IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH, (COURT NO.-II)

KOLKATA

IVN.P (I.B.C)/41(KB)2024

In

I.A. (I.B.C) LIQ No.33/KB/2024

In

C.P. (I.B) No.82/KB/2021

Date of Hearing: 01.09.2026

Date of Order: **16.10.2026**

Section 33 of the Insolvency and Bankruptcy Code, 2016.

IN THE MATTER OF:

State Bank of India

...Financial Creditor

VERSUS

R. Piyarelall Iron & Steel private Limited

...Corporate Debtor

IN THE MATTER OF:

Yogesh Gupta, Resolution Professional of R Piyarelall Iron & Steel Private Limited having his office at S. Jaykishan, Chartered Accountants, Suit No.2D, 2E, 2nd floor, 12, Ho Chi Minh Sarani, Kolkata, West Bengal, 700071.

...Applicant

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, (COURT NO.-II)

KOLKATA

IVN.P (I.B.C)/41(KB)2024
In
I.A. (I.B.C) LIQ No.33/KB/2024
In
C.P. (I.B) No.82/KB/2021

And

Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016

IN THE MATTER OF:

Debabrata Das, erstwhile Director of the Suspended Board of Directors of R. Piyarelall Iron & Steel Private Limited, residing at 43, Tiljala Lane, Kolkata - 700039.

...Applicant

VERSUS

Yogesh Gupta, Resolution Professional of R. Piyarelall Iron & Steel Private Limited, having office at S. Jaikishan, Chartered Accountants, Suite Nos.2D & 2E, 2nd Floor, 12, Hochi Minh Sarani, Kolkata – 700071;

...Respondent

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, (COURT NO.-II)

KOLKATA

IVN.P (I.B.C)/41(KB)2024
In
I.A. (I.B.C) LIQ No.33/KB/2024
In
C.P. (I.B) No.82/KB/2021

CORAM:
Shri. Labh Singh, Hon'ble Member (Judicial)
Ms. Rekha Kantilal Shah, Hon'ble Member (Technical)

Counsel appeared through physically or virtually

Mr. D. N. Sharma, Sr. Adv.] For MMTC
Mr. S. Nabi, Adv.]
Mr. S. Mishra, Adv.]

Mr. Rahul Auddy, Adv.] For Resolution Professional
Mr. Aditya Gooptu, Adv.]

O R D E R

(Heard Through Hybrid Mode)

LABH SINGH, MEMBER (JUDICIAL)

1. This common order disposes of both the liquidation and intervention application.

IVN.P (I.B.C)/41(KB)2024

2. This application is filed by Debabrata Das against the Resolution Professional, praying for the following reliefs:

a) An order adding and/or impleading the applicant as a party to the application being I.A.(I.B.C)No.33/2024 filed in C.P.(I.B)No.82/2021 seeking liquidation of the Corporate Debtor;

b) An order directing the respondent to hand over all the Minutes of Meetings of the Committee of Creditors of the corporate debtor to the applicant

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in view of the order dated 11th November, 2024 passed by the Hon'ble National Company Law Appellate Tribunal, New Delhi;

c) *An order directing that the Corporate Insolvency Resolution Process of the corporate debtor be kept in abeyance till the execution of the money award dated 16th December 2019 is completed in EC No.176 of 2021 pending before the Hon'ble High Court at Calcutta;*

d) *Ad interim order in terms of prayers above;*

e) *Such further or other order or orders as this Tribunal may deem fit and proper.*

3. The Corporate Debtor is a company incorporated under the provisions of the Companies Act, 1956, which was primarily engaged in the business of import and export.

3.1 In or about April 2008, the Corporate Debtor availed financial services from MMTC Limited, a Government of India undertaking, for importing 20,000 MT of LAM Coke from China and accordingly entered into two separate associateship agreements, both dated May 7, 2008, with the said MMTC Limited.

3.2 Pursuant thereto, by two separate high seas sale agreements, both dated June 2, 2008, MMTC sold 19,883.720 MT of LAM Coke to the Corporate Debtor, who sold the said LAM Coke to Fairdeal Supplies Limited as the ultimate buyer by virtue of two separate agreements. The first agreement was a High Sea Sale Agreement dated June 3, 2008, whereby the consignment of 19,883.720 MT of LAM Coke was sold to Fairdeal Supplies Limited, and the second agreement dated June 3, 2008 was a Deed of Pledge, as Fairdeal Supplies Limited did not possess adequate liquidity of funds to meet its payment obligations.

3.3 Subsequently, Fairdeal Supplies Limited failed to meet its payment obligations in terms of the high seas sale agreement it had entered into with the Corporate Debtor. Consequently, the Corporate Debtor was constrained to invoke the arbitration clause contained in the Deed of Pledge to claim its legitimate dues from Fairdeal.

3.4 By orders dated April 26, 2011 and July 18, 2012, the Hon'ble High Court at Calcutta injuncted and directed Fairdeal Supplies Limited to set apart a sum of Rs. 3.25 crores as a fixed deposit subject to the arbitral proceedings and directed Fairdeal Supplies Limited not to

sell, transfer, deal with, or encumber a specific immovable property situated in Gujarat.

3.5 The intervenor through application submitted that, by an order dated March 5, 2013, the Hon'ble High Court at Calcutta directed the parties to appoint their respective nominee arbitrators and further directed the nominee arbitrators to appoint a third arbitrator by consent. Instead of appointing its nominee arbitrator, Fairdeal Supplies Limited preferred a Special Leave Petition challenging the order dated March 5, 2013. However, the Hon'ble Supreme Court did not interfere with the order dated March 5, 2013, and the Special Leave Petition filed by judgment debtor no. 5 was dismissed by an order dated September 10, 2013.

