

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.36/2024
(IA Nos. 106, 107 & 779/2024)

IN THE MATTER OF:

RBL Bank Limited

Having its office at,
Block A, 7th Floor,
Bannari Amman Towers,
No. 29, Dr Radhakrishnan Salai,
Mylapore Chennai-600 004.
Represented by its Deputy Vice President - Special
Assets Group & Authorised Signatory

...APPELLANT

Vs

Sical Logistics Limited

Represented by its Authorized Signatory,
Having its office at South India House,
73 Armenian Street, Chennai-600 001.

.... RESPONDENT NO.1

Mr. Sripatham Venkatasubramanian Ramkumar,

Erstwhile Resolution Professional of
Sical Logistics Ltd., Having its office at: 73,
South India House, Armenian Street,
Chennai - 600001 And having address at: 1605,
Block-1, Myhome Vihanga, Gachibowli,
Hyderabad, Telengana – 500032

.... RESPONDENT NO. 2

Bank of Baroda

Represented by the Assistant General Manager,
Having its office at SAM Branch,
No. 45, 4th Floor, JBAS Building,
Moore Street, Chennai-600029

.... RESPONDENT NO. 3

Yes Bank Limited

JCF Asset Reconstruction Co 12th Floor,
Crompton Greaves House,
Dr. Annie Besant Road, Worli, Mumbai-400030

Maharashtra.

.... RESPONDENT NO. 4

IDFC Bank Limited

IDFC First Bank, Plot No. 79,
Residency Road, Richmond Town,
Bengaluru-560025,
Karnataka

.... RESPONDENT NO. 5

Canara Bank Limited

Industrial Finance Branch,
No. 91, Infantry Road,
Bengaluru 560001, Karnataka

.... RESPONDENT NO. 6

UCO Bank Limited

Kind Attn: Mr. Sandeep Kumar
Flagship Corporate Branch,
Mafatlal Centre, 1^a Floor, Nariman Point,
Mumbai-400021, Maharashtra

.... RESPONDENT NO. 7

IndusInd Bank Limited

Embassy Heights,
3rd Floor, Block B, 13, Mcgrath Road,
Bengaluru-560025, Karnataka

.... RESPONDENT NO. 8

SREI Equipment Finance Limited

Plot No. Y-10, Block EP, Sector V,
Salt Lake City, Kolkata - 700091
West Bengal

.... RESPONDENT NO. 9

Union Bank of India Limited

1/1, First Floor, Jeevan Sampige,
2nd Main Road, Sampige Road,
Malleswaram, Bengaluru - 560003,
Karnataka.

.... RESPONDENT NO. 10

Axis Bank of India

Arcot Plaza, 4th Floor, New No. 38,
Old No. 165, Arcot Road, Kodambakkam,
Chennai-600024 Tamil Nadu

.... RESPONDENT NO. 11

DCB Bank Limited

No. 6, Rajaji Road,
(Opp. Tennis Stadium) Nungambakkam,
Chennai-600034, Tamil Nadu

.... RESPONDENT NO. 12

Volvo Financial Services (India) Private Limited

#65/2, Bagmane Teck Park, Block-A,
5th Floor, Parin Building CV Raman Nagar,
Bengaluru-560093 Karnataka

....RESPONDENT NO. 13

Cholamandalam Investment & Finance Co. Limited

No. 45, Justice Basheer Ahmed Sayeed Building,
II Floor, 2nd Line Beach, Moore Street,
Parrys, Chennai-600001, Tamil Nadu

....RESPONDENT NO. 14

Standard Chartered Bank

Cresenzo, 7th Floor, C-38/39, G-Block,
Behind MCA Club, Sandra Kurla Complex,
Sandra (East), Mumbai-400051 Maharashtra

....RESPONDENT NO. 15

Tata Motor Finance Limited

Kind Attn: Mr. M.V. Balaji
Celestial Point, 2nd Floor, No. 45,
Damodharan Street, T. Nagar,
Chennai – 600017, Tamil Nadu

....RESPONDENT NO. 16

Sundaram Finance Limited

No. 21, Patullos Road,
Chennai-600002 Tamil Nadu

....RESPONDENT NO. 17

Mercedes-Benz Financial Services India Private Limited

(Erstwhile Daimler Financial Services Solution Limited)
1st Floor, Unit #1, Block B -Tek Meadows campus,
No. 51 Rajiv Gandhi Salai, Sholinganallur,
Chennai-600119, Tamil Nadu

....RESPONDENT NO. 18

Kotak Mahindra Bank Limited

4th Floor, No. 11, MG Road,
Bengaluru-560001, Karnataka

....RESPONDENT NO. 19

Reliance Commercial Financial Limited

2nd Floor, FFK Tower, No. 39,
30th Cross Road, Tilak Nagar, Bannerghatta Road,
Bengaluru-560029 Karnataka

