

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 169 of 2017

(Arising out of Order dated 2nd August, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad in C.A. No. 123 of 2017 in CP(IB) No. 01/HDB/2017)

IN THE MATTER OF:

Edelweiss Asset Reconstruction Company Ltd. ...Appellant

Versus

Synergies Dooray Automotive Ltd. & Ors. ...Respondents

With

Company Appeal (AT) (Insolvency) No. 170 of 2017

(Arising out of Order dated 2nd August, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad in CA No. 43 of 2017 in CP. No. 01/IBC/HDB/2017)

IN THE MATTER OF:

Edelweiss Asset Reconstruction Company Ltd. ...Appellant

Versus

Synergies Dooray Automotive Ltd. & Ors. ...Respondents

With

Company Appeal (AT) (Insolvency) No. 171 of 2017

(Arising out of Order dated 2nd August, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad in CA No. 124 of 2017 in CP (IB) No. 01/HDB/2017)

IN THE MATTER OF:

Edelweiss Asset Reconstruction Company Ltd. ...Appellant

Versus

Mrs. Mamta Binani & Ors. ...Respondents

With
Company Appeal (AT) (Insolvency) No. 172 of 2017

(Arising out of Order dated 2nd August, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad in CA No. 56 of 2017 in CP (IB) No. 01/HDB/2017)

IN THE MATTER OF:

Edelweiss Asset Reconstruction Company Ltd. ... Appellant

Versus

Mrs. Mamta Binani & Ors. ... Respondents

AND
Company Appeal (AT) (Insolvency) No. 173 of 2017

(Arising out of Order dated 2nd August, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad in C.A. No. 57 of 2017 in CP (IB) No. 01/HDB/2017)

IN THE MATTER OF:

Edelweiss Asset Reconstruction Company Ltd. ...Appellant

Versus

Synergies Dooray Automotive Ltd. & Ors. ...Respondents

Present:

For Appellant: **Shri Arun Kathpalia Senior Advocate with Mr. V.P. Singh, Mr. Aditya Jalan, Mr. Abhijaan Jha, Mr. Priyank Ladoia, Ms. Jyoti Singh, Ms. Smiti Verma, Mr. Vishnu Shriram and Mr. Somaksh Goyal, Advocates.**

For Respondents: **Shri Sudipto Sarkar, Senior Advocate assisted by Mr. Prateek Gupta and Mr. Kunal Godhwani, Advocates for Respondent No. 3.**

Mr. Amit Singh Chadha, Senior Advocate assisted by Ms. Srishti Govil, Advocate for Respondent- SCL.

Dr. U.K. Chaudhary, Senior Advocate assisted by Mr. Milan Singh Negi, Ms. Manisha Chaudhary and Mr. Himanshu Vij, Advocates for – Respondent No. 4-MFL.

Mr. Arjun Pant, Advocate for R-2 in appeal 169/2017.

Mr. Saurabh Kalia, Mr. Rahul Ahuja and Mr. Palash Agarwal, Advocates.

Ms. Anuisha Mahajan and Mr. Harishit Agarwal, Advocates.

Mr. K. Datta, Ms. Prachi Johri Advocate for RP.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

All these appeals have been preferred by ‘Edelweiss Asset Reconstruction Company Limited’- (‘Financial Creditor’) against different orders all dated 2nd August, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad, therefore, they were heard together and disposed of by this common judgment.

2. The ‘Corporate Insolvency Resolution Process’ was initiated against ‘Synergies-Dooray Automotive Limited’. After the submission of the ‘Resolution Plan(s)’, a number of applications were preferred by the Applicant/Appellant under sub-section (5) (c) of Section 60 of the Insolvency and Bankruptcy Code, 2016 (‘I&B Code’ for short) and related Rules. All the applications have been rejected by different orders all dated 2nd August, 2017 and the ‘Resolution Plan’ submitted by ‘Synergies Castings Ltd.’ as

approved by the 'Committee of Creditors' with 91.06% vote, has also been approved by the Adjudicating Authority in terms of Section 31(1) of the 'I&B Code'.

3. For disposing all the appeals, it is not necessary to discuss all the facts except the relevant one as discussed below:

4. An application bearing C.A No. 43 of 2017 was filed by the Applicant/Appellant under sub-section (5) (c) of Section 60 of the 'I&B Code' read with Rules 14 & 34 of the National Company Law Tribunal Rules, 2016, *inter alia* seeking direction to direct the 'Resolution Professional' to cancel and/or defer the first meeting of the 'Committee of Creditors'. It was scheduled to be held on 22nd February, 2017 at 2.00 p.m. at Hotel Park Inn by Raddisson, 1 & 2, Ring Road, Vikram Vihar, Lajpat Nagar-4, Near Moolchand Metro Station, New Delhi. Such application was filed on the ground that 'Interim Resolution Professional' has failed to consider that the assignment agreements which were entered into as late as 24th November, 2016, by which the existing debt of the 'Corporate Debtor' was suspiciously changed hands from a related party of the 'Corporate Debtor' being 'Synergies Castings Limited' to a third-party Non-Banking Financial Company being 'Millennium Finance Limited'. It was alleged that the same is invalid as it was entered into with the *malafide* ulterior motive of reducing the voting rights of the Applicant/Appellant in the meeting of the 'Committee of Creditors'.

The Adjudicating Authority taking into consideration the revised claim made by the Appellant as was requested to the 'Interim Resolution

Professional' and other facts held that the Adjudicating Authority cannot go into roving enquiry especially in the case where several issues have been settled by 'BIFR' and several agreements have already been executed and approved. C.A No. 43 of 2017 preferred by the Applicant/Appellant was dismissed. This order dated 2nd August, 2017 is under challenge in Company Appeal (AT) (Insolvency) No. 170 of 2017.

5. Another application bearing CA No. 124 of 2017 was filed by the Applicant/Appellant under sub-section (5) (c) of Section 60 of the 'I&B Code' read with Rules 14 & 34 of the National Company Law Tribunal Rules, 2016, *inter alia* seeking to declare all the decisions taken by the 'Committee of Creditors' at the second meeting held on 24th June, 2017, as invalid and consequently to set aside and quashing of all the resolutions passed in the said meeting. The Adjudicating Authority, on hearing the parties, by another order dated 2nd August, 2017 observed that all the facts relating to related party considered in CA Nos. 43 and 57 of 2017 by adverting to fundamental objections raised by the Applicant/Appellant and subsequently, the 'Resolution Plan' having approved by separate order dated 2nd August, 2017 passed in CA No. 123 of 2017, the application has become infructuous. This order dated 2nd August, 2017 is under challenge in Company Appeal (AT) (Insolvency) No. 171 of 2017.

