

May 4, 2023

**BSE Limited**

Phiroze Jeejeebhoy Towers,  
Dalal Street, Fort,  
Mumbai 400 001

**BSE Scrip Code: 540709**

**National Stock Exchange of India Limited**

Exchange Plaza, 5<sup>th</sup> Floor,  
Plot No. C/1, G Block, Bandra Kurla  
Complex, Bandra (East), Mumbai 400 051

**NSE Scrip Symbol: RHFL**

Dear Sir(s),

**Sub.: Disclosure under Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015**

In continuation with our disclosure dated January 10, 2023, we enclose herewith the Order passed by the National Company Law Appellate Tribunal (NCLAT), Principal Bench, New Delhi.

Further, the Company vide its disclosure dated March 31, 2023 had already informed that pursuant to the approved Resolution Plan of the Company by its Lenders in terms of RBI Circular No. RBI/2018-19/ 203, DBR.No.BP.BC.45/21.04.048/2018-19 dated June 7, 2019 on Prudential Framework for Resolution of Stressed Assets, the order of Hon'ble Supreme Court of India dated March 3, 2023 and the special resolution passed by the Shareholders dated March 25, 2023, the Resolution Plan comprising the total Resolution amount of Rs. 3,351 crore has been implemented and in pursuance of the implementation of the Resolution Plan, all financial creditors (other than dissenting debenture holder) have been paid in terms of their respective entitlement under the Resolution Plan in full and final settlement of their dues.

Thanking you.

Yours faithfully,

For **Reliance Home Finance Limited**

**Parul Jain**

**Company Secretary & Compliance Officer**

Encl.: As Above.

**Reliance Home Finance Limited**

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**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,**