3.6 While disputes with Fairdeal Supplies Limited were at a nascent stage, on June 30, 2012, the Corporate Debtor was declared an NPA by the financial creditor herein, virtually owing to non-payment by Fairdeal Supplies Limited to the Corporate Debtor, which resulted in non-payment to the financial creditor by the Corporate Debtor.

3.7 In terms of the orders dated March 5, 2013 and December 18, 2013, the Arbitral Tribunal comprising Mr. P.K. Ghose,

Senior Advocate and Presiding Arbitrator, Mr. Utpal Bose, Senior Advocate and Arbitrator, and Mr. Pramit Kumar Ray, Senior Advocate and Arbitrator, was duly constituted. After several sittings, the Arbitral Tribunal made and published an Award on December 16, 2019 (**page 30** of the intervention application).

3.8 By the Money Award/Decree dated December 16, 2019, the learned Arbitral Tribunal held that the Corporate Debtor was entitled to a sum of Rs. 31,67,19,156/- from Fairdeal being the price of goods sold and delivered, along with interest on the said sum @ 12% per annum from March 14, 2014 until December 11, 2019, and further interest @ 12% per annum until payment, along with costs assessed at Rs. 4 lakhs. That apart, the Corporate Debtor was awarded a sum of Rs. 4,87,62,851/- being various sums paid by it on behalf of Fairdeal towards expenses.

3.9 Fairdeal challenged the Money Award before the Hon'ble High Court at Calcutta under Section 34 of the Arbitration and Conciliation Act, 1996 in A.P. No.156 of 2020. In the said application, Fairdeal also filed an application for stay of operation of the money award. However, there is no stay on the operation of the award as Fairdeal failed to deposit the

awarded amount in terms of orders dated December 7, 2021 and February 28, 2022 passed by the Hon'ble High Court of Calcutta (**page 62** of the intervention application).

3.10 In view of there being no stay on the money award/decree, execution proceedings in E.C. No. 176 of 2021 were filed by the Corporate Debtor against Ram Prasad Agarwala, Narayan Prasad Agarwal, Pawan Kumar Agarwal, Saurabh Jhunjhunwala, Fair Deal Supplies Limited and Frontline Corporation Limited(judgment debtor) before the Hon'ble High Court at Calcutta, seeking execution of the money award/decree, and several orders were passed therein.

3.11 Virtue of orders passed in E.C. No. 176 of 2021 by the Hon'ble High Court at Calcutta, the Corporate Debtor has realized a sum of Rs. 6,23,56,524/- from Fairdeal. However, a sum amounting to Rs. 107,60,89,107/-, calculated up to December 2024, still remains due, payable, and recoverable from Fairdeal. In terms of orders dated February 28, 2022, August 23, 2022, and December 16, 2022, Fairdeal had to file four affidavits of assets on subsequent dates owing to non-disclosure or partial disclosure. By orders dated September 29, 2023 and March 1, 2024, the Hon'ble High Court at Calcutta directed all promoters, directors, and

shareholders of Fairdeal namely Mr. Ram Prasad Agarwala, Narayan Prasad Agarwal, Pawan Kumar Agarwal and Saurabh Jhunjhunwala, to be present in court on the next date of hearing (**page 170** of the intervention application). From the deposition of Narayan Prasad Agarwal, one of the promoter directors of Fairdeal, it appears that Fairdeal has had the means to pay the awarded amount of the decree since the date of decree, but deliberately refused or neglected to pay the same to the Corporate Debtor.

3.12 Furthermore, bank statements produced during cross-examination in E.C. No. 176 of 2021 revealed that even after filing E.C. No. 176 of 2021 (**page 70** of intervention application), Fairdeal received substantial sums from third parties in bank accounts which were not disclosed in the several affidavits of assets filed by Fairdeal, and such sums were never used to satisfy the decree.

3.13 Because most of the assets of Fairdeal are situated outside the jurisdiction of the Hon’ble High Court at Calcutta, the Corporate Debtor filed simultaneous execution proceedings in various other courts within whose jurisdiction the assets of Fairdeal are situated, as ascertained from the affidavits of assets filed in E.C. No. 176 of 2021.

3.14 Corporate Debtor filed an execution case being EXE/R No. 202/2023 before the Principal Civil Judge (Sr. Division), Ahmedabad, as properties of the judgment debtors are situated in Ahmedabad (**page 187** of the intervention application).

3.15 Upon perusal of Execution Application EXE/R No. 202/2023 filed before the Principal Civil Judge (Sr. Division), Ahmedabad, it is evident that Mr. Ram Prasad Agarwala, Narayan Prasad Agarwal, Pawan Kumar Agarwal, Saurabh Jhunjhunwala, Fair Deal supplies Limited and Frontline Corporation Limited possess various assets within the territorial jurisdiction of the said court.

3.16 The execution proceeding in EXE/R No. 202/2023 was taken up for hearing on March 4, 2023, and by an order dated June 17, 2023, Fairdeal Supplies Limited, Mr. Ram Prasad Agarwala, Narayan Prasad Agarwal, Pawan Kumar Agarwal and Saurabh Jhunjhunwala were directed to maintain status quo on the schedule of properties mentioned in the application. (**page 207** of the intervention application) Thus, the execution proceedings pending before the Civil Judge (Sr. Division) at Ahmedabad are at an advanced stage, and if even one of the

attached properties is sold, the entire money award dated December 16, 2019 shall stand satisfied.

3.17 Similarly, the Corporate Debtor filed Execution Application EXE/R. 5 of 2023 before the Principal Senior Civil Court at Bhachau as properties of Fairdeal are situated within the territorial jurisdiction of the Civil Court in Bhachau. Perusal of Execution Application EXE/R. 5 of 2023 reveals that Fairdeal possess various assets within the territorial jurisdiction of the court in Bhachau. (**page 209** of the intervention application)

3.18 An order dated July 18, 2012, the Hon'ble High Court at Calcutta restrained Fairdeal from dealing with, disposing of, or alienating the non-agricultural land bearing Revenue Survey No. 868/47 measuring approximately 20,235 sq. meters at Mouja Shikharpur, Taluk Bachua, Registration District Kutchh, Gujarat, along with plant and machinery. The said property owned by Fairdeal has remained injuncted for the last 13 years and is free from any encumbrances whatsoever; thus, the property can be sold without impediment to satisfy the entire award in full.