6. A third application being CA No. 56 of 2017 was filed by the Applicant/Appellant under sub-section (5) (c) of Section 60 of the 'I&B Code' read with Rules 14 & 34 of the National Company Law Tribunal Rules, 2016, *inter alia* seeking to declare the meeting of the 'Committee of Creditors' of the

'Corporate Debtor' held on 22nd February, 2017 at Hotel Park Inn, New Delhi as invalid and consequentially declare all the decisions taken by the 'Committee of Creditors' as wrong. The Adjudicating Authority by separate order dated 2nd August, 2017 held that all those related matters have been considered in CA Nos. 43 and 57 of 2017 and they have been dismissed by separate order dated 2nd August, 2017, therefore, as nothing remains for adjudication in this application. This order dated 2nd August, 2017 is under challenge in Company Appeal (AT) (Insolvency) No. 172 of 2017.

7. Another application being CA No. 57 of 2017 was filed by the Applicant/Appellant under sub-section (5) (c) of Section 60 of the 'I&B Code' read with Rules 14 & 34 of the National Company Law Tribunal Rules, 2016, *inter alia* seeking to declare three assignment agreements, all dated 24th November, 2016 entered into between 2nd and 3rd Respondents as invalid and un-reliable for the purpose of determining claims against the 'Corporate Debtor' and the 'Resolution Plan' of 'Millennium Finance Limited' (3rd Respondent) as 'Financial Creditor' etc. as illegal.

The Adjudicating Authority by order dated 2nd August, 2017 noticed that the assignment deeds of various Banks/ Financial Institutions/ ARCs in favour of 'Synergies Castings Limited' (2nd Respondent) happened way back in the years 2008-2011 and that too from 'SBI', 'IDBI', 'ICICI' (ARCIL) and held that no fault can be found out from such assignment deeds. With respect to the allegation of 'Synergies Castings Limited' assigning its debts to 'Millennium Finance Limited', the Adjudicating Authority having noticed that the said assignment were made on 24th November, 2016, held that there was

no merit in the argument of alleged illegal assignment. CA No. 57 of 2017 having dismissed by order dated 2nd August, 2017, the Company Appeal (AT) (Insolvency) No. 173 of 2017 has been preferred.

8. By final order dated 2nd August, 2017 in CA No. 123 of 2017, the Adjudicating Authority approved the 'Resolution Plan' submitted by 'Synergies Castings Limited'. The said order is under challenge in Company Appeal (AT) (Insolvency) No. 169 of 2017 for the grounds as were taken in CA Nos. 43 and 57 of 2017.

9. The questions arise for consideration in these appeals are:

- i. Whether the assignment(s) made by 'Synergies Castings Limited' on 24th November, 2016 in favour of 'Millennium Finance Limited' is legal?
- ii. Whether the order dated 2nd August, 2017 passed by the Adjudicating Authority approving the 'Resolution Plan' submitted by 'Synergies Castings Limited' is legal?

10. In the present case, if we hold that the assignments made by 'Synergies Castings Limited' on 24th November, 2016 in favour of 'Millennium Finance Limited' are legal, the second question will be automatically answered in favour of the Appellant.

11. On the other hand, if we hold that the assignments made by the 'Synergies Castings Limited' all dated 24th November, 2016 in favour of the 'Millennium Finance Limited' are illegal and invalid, the approval of the 'Resolution Plan' will be declared as illegal.

Stand of the Appellant- 'Edelweiss Asset Reconstruction Company Limited'

12. Learned Senior Counsel for the Appellant submitted that on the eve of the issuance of Notification No. S.O. 3568 (E) pursuant to which the 'Sick Industrial Companies (Special Provisions) Repeal Act, 2003' ('SICA Repeal Act') came into force on 1st December 2016, the 'Financial Creditors' of the 'Corporate Debtor' were:

Sr. No.	Creditor	Amount (approx.)	Percentage of Debt (approx.)
1.	Edelweiss Asset Reconstruction Company Limited (EARC)	Rs. 88.92 Crores	9.25%
2.	Alchemist Asset Reconstruction Company Limited (AARC)	Rs. 122.07 Crores	12.70%
3.	Synergies Castings Limited (SCL)	Rs.749.63 Crores	78.03%

13. Out of the above 'Financial Creditors', 'Synergies Castings Limited' which held approximately 78.03% of the total financial debt of the 'Corporate Debtor' was, and is, ineligible to be a member of the 'Committee of Creditors' of the 'Corporate Debtor' in view of the mandate of Section 21 of the 'I&B Code' since 'Synergies Castings Limited' is a related party of the 'Corporate Debtor' within the meaning of Section 5(24) of the 'I&B Code'. It is stated that 'Synergies Castings Limited' is a Special Purpose Vehicle that was established by the 'Corporate Debtor', and 'Synergies Castings Limited' has been listed as a related party of the 'Corporate Debtor' in the 'Corporate

Debtor's' audited financial statements for the financial year ending 31st March, 2015 and 31st March, 2016.

14. On 15th February, 2017, the Appellant received a notice along with agenda for the first meeting of the 'Committee of Creditors' scheduled to take place on 22nd February, 2017, and the initial 'Information Memorandum'.

15. It was submitted that the Appellant was surprised to note that a new creditor — 'Millennium Finance Limited' was reflected as a 'Financial Creditor' and member of the 'Committee of Creditors'. From the initial 'Information Memorandum', the Appellant noted that immediately before the 'SICA Repeal Act' came into force, 'Synergies Castings Limited' had allegedly entered into three purported Assignment Agreements, all dated 24th November, 2016 (purported Assignment Agreements) by which it claims to have assigned an amount of Rs.749.63 crores to 'Millennium Finance Limited'.