**Principal Bench, New Delhi**

**Comp. App. (AT) No. 69 of 2021**

**IN THE MATTER OF:**

**Bank of Baroda As lead bank and on behalf of ...Appellant  
the ICA Lenders of Reliance Housing Finance  
Ltd.**

**Vs.**

**IDBI Trusteeship Services Ltd. & Anr. ....Respondents**

**Present:**

**For Appellant: Mr. Kumar Kislyia, Advocate.**

**For Respondent: Ms. Moulshree Shukla & Mr. Vaijayant  
Poliwal Advocates for R-1.**

**With**

**Comp. App. (AT) No. 70 of 2021**

**IN THE MATTER OF:**

**Reliance Home Finance Ltd. ...Appellant**

**Vs.**

**IDBI Trusteeship Services Ltd. & Anr. ....Respondents**

**Present:**

**For Appellant: Mr. Victor Das, Advocate.**

**For Respondent: Ms. Moulshree Shukla & Mr. Vaijayant  
Poliwal Advocates for R-1.**

**With**

**Comp. App. (AT) No. 71 of 2021**

**IN THE MATTER OF:**

**Reliance Home Finance Ltd. ...Appellant**

**Vs.**

**IDBI Trusteeship Services Ltd. ....Respondents**

**Present:**

**For Appellant: Mr. Victor Das, Advocate.**

**For Respondent: Ms. Moulshree Shukla & Mr. Vaijayant  
Poliwal Advocates for R-1.**

With

Comp. App. (AT) No. 73 of 2021

**IN THE MATTER OF:**

**Bank of Baroda As lead bank and on behalf of ...Appellant  
the ICA Lenders of Reliance Housing Finance  
Ltd.**

**Vs.**

**IDBI Trusteeship Services Ltd. & Ors. ....Respondents**

**Present:**

**For Appellant: Mr. Kumar Kislay and Ms. Aishna Jain,  
Advocate.**

**For Respondent: Ms. Moulshree Shukla & Mr. Vaijayant  
Poliwal Advocates for R-1.**

**JUDGMENT**

**(Dated: 26.4.2023)**

**[Per. Dr. Alok Srivastava, Member (Technical)]**

1. Four appeals being disposed of in this common judgment, namely, CA(AT) No. 69/2021 (in short "Appeal-I"), CA(AT) No. 70/2021 (in short "Appeal-II"), CA(AT) No. 71/2021 (in short "Appeal-III") and CA(AT) No. 73/2021 (in short "Appeal-IV"), which are tagged together, which have been filed by respective Appellants under section 421 of the Companies Act, 2013 assailing the order dated 21.6.2021 (hereinafter called "Impugned Order-I") read with the order dated 27.5.2021 (hereinafter called "Impugned Order-II") passed by National Company Law Tribunal, Mumbai Bench in C.P.

No. 138/MB/2020, which was filed under section 71 of the Companies Act, 2013.

2. Appeal-I is filed by Bank of Baroda (Appellant-1) the lead lender, on behalf of the ICA Lenders of Reliance Housing Finance Limited for setting aside the two Impugned Orders.

3. Appeal-II is filed by Reliance Home Finance Limited (in short 'RHFL'), who is Appellant-II, aggrieved by Impugned Order-I and praying for setting it aside.

4. Appeal-III is filed by RHFL (Appellant-II) aggrieved by Impugned Order-I and praying for setting aside Impugned Order-I.

5. Appeal-IV is filed by Bank of Baroda as lead bank and on behalf of the ICA Lenders of Reliance Housing Finance Limited (Appellant) against Impugned Order-I and Impugned Order-II praying for setting aside of Impugned Order-I and also directing Reliance Housing Finance Limited to take necessary steps in relation to implementation of approved bid so that all the financial creditors can recover their due amounts in a timely manner.

6. The conspectus of the case is that a number of debentures holders had subscribed to secured Non-Convertible Debentures (NCDs) issued by the RMFL for which IDBI Trusteeship Services Limited was appointed as Debenture Trustee for the said debentures vide Debenture Trustee Deed dated 10.11.2016 entered into between RHFL as the issuer of NCDs and IDBI Trusteeship Services Limited as the Debentures Trustee. The Debenture Trustee filed CP NO. 138/MB/2020 ('Company Petition') under section 71 of the Companies Act, 2013 for redemption of the NCDs as the issuer company had failed to honour its commitments. Earlier RHFL issued two series of secured NCDs at face value of Rs.1000/- each with coupon interest @ 9.25% (for NCD Series-I) and 9.40%(for NCD Series-II) payable annually to respective debenture holders and the maturity/redemption date of NCDs was 3.1.2032.

7. The Appellant-1 and other lender banks of RHFL have also executed a Inter Creditors Agreement ("ICA") on 6.7.2019 in accordance and pursuant to "Prudential Framework for Resolution of Stressed Assets" circular dated 7.6.2019 issued by the Reserve Bank of India. In the Company Petition filed by the Debenture Trustee before NCLT, the Appellant - 1 filed CA No. 129/2021 requesting that it be impleaded in the Company Petition since it was 'a person interested in the matter' as per proviso of section 73(3) of *Comp. App. (AT) Nos. 69, 70, 71 & 73 of 2021*

the Companies Act, 2013. This application CA No. 129/2021 was rejected by NCLT vide Impugned Order-II passed on 27.5.2021 and without waiting for the limitation period for the appeal on this order to be over, the NCLT went ahead and passed Impugned Order-I on 21.6.2021 whereby RHFL was directed to pay interest on the debentures at the contractual rate within a period of two months and also redeem the debentures thereafter within three months. In the other appeals, namely, Appeal-II and Appeal-III, RHFL has requested for setting aside the Impugned Order-I on the ground that the bid for resolution of the corporate debtor (RHFL) is being finalized and Impugned Order-I will cause hurdle in the finalization of the bid which would lead to the successful resolution of the corporate debtor, so that the interest of all financial creditors including debentures holders can be taken care of. In Appeal-IV the Appellant Bank of Baroda has prayed for setting aside both the Impugned Order-I and Impugned Order-II, so that the resolution of the corporate debtor can be successfully achieved in accordance with the circular dated 7.6.2019 issued by Reserve Bank of India, so that the insolvency of the corporate debtor can be successfully resolved and interest of all the financial creditors be taken care of.

