



2025:DHC:6601-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 01st AUGUST, 2025

IN THE MATTER OF:

+ **W.P.(C) 3228/2025, CM APPL. 15199/2025, CM APPL. 15201/2025, CM APPL. 15496/2025, CM APPL. 21214/2025 & CM APPL. 24462/2025**

ERA INFRA ENGINEERING LIMITED

.....Petitioner

Through: Dr. Abhishek Singhvi, Sr. Advocate,
Mr. Dayan Krishnan, Sr. Advocate
with Ms. Kaveri Rawal, Ms. Zinnea
Mehta, Mr. Sukrit Seth and Mr. Yash
Johri, Advocates.

versus

**NATIONAL ASSET RECONSTRUCTION COMPANY LIMITED
& ORS.**

.....Respondents

Through: Mr. Arvind Nigam, Senior,
Mr. Vaibhav Gaggar, Sr. Advocate
with Ms. Smriti Churiwal, Mr. Jaiveer
Kant, Ms. Ambikka Singh, Advocates
for R-1.
Ms. Arundhati Katju, Sr. Advocate
with Ms. Tanushvi, Ms. Swati
Kwatra, Mr. Anshuman Jindal,
Advocates for R-2.
Mr. Ashish Verma, Mr. Saksham
Thareja, Mr. Kartikay Bhargava,
Advocates for R-3 with RP Mr.
Sandeep Goel.
Mr. Siddharth Yadav, Sr. Advocate
with Mr. Manav Goyal, Advocate for
R-4 & 5.
Mr. Krishnan Venugopal, Sr.
Advocate with Mr. Manav Goal,
Advocate.



CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR

JUDGMENT

SUBRAMONIUM PRASAD, J

1. The present writ petition has been filed by the Petitioner seeking a relief in the nature of writ of mandamus against the Respondent No. 1, thereby restricting it to take any illegal actions and initiate parallel recovery proceedings against its subsidiaries before different forums, which will defeat the purpose of Insolvency and Bankruptcy Code, 2016 (*hereinafter referred to as "IBC"*).
2. The facts leading to the filing of the present writ petition are as follows –
 - a. The Petitioner is a company incorporated on 03.12.1990 under the provisions of the Companies Act, 1959. The Petitioner is an Engineering, Procurement and Construction (EPC) commission contract company, which mostly operated on Building Operate-Transfer (BoT) models in India.
 - b. National Highways Authority of India (*hereinafter referred to as "NHAI"*) has issued tenders for the construction, maintenance and operation of three highway segments i.e., Bareilly-Sitapur section of NH-24 (*hereinafter referred to as "Project A"*); Muzaffarnagar-Haridwar section of NH-58 (*hereinafter referred to as "Project B"*); and Delhi-Haryana Border to the Rohtak section of NH-10 (*hereinafter referred to as "Project C"*).



- c. The Petitioner participated in the bidding of the aforesaid projects and after being declared as successful bidders, the NHAI has issued a Letter of Awards for each project, wherein the Petitioner was obligated to incorporate Special Purpose Vehicles (*hereinafter referred to as "SPV"*) for the execution of the aforementioned projects.
- d. Accordingly, the Petitioner has incorporated three SPVs as subsidiaries for the execution of the projects, which are as follows –
- i) Bareilly Highway Project Limited (*hereinafter referred to as "Respondent No. 3"*)
 - ii) Haridwar Highway Project Limited (*hereinafter referred to as "Respondent No. 4"*)
 - iii) West Haryana Highway Project Limited (*hereinafter referred to as "Respondent No. 5"*)
- e. After the incorporation of Respondent No. 3-5, the SPVs started executing the contracts. The details of the work to be executed by Respondents No.3-5 is as under:

Bareilly Highway Project Limited/Respondent No. 3

- i. Respondent No. 3 and NHAI have entered into a Concession Agreement on 22.06.2010 for the completion of Project A. However, being a parent company, the Petitioner has also entered into an EPC Agreement on 24.12.2010 with Respondent No. 3 to comply with the terms of the Concession Agreement.



- ii. In order to complete its work pertaining to Project A, the Respondent No. 3 has availed various loans from different banks, with Petitioner being the Guarantor. The same has been encapsulated in Clause 5.2.6 of the Facility Agreement dated 16.12.2010, which was entered into by the Respondent No. 3, State Bank of India (SBI) and Union Bank of India.
- iii. Project A could not be completed. Concession Agreement dated 22.06.2010 was terminated on 03.05.2019, due to which the EPC Agreement dated 24.12.2010 also got terminated.
- iv. Aggrieved by the termination of the Agreements, Respondent No. 3 invoked the arbitration clause against NHAI claiming an amount of Rs.98,19,18,30,276/-. The arbitral proceedings with respect to the same has already reached the stage of conclusion, with Arbitral Tribunal reserving its award *vide* Order dated 22.08.2024.
- v. Thereafter, an application under Section 7 of the IBC was filed by the SBI against the Respondent No. 3 and *vide* order dated 23.09.2024, the NCLT has admitted the Respondent No. 3 into Corporate Insolvency Resolution Process (CIRP). However, when the said order was challenged, the NCLAT had stayed the CIRP proceedings against the Respondent No. 3 *vide* order dated 15.10.2024.
- vi. While the said appeal was still pending, the Consortium of Lenders (CoL) of the Respondent No. 3 assigned its debt