16. The details of the financial debt (claimed and admitted) owed by the 'Corporate Debtor' to each 'Financial Creditor' along with respective voting share before and after the purported assignment of debt from 'Synergies Castings Limited' to 'Millennium Finance Limited' is provided in the table below:

Sr. No.	Creditor	Amount in Claimed (INR crores)	Amount admitted by the Insolvency Professional (INR in crores)	Percentage of total debt in the Corporate Debtor (post purported Assignment Agreements)	Voting share without the purported Assignment Agreements	Voting share after purported Assignment Agreements
1.	MFL	749.63	673.91	69.32%	N.A.	76.32%

2.	SCL	102.95	89.26	9.18%	0%	0%
3.	EARC	88.92	86.92	8.94%	41.59%	9.85%
4.	AARC	122.07	122.06	12.56%	58.41%	13.83%

17. According to learned Senior Counsel for the Appellant, the purported Assignment Agreements, their alleged dates of execution as also the manner of execution were clearly fraudulent having been made with the sole object of attempting to defeat and negate the rigours and mandate of Section 21 of the 'I&B Code'. Apart from that, even otherwise the purported Assignment Agreements did not constitute evidence of any assignment and were inadmissible as such, in view of the fact that these being compulsorily registrable instruments were unregistered and inadequately stamped. Despite the 'Insolvency Professional' being obliged to admit only those claims with regard to which evidence was presented (and evidence must mean "admissible" evidence), the 'Insolvency Professional' in a blatant disregard of the law and in complete "dereliction of duties" under the 'I&B Code' and Regulations framed thereunder, proceeded to admit 'Millennium Finance Limited' as a 'Financial Creditor'.

18. Further, according to him, the effect of the highly dubious and purported assignment of debt by 'Synergies Castings Limited' to 'Millennium Finance Limited' is that the Appellant's voting share in the 'Committee of Creditors' was reduced from 41.59% (without the purported Assignment Agreements) to a mere 9.85%. The Appellant issued a letter dated 20th February, 2017 voicing its concerns and objections regarding the constitution of the 'Committee of Creditors' and the agenda for the first

meeting, including of the agenda item to confirm the leasing of assets of the 'Corporate Debtor' to its related party 'Synergies Castings Limited' at very low lease rentals. The fraudulent reduction of the Appellant's voting share meant that it could not effectively participate in the first meeting of the 'Committee of Creditors'.

19. In this backdrop, the Appellant filed C.A. 43 of 2017 in C.P. No. 1/I&BP/NGLT/HDB/2017 on 21st February, 2017 before the Adjudicating Authority *inter alia* seeking deferment of the first meeting of the 'Committee of Creditors' till the 'Insolvency Professional' considered the Appellant's concerns and objections. By an order dated 22nd February, 2017, the Adjudicating Authority permitted the first 'Committee of Creditors' meeting to be held as scheduled, but expressly stated that the all decisions taken in the said meeting would be subject to further orders of the Adjudicating Authority. Thereafter, the Appellant also issued another letter dated 22nd February, 2017 also pointing out its objections.

20. The Appellant filed C.A. 56 of 2017 in C.P. No. 1/I&BP/NCLT/HDB/2017 before the Adjudicating Authority on 6th March, 2017 seeking setting aside of the resolution passed in the first 'Committee of Creditors' meeting. The Appellant also filed C.A. 57 of 2017 in C.P. No. 1/I&BP/NCLT/HDB/2017 before the Adjudicating Authority on 6th March, 2017 challenging the validity of the Assignment Agreements for the purpose of including 'Millennium Finance Limited' as a member of the 'Committee of Creditors' with the right of voting and participation.

21. It is alleged that in spite of the repeated request, the Appellant was not allowed to inspect all the documents related to other 'Financial Creditors'.

22. The 'Insolvency Professional' proposed to put three 'Resolution Plans' (including the 'Synergies Castings Limited' 'Resolution Plan') for vote at the second 'Committee of Creditors' meeting itself for voting (while there had been no discussion *inter-se* 'Committee of Creditors' members on the same).

23. The Appellant issued a letter dated 22nd June, 2017 to the 'Insolvency Professional' setting out its serious objections as to why the 'Synergies Castings Limited' 'Resolution Plan' cannot be put to vote before the 'Committee of Creditors', including but not limited to the fact that the purported Assignment Agreements could not have been relied upon for verification of 'Millennium Finance Limited's claim, that the constitution of the 'Committee of Creditors' itself was illegal and invalid and most importantly that there was no consideration whatsoever paid by 'Millennium Finance Limited' to 'Synergies Castings Limited' under the purported Assignment Agreements (which fact also came to the knowledge of the Appellant for the first time after receipt of the 'Synergies Castings Limited' 'Resolution Plan'). The Appellant requested the 'Insolvency Professional' to bring the Appellant's objections to the notice of the Adjudicating Authority or defer the second 'Committee of Creditors' meeting till such time. The 'Insolvency Professional' responded by an email dated 23rd June, 2017 yet again refusing to even place the grave and serious objections of the Appellant before the Adjudicating Authority and continued to state that she does not have the power to get into disputes between creditors of the 'Corporate

Debtor'. The Appellant sent further objections and concerns relating to the 'Synergies Castings Limited' 'Resolution Plan' to the 'Insolvency Professional' by its letter dated 23rd June, 2017. The Appellant made suggestions by which the 'Synergies Castings Limited' 'Resolution Plan' could be improved and made more beneficial for all stakeholders since the Liquidation Value was not arrived at correctly and even the repayment to financial creditors with 94% haircut was detrimental to their interest. At the second 'Committee of Creditors' meeting on 24th June, 2017, the 'Synergies Castings Limited' 'Resolution Plan' came to be approved without any modification and without considering any of the suggestions/ concerns of the Appellant. Pursuant thereto, the 'Insolvency Professional' filed C.A. 123 of 2017 in C.P. No. 1/I&BP/NCLT/HDB/2017 before the Adjudicating Authority on 7th July, 2017 seeking approval of the 'Synergies Castings Limited' 'Resolution Plan' from the Adjudicating Authority. Consequently, the Appellant was constrained to file its objection affidavit dated 10th July, 2017 before the Adjudicating Authority. The Appellant also filed C.A. 124 of 2017 in C.P. No. 1/I&BP/NCLT/HDB/2017 before the Adjudicating Authority on 11th July, 2017 challenging the resolutions in the second 'Committee of Creditors' meeting.

By an order dated 2nd August, 2017 passed by the Adjudicating Authority in C.A. 123 of 2017 in C.P. No. 1/I&BP/NCLT/HDB/2017, the 'Synergies Castings Limited' 'Resolution Plan' came to be approved by the Adjudicating Authority with certain modifications going to its root. By four more separate orders, all dated 2nd August, 2017 passed by the Adjudicating

Authority, the Appellant's four applications being C.A. 43 of 2017, C.A. 56 of 2017, C.A. 57 of 2017 and C.A. 124 of 2017 in C.P. No. 1/I&BP/NCLT/HDB/2017 were dismissed, ignoring the facts and the law.