3.19 Pursuant to the filing of execution application EXE/R. 5 of 2023 in Bhachau Court, all judgment debtors, including

Fairdeal, have been seeking adjournments on the pretext of filing an affidavit in reply. Case history on the E-court website of the Principal Senior Civil Court at Bachau shows that the matter has been adjourned on several occasions as no affidavit in reply has been forthcoming on behalf of the judgment debtors (**page 288** of the intervention application).

3.20 The Corporate Debtor also filed an Execution Application Exe. S/1 of 2023 before the Principal Civil Judge, Mundra Taluka Court, as Pawan Kumar Agarwal, one of the promoter directors and shareholders of Fairdeal, possesses a property situated within the territorial jurisdiction of the Mundra Taluka Court (**page 231** of the intervention application).

3.21 In the said execution proceeding, the judgment debtors therein, namely Ram Prasad Agarwala, Pawan Kumar Agarwala, Saurabh Jhunjhunwala, Narayan Prasad Agarwala, Fair Deal Supplies Limited and Frontline Corporation Limited, have been evading service of summons, as indicated by the case history available on the E-courts website of the Mundra Taluka Court (**page 250** of the intervention application).

3.22 During the pendency of the aforesaid proceedings, and following the enactment of the Insolvency and Bankruptcy Code, 2016, the financial creditor herein filed a company

petition being C.P. (I.B) No.82/KB/2021 before this Tribunal seeking initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor. The Corporate Debtor opposed the initiation of CIRP, inter alia, on the ground that it was in possession of the money award/decree, which exceeds the cumulative dues owed to its financial creditors, is capable of execution, and in reliance on the judgment of the Hon'ble Supreme Court of India in Vidarbha Industries Power Limited v. Axis Bank Limited (2022) 8 SC 352, wherein it was held that an application under Section 7 of the Code should be kept in abeyance if the Corporate Debtor possesses a money award/decree that exceeds the dues owed and is capable of being utilized (**page 253** of the intervention application).

3.23 By an order dated January 19, 2024, NCLT Kolkata initiated the CIRP against the Corporate Debtor without taking into consideration the money award/decree and the orders passed by the Hon'ble High Court at Calcutta in E.C. No. 176 of 2021, despite the same having been taken on record vide order dated June 8, 2023 (**page 279** of the intervention application). The admission order dated January 19, 2024 did

not refer to the money award/decree (**page 280** of the intervention application).

3.24 Those circumstances, the applicant filed an appeal being Company Appeal (AT) (Insolvency) No. 286 of 2024 before the Hon'ble National Company Law Appellate Tribunal, New Delhi, seeking a stay and setting aside of the admission order dated January 19, 2024, primarily on the basis that the judgment in Vidarbha Industries Power Limited v. Axis Bank Limited (2022) 8 SC 352 is squarely applicable to the present case.

3.25 By an order dated February 12, 2024, the Hon'ble National Company Law Appellate Tribunal directed the respondent not to finalize any resolution plan regarding the Corporate Debtor, in view of the existence of the money award/decree against Fairdeal Supplies Limited, which was under execution before the High Court at Calcutta (**page 290** of the intervention application).

3.26 Subsequently, the appeal was heard from time to time by the Hon'ble NCLAT while the award was being executed in the Hon'ble High Court at Calcutta in E.C. No. 176 of 2021, and the Corporate Debtor filed an Affidavit of Compliance before

the Hon'ble NCLAT (**page 309** of the intervention application).

3.27 Meanwhile, the CIRP was initiated against Fairdeal Supplies Limited by NCLT Kolkata, vide order dated March 19, 2024 and corrigendum order dated April 3, 2024 (**page 417** of the intervention application). The suspended Board of Directors of Fairdeal Supplies Limited challenged the admission order before the Hon'ble NCLAT, New Delhi in Company Appeal (AT) (Ins) No. 648 of 2024, and by orders dated April 8, 2024 and May 28, 2024, the CIRP was stayed in view of Fairdeal depositing the principal sum of Rs. 22 crore (approximately) due to its financial creditor.

3.28 However, owing to the moratorium against Fairdeal, execution proceedings in the Hon'ble High Court at Calcutta were stalled, as the High Court took the view that execution could not proceed until the appeal before the Hon'ble NCLAT was decided; by an order dated June 14, 2024, E.C. No. 176 of 2021 was adjourned sine die with liberty to mention once proceedings before the Hon'ble NCLAT or NCLT reached a stage allowing applications before the High Court to proceed (**page 471** of the intervention application).

3.29 The Corporate Debtor challenged the order dated June 14, 2024 before the Division Bench of the Hon'ble High Court at Calcutta in APOT No. 244 of 2024, and by an order dated July 8, 2024, the Division Bench restored E.C. No. 176 of 2021 to the list, holding that a simpliciter adjournment of the execution case and setting-aside applications ought not to have been made (**page 473** of the intervention application).

3.30 By an order dated November 11, 2024, the Hon'ble NCLAT, New Delhi disposed of Company Appeal (AT) (Insolvency) No. 286 of 2024 with observations that execution proceedings are to be prosecuted by the Resolution Professional in accordance with law, that it remains open for parties under Section 12A of the Insolvency and Bankruptcy Code, 2016 to settle the matter if dues of the financial creditor are satisfied, and granting liberty to the applicant to participate in the CIRP(**page 478** of the intervention application).

