State of M.P., (2003) 8 SCC 648] thus : (SCC pp. 662-64, paras 26-28)*

*“26. In our opinion, the principle of restitution takes care of this submission. The word “restitution” in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order, what has been lost to him in execution of decree or order of the court or in direct consequence of a decree or order (see Zafar Khan v. Board of Revenue, U.P. [Zafar Khan v. Board of Revenue, U.P., 1984 Supp SCC 505] ). In law, the term “restitution” is used in three senses : (i) return or restoration of some specific thing to its rightful owner or status; (ii) compensation for benefits derived from a wrong done to another; and (iii) compensation or reparation for the loss caused to another. (See Black's Law Dictionary, 7th Edn., p. 1315). The Law of Contracts by John D. Calamari & Joseph M. Perillo has been quoted by Black to say that “restitution” is an ambiguous term, sometimes referring to the disgorging of something which has been taken and at times referring to compensation for the injury done:*

*‘Often, the result under either meaning of the term would be the same. ... Unjust impoverishment, as well as unjust enrichment, is a ground for restitution. If the defendant is guilty of a non-tortious misrepresentation, the measure of recovery is not rigid but, as in other cases of restitution, such factors as relative fault, the agreed-upon risks, and the fairness of alternative risk allocations not agreed*

*upon and not attributable to the fault of either party need to be weighed.'*

*The principle of restitution has been statutorily recognised in Section 144 of the Code of Civil Procedure, 1908. Section 144 CPC speaks not only of a decree being varied, reversed, set aside or modified but also includes an order on a par with a decree. The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of a final decision going against the party successful at the interim stage. ...*

*27. ... This is also on the principle that a wrong order should not be perpetuated by keeping it alive and respecting it (A. Arunagiri Nadar v. S.P. Rathinasami [A. Arunagiri Nadar v. S.P. Rathinasami, 1970 SCC OnLine Mad 63] ). In the exercise of such inherent power, the courts have applied the principles of restitution to myriad situations not strictly falling within the terms of Section 144.*

*28. That no one shall suffer by an act of the court is not a rule confined to an erroneous act of the court; the "act of the court" embraces within its sweep all such acts as to which the court may form an opinion in any legal proceedings that the court would not have so acted had it been correctly apprised of the facts and the law. ... the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the*

*benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money had remained in operation.”*

*(emphasis supplied)”*

106. We have noticed the judgment of the Hon’ble Supreme Court in the **‘State of Uttar Pradesh’ Vs. ‘Prem Chopra’**, reported in [2022 SCC OnLine SC 1770] in which judgment on account of interim order passed in the writ petition, which writ petition ultimately got dismissed contention was sought to be raised that no liability to pay interest shall accrue during the period interim order was being operated. The said argument was rejected in paragraphs 20 to 22, following was held:

*“20. In Rajasthan Housing Board v. Krishna Kumari,<sup>3</sup> this Court observed that Order 39 of the Civil Procedure Code, 1908 provides for grant of temporary injunction at the risk and responsibility of the person who obtains it and, if ultimately case is decided against such person, he would be liable to pay interest on the arrears of any amount due which had been stayed by the injunction order. The legal maxim actus curiae neminem gravabit, which means that an act of the Court shall prejudice no man, becomes applicable in such a case.*

21. In *South Eastern Coalfields Ltd. v. State of M.P.*, the writ petitioner therein had argued that interest accrued due to non-payment of enhanced amount of royalty was protected by a judicial order of an interim nature and, therefore, merely because the writ was finally dismissed, the writ petitioner should not be held liable for payment of interest so long as money was withheld under the protective umbrella of the injunction order. This submission was rejected by this Court by holding as under:

