

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 1450 of 2025

**[Arising out of the Order dated 16.07.2025, passed by the
'Adjudicating Authority' (National Company Law Tribunal, Mumbai
Bench) in CP(IB) No. 3143/MB/2019]]**

IN THE MATTER OF:

Pankaj Mahajan

(IBBI Registration No. IBBI/IPA-001/IP-
P00836/2017-2018/11420)
Resolution Professional of Arshiya Limited),
Having office at: H-223, 22nd Floor,
DLF Capital Greens, 15 Shivaji Marg, New Delhi,
National Capital Territory of Delhi, 110015

...Appellant

Versus

1. **Edelweiss Asset Reconstruction Asset
Company**

(lead CoC member holding 79.00% voting
share)
Edelweiss House, Windsor Ln,
Kolivery Village, MMRDA Area,
Kalina, Santacruz East, Mumbai 400 098

...Respondent No.1

2. **Punjab National Bank**

(CoC member holding 5.34% voting share)
Zonal Sastra Centre-Mumbai
Pragati Tower, 1st Floor, G-Block, BKC, Bandra
(East) Mumbai-400051

...Respondent No.2

3. **Bank of India**

(CoC member holding 4.98% voting share)
Specialised Asset Recovery Management
Branch, BOI Building, Mezzanine Floor,
70-80, MG Road, Fort, Mumbai - 400001

...Respondent No.3

4. **Union Bank of India**

(CoC member holding 2.61% voting share)
Stressed Assets Management Branch, Mumbai
Ground Floor, 104, Bharat House,
M.S. Marg, Fort, Mumbai 400 023

...Respondent No.4

5. **Karur Vysya Bank**
(CoC member holding 1.03% voting share)
The Karur Vysya Bank Ltd
Asset Recovery Branch, Shop No. 12; and 13,
Diamond Mansion, Dr. Viegas Street,
Kalbadevi Main Road, Kalbadevi, Mumbai,
Maharashtra – 400 002 **...Respondent No.5**
6. **CFM Asset Reconstruction Private Limited**
(CoC member holding 0.66% voting share)
1st Floor, Wakefield house, Spratt Road,
Ballard Estate, Mumbai 400 038, India **...Respondent No.6**
7. **Axis Bank Limited**
(CoC member holding 0.37% voting share)
Stressed Assets Department,
7th Floor, "Axis House",
C-2, Wadia International Centre,
Bombay Dyeing Compund,
P.B. Marg, Worli, Mumbai – 400 025 **...Respondent No.7**
8. **M/s SREI Equipment Finance Limited**
(CoC member holding 0.09% voting share)
Plot No. Y-10, Block EP, Sector V, Salt Lake City
Kolkata-700091 **...Respondent No.8**
9. **NCR Rail Infrastructure Limited,**
(undergoing CIRP vide Order dated 07.03.2024)
205 & 206 (Part), 2nd Floor, Ceejay House,
F-Block, Shiv Sagar Estate,
Dr. Annie Besant Road,
Worli, Mumbai - 400 018 **...Respondent No.9**
10. **Arshiya Northern FTZ Ltd. (ANFL)**
(undergoing CIRP via Order dated 14.11.2022)
205 & 206 (Part), 2nd Floor, Ceejay House,
F-Block, Shiv Sagar Estate,
Dr. Annie Besant Road, Worli,
Mumbai – 400 018 **...Respondent No.10**
11. **IDFC First Bank Limited ("IDFC")**
(CoC member holding 2.21% voting share)
"IDFC First Bank
Vigyor Towers, C-62, G Block,
Bandra Kurla Complex, Bandra East,
Mumbai – 400 051 **...Respondent No.11**

12. **State Bank of India("SBI")**
(CoC member holding 3.71% voting share)
"Stressed Assets Management Branch - III
SAMB-III Branch, Tulsiani Chambers,
1st Floor, Free Press Journal Marg,
Nariman Point, Mumbai – 400005

...Respondent No.12

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Ayush Rajani and Ms. Heena Kochar, Advocates

For Respondent : Mr. Arvind Nayyar, Sr. Advocate with Mr. Vivek Jain, Mr. Swapnil Srivastava, Mr. Abhishek Gupta, Mr. Chirag Naik, Mr. Jayesh Srivastava, Mr. Rishabh Periwal, Mr. Shubham and Ms. Diksha Dadu, Advocates.

Mr. Arun Kathpalia, Sr. Advocate with Ms. Misha, Ms. Mahima Sareen, Mr. Abhilash Chaudhary and Ms. Sanjukta Fauzdar and Ms. Diksha Gupta Advocates for R1-R8, R-11 and R-12 CoC.

With
Company Appeal (AT) (Insolvency) No. 1451 of 2025
&
I.A. No. 5647 of 2025

IN THE MATTER OF:

Bhuvan Madan
(IBBI Registration No. IBBI/IPA-001/IP-
P01004/2017-18/11655)
Resolution professional of
Arshiya northern ftwz limited), having office at,
CGH 212, DLF Capital Green,
Moti Nagar, Delhi – 110015

...Appellant

Versus

1. **Edelweiss Asset Reconstruction Company**
(Lead CoC member)
Edelweiss House, Windsor Ln, Kolivery Village,
MMRDA Area, Kalina, Santacruz East,
Mumbai – 400 098

...Respondent No.1

2. **Punjab National Bank**
(Common CoC member for Appellant and Respondent No. 12)
Zonal Sastra Centre-Mumbai
Pragati Tower, 1st Floor,
G-Block, BKC, Bandra (East)
Mumbai – 400051
...Respondent No.2
3. **Bank of India**
(CoC member of Respondent No. 12)
Specialised Asset Recovery Management Branch,
BOI Building, Mezannine Floor, 70-80,
MG Road, Fort,
Mumbai - 400001
...Respondent No.3
4. **Union Bank of India**
(CoC member of Respondent No. 12)
Stressed Assets Management Branch, Mumbai
Ground Floor, 104, Bharat House,
M.S. Marg, Fort, Mumbai 400 023
...Respondent No.4
5. **Karur Vysya Bank**
(CoC member of Respondent No. 12)
The Karur Vysya Bank Ltd
Asset Recovery Branch, Shop No. 12; and 13,
Diamond Mansion, Dr. Viegas Street, Kalbadevi
Main Road, Kalbadevi, Mumbai,
Maharashtra – 400002
...Respondent No.5
6. **CFM Asset Reconstruction Private Limited**
(CoC member of Respondent No. 12)
1st Floor, Wakefield house, Sprott Road,
Ballard Estate, Mumbai 400 038, India
...Respondent No.6
7. **Axis Bank Limited**
(CoC member of Respondent No. 12)
Stressed Assets Department, 7th Floor,
"Axis House", C-2, Wadia International Centre,
Bombay Dyeing Compund, P.B. Marg, Worli,
Mumbai – 400 025
...Respondent No.7
8. **M/s SREI Equipment Finance Limited**
(Common CoC member for Appellant and Respondent No.12.
Plot No. Y-10, Block EP, Sector V, Salt Lake City
Kolkata – 700091
...Respondent No.8

9. **IDFC First Bank Limited ("IDFC")**
(Common CoC member for Appellant and Respondent No.12
"IDFC First Bank Vigyor Towers, C-62, G Block, Bandra Kurla Complex, Bandra East, Mumbai – 400 051 **...Respondent No.9**
10. **State Bank of India("SBI")**
(Common CoC member for Appellant and Respondent No. 12.
"Stressed Assets Management Branch - III SAMB-III Branch, Tulsiani Chambers, 1st Floor, Free Press Journal Marg, Nariman Point, Mumbai-400005 **...Respondent No.10**
11. **NCR Rail Infrastructure Limited,**
(undergoing CIRP vide Order dated 07.03.2024)
205 & 206 (Part), 2nd Floor, Ceejay House, F-Block, Shiv Sagar Estate, Dr. Annie Besant Road, Worli, Mumbai – 400018 **...Respondent No.11**
12. Arshiya Ltd ("AL")
(undergoing CIRP vide Order dated 23.04.2024)
having office at, H-223, 22nd Floor, DLF Capital Greens, 15 Shivaji Marg. New Delhi-110015 **...Respondent No.12**

Present:

For Appellant : Mr. Abhishek Anand, Mr. Karan Kohli and Mr. Palak Kalra, Advocates.