3.31 Subsequently, on October 21, 2024, the respondent filed application I.A. No. 33 of 2024 seeking liquidation of the Corporate Debtor, in which the applicant seeks to intervene and be impleaded as a party, particularly in view of the liberty granted by the Hon'ble NCLAT, New Delhi in its order dated November 11, 2024 allowing the applicant to

participate in the CIRP, which encompasses decisions regarding liquidation.

3.32 The applicant submitted that the Corporate Debtor cannot be liquidated at this stage, particularly in light of paragraphs 88-90 of Vidarbha Industries Power Limited v. Axis Bank Limited (2022) 8 SC 352, which categorically held that when a Corporate Debtor possesses a money award/decree in excess of dues owed to the financial creditor that is capable of realization, the CIRP should be kept in abeyance and the award/decree must not be disregarded.

3.33 The Corporate Debtor was engaged in import and export and operated smoothly until disputes with Fairdeal, which caused total erosion of its net worth and brought operations to a standstill since 2012. The Corporate Debtor has sustained itself by borrowing from sister concerns or group companies to enjoy the fruits of the said money award and work toward revival.

3.34 The applicant submitted that putting the Corporate Debtor into liquidation would irreparably jeopardize its survival and render 13 years of litigation efforts with Fairdeal futile, which benefits no party. Furthermore, the Corporate Debtor cannot be sold as a going concern in liquidation

because it possesses no operational assets and its business is virtually crippled.

3.35 The applicant further submitted that the pendency of an application under Section 34 of the Arbitration and Conciliation Act, 1996 against the money award dated December 16, 2019 is not an impediment to execution, as Fairdeal Supplies Limited retains the right to restitute itself under the Code of Civil Procedure, 1908, in the event the award is set aside.

3.36 The applicant states that the respondent, driven by mala fide motives, devised a scheme to liquidate the Corporate Debtor without involving the applicant or the suspended management, contrary to directions issued by the Hon'ble NCLAT in several orders.

3.37 The applicant states that it is in the best interest of the Corporate Debtor and its creditors that this Tribunal restrain the respondent from liquidating the Corporate Debtor.

3.38 As orders passed in these proceedings may affect the applicant's rights, the applicant prays to be added as a party in I.A. No. 33 of 2024 filed by the respondent seeking liquidation.

3.39 The applicant submitted that the respondent be directed to provide copies of all Minutes of Meetings of the Committee of Creditors (CoC) in view of the liberty granted by the Hon'ble NCLAT in its order dated November 11, 2024.

3.40 The facts warrant an order directing that the CIRP of the Corporate Debtor be kept in abeyance in view of the money award dated December 16, 2019, pending completion of execution in EC No. 176 of 2021 before the Hon'ble High Court at Calcutta.

4. In response to the notice issued by this Tribunal, the Respondent appeared and filed a reply stating therein that the intervention application filed by the member of the suspended Board of Directors is bad in law and on facts, void of any merit or locus standi, not maintainable, and filed for mala fide reasons to defeat the purpose of the Code.

4.1 The applicant seeks to stay the initiation of liquidation and keep the CIRP in abeyance on the grounds that the Corporate Debtor possesses an arbitral award in its favor that exceeds the dues of the financial creditor. However, CIRP is a time-bound statutory process of 180 days (extendable only strictly in accordance with the Code upon

mandatory CoC approval), and under no circumstances can the CIRP be stayed, stopped, or extended at the instance of the suspended board. Furthermore, this Tribunal, having directed the initiation of CIRP, cannot stay or review its own order.

4.2 The issue regarding the pending execution of the arbitral award and the likelihood of recovery was argued at length by the applicant during pre-admission hearings as well as before the Hon'ble National Company Law Appellate Tribunal (NCLAT) challenging the admission order. The Hon'ble NCLAT dismissed the appeal, holding that merely having an unexecuted decree from 2019 that is under execution before the High Court is no ground to keep the appeal pending or stay the order admitting the Section 7 petition. Thus, the applicant cannot re-agitate the same grounds to delay liquidation, as those arguments were disregarded and rejected by all the tribunals (**page 12** of the reply).

4.3 So far as the order dated November 11, 2024 passed by the Hon'ble NCLAT is concerned, it clearly directed the Resolution Professional to proceed with the CIRP of the Corporate Debtor in the usual course, while granting an opportunity to the promoters/applicant to explore settlement through the Section 12A route. Pursuant thereto, a CoC

meeting was convened on December 3, 2024 (**page 14** of the reply), wherein the representative of the applicant, Mr. Sayantaan Das, submitted an open-ended, non-committal, and vague proposal stating that the lender's dues would be met as and when money was realized from the execution proceedings, without offering any concrete commitment or timeline. The CoC rejected this proposal and granted time until December 11, 2024 to submit a concrete, time-bound proposal; however, no such proposal was submitted. Consequently, there is no settlement under Section 12A of the Code, and the CoC in its commercial wisdom resolved by 100% voting majority to send the company into liquidation and file a petition under Section 33 of the Code.

4.4 The Respondent submitted that once CIRP commences, it can only be halted either by an explicit stay from the Hon'ble NCLAT or through an approved Section 12A settlement. Since the appeal was disposed of by NCLAT and the Section 12A proposal was rejected by the CoC, the Resolution Professional is statutorily bound to follow the CIRP process.

4.5 Upon expiry of the statutory period (which concluded on July 16, 2024) without an approved resolution plan, a liquidation

order must be passed as there is no legal alternative. This Tribunal does not possess the power to keep the liquidation hearing in abeyance or grant time extensions not approved by the CoC. Staying liquidation pending execution of the award would leave the RP with no legal basis to continue the CIRP in the absence of CoC-approved time extensions or exclusions.

