IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

BEFORE :-

THE HON'BLE JUSTICE SHAMPA SARKAR
&
THE HON'BLE JUSTICE AJAY KUMAR GUPTA

M.A.T 444 of 2026
with
CAN 1 of 2026, CAN 2 of 2026,
CAN 3 of 2026 and CAN 4 of 2026

M/s. Jeel Kandla Service & Anr.

vs.

Union of India and Ors.

For the Appellants	: Mr. Anindya Kumar Mitra, Sr. Adv. Mr. Saptangshu Basu, Sr. Adv. Mr. Anirban Ray, Sr. Adv. Mr. Biswaroop Bhattacharya, Adv. Mr. Arik Banerjee, Adv. Mr. Tanish Ganeriwala, Adv. Mr. Aman Agarwal, Adv. Mr. Durbadal Sen, Adv.
For the Respondent Nos. 1 to 3	: Mr. Dhiraj Trivedi, D.S.G., Mr. Subhankar Chakraborty, Adv. Mr. Anindya Sundar Das, Adv. Ms. Sayani Gupta, Adv. Mr. Atindra Rai, Adv.
For the Respondent No. 4	: Mr. Sudipto Sarkar, Sr. Adv., Mr. Rishav Banerjee, Adv. Ms. Pooja Chakrabarti, Adv. Mr. Kiran Sharma, Adv. Ms. A. Bhattacharyya, Adv.
For the Respondent No. 5	: Mr. Krishnaraj Thaker, Sr. Adv. Ms. Pooja Chakrabarti, Adv. Mr. Kiran Sharma, Adv. Ms. Arti Bhattacharyya, Adv. Ms. Jiya Bose, Adv. Ms. Shreya Goenka, Adv. Ms. Surabhi Mehta, Adv.
For the intervener, HNG Karmachari Union and HNG Mazdoor Union	: Mr. Sakya Sen, Sr. Adv. Mr. Jishnu Choudhury, Sr. Adv. Ms. Tapashya Bhattacharya, Adv.

2026:CHC-AS:739-DB

For the intervener, HNG Thozilalar Nala Sangam	: Mr. Abhrajit Mitra, Sr. Adv. Mr. Shadma Manzar, Adv.
Judgment reserved on	: 30.03.2026
Judgment pronounced on	: 15.05.2026
Judgment uploaded on	: 15.05.2026.

Shampa Sarkar, J.

1. CAN 1 of 2026 is an application for stay of operation and/or implementation of the order dated February 27, 2026 passed in WPA No. 3755 of 2022. Instead of hearing the said application separately, we proposed to hear out the appeal.

2. CAN 2 of 2026 is an application by H.N.G Karmachari Union for leave to intervene in the appeal or be added as a party to the appeal.

3. CAN 3 of 2026 is an application by H.N.G Industries Thozilalar Nala Sangam, a registered trade union with similar prayers as in CAN 2 of 2026.

4. CAN 4 of 2026 is an application by H.N.G Mazdoor Union (INTUC) also for leave to intervene in the appeal or to be added as a party to the proceeding.

5. These three applications were filed on 16.03.2026 i.e. towards the conclusion of the proceedings before us.

6. The appeal arises out of a judgment and order dated February 27, 2026 passed by a learned Single Judge in WPA no. 3755 of 2026. By the order impugned, the learned Judge dismissed the writ petition, inter alia, holding that the order passed by the Regional Director, Eastern Region, Ministry of Corporate Affairs was not in violation of the second proviso to

sub-rule (9) of Rule 30 of the Companies (Incorporation) Rules, 2014 (hereinafter referred to as the said Rules).

7. Mr. Aninyda Kumar Mitra, learned senior advocate appearing on behalf of the appellants urged that, the respondent no. 5, Hindusthan Glass and Industries Limited (in short HNGIL) went into CIRP on 21st October, 2021. The appellants claimed to be post-CIRP creditors of HNGIL whose dues were paid in preference under section 5(B) of the Insolvency and Bankruptcy Code, 2016 (in short 'IBC').

8. The facts pleaded in the writ petition were that, on the allegation that, post the order of admission in CIRP, the payment for the transportation services provided to HNGIL, was not made by the Resolution Professional (RP). The appellant as a Micro Small and Medium Enterprise (MSME) filed an application for release of the post-CIRP dues. The National Company Law Tribunal (NCLT) passed an order on the admission of the RP to pay 75% of the balance dues within 60 days. The claim of the appellants was allowed to the extent of 44 lakhs, but the prayer of the appellants for interest under section 16 of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as the 'MSMED Act') was disallowed. The appellants preferred an appeal before the National Company Law Appellate Tribunal (NCLAT). In the meantime, Independent Sugar Corporation Limited, the respondent no. 4 gave a resolution plan to revive HNGIL, which was approved by the NCLT on August 14, 2025. The appellants filed an application for rejection of the plan before the NCLT being I.V.N. No. 22 of 2025. The application was rejected and the resolution plan was approved. Being aggrieved, the

