NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.662 of 2025 &
I.A. No.8026 of 2025

(Arising out of Order dated 08.01.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Division Bench, Court No.II, Kolkata in I.A. (I.B.) No.84/KB/2022 in C.P.(I.B.) No.1684/KB/2018)

IN THE MATTER OF:

Tropical Ventures Company Ltd. **...Appellant**

Versus

INCAB Industries Ltd., Through Pankaj Kumar Tibrewal, RP & Ors. **...Respondents**

Present:

For Appellant : Mr. Abhijeet Sinha and Mr. Dhruv Malik, Sr. Advocates with Mr. Saikat Sarkar, Mr. Prantik Garaj and Ms. Malarika C., Advocates.

For Respondents : Mr. Krishnendu Datta, Sr. Advocate with Mr. Shaunak Mitra, Ms. Ritika Gaur, Mr. Siddhant Makkar and Mr. Harsh Gurbani, Advocates for RP.

Mr. Vaibhav Gaggar, Sr. Advocate with Mr. Vishesh Kalra, Ms. Smriti Churiwal, Mr. Vikram Wadhera, Ms. Sonia Sharma, Ms. Aasia Hasan, Mr. Ramayani, Mr. Jaiveer, Ms. Neha, Ms. Simran Shadija and Ms. Vidisha Jain, Advocates for Pegasus.

Mr. Abhishek Anand, Mr. Karan Kohli and Ms. Palak Kalra, Advocates for SRA.

With
Company Appeal (AT) (Insolvency) No.16 of 2026 &
I.A. No.63 of 2026

(Arising out of Order dated 03.12.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata bench (Court No.-II) in I.A. No.1511/KB/2025 in C.P.(I.B.) No.1684/KB/2018)

IN THE MATTER OF:

Pegasus Assets Reconstruction Pvt. Ltd. **...Appellant**

Versus

Pankaj Kumar Tibrewal & Anr. **...Respondents**

Present:

For Appellant : Mr. S. Niranjan Reddy, Sr. Advocate with Mr. Vishesh Kalra, Ms. Rajeshwari, Mr. Vikram Wadhera, Ms. Sonia Sharma, Ms. Ramyani, Ms. Aashiya Hasan and Ms. Simran Shadija, Advocates.

For Respondents : Mr. Krishnendu Datta, Sr. Advocate with Mr. Shaunak Mitra, Ms. Ritika Gaur, Mr. Siddhant Makkar and Mr. Harsh Gurbani, Advocates for RP.

Mr. Abhishek Anand, Mr. Karan Kohli and Ms. Palak Kalra, Advocates for SRA.

Mr. Abhijeet Sinha and Mr. Dhruv Malik, Sr. Advocates with Mr. Saikat Sarkar, Mr. Prantik Garaj and Ms. Malarika C., Advocates.

With
Company Appeal (AT) (Insolvency) No.192 of 2026 &
I.A. No.702 of 2026

(Arising out of Order dated 03.12.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench (Court-II) in I.A. (IB) No.646/KB/2022 in C.P.(IB) No.1684/KB/2018)

IN THE MATTER OF:

Tropical Ventures Company Ltd. **...Appellant**

Versus

Steering Committee of Incab Industries Ltd.
Through: Pankaj Kumar Tibrewal
Chairman of Steering Committee & Ors. **...Respondents**

Present:

For Appellant : Mr. Abhijeet Sinha and Mr. Dhruv Malik, Sr. Advocates with Mr. Saikat Sarkar, Mr. Prantik Garaj and Ms. Malarika C., Advocates.

For Respondents : Mr. Krishnendu Datta, Sr. Advocate with Mr. Shaunak Mitra, Ms. Ritika Gaur, Mr. Siddhant Makkar and Mr. Harsh Gurbani, Advocates for RP.

Mr. Vaibhav Gaggar, Sr. Advocate with Mr. Vishesh Kalra, Ms. Smriti Churiwal, Mr. Vikram Wadhera, Ms. Sonia Sharma, Ms. Aasia Hasan, Mr. Ramayani, Mr. Jaiveer, Ms. Neha, Ms. Simran Shadija and Ms. Vidisha Jain, Advocates for Pegasus.

Mr. Abhishek Anand, Mr. Karan Kohli and Ms. Palak Kalra, Advocates for SRA.

J U D G M E N T

Ashok Bhushan, J.

These three Appeal(s) arise from same Corporate Insolvency Resolution Process ("**CIRP**") of Corporate Debtor ("**CD**") Incab Industries Ltd. being CP (IB) No.1684/KB/2018. Company Appeal (AT) (Ins.) No.662 of 2025 has been filed by Tropical Ventures Company Ltd. (hereinafter referred to as "**Tropical**") challenging the order dated 08.01.2025 passed by National Company Law Tribunal ("**NCLT**"), Division Bench, Court No.II, Kolkata in I.A.(IB)No.84/KB/2022. By order dated 08.01.2025 I.A.(IB) No.84/KB/2022 filed by the Tropical has been dismissed. Company Appeal (AT) (Ins.) No.16 of 2026 has been filed by Pegasus Assets Reconstruction Pvt. Ltd. (hereinafter referred to as the "**Pegasus**") challenging the order dated 03.12.2025 passed by NCLT, Kolkata Bench (Court No.-II), Kolkata in IA No. 1511/KB/2025. By order dated 03.12.2025, IA No.1511/KB/2025 filed by the Pegasus has been dismissed. Company Appeal (AT) (Ins.) No.192 of 2026 has been filed by Tropical challenging the order dated 03.12.2025 passed by NCLT, Kolkata Bench (Court-II), Kolkata praying for partially set aside order dated 03.12.2025 passed in IA No. 646/KB/2022 in CP (IB) No. 1684 of 2018 with respect to affirmance of resolution passed in 22nd Committee of Creditors ("**CoC**") Meeting. All three Appeal(s) having arisen out of same CIRP and out of the same set of facts, have been heard together and are being decided by this common judgment.

2. Brief background facts giving rise to these Appeal(s) are:

(i) The CD – Incab Industries Ltd. is a Private Limited Company registered with Registrar of Company, Kolkata incorporated on 12.12.1920 carrying on business of manufacturing of basic iron and steel.

(ii) From 1993-1996 the CD started making losses and was shut down. The CD had taken various financial facilities from different Banks and financial institutions. A Malaysian Company namely Leader Universal Holdings Berhad (hereinafter referred to as the "**Leader Berhad**") was inducted by the Lenders of the CD as promoter of the CD. An MoU dated 04.12.1996 was entered between Leader Berhad and the Lenders of the CD and the CD.

(iii) The CD availed credit facility from ICICI Bank, Citibank and HSBC (All three Banks are referred to as the "**Resident Lenders**"). Leader Berhad executed Deeds of Guarantee in favour of Resident Lenders to secure the credit facilities.

(iv) The CD was referred to Board for Industrial and Financial Reconstruction ("**BIFR**") and was declared a Sick Company on 04.04.2000.

(v) In the year 2000-2001 Resident Lenders invoked the guarantees and in consequence of which Leder Berhad paid ICICI Bank and Citibank. Leader Cables, a subsidiary of Leader Berhad paid Rs.3.75 million US$ to HSBC.

(vi) On 26.09.2000, the Reserve Bank of India ("**RBI**") issued Notification amending RBI Notification dated 03.05.2000.

(vii) On 08.03.2007, Leader Berhad executed Deed of Assignment and liabilities of the CD to Tropical Ventures Company Ltd., a Mauritius Company for consideration of US$ 1, on as is where is basis. On 06.08.2007, Leader Berhad intimated the CD about the assignment of loan to Tropical.

(viii) On 01.12.2016, the Sick Industrial Companies (Special Provisions) Act, 1985 was repealed.

(ix) On an application filed by an Operational Creditor, Jayanta Baneerjee, the CD was admitted into CIRP on 07.08.2019. The Adjudicating Authority directed for liquidation of the CD on 07.02.2020. An Appeal was filed by the Operational Creditor challenging the order dated 07.08.2019. The Appellate Tribunal vide its order dated 04.06.2021 set aside the order of liquidation and reinstated the CIRP of the CD. Pankaj Kumar Tibrewal was appointed as Interim Resolution Professional of the CD.

(x) Tropical filed a claim for a sum of Rs.21,52,84,33,946.87 in Form-C as Financial Creditor. On 17.11.2021, the RP admitted the claim of Tropical as 'related party' of the CD. The Tropical filed an IA (IB) No.84 of 2022 challenging the decision of the RP declaring the Appellant as 'related party' and treatment of the part of the claim of Tropical as unsecured. The RP vide email

dated 10.12.2021 admitted the claim of Tropical for a sum of Rs.19,90,63,12,342/- only.

(xi) Pegasus filed an IA (IB) No. 140 of 2022 challenging the decision of the RP to admit the claim of Tropical. On 08.01.2025, the Adjudicating Authority dismissed IA (IB) No.84 of 2022 filed by Tropical against which the Tropical has filed Company Appeal (AT) (Ins.) No.662 of 2025. On 08.01.2025 in IA (IB) No.140 of 2022 the Adjudicating Authority issued various directions to the RP, including a direction to re-verify the claim of Tropical. A direction was also issued to the RP to verify as to whether Tropical can be treated as secured Financial Creditor by verifying the RBI's permission, if any, granted to the Leader Berhad. The RP was also directed to see whether the admission of claim and the allocation made to Tropical is in compliance with the Notification issued under FEMA 29/RB/20000 dated 26.09.2000 and as to whether the claim of Tropical is time barred. The RP filed an affidavit reporting compliance of the order dated 08.01.2025. The RP re-verified the claim and while admitting the claim, admitted the claim of Rs.17,31,40,02,705/- The RP also took the view that RBI Notification dated 26.09.2000 is not applicable. Challenging the decision of the RP admitting the claim of Tropical, Pegasus filed an IA No. 1511/KB/2025.

(xii) In the CIRP of the CD, the CoC was constituted in which Tropical was not included being 'related party'. The RP obtained the Report of Valuer with regard to Fair Value and Liquidation Value. Form-G was published inviting EoIs. The Resolution Plan submitted by M/s Vedanta Ltd. in the 22nd CoC Meeting of the CoC held on 23.06.2022 was approved by 99.37% vote share. The RP filed an application in IA No. 646/KB/2022 seeking approval of the Resolution Plan. The Resolution Plan treating the Tropical as related party has also allocated an amount to the Tropical as secured creditor.

(xiii) The Adjudicating Authority vide order dated 03.12.2025 allowed the IA No. 646/KB/2022 filed by the RP for approval of the Plan. By order dated 03.12.2025, IA filed by the Pegasus being IA No. 1511/KB/2025 was rejected. Company Appeal (AT) (Ins.) No.16 of 2026 has been filed challenging the order dated 03.12.2025 passed in IA No. 1511/KB/2025 and Company Appeal (AT) (Ins.) No.192 of 2026 has been filed by Tropical praying for partially set aside order dated 03.12.2025 passed in IA No. 646/KB/2022 with respect to affirmation of the Resolution Plan by the CoC.

3. We have heard Shri Abhijeet Sinha, learned Senior Counsel appearing for Tropical in Company Appeal (AT) (Ins.) Nos.662 of 2025 and 192 of 2026; Shri S. Niranjan Reddy, learned Senior Counsel appearing for Pegasus in Company Appeal (AT) (Ins.) No.16 of 2026; Shri Krishnendu Datta, learned

Senior Counsel appearing for the RP; Shri Abhishek Anand, learned Counsel appearing for SRA; Shri Vaibhav Gaggar, learned Senior Counsel appearing for Pegasus in Company Appeal (AT) (Ins.) Nos.662 of 2025 and 192 of 2026. On 15.05.2026, hearing was completed and judgment was reserved. In these Appeal(s), learned Counsel for the parties have made submissions in support of their respective cases. We proceed to notice the submissions of the parties in each Appeal separately.