4.6 Citing the decision of the Hon'ble NCLAT in ***Sunil Surrendrakumar Kakkad v. Sujyot Infrastructure Pvt. Ltd. & Anr.(Company Appeal (AT) (Insolvency) No. 1423 of 2024)***, the Respondent submitted that the decision of the CoC to liquidate a corporate debtor can only be interfered with if there is material irregularity or fraud, neither of which exists in the present case. The applicant's reliance on ***Vidarbha Industries Power Limited v. Axis Bank Limited (2022) 8 SC 352*** is wholly misplaced because Vidarbha Industries dealt with the pre-admission stage under Section 7, whereas the present proceedings are at the liquidation stage following a 100% CoC resolution.

4.7 Furthermore, as admitted by the applicant in paragraph (hh) of the intervention application, the Corporate Debtor has no operational assets and its business is virtually crippled,

making Vidarbha Industries completely inapplicable. Moreover, because the applicant previously raised these exact arguments before the NCLT and NCLAT and lost, the present application is squarely barred by the principles of Res Judicata.

4.8 The Respondent submited that suspended directors have no locus standi to intervene in liquidation proceedings or challenge CoC decisions in the absence of fraud or material irregularity. Regarding the applicant's prayer for CoC minutes, the Respondent clarifies that CoC minutes contain confidential information; nonetheless, the minutes were already circulated to the suspended board on December 6, 2024, and the NCLAT order dated November 11, 2024 contained no direction to hand over CoC minutes. Furthermore, applications under Section 19(2) and Section 43 of the IBC are currently pending against the directors. The present intervention application filed on December 9, 2024 contains no settlement proposal under Section 12A and is merely a new way for the suspended management to interfere with the Resolution Professional's statutory duties and liquidation procedure.

4.9 The Respondent has denied all allegations of mala fides and asserts that liquidation cannot be halted based on speculative future realizations from arbitral execution.

4.10 Allowing the intervention application and staying liquidation pending execution would cause great prejudice to the Corporate Debtor and its stakeholders, defeating the very object of the Code. The applicant has failed to make out any prima facie case or balance of convenience, and the intervention application is liable to be summarily rejected with costs, allowing the liquidation application filed under Section 33 to proceed.

5. The applicant, in its rejoinder affidavit, submitted that the Corporate Debtor is possessed of a substantial, crystallised, and legally enforceable receivable under and by virtue of a binding Arbitral Award dated 16th December, 2019 passed in its favour against M/s. Fairdeal Supplies Limited, awarding a sum of Rs. 31,67,19,156/- together with interest thereon @ 12% per annum from 14th March, 2014 till 11th December, 2019 and further interest at the same rate till actual payment and/or realisation, along with costs assessed at Rs. 4,00,000/-, besides a further awarded sum of

Rs. 4,87,62,851/- representing various sums paid by the Corporate Debtor on behalf of the award-debtor.

5.1 The said Arbitral Award has already been put into execution before the Hon'ble High Court at Calcutta in E.C. No. 176 of 2021, constituting a subsisting, adjudicated, and enforceable asset that goes to the root of the present controversy and directly impacts the question of whether liquidation at all ought to be directed.

5.2 Pursuant to the enforcement and recovery steps taken, the Corporate Debtor has till date realised a sum of Rs. 4,84,55,424/- from and out of the dues payable by M/s. Fairdeal Supplies Limited. After giving due credit to the said realisation, a substantial sum of Rs. 114,23,40,385.26/- still remains due and payable by M/s. Fairdeal Supplies Limited to the Corporate Debtor. The said outstanding amount is ex facie far in excess of the liabilities sought to be pressed in the present CIRP and clearly demonstrates that the Corporate Debtor has substantial recoverable assets and cannot be pushed into liquidation in a mechanical manner.

5.3 The applicant further submitted that during the subsistence of the execution petition before the Hon'ble High Court at

Calcutta, M/s. Fairdeal Supplies Limited was admitted into CIRP by an order dated 19th March, 2024 and corrigendum order dated 3rd April, 2024 passed by this Tribunal. The Respondent himself, acting in his capacity as the Resolution Professional of the Corporate Debtor, recognised the existence and recoverability of the aforesaid claim and, on the strength of the said Arbitral Award, filed a claim under Form C before the Resolution Professional of M/s. Fairdeal Supplies Limited in the CIRP of the said company.

5.4 Despite repeated clarifications and supporting materials furnished by the Respondent, the Resolution Professional of M/s. Fairdeal Supplies Limited, vide an email dated 19th June, 2025, erroneously admitted the Corporate Debtor's claim only as an operational debt instead of a financial debt. Aggrieved by the wrongful classification of the claim, the Respondent himself preferred an application before this Tribunal, being I.A. (I.B.C) No. 1636 of 2025 in C.P. (I.B) No. 308 of 2022, seeking appropriate reliefs in respect of the said claim and its proper treatment. Pleadings in the said interlocutory application have been completed, and the matter is ripe for adjudication, listed next before this Tribunal on 10th April, 2026 (**page 8** of the rejoinder), the

outcome of which has a direct and substantial nexus with the financial position, asset realisation, and viability of the Corporate Debtor.

5.5 The applicant contended that the conduct of the Respondent Resolution Professional is wholly contradictory, self-defeating, and ex facie arbitrary. On the one hand, the Respondent, in his capacity as Resolution Professional of the Corporate Debtor, has approached this Tribunal asserting that the Corporate Debtor possesses a substantial receivable which ought to be recognised and treated as a financial debt in the CIRP of M/s. Fairdeal Supplies Limited; yet, on the other hand, the very same Respondent now seeks liquidation of the Corporate Debtor. Such contradictory stands cannot be permitted to be taken before this Tribunal.