....RESPONDENT NO. 20

HDB Financial Services Limited

No. 68/2 4th Floor Loyal Towers,
Greams Road, Chennai-600006 Tamil Nadu

....RESPONDENT NO. 21

Tata Motor Finance Solution Limited

Kind Attn: Mr. M.V. Balaji
Celestial Point, 2nd Floor,
No. 45, Damodharan Street,
T. Nagar, Chennai - 600017
Tamil Nadu

....RESPONDENT NO. 22

Present:

For Appellant : Mr. Krishna Srinivasan, Senior Advocate
For Ms. Pavitra Venkateswaran, Advocate

For Respondents : Mr. R. Sankaranarayanan, Senior Advocate
For Mr. Aditya Reddy, Mr. Abhishek Swaroop,
Mr. Palash Agarwal and
Ms. Bhawana Sharma, Advocates for R1
Mr. Pradeep Joy and Ms. Dharmya M S,
Advocates for R2
Mr. Srinath Sridevan, Senior Advocate
For Mr. Rama Subramaniam Raja, Advocate for R3
Mr. N. Somasundar, Advocate for R10
Mr. H Arunachalam, Advocate for R21

With

Company Appeal (AT) (CH) (Ins) No.37 / 2024
(IA Nos. 109 & 778 / 2024)

IN THE MATTER OF:**RBL Bank Limited**

Having its office at, Block A, 7th Floor,
Bannari Amman Towers,
No. 29, Dr Radhakrishnan Salai,
Mylapor Chennai-600 004.

Represented by its Deputy Vice President - Special
Assets Group & Authorised Signatory

... Appellant

Vs

Sical Logistics Limited

Represented by its Authorized Signatory,
Having its office at South India House,
73 Armenian Street, Chennai-600 001.

....Respondent No.1

Pristine Malwa Logistics Park Pvt. Ltd.,

Represented by Mr. Vikash Kumar Verma,
(Power of Attorney Holder)
Having its office at:
3rd Floor, Wing-B, Commercial Plaza,
Radisson Hotel Delhi, H-8, Mahipalpur,
New Delhi - 110 037.

....Respondent No.2

Bank of Baroda

Represented by the Assistant General Manager,
Having its office at
SAM Branch,
No. 45, 4th Floor, J BAS Building, Moore Street,
Chennai-600029

....Respondent No.3

Mr. Sripatham Venkatasubramanian Ramkumar,

Erstwhile Resolution Professional of Sical Logistics Ltd.,
Having its office at:
73, South India House, Armenian Street, Chennai - 600001
And having address at:
1605, Block-1, Myhome Vihanga, Gachibowli,
Hyderabad, Telengana – 500032

....Respondent No.4

Present:

For Appellant : Ms. Manusri for Ms. Pavithra Venkateswaran, Advocates

For Respondents : Mr. Aditya Reddy, Mr. Abhishek Swaroop,
Mr. Palash Agarwal and
Ms. Bhawana Sharma, Advocates for R -1
Mr. Rama Subramaniam Raja, Advocate for R3
Mr. Pradeep Joy & Ms. Dharmya M S, Advocates for R4

JUDGMENT
(Hybrid Mode)

[Oral Judgment: Justice Sharad Kumar Sharma, Member (Judicial)]

These are two company appeals. The respective counsels, representing the parties in two appeals have unanimously agreed that, since the issues of law and facts are common, in both appeals, they may be considered and decided together.

2. In **Company Appeal (AT) (CH) (Ins) No. 36/2024**, RBL Bank Limited versus Sical Logistic Limited and 21 others, the Appellant (RBL Bank Limited) questions the propriety of the impugned order of 20.12.2023, as passed in IA (IBC) No. 1188/2023 which was preferred by Respondent No.1 in CP(IB)No.73/2020 herein (Sical Logistics Limited) Sical Logistic Limited Versus Mr. Sripatham Venkatasubramanian Ramkumar and 21 others. By virtue of the said impugned order, Ld. Adjudicating Authority has directed the Appellant (RBL Bank Limited), Respondent No.3 (Bank of Baroda) and other members of Committee of Creditors (CoC)

- (i) to release all original title documents of the assets of the Corporate Debtor (CD) to the Respondent No.1 herein (Sical Logistics Limited), for facilitating the sale of said assets, including two pieces of land situated in Madhavaram, Chennai, in terms of approved Resolution Plan,

- (ii) to facilitate the regulatory filing in relation to the sale of the said assets of the Corporate Debtor and
- (iii) to execute the respective definitive agreements as stipulated under the approved Resolution Plan.