appellants preferred an appeal before NCLAT from the order of approval of the resolution plan and rejection of I.V.N No. 22 of 2025. Several other parties also preferred appeals from the approval of the resolution plan and 24 appeals were pending before the NCLAT on October 28, 2025. The respondent no. 4 filed an application before the Regional Director, Eastern Region, seeking permission to shift the registered office of the respondent No. 5 to Mumbai. The Regional Director informed the respondent No. 4 that the prayer for shifting of the registered office had been kept in abeyance in view of the pending appeals before the NCLAT. Respondent no. 4 sought for clarification from the NCLAT that, pendency of the appeals should not affect the application for change of the registered office from the State of West Bengal to Maharashtra. NCLAT passed an order observing that pendency of the appeals should not be a ground for non-compliance of the statutory provisions by a statutory authority. NCLAT did not grant the clarification prayed for, but observed that the Regional Director should decide the application filed by the respondent No. 4, in accordance with law. By an order dated February 4, 2026, the Regional Director allowed shifting of the registered office without complying with the provisions of law. Mr. Mitra urged that the order passed by the Regional Director was ex facie contrary to the mandate of the second proviso to Rule 30(9) of the said Rules. The proviso clearly stipulated that, shifting of the registered office of a Company after approval of a resolution plan, could be permitted only when no appeal against the resolution plan was pending before any court or tribunal. In respect of the resolution plan of the respondent No. 4, several appeals were pending before the NCLAT.

The learned Single Judge failed to appreciate that the Regional Director had wrongly exercised jurisdiction in allowing the shifting of the registered office of the respondent no. 4 to Mumbai. Such erroneous exercise of jurisdiction by the Regional Director ought to have been struck down by the learned Single Judge. Instead, the same was upheld upon erroneous appreciation of law. According to Mr. Mitra, the learned Single Judge had re-written the Rules by concluding that, unless there was an order of stay of operation of the resolution plan in the pending appeals before the NCLAT, the second proviso to Rule 30(9) would not operate as a bar in the exercise of jurisdiction by the Regional Director, thereby, permitting shifting of the registered office of the respondent no. 4. It was further urged that the learned Single Judge committed patent illegality in holding that, unless prejudice could be demonstrated by the writ petitioners, the order of the Regional Director should not be interfered with. Prejudice should not have been a consideration at all, when the appellant complained of violation of the said Rules which had statutory force. Learned Senior Advocate further submitted that, the learned Single Judge failed to appreciate that the pendency of the appeals materially affected the forum, regulatory supervision and enforcement jurisdiction, which directly impacted the rights and remedies of stakeholders, including operational creditors like the appellants. Initially, the Regional Director had kept the application for shifting of the registered office in abeyance, on account of pendency of the appeal. Subsequently, such decision was reversed in wrongful exercise of statutory power. The finding of the learned Single Judge that the NCLAT had directed the respondent no. 3 to

consider the pending application for shifting of the registered office of the corporate debtor, was a mis-interpretation of the order of the NCLAT dated December 22, 2025.

9. On the issue of locus of the appellants to initiate the writ petition, Mr. Mitra submitted that the appellants were aggrieved by the order passed by the Regional Director. The appellants were objectors to the said application and the appellant No. 1 was a noticee along with 11 others. The appellants were heard by the Regional Director and their objections were turned down by the order which was impugned in the writ petition. The appellants did not have any other efficacious remedy under the law to challenge the order of the Regional Director. Thus, the writ petition was maintainable at the instance of the appellants.

10. According to Mr. Mitra, the statutory discretion vested in the Regional Director ought to have been exercised within the framework of the said Rules and not in derogation thereof. The Regional Director had acted in colourable exercise of statutory power. The order of the Regional Director suffered from jurisdictional error. The learned Single Judge failed to appreciate the illegality in the order passed by the Regional Director.

11. Mr. Mitra submitted that, the second proviso to Rule 30(9) of the said Rules, was incorporated by way of an amendment in 2023. The proviso was introduced specifically to prevent alienation of corporate jurisdiction during pendency of judicial challenges to resolution plans, thereby preserving the authority of the appellate forum and courts and preventing circumvention of judicial scrutiny.

12. It was submitted that Rule 30(9) of the said Rules operated in furtherance of the framework of the IBC, thereby ensuring that the corporate restructuring was subject to judicial supervision until appellate remedies were exhausted. Referring to Section 31(4) of the IBC, Mr. Mitra submitted that, after the approval of the resolution plan, the resolution applicant was required by law to obtain the necessary approvals under other laws which were in force, within a period of one year from the date of approval of the resolution plan. Thus, requirement for compliance of the said Rules was provided in the IBC itself.

13. Reference was made to Section 32 and sub-section 3 of Section 61 of the IBC in support of his contention that, an appeal against an order approving a resolution plan under Section 31 may be filed on various grounds, namely:-

(i) The approved resolution plan is in contravention of the provisions of any law for the time being in force;
(ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;
(iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;
(iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or
(v) the resolution plan does not comply with any other criteria specified by the Board.