in favour of Respondent No. 1. Respondent No. 1 is a Public Sector Undertaking which is in the nature of an Asset Reconstruction Company, incorporated under the provisions of the Companies Act, 2013 on 07.12.2021.

- vii. Based on the EPC Agreement dated 24.12.2010, Petitioner has initiated arbitration proceedings against the Respondent No. 3 and filed an application under Section 17 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as "A&C Act"*) to preserve and secure the assets and receivables of Respondent No. 3 and to restrain from getting it disbursed to other parties.

Haridwar Highway Project Limited/Respondent No. 4

- i. Similar to the factual situation of Respondent No. 3, Respondent No. 4 and NHAI has also entered into a Concession Agreement dated 24.02.2010, which led to the EPC Agreement dated 24.02.2010 between the Petitioner and Respondent No. 4.
- ii. However, due to certain disputes, NHAI terminated the said Concession Agreement *vide* letter dated 25.07.2018. As previously seen in the case of Respondent No. 3, the debt of Respondent No. 4 was also handed over to Respondent No. 1 by the CoL *vide* Joint Assignment Agreement dated 28.03.2024.
- iii. Thereafter, the Respondent No. 1 preferred an application under Section 7 of the IBC for the initiation of CIRP against the Respondent No. 4. The arguments before the



NCLT have been concluded and the order on the application was reserved *vide* order dated 13.12.2025.

West Haryana Highway Project Limited/Respondent No. 5

- i. For the incorporation of Respondent No. 5, the Petitioner and M/s Karam Chand Thapar & Bros. (Coles Sales) Limited entered into a Memorandum of Understanding on 23.02.2007 and have become the successful bidders for attaining Project C.
- ii. Accordingly, an EPC Agreement dated 21.03.2008 was entered into between the Petitioner and the Respondent No. 5 for the execution of Project C as per the specified terms and conditions mentioned therein.
- iii. In order to complete Project C, Respondent No. 5 has taken various loans from CoL and upon termination of the said work, the CoL has assigned its debt to the Respondent No. 5.
- f. It is pertinent to note that the Petitioner is a Guarantor for the loans availed by the SPVs for the execution of Projects A, B and C.
- g. In the interregnum, disputes arose between the Petitioner and the NHAI and the contracts got terminated resulting in filing of an application under Section 7 of the IBC before the NCLT. The said application was admitted by the NCLT. An IRP was appointed. The IRP, who later became the Resolution Profession (RP), took steps in accordance with the IBC by



inviting prospective resolution applicants. Expression of Interests (EoI) were received from various parties.

- h. Respondent No. 2, an engineering consulting firm, submitted its Resolution Plan for the revival of the Petitioner-company. The said Resolution Plan was admitted by the CoC with 87.08% majority votes.
- i. Thereafter, the RP filed an application before the NCLT for the approval of the Resolution Plan and *vide* order dated 11.06.2024, the Resolution Plan was approved, thereby making the Respondent No. 2 a Successful Resolution Applicant (SRA).
- j. A Monitoring Committee was formed to ensure the implementation of the Resolution Plan by 20.09.2024 and has stated that the Resolution Plan was implemented successfully. With this statement of satisfaction on the implementation of the Resolution Plan, the Monitoring Committee dissolved and filed an application before the NCLT submitting the same. The same is taken on record by the NCLT on 21.10.2024.
- k. After the implementation of the Resolution Plan, notice dated 16.10.2024 was issued for conducting the First Meeting of the Board of Directors of the Petitioner. The said Meeting was conducted on 18.10.2024.
- l. After its rejuvenation, the main concern of the Petitioner is regarding the sharing of arbitral proceeds and claims from its SPVs i.e., Respondent No. 3-5 and for this purpose, an Agreement for sharing of arbitral proceeds (*hereinafter referred*



to as “SAP Agreement”) on 05.09.2024 was entered into between the Petitioner, Assenting Secured Financial Creditors, Assenting Unsecured Financial Creditors and Respondent No. 2. Respondent No. 1 is one of the signatories of the said Agreement.