Company Appeal (AT) (Ins.) No.662 of 2025

4. This Appeal has been filed by Tropical challenging the order dated 08.01.2025 rejecting I.A.(IB) No.84/KB/2022 filed by the Tropical challenging the decision of the RP declaring the Tropical as 'related party' and rejecting the claim in respect of HSBC Bank. Shri Abhijeet Sinha, learned Senior Counsel appearing for the Tropical submits that the decision of the Adjudicating Authority declaring the Appellant as 'related party' to the CD under Section 5(24) (i) and 5(24)(l) is unsustainable. It is submitted that Adjudicating Authority itself has recorded a finding that the Appellant is neither Holding Company nor Subsidiary Company of the CD. The finding of Adjudicating Authority that Appellant is an Associate Company of the CD and has significant influence is incorrect. The control with reference to Section 2(27) of the Companies Act, 2013, include the right to appoint majority of the directors or control or management or policy decision directly or indirectly, including shareholding or management rights, or shareholders agreements or voting agreements. It is submitted that the Appellant does

not exercise any control over the CD. The Appellant – Tropical has 63% shareholding in Leader Universal (Mauritius), which in turn hold 51.2% shares in the CD directly and additional 10% indirectly through Satyam Incab (Holdings) Ltd. The CD was referred as SICA Company on 04.04.2000 and came out of BIFR only on 01.12.2016, when SICA Act was repealed. The Tropical was incorporated on 28.08.2006 when the CD was under BIFR. Leader Berhad assigned the debt in favour of the Tropical through Deed of Assignment on 08.03.2007. Mr. Naresh Lakhmichand Asrani (hereinafter referred to as "**Naresh Asrani**") did not have any control over the CD, the CD being under the BIFR at the relevant time. The balance sheet of the CD as on 31.12.1999 refers to its Directors under it and it did not include the name of Naresh Asrani. The Appellant does not qualify as 'related party' of the CD under the IBC, it being neither a Holding Company nor Subsidiary Company. The Adjudicating Authority has erroneously held the Appellant to be 'related party' under Section 5(24)(i) observing that the Appellant was in position of *de facto* control of the CD. Leader Berhad had 51.2% shareholding in the CD and the Appellant held 63% shareholding in Leader Universal (Mauritius). There was neither significant influence nor control of the Appellant – Tropical on the CD. The Appellant is neither shareholder of the CD, nor it has any significance influence or control over the CD. There is no governance influence, no administrative oversight and no management action of the Appellant with respect to the CD. The finding of the Adjudicating Authority that Appellant Tropical is neither Holding Company or Subsidiary Company is not even challenged by the Respondents. With

respect to claim of the Appellant for US$ 3.75 millions against Hold Cover to HSBC, it is submitted that RP committed error in rejecting the said claim. The Hold Cover is essentially a Counter Guarantee on behalf of Leader Universal Holdings Berhad to enable their Guarantee to HSBC. The Hold Cover was issued using the existing Guarantee-line of Leader Cable Industry Berhad, a subsidiary of Leader Berhad. Leader Cable Industry Berhad made necessary payment of US$ 3.75 millions. The RP committed error in rejecting the said claim of US$ 3.75 millions on behalf of the Leader Berhad and on assignment of the debt in favour of the Tropical, the Appellant was subrogated and entitled for acceptance of the claim relating to payment to HSBC.

5. Shri Krishnendu Datta, learned Senior Counsel appearing for the RP refuting the submissions of the Appellant submits that RP had rightly declared the Tropical as 'related party' to the CD. Under the admitted ownership structure, Naresh Asrani is ultimate beneficial owner. The Appellant itself has produced and confirmed the correctness of shareholding chart, where Naresh Asrani owns FW Enterprises Ltd., which owns 100% of Tropical. Tropical hold 63% in Leader Universal (Mauritius), which holds 51.2% in CD and further 10% in CD through Satyam Incab (Holdings) Ltd. Naresh Asrani is therefore common ultimate beneficial owner of entire chain, including the CD, the Appellant cannot deny the legal consequences flowing from it. Tropical is Holding Company/ step-down controlling entity of the CD. The Tropical holds 63% shareholding in Leader Universal (Mauritius), which holds 51.2% in the CD. The CD is step-down subsidiary

of Tropical. The step-down subsidiary relationship is legally sufficient and independently attracts Section 5(24)(i) of the IBC. *De Facto* control within the meaning of Section 2(27) of the Companies Act is very much present. Leader Berhad was the financial sponsor of the CD under MoU dated 04.12.1996. Indirect shareholding control and voting interest through Mauritius Co. and Satyam Incab Holdings, all ultimately owned by Naresh Asrani. The Appellant is 'related party' under different sub-clauses of Section 5(24) of the IBC. As per HSBC's claim, there was no valid subrogation or assignment on record with the Tropical. Leader Cable has paid the amount and not Leader Berhad. No formal Guarantee Agreement was ever executed between HSBC, Leader Berhad and the CD. Leader Berhad at no point was the guarantor or payer in respect of HSBC facility. Leader Berhad cannot claim subrogation. There is no assignment of security interest in favour of Tropical.

6. Learned Counsel appearing for the Pegasus refuting the submissions of the Appellant contended that the CD is a step-down entity and clearly falls within the definition of Section 5(24)(i). Once statutory relationship is established between the Appellant and the CD, no further inquiry is necessary. The records of the Appellant demonstrate that Naresh Asrani not only control both the entities, but also continues to represent interest of Tropical in the CIRP of the CD. The CD is nothing but step-down subsidiary of Tropical, all of which is ultimately owned and controlled by Naresh Asrani. There can be no doubt that all the entities are related to one another.

7. Learned Counsel appearing for the SRA has also supported the impugned order and submits that the Appellant has been rightly held to be 'related party' to the CD. The Appellant holds 63% of Leader Berhad and Leader Berhad in turn holds 52.1% in the CD directly and 10% indirectly through Satyam Incab (Holdings) Ltd., which gives the Appellant effective influence of over 60% voting power in the CD. The Appellant qualifies as a 'related party' under Section 5(24)(i) (associate company and step-down subsidiary company test) and also under Section 5(24)(l) (control over board composition). Lifting of corporate veil rightly applied to determine control. There was no valid basis for admission of claim arising from HSBC facility. Subsequent changes in the CoC cannot affect decisions already taken. The Plan of the SRA has already been approved by the CoC as well as by the Adjudicating Authority.

Company Appeal (AT) (Ins.) No.16 of 2026

8. Learned Senior Counsel appearing for the Pegasus in support of the Appeal submits that RP committed error in admitting exorbitant claim of Tropical of Rs.1731 crores, which contains principal amount of Rs.85 crores. + interest of Rs.1646 crores. The Adjudicating Authority committed error in rejecting IA filed by the Pegasus being IA No.1511/KB/2025, which contained detailed pleadings and the grounds by questioning the decision of the RP for admitting the claim of the Tropical. The assignment in favour of the Tropical by Assignment Deed dated 08.03.2007 was limited to amount paid by the Assignor to the creditors. The amount paid by the Assignor to

creditors was only Rs.85,79,269,44/-, and as per the assignment, the Appellant cannot claim any further amount. The payment of funds exceeding the principal amount actually paid to the Lenders by a foreign entity (Leader Berhad) is in violation of Indian foreign exchange laws. The Pegasus has relied on RBI Notification dated 26.09.2000, which clearly provided a cap on reimbursement by the resident principal debtor, which shall not exceed the rupee equivalent of the amount paid by the non-resident guarantor under the guarantee. The Adjudicating Authority committed error in holding that Notification dated 26.09.2000 is not applicable. The Adjudicating Authority also committed error in holding that no reimbursement was involved in the claim. The assignment of debt to the Tropical is limited to the term of Assignment Deed. The Leader Berhad's right of subrogation was never assigned to Tropical. No claim could have been admitted in violation of Indian foreign exchange laws, i.e. Foreign Exchange Management Act, 1999 ("**FEMA**") and the Notification dated 26.09.2000. The submission of the Tropical that *post facto* permission can be obtained from the RBI has no legs to stand. No *post facto* approval of the RBI can condone the breach. The Adjudicating Authority also committed error in holding that RP does not performs adjudicator functions and has rightly performed his administrative functions in verifying the claim of Tropical. The Adjudicating Authority having invited to adjudicate the claim of the Tropical, the question that RP has no adjudicatory functions, is meaning less and cannot preclude the Adjudicating Authority to directly adjudicate the claim raised by the Tropical. The Assignment Deed, which

was issued by Assignor – Leader Berhad dated 08.03.2007, was assignment of debt for US$ 1, and claim which is submitted by the Tropical in the CIRP was claim of more than Rs.2000 crores. The RP failed to recognise that Tropical is not entitled to interest as per both FEMA and the terms of the Assignment Deed itself. The Tropical claim is also barred by time.

9. Shri Abhijeet Sinha, learned Senior Counsel appearing for Tropical refuting the submissions of Pegasus submits that assignment in favour of the Tropical by Leader Berhad was assignment with subrogation. The Appellant by virtue of Sections 140 & 141 of the Indian Contract Act, 1872 have all rights of the creditors against the CD and the claim, which was filed by Tropical was in accordance with the Assignment Deed dated 08.03.2007. Assignor has issued a general announcement. The Assignor intimated the CD regarding assignment of debt in favour of the Tropical on 06.08.2007. The CD was declared a SICA Company and was with the BIFR till 01.12.2016. The claim was filed by the Tropical before the RP, which after due verification was accepted by the RP. Pegasus (who is part of the CoC) post claim, which has already been admitted, has no right to question the admission of the claim of the Tropical. The transaction, which took place between the Lenders and the Leader Berhad were much before the Notification dated 26.09.2000 issued by the RBI. The entire transaction having taken place prior to Notification dated 26.09.2000, the Notification has no applicability and the Adjudicating Authority has rightly taken the view that Notification dated 26.09.2000 has no applicability. It is submitted

that there was no merit in the application filed by the Pegasus questioning the claim of the Tropical.

10. Learned Senior Counsel appearing for the RP also opposed the submissions made on behalf of the Pegasus. Learned Counsel for the RP submits that the RP's role is only administrative verification, not adjudication. The CD had obtained financial assistance from ICICI Bank, Citibank and HSBC Bank between 1997-1999. Leader Berhad had provided formal corporate guarantee for these facilities. The Leader Berhard has made payments to Citibank, ICICI Bank and HSBC (through Leader Cable Industry Berhad, a subsidiary of Leader Berhad) and on making payments, it became subrogated to the rights of the original creditors by operation of Section 140 of the Indian Contract Act, stepping into the shoes of ICICI Bank and Citibank. The Leader Berhad by Deed of Assignment assigned all its subrogated rights and interests to the Tropical. Security interests follow the debt by operation of law, no fresh mortgage or hypothecation was required. The objections raised by Pegasus regarding FEMA/ FERA violations are misconceived. The guarantees in question were executed by Leader Berhad in 1997-1999, when the original loans were sanctioned to the CD by ICICI Bank, Citibank and HSBC. At that time, loan transactions were between two resident entities (Indian Banks and Indian CD) and did not attract FERA/ FEMA provisions. Sections 26 and 31 of the FERA, 1973 imposed restrictions only on persons resident in India and not on non-resident entities. Leader Berhad is a Company incorporated in Malaysia and was, at all material times, a non-resident under FERA. FEMA, 1999 has no

retrospective application. FEMA came into force with effect from 01.06.2000 and does not contain any provision rendering transactions validly entered into under FERA void or unenforceable. Deed of Assignment dated 08.03.2007 assigns subrogated debt rights a pure current account transaction under Section 130 of the Transfer of Property Act, 1882 and does not involve creation of any new security interest or transfer of immovable property in India. The RBI Notification dated 26.09.2000 is not applicable. Even assuming, without admitting any FEMA non-compliance, it is settled law that regulatory infractions do not extinguish the underlying debt and at best invite regulatory consequences through specialised authorities such as the RBI or the Enforcement Directorate. The RP is not the forum for adjudication of foreign exchange disputes. The claim is not barred by time.

Company Appeal (AT) (Ins.) No.192 of 2026

11. Learned Senior Counsel appearing for the Appellant – Tropical in support of the Appeal submits that the resolution in 22nd CoC Meeting was never informed to the Tropical. The SRA noted that the claim of the Tropical has been accepted and Tropical has already been allocated Rs.294 crores in the Resolution Plan. In the Resolution Plan no additional or subsequent changes has been done by the Adjudicating Authority while approving the Plan. The Appellant - Tropical has only prayed for partially set aside the order approving the Plan. The payment schedule under the Resolution Plan

cannot be altered. The Appellant has been allocated the amount, even though it has been treated as 'related party'.

12. Learned Senior Counsel appearing for the RP opposing the submissions of the Appellant submits that the SRA has already deposited the amount of Rs.585 crores and has taken possession and the control of the CD. The Adjudicating Authority by the impugned order dated 03.12.2025 made the outcome of the approval of the Plan subject to pending Appeal before this Tribunal, in which no illegality has been committed. The Tropical being 'related party' has no *locus* to challenge the decision of 22nd CoC Meeting, it being not a Member of the CoC. The CoC in its 22nd Meeting's resolution, directed to deposit the claimed amount in interest bearing account, pending final adjudication. The commercial wisdom of the CoC is paramount and non-justifiable. The allocation of Rs.294.91 crores is presently held in the interest bearing account, which is subject to outcome of any pending Appeal(s). There is no surviving cause of action or actionable grievance in the Appeal filed by the Tropical.