14. Appeals, inter alia, on the above grounds were pending before the NCLAT at the instance of various creditors. Reliance was placed on the decision of the Supreme Court in ***Satyanarayan Prosad Gooptu vs. Diana Engineering Company*** reported in ***1955 CWN 509,*** in support of the contention that, the resolution plan lost its finality on account of

pendency of the appeal. Until the appeal was preferred, the resolution plan was final. Once the appeal was filed, the plan lost its character of finality. Mr. Mitra submitted that, the intent behind the incorporation of the second proviso to Rule 30(9) of the said Rules, was to put a restriction on the power of the central government acting through the Regional Director, to permit shifting of the registered office of the corporate debtor at the behest of the successful resolution applicant, during the pendency of the appeals.

15. Reliance was placed on the decision of ***Solidaire India Ltd. vs Fairgrowth Financial Services Ltd. and Ors.*** reported in ***(2001) 3 SCC 71,*** in support of the contention that when there were two special statutes, the provisions of both should be harmoniously construed. According to Mr. Mitra, the provisions of the IBC were not in conflict with the provisions of the Companies Act, 2013 (hereinafter referred to as the 2013 Act) and Rule 30(9) of the said Rules, including the provisos thereto. There was no inconsistency. Thus, the provision of Section 238 of the IBC was wrongly pressed into service by the Regional Director and the learned Single Judge erroneously upheld such decision which was contrary to law.

16. Reliance was placed on the decision of ***Hardeep Singh vs. State of Punjab and Ors.*** reported in ***(2014) 3 SCC 92,*** on the proposition that, when the language of the statute was plain and unambiguous, the court should give effect to the same and not go behind the express language, so as to add or subtract any word therefrom. The legislature should be presumed to have used the words deliberately and consciously for carrying out the purpose of the statute.

17. ***Indus Biotech Private Limited vs Kotak India Venture (Offshore) Fund (Earlier Known as Kotak India Venture Limited) and Ors.*** reported in ***(2021) 6 SCC 436,*** was relied upon in support of the contention that, the proceedings pending before the NCLAT were proceedings in rem, and rights had been created in favour of creditors of the corporate debtor. It would have an erga omnes effect. Mr. Mitra prayed for setting aside of the order of the learned Single Judge and the order of the Regional Director.

18. Mr. Sudipto Sarkar, learned Senior Advocate appearing on behalf of the respondent no. 4 submitted that the learned Single Judge did not commit any error of law. The scope of this intra court appeal was limited. The exercise of power of judicial review by the writ court was discretionary. The learned Single Judge was not sitting in appeal over the decision of the Regional Director. What was required to be considered was, whether the order of the Regional Director was patently illegal or not. Prejudice was an important factor for consideration by the learned Single Judge, while exercising his discretion. Thus, in exercise of such discretionary power, the court was always required to balance the equities between the parties and consider whether the order of the Regional Director was passed in good faith, was reasonable and not shocking to the conscience of a reasonable man. In this case, the learned Single Judge rightly applied the doctrine of prejudice to determine whether the decision of the Regional Director in allowing the shifting of the registered office of the successful resolution applicant, would cause any apparent harm to the appellants. The learned Single Judge correctly held that the procedure

followed by the Regional Director was not unfair. All the parties / objectors were granted an opportunity to raise their objections. The registered office was sought to be shifted to Mumbai for administrative convenience. The appellants were also situated at Mumbai. Moreover, the Regional Director had sufficiently protected the interest of the creditors and the workers and had made the shifting of the registered office subject to the result of the appeals. Thus, no real prejudice could be demonstrated by the appellants before the writ court. The appellants did not suffer any disadvantage on account of the order of the Regional Director. The proceedings before the NCLAT were independent of the order of the Regional Director and the jurisdiction was reserved to the NCLAT, to proceed with the appeals independently. He further submitted that Section 13(5) of the 2013 Act provided that, the central government must dispose of the application for alteration in the Memorandum relating to the place of the registered office from one state to another, within a period of 60 days, and before passing any order, must satisfy itself that the alteration had the consent of the creditors, debenture holders and other persons concerned with the Company, or that, sufficient provisions had been made by the company either for due discharge of all its debts and obligations or that adequate security had been provided for such discharge. As a general rule, shifting of the registered office should be allowed on certain terms and conditions.

19. In this case, adequate security had been provided for due discharge of debts and obligations of the creditors. Moreover, once the resolution plan was approved, the respondent no. 4 started on a clean slate.

Reference was made to ***Ghyansham Mishra and Sons Pvt. Ltd. vs Edelweiss Asset Reconstruction Company Ltd.*** reported in ***(2021) 9 SCC 657***.