- m. The dispute between the parties arose when Respondent No. 1 has initiated various recovery proceedings with respect to the Respondent No. 3, 4 and 5 before different forums, despite the Resolution Plan and the SAP Agreement.
- n. The Petitioner has therefore, filed the present Petition with the following prayers:

"a) Issue a writ of mandamus or any other writ/ direction to Respondent No. 1 restraining the Respondent No. 1 from initiating any recovery action against the Respondent No. 3-5 in order to frustrate the provisions of Resolution Plan of the Petitioner and SAP Agreement;

b) Issue a writ of mandamus or any other writ/ direction to Respondent No. 1 to comply in full with the Resolution Plan, as mandated by Section 31 of the Code, ensuring timely and effective execution of the Plan without any further hindrance;

c) Issue a writ of mandamus or any other writ/ direction to the Hon'ble DRT, Hon'ble NCLT, Hon'ble NCLAT to not advance with the proceedings initiated by Respondent No. 1 against the Respondent No. 3-5;

d) Pass any other/ further other(s) which this Hon'ble Court may deem fit and equitable in the facts of the case and in the interests of justice."



3. When the matter came up for hearing before this Court on 27.03.2025, an order was passed staying all the proceedings before the NCLT and DRT. Challenging the said order, an application bearing CM APPL. No. 21214/2025 was filed by the Respondent No. 1 seeking vacation of stay on the said proceedings. The relevant portions of the Order read as under:

"2. Learned counsel appearing on behalf of the petitioner submitted that the respondent no. 1 has been acting against the intent of the Resolution Plan as well as the provisions of the Insolvency and Bankruptcy Code, 2016 (hereinafter "Code"), thereby initiating multiple proceedings before various forums such as the National Company Law Tribunal (hereinafter "NCLT") and Debt Recovery Tribunal (hereinafter "DRT"), which undermines the resolution process of the petitioner-company.

3. It is submitted that the said Resolution Plan has already attained finality as it has been approved by the Committee of Creditors and the NCLT. It is submitted that the said actions of respondent no. 1 are against the very provisions of the Resolution Plan, which were duly approved by the banks that have assigned their debt to respondent no. 1.

4. It is further submitted that having stepped into the shoes of the original lenders, the respondent no. 1 cannot take a contradictory stance and adopt decisions that are inconsistent with those taken by its assignors, especially while approving a Resolution Plan, which categorically lays down the due course of resolution of the petitioner-company.

5. It is submitted that the respondent no. 1 cannot initiate parallel proceedings to recover the amount since the Resolution Plan is designed to prevent



prolonged litigation, thereby leading to the effective liquidation of the petitioner-company.

6. In view of the foregoing submissions, it is prayed that the proceedings before the concerned NCLT and concerned DRT may be stayed till the next date of hearing.

7. Learned senior counsel for the respondents no. 2, 4 and 5, appearing on advance notice, have not contradicted the submissions advanced on behalf of the petitioner.

8. Heard learned counsel for the parties and perused the material placed on record.

9. Considering the contents of the instant petition as well as the submissions advanced on behalf of the parties, this Court is of the view that the matter requires consideration.

10. Issue notice. Learned counsel appearing on behalf of the respondents no. 2, 4 and 5 accepted notice.

11. Issue notice to respondents no. 1 and 3 through all permissible modes on filing PF within one week.

12. Given that the issues raised by the learned counsel for the parties require consideration and that the learned counsel for the respondent nos. 2, 4 and 5 has not contradicted the submissions advanced by the learned counsel for the petitioner, this Court is inclined to keep the proceedings before the concerned NCLT and concerned DRT in abeyance.

13. Accordingly, the proceedings before the concerned NCLT and concerned DRT shall be kept in abeyance till the next date of hearing."



4. Respondent No. 1 has filed the said application challenging the maintainability of the present Writ Petition stating that the Petitioner has to take recourse to the remedies available to it under the IBC and that the Writ Court while exercising its jurisdiction under Article 226 of the Constitution of India cannot entertain the present writ petition in view of the efficacious, alternate remedy available to the Petitioner under the IBC.

5. Respondent No. 1 has also prayed for vacation of stay granted by this Court in its order dated 27.03.2015 contending that substantial amount of money is to be received by the Respondent No.1 from Respondents No.3, 4 and 5.

6. Mr. Arvind Nigam, learned Senior Counsel for the Respondent No. 1, contends that the present Petition is not maintainable in view of the alternate remedies available to the Petitioner under the IBC. He states that the Petitioner primarily seeks restraint on the Respondent No.1/Applicant, which is an asset reconstruction company, from continuing legal proceedings before forums under the Recovery of Debts and Bankruptcy Act, 1993, (*hereinafter referred to as "RDDDB Act"*) or under the IBC by exercising its legal rights against Respondents No.3, 4 & 5. He states that Respondent Nos.3, 4 & 5 collectively owe a whopping amount of Rs.7800 crores. He also states that the Petitioner has already approached the NCLAT by moving an application in the Petition filed by the ex-Directors of the old avatar of the Petitioner-company challenging the Resolution Plan approved by the NCLT, wherein all the facts, which have been stated in the present Writ Petition *qua* Respondent No.3, had been raised. He states that the said application has been disposed of by the NCLT *vide* Order dated 24.03.2025 and the remedy of the Petitioner is to challenge the said Order before the



appropriate forum. He states that even after exhausting its right to appeal before the NCLAT and failing to get any favourable order, the Petitioner cannot approach this Court without exercising its remedy under the IBC itself. He has laid emphasis on the proposition that the IBC is a separate code in itself.