24. Learned counsel for the Appellant submitted that the 'Resolution Plan' of 'Synergies Castings Limited', which is a related party to the 'Corporate Debtor' is contrary to law, being in contravention of the provisions of the 'I&B Code' (violation of section 30 (2) (e) and 61 (3) (f) of the 'I&B Code' read with Regulation 38 (2) of 'Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016' and other laws, including Section 230 of Companies Act, 2013.

25. According to learned Senior Counsel for the Appellant, the 'I&B Code' does not contemplate/ permit/ provide for effecting amalgamation before implementation of the 'Resolution Plan' especially in case such amalgamation has an effect of extinguishment of the 'Corporate Debtor' itself.

26. Further, the 'Synergies Castings Limited' 'Resolution Plan' does not have an implementation schedule or means of supervision, which are mandatory contents of any 'Resolution Plan' under section 30 of the 'I&B Code' read with Regulation 38 (2) of 'Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016'.

27. Learned Senior Counsel for the Appellant submitted that the 'I&B Code' obliges the 'Insolvency Professional' to examine and admit only those claims that admissible in law. Regulations 8, 10 and 13 of the 'Insolvency

and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016' may be referred to, which uses words such "proof", "evidence", "verify", "substantiate", "determine". While the Insolvency Professional does not discharge an adjudicatory function he/ she nevertheless is required to verify and determine only those claims as admissible, where the supporting documents constitute "proof" and are admissible in evidence.

28. It was contended that the process leading to the formulation and approval of the 'Synergies Castings Limited' 'Resolution Plan' suffers from material irregularities, which are set out hereunder:

a. Admission of 'Millennium Finance Limited' as a 'Financial Creditor' of the 'Corporate Debtor' coupled with giving it a seat in the 'Committee of Creditors' is in violation of law:

i. **Violation of the Registration Act-** The purported Assignment Agreements are in violation of the 'Registration Act, 1908' as despite being compulsorily registrable documents, they were unregistered at the time of verification and admission of claims by the 'Insolvency Professional'.

ii. **Violation of the Stamp Act-** The purported Assignment Agreements are in violation of the Stamp Act as they were also inadequately stamped at the time of verification and admission of claims by the 'Insolvency Professional'.

- iii. **Verification of evidence and proof of claim**— The ‘Insolvency Professional’ can only accept and admit claims that are legally valid. ‘Millennium Finance Limited’s claim and its basis, were therefore inadmissible.
- iv. Apart from the purported Assignment Agreements, ‘Millennium Finance Limited’ did not furnish any other evidence or proof in support of its claim, not even the proof of payment was furnished as no payment was made.

b. But for the admission of ‘Millennium Finance Limited’ claim in violation of law, the composition of the ‘Committee of Creditors’ would have been different as ‘Synergies Castings Limited’ being a related party would have no vote in the ‘Committee of Creditors’.

29. According to learned Senior Counsel for the Appellant, ‘Millennium Finance Limited’s claim ought not have been verified/ admitted since the / purported Assignment Agreements were inadequately stamped and unregistered at the time the ‘Insolvency Professional’ verified/ admitted ‘Millennium Finance Limited’s claim.

30. Further, it was contended that the purported Assignment Agreements were entered into to circumvent the provisions of the ‘I&B Code’ and fraudulently reduce the voting share of the Appellant in the ‘Committee of Creditors’ of the ‘Corporate Debtor’.

31. It was also submitted that Assignment of debt with no payment of consideration is illegal/ unenforceable.

As per the 'Resolution Plan' submitted by 'Synergies Castings Limited' as approved by the 'Committee of Creditors', no purchase consideration has been paid by 'Millennium Finance Limited' to 'Synergies Castings Limited' in respect of the purported Assignment Agreements, and it proposes netting off of the amount due from 'Millennium Finance Limited' as purchase consideration against the amount due to be paid under the 'Resolution Plan'.

32. Further, according to the Appellant, the payment Schedule Agreement dated 24th November, 2016 produced before this Appellate Tribunal for the first time on 13th March, 2018 is not a genuine document.

Stand of the 'Resolution Professional'

33. Learned counsel for the 'Resolution Professional' submitted that he duly verified the claims of the creditors in terms of Section 18(1)(b) read with Regulation 13 of the 'Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016' and accordingly, constituted 'Committee of Creditors' of the 'Corporate Debtor'. It is submitted that the 'Resolution Professional' in terms of provisions of 'I&B Code' merely receives and collates claim.

34. It is relevant to mention herein that the list of 'Financial Creditors' as placed before the Adjudicating Authority by the 'Corporate Debtor' in its section 10 application reflected 'Millennium Finance Limited' as its 'Financial Creditor'.

35. It is submitted that 'Millennium Finance Limited' in its proof of claim had filed three Assignment Agreements dated 24th November, 2016 which were executed by 'Synergies Castings Limited' in favour of 'Millennium Finance Limited', whereby the 'Synergies Castings Limited' assigned the debts qua 'ICICI Bank', 'SBI' and 'IDBI Bank' in favour of 'Millennium Finance Limited'.

36. Along with the Assignment Agreements 'Millennium Finance Limited' had also filed Form No. CHG-I which demonstrates that the charges were registered with the Registrar of Companies in favor of the 'Millennium Finance Limited' on 24th November, 2016 itself which is even prior to coming into force of provisions of 'I&B Code'. The objections of the Appellant have been dealt with by the 'Resolution Professional' vide reply dated 21st February, 2017. Reliance has been placed on the same and similar stand has been taken by the 'Resolution Professional' before this Appellate Tribunal. It is informed that the Appellant objected that no consideration was disbursed by 'Millennium Finance Limited' to 'Synergies Castings Limited', but the said allegation of the Appellant was unfounded as the payment schedule agreement had been duly placed by 'Synergies Castings Limited'.