8. We heard the arguments put forth by the Learned Counsels of all the respective parties in all the four appeals and perused the record of all the appeals.

9. The Learned Counsel for Bank of Baroda (lead bank on behalf of ICA Lenders) has argued that the corporate debtor (RHFL) has suffered financial losses and was unable to service the debts taken from ICA Lenders, who are mostly public sector financial institutions and major private banks, and owes a sum of approximately Rs. 7109 crores which is 60% of the outstanding debt of RHFL as in July, 2019. He has further submitted that ICA Lenders are secured by a first ranking *pari passu* charge on all book debts/receivables, cash and cash equivalents of RHFL, but the ICA Lenders refrained from enforcing their security interests in order to resolve the financial situation of RHFL in the interest of all stakeholders. He has further submitted that debenture holders of RHFL for which IDBI Trusteeship Services Limited is the Debenture Trustee holding NCDs worth approximately Rs.2,804 crores, which is approximately 41.63% of the total debentures of RHFL, has also signed the Inter Creditors Agreement. He has further submitted that out of the total debentures represented by the Debenture Trustee in the Company Petition, the debenture holders aggregating over 20% have signed the ICA, and therefore, the Debenture Trustee *Comp. App. (AT) Nos. 69, 70, 71 & 73 of 2021*

by filing the Company Petition has placed the said debenture holders in breach of its obligations of the ICA.

10. The Learned Counsel for Bank of Baroda has further argued that in view of the financial stress of RHFL, resolution process of RHFL was initiated in accordance with Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets) Directions, 2019 dated June 7, 2019 and the ICA Lenders appointed BOB Capital Markets Limited and Ernst & Young LLP (collectively referred to as the “Process Advisors”) for conducting the bid process and finding suitable bids for resolving the financial stress of RHFL. He has further submitted that Process Advisors published an advertisement on 29.7.2020 inviting Expressions of Interest cum bid(s) from potential bidders and this was uploaded on the website of the lead bank. He has also submitted that the bid document stipulates that implementation of the approved bid would require prior consent of the non-ICA lenders as per the terms of their respective financing documents.

11. The Learned Counsel for Appellant Bank of Baroda has further submitted that the Debenture Trustee filed the Company Petition for CP No. 139/MB/2020 under section 71 of the Companies Act, 2013 before NCLT, Mumbai on 8.1.2020, praying *Comp. App. (AT) Nos. 69, 70, 71 & 73 of 2021*



for declaration that RHFL is liable and obligated to redeem the secured NCDs and make payment of principal amount, interest and other monies due and payable to the debenture holders amounting to Rs.2850.79 crores, Certain other prayers made by the Debenture Trustee in the said Company Petition pertain to payment of interest in respect of various series of NCDs.

12. The Learned Counsel for Bank of Baroda has further submitted that the resolution process of RHFL resulted in receipt of four bids, which were thoroughly evaluated and voting on the bids by ICA Lenders took place between 31.5.2021 and 9.6.2021 and simultaneously to ensure a fair and equitable treatment, the ICA Lenders have been engaging with non-IAC Lenders to ensure transparency and fair and equitable treatment to non-ICA Lenders too and about 95% of all the lenders have either acceded to ICA or executed confidentiality undertaking to get the terms of bids for their consideration. He has also submitted that the Debenture Trustee has also been participating, though without prejudice, in the resolution process of RHFL, and the meetings involving discussions and evaluation of the bids with the ICA Lenders and the minutes of the lenders meeting held on 8.3.2021 and 10.3.2021 are testimony of the same. Further, RHFL has also given a letter of undertaking to cooperate in the implementation of the approved bid