13. Learned Counsel appearing for the Pegasus opposing the submission of learned Counsel for the Appellant submits that the Appeal is not maintainable. The challenge to Resolution Plan is circumscribed by Section 61(3) of the IBC and no grounds have been made out in the Appeal within the meaning of Section 61, sub-section (3). The Appellant himself in the Appeal has pleaded that the Appellant does not have any grievance against the Resolution Plan and its implementation and the business of the CD,

barring the distribution mechanism resolved by the CoC in its 22nd Meeting, as the alleged resolution creates a separate subclass classification of creditors without there being any justifiable reason for the same. The Appellant seeks to partially set aside the impugned order approving the Resolution Plan, which is beyond the limited scope of Section 61 sub-section (3). There are no grounds within Section 61 sub-section (3) to interfere with the impugned order and indirectly challenge the CoC decisions taken in 22nd Meeting. The Appeal cannot be entertained on this ground. There is no illegality or infirmity in decision of CoC taken in its 22nd Meeting. The decision taken by the CoC in its 22nd Meeting in its commercial wisdom, cannot be interfered with.

14. We have considered the submissions of learned Counsel for the parties and have perused the record.

15. From the submissions of learned Counsel for the parties and materials on the record, following are the questions which arise for consideration in these Appeal(s):

(I) Whether the Appellant – Tropical is 'related party' to the CD within the meaning of Section 5 (24) of the IBC?

(II) Whether the decision of the RP rejecting the claim of the Tropical with respect to HSBC was sustainable?

(III) Whether in the facts of the case and the sequence of events, the Tropical is 'Secured Creditor' of the CD?

(IV) Whether the Peagasus in its is I.A.(IB)No.1511/KB/2025 has made out sufficient ground to interfere with the order of RP

verifying the claim of Tropical to the sum of Rs.19,90,63,12,342/-?

(V) Whether the Notification dated 26.09.2000 was applicable in respect to the claim submitted by the Tropical and the Adjudicating Authority has rightly held the Notification not applicable with respect to verification of the claim of the Tropical?

(VI) Whether the Tropical is entitled to obtain any post-facto approval of RBI with respect to amount of claim admitted in the CIRP and the amount allocated in the Resolution Plan to the Tropical?

(VII) Whether Tropical has made out a case for partially setting aside the order dated 03.12.2025 in I.A. No.646 of 2022 insofar as directions, which have been issued by the Adjudicating Authority in the impugned order in Paragraph 49 of the impugned order making the Resolution Plan subject to outcome of the pending Appeal before NCLAT?

(VIII) Whether the decision taken by the CoC in its 22nd Meeting regarding distribution of the amount under the Resolution Plan as submitted by the SRA is in accordance with law?

Question No.(I)

16. The RP as well as Adjudicating Authority have found the Tropical to be 'related party' to the CD within the meaning of Section 5(24) of the IBC. The Tropical had filed I.A.(IB)No.84/KB/2022 challenging the decision of the RP, holding the Tropical as 'related party'. Prayers made in I.A.(IB)No.84/KB/2022 have been quoted in Paragraph-3 of the impugned order dated 08.01.2025, which are as follows:

> "a) To set aside the direction dated 17.11.2021 communicated by the resolution professional to the extent of the applicant being declared as a related party.
>
> b) Pass an Order declaring the applicant as not a related party.
>
> c) Pass an Order to set aside the direction issued by the resolution professional to the extent of the HSBC Guarantee being considered as an unsecured loan.
>
> d) Pass an Order declaring that the claim of the applicant basis the HSBC guarantee is not an unsecured loan.
>
> e) Pass an Order declaring that the date of conversion rate from USD to Rupees ought to be as on 06.08.2019 i.e. the commencement of CIRP of the corporate debtor."

17. The Tropical has challenged the order dated 08.01.2025 in Company Appeal (AT) (Ins.) No.662 of 2025 and has raised various contentions to support its submission that Tropical is not the 'related party' to the CD as has been noted above.

18. The Tropical before the Adjudicating Authority has submitted a chart depicting the respective shareholding of the Tropical, Leader Berhad, CD and other Companies and Naresh Asrani, the beneficial owner. The Adjudicating Authority in Paragraph-16 of the impugned order has noted the submissions of the Tropical as well as chart relied by the Applicant itself. The above chart indicates that Tropical (the Appellant herein) holds 63% shareholding of Leader Berhad, who in turn holds 51.2% shareholding in the CD. The Adjudicating Authority by the impugned order has held the Appellant as 'related party' relying on Section 5(24)(i) and 5(24)(l). The Adjudicating Authority has further observed that the Appellant is neither a Holding Company nor a subsidiary of the CD. However, the Adjudicating Authority has held that the Appellant exercises control over the CD and has

more than 20% voting power directly. In Paragraph-44 of the impugned order, following has been held:

> "44. Therefore, we are of the view that the corporate debtor will have to be treated as "related party" as it is an "associate company" in terms of Section 5(24)(i) as Applicant is in a position to de facto control the corporate debtor, indirectly and also covered by Section 5(24)(1) of the Code as the Applicant is in a position to control the company's board thru its direct shareholding of 63% shareholding in Leader Universal which in turn owns 52% shareholding in corporate debtor. In any event all the Companies are owned or controlled by single person Mr. Naresh Lakshmi Chand Asrani who can decide on the board of any company, mentioned in the chart above and thus Tropical's board, the LUH's board and ultimately the board of the corporate debtor."

19. For considering the issue as to whether the Appellant is 'related party' of the CD, we need to notice relevant provisions of the IBC and the provisions of the Companies Act, 2013. Section 5(24) defines 'related party'. We may take note of Section 5(24)(i) and 5(24)(l), which are as follows:

> "**5(24)(i)** a body corporate which is a holding, subsidiary or an associate company of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary;
>
> **(l)** any person who can control the composition of the board of directors or corresponding governing body of the corporate debtor;"

20. The expression 'holding company' and 'subsidiary company' or an 'associate company' has not been defined in the IBC. However, by virtue of Section 3 sub-section (37) of the IBC, words and expressions used, but not defined in the Code but defined in the Companies Act, 2013 shall have the meanings respectively assigned to them. We need to notice the provisions of the Companies Act defining the 'associate company', 'holding company' and 'subsidiary company'. Section 2 sub-section (6) of the Companies Act, 2013 defines 'associate company' to the following effect:

> "**2(6)** "associate company", in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company."

21. Section 2(46) defines 'holding company' and Section 2(87) defines 'subsidiary company', which are as follows:

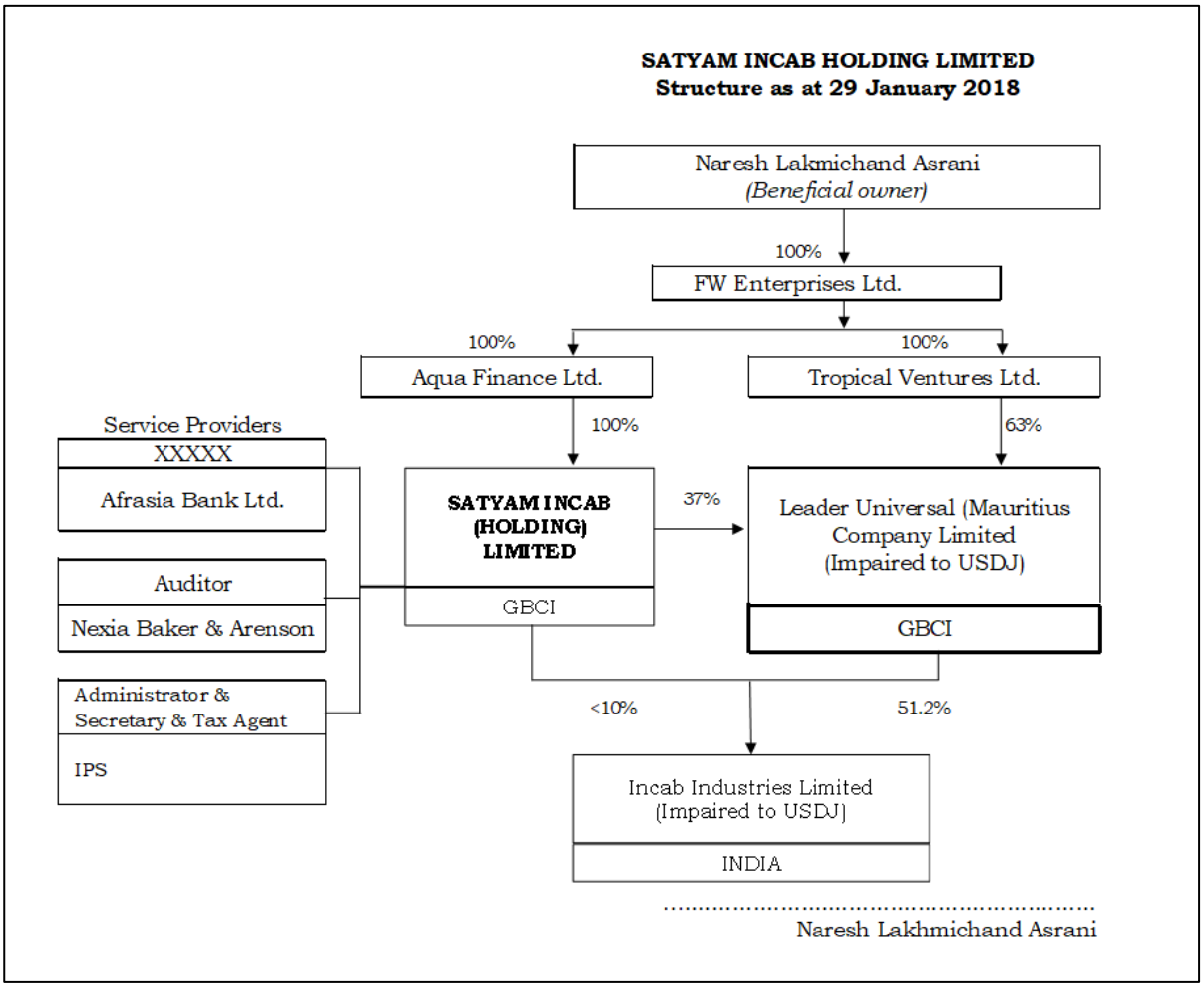
> "**2(46)** "holding company", in relation to one or more other companies, means a company of which such companies are subsidiary companies;"
>
> **2(87)** "subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company—
>
> (i) controls the composition of the Board of Directors; or
>
> (ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:
>
> Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed."

22. As per Section 2(87), 'subsidiary' in relation to a holding company means a company, which exercises or controls more than one-half of the total voting power, either through its own or together with one or more of its subsidiary company and further explanation of Section 2(87) provides as follows:

> "Explanation.—For the purposes of this clause,—
>
> (a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
>
> (b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
>
> (c) the expression "company" includes any body corporate;
>
> (d) "layer" in relation to a holding company means its subsidiary or subsidiaries;"

23. Learned Counsel for the Appellant has contended that the Tropical does not have any shareholding in CD, hence, the CD cannot be said to be subsidiary of the Appellant. When we look into the chart as quoted in Paragraph-16 of the judgment of the Adjudicating Authority, the Appellant has 63% shareholding in Leader Universal (Mauritius). Paragraph 16 of the impugned order (in Company Appeal (AT) (Ins.) No.662 of 2025) including the chart therein is as follows:

> "16. Ld. Counsel relied on a chart which explains the holdings of various companies in relation to the corporate debtor. For the sake of convenience, the chart has been extracted and reproduced as under:



24. Thus, Leader Universal (Mauritius) is subsidiary company of the Appellant. Leader Universal (Mauritius) in turn has 51.2% shareholding in the CD. The Tropical, which is holding company of Leader Universal (Mauritius), which has 51.2% shareholding in the CD, Leader Universal (Mauritius) being subsidiary of the Appellant, hence, the Appellant, has control over the CD by another subsidiary of the Appellant, i.e. Leader Universal (Mauritius), which is clearly covered by the definition of 'subsidiary company' as defined in Section 2(87) of the Companies Act.

25. Learned Counsel for the Appellant sought to contend that the Adjudicating Authority in the impugned order has observed that CD is neither the 'holding company' nor 'subsidiary company' of the Appellant, which findings have not been challenged by filing an Appeal. Whether the Appellant is 'related party' of the CD is a question, which fell for consideration before the Adjudicating Authority and Adjudicating Authority by the impugned order having held that the Appellant is 'related party' of the CD, it was not necessary for RP or any other party to file an Appeal only against such observations and findings. The Respondents are fully entitled to defend the order of the Adjudicating Authority declaring the Appellant as related party to the CD by making submissions to support the impugned order.

26. Explanation (a) of Section 2(87) of the Companies Act, makes it clear that a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is

of another subsidiary company of the holding company. Tropical having 63% voting share in Leader Universal (Mauritius), which is, thus, clearly subsidiary of the Tropical, which has control over the CD. Thus, the Appellant is 'related party' to the CD and the CD being subsidiary within the meaning of Section 2(87) of the Companies Act, 2017.