20. According to Mr. Sudipta Sarkar, the appellant No. 1 was neither a creditor of the corporate debtor nor a creditor of the successful resolution applicant. The entire dues of the appellant No. 1 had been paid in accordance with the order dated August 14, 2025 passed by the NCLT. Section 31(1) of the IBC provided that an order approving the resolution plan shall be binding on all creditors and stakeholders. Moreover, the NCLAT refused to stay the order of approval of the resolution plan. Until and unless the said plan was stayed by the NCLAT or set aside in the appeal, the plan was binding on all creditors. Section 13(4) and 13(5) of the 2013 Act required that any alteration of the registered office of the company would require the central government's satisfaction that the creditors had given their consent. The appellant No. 1 did not remain a creditor and could not raise any objection with regard to the shifting of the registered office. Moreover, even if the appellants were successful before the NCLAT and any sum was found to be due and payable, the liability of the payment would not rest upon the corporate debtor or the successful resolution applicant as had been clearly stated in the order approving the resolution plan. The plan specifically provided that, any additional claim that became payable by the resolution applicant should be paid out of "Upfront Cash", paid to the secured financial creditors and without any further liability on the resolution applicant. The resolution plan stood incorporated as an integral part of the order dated August 14, 2025

passed by the NCLT, which was binding on the creditors as also upon the Regional Director. By resisting the shifting of the registered office of the Company, the appellants were attempting to challenge the implementation of the resolution plan, which was not permissible in law. Reliance was placed on the decision of ***Ayaaubkhan Noorkhan Pathan vs State of Maharashtra and Ors.*** reported in ***(2013) 4 SCC 465*** on the proposition that, only a person aggrieved, whose right and interest had been adversely affected or jeopardized or who had suffered legal injury could invoke writ jurisdiction. The existence of a legal right was a pre-condition for invoking the writ jurisdiction. The appellants could not be treated as persons aggrieved. It was further submitted that the second proviso could not operate contrary to the substantive provision. Therefore, when Rule 30(9) permitted shifting on certain terms and conditions, the second proviso could not be treated as a bar. The second proviso was permissive in character and was not to be construed in a restrictive manner. Rather, the second proviso gave a discretion to the Regional Director to allow shifting of the registered office and operated as an exception to the first proviso.

21. Referring to the second proviso of sub-rule 9 of Rule 30, Mr. Sarkar submitted that, the same was an exception to the first proviso and a discretion was left to the Regional Director to permit shifting, even if an appeal was pending. The first proviso was a complete bar in view of the use of the expression “shall not”. The second proviso must be construed as a permissive provision, inasmuch as, it carved out an exception to the general rule, by use of the expression “may be allowed”. The complete bar under the first proviso was relaxed. On this issue reliance was placed on

the decision of ***Satnam Singh and Others vs Punjab & Haryana High Court and Ors.*** reported in ***(1997) 3 SCC 353.*** Prayer was made for dismissal of the appeal.

22. Mr. Thaker, learned Senior Advocate for the respondent No. 5 argued on the same lines as Mr. Sarkar and submitted that the appellants did not have any locus to file the writ petition. They were not operational creditors. Their debt was discharged upon approval of the resolution plan. The Rules of 2014 were framed by the Ministry of Corporate Affairs vide notification dated March 31, 2014. The said Rules could not have an overriding effect over the 2013 Act. Section 13(4) of the 2013 Act dealt with alternation of the Memorandum, in relation to the shifting of the place of the registered office from one state to another. The alteration must be approved by the central government. Under Section 13(5), the central government was required to dispose of the application within a period of 60 days and before passing the order, it was to satisfy itself that the alteration had the consent of the creditors, debenture holders and other persons concerned with the company. The appellants were not creditors. The provisions of Section 13 had not been amended, upon promulgation of the IBC. Therefore, the exercise of jurisdiction by the Regional Director under the Act of 2013, which was vested by a legislative mandate, could not be taken away by the Ministry of Corporate Affairs upon incorporation of the second proviso to Rule 30(9) of the said Rules. Thus, the second proviso should be read harmoniously with Section 13 of the 2013 Act, to mean that a discretion could be exercised by the Regional Director even when an appeal from the Resolution plan was pending. In

the present case, discretion was exercised by the Regional Director. He satisfied himself that no prejudice would be suffered by the appellants. Rule 30(9) and the proviso thereunder, were subordinate to the 2013 Act. Rule 30(8) of the said Rules provided that, in the event an objection was received by the central government with regard to shifting of the place of the registered office of the company from one state to another and no consensus was reached at the hearings, the company was to file an affidavit specifying the manner in which the objection was to be resolved within a definite time frame, duly reserving the original jurisdiction to the objector for pursing its legal remedies even after the registered office was shifted. In the instant case, the legal remedy of the appellants was before the NCLAT, and the NCLAT always reserved the jurisdiction to dispose of the matter. Such jurisdiction did not change, although the shifting was allowed. No other proceeding had been initiated by the appellants, save and except what was pending before the NCLAT.

23. Rule 30(8) did not give any veto power to any stakeholder to oppose shifting of the registered office. Reference was made to paragraph 17(iii) of the order to urge that, the Regional Director had clearly stipulated that there would be no jurisdictional change in the legal proceedings pending against the company on the date of the order. A purported creditor did not have any locus to raise any objection for alleged contravention of Rule 30(9) inasmuch as, Rule 30(9) was triggered after due compliance of Rule 30 Sub Rules (1) to (8). In this case, the objections were considered and the procedure under Rule 30(8) was followed. Even if the order of approval of the resolution plan was set aside by the NCLAT, it would result in

resumption of the original CIRP proceedings before the NCLT Calcutta Bench and such proceedings would remain unaffected by the shifting of the registered office from Kolkata to Mumbai. If the legislature had thought it prudent, it would have inserted a specific provision in the IBC and / or in the CIRP regulations, prohibiting shifting of the registered office during the pendency of appeals from the order of approval of the resolution plan. The general power conferred upon the central government to alter the Memorandum of the company under section 13 (4) of the 2013 Act could not be taken away by a proviso to a rule.