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and take all the necessary actions as required. He has argued that in the light of all the actions taken in consideration of the bids received and ensuring participation of non-ICA Lenders in the resolution process, the Appellant Bank of Baroda filed an Intervention Application being CA No. 129/2021 seeking to intervene in the Company Petition on the ground that under section 71(10) of the Companies Act, 2013 read with Rule 73 (3) of the NCLT Rules, 2016, the NCLT was required to give an opportunity of hearing to parties concerned, and therefore, Appellant Bank of Baroda should have been granted an opportunity for hearing, but by Impugned Order-II dated 27.5.20221 the request for intervention was denied. He has further argued that after rejection of its Intervention Application CA No.129/2021, the NCLT went ahead and passed Impugned Order-I on 21.6.2021 whereby CP No. 139/MB/2020 was allowed, even though the Impugned Order-I was passed, when the limitation period for appeal against Impugned Order-II had not expired.

13. The Learned Counsel for Debenture Trustee (IDBI Trusteeship Services Limited) has argued that the Debenture Trustee Agreement dated 10.11.2016 was signed with the Debenture Trustee and RHFL as parties, and after the Debenture Trustee gave consent for its appointment as Debenture Trustee for the authorized issue of *Comp. App. (AT) Nos. 69, 70, 71 & 73 of 2021*

secured NCDs aggregating up to Rs.3,000 crores, the Debenture Trustee Deed was executed between the Debenture Trustee and RHFL on 2.1.2017 setting out the terms and conditions of the issue of the secured NCDs. He has further argued that under the Debenture Trustee Agreement, a *pari passu* hypothecation charge is created on all book debts and receivables, cash and cash equivalent of RHFL. Thus, the Debenture Trustee holds a *pari passu* charge on assets of RHFL, along with the ICA Lenders. He has further submitted that the ICA Lenders of RHFL took action to identify a debt resolution plan, but due to the inapplicability of the provisions of RBI circular to majority of secured NCD holders (mutual funds, pension funds and individuals), the Debenture Trustee did not accede to the ICA. He has further argued that the credit rating of RHFL degraded from AA+ to D between April 2019 to September 2019 and RHFL committed various breaches of the Debenture Trustee Deed, particularly of clauses 7.3(f), (h) and (l), 25.2(xxii) and 26 and these breaches were flagged by the Debenture Trustee in its letters dated 7.8.2019 and 27.8.2019 to RHFL, which went unresponded and the breaches to the Debenture Trustee Deed were also not rectified.

14. The Learned Counsel for Debenture Trustee has argued that upon instructions from the NCD holders, the Debenture Trustee *Comp. App. (AT) Nos. 69, 70, 71 & 73 of 2021*

vide letter dated 19.11.2019 declared occurrence of Event of Default under clause 7.1 of the Debenture Trustee Deed and called upon the Appellant to make payment of the principal amount and all interests payable in respect of secured NCDs aggregating to Rs.2822.12 crores. Thereafter on 3.1.2020, NCD Series 1A and NCD Series 1B became due for redemption and for NCD Series 2A, NCD Series 2B, NCD Series 3A and NCD Series 3B, the annual interest became payable and when the Debenture Trustee did not receive any response to its notice dated 4.1.2020 from RHFL, it filed Company Petition under section 71 (10) of the Companies Act, 2013 upon instructions from NCD holders for redemption of secured NCDs. He has further submitted that while the said Company Petition was pending, the ICA Lenders invited Expressions of Interest cum Submission of Resolution Plan from bidders through its invitation dated 29.7.2020 and the said invitation clearly disclosed that a significant portion of lenders was mutual funds, pension funds and others and consent of such lenders will be required in implementation of the approved resolution plan.