3. The notices were issued to the Respondents by an order dated 06.02.2024, as some of the Respondents had not appeared. This Appellate Tribunal by an order dated 21.10.2024, had directed to serve the unserved Respondent No. 4, 16, 22, and 18 by a substitutive mode of service. In compliance thereto, the Ld. Counsel for the Appellant has resorted to the process of substitutive mode of service and had filed an Affidavit of Service on 07.11.2024, along with the copy of the Newspaper, in original in which the notices were carried for service on the unserved Respondents. In that eventuality, all Respondents would be deemed to have been served with the notice in the instant appeal. Hence, we have to proceed to hear the matter on merits.

4. There is an exemption application being **IA No. 107/2024**, preferred by the Ld. Counsel for the Appellant, seeking an exemption from placing on record the certified copy of the impugned order, owing to the grounds taken in the exemption application preferred under Rule 31 of the NCLAT Rules 2016. The same would stand 'allowed' and the exemption as prayed for, from filing of the certified copy of the impugned order, since it is not being opposed by the counsels for the other side, would stand 'disposed of' subject to the above observations.

5. In the connected company appeal being **Company Appeal (AT) (CH) (Ins) No. 37/2024**, RBL Bank Limited versus Sical Logistic Limited and 03 others, the challenge is given by the Appellant (RBL Bank Limited) to the impugned order of 20.12.2023, as it was passed in IA (IBC) No.1329/(CHE)2023, as preferred in Company Petition (IB) No. 73/2020, whereby the Ld. Tribunal has declined the prayer to restrain Respondent No. 1 (SICAL Logistics Limited) from alienating the assets of the Corporate Debtor, provided as security to the Appellant herein and rejected the relief sought for, in the IA (IBC) No. 1329/2023, with the observations, that “the members of the erstwhile Committee of Creditors”, are directed, to take action within a period of one month from the date of the order, to redraw the distribution matrix by taking into account the amount already disbursed, the amount withheld and future receipts based on the principles to the effect that “the Dissenting Creditors shall be paid the amount in accordance with Section 53(1) of the I & B Code”, in the event of liquidation, in compliance with the terms of provision contained under Section 30(2) of the I & B Code, 2016, as mentioned in Para 1.2.9.1(b) of the Resolution Plan and the Dissenting Financial Creditors shall be paid in priority over the Assenting Financial Creditors as held in IA(IBC) No. 250/(CHE)2023.

6. For all practical purposes since the counsels have agreed to address the Company Appeal (AT) (CH) (Ins) No. 36/2024 on merits, nothing much is required to be ventured into in this Appeal, i.e., CA (AT) (CH) (Ins) No. 37/2024

because the entire controversy would be confined to be determined from the perspective as to whether the amount paid and to be paid to the Appellant (RBL Bank) is in terms of Section 30(2) of the I & B Code, 2016, as mentioned in Para 1.2.9 (1)(b) of the Resolution Plan and under what terms the Appellant will part with his title deeds in favour of Respondent No. 1. It may be noted that in this appeal too, since the Respondents being common in view of the 'Affidavit of Service' as already referred above, they will be treated as having been served with the notices.

7. Heard the Ld. Counsels, for the parties. At the very outset, the Ld. Counsel for the Respondent had extended an offer that, since he is to pay Rs. 105 Crores by 11.01.2025 (Effective date +2 years) and balance Rs. 226 Crores by 11.07.2025 (Effective date +2 years 6 months), he is ready to deposit Rs. 105 Crores (One Hundred and Five Crores Only) in 2 weeks and the balance Rs. 226 Crores within stipulated time frame and requested that consequent to the remittance of the said amount, the title deeds of the assets which were thus surrendered by him to the Financial Creditors, including the Appellant (RBL Bank), may be directed to be returned back and handed over to him in original, as per the approved Resolution Plan.

8. Ld. Counsel for the Appellant responded to this statement of Respondent No. 1 by contending that he is a Dissenting Financial Creditor (FC), that he is entitled a share of 9.88% of the Resolution Plan value of Rs. 425 Crores and

therefore he should be given Rs. 42.09 Crores being 9.88% of 425 Crores, that as a dissenting Creditor he should get priority in payment and therefore as Rs. 54.32 Crores has been remitted by Successful Resolution Applicant (SRA) as the 1st tranche of the Resolution amount he should have been paid Rs. 42.09 Crores in full, but instead he has been paid Rs. 9.38 Crores only and that his share has been reduced to Rs. 34.78 Crores being 9.88% of the estimated liquidation value of Rs. 351.88 Crores, that thus the Resolution Plan has violated Section 30(2) of the Code and hence he is not bound to return the title deeds as envisaged in the approved Resolution Plan, unless directions are given to pay the Dissenting Financial Creditors in terms of Clause 1.2.9 (1) (b) of the said plan.