24. He next submitted that the remedy provided under Article 226 of the Constitution of India was a discretionary remedy. The learned Single Judge had rightly exercised discretion in refusing the reliefs. The learned Single Judge was of the view that no prejudice would be caused to the appellants, as the appellants were also stationed in Mumbai. The learned Judge observed that the Regional Director had protected and safeguarded the rights of the workers, the creditors etc. and made the shifting subject to the result of the pending appeal. The writ court was not a court of appeal. It could exercise powers of judicial review only to the limited extent in ensuring fair treatment. Judicial review could not be extended to examine the correctness of the decision. Unless the appellants could demonstrate substantial injustice, a reasoned decision of a statutory authority, should not be interfered with by this Bench. The learned Single Judge, upon weighing the facts and circumstances and by applying the law, rightly held that no injustice had been caused to the appellants.

Thus, the decision of the Regional Director should not be set aside. The Regional Director had discharged his statutory function.

25. Mr. Thaker further urged that, the appellants were erstwhile operational creditors whose claims had already crystalized and extinguished under the approved resolution plan. They were attempting to frustrate the implementation of the resolution plan.

26. Reliance was placed on the decision of ***All Odisha Lawyers Association vs The Odisha State Bar Council and Ors.*** reported in ***MANU/OR/0153/2020*** and ***West Bengal Central School Service Commission and Ors. vs Abdul Halim and Ors.*** reported in ***(2019) 18 SCC 39,*** in support of his contention that, the High Court exercised extra-ordinary jurisdiction under Article 226 of the Constitution of India for enforcement of a fundamental right or some other legal right. Thus, the Writ Court would necessarily have to address the question whether there was a breach of any fundamental or legal right or whether there was any lapse in the performance of the duty of the authority. A high prerogative writ could not be issued on the mere asking. The High Court could not act as a court of appeal over administrative decisions. The High Court could only examine the decision making process and not the decision itself. Unless the decision was vitiated by error apparent on the face of record or the order was passed beyond jurisdiction, the order could not be interfered with by the High Court. The Court would have to see whether a reasonable person could have taken the view that was taken by the Regional Director or whether the decision led to manifest injustice. Thus, the learned Single Judge rightly dismissed the writ petition. Reliance was

placed on ***Ayaaubkhan Noorkhan Pathan (supra)*** on the proposition that the appellant did not have any locus to raise a grievance whatsoever. Therefore, without a judicially enforceable right available for enforcement, the writ petition could not have been filed. The writ court had the power to enforce the performance of a statutory duty by a public body only upon the court being satisfied that the person aggrieved had a legal right to insist on such performance. In this case, the appellants ceased to be creditors and as such did not have any locus to approach the writ court. Reliance was placed on the decision of ***Ghanshyam Mishra (supra)***. It was submitted that the goal of the resolution plan was to give the company a fresh start, on a clean slate. All the claims against the corporate debtor stood extinguished. Such theory had been recognized by the Hon'ble Supreme Court in various decisions from time to time. The resolution plan was a binding document. Commercial necessity required the company to streamline its operation, for which the shifting of the registered office was absolutely necessary. Accordingly, the shifting of the registered office was a part of a new life induced to the company and the relevant proviso could not override the provision of the 2013 Act.

27. Mr. D. Trivedi, learned Deputy Solicitor General and senior Advocate appeared on behalf of the Union of India. The learned Advocate supported the decision of the Regional Director dated February 4, 2026 and primarily adopted the submissions made by Mr. Sarkar and Mr. Thaker. Mr. Trivedi urged that this Bench should not interfere with the order of the learned Single Judge, in an intra court appeal. The order of the learned Single Judge, as also the order of the Regional Director, were

reasonable and rational. He placed the order of the Regional Director in details, and submitted that the Regional Director had protected the interest of the stakeholders. The Regional Director took into consideration the provisions of the IBC, which mandated revival of the company. The provisions of IBC, including implementation of the resolution plan would take precedence over the procedural bar under the second proviso to Rule 30(9) of the 2014 Rules. Learned Advocate submitted that, the Regional Director rightly considered the legal effect of Section 238 of the IBC to be a legal bridge, in order to grant the prayer for shifting of the registered office, especially when public interest tilted in favour of the successful resolution applicant and denial would impede the new management's efforts to streamline the operation of the company. The company was a going concern. Not allowing shifting of the registered office until the management was taken over by the reconstituted Board, was a part of the plan, but once the company had been taken over by the reconstituted Board and such act of taking over had been approved, the shifting of the office from the State of West Bengal to the State of Maharashtra was rightly allowed by the Regional Director with certain protective terms and conditions. The Regional Director required the respondent no. 4 to provide an undertaking on the following conditions:-

> "17. As the company is a going concern and not shifting of the registered office till the management is taken over by the re-constituted board was the part of the plan and how the company has been taken over by the Reconstituted Board and as such taking in consideration of all the submission and in the interest of justice, the shifting of registered office from the State of West Bengal to the State of Maharashtra is allowed which shall be subject to outcome of all the Company appeals pending before Hon'ble NCLAT in respect of the resolution plan in the present matter. Further the

company shall be required to give the following undertaking in the office of this Directorate:-

(i) Company to place copy of this order and bring it to the notice of Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 1340 of 2025 & other connected matters and to comply with any further directions (if any) a may be issued by Hon'ble NCLAT in the matter.