37. Based on the documents and after due verification of claims by the 'Resolution Professional', the 'Committee of Creditors' was constituted by the 'Resolution Professional' and accordingly, voting rights were assigned to the members of 'Committee of Creditors'. Since 'Synergies Castings Limited' was related party of the 'Corporate Debtor' no voting rights were assigned to

‘Synergies Castings Limited’. The chart depicting the constitution of Committee of Creditors’, their exposure and voting rights is provided herein below:

Sl. No.	Name of the Financial Creditor	Percentage of debt	Amount of Claim admitted in Cr.	Voting Share
1.	Alchemist Asset Reconstruction Com an (AARC)	12.56%	122.06	13.83%
2.	Edelweiss Asset Reconstruction Company Limited (EARC)	8.94%	86.92	9.84%
3.	Millennium Finance Ltd.	69.32%	673.91	76.33%
4.	Synergies Castings Ltd. – Resolution Applicant	9.18%	89.26	
	TOTAL	100%		100%

It is stated that all the ‘Financial Creditors’ of the ‘Corporate Debtor’ including the Appellants herein are assignee of the original lenders and thus to be treated identically.

38. It was submitted that in the instant case, the ‘Resolution Professional’ received three ‘Resolution Plans’ for the resolution of the ‘Corporate Debtor’ which were placed before the ‘Committee of Creditors’ in its 2nd meeting held on 24th June, 2017. The ‘Committee of Creditors’ with a majority of 91.06% approved the ‘Resolution Plan’ submitted by ‘Synergies Castings Limited’ which provided for merger of ‘Synergies Castings Limited’ with the ‘Corporate Debtor’.

39. The 'Resolution Plan' of 'Synergies Castings Limited' has been duly approved by the Adjudicating Authority vide order dated 2nd August, 2018 pursuant to which the same has been made binding on all stakeholders.

Stand of the 'Synergies Castings Limited'

40. Learned counsel for the 'Synergies Castings Limited' submitted that that the debt of 'Synergies Castings Limited' in the 'Corporate Debtor' were assigned to 'Millennium Finance Limited' on 24th November, 2016 vide Assignment Agreements all dated 24th November, 2016. In furtherance of Assignment Agreements, the charge was created in favor of the 'Millennium Finance Limited' in Form No. CHG-1 on 24th November, 2016 itself.

41. It was submitted that the creation of charge with the Registrar of Companies in favor of 'Millennium Finance Limited' substantiates the fact that the debt was validly transferred from 'Synergies Castings Limited' to 'Millennium Finance Limited' on 24th November, 2016 which is even prior to coming into force of 'I&B Code'.

42. According to learned counsel, the argument of Appellant that no consideration was paid by 'Millennium Finance Limited' to 'Synergies Castings Limited' is baseless as the payment schedule agreement dated 24th November, 2016 establishes the fact that the consideration towards the assignment of debt from 'Synergies Castings Limited' of 'Millennium Finance Limited' is being duly paid by 'Millennium Finance Limited' to 'Synergies Castings Limited'.

43. It was submitted that pursuant to 'Expression of Interest', three 'Resolution Plans' were received from the following parties:

- a) Synergies Castings Limited (SCL)
- b) S.M.B Ashes Industries
- c) Suiyas Industries Private Limited

44. It is informed that the 'Resolution Plan' submitted by 'S.M.B Ashes Industries' and 'Suiyas Industries Private Limited' were unanimously rejected by the 'Committee of Creditors' in its Second meeting held on 24th June, 2017. The 'Resolution Plan' submitted by 'Synergies Castings Limited' was approved by the 'Committee of Creditors' with 91.06% majority. The 'Resolution Plan' of 'Synergies Castings Limited' was thereafter approved by the Adjudicating Authority vide its order dated 2nd August, 2017 in terms of Section 31 of the 'I&B Code'. The approved 'Resolution Plan' is final and binding on all.

45. The approved 'Resolution Plan' provides for a payment of Rs. 54.69 Cr. to the 'Financial Creditors' of the 'Corporate Debtor' against the Liquidation value which is merely 6.93 Cr. The approved 'Resolution Plan' had the consent of overwhelming majority of the 'Financial Creditors' i.e. the consent of 91.06%, whereas the Appellant merely having 8.94% of voting share abstained from voting. Thus, a minority creditor having a share of only 8.94% was trying to scuttle the process of 'Resolution Plan'.

46. The 'Resolution Plan' approved by the 'Committee of Creditors' and Adjudicating Authority duly identifies specific sources of funds that will be used to pay Insolvency Resolution Process Costs, liquidation value due to 'Operational Creditors' and liquidation value due to dissenting 'Financial Creditors' in terms of priority prescribed under Regulation 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. In terms of Regulation 37 of 'Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016', a 'Resolution Plan' can provide for merger or consolidation of the 'Corporate Debtor' with one or more person in terms of Regulation 37(1)(c) of 'Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016'. The approved 'Resolution Plan' in the instant case accordingly envisages amalgamation.

47. The approved 'Resolution Plan' in the instant case provides for dispensation of meeting in terms of Sections 230 and 231 of Companies Act, 2013. It is submitted that an approved 'Resolution Plan' is binding upon all the creditors and stakeholders in terms of Section 31 of the 'I&B Code'. It is noteworthy that the Appellant in the present case never objected to the dispensation of applicability of Sections 230-232 of the Companies Act, 2013.

48. In terms of explanation to Section 30(2) approval of shareholders if any under Companies Act, 2013 or any or any other law for the time being in

force for the implementation of actions under the 'Resolution Plan' shall be deemed to have been given and accordingly, there shall not be a contravention of that Act or law. The said explanation as per settled provision of law is retrospective in effect.

49. In view of the deemed consent of shareholders and 'Resolution Plan' being binding upon the creditors, the approved 'Resolution Plan' in the instant case is in accordance with applicable provisions of law. It is submitted that mere dispensation of meeting does not amount to contravention. The 'I&B Code' is a complete code and thus, a 'Resolution Plan' approved under Section 31 of the 'I&B Code' can be appropriately given effect to.

50. The approved 'Resolution Plan' of 'Synergies Castings Limited' is premised on a scheme of amalgamation of 'Corporate Debtor' with 'Synergies Castings Limited' which is in line with the purpose and object with which 'I&B Code' has been enacted i.e. 'Reorganization and Insolvency Resolution of Corporate Entities' in a time bound manner for maximization of value of assets, rescuing industries with a chance to revive, preventing national waste due to liquidation because of prolonged delays, and promotion of entrepreneurship.

Stand of 'Millennium Finance Limited'

51. According to learned counsel for the Respondent- 'Millennium Finance Limited', the debt of 'Synergies Castings Limited' in the 'Corporate Debtor'

were assigned in favour of 'Millennium Finance Limited' as on 24th November, 2016. Three Assignment Agreements all dated 24th November, 2016 were executed by 'Synergies Castings Limited' in favour of the 'Millennium Finance Limited', whereby the 'Synergies Castings Limited' assigned the debts qua 'ICICI Bank', 'SBI' and 'IDBI Bank' in favour of 'Millennium Finance Limited'.