For Respondent : Ms. Misha, Ms. Mahima Sareen, Mr. Abhilash Chaudhary and Ms. Sanyukta Fauzdar, Advocates for R1-R10 CoC.

Mr. Vivek Jain, Mr. Swapnil Srivastava, Mr. Abhishek Gupta, Mr. Chirag Naik, Mr. Jayesh Srivastava, Mr. Rishabh Periwal and Mr. Santosh Kumar, Advocates for Intervenor.

With
Company Appeal (AT) (Insolvency) No. 1452 of 2025
&
I.A. No. 5650 of 2025

IN THE MATTER OF:

PANKAJ MAHAJAN

(IBBI Registration No. IBBI/IPA-001/IP-P00836/2017-2018/11420)

(Formerly Known as "Arshiya Rail Infrastructure Limited"), having office at, H-223, 22nd Floor, DLF Capital Greens, 15 Shivaji Marg, New Delhi, National Capital Territory of Delhi – 110015

...Appellant

Versus

1. **Edelweiss Asset Reconstruction Asset Company**

(lead CoC member and common CoC member of Appellant and Respondent No.11
Edelweiss House, Windsor Ln,
Kolivery Village, MMRDA Area,
Kalina, Santacruz East, Mumbai 400 098

...Respondent No.1

2. **Punjab National Bank**

(CoC member of Respondent No. 11)
Zonal Sastra Centre-Mumbai
Pragati Tower, 1st Floor, G-Block,
BKC, Bandra (East) Mumbai-400051

...Respondent No.2

3. **Bank of India**

(CoC member of Respondent No. 11)
Specialised Asset Recovery Management
Branch, BOI Building, Mezzanine Floor,
70-80, MG Road, Fort,
Mumbai – 400001

...Respondent No.3

4. **State Bank of India("SBI")**

(CoC member of Respondent No. 11)
"Stressed Assets Management Branch - III
SAMBIII Branch, Tulsiani Chambers, 1st Floor,
Free Press Journal Marg,
Nariman Point, Mumbai – 400005

...Respondent No.4

5. **Union Bank of India**

(Common CoC member of Appellant and Respondent No.11)
"Stressed Assets Management Branch, Mumbai
Ground Floor, 104, Bharat House,
M.S. Marg, Fort, Mumbai – 400 023

...Respondent No.5

6. **IDFC First Bank Limited ("IDFC")**
(CoC member of Respondent No. 11)
"IDFC First Bank
Vibgyor Towers, C-62, G Block, Bandra Kurla
Complex, Bandra East, Mumbai-400 051 **...Respondent No.6**

7. **Karur Vysya Bank**
(Common CoC member of Appellant and
Respondent No.11
The Karur Vysya Bank Ltd
Asset Recovery Branch, Shop No. 12; and 13,
Diamond Mansion, Dr. Viegas Street, Kalbadevi
Main Road, Kalbadevi, Mumbai,
Maharashtra – 400002 **...Respondent No.7**

8. **CFM Asset Reconstruction Private Limited**
(CoC member of Respondent No. 11)
1st Floor, Wakefield house, Sprrott Road,
Ballard Estate, Mumbai 400 038, India **...Respondent No.8**

9. **9. Axis Bank Limited**
(CoC member of Respondent No. 11)
Stressed Assets Department, 7th Floor, "Axis
House", C-2, Wadia International Centre,
Bombay Dyeing Compund,
P.B. Marg, Worli, Mumbai – 400025 **...Respondent No.9**

10. **M/s SREI Equipment Finance Limited**
(Common CoC member of Appellant and
Respondent No.11)
Plot No. Y-10, Block EP, Sector V,
Salt Lake City, Kolkata-700091 **...Respondent No.10**

11. **Arshiya Limited,**
(undergoing CIRP vide Order dated 07.03.2024)
205 & 206 (Part), 2nd Floor, Ceejay House,
F-Block, Shiv Sagar Estate,
Dr. Annie Besant Road, Worli, Mumbai-400 018 **...Respondent No.11**

12. **Arshiya Northern FTZ Ltd ("ANFL")**
(undergoing CIRP vide Order dated 14.11.2022)
205 & 206 (Part), 2nd Floor, Ceejay House, F-
Block, Shiv Sagar Estate,
Dr. Annie Besant Road, Worli,
Mumbai – 400 018 **...Respondent No.12**

Present:

For Appellant : Mr. Abhishek Anand, Mr. Karan Kohli and Mr. Palak Kalra, Advocates

For Respondent : Ms. Misha, Ms. Mahima Sareen, Mr. Abhilash Chaudhary and Ms. Sanyukta F., Advocates for R1-R10 - CoC.

Mr. Vivek Jain, Mr. Swapnil Srivastava, Mr. Abhishek Gupta, Mr. Chirag Naik, Mr. Jayesh Srivastava, Mr. Rishabh Periwal and Mr. Santosh Kumar, Advocates for Intervenor.

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

The present Appeal is filed by the Resolution Professional (hereinafter referred to as the "Appellant" or "Resolution Professional") of ¹Arshiya Limited (the "Corporate Debtor"), challenging the order dated 16.07.2025 (the "Impugned Order") passed by the Hon'ble National Company Law Tribunal, Mumbai Bench (the "NCLT" or "Adjudicating Authority") in IA No. 1927 of 2025 (the "Application") arising out of CP (IB) No. 3143/MB/2019 (the "Company Petition"). The Appellant contends that the Adjudicating Authority erred in passing the Impugned Order by failing to appreciate the provisions of Regulation 29 of the Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process) Regulations, 2016 (the "CIRP Regulations").

2. The Committee of Creditors ("COC") members had approved the proposed "sale" of the non-core assets of Arshiya Limited which is a "Sale of asset outside

¹ Arshiya Limited- CIRP initiated vide order dated 23rd April 2024

the course of business" of the Appellant with a clear intent of maximisation of value which would not only enhance the value of the present CIRP process of Arshiya Limited but would have also had a positive impact on the CIRP process of other two Corporate Debtors i.e., NCR Rail Infrastructure Limited Respondent No. 9 (undergoing CIRP process vide order dated 07 March 2024) and also Arshiya Northern FTWZ Limited Respondent No. 10 (undergoing CIRP vide order dated 14 November 2022).

3. The appeal essentially disputes the Adjudicating Authority's rejection of the sale of non-core assets of Arshiya Limited, which was approved by the Committee of Creditors ("CoC") as a sale of assets outside the course of business, aimed at maximization of value. This sale was intended not only to enhance the value of the ongoing Corporate Insolvency Resolution Process (CIRP) of Arshiya Limited but also to positively impact the CIRP processes of two other Corporate Debtors, namely ²NCR Rail Infrastructure Limited (Respondent No. 9), undergoing CIRP by an order dated 07 March 2024, and ³Arshiya Northern FTWZ Limited (Respondent No. 10), undergoing CIRP by an order dated 14 November 2022.

4. Appellant claims that the Adjudicating Authority indirectly allowed the Intervention Petition (IBC/66/MB/2025) whilst the Impugned Order records that the Intervention Petition has been dismissed, however the application i.e.,

² NCR Rail Infrastructure Limited-undergoing CIRP vide Order dated 07.03.2024

³ Arshiya Northern FTZ Ltd. (ANFL) -undergoing CIRP vide Order dated 14.11.2022

IA 1927/2025 which was filed by the Appellant i.e., Resolution Professional for Arshiya Limited before the Adjudicating Authority was only partly allowed which was predominantly based on the submissions made by the intervenor.

5. The Appellant argues that the Impugned Order, if upheld, would effectively reset the CIRP process to its initial stages (Form G stages), which is impermissible under the Code and was neither sought nor suggested. This would undermine the commercial wisdom of the CoC members, who have, after thorough deliberation and documented discussions in various meetings along with all PRAs, approved the proposed sale as the best way to maximize value. The Appellant submits that the Impugned Order, by obstructing the sale, adversely affects the stakeholders' interests of all three involved CIRPs and defeats the fundamental objective of maximization of value envisaged under the Insolvency and Bankruptcy Code.