7. It is submitted that if the grievance of the Petitioner is that the initiation of recovery proceedings of the Respondent No. 1 against the Respondent Nos. 3, 4 and 5 directly affects the implementation plan of the Petitioner, then only the forums under the IBC would be in a position to appreciate this contention and modify the plans appropriately and this Court under Article 226 of the Constitution of India cannot exercise its jurisdiction in such a scenario. He states that just because the Respondent No.1 is backed by the Government, that alone would not be sufficient to enable the Petitioner to approach this Court by invoking Article 226 of the Constitution of India. He further states that Respondent No.1 is exercising its right under the various provisions of the IBC and the actions of the Respondent can only be challenged before the forums where the actions have been initiated by the Respondent No.1 and not before this Court.

8. He states that the present case does not involve any question of public law remedy. It is submitted that the Respondent No. 1 is only exercising its contractual rights against Respondents No. 3-5 and therefore, the forums created under relevant statutes alone would be in a position to adjudicate the disputes and only those forums would have to be approached for the redressal of those rights, if any, of the Petitioner. Hence, it is contended that the present petition is not maintainable under law.



9. He further states that the issues which have been raised in the Petition are that the Resolution Plan of the Petitioner in its old form will be affected if the Respondent No.1 appropriates the amount received in the award. He states that this issue can only be dealt with by those authorities who have approved the plan. He states that even assuming that there is ambiguity in the plan, it can only be resolved by the authorities under the IBC. He states that it is settled law that the Writ Petition could not be invoked with respect to the matters which are to be adjudicated by the specialized forums under the Act.

10. Learned Senior Counsel also states that the Petitioner is indulging in forum shopping. It is stated that the Petitioner approached the NCLT on 23.07.2024, where it made submissions that it intended to settle the debt of Respondent No.3, however, the NCLT did not give indulgence to the Petitioner stating it has no locus. He states that this order was not challenged by the Petitioner and has accordingly attained finality. He further states that the Petitioner approached the NCLAT by way of an Intervention Application dated 22.10.2024 and an Additional Affidavit dated 18.11.2024 was filed in the proceedings *qua* the Respondent No. 3. He states that the Petitioner appeared on 8 dates from 25.10.2024 before the NCLAT, which disposed off its application without any finding to the effect that NCLT/NCLAT does not have jurisdiction to deal with the issues raised in the intervention application. He states that this order has also not been challenged by the Petitioner by resorting to the remedies provided under law. He states that the Petitioner simply chose to approach this Court invoking the writ jurisdiction without even disclosing the NCLT and NCLAT orders in the Writ Petition. He further states that the stay that has



been obtained by the Petitioner was obtained completely in collusion with the Respondents No.2, 3 & 4 behind the back of the Petitioner without presenting the correct facts and this Court has been misled into passing the interim order.

11. The contentions raised by the Respondent No. 1 are also supported by the learned Counsel for the Respondent No. 3.

12. *Per Contra*, Dr. Abhishek Manu Singhvi, learned Senior Counsel for the Petitioner, contends that the Petitioner, an EPC Contractor, was awarded multiple highway projects by the NHAI and incorporated SPVs, i.e. Respondent Nos.3, 4 & 5 solely to meet the NHAI's tender conditions. He states that CIRP proceedings were initiated against the Petitioner in the year 2018 and a Resolution Plan was submitted by the Respondent No.2 which has been approved by the CoC and NCLT. He states that as a part of the restructuring plan, the money which was to be received by the SPVs under the Arbitration dispute between the NHAI and the SPVs, should ideally come to the pocket of the Petitioner in its new avatar. He states that SAP Agreement was entered into between the Petitioner, Respondent Nos.3-5, the lenders and the Respondent No.1, wherein it was agreed that the awards received by Respondents No.3-5 will go to Petitioner and Respondent No.2. He states that this fact was in the knowledge of the Banks and the Respondent No.1, who are the signatories to the Resolution Plan. He states that the debt of Respondents No.3, 4 & 5 were assigned to Respondent No.1, which also became a party to the SAP Agreement. He states that all the parties, including the Respondent No.1 had agreed that the arbitral proceeds of the SPVs will be included in the Resolution Plan of the Petitioner and will be shared with the Assenting Financial Creditors. He states that despite



being bound by the Resolution Plan and the SAP Agreement, Respondent No.1, in contravention of the provisions of the IBC, more particularly Section 31, has initiated multiple proceedings, including insolvency and debt recovery, against Respondents No.3 to 5 before the NCLT and DRT, in breach of the agreed terms therein.