15. The Learned Counsel for Debenture Trustee has argued that the Appellant cannot be termed as 'aggrieved person' and does not have any locus to file the appeal because he was not a party before the NCLT and the Impugned Order in the Company Petition under *Comp. App. (AT) Nos. 69, 70, 71 & 73 of 2021*

section 71(10) of the Companies Act, 2013 is only an order *in personam* with directions against the Company, which is akin to money decree and no person can claim to be aggrieved party within the meaning of Rule 2(18) of the NCLT Rules. He has also claimed that no party in the Resolution Plan approved by ICA Lenders is in any way affected by Debenture Trustee obtaining a direction against the corporate debtor RHFL. He has further contended that section 71 (10) only stipulates that a reasonable opportunity of being heard should be given to any other person interested in the matter and the term “person interested” has to be interpreted and construed by making reference to the part of the definition clause, which contains “in this context otherwise required” and the context is regarding redemption of secured NCDs and, therefore, only such persons, who have privity of contract with the Debenture Trustee or is a debenture holder can be “person interested”.

16. The Learned Counsel for Debenture Trustee has further claimed that there is no requirement for the Tribunal to consider the resolution process of RHFL, which is being helmed by ICA Lenders, as such requirement is not covered in Section 71(10) of the Companies Act, 2013, and also that the Tribunal does not have to consider “public interest” while deciding the application under Section 71(10) of the Companies Act, 2013.

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17. The Learned Counsel for the corporate debtor RHFL has echoed the arguments put forth by the Learned Counsel for Bank of Board (ICA Lenders) and argued that the RBI circular dated 7.6.2019 provided a framework for resolution of stressed assets and in accordance with this circular, the resolution process of the corporate debtor RHFL was initiated, in which on 19.6.2021 Authum Infrastructure and Investment Limited was declared as the successful highest bidder in relation to acquisition of all the assets of RHFL. He has also pointed that out of total of 20,453 creditors of RHFL, 35 creditors, who control 63% of the total principal amount outstanding have already approved the Resolution Plan as ICA Lenders and under the proposed Resolution Plan, over 18880 retail debenture holders (who are represented by the Debenture Trustee) would receive 100% principal repayment as per the distribution pattern. He has thus added that actually 23 debenture holders, who are also among those represented by the Debenture Trustee, are part of the ICA Lenders, who have approved the Resolution Plan and selected the final bidder. He has contended that despite the fact the resolution process is in final stage, the NCLT vide Impugned Order did not allow the ICA Lenders led by Bank of Baroda to intervene in the Company Petition and directed for redemption of NCDs and payment of due interest.

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18. The Learned Counsel for RHFL has argued that the NCLT has incorrectly exercised its jurisdiction under section 71(10) by interpreting the word 'may' as 'shall' regarding redemption of NCDs. He has further claimed that rule 73(4) of NCLT Rules provide guidance on how NCLT is to exercise its discretionary powers and the use of the word 'financial conditions of company' in Rule 73(4) indicates that the NCLT ought to have considered the impact the order of redemption of NCDs would have on the financial health of the company RHFL. He has further claimed that the Impugned Order-I and Impugned Order-II are, therefore, against public interest including the interest of debenture holders and Impugned Order-I which directs redemption of debentures, which have not matured, is not legal and therefore the Impugned Orders I and II should be set aside.

19. The issue that falls for consideration in the present appeal is whether the ICA Lenders led by Bank of Baroda were entitled to be intervenor and be heard in the company petition filed by the Debenture Trustee and if they had a right to be heard, then whether the Impugned Order turning down the Intervention Application correct in law, and further Impugned Order-I which was passed without hearing the ICA Lenders liable to be set aside?