“The principle of restitution has been statutorily recognized in Section 144 of the Civil Procedure Code, 1908. Section 144 CPC speaks not only of a decree being varied, reversed, set aside or modified but also includes an order on a par with a decree. The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of a final decision going against the party successful at the interim stage. Unless otherwise ordered by the court, the successful party at the end would be justified with all expediency in demanding compensation and being placed in the same situation in which it would have been if the interim order would not have been passed against it. The successful party can demand (a) the delivery of benefit earned by the opposite party under the interim order of the court, or (b) to make restitution for what it has lost; and it is the duty of the court to do so unless it feels that in the facts and on the circumstances of the case, the

*restitution far from meeting the ends of justice, would rather defeat the same. Undoing the effect of an interim order by resorting to principles of restitution is an obligation of the party, who has gained by the interim order of the court, so as to wipe out the effect of the interim order passed which, in view of the reasoning adopted by the court at the stage of final decision, the court earlier would not or ought not to have passed. There is nothing wrong in an effort being made to restore the parties to the same position in which they would have been if the interim order would not have existed.”*

*22. In Nava Bharat Ferro Alloys Limited v. Transmission Corporation of Andhra Pradesh Limited,<sup>5</sup> the appellant therein had challenged the revised tariff rates imposed by the respondent therein and obtained an interim order of stay against collection of the disputed amounts. The High Court subsequently upheld upward revision of tariff. Thereafter, the respondent therein raised a demand for additional charges/interest on outstanding amounts from the date of tariff revision and the High Court upheld such demand holding that there was no subsisting relief once the demand was upheld. This Court further held that the principle of restitution entitles the successful party to be restored back to the position it would hold had there been no order/judgment adverse to it. The appellant therein had obtained only an ad-interim order of stay against enforcement of tariffs. A party who fails in the main proceedings cannot take benefit from the interim order issued during the pendency of such proceedings. Therefore, it was held in that case that the amount*

*became recoverable from the appellant therein no sooner the judgment of the High Court was reversed and the revision of tariffs was upheld.”*

107. Learned counsel for the appellants opposing the submission of the appellant on the Doctrine of Restitution contends that IBC itself provides for restitution under Section 74 of the IBC. Section 74 is punishment for contravention of moratorium or the resolution plan. Punishment on prosecution is a separate mechanism provided for initiating prosecution. The said provision cannot take place of restitution which in appropriate case a party who has taken benefit of interim order is liable to be restored. Another submission raised by the appellant is that restitution applies any inter-parties. It is submitted that appeal was filed by the promoters, Shilpi Asthana, hence the restitution cannot be pressed against the lenders.

108. The present is not a case where it is the promoters of the corporate debtor who has withdrawn any amount from the account of the corporate debtor. It is the Axis Bank and other lenders who by taking advantage of the interim order dated 07.03.2023 proceeded to withdraw the amount from the account of the corporate debtor on the pretext that order admitting Section 7 application having been stayed by this Tribunal, there is no moratorium operating on the date after 07.03.2023 hence they were fully entitled to withdraw the amount from the account of the corporate debtor. Thus, the present is the clear case where Axis Bank and other lenders are relying the interim order 07.03.2023 for withdrawing the amount from the account of the corporate debtor. Axis Bank and respondents cannot be heard in saying that they have not taken any advantage of the interim order

dated 07.03.2023 hence Doctrine of Restitution is not applicable on them. Advantage of the interim order was taken by the Axis Bank and other lenders contending that moratorium ceased after 07.03.2023, when the appeal stands dismissed on 10.08.2023 interim order also stands withdrawn which merges in the final order. The benefit taken under the interim order has to be restored by the Axis Bank and other lenders, which is the principle recognized by law. We have already referred the judgment of the Hon'ble Supreme Court where applying the principle of restitution, directions have been issued to restore the benefits taken under the interim order. Thus, the submission on behalf of the lenders that doctrine applies only inter-parties does not help them in the present case.

109. We thus are satisfied that the benefit which was taken by the lenders relying on the interim order 07.03.2023 for withdrawing amount of more than Rs.143 crore from the account of the corporate debtor is required to be made good by the lenders. Adjudicating authority thus has not committed any error in issuing the direction to the lenders to reverse the amount withdrawn from the account of the corporate debtor.