5.6 In the facts and circumstances aforesaid, the Corporate Debtor has a real, substantial, and demonstrable prospect of revival and successful resolution, and it cannot be said that liquidation is either inevitable or the only course available. On the contrary, the admitted existence of a large adjudicated receivable, already partly realised and presently under active pursuit before competent fora,

clearly shows that the Corporate Debtor possesses assets and recovery avenues far exceeding the dues payable to the CoC.

5.7 An order of liquidation at this stage would therefore be contrary to the settled objectives of the Insolvency and Bankruptcy Code, 2016, namely value maximisation and prioritisation of resolution over liquidation.

I.A. (I.B.C) LIQ No.33/KB/2024

6. This application is filed by Mr. Yogesh Gupta, the Resolution Professional, praying for the following reliefs:

a) The Tribunal be pleased to pass necessary orders of Liquidation of the CD under Section 33 of the Code;

b) Appoint any person as the Liquidator as this Tribunal deems fit and proper;

c) Such further and/or other order or orders as this Court may deem fit and proper.

7. A petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 was filed by State Bank of India against the Corporate Debtor before this Tribunal and was admitted on 19th January 2024, whereupon moratorium was declared under Section 14 of the Code.

7.1 Vide the order of admission dated 19th January 2024, the Applicant herein was appointed as the Interim Resolution Professional.

7.2 In accordance with the provisions of the Code, the Applicant issued a Public Announcement dated 22nd January 2024, constituted the CoC, and held the first meeting of the CoC on 16th February 2024, which comprises (i) State Bank of India with 51.54% voting share and (ii) Bank of Baroda with 48.46% voting share.

7.3 Vide e-mail dated 22nd January 2024 sent to the registered email address available on the MCA website, the Applicant informed the Suspended Board of Directors that the CIRP of the Corporate Debtor had been initiated and that the management of the Corporate Debtor rests with the Resolution Professional.

7.4 In the meantime, an appeal bearing Company Appeal (AT) (Insolvency) No. 286/2024 was filed against the CIRP admission order by a member of the Suspended Board of Directors before the Hon'ble NCLAT (New Delhi), wherein an interim order was passed on 12th February 2024 directing the Resolution Professional to continue with the CIRP process but not to decide finally on the Resolution Plan, with the

appeal listed for hearing on 18th October 2024 (**Letter "A"** of the Liquidation application).

7.5 It is submitted that, upon studying the books of accounts and relevant documents of the Corporate Debtor, the Applicant formed an opinion that several transactions of the Corporate Debtor fall within the ambit of avoidance transactions, for which an application is being filed by the Resolution Professional.

7.6 Form G was issued on 14th March 2024 inviting Resolution Plans, pursuant to which the Resolution Professional received four Expressions of Interest from: (1) RKG Asset Management LLP, (2) Resurgent Property Ventures Pvt. Ltd., (3) SPSS Infrastructure Pvt. Ltd., and (4) Subhlaxmi Investment Advisory Pvt. Ltd.

7.7 Out of the aforesaid entities, the prospective resolution applicants at serial numbers 1 and 2 were selected, and the Information Memorandum, Request for Resolution Plan, and Evaluation Matrix were shared with them for submitting a Resolution Plan by 26th May 2024; however, neither entity submitted a Resolution Plan within the due date nor requested permission for an extension of time.

7.8 In the 4th CoC meeting held on 10th June 2024, the Applicant requested the members to permit the issuance of Form G for a second time, but the CoC members were not in favour of issuing Form G afresh and preferred proceeding towards liquidation of the Corporate Debtor, whereupon the Chairman suggested obtaining a legal opinion before proceeding towards liquidation in view of the pending proceedings before the Hon'ble NCLAT (**page 23** of the Liquidation application).

7.9 As the 180 day period of CIRP was expiring on 16th July 2024, the Applicant sent emails to the CoC members on 10th July 2024, 12th July 2024, and 16th July 2024 seeking their views on extending the CIRP period or proceeding for liquidation, to which no response was received **(page 34** of the Liquidation application**)**.

7.10 In the 5th CoC meeting held on 25th July 2024, the representatives of the members present reiterated that they would proceed with liquidation of the Corporate Debtor since they had already decided against issuing an Expression of Interest for a second time, and upon placing the resolution for liquidation before the members, voting was deferred to 30th July 2024 for internal discussions, on which date the

members voted with 100% majority in favour of liquidation of the Corporate Debtor **(page 38** of the Liquidation application**)**.

7.11 Subsequently, in a meeting held on 12th September 2024, the Applicant placed a legal opinion before the CoC members on whether to proceed with liquidation in light of the Hon'ble NCLAT order dated 12th February 2024, and upon considering the legal opinion, the CoC members maintained their view to proceed with liquidation of the Corporate Debtor (**page 52** of the Liquidation application).

7.12 The asset position of the Corporate Debtor as per its audited financial statements as on 31st March 2023 stands recorded as follows: Property, Plant and Equipment at Rs. 68.62 hundred; Non-Current Investments at Rs. 48,359.50 hundred; Long-Term Loans and Advances at Rs. 16,915.54 hundred; Other Non-Current Assets at Rs. 621.52 hundred; Trade Receivables at Rs. 31,01,802.33 hundred; Cash and Cash Equivalents at Rs. 63,663.38 hundred; Short-Term Loans and Advances at Rs. 5,40,844.25 hundred; and Other Current Assets at Rs. 2,362.39 hundred, totaling Rs. 37,73,637.52 hundred.