9. The Resolution Plan that was approved by Committee of Creditors (CoC) on 29.02.2022, and later on, affirmed by Ld. NCLT on 08.12.2022 in IA(IBC)No.366/2022 amounts to payment of Rs. 521.82 Crores by the Successful Resolution Applicant (SRA), Respondent No. 1 herein, the breakup of which is given below: -

- i) Payment of secured FCs – upfront: Rs 54.32 Crores (Effective Date +30 days)
- ii) Payment of Secured FCs from the internal cash balance of the Corporate Debtor: Rs. 40.63 Crores (Effective Date +30 days)
- iii) Payment of Secured FCs – deferred Lot-1: Rs. 105 Crores.
- iv) Payment of Secured FCs: deferred Lot-2: Rs. 226 Crores.

v) Payment of Secured FCs, if live BGs are invoked: Rs. 84.82 Crores.

The effective date was also determined to be 11.01.2023

10. We may not be much concerned at this stage, with regards to the Resolution Plan and its implication, which stood approved by the Committee of Creditors, because the only controversy which, has been addressed upon by the Ld. Counsel for the Respondent was as to how and when the amount thus determined qua the Appellant, who was held to be a Dissenting Financial Creditor, is to be settled and its appropriate quantification. As per the Resolution Plan, the Successful Resolution Applicant (SRA) on 11.01.2023, as per the clause 1.2.9(1)(a) of the plan, infused Rs. 54.32 Crores as the upfront payment. This amount alongwith Rs. 40.63 Crores (income tax refund) were to be distributed among the secured FCs. At this point of time, dispute arose as to how this amount is to be distributed and what share will be given to the Dissenting Financial Creditors, who were entitled to, as per Clause 1.2.9(1)(b) of the plan, to an amount which they would have otherwise received in accordance with the provisions contained under Section 30(2)(b)(ii) read with Section 53(1) of the Insolvency and Bankruptcy Code, 2016, in priority to the Assenting Financial Creditors. This issue of distribution was taken up in Joint Lenders Meeting (JLM): as per Resolution Plan, the Appellant RBL Bank was to receive an amount of Rs. 42.09 Crores, being 9.88% of the total Resolution Plan pay out (without the BG return) of Rs. 425.93 Crores. Accordingly, the Appellant was paid Rs. 9.38 Crores being 9.88% of the

amount available for distribution which was Rs. 94.93 Crores (54.32 + 40.61 Crores). However, the Appellant demanded full payment of Rs. 42.09 Crores, claiming that he is entitled to paid in priority over Assenting FCs as per the plan and as the provisions of I & B Code, 2016. At this point, JLM tried to work out various formulas to accommodate the claims of the Appellant (RBL Bank), but the Appellant was not satisfied.

11. Aggrieved against the said determination of the fund-sharing ratio, by the JLM, the Appellant filed IA (IBC) No. 250/2023 in IA (IBC) No. 366/2022 in CP(IB) No. 73/2020, with the prayer to, direct the Resolution Professional to strictly adhere to the terms of the Resolution Plan and remit the balance amount of Rs. 32.71 Crores (total amount payable of Rs. 42.09 Crores minus the amount of Rs. 9.38 Crores already paid on 13.01.2023) as settled to be paid, in terms of the the plan as approved by the Ld. Adjudicating Authority and to pay the amount from the initial tranche of fund thus infused.

12. In addition, the Appellant in the said application in IA (IBC) No. 250/2023, prayed that the Hon'ble Tribunal may report, regarding the actions of the Respondent No.01 in IA i.e., the Resolution Professional, to IBBI for further and appropriate action. So far as the other reliefs are concerned, we may not be much concerned, while deciding these appeals except for relief A, which has been extracted hereunder: -.

“A. The Respondent No. 1, the Resolution Professional, be directed to make payment of the sum of Rs. 32.71 crores to the Applicant herein (i.e. the total amount payable under the terms of resolution plan Rs.42.09 crores minus the amount received by the Applicant on 13.01.2023 Rs.9.38 crores) in line with the resolution plan of the Respondent No.2, successful resolution applicant, dated 08.01.2022 (amended on 11.02.2022 and 24.02.2022) which was approved by this Hon'ble Tribunal vide order dated 08.12.2022;”