27. Learned Counsel for the Respondent submitted that the CD is a step-down subsidiary of the Appellant, which is a holding company. It is true that holding company does not have shareholding directly in the CD, but controls the CD by a subsidiary of the Appellant, i.e. Leader Universal (Mauritius). Thus, no error can be found in the order of the Adjudicating Authority holding the Appellant as 'related party' to the CD. Furthermore, from the chart as quoted in Paragraph-16 of the impugned order, it is clear that Naresh Asrani, who is beneficial owner, has control over all the companies.

28. Learned Counsel for the Appellant contended that the CD was in the BIFR from 04.04.2000 till 01.12.2016, hence, it cannot be said that CD was under the control of Naresh Asrani. The CIRP in the present case had commenced on 07.08.2019. For the purpose of deciding the 'related party', the control on the CD before the commencement of the CIRP is relevant and the fact that the CD was in BIFR till 01.12.2016, has no relevance in finding out the 'related party' status on commencement of the CIRP. Shareholding of the Appellant, CD, Leader Berhad and other companies is reflected in chart as noted in Paragraph-16, is an admitted position, which is prior to

initiation of CIRP. Hence, the said shareholding and control is relevant to determine and the submission of the Appellant that CD was in BIFR till 01.12.2016 has no relevance.

29. We also do not find any error in the order of the Adjudicating Authority holding the Appellant 'related party' of the CD, relying on Section 5(24)(l). We, thus, are of the view that the order passed by the Adjudicating Authority dated 08.01.2025 holding the Appellant as 'related party' of the CD cannot be faulted and Question No.(I) is answered in following manner:

The Appellant – Tropical is 'related party' to the CD within the meaning of Section 5(24) of the IBC.

Question No.(II)

30. The Appellant has also questioned the rejection of the claim of Tropical with respect to HSBC overdraft facility of US$ 3.75 million against the Hold Cover Guarantee, which was furnished by Leader Cable Industry Berhad, a wholly owned subsidiary of Leader Berhad and not by Leader Berhad itself. Actual payment to HSBC of US$ 3.75 million on 12.09.2000 was made by Leader Cable Industry Berhad and not by Leader Berhad. No formal Guarantee Agreement was either executed between the HSBC, Leader Berhad and the CD. Leader Berhad at no point was the guarantor or payee, in respect of the HSBC facility. By order dated 08.01.2025, the Adjudicating Authority has already upheld the decision of the RP not admitting the claim with respect to HSBC debt as secured creditor. The RP subsequent to the direction dated 08.01.2025 of the Adjudicating Authority, has rejected the

claim filed by the Appellant with regard to HSBC debt as secured debt. We find sufficient reasons have been given in Paragraph-48 of the impugned order for not accepting the claim of the Appellant with regard to HSBC debt. Leader Berhad having not extended any guarantee with regard to HSBC, it could not have assigned any such debt to the Tropical. We, thus, answer Question No.(II) in following manner:

Decision of the RP to reject the claim of the Appellant – Tropical with respect to HSBC debt as not secured debt, has rightly been sustained.

Question No.(III)

31. The question to be considered is as to whether Tropical Ventures Company Ltd. is secured creditor of the Corporate Debtor-Incab Industries Ltd.

32. From the facts as noted above, the Corporate Debtor has availed credit facility from the ICICI Bank, City Bank and HSBC. A Malaysian Company, namely, Leader Universal Holdings Berhad was inducted by the Lenders of the Corporate Debtor as promoter of the Corporate Debtor. A Deed of Guarantee was executed by Leader Berhad in favour of City Bank dated 03.03.1997 and in favour of ICICI Bank on 26.02.1999. There was a Hold Cover Guarantee also in favour of HSBC which we have already dealt in proceedings paragraph of this judgment. The Lenders have invoked the guarantee in pursuance of which invocation Leader Berhad made the payments to the Lenders in the year 2000-2001 as noted above. The

Corporate Debtor had registered charge in favour of Lenders with the Registrar of Companies in the year 1998-1999. Thus, security interest was created over the assets worth charge assets in favour of Lenders. Leader Berhad the Assignor had executed an assignment deed dated 08.03.2007 in favour of Tropical for a consideration of USD 1 on as is where is basis. On the strength of an assignment, Tropical has filed claim before the IRP. RP had admitted the claim as secured creditor. Acceptance of claim of Tropical by RP was challenged by Pegasus Asset Reconstruction Ltd. by filing I.A No. 1511 of 2025. In I.A No. 1511 of 2025, Pegasus who is a secured creditor of the Corporate Debtor had questioned the admission of claim of Tropical. In the application, Pegasus has also pleaded that Tropical is not a secured creditor of the Corporate Debtor, no security interest was created in favour of Tropical nor assignment deed dated 08.03.2007 shall create any security interest in favour of Tropical. Copy of I.A No. 1511 of 2025 is part of CA (AT) (Ins) No. 16 of 2026. It is useful to notice the pleadings in the said application where challenge is made to the acceptance of the claim of Tropical as a secured creditor. The relevant pleadings are mentioned in paras 19, 20 and 21 of the application which are reproduced below:-

> "19. It is further submitted that the Deeds of Guarantees in the present case were supposedly executed on 03.03.1997 (in favour of Citibank) on 12.09.1997 (in favour of HSBC) and on 26.02.1999 (in favour of ICICI). It is further stated that the Corporate Debtor registered various charges and modification of charges in favour of ICICI, HSBC and Citibank in or about 1998. At the time when the Deeds of Guarantees were purportedly executed, the applicable law governing foreign transactions was the Foreign Exchange Regulation

Act, 1973 (FERA). Section 31 of FERA contains express restrictions on acquisition of an immoveable property by a foreign company by way of a mortgage or otherwise, except with the previous permission of the Reserve Bank of India. A copy of Section 31 of FERA is attached herewith and marked as Annexure 'C'.

20. It is important to note that the Respondent No. 1 has deliberately overlooked the said provision and has instead upheld the contention of the Respondent No. 2 that it is a secured creditor, without calling upon them to furnish a copy of the previous permission, if any obtained by them or its predecessor from the Reserve Bank of India. The Respondent No. 1 has by his action, displayed complete dis-regard for the extant laws.

21. It appears that upon the invocation of the guarantees by the lenders, the alleged Assignor made payments under the said guarantees to the respective lenders between April 2000 and June 2001. The Respondent No. 1 has failed to examine whether at the time when the alleged Assignor paid the amounts under the guarantees, it could have stepped into the shoes of the original lenders and acquired rights to the securities under subrogation under the Contract Act by completely ignoring the provisions of the special statute governing foreign exchange at that relevant time.

i. Foreign Exchange Management Act, 1999 (FEMA) replaced FERA. It came into force on 1st June 2000.

ii. The Resolution Professional ought to have appreciated that as stated above, Leader Berhad would have had to obtain prior permission from the Reserve Bank of India if it were to acquire the immovable property of the Corporate Debtor via mortgage under FERA. No such approval has been furnished. On the contrary, in the expert opinion furnished by the Respondent No. 2 to substantiate its claim, the expert has merely contended that upon payment of monies to the lenders, "Leader Berhad, the alleged Assignor stepped into the shoes of the creditors".

iii. In so far as payments made by the alleged Assignor to the lenders of the Corporate Debtor post 1st June 2000 (i.e. when FEMA came

into force), the following provisions ought to have been considered by the Respondent No. 1, which he has failed to do so:-

(a) Notification No. FEMA 29/RB-2000 dated 26.09.2000 ("FEMA 29 RB"), expressly stipulates that "(2A) a person resident in India being the principal debtor, to make payment to a person resident outside India being a guarantor, such payment being by way of reimbursement of the payment made to the resident creditor by the non-resident guarantor under the guarantee furnished by him on behalf of the principal debtor; Provided that the amount payable by way of reimbursement by the resident principal debtor shall not exceed the rupee equivalent of the amount paid by the non-resident guarantor under the guarantee". It is submitted that the aforesaid provision is relevant in the present case by reason that some of the payments were made by the alleged Assignor after FEMA came into force. It is submitted that FEMA sets a statutory ceiling on reimbursement, limiting it strictly to the amount discharged on a guarantee. The Respondent No. 1 has failed to address or apply these binding directions, despite their direct relevance, thereby showing a gross oversight and legal misdirection in the said Affidavit. It may be noted that the Respondent No. 2 has claimed an additional ₹1,531 Crores by way of interest, in excess of the actual amount paid by the alleged Assignor (the predecessor of TVCL). Such a claim is not permissible in law, and the Respondent No. 1, by admitting such a claim has acted in complete disregard for the legal provisions. A copy of FEMA 29 RB is attached herewith as Annexure D.

(b) RBI Circular No. 28 dated 30th March 2001, which reads as follows clarifies. "Authorised dealers are aware that borrowing and lending of Indian rupees between two residents does not attract any provisions of the Foreign Exchange Management Act, 1999. In cases where a rupee loan is granted against the guarantee provided by a non-resident, there is no transaction involving foreign exchange until the guarantee is invoked and the non-resident guarantor is required to meet the liability under the guarantee.....". As is evident from the foregoing, the relevant time to be considered is the time when the guarantee is invoked and payments are discharged under such

guarantee. The Respondent No. 1 has without application of mind accepted the submissions by Respondent No. 2 that the time of issuance of a guarantee should be considered and not the time of invocation. A copy of the said Circular dated 30th March 2001 is attached herewith as Annexure E.

It is further submitted that admitting Respondent No. 2 as a secured creditor is also violative of the FERA and FEMA provisions interalia for the following reasons:-

(a) The Respondent No. 1 ought to have appreciated that creation of a security in favour of a foreign company, under the construct of the FERA and FEMA provisions require prior approval of the RBI. In this regard, one may refer to the provisions concerning creation of security interests in the case of an External Commercial Borrowing (ECB), wherein the provisions expressly state that approval of the Reserve Bank in mandatory for creating a security interest. The Applicant craves leave to refer to any rely upon the ECB related provisions for reference, when produced. It is submitted that having regard to the foregoing, the Respondent No. 1 erred in accepting the submission of Respondent No. 2 that it should be treated as a secured creditor. It is submitted that no security could have been created in favour of Respondent No. 2 or its predecessor, the alleged Assignor, without the prior permission of the Reserve Bank of India. As stated hereinabove, the Respondent No. 1 has, without application of mind, accepted the submission of Respondent No. 2 that upon discharge of liability by the alleged Assignor, it had stepped into the shoes of the original secured lenders.

(b) The Respondent No. 1 ought to have appreciated that under the Deed of Assignment, there is no reference to alleged Assignor having transferred any underlying security to the Respondent No. 2. By ignoring the same, the Respondent No. 1 is jeopardising the rights of the actual and legitimate secured creditors of the Corporate Debtor."

33. The claim of Pegasus has been refuted by Tropical claiming that by virtue of an assignment deed dated 08.03.2007 all rights of Lenders stood assigned and subrogated to Tropical by virtue of Section 140 of the Indian Contract Act, 1872. It is submitted that Lenders had security interest which security interest also stood transferred to Tropical, hence, RP has rightly accepted the claim of Tropical as a secured creditor. Ld. Counsel for Tropical has relied on Section 31 of the Foreign Exchange Regulation Act, 1973. Section 31 of the Foreign Exchange Regulation Act, 1973 provides as follows:-

> " Section 31 in The Foreign Exchange Regulation Act, 1973
>
> 31. Restriction on acquisition, holding, etc., of immovable property in India .-(1) No person who is not a citizen of India and no company (other than a banking company) which is not incorporated under any law in force in India [* * *] shall, except with the previous general or special permission of the Reserve Bank, acquire or hold or transfer or dispose of by sale, mortgage, lease, gift, settlement or otherwise any immovable property situate in India:
>
> Provided that nothing in this sub-section shall apply to the acquisition or transfer of any such immovable property by way of lease for a period not exceeding five years.
>
> (2)Any person or company referred to in sub-section (1) and requiring a special permission under that sub-section for acquiring, or holding, or transferring, or disposing of, by sale, mortgage, lease, gift, settlement or otherwise any immovable property situate in India may make an application to the Reserve Bank in such form and containing such particulars as may be specified by the Reserve Bank.
>
> (3)On receipt of an application under sub-section (2), the Reserve Bank may, after making such inquiry as it deems fit, either grant or refuse to grant the permission applied for:

> Provided that no permission shall be refused unless the applicant has been given a reasonable opportunity for making a representation in the matter:
>
> Provided further that if before the expiry of a period of ninety days from the date on which the application was received by the Reserve Bank, the Reserve Bank does not communicate to the applicant that the permission applied for has been refused, it shall be presumed that the Reserve Bank has granted such permission.
>
> Explanation .-In computing the period of ninety days for the purposes of the second proviso, the period, if any, taken by the Reserve Bank for giving an opportunity to the applicant for making a representation under the first proviso shall be excluded.
>
> (4)Every person and company referred to in sub-section (1) holding at the commencement of this Act any immovable property situate in India shall, before the expiry of a period of ninety days from such commencement or such further period as the Reserve Bank may allow in this behalf, make a declaration in such form as may be specified by the Reserve Bank regarding the immovable property or properties held by such person or company."