110. We thus answer Question No. V in following manner:

On Principle of Restitution, the lenders who have withdrawn the money from the account of the corporate debtor during period of interim stay which came to be end on 10.08.2023, are obliged to reverse the amount in the account of the corporate debtor.

**Question No. (VI)**

111. Learned counsel appearing for the RP in support of Comp. App. (AT) (Ins.) Nos.1978-1979/2024 has challenged the findings and observations returned by the adjudicating authority in paragraph 78 of the order of the adjudicating authority. It is submitted that adjudicating authority had come to conclusion that RP ought not to have handed over the management and control of the corporate debtor back to the Suspended Directors. As noted above, I.A.4844/2023 was filed by the RP on 11.10.2023 much subsequent to dismissal of company appeal on 10.08.2023. The contention of the RP is that after interim order dated 07.03.2023 promoters wrote to the RP to hand over the possession and since interim order dated 07.03.2023 has stayed the admission order, RP could not have continued or perform any function hence he had handed over the management to the Ex-Director.

112. Learned counsel for the RP has also referred to the judgment of this Tribunal in '**Ashok Tyagi's**' case (*Supra*) where this Tribunal held that after stay of admission order, IRP could not perform any function. The judgment of '**Ashok Tyagi**' (*Supra*) on which reliance is placed by the counsel for the RP was delivered on 21.11.2022 i.e., much before commencement of the CIRP against the corporate debtor. In '**Ashok Kumar Tyagi**' (*Supra*), this Tribunal has categorically rejected the prayer of Suspended Director to hand over the management and to permit the management to function which was functioning prior to admission order 28.10.2022. In paragraph 18 of the judgment, following was observed:

*“18. The difference between stay of an Order and quashing of any Order are well settled as noticed above. In event on the stay of the admission of Section 7 Application, the Corporate Debtor is allowed to function and position as was existing prior to 28.10.2022 is restored, there shall be no difference in staying an Order and quashing of an Order. What the Appellants are asking/praying is restoration of the position as was prior to admission of Section 7 Application. We can not accept such request made by the Appellant. The Admission Order of Section 7 Application has only been stayed and not quashed thus the Corporate Debtor can not be permitted to function as it was functioning prior to 28.10.2022.”*

113. Thus, the opinion of this Tribunal was very much in existence on the date when CIRP commenced against the corporate debtor and the interim order was passed on 07.03.2023. Even if Suspended Director had informed the IRP of the interim order and asked for handing over the management it was incumbent for the IRP to seek clarification/direction from the adjudicating authority or this Appellate Tribunal for the steps which had to be taken by the IRP. IRP had happily handed over the management to the Ex-Directors and did not raise a single finger till the appeal was dismissed on 10.08.2023. The prayer made in the application I.A.4844/2023 where the RP sought a direction in prayer (c) is follows:

*“a. Allow the present Application;*

*b. Clarify that/direct that the Unpaid OC Liabilities/  
Unpaid Interest Claim (as defined in the Application)/  
Unpaid Other Liabilities (as defined in the Application)*

*is to considered for admission/ verification as part of the claims of the respective creditors against the Corporate Debtor (which will then be dealt with under the resolution plan or liquidation, as the case may be, in accordance with the Code);*

*c. Clarify that/ direct that for the purpose of conducting various CIRP related activities under the Code read with the CIRP Regulations, including valuation, conducting transactional audit for avoidance transactions, preparation of Information Memorandum and provisional balance sheet, updation of claims etc. the relevant date should be 10 August 2023 (being the date of resumption of CIRP of the Corporate Debtor).*

*d. Any such other or further order(s) which this Hon'ble Adjudicating Authority may deem fit in the present facts and circumstances.”*