13. IA (IBC) No. 250/2023, was vehemently contested by the respective parties including the Appellant. The Ld. Adjudicating Authority on considering the rival contentions while deciding IA (IBC) No. 250/2023, including the narration of facts pertaining to the basis of the claim, its determination and the quantification of the entitlement of the Dissenting and Assenting Creditors came to the conclusion in Para B9 of the order rendered in IA (IBC) No. 250/2023 that, the Dissenting Creditor would be entitled to be paid with the amount that shall be paid to such Dissenting Creditors in accordance with Section 53 (1) Insolvency and Bankruptcy Code, 2016, which has been provided in the plan in its clause 1.2.9(b) of the Resolution Plan. With regard to priority in payment, the Ld. Adjudicating Authority has referred to the interplay of Section 30(2) with regards to the entitlement of the Dissenting Financial Creditor to receive payment in priority over others with the implications of Regulation 38 (1)(b) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 which

contemplates for conferring the Dissenting Financial Creditors a priority in the payment.

14. Regulation 38 (1)(b) of Insolvency and Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 is extracted hereunder: -

“38. Mandatory contents of the resolution plan.

[(1)The amount payable under a resolution plan-

- (a)to the operational creditors shall be paid in priority over financial creditors; and*
- (b)to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.]”*

15. The Ld. Adjudicating Authority, upon the determination of the implication of Regulation 38 with Section 30(2) of the I & B Code, 2016 ultimately drew a conclusion in the following manner: -

“CONCLUSION:

18.In the light of the above discussions, we are of the view that:

- i) The classification of amount payable as 'disputed' and 'undisputed' in the Joint Lenders meeting subsequent to approval of Resolution Plan is not valid.*
- ii) The amount payable to dissenting creditors is the minimum amount prescribed in Section 30(2)(b) of IBC, which has been provided for in clause 1.2.9 (b) of the resolution plan.”*

iii) *The dissenting lenders will be paid in priority over the assenting lenders.*

16. Going further, the Ld. Adjudicating Authority while deciding IA (IBC) No. 250/2023 had gone on to determine the amount payable to the Appellant herein, RBL Bank in its order dated 20.12.2023, as contained under Clause B to be read with the conclusion arrived at which are extracted hereunder: -

“B.) What is the amount eligible to be paid to dissenting creditors in case the amount payable under resolution plan is more than liquidation value?”

B1). In the instant case, the resolution amount is higher than the liquidation value. The Applicant RBL Bank arrived at its share of Rs.42.09 crores by calculating 9.88% on the resolution plan value i.e. Rs.425.93 crores instead of calculating the share on the liquidation value. The liquidation value is Rs.351.88 crores. Assuming non-deduction of CIRP cost and workmen dues etc., the Applicant is entitled to receive its share as per the liquidation value i.e. 9.88% of Rs.351.88 crores, which comes to Rs.34.76 crores only as opposed to the Applicant claims of Rs.42.09 crores. In the JLM held 13.01.2023, the Applicant had demanded that if the liquidation value is to be taken, then the same shall be as per the liquidation value of the individual lenders.”

17. During the proceedings of the instant appeals, the Ld. Counsel for the Bank of Baroda, the lead member of the Committee of Creditors, Respondent No.3 herein has contended that in the absence of a challenge given to the order of 20.12.2023 rendered in IA (IBC) No. 250/2023 as above, where the quantification of the amount claimed by the Appellant has already been determined and status of priority has also been decided in para 18(3) of the order, strictly in conformity

with Regulation 38 to be read with Section 30(2)(b), the ambit and scope of the right of the Appellant cannot be magnified in any manner whatsoever beyond the order of 20.12.2023 in the instant proceedings. Thus, he submits, that in the absence of any challenge given to the said order dated 20.12.2023 rendered in IA (IBC) No. 250/2023, the Appellant cannot argue to the contrary with regards to the quantification of the rights. In other words, he wants to submit that, whatsoever claim if any is required to be determined for the Appellant it has had to be confined to the parameters and the determination made by the order of 20.12.2023 in IA. No. 250/2023 by Ld. Adjudicating Authority and nothing beyond that. There is no quarrel by the parties on the said issue except for the fact that, the Ld. Counsel for the Appellant has attempted to draw the attention of this Appellate Tribunal to, the relevant parts of the Resolution Plan specifying his entitlement and particularly a statement in which 2 scenarios of payment were presented. The Appellant contended that in both Scenarios i.e., Scenario - 01 which deals with the “pro-rata payment to the assenting and the dissenting creditors”, and Scenario - 02 which envisages with ‘100% upfront payment to Dissenting Creditors, his name finds place at Serial No. 03 as a dissenting creditor in both the columns and in both scenarios, it has been determined that he has to be paid with 42.09 Crores. The relevant extracts of the column are given hereunder: -

***“Scenario 1: Pro rata to assenting and dissenting
creditors (excluding BG amounts)”***

(INR Crore)