34. When we look into Section 31(1) it prohibits a non-citizen of India or a company which is not incorporated under any law in force in India to acquire or hold or transfer or dispose of by sale, mortgage, lease, gift, settlement or otherwise any immovable property situated in India and has to obtain special permission from the Reserve Bank of India. The law thus prohibits a company registered or incorporated outside in India to acquire any right interest in immovable property situated in India, permission of RBI is mandatory. In the present case, security interest in the assets of the CD was created by CD in favour of Lenders who were Banking Companies situated in India. Leader Berhad is a Malaysian Company who had given

guarantee in favour of Indian Lenders and after invocation of guarantee made payment to the Indian Lenders in the year 2000-2001 and thereafter has assigned a debt in favour of Tropical on 08.03.2007. The security interest created in the assets of the CD in favour of Indian Lenders cannot automatically transferred to non-Indian Company for which acquisition of security interest permission of the RBI is mandated under Section 31 of the Foreign Exchange Regulation Act, 1973. When security interest in favour of Leader Berhad could not have been acquired without RBI permission, Leader Berhad could not have assigned the security interest in favour of Tropical by assignment deed dated 08.03.2007. Section 140 of the Contract Act on which reliance has been placed by Ld. Counsel for Tropical is subject to the restriction under Section 31 of the Foreign Exchange Regulation Act, 1973. The Adjudicating Authority in the impugned order although have noted the provisions of Foreign Exchange Regulation Act, 1973 but has not appropriately dealt with restriction under Section 31 of the Foreign Exchange Regulation Act, 1973.

35. We are of the view that Leader Berhad could not have acquired security interest by invocation of guarantee without obtaining permission from the RBI. In the present case, Ld. Counsel for Tropical has not claimed any permission from the RBI either in favour of Leader Berhad or in favour of Tropical. The assignment agreement dated 08.03.2007 as noted above, does not contain statement that security interest is transferred in favor of Assignee by Assignor. In the present case, Assignor itself had no security interest nor at any time security interest were registered in the name of

Assignor or Tropical with the Registrar of Companies. Security interest registered with the Registrar of Companies were in favour of Indian Lenders and by virtue of provisions of Foreign Exchange Regulation Act, 1973 and no interest in any immovable property could be acquired without permission of RBI. Ld. Counsel for Pegasus has also relied on the judgment of this Tribunal in ***K.V Jayaprakash Vs. State Bank of India & Anr., CA (AT) (Ins) No. 362 of 2022*** decided on 30.09.2022 while considering security interest this Tribunal has held that secured creditor is one in whose favour security interest is created. In the above case, no security interest was created by the CD in favour of Appellant of that case, hence, it was held that the Appellant could not be treated as secured creditor. From paras 67 to 70 following was laid down:-

> "67. Section 140 of the Indian Contract Act deals with rights of surety on payment or performance. Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.
>
> 68. A guarantor will get invested with all the rights which the creditor had only "upon payment or performance of all that he is liable for". A guarantor is liable for any payment or performance of any obligation only to the extent the principal debtor has defaulted (vide C.K.Aboobacker v K.P.Ayishu13). In any view of the matter, in view of Section 140 of the Indian Contract Act, the appellant herein, on payment of debt due under the guranteed debt, is entitled to recover the same as if he is a creditor. Taking advantage of Section 140 of the Indian Contract Act, Smt. Menaka Gyuruswamy, learned Senior Counsel contended that, in case the entire assets of the corporate debtor are liquidated and the amount realised on sale of assets of

debtor shall be distributed among the creditors of different kinds, the appellant will be denuded to realise the debt. Therefore, he shall be included in the list of secured creditors, but this was not specifically urged in the petition before the Tribunal.

69. In view of the specific contention raised for the first time before the Tribunal, it is apposite to advert to the definition of corporate guarantor and secured creditor and security interest, as defined under the I.B.C.

"Section 5 (5A) "corporate guarantor" means a corporate person who is the surety in a contract of guarantee to a corporate debtor;

Section 3(30) 'secured creditor, means a Creditor in favour of whom security interest is credited.

Section 3 (31) "security interest" means right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person: Provided that security interest shall not include a performance guarantee"

70. On conjoint reading of the words 'corporate guarantor', 'security interest' and secured creditor to claim that he is a secured guarantor as defined under Section 3(30), he must satisfy that he has got security interest as defined under Section 3 (31) of I.B.C. The word 'secured creditor' is also defined under Section 3(30) of I.B.C, which means a creditor in favour of whom security interest is created. Here, no security interest, as defined under Section 3(31) was created by the corporate debtor, in any of the specified modes, thereby he cannot claim to be a secured creditor to include him as secured creditor in the creditors list to pay his share of amount."

36. Learned. Counsel for Pegasus has also relied on judgment of Hon'ble Supreme Court in Amrit Lal Goverdhan Lalan Vs. State Bank of Travancore

& Ors., 1968 SCC OnLine SC 246 where the Hon'ble Supreme Court has occasion to deal with Section 140 and 141 of the Indian Contract Act, 1872. Following was laid down in the above judgment:-

> "In this connection it is necessary to consider the provisions of s. 140 of the Indian Contract Act, 1872 which states
>
> "Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for is invested with all the rights which the creditor had against the principal debtor(s)."
>
> This section embodies the general rule of equity expounded by Sir Samuel Romilly as counsel and accepted by the Court of Chancery in Craythorne v. Swinburne, namely :
>
> "The surety will be entitled to every remedy which the creditor has against the principal debtor; to enforce every security and all means of payment; to stand in the place of the creditor; not only through the medium of contract, but even by means of securities entered into without the knowledge of the surety; having a right to have those securities transferred to him, though there was no stipulation for that; and to avail himself of all those securities against the debtor. This right of a surety also stands, not upon contract, but upon a principle of natural justice."
>
> The language of the section which employs the words "is invested with all the rights which the creditor had against the principal debtor" makes it plain that even without the necessity of a transfer, the law vests those rights in the surety. Section 141 of the Indian Contract Act, 1872 states
>
> "A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and, if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security."

As pointed out by this Court in State of Madhya Pradesh v. Kaluram, the expression "security" in this section is not used in any technical sense; it includes all rights which the creditor has against the property at the date of the contract. The surety is entitled on payment of the debt or performance of all that he is liable for to the benefit of the rights of the creditor against the principal debtor which arise out of the transaction which gives rise to the right or liability. The surety is therefore on payment of the amount due by the principal debtor entitled to be put in the same positionin which the creditor stood in relation to the principal debtor. If the creditor has lost or parted with the security without the consent of the surely, the latter is by the express provision contained in s., 141, discharged to the extent of the value of the security lost or parted with. In Wulff and Billing v. Jay Hannen, J. stated the law as follows :

…….I take it to be established that the defendant became surety upon the faith of there being some real and substantial security pledged, as well as his own credit, to the plaintiff; and he was entitled, therefore, to the benefit of that real and substantial security in the event of his being called on to fulfil his duty as a surety, and to pay the debt for which he had so become surety. He will, however, be discharged from his liability as surety if the creditors have put it out of their power to hand over to the surety the means of recouping, himself by the security given by the principal. That doctrine is very clearly expressed in the notes in Rees v. Barrington-2 White & Tudor's L.C., 4th Edn. at pg. 1002- As a surety, on payment of the debt, is entitled to all the securities of the creditor, whether he is aware of their existence or not, even though they were given after the contract of suretyship, if the creditor who has had, or ought to have had, them in his full possession or power, loses them or permits them to get into the possession of the debtor, or does not make them effectual by giving proper notice, the surety to the extent of such security will be discharged. A surety, moreover, will be released if the creditor, by reason of what he has done, cannot, on payment by the surety, give him the securities in exactly the same condition as they formerly stood in his hands.' "

> It is true that S. 141 of the Indian Contract Act has limited the surety's right to securities held by the creditor at the date of his. becoming surety and has modified the English rule that the surety is entitled to the securities given to the creditor both before and after the contract of surety. But subject to this variation, s. 141 of the Indian Contract Act incorporates the rule of English law relating to the discharge from liability of a surety when the creditor parts with or loses the security held by him. Upon the evidence adduced by the parties in this case we are satisfied that there was shortage of goods of the value of Rs. 35,690 brought about by the negligence of the Bank or for some other reason and to that extent there must be deemed to be a loss by the Bank of the securities which the Bank had at the time when the contract of surety was entered into. It follows therefore that the principle of s. 141 of the Indian Contract Act applies to this case and the surety is discharged of the liability to the Bank to the extent of Rs. 35,690. We accordingly hold that the respondent Bank is entitled to a decree against respondent 6, the appellant only to the extent of Rs. 5,243-58 and not to the sum of Rs. 40,933-58 and to proportionate costs."

37. The present is the case where security interest was created by the Corporate Debtor in favour of Indian Landers. Guarantee was given by Leader Berhad which was invoked by Leader Berhad a Malaysian Company. Charge was registered by the CD in favour of Indian Lenders with Registrar of Companies which charge was never modified or registered in favour of Leader Berhad insofar as immovable property of CD is concerned. The security cannot be treated to have been transferred in favour of Leader Berhad or in favour of Tropical the Assignee of Leader Berhad. Thus, the security stood discharged and no security interest thus can subsist in favour of Leader Berhad or Tropical.

38. We however make it clear that the requirement of obtaining permission from the RBI under Section 31 is with respect to only immovable property. Thus, the security interest in immovable property of the CD shall not be created in favour of either Leader Berhad or Tropical. Hence to the extent of immovable properties of the Corporate Debtor, Tropical cannot claim secured creditor and the decision of the RP treating the Tropical as a secured creditor to the extent of immovable property cannot be sustained. We thus hold that Tropical cannot be held to be a secured creditor with respect to immovable properties of the CD and the decision of the RP to that extent is unsustainable. We answer Question No.(III) in following manner:

> **Tropical cannot be held to be a secured creditor of the Corporate Debtor with respect to immovable properties of the Corporate Debtor in the facts and circumstances of the present case.**

Question Nos.(IV), (V) and (VI)

39. Prior to filing of IA 1511/KB/2025, the Appellant – Pegasus has filed IA 140/2022 challenging the decision of the RP, admitting the claim of Tropical. Following prayers were made by the Pegasus in IA 140/2022:

> "a) Pass an Order quashing and setting aside the decision of the Respondent No. 1 whereby he has incorrectly admitted the claim of the Respondent No. 2;
>
> (b) Pass an Order rejecting the claim of the Respondent No. 2 against the Corporate Debtor;
>
> (c) Pass such further and other Orders and directions as the nature and circumstances of the case may require and as this Hon'ble Tribunal may deem fit and proper."

40. The Adjudicating Authority decided IA 140/2022 by the order dated 08.01.2025 and issued directions to the RP to verify the claim of Tropical. In Paragraph-69, following directions were issued to RP:

> "69. The Resolution Professional is directed to:
>
> a) Verify the claim with the original assignment deed duly registered and executed.
>
> b) Whether the respondent No. 2 can be treated as secured financial creditor by verifying the RBI's permission, if any, granted to Leader Universal Holding, when they became guarantor for the loans advanced to corporate debtors by various lenders against charge of assets of the corporate debtor.
>
> c) RP is also directed to see whether the admission of claim and the allocation made to the respondent No. 2 is in compliance with the notification issued under FEMA 29/RB/20000 dated September 26, 2000.
>
> d) Whether the claim made by Tropical Ventures is time barred as the documents attached hereunder indicates that the respondent no. 2 Tropical has written all the banks in 2007 as well as in 2021, asking for NoC to formally register their claim or change with the concerned."