13. He further states that Respondent No.1 being the instrumentality of the State is bound by Article 14 of the Constitution of India and, therefore, the Petitioner has invoked the writ jurisdiction of this Court seeking mandamus against the Respondent No.1 restraining Respondent No.1 from acting in breach of the SAP Agreement and to ensure compliance of the Resolution Plan.

14. Learned Senior Counsel for the Petitioner further contends that Petitioner is not challenging the admission of the SPVs into CIRP by the Adjudicating Authority but the action of Respondent No.1 of filing the Petition under Section 7 of IBC. He states that the jurisdiction of the NCLT is summary in nature and limited to determining the existence of a financial debt and default and no person other than the financial creditor and the corporate debtor has the right to be heard at the pre-admission stage and third-party intervention is not permitted, therefore, the Petitioner, who is neither a corporate debtor nor a financial creditor can be heard before the NCLT. He further states that since the Petitioner's intervention application was not entertained by the NCLAT, and the Petitioner realised that it was raising its grievances before a forum which is not competent to entertain such grievances, and the Petitioner had no other alternate efficacious remedy other than approaching this Court under the writ jurisdiction.



15. He states that the issues raised by the Petitioner squarely falls within the realm of public law remedy and the reliefs sought for by the Petitioner cannot be granted by the NCLT, NCLAT, DRAT, or even the Apex Court in its appellate jurisdiction under the IBC, which is structured, limited, and does not permit adjudication of public law claims. He states that even the Apex Court, while exercising its jurisdiction under the provisions of the IBC, cannot cover public law or judicial reviews of administrative actions. He states that the Apex Court in Kalyani Transco v. Bhushan Power & Steel Ltd., **2025 SCC OnLine SC 1010**, has acknowledged the Judgment of the Apex Court in GLAS Trust Co. LLC v. BYJU Raveendran, **(2025) 3 SCC 625**, and went to clarify that NCLAT, being an appellate authority, is limited to the jurisdiction exercised by the NCLT and it cannot exceed its jurisdiction by entertaining matters beyond the NCLT's original jurisdiction. He submits that the expression “*any person*” under Section 61 of the IBC, must be construed narrowly to include only those persons who have a right to initiate proceedings under Sections 7 or 9 of the IBC and it cannot be expansively interpreted to include shareholders or Investors in the corporate debtor. He states that the Petitioner would become remediless if the present Petition is not entertained.

16. He states that the NCLT, having no residuary jurisdiction to adjudicate disputes arising *de hors* the insolvency of the corporate debtor, cannot entertain the present matter where the Resolution Plan of the Petitioner is not impacting, but rather being undermined by the CIRP of its SPVs. He states that as far as Respondent No.5 is concerned, apart from NCLT, the Respondent No.1 is also pursuing the proceedings against Respondents No.3 to 5 before the DRT and neither the NCLT and NCLAT



has the jurisdiction to *injunction* such proceedings and only this Court, in exercise of its writ jurisdiction, can issue a mandamus to restrain such *mala fide* actions. He states that since the forums under the IBC or the DRT cannot entertain the grievances of the Petitioner, the Petitioner is justified in approaching this Court by filing the present Writ Petition under Article 226 of the Constitution of India.

17. Learned Counsel for the Petitioner also contends that the present Petition, as framed, is maintainable and while adjudicating the issue of maintainability in an application challenging the maintainability, this Court is not required to delve into the fact of relief or the precise percentage of the arbitral proceeds to be disbursed and this has to be decided on the merits of the matter. He further states that Respondent No.1 has admitted that the arbitral proceeds of the SPVs form part of the Resolution Plan submitted by the Petitioner and further, that Respondent No.1 is a signatory to the SAP Agreement and, therefore, Respondent No.1 cannot question the maintainability of the present Petition. He further states that the issue of forum shopping and collusion are false and contrary to the record. He states that the Respondent No.1 has to file its counter affidavit and take a stand on the Resolution Plan of the Petitioner and the SAP Agreement. He states that the question of maintainability can be seen after the Respondent No.1 has filed its counter.