<i>Voting Status</i>	<i>CoC Member</i>	<i>Upfront</i>	<i>Deferred</i>	<i>Total</i>
<i>Assenting</i>	<i>Bank of Baroda</i>	<i>31.70</i>	<i>110.55</i>	<i>142.25</i>
<i>Assenting</i>	<i>Yes Bank Ltd</i>	<i>16.77</i>	<i>58.49</i>	<i>75.27</i>
<i>Dissenting</i>	<i>RBL bank Limited</i>	<i>9.38</i>	<i>32.71</i>	<i>42.09</i>
<i>Assenting</i>	<i>IDFC Bank Limited</i>	<i>12.27</i>	<i>42.78</i>	<i>55.05</i>
<i>Assenting</i>	<i>Canara Bank</i>	<i>8.22</i>	<i>28.65</i>	<i>36.87</i>

***Scenario 2: 100% upfront to dissenting creditors
(excluding BG amounts)***

(INR Crore)

<i>Voting Status</i>	<i>CoC Member</i>	<i>Upfront</i>	<i>Deferred</i>	<i>Total</i>
<i>Assenting</i>	<i>Bank of Baroda</i>	<i>11.72</i>	<i>130.54</i>	<i>142.25</i>
<i>Assenting</i>	<i>Yes Bank Ltd</i>	<i>6.20</i>	<i>69.07</i>	<i>75.27</i>
<i>Dissenting</i>	<i>RBL bank Limited</i>	<i>42.09</i>	<i>-</i>	<i>42.09</i>
<i>Assenting</i>	<i>IDFC Bank Limited</i>	<i>4.54</i>	<i>50.52</i>	<i>55.05</i>
<i>Assenting</i>	<i>Canara Bank</i>	<i>-</i>	<i>-</i>	<i>-</i>

18. At this stage, we feel that Ld. Adjudicating Authority has erred in holding that the amount payable to a Dissenting Creditor is the minimum amount prescribed in Section 30(2)(b) of I & B Code, 2016, which is the amount to be determined as per Section 53(1) of the I & B Code, 2016, in the event of liquidation of the Corporate Debtor in compliance with the provision of Section 30(2) of the Code as mentioned in para 1.2.9.1.b of the approved Resolution Plan. The entitlement of Dissenting Creditor is laid down in Section 30(2)(b)(ii) along with explanation (I). Section 30(2)(b)(ii) stipulates that Resolution Plan shall provide for payment to a Dissenting Creditor, which shall not be less than the

amount to be paid in accordance with Section 53(1) in the event of liquidation of the Corporate Debtor. This implies that the payment to be given shall not be less than the proportionate share of liquidation value. Explanation (I) states that the distribution under this Clause shall be fair and equitable to such Creditors. In the instant case, the resolution value is higher than liquidation value. So it is fair and equitable that the Dissenting Creditor gets a pro-rata share of the resolution value rather than the pro-rata share of the liquidation value. This being so, RBL Bank's due should have been Rs. 42.09 Crores being 9.88% of the Resolution Plan pay out of Rs. 425.93 Crores and not Rs. 34.78 Crores being 9.88% of the liquidation value amounting to Rs. 351.88 Crores. Even though the order passed in IA No. 250/2023 is claimed to have attained finality, there are elements of challenge to it in the instant Appeal CA(AT)(CH)(Ins) No. 36/2024, the Appellant seeks the following reliefs:

“21 RELIEFS SOUGHT

In view of the facts mentioned in Paragraph 7 above, the points in dispute and the questions of law as set out in Paragraph 8 above, and the grounds as set out in paragraph 9 above, it is humbly prayed before this Hon'ble Appellate Tribunal may be pleased to:

- i. Allow the present Appeal and set aside the Impugned Order dated 20.12.2023 passed in I.A. (IBC) No. 1188 of 2023 in C.P. (IB) 73/2020 and consequently direct payments to be made to the Mandatory Dissenting Financial Creditors in terms of Clause 1.2.9.(1)(b) of the resolution plan.*

- ii. *Pass such other orders as this Hon'ble Appellate Tribunal may deem fit and proper in the circumstances of this case and thus render justice."*

Thus, the Appellant in the present Appeal is seeking direction for payments to be made to the mandatory Dissenting Creditors in terms of Clause 1.2.9(1)(b) of the Resolution Plan. Clause 1.2.9(1)(b) stipulates that the payment to such Financial Creditors will be made as per Section 30(2)(b) of I & B Code, 2016, whose provisions are in variance with the order of Ld. Adjudicating Authority in IA No. 250/2023. Therefore, it will be correct to satisfy the ends of equity and justice, to hold that the Appellant will be entitled to an amount of Rs. 42.09 Crores and that all other Dissenting FCs will also be paid proportionate share of Resolution Plan value.