6. Thus, the appeal challenges the correctness of the Impugned Order and seeks its setting aside, asserting that it goes against the enabling provisions of the CIRP Regulations and the considered commercial decisions of the CoC.

7. Company Appeal (AT) (Insolvency) No. 1450 of 2025 is filed by the RP (Pankaj Mahajan) of CD i.e. Arshiya Limited- in which case CIRP was initiated vide order dated 23rd April 2024 against the impugned order dated 16.07.2025 in IA No. 1927 of 2025 arising out of CP (IB) No. 3143/MB/2019.

8. Company Appeal (AT) (Insolvency) No. 1451 of 2025 is filed by the RP (Bhuvan Madan) of Arshiya Northern FTZ Ltd. (ANFL) [in which case CIRP was initiated vide order dated 14.11.2022] against the same impugned order as noted above. The respondent parties are same as in CA (AT) (Insolvency) No. 1450 of 2025, except for change in their ranks.

9. Company Appeal (AT) (Insolvency) No. 1452 of 2025 is filed by the RP (Pankaj Mahajan) of NCR Rail Infrastructure Limited [undergoing CIRP in which case CIRP was initiated vide order dated 07.03.2024] against the same impugned order dated 16.07.2025. The respondent parties are same as in CA (AT) (Insolvency) No. 1450 of 2025, except for change in their ranks.

10. Since the respondent parties are same and the same order is being challenged by the three RPs of three CIRP proceedings and on similar grounds, the APB of CA (AT) (Insolvency) No. 1450 of 2025 is being taken as a lead matter. The pleadings in other matters have been noted wherever necessary

Submissions of the CD-Arshiya Limited – AL (through its RP – Pankaj Mahajan)

11. The main issue in this appeal relates to the disposal of land parcels of CD which were permitted to be sold by the Adjudicating Authority with an impugned order these are noted as below:

- a. Land admeasuring 39.56 acres situate at Khurja Uttar Pradesh. This land parcel is non-contiguous and situated on the site of NCR Rail Infrastructure Limited (NCR Rail)

b. Land admeasuring 2.52 acres (Spine Road) situated at Khurja, Uttar Pradesh. This land parcel is situated on the site of Arshiya Northern.

12. NCR Rail and ANFL- both undergoing CIRP - are sister concerns of the Corporate Debtor which is the owner of the above land parcels. Interlocutory Applications for approval of resolution plans is pending in both CIRPs before the Adjudicating Authority,

c. NCR Rail Infrastructure Limited- I.A.(IBC)(Plan) No. 87 of 2025;

d. Arshiya Northern FTWZ Limited- I.A.(IBC)(Plan) No. 52 of 2025.

13. The primary business operations of the Corporate Debtor i.e. Arshiya Limited are carried out at Panvel, Raigad, therefore, the abovementioned land parcels are a 'non-core' asset of the Corporate Debtor. Therefore, CoC of the CD was of the opinion that the best value these land parcels can offer to the CD is the one they will fetch upon being sold.

14. The said land parcels were mortgaged in favour of Edelweiss ARC and SREI Equipment. Both lenders have assented to the sale of the land parcels, however, the existence of the mortgage makes the land parcels, 'encumbered' and not 'unencumbered; as is required by Regulation 29 of the CIRP Regulations, 2016. Therefore, permission of the Hon'ble Adjudicating Authority was required to sell the land parcels.

15. Pursuant to extensive discussions and multiple arrangements being explored by the Committee of Creditors of the Corporate Debtor, Interlocutory

Application No. 1927 of 2025 was filed by the Appellant herein seeking permission to sell land admeasuring 39.56 acres to SRA of NCR Rail and spine road admeasuring 2.52 acres to SRA of ANFL, under Regulation 29 of the CIRP Regulations, 2016, as per the decision of the CoC in the 8th CoC meeting of the Corporate Debtor.

16. The subject land parcel in question i.e., 42.08 Acres of land owned by the Corporate Debtor which is a no-core asset, is scattered and is located at Khurja District in Uttar Pradesh while the actual core business of the Corporate Debtor is at Panvel FTWZ, Maharashtra. Hence, it is evident that the isolated land parcel i.e., 42.08 Acres are assets which are not used in the ordinary course of business of the Corporate Debtor and the only purpose of approaching the Adjudicating Authority by the Appellant was because the said asset is encumbered with the CoC members and major lenders are common in all the three CIRP and the respective CoC members had also agreed to dispose of the said non-core land parcel of Corporate Debtor admeasuring 39.56 acres to the Successful Resolution Applicant ("SRA") of NCR Rail Infrastructure Limited and land parcel admeasuring 2.52 acres to the Successful Resolution Applicant Arshiya Northern FTWZ Limited, respectively, since that would be best option for value maximization as this land parcel can only be utilized by these entities which are running their business/operations at Khurja district, Uttar Pradesh and own the surrounding land parcels. While the Adjudicating Authority was pleased to grant permission to sell the land parcel @ para 27 of the Impugned order, but it has

allowed the land parcels to be offered to the PRAs of NCR Rail and ANFL as opposed to the SRA of NCR Rail and ANFL, as was sought. This, in essence, will have the effect of reversing the timeline of the CIRP of both entities and lead to delay in the resolution of insolvency of the all entities.

17. The Intervenor i.e. Mr. Ajay Mittal is the erstwhile Director of the Corporate Debtor who has no locus in the present proceedings but has been consistently trying to derail the CIR Processes of all the concerned entities i.e Arshiya Limited, NCR Rail and ANFL. In keeping with this pattern, he has filed the Intervention Application in the present Appeals with the sole intention of misleading the Hon'ble Tribunal. The Intervenor on 29.10.2025 put forth the following arguments:

- e. Sale of land parcels, as proposed by the Appellant, goes against the spirit of IBC, 2016 and that it does not lead to value maximisation for the Corporate Debtor.
- f. The PRAs of the Corporate Debtor and the other entities were deliberately kept in the dark about the availability and status of the land parcels.

18. The Appellant contends that a corporate insolvency resolution process initiated under the Code primarily aims at (i) keeping a Corporate Debtor as a going concern and (ii) maximization of the value of assets of such Corporate Debtor. The sale of assets of a Corporate Debtor during its CIRP is obviously not a matter of routine but can be allowed in exceptional circumstances and subject to conditions and compliances. Regulation 29 of the CIRP Regulations permits

the sale of unencumbered assets for better realisation / maximisation of the value of such assets.

19. This Hon'ble Appellate Tribunal in the case of **Jet Aircraft Maintenance Engineers Welfare Association Vs. Shri Ashish Chhawchharia RP for Jet Airways (India) Ltd, 2022 SCC OnLine NCLAT 278** has also laid down in paras. 21, 22, 23, 25 and 28 that a resolution professional is empowered to sell unencumbered assets of the CD if he is of the opinion that the same is necessary for better realization of value. The judgment further lays down that even encumbered assets may be sold by a resolution professional, after taking necessary approvals from the committee of creditors and thereafter, seeking sanction from the Adjudicating Authority. There is no bar under the Code and/or the CIRP Regulations which restrict the sale of any non- core asset of a Corporate Debtor during its Corporate Insolvency Resolution Process. The restriction imposed is only against the CD from doing so.

20. Additionally, Appellant-RP contends that the contention of the Intervenor that an asset of the Corporate Debtor may only be sold through an open auction, the Appellant contends that the absence of a provision regarding a particular procedure/subject matter in a body of statute does not automatically imply prohibition of the same. It merely means that there is a lacuna in the law and therefore, the present sale, as long as it leads to value maximization and is done with the requisite permission of the CoC and the Hon'ble Adjudicating Authority.

21. The Appellant further contends that the reliance placed by the Adjudicating Authority on **Regulation 33 of the IBBI (Liquidation Process Regulations), 2016** is completely misplaced not only because the same pertain to liquidation proceedings and present Corporate Debtor is under CIRP but also because the words used in the regulation are “**shall ordinarily**” which indicates that the mode of sale prescribed is merely directory in nature and is not a mandate. Regulation 33 is reproduced hereunder:

“33. (1) The liquidator shall ordinarily sell the assets of the corporate debtor through an auction in the manner specified in Schedule I.”