(ii) That the shifting of registered office is being carried out for operationally efficiency and value maximization.

(iii) That no employee shall be retrenched as a consequence of shifting of the registered office of the company and that there will be no jurisdictional change in the legal proceedings pending if any, against the company on the date of this order.

(iv) That shifting of registered office does not result in any deviation from or non-compliance with the approved resolution plan."

28. Thereafter, Mr. Trivedi submitted that the learned Single Judge rightly dismissed the writ petition upon holding that the order of the Regional Director did not suffer from material irregularity. The order was not shocking to the conscience. A reasonable man would consider the order to be a possible view as the balance of convenience and inconvenience tilted in favour of allowing the shifting.

29. During the continuation of the appeal, applications for leave to be added as party/respondents in the appeal or in the alternative to be permitted to make submissions by intervening in the proceeding, were moved by different groups of workers union. Such prayer had also been made orally on March 12, 2026. This Bench observed that, the interveners would not be heard, as they were not parties to the writ proceeding. The order of the learned Single Judge did not indicate that their submissions had been either recorded or considered. Subsequently, the interveners filed three applications. They supported the case made out by the respondents Nos. 4 and 5. However, as the applications were filed, we

heard the respective senior Advocates who made elaborate submissions and also filed their written notes of arguments.

30. Mr. Sakya Sen, senior learned Advocate appeared on behalf of H.N.G Karmachari Union and H.N.G Mazdur Union. Mr. Sen submitted that the prayer for stay of operation/implementation of the resolution plan was refused by the NCLAT. The interveners were concerned with the outcome of the CIRP of HNGIL and in the full and timely implementation of the resolution plan. The implementation of the resolution plan would ensure continuity of operation, protection of employment, preservation of the service conditions of the workmen. The members of the interveners were directly engaged in the activities of HNGIL and were dependent on the resolution plan for their livelihood, job security etc. Any disturbance in the execution of the resolution plan would have serious consequences on industrial peace, workforce stability and continuous functioning of the corporate debtor. Reliance was placed on paragraph 70, 78 and 104 of the order of approval of the plan which are quoted below :-

> **"*70.*** *The payment of 'CIRP Costs' will be 'at actual' and the CIRP costs shall be paid out of the cash flow of the corporate debtor and in the event the cash flow of the corporate debtor is insufficient then the outstanding CIRP Costs shall be paid by the resolution applicant from the upfront cash. The upfront cash shall be utilized for the payment of outstanding CIRP costs in priority to the payment of other debts of the corporate debtor. Furthermore, if on the Trigger date, outstanding CIRP cost remains unpaid as on the Trigger Date, the payment to the Financial Creditors shall stand adjusted accordingly.*
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> ***78****. Any additional claim that becomes payable by the Resolution Applicant, the same shall be paid out of the Upfront Cash and without any further liability on the Resolution Applicant. The*

Creditors of such claims shall be entitled to receive only from the amounts agreed to be paid under the plan as per the relevant category such creditors fall under as per the plan and the amounts payable to that category of creditors shall stand adjusted accordingly proportionately.

***104**. The Resolution Plan shall form part of this Order and shall be read along with this order for implementation. The Resolution Plan thus approved shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government, or any local authority in terms of Section 31 of the I&B Code, so that revival of the Corporate Debtor Company shall come into force with immediate effect without any delay."*

31. Further reliance was placed on paragraphs 9.5, 9.6 and 9.8 of the order approving the plan. It was submitted that, the appellants were not operational creditors and their dues had been paid. An appeal on the question of payment of interest at the rate claimed by the appellants, was pending before the NCLAT. The NCLT refused such interest at the rate claimed. The appellants had already been paid under the mechanism provided in the IBC, as also, in terms of the resolution plan. No amount of debt was payable by the company to the appellants. As the appellants were not operational creditors, the question of raising any objection before the Regional Director did not arise and the appellants did not have any locus to file the writ petition as they could not be aggrieved by the order of the Regional Director. If they did not have the locus to object to the prayer of shifting, they also did not have any locus to challenge the order of the Regional Director before the writ court. He further submitted that, Section 13(5) of the 2013 Act, clearly provided that the central government was only required to consider the objections of creditors, debenture holders

and workers, but the appellants did not fit into any of those categories and as such, their objections to the decision of the Regional Director were misplaced. The objections of the appellants should not have been considered by the Regional Director at all. The Regional Director rightly disregarded their objections by, inter alia, holding that precedence should be given to implementation of the resolution plan, for revival of the company for greater public interest and also for the benefit of the workers and stakeholders. Once the Regional Director recorded his satisfaction that the statutory procedure prescribed under the 2013 Act and the Companies (Incorporation) Rules 2014 had been duly complied with before grant of approval to the shifting of the registered office, nothing further remained to be decided. He submitted that in the decision of ***Ghanshyam Mishra (supra)***, the Hon'ble Apex Court held that, a successful resolution applicant must be enabled to commence the business of the corporate debtor on a clean slate and the past claims which were not incorporated in the resolution plan, stood extinguished upon its approval. Thus, the Regional Director rightly held that the provisions of the IBC would prevail over any procedural law and the Rules. Prime importance should be given to the revival of the company. He submitted that the writ petition was filed only to obstruct the implementation of a valid and operative resolution plan.