19. The second issue in contention is that of receiving payment in priority. Section 30(2)(b)(ii) stipulates payment of debts of dissenting FCs in such manner as may be specified by IBBI. IBBI has specified the relevant guidelines in Regulation 38(1)(b) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which is that such dissenting FCs shall be paid in priority over assenting FCs. The Ld. Adjudicating Authority has also directed that the dissenting Financial Creditors will be paid in priority over the assenting Financial Creditors in the manner as discussed in para C1 – C6 of its order dated 20.12.2023. But full clarity is yet to be made available in the said order dated 20.12.2023. Will the Appellant (RBL Bank) get its dues in full, before any

payment is given to other Assenting Creditors which he is praying for? This has not been answered clearly in the said order and has been left to be interpreted by the monitoring committee. We are of the view that priority in payment will mean that whenever any payment is released by the Successful Resolution Applicant (SRA) to the FCs, the Dissenting Creditor will still be paid pro-rata, but first in case where SRA pays the plan amount at one go, then the issue is simple, pay dissenting FC first and then to other FCs. But in most cases, payments from Successful Resolution Applicant (SRA) will come in instalments: this being the case, payment to creditors will have to be paid in instalments. Further, even within an instalment, fund infusion may be done in stages. In such a case it may not be possible to pay in full to the Dissenting Creditors before disbursement to Assenting Creditors can start. Therefore, we hold that priority in payment will mean that whenever an amount is going to be distributed among creditors, the payment will be done pro-rata but the Dissenting Creditor has to be paid first before others. This is also in sync with the views taken by this Tribunal in para 19 of its judgment in the matter of Puro Naturals JV Vs Warana Sahakari Bank & Ors. in CA (AT) (Ins) Nos. 651, 661-663, 1005 of 2023, which has also been referred by the Ld. Adjudicating Authority

20. The controversy ultimately boils down, to the issue dealt with in IA No. 1188/2023, which is the subject matter of consideration in the instant company appeal CA(AT)(CH)(Ins) No. 361/2024. In the application thus filed, the

Applicant therein (Sical Logistics Limited) had modulated the relief in the following manner: -

- a) RBL Bank, Bank of Baroda and other member of CoC of the Corporate Debtor to release all the original title documents of the assets of the Corporate Debtor, as may be required from time to time, for facilitating the sale of the said assets including 1.37 acres of land at GNT Road, Madhavaram and 1.82 acres of land at Thattankulam, Madhavaram in terms of the Approved Resolution Plan.
- b) Direct them to facilitate any regulatory filing in relation to the sale of assets of the Corporate Debtor as above.
- c) Direct them to waive off interest on the deferred Financial Creditors payments till the release of original title documents of the 2 pieces of lands as given above.
- d) Direct the Resolution Professional and the members of CoC to execute the necessary agreements in pursuant to the approved Resolution Plan.

21. Ld. Adjudicating Authority has considered the above application being IA No. 1188/2023 and has decided the same vide the impugned judgment dated 20.12.2023. Further, the Ld. Adjudicating Authority while dealing with the implications of the IA No. 1188/2023, where the release of the title documents

was prayed for, has observed that, there has been a settled obligation, which was required to be fulfilled as per the terms of the approved Resolution Plan, that is, the Corporate Debtor would be handed over to the Successful Resolution Applicant (SRA) as a going concern along with its management control and operation and the Successful Resolution Applicant (SRA), as part of the implementation of the Resolution Plan, would have to disburse a sum of Rs. 331,00,00,000/- as deferred FC debt payments to the Financial Creditors in two installments, that is, Rs. 105,00,00,000/- within a period of two years and the balance amount of Rs. 226,00,00,000/- within two years and six months of the effective date. It was further observed that the Corporate Debtor has also agreed to pay the interest at the rate of 8% per annum, payable annually at the end of each year as computed on a monthly basis for the deferred component to be paid to the Financial Creditors.

22. The Ld. Adjudicating Authority, while considering the stand taken by the Ld. Counsel for the Appellant regarding the IA No. 1188/2023, has made reference to the order passed on 20.12.2023 on IA (IBC) 250/2023. According to the findings recorded, the Ld. Adjudicating Authority while making reference to the terms and conditions contained in Para 1.2.9.1(m), of the Resolution Plan has observed that it will be a deemed consent of the Financial Creditor for the sale of non-core assets as the relevant clause 1.2.9.1(m) has envisaged that in the event of any sale in relation to the secured fixed assets of the Corporate Debtor, the

money realized from such sale shall be utilized for making the payment towards the deferred Financial Creditors dues, and the Financial Creditors shall be deemed to have provided their consent to such sale on approval of this Resolution Plan. The relevant part of the resolution plan is contained under Para 1.2.9. 1(m) is extracted hereunder: -.