22. The Appellant further contends that out of the 42.08 acres proposed/sought to be sold, the breakdown, as mentioned above, is as such - Spine Road covering 2.52 acres and the balance 39.56 acres is in and around the major parcel of NCR Rail. It is pertinent to note that though only 2.52 acres are proposed to be sold by the Applicant to ANFL/forms the subject matter of the present application, the entire spine road covers about 6.31 acres of land out of which 2.52 acres belong to the present CD and the remaining 3.79 acres belong to NCR Rail. It is submitted that the rationale behind selling 2.52 to ANFL, which is in concurrence with the commercial wisdom of the CoC, is to avoid any conflict in the future between two SRAs (of NCR Rail and ANFL) and both of them can execute mutual right of way resulting in easement rights to both NCR Rail and ANFL and value maximization for Arshiya Limited/CD. It is also submitted that, there is no fixed buyer as of now, the final buyer would be decided after AA approves the resolution plan in respective CD. This rationale was deliberated

over at length by the CoC of the Corporate Debtor as well as NCR Rail and ANFL.

23. It is contended that as far as 39.5 acres land is concerned, the same is on and around railway tracks, non- contiguous, in between the land parcel of NCR Rail of 129 acres and is currently being used by NCR Rail. No person can reach the 39.5 acres of the CD without crossing land of NCR Rail and similarly NCR Rail will not able to access its entire land without crossing 39.5 acres scattered land parcel highlighted in the layout. It is due to this reason it is crucial for the PRA of NCR Rail. Considering this reason, it is difficult for any other entity to ascribe any value to 39.5 acres other than NCR Rail SRA.

24. This rationale was deliberated over at length by the CoC of the Corporate Debtor as well as NCR Rail and ANFL. Therefore, the decision to sell the said land parcels as proposed was arrived at in a completely transparent manner, after multiple rounds of discussions and the value was ascertained only after appointing 2 registered valuers in accordance with the provision of the Code/Regulations. The Intervenor has miserably failed to make out any procedural irregularities in the CoC minutes of the Corporate Debtor and is merely trying to mislead the Hon'ble Appellate Tribunal.

25. It is also pertinent to note, that the intervenor's primary objection is to the sale of the spine road of 2.52 acres which, evidently makes the smaller chunk of the land to be sold and not to the sale of the 39 acres to the SRA of NCR Rail. This only goes to show that the Intervention Application has been filed by the

erstwhile director with no other intention but to put a spoke in the wheel of the CIRP of the Corporate Debtor.

26. To the contention that the PRAs had no clarity on the status of land parcels the Appellant claims that the PRAs of all entities were duly informed that the land parcels would be excluded from the resolution plan process and instead would be sold through a separate transaction pursuant to approval from the Adjudicating Authority. Therefore, there has been no procedural impropriety nor concealment in the process as is been alleged by the Intervenor.

27. Appellant further contends that a Corporate Insolvency Resolution Process is a creditor centric process and the CoC's commercial wisdom is paramount. The sale and purchase of the said land parcels have been duly approved by the CoC members of Arshiya Limited by a voting majority of 85.46% after due deliberation over the relevant facts and in exercise of their commercial wisdom.

28. Sale of the said land parcels is proposed with the sole intent of accelerating the CIRP of the Corporate Debtor and structured to ensure value maximization to the Corporate Debtor. Valuation, ownership of land, location and position of land and other relevant factors have been considered at length and the most commercially prudent and value-accretive arrangement has been approved. This is in line with the intent and purpose of the Code.

29. Further Appellant contends that the proposed sale is lawful as it has all the preconditions envisaged under Regulation 29 of the CIRP Regulations, 2016

and the power of the Resolution Professional to carry out such a sale has also been reiterated by the Appellate Tribunal in the Jet Airways case.

30. Appellant claims that no allegation of malafides, undervaluation or lack of transparency has been made out which can be the only grounds for subjecting a legally compliant and CoC approved sale to heightened scrutiny.

31. Appellant claims that the application of the Regulation 36A(1A) by the Adjudicating Authority in the Impugned Order is misplaced. The Appellant submits that the Form G in the present matter was published on 27th September 2024, followed by an addendum on 14th October 2024, however, the insertion of the Regulation 36A(1A) was only vide notification dated 26th May 2025. It is to be noted that the said newly inserted Regulation is prospective in nature. When the CoC took the said decisions during the 7th CoC meeting and followed by the 8th CoC meeting, latter being held on 18th March 2025, the proposed Regulation 36A (1A) was not in existence. Therefore, considering the law prevailing at the relevant time only Regulation 29 could have been looked into and in view of the fact that the secured lenders have approved the “sale” and hence, the course of action decided by the CoC clearly falls within their realm of “commercial wisdom”.

32. Appellant contends that the Intervenor in his submissions has relied on the case of **B.K. Educational Services Private Limited Vs. Parag Gupta and Associates (2019) 11 SCC 633** has absolutely no bearing on the facts of the

present matter as the case pertains to the retrospective applicability of the law of limitation to IBC, 2016.

33. The Appellant claims that, the Adjudicating Authority, by erroneously imposing that independent bids be invited from the PRAs of the entities, when the sale is already Regulation 29 compliant, has created a procedural requirement that is not found anywhere in the IBC or CIRP Regulations.

34. The Appellant submits the Adjudicating Authority has while imposing the above condition has failed to consider that the CIRPs of NCR Rail and NFL are at an advanced stage and resolution plans have been approved by their respective CoCs. It is submitted that this direction has been given by the Adjudicating Authority in complete contravention of the settled legal principle once a resolution plan is approved by the CoC and submitted to the Adjudicating Authority, it becomes binding and irrevocable as between the CoC and the Successful Resolution Applicant ("SRA"), and neither party can withdraw from or modify the plan unilaterally.

35. In view of the above, the Appellant claims that the Impugned Order, to the extent it interferes with and nullifies the decision of the Committee of Creditors of the Corporate Debtor for sale of non-core assets under Regulation 29 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process Regulations)

Submissions of CoC of Arshiya Limited-Corporate Debtor
[Respondent Nos. 1-8, 11 and 12]

36. CoC informs that the Corporate Debtor, an integrated supply chain and logistics infrastructure company, was admitted into corporate insolvency resolution process (“CIR Process”) on 23 April 2024. The **Subject Parcels** are non-core land assets of the Corporate Debtor situated within a free trade warehousing zone (“FTWZ”) in Khurja admeasuring 42.08 acres. Of the Subject Parcels: (i) 39.56 acres are interspersed within and adjacent to railway siding operations of NCR Rail Infrastructure Limited (“NCR Rail”); (ii) and 2.52 acres form part of a spine road providing sole access to the FTWZ assets of both NCR Rail and Arshiya Northern FTWZ Limited (“ANFL”).

37. NCR Rail and ANFL are wholly owned subsidiaries of the Corporate Debtor undergoing independent CIR Processes. Pertinently, the CoCs of the Corporate Debtor, NCR Rail and ANFL share a common majority of lenders. Further, the respective CoCs of both NCR Rail and ANFL approved resolution plans prior to the passing of the Impugned Order. The successful resolution of NCR Rail and ANFL hinges upon securing access to the Subject Parcels. Further, applications for approval of both resolution plans are currently pending before separate benches of the Adjudicating Authority.

38. CoC informs us that the Subject Parcels are also partly mortgaged in favour of Edelweiss Asset Reconstruction Company Limited (“EARCL”) and SREI Equipment Finance Limited (“SREI”). Both EARCL and SREI form part of the CoCs of all three entities. The CoC of the Corporate Debtor deliberated upon the treatment of the Subject Parcels in its 7th and 8th meetings and thereafter

approved a resolution, with 85.46% voting in favor, for two-part sale (“Subject Transaction”) of: (i) 39.56 acres to NCR Rail, or its successful resolution applicant (“SRA”), and (ii) 2.52 acres of the spine road to ANFL, or its SRA.

39. Further the minutes of the 7th and 8th meetings record detailed deliberations leading to the CoC’s conclusion that the commercial value of the Subject Parcels hinges upon their strategic location and seamless integration with adjoining assets owned by NCR Rail and ANFL. While a resolution for granting permanent right of way to NCR Rail through execution of a memorandum of understanding was tabled before the CoC at its 7th CoC meeting, the same failed to gather requisite approval. Thus, after due consideration, the CoC concluded that outright sale rather than grant of limited right-of-way to the SRAs of both related entities would maximize value, mitigate risk of future ambiguity and disputes, and ensure that the Subject Parcels are deployed to their best, most value-accretive use within the unique FTWZ ecosystem. Further, while passing a resolution vis-à-vis the Subject Transaction at its 8th meeting, the CoC also decided to commission valuation of the Subject Parcels through two independent valuers to ensure price discovery.