32. Mr. Abhrajit Mitra, learned senior Advocate appeared on behalf of the interveners, H.N.G Industries Thozilalar Nala Sangam. He submitted that, the workers who sought to intervene were directly and materially affected by the CIRP of HINGL and by the implementation of the resolution

plan, which was approved by the NCLT. Their livelihood, employment, job security, continuity of service, benefits of the workmen were contingent upon the unimpeded and complete implementation of the approved plan. The revival of the corporate debtor, which was a going concern was therefore a matter of immediate concern for the workmen. The right to participate in the proceedings before the Regional Director was therefore, confined to persons who qualified as creditors, debenture holders or other persons concerned with the Company at the material time. The appellants could not claim to be operational creditors of the corporate debtor and assert that they had a right to object before the Regional Director. By operation of section 31 of the IBC, the claims of all creditors including operational creditors had crystalized and were dealt with in accordance with the terms of the approved plan. No creditor retained any claim against the corporate debtor beyond what the resolution plan approved. Paragraph 70 of the approval order was relied upon in this regard. The appellants having participated in the CIRP and having been bound by the outcome of the resolution plan upon its approval, did not have any residual or continuing status as creditors or corporate debtors. Paragraph 9.6 of the approval order was further referred to, which stated that no proceedings by any person shall be initiated or entertained by any court of law, whereby, the resolution applicant's liability under the obligations and / or resolution plan stood increased or the resolution applicant was required to contribute any amount over and above the payment outlined in the resolution plan. ***Ghanshyam Mishra (supra)*** was relied upon in support of the contention that all claims not included in the plan stood

extinguished and no creditor could initiate or continue any proceedings in respect of such extinguished claims. The entire basis of the challenge to the order passed by the Regional Director was on a false premise that the appellants continued to be successful creditors. Such proposition was not supported by law. Section 60(5) of the IBC provided that notwithstanding anything to the contrary contained in any other law, the NCLT would have jurisdiction to entertain and dispose of any application or proceeding by or against the corporate debtor or any claim made by or against the corporate debtor. The appellants could not have filed a writ petition challenging the order of the Regional Director. Moreover, as the appeals were already pending before the NCLAT, the appellants could also approach the NCLAT instead of filing a writ petition. Thus, in either case, the writ petition was not maintainable. Reliance was placed on the following decisions:-

i. ***Tata Power Western Odisha Distribution Limited and Ors. vs. Jagannath Sponge Private Limited, Director*** reported in ***(2023) SCC Online SC 1402.***
ii. ***Paschimanchal Vidyut Vitran Nigam Ltd. vs. Raman Ispat Private Limited and Ors.*** reported in ***2023:INSC:625.***
iii. ***Embassy Property Developments Private Limited vs. State of Karnataka and Ors.*** reported in ***(2020) 13 SCC 308.***

33. According to learned senior Advocate, Section 238 of the IBC provided that the provisions of the IBC would override any other law for the time being in force. Once the resolution plan was approved by the NCLT, it became binding upon the corporate debtor and upon all the stakeholders, including the creditors, employees, claimants and other persons. Although, the notice of the appeal was issued, the NCLAT did not find any reason to stay the order. The NCLT approved the resolution plan,

as such, the resolution plan continued to remain operative and enforceable in its entirety. The observation made by the NCLAT in its order dated February 26, 2025, would clearly indicate that the appeals could not be treated as a reason for non-compliance of the statutory requirements applicable to the company. The observations also clearly recorded that the resolution plan could be implemented and would continue to operate, notwithstanding the pendency of the appeals. The objective of the IBC was to revive and rehabilitate the corporate debtor as a going concern. Operational and restructuring measures for effective implementation of the resolution plan must be permitted, unless expressly prohibited by law. In the case in hand, there was no express prohibition.

34. Considered the submissions of the parties and the reasons assigned by the learned Single Judge in the order impugned. We find that the learned Judge erroneously imported the overriding effect of the IBC in the facts of this case and erred in holding that the resolution plan should be given primacy over the second proviso to Rule 30(9) of the said Rules. There is no inconsistency between the provisions of the IBC and the 2014 Rules, insofar as, the issue before the writ court was concerned. The application for shifting the registered office, was filed under Section 13(4) of the 2013 Act. Sections 13(4) of the 2013 Act provides for alteration in the Memorandum relating to change in the place of the registered office of a Company from one state to another. The IBC does not contain any similar provision. Such alteration and shifting cannot be permitted unless the central government approves the same on an application being filed, in such form and manner as may be prescribed. Rule 30 of the 2014

Rules prescribes the mode and manner in which an application under Section 13(4) of the 2013 Act should be dealt with**.**

35. The Rules of 2014 do not override Section 13(4), but lay down the procedure to be followed in exercise of power under Section 13(4) of the 2013 Act, by the Regional Director. The second proviso to Rule 30(9) of the said Rules was incorporated by an amendment of 2023.