52. In pursuance of execution of above Assignment Agreements, appropriate charges in Form No. CHG-I were duly created in favour of the 'Millennium Finance Limited' on 24th November, 2016. The said assignment is duly evidenced by creation of charge as a contemporaneous document with the Registrar of Companies on 24th November, 2016 itself. The creation of charge with the Registrar of Companies which is an independent third party evidences valid transfer of debt in favour of 'Millennium Finance Limited' which is even prior to coming into force of the 'I&B Code'.

53. It was submitted that the transfer of debt is valid even if the assignment agreements dated 24th November, 2016 were not registered immediately on 24th November, 2016. It is a settled position of law that a debt can be transferred / assigned on execution of an instrument in writing signed by the transferor or his duly authorized agent.

54. Reliance was placed on the decision of the Hon'ble Supreme Court in '**ICICI Bank Lt. V. APS Star Industries Ltd., (2010) 10 SCC 1**', wherein it has been held that an assignment of a debt will not be contrary to public

policy on the grounds that the assignee has purchased the debt for a considerably discounted price or because that price is only payable after a period of credit. (Para 49). Even otherwise, in the instant case the Assignment Agreements are supported by Payment Schedule Agreements dated 24th November, 2016, whereby, the consideration towards the assignment of debt from 'Synergies Castings Limited' to 'Millennium Finance Limited' is being duly paid by 'Millennium Finance Limited' to 'Synergies Castings Limited'.

55. Learned counsel for the Respondent further submitted that in terms of section 47 of the 'Indian Registration Act, 1908', registration relates back to the date of execution of the agreements itself. In the present case, the Assignment Agreements were duly registered with the Joint Sub Registrar, Sabbavaram on 25th April, 2017 and the payment of stamp duty to the tune of Rs. 1,30,300/- for each of the Assignment Agreements made. Further, a sum of Rs. 1,50,000/- was also paid towards fine for delay in presenting the documents in each case. In terms of Section 47 of the 'Indian Registration Act, 1908', once a document is registered, the operation of the said relates to the date of execution of the document as held by the Hon'ble Supreme Court in the matter of "**Gurbax Singh V. Kartar Singh & ors., SLP (Civil) No. 1969 of 2002**" and "**Principal Secretary Gov. of Karnataka and Anr. V. Ragini Narayan and Anr., Civil Appeal No. 8895 of 2012**". Accordingly, the assignment deeds by virtue of which 'Millennium Finance Limited' became a 'Financial Creditor' of the 'Corporate Debtor', are validly executed and in force w.e.f. 24th November, 2016.

56. Learned counsel for the Respondent refuted the allegation of fraud played in the transaction entered between 'Millennium Finance Limited' and 'Synergies Castings Limited' whereby debts have been assigned by 'Synergies Castings Limited' in favour of 'Millennium Finance Limited'. It is contended that there is no evidence placed on record nor there is circumstances evidence brought on record to prove the allegations.

Discussions on fact and law:

57. Learned counsel for the Respondents brought to the notice of the Adjudicating Authority the following facts:

58. The Appellant itself is not one of the original Lenders of the 'Corporate Debtor' as the debt of the 'Corporate Debtor' as owned by the Appellant as on date was originally disbursed by 'EXIM Bank'. The Appellant during the pendency of the reference of the 'Corporate Debtor' with the 'BIFR', took over the debts of 'EXIM Bank', pursuant to which, the Appellant, at best, stepped into the shoes of the original Lender of the 'Corporate Debtor' i.e. 'EXIM Bank'. It is noteworthy that in the present case, the Appellant vide the Assignment Agreement dated 6th January, 2014 acquired the debt of 'EXIM Bank', during the subsistence of a status quo order passed by the 'Debts Recovery Tribunal', Visakhapatnam under the provisions of the 'SARFAESI Act' and also during subsistence of the order dated 29th May, 2012 passed by the 'BIFR', wherein the 'BIFR' categorically directed 'EXIM Bank' to accept the offer of the 'Corporate Debtor' for settlement of its dues at 26.66% of the

principal dues in line with the settlement offered and agreed by other Secured Lenders of the 'Corporate Debtor'. Thus, it is evident that on the date of acquisition of the debt in the instant case, the Appellant was not only aware about the factum of pendency of reference of the 'Corporate Debtor' with the 'BIFR' indicating its financial stressed position but also aware about its limited rights and exposure in the total secured debts of the 'Corporate Debtor' in terms of the order dated 29th May, 2012 passed by the 'BIFR' and the orders dated 1st February, 2013 & 20th June, 2013 passed by the 'DRT', Visakhapatnam. However, despite the same, the Applicant acquired the debts of the 'Corporate Debtor' and thereafter in the proceedings not only before the 'BIFR' but before the Tribunal making systemized efforts to derail and delay the revival prospects of the 'Corporate Debtor'.

59. The 'BIFR' has subsequently also passed an order dated 25th June, 2013, wherein also the 'BIFR' returned a finding as to the exposure of the dues of the Appellant in the 'Corporate Debtor' under the provisions of the 'SARFAESI Act'. The 'BIFR' vide its order dated 25th June, 2013, specifically stated that between the Appellant and 'Alchemist Asset Reconstruction Company Ltd' (AARC), it is apparent that the exposure of Appellant is in the ratio of 34.15%: 65.85%. Therefore, the Appellant in the present case is a minority creditor of the 'Corporate Debtor' and thus single handedly not entitled under law to interject and interfere in an appropriate 'Resolution Plan' having the consent of the majority 'Financial Creditors' of the 'Corporate Debtor'.

60. It is stated that all the 'Financial Creditors' of the 'Corporate Debtor' has been duly agreed and admitted in terms of 'Master Restructuring Agreement' dated 6th March, 2007 (referred to as 'MRA') and the following are the details of the dues of the various 'Financial Creditors' along with their percentage exposure in the 'Corporate Debtor':

Lenders	Outstanding (Rs. in Crores)	Percentage
IDBI	65.66	30.93%
ICICI	66.30	31.23%
EXIM Bank of India	18.36	8.65%
State Bank of India	25.28	11.91%
Indian Overseas Bank	9.89	4.66%
Andhra Bank	8.35	3.93%
JP Morgan Chase (HSBC Share)	9.52	4.48%
IDBI Bank	8.91	4.21%
Total secured loans	212.27	100%

- 1) The said 'MRA' was duly signed by all the 'Financial Creditors' of the 'Corporate Debtor' including 'EXIM Bank'. The said 'MRA' at Clause 3.2 specifically provided for Lenders' admission as to their exposure in the total dues of the 'Corporate Debtor'. Clause 3.2 reads as under

"3.2 Lender Representation on Scope of Existing Loans

Each of the Existing CDR Lenders hereby represents and warrants to each other Lender that, in the absence of any manifest error, the details of its Existing Loans as set out in Annexure III are complete and accurate in all respects."