20. We first notice section 71(10) of the Companies Act, 2013, which is as follows:-

**“71. Debentures**

*(10) Where a company fails to redeem the debentures on the date of their maturity or fails to pay interest on the debentures when it is due, the Tribunal may, on the application of any or all of the debenture-holders, or debenture trustee and, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith on payment of principal and interest due thereon.”*

21. We further notice Rules 73(1), 73(3), 73(4) and Rule 2(18) of the NCLT Rules, 2016, which are as follows:

*73. Application under sections 71(9), 71(10), section 73(4) or section 74(2) and, 76(2)-*

*(1) Where a company fails to redeem the debentures or repay the deposits or any part thereof or any interest thereon, an application under sub-section (10) of section 71 or under subsection (4) of section 73 of the Act or section 45QA of the Reserve Bank of India Act, 1934 (2 of 1934), shall be filed to the Tribunal, in Form No. NCLT. 11 in duplicate and shall be accompanied by such documents as are mentioned in Annexure B, by-*

*(a) in case of debentures, all or any of the debenture holders concerned, or debenture trustee;*

*(b) in case of deposits, all or any of the where the deposits are secured, by the depositors concerned, or deposit trustee.*

*xx xx xx xx xx*



*(3) The Tribunal shall pass an appropriate order within a period of sixty days from the date of receipt of application under sub-rule (1);*

*Provided that the Tribunal shall, before making any order under this rule, give a reasonable opportunity of being heard to the company and any other person interested in the matter.*

*(4) The Tribunal may, if it is satisfied, on the application filed under sub-rule (1). that it is necessary so to do, to safeguard the interests of the company, the debenture holders or the depositors, as the case may be, or in the public interest, direct, by order. the company to make repayment of such deposit or debenture or part thereof forthwith or within such time and subject to such conditions as may be specified in the order:*

*Provided that while passing the order, the Tribunal shall consider the financial condition of the company, the amount or deposit or debenture or part thereof and the interest payable thereon*

**Rule 2(18) of the NCLT Rules:**

*"person interested" means a shareholder, creditor, employee, transferee company and other company concerned in relation to the term or context referred to in the relevant provisions of the Act or any person aggrieved by any order or action of any company or its directors;"*

22. We note that Section 71(10) of the Companies Act, 2013 uses the word 'may' in the context when the Tribunal has to pass order on the application of any or all of the debenture holders or debenture trustee. Further, sub-section 10 of section 71 also lays down that the Tribunal may pass orders 'after hearing the parties concerned'.

23. Regarding the use of word 'may', the Learned Senior Counsel for Appellant has cited the judgment in the matter of **Rajinder Mohan Rana vs. and Ors. vs. Prem Prakash Chaudhary [2011 SCC Online Del 3684]**, wherein it is held as follows:-

*"7. Normally, the word 'may' means discretion and is not mandatory. In the present case we do not see any reason why the word 'may' in Section 55, should be read as 'must' or 'shall':*

*Courts do not interpret the word 'may' as 'shall' unless such interpretation is necessary and required to void absurdity, inconvenient consequence or is mandated by the intent of the legislature which is collected from other parts of the statute. While examining the third aspect, the courts examine the purpose, object, design and scope of the statute.*

*10. To reiterate the words "may" and "shall" are distinct in meaning. While one confers a discretionary power, the latter one. pelts out mandatory directions. These words are not synonymous but may be used interchangeably if the context requires such interpretation."*

24. Further, the judgment in **Jamatraj Kewalji Govani v. vs. State of Maharashtra [1967 3 SCR 415]**, it is again held that the use of word 'may' be meant to give discretionary power as opposed to the use of word 'shall'. We further note that 20% of the debenture holders are signees of the Inter Creditor Agreement (ICA), even though it is not obligatory on the debenture holders to sign the ICA. The debenture holders are investors, whereas the creditors, who sign the ICA, who form the major part of ICA are financial creditors of the Company. It stands to reason that if some debenture holders

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have signed the ICA, they have shown interest in the successful resolution of RHFL.