8. We have heard the Learned Counsel appearing for the Applicant/Resolution Professional as well as the Learned Counsel appearing for the Intervenor/Suspended Director at length, perused the respective pleadings, affidavits, rejoinders, and examined the documents placed on record in I.A. (I.B.C) LIQ No.33/KB/2024 along with Intervention Petition No. 41 of 2024. The core issues arising for our judicial determination in the present proceedings are:

I. Whether the Intervention Petition filed by the member of the Suspended Board of Directors is maintainable and sustainable in law;

II. Whether the statutory directive of Section 33 of the Code compelling liquidation upon the expiry of the CIRP timeline and 100% CoC voting can be stayed or deferred on the ground that an unexecuted Arbitral Award/Money Decree exists in favour of the Corporate Debtor; and

III. Whether the Liquidation Application filed by the Resolution Professional deserves to be allowed.

9. Although the Intervenor challenged the admission order before the Hon'ble NCLAT, New Delhi in Company Appeal (AT) (Insolvency) No. 286 of 2024, the Hon'ble Appellate Tribunal vide order dated 12th February 2024 permitted the RP to

continue with the CIRP process. The statutory 180 day CIRP period expired on 16th July 2024 without any Resolution Plan being received or approved. (**page 12** of the reply to the intervention application)

10. In the 4th CoC meeting held on 10th June 2024 and 5th CoC meeting held on 25th July 2024, the CoC deliberated upon the state of affairs and unanimously decided not to issue any further Expression of Interest. Thereafter, on 30th July 2024 (**page 46** of the liquidation application), the CoC with 100% voting share formally passed a resolution resolving to liquidate the Corporate Debtor under Section 33(2) of the Code, which decision was re-affirmed in the subsequent CoC meeting dated 12th September 2024 after reviewing legal opinions (**page 52** of the liquidation application). The relevant extracts of the minutes of the CoC meeting held on 30.07.2024 are reproduced hereinbelow:

> *"RESOLVED that the Corporate Debtor be and is hereby recommended for liquidation in terms of Section 33(1) of IBC 2016 and intimation in this regard be made to the NCLT by the Resolution Professional.*
> *RESOLVED FURTHER that Mr Yogesh Gupta, Resolution Professional bearing IBBI Regn Number: IP/P-00349/10650/2017-18, be and is hereby*

authorised to file application under Section 33 of IBC, 2016, for Liquidation of Corporate Debtor, before NCLT, Kolkata Bench."

11. The opposition raised by the Intervenor seeking to hold the liquidation in abeyance is based on the contention that the Corporate Debtor is possessed of a legally enforceable receivable under an Arbitral Award dated 16th December 2019 passed in its favour against M/s Fairdeal Supplies Limited for a sum of Rs. 31,67,19,156/- along with interest @ 12% p.a., costs of Rs. 4,00,000/-, and an additional sum of Rs. 4,87,62,851/-, which is currently pending execution before the Hon'ble High Court at Calcutta in E.C. No. 176 of 2021 (**pages 70-169** of the intervention application).

12. The Intervenor contended that since the cumulative value of this money award/decree exceeds the total debt owed to the Financial Creditors, the CIRP/liquidation proceedings ought to be kept in abeyance to allow value recovery, placing reliance on the judgment of the Hon'ble Supreme Court in *Vidarbha Industries Power Limited v. Axis Bank Limited (2022) [(2022) ibclaw.in 91 SC]*.

13. However, this Tribunal is of the considered view that the reliance placed by the Intervenor on Vidarbha Industries is misplaced and legally untenable.

14. Upon the expiry of the statutory timeline following the initiation of CIRP, and in the absence of a viable resolution plan, the Adjudicating Authority lacks residual equitable jurisdiction to defer the process of liquidation merely on the basis of prospective or unexecuted arbitral recoveries.

15. Under Section 36(3) of the Code read with IBBI (Liquidation Process) Regulations, 2016, any pending arbitral award, money decree, or actionable claim automatically vests in and forms part of the Liquidation Estate of the Corporate Debtor. Under Section 35(1)(k) of the Code, the Liquidator is endowed with full statutory authority to institute, continue, and prosecute execution proceedings before competent judicial fora or assign the decree to maximize asset value for distribution under Section 53. The relevant extracts of the Section 35(1)(k) of IBC, 2016 are reproduced hereinbelow:

> *"(k) to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of on behalf of the corporate debtor"*

16. Therefore, liquidating the Corporate Debtor does not extinguish or prejudice the Arbitral Award dated 16th December 2019; rather, it transfers the duty of enforcement

to the Liquidator, eliminating any legal necessity or justification for holding liquidation in abeyance.

17. The Hon'ble Appellate Tribunal vide order dated 11th November 2024 rejected the stay on CIRP, holding that the pendency of execution of a decree in favour of the Corporate Debtor is no ground to stall insolvency proceedings, and merely granted liberty to the RP to continue execution and allowed parties to explore a settlement under Section 12A if concrete proposals were made. Having failed to obtain a stay from the Hon'ble Appellate Tribunal, the Suspended Board of Directors cannot be permitted to re-agitate the self-same grounds before this Tribunal through an Intervention Petition.

18. Regarding the commercial decision of the CoC, the statutory mandate of Section 33(1)(a) and Section 33(2) of the Code is mandatory: where no resolution plan is received before the expiry of CIRP or where the CoC resolves by not less than 66% voting share to liquidate the Corporate Debtor, the Adjudicating Authority "shall pass an order" liquidating the Corporate Debtor. The relevant extracts of the said provision are reproduced hereinbelow:

"(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors approved by not less than sixty-six per cent. of the voting share to liquidate or dissolve the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii), (iii), (iv) and (v) of clause (b) of sub-Section (1) or a dissolution order under sub-Section (2A) of Section 54, as the case may be: Provided that the committee of creditors shall, before taking the decision to dissolve the corporate debtor, comply with such conditions, as may be specified."