18. He states that even if an alternate remedy is available, that alone would not oust the jurisdiction of this Court to entertain the present Petition under Article 226 of the Constitution of India. He contends that Respondent No.1 being the instrumentality of the State under Article 12 of the Constitution of India cannot act arbitrarily and its arbitrary and *mala fide*



actions can be looked into only by this Court. He states that Respondent No.1 being a “State” is bound by higher standard of fairness in its actions and since Respondent No.1 has acted arbitrarily and *mala fide*, the present Writ Petition is maintainable. Reliance has been placed by the learned Senior Counsel for the Petitioner on the judgment of the Apex Court in Shrilekha Vidyarthi (Kumari) v. State of U.P., (1991) 1 SCC 212. He further states that the amounts to be shared under the SAP Agreement will have to be looked into and only then can the present Writ Petition be adjudicated. He also states that all the concerned parties have been arrayed in the present Petition.

19. The contentions raised by the learned Senior Counsel for the Petitioner are supported by Respondent No. 2, 4 and 5.

20. Heard learned Senior Counsels for the parties and perused the material on record.

21. The Petitioner has approached this Court primarily to restrain Respondent No.1 from initiating any recovery action against Respondents No.3 to 5 contending that any recovery against Respondents No. 3 to 5 will frustrate the Resolution Plan dated 20.09.2022 restructuring the Petitioner and the SAP Agreement dated 05.09.2024 in which Respondent No.1 is also a signatory. The SAP Agreement signifies that the amounts (if any) to be received under the arbitral proceedings, which are pending between Respondent No.3 to 5, are not appropriated by Respondent No.1 but rather shared by Petitioner and other financial institutions in terms of the Resolution Plan dated 20.09.2022 and SAP Agreement. The Petitioner states that Respondent No.1 being the instrumentality of the State, cannot be



permitted to resile from the SAP Agreement and cannot be permitted to thwart the Resolution Plan.

22. It is further stated that even the DRT and the authorities under the RDDB Act would not be in a position to sit in appeal against their Resolution Plan nor can they sit as an authority over the decisions taken by the forums functioning under the IBC.

23. It is the case of the Petitioner that this petition cannot be dismissed at the threshold only on the ground of maintainability and this Court has to go into the facts of the case and only after satisfying itself that the parties are not covered by the Resolution Plan dated 20.09.2022 or the SAP Agreement, a decision can be taken.

24. *Per contra*, the case of Respondent No.1 is that the Petitioner has engaged in forum shopping and as far as the Petitioner is concerned, they should have approached the forums under the IBC, but have chosen to approach this Court by filing the present writ petition, instead of exhausting the available remedies under the IBC itself.

25. Respondent No.1 also states that if the recovery proceedings initiated against the Respondent No. 3 is at variance with the Resolution Plan dated 20.09.2022, then the authorities who have approved the Plan are the correct authority to consider this aspect and come to a solution to the problem, if any, that exists in accordance with law. Respondent No.1 also contends that as far as Respondent No.4 is concerned, the matter is still pending before the NCLT and proceedings being *in rem*, the Petitioner can avail the remedies provided under the IBC once the order is passed by the NCLT. It is also the case of Respondent No.1 that as far as Respondent No.5 is concerned, the petition is premature inasmuch as no orders have been passed against



Respondent No.5 and these arguments can be taken before the authorities under the provisions of the RDDB Act. It is also stated that no question of public law remedy arises in this case as the Petitioner is exercising its remedies available to it under the IBC.

26. According to the Petitioner, the Respondent No. 1 has to adhere to the Resolution Plan dated 20.09.2022 and the SAP Agreement and cannot resort to the remedies available under the provisions of the statute. It is anyway settled that availability of alternate remedy does not bar entertaining a petition under Article 226 of the Constitution of India.

27. The facts of the case reveal that in the year 1990, the Petitioner was incorporated as an EPC commission contractor mostly operating on BoT basis of various projects. The Petitioner was awarded tenders by the NHAI and as required by the tenders, SPVs were incorporated by the Petitioner which are Respondent No.3, 4 and 5 herein. The Petitioner established Respondent No.3 for the Bareilly Highways Project, Respondent No.4 for the Haridwar Highways Project and Respondent No.5 for West Haryana Highways Project. Respondents No.3 to 5 have been incorporated only for the purposes of executing the projects. In the meantime, the contracts with the NHAI got terminated, CIRP proceedings were initiated against the Petitioner under the provisions of the IBC. An IRP was appointed and Respondent No.2 was the SRA. The Resolution Plan dated 20.09.2022 was cleared by the NCLT *vide* order dated 11.06.2024.

28. The SAP Agreement was entered into between Respondent No.2, Petitioner and other financial institutions. In the meantime, the debts taken by Respondents No.3 to 5 were assigned to Respondent No.1 and Respondent No.1 also was a signatory to the SAP Agreement. Respondent



No.1 initiated proceedings against Respondents No.3 and 4 before the NCLT. As far as Respondent No.3 is concerned, the Resolution Plan has attained finality. The said Plan was challenged before the NCLAT when the Petitioner moved an application for intervention. *Vide* Order dated 24.03.2025, the appeal filed by the erstwhile Director of Respondent No.3 was dismissed. It is pertinent to note that there is no discussion on the application for intervention filed by the Petitioner therein.