25. It is argued by the Learned Counsel for the Debenture Trustee that the Company Petition was preferred under section 71(10) of the Companies Act, 2013 before the NCLT in exercise of its exclusive jurisdiction, which arises from the provision of section 71(8) of the Companies Act, 2013 which mandates that a company shall pay interest and redeem the debentures in accordance with the terms and conditions of the debenture issue. Clause 3.1.3 of the Debenture Trust Deed provides that the contractual obligation of the Issuer Company to pay to the secured NCDs holders, the principal amount on the date of the maturity and annual interest as accrued in accordance with the financial governance and conditions. He has argued that it is, therefore, incumbent on the Issuer Company to carry out its contractual obligations and the Company Petition under section 71(10) is to that end which is summary in nature and its scope is also limited to the failure of the company to make payment of the principal amount and any interest on the debentures. The Learned Counsel for the Debenture Trustee has further contended that the proceedings under Section 71 in the Company Petition are proceedings '*in personam*' and they are not

proceedings ‘in rem’ and therefore in the proceedings which are ‘*in personam*’, there is no requirement for giving an opportunity for hearing to other parties who are not related to the Debenture Trust Deed and the issue of NCDs. He has also claimed that the principle of natural justice has been followed in the present case, since Bank of Baroda was allowed to file an application seeking intervention, which was rejected by NCLT after due consideration by its order dated 21.5.2021 in the light of legal provisions.

26. We note that the question of any proceedings being ‘*in personam*’ or in ‘in rem’ has been dealt in the matter of **Vidya Drolia v. Durga Trading Corpn. [2021 2 SCC 1]**, wherein the following is held:-

*“37. Booz Allen & Hamilton Inc. draws a distinction between actions in personam, that is, actions which determine the rights and interests of parties themselves in the subject-matter of the case, and actions ‘in rem’ which refer to actions determining the title of the property and the rights of the parties not being merely amongst themselves but also against all the persons at any time claiming an interest in that property. Rights ‘in personam’ are considered to be amenable to arbitration and disputes regarding rights ‘in rem’ are required to be adjudicated by the courts and public tribunals. The latter actions are unsuitable for private arbitration. Disputes relating to subordinate rights in personam arising from rights in rem are considered to be arbitrable.*

xx xx xx xx xx

**40.** *Dr D.Y. Chandrachud, J. in A. Ayyasamy v. A. Paramasivam, referring to the dictum in Booz Allen & Hamilton Comp. App. (AT) Nos. 69, 70, 71 & 73 of 2021*

*Inc., has made two important comments: (A. Ayyasamy case, SCC pp. 410-11, paras 35 & 38)*

*"35... This Court held that this class of actions operates 'in rem', which is a right exercisable against the world at large as contrasted with a right 'in personam' which is an interest protected against specified individuals. All disputes relating to rights in personam are considered to be amenable to arbitration while rights in rem are required to be adjudicated by courts and public tribunals....*

\* \* \* \* \*

*38. Hence, in addition to various classes of disputes which are generally considered by the courts as appropriate for decision by public fora, there are classes of disputes which fall within the exclusive domain of special fora under legislation which confers exclusive jurisdiction to the exclusion of an ordinary civil court. That such disputes are not arbitrable dovetails with the general principle that a dispute which is capable of adjudication by an ordinary civil court is also capable of being resolved by arbitration. However, if the jurisdiction of an ordinary civil court is excluded by the conferment of exclusive jurisdiction on a specified court or tribunal as a matter of public policy such a dispute would not then be capable of resolution by arbitration."*

27. Further, the question of proceedings to be 'in personam' or 'in rem' is also made clear by the fact that in the Company that is facing financial stress and for which a resolution plan is under consideration, 23 debenture holders who are among those represented by the Debenture Trustee are also part of ICA Lenders, though a majority of the retail debenture holders are not signatories to the ICA.

28. Insofar as the effect of the RBI circular is concerned, it is seen that circular issued by RBI on 7.6.2019 providing directions regarding Prudential Framework for Resolution of Stressed Assets, attempts to provide a solution for financial resolution of the Company. The Learned Counsel for Appellant has stated that the debenture holders are likely to get 100% of the principal repayment, as per the distribution pattern included in the proposed resolution plan, which has already been approved by the ICA Lenders.