114. What virtually IRP was claiming was in the above prayer was to declare that insolvency commencement date as 10.08.2023. The above prayer was only to keep away the period upto 10.08.2023 from CIRP to give a clean chit to the lenders. In the entire application there was no objection raised by the IRP regarding withdrawal made by the lenders from the account of the corporate debtor although promoters and ARCIL were making prayers for reversal of the amount to the account of the corporate debtor which was withdrawn by lenders. RP neither made any prayer nor took that stand in the application. IRP even though was recommended by IndusInd Bank one of the lenders who initiated Section 7 proceeding, after appointment of the IRP, he has to act in the interest of the corporate debtor

and in accordance with the IBC Code and the CIRP Regulations. We are of the view that adjudicating authority has rightly rejected the application I.A. filed by the RP. In paragraph 78.6, adjudicating authority has made following observations:

*“78.6 Thus, in view of the same and also the clear precedence set out in Ashok Kumar Tyagi (supra) which was passed prior to the stay granted in the present matter, the RP ought not to have handed over the management and control of the Corporate Debtor back to the suspended directors without appropriate instructions/ directions from this Tribunal.”*

115. We do not find any ground to interfere with the observations made by the adjudicating authority in paragraph 78. Question No. VI is answered in following manner:

Finding and observation made by adjudicating authority in paragraph 78, do not deserve to be set aside.

**Question No. (VII)**

116. As noted above ARCIL has also filed Comp. App. (AT) (Ins.) No. 2192/2024 challenging the order of the adjudicating authority to the limited extent that is by which adjudicating authority has rejected Prayer (g) made in I.A. No.126/2024. Prayer (g) made in the application by ARCIL is that *‘pass an order directing the R-2 to R-6 to pay interest at an appropriate rate/percentage as deemed appropriate by this Tribunal on the respective principal amount withdrawn/received by them in contravention of moratorium’.*

117. Learned counsel for the appellant submits that when the amount was withdrawn by Axis Bank and other lenders from the account of the corporate debtor and appropriated, the lenders are liable to reverse the amount along with the interest. Interest is part of compensation, to which corporate debtor is entitled due to illegal withdrawal by Axis Bank. It is submitted that adjudicating authority has erroneously rejected the Prayer (g) in the application filed by ARCIL.

118. Learned counsel for ARCIL relied on Doctrine of Restitution and unjust enrichment, illegal appropriation and detention of money warrants for restitution of money interest. The lenders have refuted the submissions, on behalf of the appellant it is contended that account of the corporate debtor was a current account in which no interest is payable. It is submitted that allegation of any unjust enrichment by lender is unfounded. Amount which was withdrawn by Axis Bank and distributed to the other lenders was in accordance with the contract with the corporate debtor and lenders were only exercising their contractual rights. In paragraph 82, adjudicating authority gave following reasons for not allowing Prayer (g):

*“82. As regards prayer ‘g’, it is seen that since there was no direct transaction from the Corporate Debtor to the financial creditors as also to the extent of amount appropriated, the Corporate Debtor’s liability of interest would be reduced. Accordingly, a direction to pay interest on the appropriated amount would not be justified and hence not granted.”*

119. We are of the view that adjudicating authority has rightly exercised its discretion in not allowing Prayer (g) of the I.A.126/2024 and further it has been contended that account of the corporate debtor was the current account.

120. We, thus do not find any substantial ground to interfere with the order passed by the adjudicating authority rejecting Prayer (g) of the application. We answer Question No. VII to the following effect:

Order of the adjudicating authority dated 01.10.2024 rejecting Prayer (g) in I.A.126/2024 needs no interference.

121. In view of the foregoing discussions and our conclusion, we do not find any merit in any of the appeals. All the appeals are dismissed. As directed by the impugned order dated 01.10.2024, the appellants to remit the amount back to the corporate debtor along with accrued interest as per order dated 29.10.2024, (para 14) passed in these appeals, forthwith.

All pending IAs are closed.

Parties shall bear their own costs.

**[Justice Ashok Bhushan]  
Chairperson**

**[Barun Mitra]  
Member (Technical)**

**NEW DELHI**

**31<sup>st</sup> July, 2025**

*Anjali/Ashwani/Himanshu*