41. In pursuance of the directions dated 08.01.2025, the RP verified the claim of Tropical and admitted the claim to the extent of Rs.19,90,63,12,342/-, which included principal amount paid by Leader Berhad. There is no dispute between the parties that in the year 2000-2001, Leader Berhad had made payments to the Lenders of the CD on account of invocation of guarantees by the Lenders of the CD. The Adjudicating Authority in its order dated 08.01.2025 in

I.A.(IB)No.84/KB/2022 has noted the payments made by Leader Berhad, directly or indirectly to the Citibank, ICICI Bank and HSBC. Paragraph-9 of the order is as follows:

> "9. The corporate debtor was not able to pay outstanding amounts and consequently ICICI, HSBC and Citibank invoked the Guarantee Deeds and Leader Berhad, directly and/or indirectly through its sister company, made the following payments and honoured all the guarantees pursuant to such invocation by the lenders:

Sl. No.	Guarantee Deed	Amount	Payment date
1.	ICICI Guarantee (paid by Leader Berhad)	INR 1,00,00,000/-	30th April 2001
2.	ICICI Guarantee (paid by Leader Berhad)	INR 7,30,00,000/-	30th June, 2001
3.	HSBC Guarantee (paid by LCIB)	USD 3,960,000/-	12th September, 2000
4.	Citibank Guarantee (paid by Leader Berhad)	INR 43,53,00,000/-	20th April 2000
5.	Citibank Guarantee (paid by Leader Berhad)	INR 33,96,26,944.80	12th May 2000"

42. As noted above, the claim pertaining to HSBC was not admitted and the total payments made by Leader Berhad to Citibank and ICICI Bank, which comes to Rs.85,79,26,944/- were admitted as secured debt, which was the total amount paid by the Leader Berhad to the Lenders of the CD, after invocation of the guarantees. The Citibank and ICIC Bank had also confirmed receipt of the aforesaid amount, to which there is no dispute. Leader Berhad had executed a Deed of Assignment in favour of the Tropical on 08.03.2007. The Assignment was made by the Leader Berhad in favour of Tropical, which is a 'related party' to the CD, which assignment was for

consideration of US$ 1. The Assignment Deed mentions about the payments made by Assignor to the Lenders of the CD. It is useful to notice Paragraphs 4, 5, and 6 of the Assignment Deed, which are as follows:

> "4. The Creditors had provided banking and credit facilities to Incab. The Assignor and its subsidiaries had in turn guaranteed Incab's repayment of the said facilities to the Creditors. (hereinafter referred to as "the Assignor's Guarantees")
>
> 5. Due to adverse business conditions, Incab suffered huge financial losses in 1997-1999. Pursuant thereto, the Assignor's Guarantees were enforced by the Creditors and pursuant to the said enforcement, the Assignor has paid the following amounts to the Creditors:-

	Bank	Amount	Payment date
(5.1)	CitiBank	INR 435,300,000/-	20 April 2000
(5.2)	CitiBank	INR 339,626,944.80	12 May 2000
(5.3)	HSBC	USD 3,750,000/-	12 September, 2000
(5.4)	ICICI	INR 10,000,000/-	30 April 2001
(5.5)	ICICI	INR 73,000,000/-	30 June, 2001

> 6. Pursuant to the aforesaid, the Assignor has à claim against Incab and Incab is indebted to the Assignor for the amounts paid by the Assignor to the Creditors (this claim is hereinafter called "the Debt")"

43. The above indicates that Assignor has claim against the CD and the CD is indebted to the Assignor for the amount paid by the Assignor to the creditors, which was referred to as 'the debt'. Paragraph-3 of the Deed of Assignment is as follows:

> "**3. Other Covenants**
>
> (a) The Assignee acknowledges that it is purchasing the Debt on an as is where is basis without recourse to the Assignor of any

nature on any account whatsoever and undertakes not to hold the Assignor responsible or liable in case any irregularity is noticed subsequent to the execution of this Deed.

(b) The Assignor hereby agrees that in the event the Assignor receives, subsequent to the date of the execution of this Deed, any amounts whatsoever against the Debt, in full satisfaction or any part thereof which is payable by Incab, the Assignor shall forthwith transfer amounts to the Assignee.

44. The above Deed of Assignment indicates that assignment was made in favour of Tropical for the debt, which was discharged by Leader Berhad to the Lenders of the CD. It is also relevant to notice that the Leader Universal (Hong Kong) Ltd., which is a subsidiary of Leader Universal Holdings Berhad holds 63% in Leader Universal (Mauritius) Company Ltd. and Leader Universal (Mauritius) Company Ltd. held 51.2% paid-up capital share of CD.

45. One of the submissions, which has been raised by learned Counsel for the Pegasus is that Assignment Deed 08.03.2007 is simple assignment of debt, which was discharged by Leader Berhad and by the said Assignment Deed, no subrogation of rights of Lenders were made in favour of Tropical.

46. Learned Counsel for the parties have referred to and relied on judgment of the Hon'ble Supreme Court in ***Economic Transport Organization, Delhi vs. Charan Spinning Mills Pvt. Ltd. & Anr. – (2010) 4 SCC 114***. The Hon'ble Supreme Court in the above case was considering the concept of subrogation in reference to insurer, when it discharges the claim of insurer. In Paragraph-28, three kinds of

subrogations have been classified. Paragraphs 28.1, 28.2 and 28.3, which defines three broad categories of subrogations are as follows:

> "**28.1.** In the first category, the subrogation is not evidenced by any document, but is based on the insurance policy and the receipt issued by the assured acknowledging the full settlement of the claim relating to the loss. Where the insurer has reimbursed the entire loss incurred by the assured, it can sue in the name of the assured for the amount paid by it to the assured. But where the insurer has reimbursed only a part of the loss, in settling the insurance claim, the insurer has to wait for the assured to sue and recover compensation from the wrongdoer; and when the assured recovers compensation, the assured is entitled to first appropriate the same towards the balance of his loss (which was not received from the insurer) so that he gets full reimbursement of his loss and the costs, if any, incurred by him for such recovery. The insurer will be entitled only to whatever balance remaining, for reimbursement of what it paid to the assured.
>
> **28.2.** In the second category, the subrogation is evidenced by an instrument. To avoid any dispute about the right to claim reimbursement, or to settle the priority of inter se claims or to confirm the quantum of reimbursement in pursuance of the subrogation, and to ensure cooperation by the assured in suing the wrongdoer, the insurer usually obtains a letter of subrogation in writing, specifying its rights vis-à-vis the assured. The letter of subrogation is a contractual arrangement which crystallises the rights of the insurer vis-à-vis the assignee. On execution of a letter of subrogation, the insurer becomes entitled to recover in terms of it, a sum not exceeding what was paid by it under the contract of insurance by suing in the name of the assured. Even where the insurer had settled only a part of the loss incurred by the assured, on recovery of the claim from the wrongdoer, the insurer may, if the letter of subrogation so authorises, first appropriate what it had paid to the assured and pay only the balance, if any, to the assured.

> **28.3.** The third category is where the assured executes a letter of subrogation-cum-assignment enabling the insurer retain the entire amount recovered (even if it is more than what was paid to the assured) and giving an option to sue in the name of the assured or to sue in its own name."

47. The principles relating to subrogation have been summarized in Paragraph-35, which is as follows:

> "**35.** The principles relating to subrogation can therefore be summarised thus:
>
> (*i*) Equitable right of subrogation arises when the insurer settles the claim of the assured, for the entire loss. When there is an equitable subrogation in favour of the insurer, the insurer is allowed to stand in the shoes of the assured and enforce the rights of the assured against the wrongdoer.
>
> (*ii*) Subrogation does not terminate nor puts an end to the right of the assured to sue the wrongdoer and recover the damages for the loss. Subrogation only entitles the insurer to receive back the amount paid to the assured, in terms of the principles of subrogation.
>
> (*iii*) Where the assured executes a letter of subrogation, reducing the terms of subrogation, the rights of the insurer vis-à-vis the assured will be governed by the terms of the letter of subrogation.
>
> (*iv*) A subrogation enables the insurer to exercise the rights of the assured against third parties in the name of the assured. Consequently, any plaint, complaint or petition for recovery of compensation can be filed in the name of the assured, or by the assured represented by the insurer as subrogee-cum-attorney, or by the assured and the insurer as co-plaintiffs or co-complainants.
>
> (*v*) Where the assured executed a subrogation-cum-assignment in favour of the insurer (as contrasted from a subrogation), the assured is left with no right or interest. Consequently, the assured will no longer be entitled to sue the wrongdoer on its own account and for its own benefit. But as the instrument is a subrogation-cum-assignment, and not a mere assignment, the insurer has the choice of suing in its own name, or in the name of the assured, if the instrument so provides. The insurer becomes entitled to the entire amount recovered from the wrongdoer, that is, not only the amount that the insurer had paid to the assured, but also any amount received in excess of

> what was paid by it to the assured, if the instrument so provides."

48. The Assignment Deed as noted above assigned debt, which was discharged by Leader Berhad to the Lenders and the debt was referred to as the amount, which was paid by Assignor and for which amount it was stated that the Assignor has claim against the CD. The assignment does not indicate that it is assignment-cum-subrogation. However, for the purposes of the present case, we proceed on the premise that Deed of Assignment dated 08.03.2007 is Deed of Assignment-cum-subrogation and the Assignee can claim amount on the basis of debt, which was assigned to the Tropical by Assignee.

49. There are rival contentions of the parties with respect to one more aspect, i.e., as to whether by assignment, the Tropical became the 'secured creditor' of the CD, which has been separately dealt with.

50. IA No.1511/KB/2025 filed by the Pegasus raising various grounds and challenging the admission of the claim of the Tropical in pursuance of the order dated 08.01.2025, by which various directions were issued to the RP in order passed in IA (IB) 140 of 2022. It is pleaded by the Pegasus that RP although has filed an affidavit of compliance, but it was pleaded that RP has completely overlooked four core legal issues. In Paragraph 15(d) of the IA No.1511/KB/2025, following has been pleaded:

> "15d) The Respondent No. 1 has completely overlooked the four core legal issues which were required to be examined and opined upon before admitting the claim of the Respondent No. 2 as a secured Financial Creditor:

> (i) Whether there exists a "financial debt" as defined under Section 5(8) of IBC when there is no disbursement against the consideration for the time value of money. The payment made is discharge of the guarantor's own liability, and in the absence of any agreement between the CD and Guarantor to reimburse the Guarantor with interest, there is no financial debt as defined.
>
> ii) Whether any valid security interest could have ever been created or transferred in favour of the Respondent No. 2 under the extant laws, and
>
> (iii) Whether the Respondent No. 2 is entitled to receive any amount beyond the actual amount purportedly paid under the guarantees, in light of the restrictions under the extant laws.
>
> (iv) Effect of Foreign Exchange Management Act, 1999 which came into force with effect from 1.6.2000 i.e. before the alleged assignment."

51. Specific pleadings have been made on the basis of provisions of FEMA 1999 and the Notification dated 26.09.2000 issued by the RBI. In Paragraphs 21 and 22 of the application, detailed pleadings have been made by the Pegasus. It was specifically pleaded that interest component of Rs.1531 crores in the claim of Tropical, directly violates the proviso to Para 2A of FEMA 29/2000 dated 26.09.2000. It is useful to notice pleadings in Paragraph 22 (A) and (B), which are as follows:

> "22.A. The entire claim of Respondent No. 2 of secured status is predicated on the Assignment Deed dated 08.03.2007 executed between the alleged Assignor, being Leader Universal Berhad and the Respondent No. 2. However, the said deed merely transfers the "right, title, and interest in the debt" and is conspicuously silent as to any assignment of underlying security interests, including hypothecation rights over movable assets or mortgage rights over immovable properties situated at 9 Hare Street (Kolkata), Hadapsar (Pune), and Jamshedpur. No registered mortgage deed, hypothecation agreement, or other evidence of valid security assignment in favour of the

> Respondent No. 2 has been produced. In the absence of such documentation, no security interest can be said to have been lawfully assigned or transferred to the Respondent No. 2, The guarantees in question were issued by the alleged Assignor to Indian banks (ICICI, Citibank, and HSBC) for resident borrower between 1997 and 1999. At the time of issuance, the governing law was the Foreign Exchange Regulation Act, 1973 ("FERA"). Since both the LKATA borrower (Incab) and the guaranteeing banks were Indian residents, and there was no cross-border movement of funds at that stage, the issuance of such guarantees did not attract RBI approval under FERA and were treated as permissible resident to resident transactions. However, the legal character of the transaction changed materially in 2000 and 2001 when the alleged Assignor, a non-resident entity, discharged its liability under the guarantees by making payments to the Indian lenders. This created a foreign currency debt between the Corporate Debtor and the alleged Assignor, thereby attracting the provisions of FEMA. Under Regulation 3 of FEMA Notification No. 3/2000-RB (and its successor Notification FEMA 3(R)/2018), a resident borrower cannot accept loans or financial debts from a non-resident without prior permission of the Reserve Bank of India. Respondent No. 2 has provided no evidence of such permissions under FEMA 3/2000 or under its successor FEMA 3(R)/2018. Consequently, the resulting debt is statutorily unsecured under FEMA, which overrides any contractual subrogation claims.
>
> B. The interest component of ₹1,531 Crores in the claim of Respondent No. 2 directly violates the proviso to Para 2A of FEMA 29/2000, which caps recovery at "rupee equivalent of amount paid under guarantee "RBI Circular No. 28 (2001) reaffirms this restriction, permitting only principal reimbursement. The attempt of Respondent No. 2 to claim interest contradicts the fundamental design of FEMA 29 as an exchange-neutral settlement mechanism. The said Affidavit ignores binding RBI strictions under Notification No. FEMA 29/RB-2000 dated 26.09.2000, which explicitly limits recovery to "reimbursement of actual amounts paid under guarantee." The proviso unequivocally states: "amount payable shall not exceed rupee equivalent paid by non-resident guarantor." TVCL's claim for ₹1,531 Crores in interest violates this cap."