29. The contention of the Respondent Debenture Trustee is that the requirement of sub-section 10 of Section 71 of the Companies Act, 2013 is that the Tribunal should pass an order only keeping in view its satisfaction and what is necessary to safeguard interest of the company or debenture holders. He has contended that the issue of public interest and financial condition of the company are not necessary factors to be look into by the Tribunal while passing the order.

30. While considering the above argument of the Learned Counsel for the Respondent-Debenture Trustee, we note that the provision under section 71 (3) and section 71(10) of the Companies Act, 2013 stipulates that NCLT shall, before making any order, give a reasonable opportunity of being heard to the Company and 'person  
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concerned' in the matter. We also note that Rule 2(18) of the NCLT Rules, 2016 defines 'person interested' to be a shareholder, creditor, employee, transferee company and any other company concerned or any other person aggrieved by any order or action of the Company.

31. Rule 73(3) and Rule 73(4) of the NCLT Rules, 2016 which are applicable for an application under section 71(10) of the Companies, 2013 provide that Tribunal shall, before making any order under this rule, give an reasonable opportunity of being heard to Company or 'any other person interested, in the matter. It is quite clear from a reading of sub-rule (3) and sub-rule (4) of Rule 73 that the company is an 'important party' because the company has to redeem the debentures and pay the interest on the principal amount. The Company's financial condition and health would, therefore, also become relevant factors while hearing an application under section 71(10). The ICA Lenders, who have all signed the Inter Creditor Agreement, have also taken steps for financial rejuvenation and revitalization of the Company through a resolution plan. Therefore, the ICA Lenders are also important parties insofar as financial resolution of the Company is concerned, and therefore we are of the opinion that they should be afforded an opportunity to be heard in the company petition as the redemption of NCDs shall have an impact on the financial condition of the Company and would deeply

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affect the implementation of the resolution plan, which is for resolution of the Company.

32. In the light of the above, when we look at the Impugned Order of the NCLT dated 27.5.2021, we note that the NCLT has denied an opportunity to be heard to ICA Lenders on the ground that insofar as section 71(10) of the Companies Act, 2013 is concerned, they do not have a right to be heard. We are of the opinion that this is an incorrect reading of the requirement of hearing of 'person concerned' as is laid down in section 71(10) of the Companies Act, 2013 and 'any other person interested in the matter' as required in Rule 73(3) and 73(4) of the NCLT Rules, 2016. We are also of the view that in view of public interest as is stipulated in Rule 74(4) and the involvement of public money in the Company, though the public sector banks, public interest also demands that ICA Lenders be given opportunity of hearing. We are, therefore, of the view that the Impugned Order-II dated 27.5.2021 is incorrect and we consequently set it aside.

33. We note that the Impugned Order-I dated 21.6.2021 which was passed by the NCLT suffers from the infirmity that ICA Lenders were not afforded an opportunity to be heard while passing Impugned Order-I. We therefore, have no option but to set it aside  
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too. In the result, we remand the case to the NCLT, Mumbai to hear the matter afresh after allowing the Intervention Application of ICA Lenders led by Bank of Baroda. Thereafter, the NCLT shall pass a reasoned order taking into account the contentions and arguments put forward by all the parties, including the ICA Lenders. The Appeal is, therefore, allowed and the matter is remanded to the NCLT, Mumbai with the aforementioned directions. The parties are directed to appear before NCLT, Mumbai on 16<sup>th</sup> May, 2023.

34. There is no order as to costs.

**[Justice Rakesh Kumar Jain]**  
**Member (Judicial)**

**[Dr. Alok Srivastava]**  
**Member (Technical)**

**New Delhi**  
**26<sup>th</sup> April, 2023**

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