“(m) in case, any sale is envisaged in relation to the secured fixed assets of the Corporate Debtor, the monies realized from such sale shall be utilized for making payments towards the Deferred FC Debt Payment and Financial Creditors shall be deemed to have provided their consent to such sale on approval of this Resolution Plan”

23. The Ld. Adjudicating Authority, while dealing with the provisions contained under Section 31 of the I & B code, 2016, in terms of the approval of the plan and the decision which was taken by the monitoring committee has held it to be having a binding effect and has observed that it is expected that the Financial Creditors would cooperate and fulfill their role regarding, the release of the title deed and the sale of non-core assets, facilitating of the regulatory filing in relation to the sale of assets, and execution of the definitive documents including term documents, agreements, etc.

24. Lastly, the decision which was taken by the Ld. Adjudicating Authority, with regards to the reliefs, as claimed in IA No. 1188/2023, is extracted hereunder: -.

“23. In view of the reasons mentioned above, the reliefs as prayed for in para (a), (b), and (d) are granted and it is ordered as under.

(a) RBL Bank / Respondent No. 2, Bank of Baroda / Respondent No. 3 and other members of the committee of creditors i.e., Respondent Nos. 4 to 22 of the Corporate Debtor are directed to release all the original title documents of the assets of the Corporate Debtor to the Applicant for facilitating the sale of the said assets, including sale of 1.37 acres of land situated at GNT Road, Madhavaram and 1.82 acres of land situated at Thattankulam, Madhavaram, in terms of the Approved Resolution Plan.

(b) The Respondent Nos. 2 to 22 are directed to facilitate any regulatory filing, in relation to the sale of assets of the CD including issuance of any documents as required / sought by the person including the Government / authority / office for enabling the sale of the assets including sale of 1.37 acres of land situated at GNT Road, Madhavaram and 1.82 acres of land situated at Thattankulam, Madhavaram, in terms of the Approved Resolution Plan.

(d) Respondent Nos. 2 to 22 are directed to execute the respective definitive documents including Term Debt Agreement, Declaration of Trust and Trustee Agreement, etc., and take steps pursuant thereof as stipulated under the Approved Resolution Plan. Respondent No. 1 is also directed to provide all assistance / facilitation as required by the Applicant for the above.

*24. As regard relief which has been prayed in **para (c)** of the relief clause, the applicant in its application itself has stated that in terms of para 1.2.9.1(m) of resolution plan, financial creditors shall be deemed to have provided consent to such sale on the approval of resolution plan. Since the Corporate Debtor has every right to go ahead with sale of non-core assets, post sanction of the plan and there is approval of the monitoring committee and all the creditors*

barring RBL Bank Ltd. as to going towards that part payment of amount due to Financial Creditors, the relief as sought for in para (c) regarding waiver of interest for the deferred FC payment amount is declined.

*25. In the light of what has been stated above, the Application IA/IBC/1188/CHE/2023 stands **disposed of.**”*

25. At the inception of the judgment, we have observed that, Respondent No. 1 (Sical Logistic Limited), while opening the argument has made the statement that whatsoever financial liability has been fastened upon them, under the Resolution Plan, coupled with the long challenge made to the order of 20.12.2023 passed in IA (IBC) 250/2023, they unconditionally undertake to deposit the entire financial liability with the Resolution Professional by 30.03.2025, and have submitted thereafter that subject to the aforesaid deposit to be made by the Respondent within the aforesaid period, the title documents of the assets of the Corporate Debtor thus retained by the Financial Creditors will be returned to the Resolution Professional who would in turn return them to the Respondent No. 01 herein.

26. Owing to the aforesaid facts, the following issues are hereby determined:

- i. The amount determined to be paid under the Resolution Plan would be remitted by the Respondent No. 1 in consonance to the provisions contained under Section 30(2)(b) to be read with Regulation 38 to the Resolution Professional latest by 31.03.2025.

- ii. Respondent No. 2 will distribute the amount among the FCs in the manner as detailed in the Resolution Plan and para 18 & 19 of this judgment.
- iii. Simultaneously, upon the deposit of the due full amount made by Respondent No. 1, the respective Financial Creditors holding the title deeds of the assets of the Corporate Debtor will return them to the Resolution Professional, who in turn will return the same to the Respondent No. 1.

27. For the aforesaid reasons, these ‘appeals’ would stand ‘allowed’, and all the pending ‘Interlocutory Applications’ would stand ‘closed’.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

28/03/2025
SN/MS