40. The Appellant filed I.A. No. 1927 of 2025 with the Adjudicating Authority seeking approval for the Subject Transaction. The Adjudicating Authority, vide the Impugned Order, while permitting sale in principle, found that the process employed for price discovery must be transparent and ensure value maximization. The Ld. Adjudicating Authority then erroneously directed the RPs

of NCR Rail and ANFL to invite independent bids from all respective prospective resolution applicants (“PRAs”) for sale of the Subject Parcels.

41. CoC contends that The Subject Transaction ensures price discovery and value maximization. CoC claims that the Impugned Order suffers from material infirmities/irregularities inasmuch as, while recognizing that the Subject Transaction is necessary for the successful resolution of all three entities, it purports to interfere with the process employed on the erroneous footing that there is no transparent price discovery and value maximization. However, the Impugned Order fails to note that the CoC commissioned valuation of the Subject Parcels from two independent, reputed valuation agencies and no objections have been levelled against the valuations. In the context of the Corporate Debtor, the Subject Parcels’ value is barely approx. INR 32 Crore as against total outstanding debt of over INR 6600 Crore. Therefore, in determination of its sole commercial domain, the CoC has employed a process that ensures transparent price discovery and maximization of value.

42. CoC also claims that the Adjudicating Authority has exceeded its jurisdiction in issuing directions that render the CIR Process of the Corporate Debtor contingent upon the CIR Processes of ANFL and NCR Rail in a manner that unwinds the CIR Processes of all three entities. CoC claims that the Impugned Order commits further illegalities in purporting to direct and pass orders in respect of the CIR Processes of the NCR and ANFL, contrary to its own finding that both CIR Processes are not within the jurisdiction of the Ld.

Adjudicating Authority. Under the Code, each CIR Process is an independent statutory proceeding and cannot be contingent upon decisions arrived at in the CIR Processes of other entities. However, the directions requiring the RPs of NCR Rail and ANFL to advertise and invite independent bids for assets owned by the Corporate Debtor conflate separate proceedings and impermissibly make the Corporate Debtor's CIR Process contingent upon the outcomes of parallel CIR Processes. Thus, the directions contained in the Impugned Order are beyond the scope of the Ld. Adjudicating Authority's jurisdiction and warrant interference.

43. Furthermore, it is contended that the CIR Processes of NCR Rail and ANFL are at an advanced stage. After due deliberations, their respective CoCs have approved resolution plans for both entities. If the Impugned Order is not set aside, significant time and resources will be expended in inviting independent bids from PRAs while stalling judicial approval of the resolution plans. Further, and more significantly, the SRAs for both entities may be disincentivized against offering competitive bids for the Subject Parcels. Thus, the Impugned Order threatens to turn the clock back on the CIR Processes of both ANFL and NCR Rail. Additionally, the CoC of the Corporate Debtor will be forced to recommence deliberations on treatment of the Subject Parcels despite having already settled the issue through multiple rounds of voting and negotiations.

44. CoC claims that the commercial context of the FTWZ necessitates the Subject Transaction for value maximization. An FTWZ is a special category of SEZ designed as a contiguous, customs-notified logistics precinct and governed

by the Special Economic Zones Act, 2002. The Subject Parcels are not stand-alone landbanks; while 39.56 acres are interspersed within and around NCR Rail's private freight terminal and rail-linked operations, another 2.52 acres form part of a 6.31-acre spine road that is the sole access to assets of both NCR Rail and ANFL. Their commercial utility, regulatory viability, and bankability arise from contiguity and integration with the adjoining FTWZ assets.

45. CoC claims that fragmented title or severed ownership in this setting will trigger immediate value leakage. If the Subject Transaction is not executed, third-party acquirers will inherit integration challenges, face customs/SEZ alignment issues, and require bilateral access covenants with NCR Rail/ANFL. This very complexity will translate into depressed bids. Conversely, the Subject Transaction will preserve the FTWZ's throughput economics. Furthermore, the Corporate Debtor's operations are centered in Maharashtra; the Subject Parcels (located in Khurja, Uttar Pradesh) are non-core, disjunct assets of the Corporate Debtor, that are unlikely to fetch adequate value in any resolution plans submitted for the Corporate Debtor as a whole. Therefore, the Subject Transaction ensures value maximization in the CIR Processes of all three entities.

46. CoC claims that its approval of the Subject Transaction reflects considered commercial wisdom, warrants deference, and is non-justiciable. The CoC approved the Subject Transaction after detailed deliberations, considering the interdependent nature of the Subject Parcels, the operational synergies with NCR

Rail and ANFL and the advanced stage of the CIR Processes of the related entities. The minutes of the 7th and 8th meetings explicitly record these deliberations, the alternatives considered, and the CoC's collective conclusion that an outright sale to the group entities (or their SRAs) would maximize recoveries and avoid future disputes vis-à-vis access and interoperability. Judicial review of the CoC's decision on matters of commercial wisdom is impermissible, save to the limited extent necessary to ensure compliance with the Code and rules and regulations framed thereunder. The functions of the Ld. Adjudicating Authority are supervisory and limited to jurisdictional and compliance-based examination; they do not extend to re-appraising commercial decisions made by the CoC. The CoC's preference for an outright transfer, at fair value, to entities that will unlock operational synergies is commercially rational, within the CoC's exclusive domain, and thus non-justiciable. Therefore, the Impugned Order warrants being set aside inasmuch as it indulges in speculation vis-à-vis 'better' price discovery through invitation of independent bids.

47. CoC also contends that Regulation 29 does not bar the sale of encumbered assets in toto. Regulation 29 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations") is designed to protect secured creditors from prejudicial transfer of encumbered assets without their knowledge or consent. It permits sale of unencumbered assets "other than in the ordinary course of business" to ensure that encumbered assets are not transferred without the knowledge, consent, or appropriate treatment of the

charge-holders. However, Regulation 29 does not prohibit a CoC-sanctioned sale where the relevant secured creditors consent to the sale.

48. In the present case, EARCL and SREI – the sole charge-holders over the Subject Parcels - form part of the CoC and have expressly consented to the Subject Transaction. The consent of the secured creditors to the Subject Transaction is functionally equivalent to a waiver of the prejudice that Regulation 29 guards against. The transfer, therefore, cannot be interdicted on the ground that the assets are encumbered where the beneficiaries of that encumbrance have agreed to the route of disposal. The CoC's decision was business-oriented, consensual and seeks to realize the underlying security at an optimal value by enabling the parcels to be used by entities best placed to exploit them.

49. CoC claims that Appellate Tribunal in **Jet Aircraft Maintenance Engineers Welfare Association v. Shri Ashish Chhawchharia, RP for Jet Airways (India) Ltd., (2022) SCC OnLine NCLAT 278**, has previously recognized that encumbered assets can be sold under Regulation 29 upon relinquishment/consent by the charge-holders during a CIR Process. Therefore, reading Regulation 29 as a blanket prohibition on the sale of encumbered assets would invert its purpose and needlessly sacrifice creditor value in a case where secured creditors themselves supervise and benefit from the transaction.

50. CoC claims that Regulation 36A does not permit invitation of independent bids for sale of assets owned by separate entities. Regulation 36A(1A) of the CIRP

Regulations, which permits invitation of expressions of interest for sale of one or more assets of a corporate debtor, is wholly inapplicable in the present case. While the Subject Parcels are assets of the Corporate Debtor, the Impugned Order contains directions for invitation of bids for the sale of the Subject Parcels from PRAs for NCR Rail and ANFL. Let alone Regulation 36A(1A), no provision in the Code allows invitations of bids for sale of assets owned by a separate entity in the CIR Process of a corporate debtor. Therefore, the Impugned Order is entirely incongruent with the scheme of the Code and ought to be set aside.