So it is beyond doubt that Appellant is a minority 'Financial Creditor' in the case of the 'Corporate Debtor'. However, the Appellant in the garb of instant Application is attempting to improve its position and exposure as one of the 'Financial Creditors' of the 'Corporate Debtor' by non-suiting 'Millennium Finance Limited' which is legally impermissible and accordingly warrants no indulgence of the Tribunal.

- 2) It is further stated that 'Millennium Finance Limited' is not a related party as regards the 'Corporate Debtor' as alleged by the Appellant and thus it cannot be eliminated from the 'Committee of Creditors'. 'Millennium Finance Limited' is a Non-Banking Financial Institution, which had acquired the debts from 'Synergies Castings Limited' and being an independent party and the single largest 'Financial Creditor' of the 'Corporate Debtor' entitled to voting in the meeting of 'Committee of Creditors'. The date of the Assignment Agreement being just a date precedent to the issuance of notification by the Central Government for the purpose of repeal of 'SICA' is no ground to eliminate 'Millennium Finance Limited' from

the 'Committee of Creditors'. 'Millennium Finance Limited' in its ordinary course of business entered into an Assignment Agreement dated 24th November, 2016. There is neither any mechanism nor any manner by which 'Millennium Finance Limited' can be attributed with any malafide intent of entering into an agreement immediately prior to coming into force of 'SICA Repeal Act'. The submissions and averments made by the Appellant on the proximity of the Assignment Deed with the coming into force of the 'SICA Repeal Act' are mere surmises, which have no legal basis and thus liable to be rejected by the Tribunal.

- 3) It is contented that even in absence of any voting right in the meeting of 'Committee of Creditors', the 'Financial Creditor' whether it is 'Synergies Castings Limited' or 'Millennium Finance Limited' will continue to be equitably treated for the purpose of settlement of its dues. Thus, in no eventuality, the Appellant can steal a march and seek better dispensation than either 'Synergies Castings Limited' or 'Millennium Finance Limited', which appears to be sole vested interest of the Appellant herein.
- 4) The allegation that 'Millennium Finance Limited' becoming a related party by virtue of assignment from

a related party the same is frivolous and unsubstantiated. 'Millennium Finance Limited' does not fall within any of the definitions of related party as mentioned from 5(24)(a) to 5(24)(m). 'Edelweiss Asset Reconstruction Company' is put to strict proof of establishing the same.

- 5) Therefore, the learned Senior Counsel prayed the Adjudicating Authority to dismiss the application under reply with exemplary costs.

61. The Appellant has not filed copies of three Assignment Agreements in question even though they have expressed several apprehensions, allegations, malafide etc. against its execution. However, the 'Millennium Finance Limited' has filed all three Assignment Agreements to substantiate its case and repelling the allegations of Appellant. The Adjudicating Authority have examined all the three assignment agreements in question.

62. Admittedly both the Appellant and Respondents- 'Synergies Castings Limited' and 'Millennium Finance Limited' are assignees of original lenders to the borrowers ('Synergies-Dooray Automotive Limited').The list of existing term lenders and existing term loans and list of existing CDR lender and on CDR lenders are as per master restructuring agreement dated 6th March, 2007 made by and between 'Synergies-Dooray Automotive Limited', 'ICICI Bank Limited', 'Indian Overseas Bank' and 'Andhra Bank' (more particularly set forth in part C of Schedule 1 herein and hereinafter individually referred

to as the “Existing CDR Lender” and collectively as the “Existing CDR Lenders”, are as follows

“LIST OF EXISTING TERM LENDERS AND THE EXISTING TERM LOANS

Reconciled secured term loans outstanding as on 30.9.2004 as provided by the Company

PART-A

Lenders	Outstanding (Rs in millions)
IDBI	656.6
ICICI BANK	663.0
EXIM BANK OF INDIA	183.6
STATE BANK OF INDIA	252.8
INDIAN OVERSEAS BANK	98.9
ANDHRA BANK	83.5
JP MORGAN CHASE (HSBC HARE)	95.2
INDBI BANK	89.1
TOTAL SECURED LOANS	89.1
TOTAL SECURED LOANS	2122.7

PART-B

LIST OF EXISTING CDR LENDERS

ICICI BANK

IDBI BANK

STATE BANK OF INDIA

EXPORT IMPORT BANK OF INDIA

INDIAN OVERSEAS BANK

ANDHRA BANK

PART C

LIST OF EXISTING 'NON-CDR LENDERS

JP MORGAN CHASE BANK”

63. The first assignment agreement dated 24th November, 2016 was executed between 'Synergies Castings Limited' and 'Millennium Finance Limited'. This assignment originally relates to 'ICICI Bank'. 'ICICI Bank Limited' vide its assignment dated 28th September, 2011 assigned the loans together with all its rights, title and interest in financing documents etc in favour of the assignor ('Synergies Castings Limited'). In turn, the assignee of 'ICICI Bank', 'Synergies Castings Limited' herein, assigned its rights accrued from 'ICICI Bank' to 'Millennium Finance Limited'. This document is duly registered with the District Registrar Anakapalli vide proceedings No. 197/G1/2017, dated : 28th April, 2017 on payment of fine (5 times equal to registration fee) of Rs. 1,50,000/- for a delay of 1 month 1 day in presentation of the document under section 25, section 34 of the 'Registration Act, 1908'. The purchase consideration for these rights is Rs.16,50,00,000/-.

64. The Second assignment agreement dated 24th November, 2016 was executed between 'Synergies Castings Limited' and 'Millennium Finance Limited'. This assignment originally relates to 'SBI Bank'. 'SBI Bank Limited' vide its assignment dated 30th May, 2008 assigned the loans together with all its rights, title and interest in financing documents etc in favour of the assignor ('Synergies Castings Limited') herein. In turn, the assignee of SBI Bank, 'Synergies Castings Limited' herein, assigned its rights accrued from SBI Bank to 'Millennium Finance Limited'. This document was duly registered with the District Registrar, Anakapalli vide proceedings No. 197/G1/2017, Dated: 28th April, 2017 on payment of fine (5 times equal to

registration fee) of Rs. 1,50,000/- for a delay of 1 month 1 day in presentation of the document under section 25, section 34 of the 'Registration Act, 1908'. The purchase consideration for these rights is Rs. 6,10,00,000/-.