19. The Supreme Court in landmark rulings including K. Sashidhar v. Indian Overseas Bank (2019) 12 SCC 150, Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta (2020) 8 SCC 531, Kalpraj Dharamshi v. Kotak Investment Advisors Ltd. (2021) 10 SCC 637, and Vallal RCK v. Siva Industries Holdings Ltd. has consistently held that the commercial wisdom of the CoC is supreme and non-justiciable. The relevant extract of the judgment in ***Vallal RCK v. Siva Industries Holdings Ltd. [(2022) ibclaw.in 63 SC]*** is reproduced hereinbelow:

"26. It is thus clear that the decision of the CoC was taken after the members of the CoC, had due deliberation to consider the pros and cons of the Settlement Plan and took a decision exercising their commercial wisdom. We are therefore of the considered view that neither the learned NCLT nor the learned NCLAT were justified in not giving due weightage to the commercial wisdom of CoC."

20. We also rely on Judgment of Hon'ble NCLAT in ***Sunil Surrendrakumar Kakkad v. Sujyot Infrastructure Pvt. Ltd. [(2024) ibclaw.in 741 NCLAT]***, The relevant extract of the judgment is reproduced hereinbelow:

"15. Given the conspectus of facts in the present case, CoC's decision to liquidate cannot be looked upon as abrupt and hasty or arbitrary. The contention of the Appellant that the decision of the CoC to liquidate the Corporate Debtor as arbitrary therefore lacks merit. The only grounds on which a liquidation order passed under Section 33 can be challenged are on grounds of material irregularity or fraud as provided under Section 61(4) of the IBC. As both these grounds do not arise in the facts in this case, hence the objections of the Appellants to set aside the resolution passed by the CoC to initiate liquidation has no merit. The decision of the CoC to liquidate having been approved by the Adjudicating Authority, the same is not open to

judicial review when no grounds have been made out as provided under Section 61(4) of the IBC of material irregularity or fraud committed in relation to such an order.

16. We have no doubt in our mind that the object and purpose of IBC is to revive the Corporate Debtor and save it from corporate death. Be that as it may, the commercial wisdom of the CoC in deciding whether an entity can be revived or the debtor can be restructured or the Corporate Debtor needs to be liquidated being a business decision of the CoC needs to be accorded primacy. We find that the Adjudicating Authority had noted the deliberations of the CoC and only on being satisfied that the decision of the CoC to liquidate conformed to the requirements laid down in terms of Section 33(2) of the IBC that it concurred in the recommendations of the CoC to proceed with liquidation proceedings. The Adjudicating Authority has therefore not committed any error in approving the recommendation of the CoC to liquidate the Corporate Debtor in the given circumstances. Furthermore, the decision of the CoC to liquidate could not have been interfered with by the Adjudicating Authority because of the limited powers of judicial review. It is a well settled proposition of law that the Adjudicating Authority has been bestowed with limited jurisdiction as specified in the IBC while dealing with matters

relating to resolution and liquidation of the Corporate Debtor and cannot enter upon adjudicating into the merits of a decision taken by the CoC with requisite majority in its commercial wisdom to liquidate a corporate debtor. However, we make it clear that the decision taken by the CoC was in the facts of the present case and it cannot be said that whenever decision is taken for liquidation the same is not open to judicial review."

21. In view of the aforesaid detailed analysis, we hold that IVN.P (I.B.C)/41(KB)2024 filed by the Suspended Director is devoid of merit, and is hereby dismissed.

22. Consequently, the statutory triggers under Section 33(1)(a) and Section 33(2) of the Code stand satisfied in I.A. (I.B.C) LIQ No.33/KB/2024. We accordingly pass the following orders:

a) I.A. (I.B.C) LIQ No.33/KB/2024 filed by the Resolution Professional under Section 33 of the Insolvency and Bankruptcy Code, 2016 is ALLOWED, and M/s R. Piyarelall Iron & Steel Private Limited is hereby ordered to be liquidated.

b) In terms of Section 34 of the Code, as amended, the Resolution Professional who conducted the CIRP shall not be appointed as the Liquidator for the liquidation

process of the Corporate Debtor. It has been prayed that any person may be appointed as Liquidator. Accordingly, Ms. Savita Agarwal, Insolvency Professional, holding IBBI Registration IBBI/IPA-001/IP-P00101/2017-18/10201 Email ID: savita@rkothari.in is hereby appointed as the Liquidator of the Corporate Debtor to conduct the liquidation proceedings.

c) Ms. Savita Agarwal will submit her consent in prescribed Form within three days from the receipt of copy of this order.

d) The Liquidator shall strictly act in accordance with the provisions of IBC, 2016 and the attendant Rules and Regulations including Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016 as amended upto date.

e) All powers of the Board of Directors, key managerial personnel, and partners of the Corporate Debtor shall cease to have effect and shall be vested in the Liquidator in terms of Section 34(2) of the Code.

f) Subject to Section 52 of the Code, upon issuance of this liquidation order, no suit or other legal

proceeding shall be instituted by or against the Corporate Debtor; provided that the Liquidator may institute or prosecute legal proceedings on behalf of the Corporate Debtor with the prior approval of this Adjudicating Authority as mandated under Section 33(5) of the Code.

g) The Liquidator shall issue the public announcement that the Corporate Debtor is in liquidation. In relation to officers/ employees and workers of the Corporate Debtor, taking into consideration Section 33(7) of IBC, 2016, this order shall be deemed to be a notice of discharge.

h) The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016.

i) The Liquidator shall submit a Preliminary report to this Tribunal within 75 (seventy-five) days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. Further such other or further report as are required to be filed under the relevant

Regulations, in addition, shall also be duly filed by him with this Adjudicating Authority.

j) The Registry is directed to communicate this order to the Registrar of Companies and to the Insolvency and Bankruptcy Board of India.

k) The order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence.

l) Copy of this order be sent to the financial creditors, Corporate Debtor and the Liquidator for taking necessary steps and for extending the necessary co-operation in relation to the Liquidation process of the Corporate Debtor.

Rekha Kantilal Shah
Member (Technical)

Labh Singh
Member (Judicial)

SRIDHAR.R(LRA)