51. Further the CoCs of both NCR Rail Infrastructure Limited -NCR Rail [R9] and Arshiya Northern FTWZ Limited – ANFL [R10] supports all arguments advanced and reliefs sought by the Appellant-RP of the CD-Arshiya Limited – AL and have filed similar arguments.

Submissions of the intervenor-Suspended Director [IA No 5807 of 2025]

52. The intervenor (Ajay Shankarlal Mittal) advanced the following arguments during the hearing and as per his IA as noted herein after.

53. Mr. Ajay Mittal is the suspended director, personal guarantor, and shareholder of the Corporate Debtor (CD), Arshiya Limited (AL). The intervenor has a vital interest in the Corporate Insolvency Resolution Process (CIRP), as any reduction in the realizable value of the CD's assets increases his residual liability due to his personal guarantee. The Corporate Debtor is engaged in free trade warehousing zones (FTWZ) development and operations, with significant assets, including land parcels and operational warehouses.

54. Intervenor has prayed for following reliefs in his I.A. No. 5807 of 2025:

“a. Declare the entire corporate insolvency resolution process and especially challenge process as void ab intitio as the Applicant was illegally ousted from attending the same.

b. Pass an order directing Respondent No. 1 to furnish to the Applicant the complete evaluation matrix pertaining to all resolution plans that were submitted and voted upon by the Committee of Creditors.

c. Pass an order directing Respondent No. 1 to provide the Applicant with the full video recording of all the meetings of the Committee of Creditors, specifically the 34th meeting of the Committee of Creditors, held between 05.12.2024 and 12.12.2024.

d. Pass an order declaring that any and all resolutions passed by the Committee of Creditors in the corporate insolvency resolution process of Arshiya Northern.

FTWZ Ltd., in meetings for which the Applicant was not provided notice or was asked to exit, are null and void.

e. Pass an order directing Respondent No. 1 to circulate afresh the complete and accurate minutes of the 34th meeting of the Committee of Creditors, conducted from 05.12.2024 to 12.12.2024, specifically incorporating the entire bidding process undertaken during the said meeting.

f. Pass an order directing the Respondents to reconsider all resolution plans de novo in a duly convened meeting of the Committee of Creditors, ensuring that the Applicant's comments and inputs on each resolution plan are duly taken into consideration prior to any voting thereon.

g. Pass an order directing the Respondents to furnish a detailed clarification as to why the resolution plan submitted by Athena

India Opportunities, despite offering the highest resolution amount, was not approved by the Committee of Creditors.

h. Reject the Application filed by the Respondent No. 1 seeking approval of the plan so approved by the committee of creditors.

i. Pending the hearing and final disposal of the present Application, stay the hearing and disposal of the Application filed by the Respondent No. 1 seeking approval of the plan so approved by the committee of creditors;

j. Replace the Respondent No. 1 as the resolution professional of Arshiya Northern FTWZ Limited and the Respondent No. 8 as the insolvency professional entity appointed to provide support to the Respondent No. 1, for having failed to adhere to the provisions of the Insolvency Bankruptcy Code, 2016 and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

k. Grant ad interim reliefs as against prayer clause (b), (c), (d) and (e).

l. Grant such other necessary reliefs as this Hon'ble Tribunal may deem fit and proper."

55. The intervenor alleges that the Committee of Creditors (CoC) and Resolution Professional (RP) have conducted the CIRP and asset sales in a manner prejudicial to value maximization and in favor of preferred bidders, violating principles of transparency, fairness, and procedural regularity. The RP and CoC have excluded the intervenor from meaningful participation in CoC meetings, withholding notice, agenda, and accurate minutes, thereby infringing his rights under the Insolvency and Bankruptcy Code (IBC) and related

regulations. The intervenor contends the sale process of critical assets such as the 'Subject Land' and 'Spine Road' was irregular, non-transparent, and aimed at favoring particular resolution applicants at throwaway prices.

56. The RP and CoC failed to conduct a public auction, instead initiating a private sale to favoured parties, which disregards Regulation 29 of the CIRP Regulations and the precedent in *Jet Aircraft Maintenance Engineers Welfare Association v. Ashish Chhawchharia*, CA (AT) (Ins) No. 628 of 2020, where sale of encumbered assets is permissible only by public auction, not private sale.

57. The proposal to sell the land at only the minimum of average fair value undermines the principle of value maximisation, and is tailored to benefit select resolution applicants rather than serve the interests of the Corporate Debtor or its stakeholders.

58. The process lacks certainty or assurance to all prospective resolution applicants, thereby undermining competitive bidding and denying the Corporate Debtor the opportunity to maximise asset value.

59. There is substantial procedural impropriety, including: exclusion of the personal guarantor from material meetings; failure to provide notices, agendas, and accurate minutes; and issuance of doctored or incomplete minutes for CoC meetings, all in violation of Section 24 of IBC and Regulations 19 and 23 of the CIRP Regulations.

60. The exclusion of the suspended director and personal guarantor from meaningful participation in CoC meetings and the sale process is against the Supreme Court's decision in **Vijay Kumar Jain v. Standard Chartered Bank, (2019) 20 SCC 455**, which establishes their vital interest and right to be involved.

61. The chosen process allows collusion and could fuel future disputes regarding crucial assets (the "Spine Road"), rather than resolving them transparently through open, competitive bidding.

62. There is a pattern of improper conduct on the part of the RP and CoC, including facilitating a particular bidder through irregular extensions, exclusion of stakeholders, and undervaluing assets for the benefit of favoured parties.

63. The integrity of the CIRP is vitiated by fraud, illegality, procedural lapses, and favouritism—all causing prejudice to the value realisation for the debtor and exposing the personal guarantor to further liability.

64. The intervenor seeks, inter alia: a declaration that the process is void ab initio; provision of all relevant CoC minutes and video recordings; a new, fair bidding process with participation of all interested parties including the suspended management; and replacement of the RP and the current IPE for their failure to adhere to the statutory norms and principles of the IBC.

Appraisal

65. We have heard the counsel of both sides and also perused the material placed on record.

66. Before proceeding further, we recapitulate factual matrix noted hereinafter. The Resolution Professional (“RP”) of the CD⁴ / Appellant filed I.A. No. 1927 of 2025 in CP (IB) No. 3143/MB/2019 with the AA seeking approval for the Subject Transaction⁵ discussed herein. The Corporate Debtor, was admitted into corporate insolvency resolution process on 23 April 2024. We note that CD has non-core land assets of the Corporate Debtor situated within a free trade warehousing zone (“⁶FTWZ”) in Khurja admeasuring 42.08 acres. We also note that of the ⁷Subject Parcels: (i) 39.56 acres are interspersed within and adjacent to railway siding operations of ⁸NCR Rail Infrastructure Limited (“NCR Rail”); (ii) and 2.52 acres form part of a spine road providing sole access to the FTWZ assets of both NCR Rail and ⁹Arshiya Northern FTWZ Limited (“ANFL”). We also note the Subject Parcels are being used by and for the benefit of NCR Rail and ANFL, which are wholly owned subsidiaries of the CD undergoing

⁴ CD is Arshiya Limited – AL

⁵ Subject Transaction: two-part sale of: (i) 39.56 acres to NCR Rail, or its SRA and (ii) 2.52 acres of the spine road to ANFL or its SRA

⁶ FTWZ: free trade warehousing zone

⁷ Subject Parcels: (i) 39.56 acres of land interspersed within and adjacent to railway siding operations of NCR Rail” (ii) and 2.52 acres forming part of a spine road providing sole access to the FTWZ assets of both NCR Rail and ANFL

⁸ NCR Rail Infrastructure Limited- NCR Rail: Also undergoing CIRP and Resolution Plan under submission to AA

⁹ Arshiya Northern FTWZ Limited - ANFL: Also undergoing CIRP and Resolution Plan under submission to AA

independent CIR Processes. While the CIR Processes of the CD, ANFL and NCR Rail did not proceed concurrently, the CoCs of the three entities share a common majority of lenders. Further, the respective CoCs of both NCR Rail and ANFL approved resolution plans prior to the passing of the Impugned Order. Applications for approval of both resolution plans are currently pending before separate benches of the National Company Law Tribunal, Mumbai Bench (“AA”), where the Subject Parcels have been recognised as essential to their successful resolution. The CoC of the CD after deliberations, in its 7th and 8th meetings approved a resolution, with 85.46% voting in favour, for two-part sale (“¹⁰Subject Transaction”) of: (i) 39.56 acres to NCR Rail, or its successful resolution applicant (“SRA”), and (ii) 2.52 acres of the spine road to ANFL, or its SRA. Furthermore, we note that the Subject Parcels are partly mortgaged in favour of Edelweiss Asset Reconstruction Company Limited (“EARCL”) and SREI Equipment Finance Limited (“SREI”), both of whom are constituents of the CoCs of all three entities. The AA, vide the order dated 16 July 2025 (“Impugned Order”) while permitting sale in principle, found that the process employed for price discovery must be transparent and ensure value maximization. The AA, thus, directed the RPs of NCR Rail and ANFL to invite independent bids from all respective prospective resolution applicants (“PRAs”) for sale of the Subject Parcels.