52. The copy of the Notification dated 26.09.2000 has been extracted by the Adjudicating Authority in Paragraph-62 of the impugned order dated 03.12.2025. It is useful to notice Paragraph-62 of the impugned order, which is as follows:

> "62. RBI Notification No. FEMA.29/RB-200 dated September 26, 2000 provides that In pursuance of the provisions of Section 3 of the Foreign Exchange Management Act, 1999 (42 of 1999), and in partial

modification of its Notification No. FEMA/16/RB-2000 dated 03rd May 2000, (hereinafter referred to as 'the said Notification'), the Reserve Bank hereby directs that the said Notification shall with immediate effect be amended as under, namely after paragraph (2) of the said Notification, the following paragraph shall be added, namely

> *"(2A) a person resident in India being the principal debtor, to make payment to a person resident outside India being a guarantor, such payment being by way of reimbursement of the payment made to the resident creditor by the non-resident guarantor under the guarantee furnished by him on behalf of the principal debtor;*
>
> *Provided that the amount payable by way of reimbursement by the resident principal debtor shall not exceed the rupee equivalent of the amount paid by the non-resident guarantor under the guarantee;*
>
> *Provided further that where the payment of the amount is made by the guarantor out of funds held in NRNR/NRO /NRSR account/s maintained with an authorised dealer in India., the amount paid by way of reimbursement shall not be remitted outside India or credited to NRE/FCNR account of the non-resident."*

53. The Adjudicating Authority in the impugned order has come to the conclusion that Notification dated 26.09.2000 is not applicable. The Adjudicating Authority has held that transaction in question does not involve reimbursement by the principal debtor to the non-resident guarantor. In Paragraphs 73 and 74 of the impugned order, following have been observed:

> "73. It is also clear from the Reserve Bank of India (RBI), Notification No. FEMA 29/2000-RB dated September 26, 2000, that by this notification, Reserve Bank of India has granted general permission to a person resident in India, being the principal debtor, to make payment, by way of reimbursement, to a person resident outside India i.e non-resident guarantor, who has discharged liability under a guarantee. It further provides that such reimbursement shall not exceed the rupee equivalent of the amount actually paid by the non-resident guarantor under the guarantee to the resident creditors.

> 74. In the instant case, this provision is not applicable. The transaction in question does not involve reimbursement by the principal debtor to the non-resident guarantor (Leader Berhad), instead, upon principal debtor's default in meeting its repayment obligations, Leader Berhad, a non-resident entity, discharged the liabilities owed to principal debtor's resident creditors, namely ICICI Bank and Citi Bank by making direct payments to them under the terms of the invoked guarantees."

54. What is the purpose and object of Notification dated 26.09.2000 and what was the purpose and object of *proviso*, which prescribed reimbursement by the resident principal debtor only to rupee equivalent of the amount paid by the non-resident guarantor under the guarantee.

55. The Foreign Exchange Management Act, 1999 was enacted to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India. One of the objectives of the enactment is to facilitate external trade and payments and FEMA Notification dated 26.09.2000 was issued with respect to payments. Clause 2A, which was inserted by Notification dated 26.09.2000 and vide the above clause the principal debtor, who is a resident in India has been permitted to make payment to a person resident outside India being a guarantor, which payment was by way of reimbursement of the payment paid to the resident debtor by non-resident guarantor. In the present case, resident guarantors are ICICI, Citibank and HSBC and the payments made by the Leader Berhard, a non-resident guarantor was to resident guarantors. The provision further provided that amount payable by

the resident principal debtor shall not exceed to rupee equivalent to the amount paid by the non-resident guarantor under the guarantee. The provisions, thus, clearly put a cap on payment by principal debtor to non-resident guarantor with respect to payment made by non-resident guarantor to a resident creditor. When a claim has been filed by the Tropical claiming to assignee of Leader Berhard of the amount paid by Leader Berhard to the ICICI Bank and Citibank for invocation of the guarantee by resident creditors, the law permits only payment to the rupee equivalent to the amount paid by non-resident guarantor. In the present case, as noted above, non-resident guarantor, i.e. Leader Berhad made a payment of only Rs. 85,79,269,44/-, which is undisputed fact.

56. The claim has been filed in the CIRP of the CD by the Tropical where in addition to amount paid by the Leader Berhad, claim of interest has been made running into thousand of crores. When resident principal debtor is prohibited by Notification dated 26.09.2000 from making payment to non-resident guarantor, apart from amount equal to rupee equivalent paid by non-resident guarantor, while examining the claim, the provisions of above Notification cannot be ignored, nor any claim can be admitted, which is in violation of the Notification dated 26.09.2000.

57. Now, we may notice reasons given by Adjudicating Authority for holding the above Notification not applicable with respect to claim of Respondent No.2. The Adjudicating Authority after noticing the Notification dated 26.09.2000 in Paragraph 74 has held that Notification is not

applicable. The Adjudicating Authority observed that the transaction in question does not involve reimbursement by the principal debtor to the non-resident guarantor (Leader Berhad), instead, upon principal debtor's default in meeting its repayment obligations, Leader Berhad, a non-resident entity, discharged the liabilities owed to principal debtor's resident creditors. Following was observed by the Adjudicating Authority in Paragraph 74:

> "74. In the instant case, this provision is not applicable. The transaction in question does not involve reimbursement by the principal debtor to the non-resident guarantor (Leader Berhad), instead, upon principal debtor's default in meeting its repayment obligations, Leader Berhad, a non-resident entity, discharged the liabilities owed to principal debtor's resident creditors, namely ICICI Bank and Citi Bank by making direct payments to them under the terms of the invoked guarantees."

58. The above interpretation put by the Adjudicating Authority to the expression 'reimbursement' as occurring in Notification dated 26.09.2000, is incorrect. As noted above, the FEMA Act, 1999 has regulated the payments and by Notification dated 26.09.2000 terms of payment to non-resident guarantors by a resident principal debtor are made, but the payment has been capped as rupee equivalent to the amount paid by non-resident guarantor to the principal resident debtor. All conditions as referred to in the Notification dated 26.09.2000 are fully present in the present case. When there is prohibition on payment by resident principal debtor to non-resident guarantor, no amount can be admitted beyond the aforesaid amount paid by a non-resident guarantor and admission of the claim by RP and the approval of the said claim by the Adjudicating Authority by the

impugned order dated 03.12.2005 is clearly contrary to the said Notification.

59. We may also notice one more submission advanced by learned Counsel for the Tropical that guarantee which was given by the Leader Berhad was much prior to Notification dated 26.09.2000 and the amounts were also paid by the Leader Berhad, i.e., guarantor subsequent to 26.09.2000 to the ICICI Bank. Payment to the Citibank was made prior to 26.09.2000. From the details of the payment made by Leader Berhad, as noted above, it is clear that payments to the Citibank were made prior to 26.09.2000, whereas payments to ICICI Bank were made by Leader Berhad in April 2001 and June 2001. The fact that payments made to the Citibank were prior to Notification dated 26.09.2000 has no consequence, because the question which has arisen for consideration, was payment by resident principal debtor to non-resident guarantor, which question has arisen in reference to CIRP, where claim has been filed by the Appellant on the basis of assignment from non-resident guarantor, when Notification dated 26.09.2000 was very much in force, when the question arose regarding verification of the claim of the Appellant in the CIRP of the CD. Thus, present is not a case of any retrospective application of Notification dated 26.09.2000. The Notification dated 26.09.2000 was fully applicable with regard to all the payments made by Leader Berhad to the Citibank as well as ICICI Bank.

60. In the above reference, we may also note one more submission made by learned Counsel for the Tropical. The submission is that present is not a stage for making any payment to non-resident guarantor, or its assignee and in present case, only question which has arisen is of determination of the claim and when the question of payment arises in future, the Tropical shall obtain necessary permission from the RBI. It is submitted by learned Counsel for the Tropical that FEMA is a regulatory and not a prohibitory statute and that transactions are not rendered void unless the statute expressly so provides. It is contended that even accepting argument that any RBI approval was necessary, the consequence cannot extinction the debt, forfeiture of securities, destruction of subrogation rights. The Adjudicating Authority in the impugned order has relied on judgment of the Hon'ble Supreme Court in ***Vijay Karia vs. Prysmian Cavi E Sistemi SRL – (2020) 11 SCC 1***. The Hon'ble Supreme Court in the above case was considering a challenge to foreign award. In the above referenced in Paragraph-1 of the order, the Hon'ble Supreme Court noticed the details of the Appeal. Learned Counsel for the Tropical has submitted that it was held by the Hon'ble Supreme Court in the above case that RBI's approval can also be obtained *post facto*. Reliance has been made on Paragraph-18 of the judgment, which is as follows:

> "**18.** The third partial final award then declared as follows:
>
> > "1. The respondents are the defaulting party under Clause 23.7 of the JVA;
> >
> > 2. All rights of whatsoever nature conferred on the respondents and specifically Mr Karia under the JVA have ceased to be effective;

> 3. Any reference in the JVA to any rights of the respondents and specifically Mr Karia including the requirement of consent or approval of respondents and specifically Mr Karia stand omitted;
>
> 4. The respondents are prohibited from exercising or attempting to exercise any rights under the JVA including in particular any representation on the Board of the Company;
>
> 5. The date for the assessment of the discounted price be 30-9-2014 and that this date be substituted for the finding in para 335(4) of the second partial final award, which date and finding the parties agreed would be remitted back to the Tribunal for further consideration;
>
> 6. The Tribunal reserves the matters set out in para 31 above, which includes the costs of the arbitration.
>
> 7. Notwithstanding para 6 above, the Tribunal records the further costs of the arbitration (other than the legal or other costs incurred by the parties themselves and other than those costs recorded in the second partial final award) up to the date of this award, which have been determined by the LCIA Court, pursuant to Article 28.1 of the applicable (1998) Rules, to be as follows:
>
> | | |
> |---|---|
> | LCIA's administration charge | £6,353.33 |
> | Tribunal's fees | £29,800.00 |
> | Total further costs of the arbitration | £36,153.33 |
>
> 8. The Tribunal's previous procedural orders and Interim Relief as amended by Procedural Order No. 12 are to continue in effect until further Order."

61. In the above judgment itself, the Hon'ble Supreme Court held that permission of RBI may be obtained *post facto* "*if such violation can be condoned*". The present is not a case that violation of Notification dated 26.09.2000 Para 2A are condonable by any prior permission or any subsequent permission by RBI. The above Notification contains a provision, where amount to be reimbursed by the resident principal debtor cannot exceed to the amount paid by non-resident guarantor to a resident creditor. When law prohibits a particular thing to be done, the said cannot be allowed to be done by any prior or subsequent permission. FEMA Notification does

not contemplate any permission or any exception to the above requirement of law. We, thus, do not find any substance in submission of learned Counsel for the Tropical for permission for payment by RBI, if necessary may be obtained at the time of actual payment to the Appellant.

62. Learned Counsel for the Appellant has also relied on judgment in ***Griesheim GMBH (Now called Air Liquide Deutschland GMBH) vs. Goyal MG Gases Pvt. Ltd. – (2026) SCC OnLine SC 648***. The above was a case where the Hon'ble Supreme Court was considering an Appeal against the judgment of Delhi High Court refusing to interfere a foreign judgment passed by High Court of Justice, Queens Bench Division (English Court). One of the questions, which was framed for consideration in the above case is as to whether judgment the judgment is rendered unenforceable in view of the conditions imposed by RBI in exercise of the statutory power under FERA. In Paragraph 28, IInd question noted for consideration is as follows:

> "II. Whether the judgment is rendered unenforceable in view of the conditions imposed by RBI in exercise of the statutory power under FERA."

63. The Hon'ble Supreme Court has occasion to consider sub-section (3) of Section 47 of FERA Act, 1973, in which reference in Paragraphs 72 and 73, following was observed:

> "**72.** Sub-section (3) of Section 47 clarified that neither the provisions of FERA nor contractual stipulations requiring prior permission of the Central Government or the Reserve Bank shall prevent legal proceedings from being instituted in India to recover sums otherwise due. However, the latter part of the provision engrafts an express

> limitation in mandatory terms, stipulating that "no steps shall be taken for the purpose of enforcing any judgment or order… except… as the Reserve Bank… may permit."
>
> **73.** The statutory distinction between the institution of proceedings and the enforcement of a judgment assumes considerable significance. While the legislation expressly permitted adjudicatory proceedings to determine liability, it has simultaneously restricted execution of such a determination in the absence of regulatory approval. The use of the expression "no steps shall be taken" manifests an intention to impose a condition precedent to enforcement. The scheme of the provision thus makes the legislative position clear that there is a conscious distinction between the initiation of proceedings and the stage of enforceability. The underlying purpose is to ensure that access to a judicial remedy is not foreclosed and that liability may be determined by a competent court, while at the same time preserving the authority of the Central Government and the RBI to decide whether, and to what extent, such adjudicated liability may ultimately be enforced. The power to grant or refuse permission, therefore, continues to vest in the regulatory authorities, and the enforceability of any decree remains subject to the grant of such permission."