29. The Petitioner has approached this Court by filing a petition under Article 226 of the Constitution of India stating that the Petitioner had approached a wrong forum and the only remedy available to the Petitioner was to approach this Court. *Vide* Order dated 27.03.2025 passed by this Court, stay was granted in favour of the Petitioner restraining Respondent No.1 from proceeding against Respondents No.3, 4 and 5 before the forums under the IBC and RDDB Act. An application has been filed by Respondent No.1 for vacation of stay and for dismissal of the writ petition on the ground that the writ petition is not maintainable.

30. One of the primary contentions made by the Petitioner with respect to the maintainability of the instant petition was that the Petitioner, not being a corporate debtor or financial creditor, cannot approach the forums under the IBC at the stage of pre-admission.

31. On this aspect, the Apex Court, while enumerating as to what is the nature of proceedings initiated under Section 7 and 9 of the IBC, has observed in GLAS Trust Company LLC v. Byju Raveendran & Ors., **2025 (3) SCC 625**, that though only a corporate debtor or a creditor being operational or financial can initiate proceedings under the IBC but once the application gets admitted, it becomes proceedings *in rem* and once it



becomes proceedings *in rem*, persons who are likely to be affected by those proceedings are entitled to maintain proceedings before the authorities, at least before the NCLT. While dealing with Section 62 of the IBC which deals with appeals to the Supreme Court wherein any person is aggrieved by the order of the NCLAT can file an appeal to the Supreme Court, in Glas Trust (supra) the Supreme Court has explained the phrase "any person" as under:-

"75. The provision stipulates that "any person" who is aggrieved by the order of Nclat may file an appeal before the Supreme Court within the prescribed limitation period. Similar language is used in Section 61 IBC, which provides for appeals to Nclat from orders of NCLT. ["61. Appeals and appellate authority.—(1) Notwithstanding anything to the contrary contained under the Companies Act, 2013 (18 of 2013), any person aggrieved by the order of the adjudicating authority under this part may prefer an appeal to the National Company Law Appellate Tribunal."(emphasis supplied)] The use of the phrase "any person aggrieved" indicates that there is no rigid locus requirement to institute an appeal challenging an order of NCLT, before Nclat or an order of Nclat, before this Court. Any person who is aggrieved by the order may institute an appeal, and nothing in the provision restricts the phrase to only the applicant creditor and the corporate debtor. As noted above, once CIRP is initiated, the proceedings are no longer restricted to the individual applicant creditor and the corporate debtor but rather become collective proceedings (in rem), where all creditors, such as the appellant, are necessary stakeholders. The appellant is not an unrelated party to CIRP, but is in fact, an entity whose claims had been verified by the IRP vide letter dated 19-8-2024. The appellant who claims to be a financial creditor, has expressed reasonable apprehensions about the prejudice it would face if



there were round tripping of the funds, and the prioritisation of the debts of the second respondent, an operational creditor."

32. To the very same effect, the Supreme Court in Independent Sugar Corporation Limited v. Girish Sriram Juneja & Ors., **2025 (5) SCC 209**, has observed as under:-

"21. At the outset, the preliminary objection regarding the locus standi of the appellant(s) to prefer the present appeal(s) must be dealt with.

22. Section 61 IBC provides the statutory framework for appeals against orders of the adjudicating authority i.e. NCLT, stipulating that "any person aggrieved" by such an order may prefer an appeal to the appellate authority i.e. Nclat in this case. Further, Section 62 extends this right of appeal to the Supreme Court.

23. Similarly, Section 53-B of the Competition Act provides that "any enterprise or any person aggrieved" within the statutory framework may file an appeal against any order of CCI to the Appellate Tribunal i.e. Nclat. Section 53-T further extends this right of appeal to the Supreme Court against any decision or order of Nclat.

24. Once the CIRP is initiated, the nature of proceedings are no longer in personam but rather become in rem. In light of the same, the expression "any person aggrieved" in the context of IBC has been held to be indicative of there being no rigid locus requirements to institute an appeal challenging an order of NCLT before Nclat or an order of Nclat before this Court. [GLAS Trust Co. LLC v. Byju Raveendran, (2025) 3 SCC 625 : (2024) 247 Comp Cas 687] Similarly, in the context of the Competition Act, even those persons that bring to CCI information



of practices that are contrary to the provisions of the Competition Act, could be said to be “aggrieved”. [Samir Agrawal v. CCI (Cab Aggregators Case), (2021) 3 SCC 136] Therefore, the term “any person aggrieved” appearing in Section 62 IBC and Section 53-T of the Competition Act must be understood widely and not in a restricted fashion.