¹⁰ Subject Transaction: two-part sale of: (i) 39.56 acres to NCR Rail, or its SRA and (ii) 2.52 acres of the spine road to ANFL or its SRA

67. In the above background we need to note the relevant directions of the Adjudicating Authority which is reproduced herein as below:

“... ”

25. We are conscious of the fact that the buyer for the proposed land parcels can only be Respondent No. 9 and 10 or its Successful Resolution Applicant for respective parcels of the land, however, the Resolution Process of Respondent No. 9 and 10 as well as that of Corporate Debtor must have contemplated this arrangement since beginning, as approved by the CoC of the Corporate Debtor so that the Prospective Resolution Applicants in all three cases would have been aware of what is available and for what they are bidding for, so that the competitive biddings could have been received in respect of land parcels in question. This would have ensured maximisation of the value of Respondent No. 9 and 10 as well as value of these land parcels, as the Prospective Resolution applicants in those processes shall have clarity on the issues, which were not clear to them while placing their bids for the Resolution of Respondent No. 9 & 10. Since, CIRP process of Respondent No. 9 & 10 is not before us, we can't comment on those processes and our observations herein should not prejudice the independent finding or conclusion of the Adjudicating authority dealing with CIRP process of Respondent No. 9 & 10 or their CoC's further decision in this regard.

26. In view of foregoing, we are of considered view that the Applicant, herein, can proceed with the sale of both the land parcels, however, the process followed for price discovery of those land parcels should be transparent and ensure value maximisation. The present mode of sale does not ensure that. Accordingly, the Applicant ought to take necessary precautions to maximise the value in the hands of Corporate Debtor and must ensure that the Resolution Professionals of Respondent No. 9 and 10 have conveyed the availability of these land parcels for sale to all the Prospective Resolution Applicants and sought the independent bid from each one of them for the land parcels on offer

to ensure fair play. Further, the Respondent No. 9 and Respondent No. 10 ought to convey to all the Prospective Resolution Applicants that they shall have to enter into an arrangement by which both of them shall allow the access through their earmarked land parcels to each other so that each one can get free access to their land parcels, as resolved by CoC of the Corporate Debtor. It is made clear that condition stipulating 'the access through their earmarked land parcels to each other' may be waived by the CoC of the Corporate debtor in its wisdom.

27. In view of the foregoing, the Applicant is allowed to offer the land parcels admeasuring 39.56 acres and land parcels admeasuring 2.52 acres belonging to Corporate Debtor to the Prospective Resolution Applicants in the CIRP of Respondent No. 9 and 10 in the manner as stated in Para 25 above.

28. IA (IB) 1927 of 2025 is partly allowed. IVNP. (B) 66 of 2025 is dismissed for the reasons stated in Para 17. Both the applications are disposed of accordingly.”

68. From the above order we note that while on one hand AA holds that the Resolution Professional of the Corporate Debtor can proceed with the sale of these land parcels being treated as non-core asset. But based on ratio laid down in the case of "**Jet Airways Maintenance Engineers Welfare Association vs. Shri Ashish Chhawchharia RP of Jet Airways (India) Ltd. [2020] SCC Online, NCLAT 278**", in subsequent paragraphs AA proceeds to decide that the competitive bid needs to be undertaken in both the other CIRP and also concludes in the Impugned Order that the present mode of sale does not ensure value maximization or transparency despite all the minutes of the CoC meetings, submissions made by the Appellant and the discussions that were undertaken

in the CIRP of the Corporate Debtor, Respondent No. 9 and Respondent No. 10, respectively.

69. For determining the sustainability of the order of the Adjudicating Authority we need to answer the following questions:

- I. Whether the manner of sale is a commercial decision lying within the exclusive domain of the CoC.
- II. Whether the Subject Transaction ensures price discovery and value maximization and whether a public auction is the sole feasible method of price discovery despite commission of valuation by the CoC.
- III. Whether the AA exceeded its jurisdiction in issuing directions that render the CIR Process of the CD contingent upon the CIR Processes of ANFL and NCR Rail pending before separate for a.
- IV. Whether the commercial context of the Khurja FTWZ necessitates the Subject Transaction for value maximization.
- V. Whether the sale of encumbered assets is permitted under Regulation 29.
- VI. Whether Regulation 36A(1A) of the CIRP Regulations is inapplicable

70. The above-raised questions are interrelated. To the extent they can be taken up separately, they are being discussed hereinafter.

71. We first delve into the issue **whether the manner of sale is a commercial decision lying within the exclusive domain of the CoC or not**. We note that the CoC approved the Subject Transaction after detailed deliberations while considering the interdependent nature of the Subject Parcels, the operational

synergies with NCR Rail and ANFL, the advanced stage of the CIR Processes of the related entities and the small value of the Subject Parcels in comparison to the total outstanding debt of INR 6600+ Crore. The minutes of the 7th meeting of the CoC record that solution for granting permanent right of way to NCR Rail through execution of a memorandum of understanding was tabled before the CoC but failed to gather requisite approval. At the 8th meeting, after due consideration, the CoC concluded that outright sale, rather than grant of limited right-of-way to the SRAs of both related entities, would maximize value, mitigate risk of future disputes, and ensure that the Subject Parcels are deployed to their most value-accretive use. We also note that the CoC's preference for an outright transfer, at fair value, to entities that will unlock operational synergies is commercially rational, within the CoC's exclusive domain, and thus non-justiciable. Judicial review of the CoC's decision on matters of commercial wisdom is impermissible, save to the limited extent necessary to ensure compliance with the Code and rules and regulations framed thereunder. Therefore, the Impugned Order can be set aside for speculating for 'better' price discovery through invitation of independent bids. Adjudicating Authority can not re-appraise commercial decisions made by the CoC. The CoC's preference for an outright transfer, at fair value, to entities that will unlock operational synergies is commercially rational, within the CoC's exclusive domain, and thus non-justiciable.

72. We note that the Impugned Order, while recognizing that the Subject Transaction is necessary for the successful resolution of all three entities, gave

a finding that there is no transparent price discovery and value maximization in the process employed by the RP. However, we note that the CoC commissioned valuation of the Subject Parcels from two independent, reputed valuation agencies and no objections have been levelled against the valuations. We note that the CoC has employed a process that ensures transparent price discovery and maximization of value.

73. We also note that the AA has ignored the fact that the subject land parcel was the asset of the Corporate Debtor which was proposed to be sold and hence the interests of stakeholders of the present Corporate Debtor was to be kept in mind while adjudicating the instant application rather than dealing with what could have been done in the resolution processes of Respondent No. 9 and Respondent No. 10 (undergoing CIRP before other benches) and the concept of value maximisation was to be looked into from the CIRP of the present Corporate Debtor. Therefore, we answer in the affirmation that CoC's approval of the subject transaction reflects considered commercial wisdom, warrants deference and is non-justiciable.