64. The above judgment was with regard to execution of a foreign judgment, which execution was required to be made except with the permission of RBI. It was held that power to grant or refuse permission, therefore, continues to vest in the regulatory authorities, and the enforceability of any decree remains subject to grant of such permission. As noted above, the present is not a case where there is any exception to provision of Para 2A of Notification dated 26.09.2000 and by obtaining any permission, the said restriction can be condoned.

65. In view of foregoing discussions we answer Question Nos.(IV), (V) and (VI) in following manner:

Answer to Question No.(IV)	:	**Pegasus in IA No. 1511/KB/2025 has made out sufficient grounds to interfere with the decision of the RP verifying the claim of Tropical as per FEMA Notification dated 26.09.2000.**
Answer to Question No.(V)	:	**Notification dated 26.09.2000 was applicable with respect to the claim submitted by Tropical and Adjudicating Authority committed error in holding that Notification is not applicable with respect to verification of the claim as per Notification dated 26.09.2000. The claim of the Tropical which could have been admitted was only to the extent of Rs. 85,79,269,44/-, which was the principal amount paid by Leader Berhad to the Lenders of the CD.**
Answer to Question No.(VI)	:	**The Tropical is not entitled to obtain any *post facto* approval of RBI with respect to amount admitted in CIRP.**

Question Nos (VII) and (VIII)

66. Company Appeal (AT) (Ins.) No.192 of 2026 has been filed by the Tropical challenging the order of Adjudicating Authority dated 03.12.2025 passed in IA (IB) No.646/KB/2022. By the impugned order the Adjudicating Authority has approved the Resolution Plan submitted by Vedanta (SRA). In the Plan, amount has also been allocated to the Tropical as secured creditor, although it was held to be 'related party'. Learned

Counsel for the Appellant submits that the Resolution Applicant in the Resolution Plan has proposed payment to Tropical and the Tropical was entitled to receive the payment as per Resolution Plan approved by the Adjudicating Authority. It is submitted that the Appellant has no grievance against the Resolution Plan and its implementation, except the distribution mechanism as record by the CoC in its 22nd Meeting. Learned Counsel for the Appellant has raised objection to the part of the Minutes of the 22nd CoC held on 23.06.202. In the 22nd CoC Meeting held, a resolution was placed before the CoC for Members voting, which is as follows:

> "**The following agenda was recommended before the members of COC through E-voting for their approval. E-voting shall open from 23/06/2022 at 9:00 PM and will end on 24/06/2022 at 9:00 PM.**
>
> "RESOLVE THAT the suo moto revised Resolution Plan submitted by Vedanta Limited on 22/06/2022 be and is hereby approved in accordance with Section 30 (4) of the Insolvency and Bankruptcy Code, 2016"
>
> "FURTHER RESOLVE THAT the Resolution Professional be and is hereby authorized to file an application under Section 31 (1) of the Insolvency and Bankruptcy Code, 2016 for approving the Resolution Plan with the Adjudicating Authority"
>
> "FURTHER RESOLVE THAT if there are any changes in the claim amount of any claimant, after adjudication of the same by the final Adjudicating / Appellate Authority, then
>
> the amount of the distribution will change but the basic structure shall remain the same in compliance with the requirement of the law in this regard, however, if the adjudication remains pending even after approval of the Resolution Plan, the distribution of respective claimants shall be put on hold until adjudication by the final

> Adjudicating/ Appellate Authority and upon adjudication, effect shall accordingly be given. Also, if due to adjudication, any amount becomes refundable from the amount already paid to the claimants, the refund shall be required to be made within 10 days from the date of pronouncement of adjudication order and consequent refund request received from the RP/Steering Committee."
>
> "FURTHER RESOLVE THAT the amount allocated in the Resolution plan towards those claimants, where the claim verification is under litigation, shall be deposited in an interest bearing bank account under the control of the Steering Committee headed by the RP until the verification and admittance of claim is adjudicated by NCLT, NCLAT and/or any other Appellate forum till the matter attains finality. The amount allocated shall be adjusted consequent to adjudication of disputes claims and the allocation method and manner shall remain the same as approved by the Committee of Creditors along with the approval of Resolution Plan."”

67. The grievance of the Appellant is that the resolution stated that where the claim verification is under litigation, shall be deposited in an interest bearing bank account under the control of the Steering Committee headed by the RP until the verification and admittance of claim is a adjudicated by NCLT, NCLAT and/or any other Appellate forum. Learned Counsel for the Appellant has referred to Paragraph-49 of the order of the Adjudicating Authority, which is as follows:

> “49. Out of the appeals pending before the Hon'ble NCLAT, Company Appeal (AT) (Insolvency) No. 542 of 2025 with I.A. Nos. 4053 and 4037 of 2025 has attained finality by order dated 09.09.2025, whereby no relief was granted; the remaining appeals, being Company Appeal (AT) (Insolvency) Nos. 561-564 of 2025 and Company Appeal (AT) (Insolvency) No. 662 of 2025, are still pending adjudication. Accordingly, the present resolution plan shall remain subject to the

> outcome of the aforesaid appeals pending before the Hon' ble NC LAT and successful resolution applicant is bound by its affidavit dated 01/09/2025 (para 11 and 12) plan being unconditional."

68. The Appellant in his Appeal only prayed for partially setting aside the order. The following prayers are made by the Appellant in the Appeal:

> "a) Allow the Present Appeal;
>
> b) Partially set aside the Impugned order dated 3rd December 2025 passed by the Hon'ble NCLT, Kolkata in IA No. 646/KB/2022 in CP (IB) No. 1684 of 2018 w.r.t to the affirmation of the Alleged Resolution;
>
> c) Stay the distribution of realised amount allocated under the distribution chart and Resolution Plan to the Impugned order dated 3rd December 2025 passed by the Hon'ble NCLT, Kolkata in IA No. 646/KB/2022 in CP (IB) No. 1684 of 2018; and
>
> d) Such other and/or further orders be passed as this Hon'ble Appellate Tribunal may deem fit and proper."

69. Learned Counsel appearing for the RP as well as Pegasus and SRA refuting the submissions of the Appellant submit that the Resolution Plan having been approved by more than 99% vote share, the Appellant has no *locus* to challenge the approval of the Resolution Plan.

70. From the facts as noted above, it is clear that various litigations including the challenge to the admission of claim of the Tropical had been pending consideration in these Appeal(s) and we do not find any error in order of Adjudicating Authority providing that approval of Resolution Plan shall be subject to the outcome of the aforesaid Appeal(s). The decision in the 22nd CoC Meeting as noted above was decision of the CoC, which has approved the Resolution Plan. Learned Counsel for the Respondents have relied on the judgment of the Hon'ble Supreme Court in ***Torrent Power Ltd. vs. Ashish Arjunkumar Rathi and Ors. – (2026) SCC OnLine 325***, where

Hon'ble Supreme Court has held that commercial wisdom of CoC cannot be interfered with and the scope of interference are very limited. In Paragraphs 69 and 70 of the judgment, the Hon'ble Supreme Court laid down following:

> "**69.** Having concluded that neither of the issues raised by the appellants establishes any modification of the resolution plan or any material irregularity in the conduct of the RP, the challenge stands stripped of its factual foundation. What remains is, in substance, a challenge to the commercial decision taken by the CoC. IBC leaves no scope for judicial intervention even here.
>
> **70.** It has been the consistent view of this Court that the commercial wisdom of the CoC cannot be interfered with by NCLT, NCLAT or this Court as was held in *K. Sashidhar* v. *Indian Overseas Bank* [*K. Sashidhar* v. *Indian Overseas Bank*, (2019) 12 SCC 150 : (2019) 4 SCC (Civ) 222 : (2019) 213 Comp Cas 356] as under : (SCC pp. 185-87, paras 55 & 58)
>
> > "*55.* Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. *Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides : (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code.* The subjective satisfaction of the financial creditors at the time of

> voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.
>
> * * *
>
> *58*. Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under Section 30(2) of the I&B Code or, at best, by the adjudicating authority (NCLT) under Section 31(2) read with Section 31(1) of the I&B Code. No other inquiry would be permissible. Further, the jurisdiction bestowed upon the appellate authority (NCLAT) is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in Section 61(3) of the I&B Code, which is limited to matters "other than" enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited jurisdiction as specified in the I&B Code and not to act as a court of equity or exercise plenary powers."
>
> (emphasis supplied)"

71. The completion of the CIRP in time bound manner is statutory requirement of the IBC and the Adjudicating Authority had not committed any error in approving the Resolution Plan even though litigations pertaining to admission of the claim of Tropical were pending consideration in these Appeal(s). We, thus, do not find any infirmity in decision of the CoC taken in 22nd Meeting as noted above, as well as the observation of the Adjudicating Authority contained in Paragraph-49. We, thus, are of the view that the Appellant has not made out any case for grant of any relief in Company Appeal (AT) (Ins.) No.192 of 2026.

72. We answer Question Nos.(VII) and (VIII) in following manner:

Answer to Question No.(VII)	:	**Tropical has not made out any case to partially set aside the order dated 03.12.2025 in IA No. 646/KB/2022. The directions issued by Adjudicating Authority in Paragraph-49 need no interference.**
Answer to Question No.(VIII)	:	**The decision taken by the CoC in its 22nd Meeting regarding disbursement of the amount under the Resolution Plan as submitted by SRA, is in accordance with law.**

73. We have noticed above the resolution of the CoC approving the Resolution Plan subject to adjudication of pending claims. The Adjudicating Authority while approving the Resolution Plan vide order dated 03.12.2025 has made the approval of the Resolution Plan subject to outcome of the Appeal(s) pending before NCLAT [these Appeal(s)]. We have recorded our discussions and conclusions as above holding that the admission of claim of Tropical has to confine to Rs.85,79,26,944/-, which was the principal amount paid by Guarantor to the Indian Lenders. We have also held that no security interest was created in favour of Guarantor or the Tropical, the assignee, with respect to immovable assets of the CD by virtue of provisions of FERA, 1973. The Resolution Plan also contained a clause that payouts in the Resolution Plan offered by Resolution Applicant shall not be changed, in event of change in the claims of Claimants. We have also taken the view that Plan approval order passed by Adjudicating Authority need no interference subject to decisions taken in these Appeal(s). Monitoring Committee being in place, we are of the view that Monitoring Committee to take a decision with regard to payouts to different stakeholders as per the

Resolution Plan and orders passed in these Appeal(s). The admission of claim of Tropical being confined to Rs.85,79,26,944/-, the payouts under the Resolution Plan, which was on the basis of admission of claim of the Tropical to the extent of Rs.19,90,63,12,342/- has to be changed. Further, we having also held that no security interest was created in favour of Guarantor i.e. Universal Berhad or the assignee, i.e. Tropical with respect to immovable assets of the CD and the Tropical is not a 'secured creditor' with respect to immovable assets of the CD. The decision taken by the RP and the Adjudicating Authority is modified to the above extent. However, it is for the Monitoring Committee to consider as to whether there are any other secured interest of the Tropical except immovable assets of the CD and to that extent only, if any, the Tropical is 'secured creditor', which is apart from immovable assets of the CD.

74. In result of the foregoing discussions and our conclusions, we decide all these Appeal(s) in following manner:

(i) Company Appeal (AT) (Ins.) No. 662 of 2025 and Company Appeal (AT) (Ins) No. 192 of 2026 are dismissed.

(ii) Company Appeal (AT) (Ins) No. 16 of 2026 is partly allowed. The admission of claim of Tropical is confined only to Rs.85,79,26,944/- (principal amount).

(iii) Tropical is also held not a 'secured creditor' of the immovable properties of the CD.

(iv) The approval of the Resolution Plan by the Adjudicating Authority vide order dated 03.12.2025 is affirmed, subject to decision in these Appeal(s).

(v) The Monitoring Committee to consider the amount allocated in the Resolution Plan for re-distribution and to give effect to the orders and directions passed in these Appeal(s), subject to which the Resolution Plan was approved.

(vi) The Monitoring Committee while distributing the amount as per the Resolution Plan and the orders passed in these Appeal(s) may consider as to whether Tropical can be treated as 'secured creditor' of any other security interest except from immovable assets of the CD.

(vii) The Monitoring Committee to take a decision with regard to distribution of the amount already deposited by the Resolution Applicant in compliance of Resolution Plan and is in the escrow account, within a period of 30 days from today.

Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

30th June, 2026

Ashwani