25. In the present case, the appellant as an unsuccessful resolution applicant whose resolution plan could have otherwise been approved by CoC, satisfies the requirement of being aggrieved. This preliminary locus standi objection vis-à-vis the appellant, therefore, does not merit acceptance.”

33. The Apex Court therefore categorically states that once the CIRP is initiated, the nature of proceedings is no longer *in personam* but rather become *in rem* and the expression “any person” aggrieved in the context of IBC has been held to be indicative of locus to institute an appeal challenging the order of the NCLT before the NCLAT or an order of the NCLAT before the Apex Court.

34. The Petitioner has already challenged the Resolution Plan against Respondent No.3 before the NCLAT by moving an application for intervention. The said application has been filed in the appeal filed by the erstwhile Director of Respondent No.3 challenging the Resolution Plan dated 20.09.2022 before the NCLAT in Appeal No. 1930/2024 and that the appeal has been dismissed on 24.03.2025 but there is no discussion whatsoever on the application for intervention filed by the Petitioner. After having availed of the remedy before the NCLT, the Petitioner has to exhaust the remedy under the IBC or even file a review against the Order dated



24.03.2025 saying that the application of the Petitioner has not been adjudicated on merits.

35. The argument raised by Dr. Singhvi, learned Senior Counsel for the Petitioner, that the Petitioner approached this Court since Respondent No.1 is the instrumentality of the State, and therefore, it is a public law remedy, does not impress this Court. The question that arises in this case is as to whether the Resolution Plan of Respondent No.3 would directly impinge on the Resolution Plan dated 20.09.2022 of the Petitioner and the SAP Agreement. In the opinion of this Court, this question can be best be addressed by the authorities under the IBC because they are approvers of the Resolution Plan of the Petitioner.

36. The question here is not a judicial review of an administrative action of the instrumentality of the State but interpretation, analysis and implementation of a Resolution Plan which should be best left to the expert body formed under a Special Law and not under Article 226 of the Constitution of India.

37. Undoubtedly, alternate remedy does not take away the right of the Petitioner to approach the High Court, however, the High Court ordinarily restrains itself from entertaining such writ petitions where there are specialised bodies which have been created only for dealing with certain provisions arising under the Special Statutes.

38. In Bank of Baroda v. Farooq Ali Khan & Ors., **2025 SCC OnLine SC 374**, while dealing with questions arising specifically under the RDDB Act, when the writ petition was entertained by the High Court, the Apex Court has observed as under:-

"10. In light of this statutory scheme, which has been followed by the Adjudicating Authority, we are of the



view that the High Court incorrectly exercised its writ jurisdiction as : first, it precluded the statutory mechanism and procedure under the IBC from taking its course, and second, to do so, the High Court arrived at a finding regarding the existence of the debt, which is a mixed question of law and fact that is within the domain of the Adjudicating Authority under Section 100 of the IBC."

39. In the same vein, the Apex Court in Mohammed Enterprises (Tanzania) Ltd. v. Farooq Ali Khan & Ors., 2025 SCC OnLine SC 23, has observed as under:-

"15. Apart from delay and laches, High Court should have noted that Insolvency and Bankruptcy Code is a complete code in itself, having sufficient checks and balances, remedial avenues and appeals. Adherence of protocols and procedures maintains legal discipline and preserves the balance between the need for order and the quest for justice. The supervisory and judicial review powers vested in High Courts represent critical constitutional safeguards, yet their exercise demands rigorous scrutiny and judicious application. This is certainly not a case for the High Court to interdict CIRP proceedings under the Insolvency and Bankruptcy Code."

40. There are various other judgments enunciating the very same principle which this Court is not referring in view of the settled position of law.

41. As far as Respondent No.4 is concerned, the proceedings are pending before the NCLT and it is open for the Petitioner to raise the very same objections before the NCLAT highlighting as to how the Resolution Plan dated 20.09.2022 of the Petitioner would be adversely affected by any other



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Resolution Plan involving the arbitral awards, which according to the Petitioner has to go to the Petitioner and Respondent No.2.

42. Similarly, as far as Respondent No.5 is concerned, this Court is of the opinion that the writ petition is premature inasmuch as no adverse orders have been passed by the authorities under the RDDB Act. It is open for the Petitioner to raise these objections before the forums under the RDDB Act and it is free to avail appropriate remedies in accordance with law.

43. Viewed in this manner, this Court is therefore not inclined to refer to the various provisions of the SAP Agreement, as according to this Court, it is only the specialized forums under IBC which are competent to analyse the Resolution Plans and the effect of any other Resolution Plan over the existing Resolution Plan.

44. Resultantly, the stay Order dated 27.03.2025 stands vacated. This Court is not inclined to entertain the writ petition.

45. The petition is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

HARISH VAIDYANATHAN SHANKAR, J

AUGUST 01, 2025

Rahul/hsk/SM