74. We further delve into a related issue **whether a public auction is the sole feasible method of price discovery or not**. We note that while recognizing that the Subject Transaction is necessary for the successful resolution of all three entities and that NCR Rail and ANFL (or their SRAs) are the only possible transferees of the Subject Parcels, the Impugned Order interferes with the manner of sale on the assumption of absence of transparent price discovery and

value maximization. Pertinently however, contemporaneous with the approval of the Subject Transaction, the CoC: (i) commissioned valuation of the Subject Parcels from two independent, reputed valuation agencies, and; (ii) resolved to effect sale of the Subject Parcels at a consideration not less than the average of fair market value – ensuring value maximization and the best price discovery for the Subject Parcels. CoC has placed its reliance on ***Binani Industries Limited v. Bank of Baroda & Anr., judgment dated 14 November 2018 in CA (AT) (Ins.) No. 82 of 2018*** and claims that reliance on principles governing maximization of value in auction processes holds little weight in light of the settled position of law that a resolution process under the Code is not a myopic auction but instead aimed at long-term commercial prospects and overall resolution of the corporate debtor. We find the argument to be convincing in the present context. We therefore find that in the facts and circumstances of the case public auction is not the sole feasible method of price discovery.

75. We also delve into the question **whether the AA can issue directions that renders the CIR Process of the CD contingent upon the CIR Processes of ANFL and NCR Rail pending before separate fora.** We note that the Impugned Order recognizes that the CIR Processes of NCR Rail and ANFL are pending before separate benches of the NCLT, Mumbai and thus beyond the jurisdiction of the Ld. AA. However, contrary to its own finding, the Adjudicating Authority has directed and passed orders in respect of the CIR Processes of NCR Rail and ANFL. The directions requiring the RPs of NCR Rail and ANFL to advertise and invite independent bids for assets owned by the CD conflate independent

Company Appeal (AT) (Insolvency) No. 1450-1452 of 2025 **40 of 45**

proceedings under the Code. This in our view renders the CD's CIR Process contingent upon the outcomes of parallel CIR Processes. Additionally, the CIR Processes of NCR Rail and ANFL are at an advanced stage wherein their respective CoCs have approved resolution plans for both entities and are pending for approval before different benches of NCLT, Mumbai. The CoC also brings to our notice that by adopting the recourse as in the Impugned Order, more time and resources will be expended in inviting independent bids from PRAs of NCR Rail and ANFL. Further judicial approval of the resolution plans will remain stalled; and the SRAs for both entities may be disincentivized against offering competitive bids for the Subject Parcels or even continuing to participate in the resolution efforts. In effect, the value achieved in the CIR Processes NCR Rail and ANFL may also be lost. We agree with the arguments canvassed by the CoC and we therefore conclude that such directions makes the CIR Process of the CD contingent upon CIR Process of ANFL and NCR Rail and thus this direction by the AA is not sustainable.

76. We now consider another important question **whether the commercial context of the Khurja FTWZ necessitates the Subject Transaction for value maximization or not**. We note that the Subject Parcels are not stand-alone landbanks; instead, they have always been utilized by NCR Rail and ANFL for seamless operations in the Khurja Free Trade Warehousing Zone-FTWZ. We note that an FTWZ is a special category of SEZ governed by the Special Economic Zones Act, 2002. Therefore, the commercial utility of the Subject Parcels arises from contiguity and integration with the adjoining FTWZ assets. If the Subject

Transaction is not executed, third-party acquirers will inherit integration challenges, face customs/SEZ alignment issues, and require bilateral access covenants with NCR Rail/ANFL. Conversely, the Subject Transaction will preserve the FTWZ's throughput economics. Therefore, the Subject Transaction ensures value maximization in the CIR Processes of all three entities. Such a commercial context has to be considered as has been brought before us by the CoC and by not accounting for this fact, an optimal commercial decision cannot be arrived at. CoC had taken into consideration the commercial context of Khurja FTWZ for value maximization and we should defer to their commercial wisdom.

77. Now we delve into the question **whether the sale of encumbered assets is permitted under Regulation 29**. Regulation 29 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations") protects secured creditors from prejudicial transfer of encumbered assets without their knowledge or consent. It permits sale of unencumbered assets "*other than in the ordinary course of business*" to ensure that encumbered assets are not transferred without the knowledge and consent charge holders. However, Regulation 29 does not prohibit a CoC sanctioned sale where the relevant secured creditors have given consent to the sale. In the present case, EARCL and SREI – the sole charge-holders over the Subject Parcels - form part of the CoC and have expressly consented to the Subject Transaction. This is functionally equivalent to a waiver of the prejudice that Regulation 29 guards against. Therefore, the Subject Transaction cannot be interdicted on the ground that the assets are encumbered where the beneficiaries of that encumbrance

have agreed to the same.

78. This Appellate Tribunal in **Jet Aircraft Maintenance Engineers Welfare Association v. Shri Ashish Chhawchharia, RP for Jet Airways (India) Ltd., (2022) SCC OnLine NCLAT 278**, had previously recognized that encumbered assets can be sold under Regulation 29 upon relinquishment/consent by the charge holders during a CIR Process. We note that **Jet Aircraft** does not mandate the conduct of a public auction for the sale of encumbered assets. In the present case, in view of AA's finding that NCR Rail and ANFL are the only possible transferees for the Subject Parcel, which has also been admitted by the Intervenor in its reply to the captioned Appeal, no material circumstances warrant conduct of a public auction at the risk of derailing the CIRPs of all three entities. We also note that for an enabling action under Regulation 29 of the CIRP Regulations, there is no requirement for undertaking any public auction and the law does not contemplate any such process which is being suggested by the Adjudicating Authority in the Impugned Order and therefore such directions are unsustainable.

79. Further, even though the IBBI (Liquidation Process) Regulations, 2016 ("**Liquidation Regulations**") have no application in the present facts. However contrary to the averments made by the Intervenor, even the Liquidation Regulations impose no bar upon private sale of assets of the Corporate Debtor.

80. Lastly, we look into the question whether **Regulation 36A(1A) of the CIRP Regulations is inapplicable in the present case or not.** We note that

Regulation 36A(1A) of the CIRP Regulations, which permits invitation of expressions of interest for sale of one or more assets of a CD, is wholly inapplicable in the present case. While the Subject Parcels are assets of the CD, the Impugned Order contains directions for invitation of bids for the sale of the Subject Parcels from PRAs of NCR Rail and ANFL. We note that not only Regulation 36A(1A), but no other provision in the Code allows invitations of bids for sale of assets owned by a separate entity in the CIR Process of a Corporate Debtor. Furthermore, Regulation 36A(1A) was only inserted into the CIRP Regulations *vide* a notification dated 26 May 2025. However, the Subject Transaction was approved by the CoC on 18 March 2025 – much prior to the introduction of Regulation 36A(1A). The concerned provision vests substantive powers in resolution professionals to invite expressions of interest for the sale of assets of a Corporate Debtor, which was hitherto not permitted. We also find that the Intervenor’s reliance on ***B.K. Educational Services (P) Ltd. vs. Parag Gupta & Associates (supra)*** is baseless in as much Regulation 36A(1A) is not merely clarificatory or procedural in nature. Therefore, given that the regulation did not exist as on the date of approval of the Subject Transaction and is prospective in import, the issue of compliance with the same does not arise. In any case, the language employed in Regulation 36A(1A) is not mandatory in nature and the CoC in exercise of its commercial wisdom may determine the mode of sale. Therefore, we find that Regulation 36A(1A) of the CIRP Regulations is not applicable in the facts and the circumstances of the case.

81. We note that Intervenor claims that auction process be attempted at least

once as the private arrangement for disposal of the land of the Corporate Debtor may not be most efficient and alleges to be a rigged arrangement. Intervenor claims that it is the CD's resolution and it should not envisage the convenience of NCR Rail – Respondent No.9 and ANFL – Respondent No. 10.

82. Basis above analysis noted earlier herein, we observe that such arguments of the intervenor indicate dilatory tactics and an attempt to thwart the resolution process of the Corporate Debtor. In the above background sought by Suspended Director of CD – AL in his Intervenor Application bearing I.A. No. 5807 of 2025 is not sustainable and we conclude that it can be dismissed basis the analysis as noted above.

Conclusion and Orders

83. In the above facts and circumstances of the case, we find that the directions issued by the Adjudicating Authority as noted above are not sustainable and deserve to be set aside. Accordingly, we allow the sale of assets as approved by the CoC and as prayed in IA 1927/2025 arising out of CP (IB) No. 3143/MB/2019 before the AA and accordingly the orders of the Adjudicating Authority are modified. I.A. No. 5807 of 2025 filed in this Appeal is also dismissed. No orders as to costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Arun Baroka]
Member (Technical)**

**New Delhi.
November 07, 2025.**

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