65. The third assignment agreement dated 24th November, 2016 executed between 'Synergies Castings Limited' and 'Millennium Finance Limited'. This assignment originally relates to 'IDBI'. 'IDBI Bank Limited' vide its assignment dated 11th March, 2008 assigned the loans together with all its rights, title and interest in financing documents etc in favour of the assignor ('Synergies Castings Limited') herein. In turn, the assignee of 'IDBI Bank', 'Synergies Castings Limited' herein, assigned its rights accrued from 'IDBI Bank' to 'Millennium Finance Limited'. This document was duly registered with the District Registrar, Anakapalli vide proceedings No. 197/G1/2017, Dated : 28th April, 2017 on payment of fine (5 times equal to registration fee) of Rs. 1,50,000/- for a delay of 1 month 1 day in presentation of the document under section 25, section 34 of the 'Registration Act, 1908'. The purchase consideration for these rights is Rs. 16,78, 00,000/- .

66. On perusal of above three assignment agreements, it is clear those documents are duly executed with the concerned authorities, and they are not questioned by any party to those proceedings. Appellant herein, being similarly situated like that of 'Synergies Castings Limited' and 'Millennium Finance Limited', do not have any locus standi to question the veracity of those documents on mere apprehensions or allegation of malafides or

fraudulent etc. Admittedly, the Appellant is not a party to those Assignment agreements. It is not tenable to raise apprehensions before the Adjudicating Authority to adjudicate. The courts usually adjudicate issues basing on cause of action arisen in a particular case. The Adjudicating Authority cannot enter into roving enquiry on mere apprehensions, baseless allegations. It is a settled law that whatever the rights the original assignor got it from the original lender will automatically accrues to subsequent assignees basing on executing appropriate legal documents in accordance with law. Here, in this case, 'Millennium Finance Limited' has got all the rights as per the assignment agreements all dated 24th November, 2016. Hence, the allegations/ apprehensions made by the Appellant being baseless and mere apprehensions, and based on conjuncture and surmised cannot be accepted, particularly when they have been executed in accordance with law and accepted by the Registrar of Companies. The Appellant doesn't have any locus standi to question those documents in the insolvency proceedings initiated under 'I&B Code' on a farfetched argument that they are going to be effected if the rights of 'Synergies Castings Limited' and 'Millennium Finance Limited' are recognized basing on the Assignment Agreements in question and the Appellant cannot assume jurisdiction to question the documents in question basing on baseless allegations, apprehension etc. Therefore, the Adjudicating Authority summarily rejected the contentions/allegations of the Appellant with regard to documents in question.

In the result, we hereby declare that both 'Synergies Castings Limited' and 'Millennium Finance Limited' were eligible to execute the assignment

agreements in question and all rights flow those agreements to 'Millennium Finance Limited'. After getting assignment of rights, the 'Millennium Finance Limited' is fully competent to participate in 'Committee of Creditors' in question and it cannot be called a related party as explained.

67. The next question arises is whether the above documents were executed without making reference to 'BIFR' is valid or not. Admittedly, the Appellant herein and the 'Millennium Finance Limited' are assignees of original lenders to 'Synergies-Dooray Automotive Limited'. It is not the case of the Appellant that Assignors have no right to question the rights / interest to the assignee. It is the case of the Applicant that the Respondent No. 3 was assigned the rights / interest in question in order to deprive / reduce the interest of the Appellant herein in the 'Committee of Creditors'. As long as the assignment agreement deeds are valid and legally enforceable, the Appellant has no locus standi to question its object, modus operandi behind its execution. The contentions of the Appellant that the 'Millennium Finance Limited' would become a related party by virtue of Section 5 (24) is not at all tenable.

68. The Appellant has alleged that the 'Corporate Debtor' had suppressed several material facts especially with regard to leasing out all its assets to 'Synergies Castings Limited' before 'BIFR'. The Appellant and its Assignor viz. 'Export Import Bank of India' ('Exim Bank') has filed various applications before 'BIFR' / 'AAIFR' questioning the determination of the 'Corporate

Debtor' as a sick industrial company, but such ground cannot be taken at the time of approval of the 'Resolution Plan(s)'.

69. The Assignment deeds of various Banks / Financial Institutions/ ARCs in favour of 'Synergies Castings Limited' happened way back in the years 2008-2011 and that too from 'SBI', 'IDBI', 'ICICI' (ARCIL). Therefore, the Adjudicating Authority has not find any fault with these assignment deeds. With respect to the allegation of 'Synergies Castings Limited' assigning its debt to 'Millennium Finance Limited' on 24th November, 2016, the Adjudicating Authority rightly held that there is no merit in this argument.

70. In so far as 'Resolution Plan' submitted by 'Synergies Castings Limited', it cannot be held to be violation of sub-section (2) of Section 30 or any of the provisions of the law on the ground of violation of Sections 230-232 of the Companies Act, 2013.

71. Section 230 of the Companies Act, 2013 relates to 'power to compromise or make arrangements with creditors and members' whereas Section 232 relates to 'merger and amalgamation of companies'. The question of filing an application before the National Company Law Tribunal under Sections 230-232, does not arise at the stage of filing of the 'Resolution Plan' as it is not known as to which of the 'Resolution Plan' will be approved. Once a plan is approved, one may argue that in terms of the provisions of the Companies Act, a formal order of amalgamation is required.

No such argument can be advanced at the time of approval of the 'Resolution Plan' which merely proposes merger.

72. The 'I&B Code' is a code by itself and Section 238 provides over riding effect of it over the provisions of the other Acts, if any of the provisions of an Act is in conflict with the provisions of the 'I&B Code'. Therefore, the arguments of the Appellant that merger and amalgamation of the companies cannot be proposed in the 'Resolution Plan' or such proposal is violative of clause (e) of sub-section (2) of Section 30 is fit to be rejected.

73. In view of the aforesaid findings and in absence of any merit, we dismiss these appeals. No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Balvinder Singh)
Member(Technical)

NEW DELHI

14th December, 2018

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