36. Section 13(4) of the 2013 Act is quoted below:-

> "**13(4)** The alteration of the memorandum relating to the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government on an application in such form and manner as may be prescribed."

37. Section 238 of IBC is quoted below:-

> "**238. Provisions of this code to override other laws:-**
> The provisions of this code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

38. Sub-section 4 of Section 13 of the 2013 Act provides that, alteration in the Memorandum relating to shifting of the registered office from one state to another, shall not have any effect unless it is approved by the central government on an application, in such form and manner as may be prescribed. The central government is required to dispose of the application within a period of 60 days. Before passing such order, the central government may satisfy itself that the alteration had the consent of the creditors, debenture holders and other persons concerned with the company or that sufficient provisions had been made by the company either for due discharge of its debts or that adequate security had been provided for such discharge. The power is to be exercised by a Regional

Director on behalf of the central government. The 2014 Rules was promulgated by the Ministry of Corporate Affairs on March 31, 2014 in exercise of powers conferred under various Sections of the 2013 Act, including Section 13(3) and (4). Thus, the substantive law under Section 13(4) was followed by the Rules. Rule 30 lays down the procedure to be followed in allowing shifting of the registered office from one state to another or from one state to a Union Territory. Rule 30 is quoted below :-

> "**30. Shifting of Registered Office from one State or Union Territory to another State.-**
>
> (1) An application under sub-section (4) of section 13, for the purpose of seeking approval for alteration of memorandum with regard to the change of place of the registered office from one State Government or Union territory to another, shall be filed with the Central Government in **Form No. INC.23** along with the fee and shall be accompanied by the[following details and documents], namely: —
>
> (a) a copy of Memorandum of Association, with proposed alterations;
>
> (b) a copy of the minutes of the general meeting at which the resolution authorising such alteration was passed, giving details of the number of votes cast in favour or against the resolution;
>
> (c) a copy of Board Resolution or Power of Attorney or the executed Vakalatnama, as the case may be.
>
> (2) There shall be [particulars of], a list of creditors and debenture holders, drawn up to the latest practicable date preceding the date of filing of application by not more than one month, setting forth the following [details in the application], namely:-
>
> (a) the names and address of every creditor and debenture holder of the company;
>
> (b) the nature and respective amounts due to them in respect of debts, claims or liabilities:

Provided that the list of creditors and debenture holders, accompanied by declaration signed by the Company Secretary of the company, if any, and not less than two directors of the company, one of whom shall be a managing director, where there is one, stating that

(i) they have made a full enquiry into the affairs of the company and, having done so, have concluded that the list of creditors are correct, and that the estimated value as given in the list of the debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that there are no other debts of or claims against the company to their knowledge, and

(ii) no employee shall be retrenched as a consequence of shifting of the registered office from one state to another state and also there shall be an application filed by the company to the Chief Secretary of the concerned State Government or the Union territory.

(3) A duly authenticated copy of the list of creditors shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of a sum not exceeding ten rupees per page to the company.

(4) There shall also be attached to the application a copy of the acknowledgment of service of a copy of the application with complete annexures to the [**] Chief Secretary of the State Government or Union territory where the registered office is situated at the time of filing the application.

[Provided that the applicant need not to submit separate copy of application with the Registrar and an intimation of filing of application in Form no. INC-23 with the Regional Director shall be shared with the Registrar through MCA system.]

(5) The company shall, not more than thirty days before the date of filing the application in **Form No. INC.23** –

(a) advertise in the **Form No. INC.26** in the vernacular newspaper in the principal vernacular language in the district and in English language in an English newspaper [78][with wide circulation] in the State in which the registered office of the company is situated:

Provided that a copy of advertisement shall be served on the Central Government immediately on its publication.

(b) serve, by registered post with acknowledgement due, individual notice, to the effect set out in clause (a) on each debenture-holder and creditor of the company; and

(c) serve, by registered post with acknowledgement due, a notice together with the copy of the application to the Registrar and to the Securities and Exchange Board of India, in the case of listed companies and to the regulatory body, if the company is regulated under any special Act or law for the time being in force.

(6) There shall be attached to the application a duly authenticated copy of the advertisement and notices issued under sub-rule (5), a copy each of the objection received by the applicant, and tabulated details of responses along with the counter-response from the company received either in the electronic mode or in physical mode in response to the advertisements and notices issued under sub-rule (5).

(7) Where no objection has been received from any person in response to the advertisement or notice under sub-rule (5) or otherwise, the application may be put up for orders without hearing and the order either approving or rejecting the application shall be passed within fifteen days of the receipt of the application.

(8) Where an objection has been received,

(i) the Central Government shall hold a hearing or hearings, as required and direct the company to file an affidavit to record the consensus reached at the hearing, upon executing which, the Central Government shall pass an order approving the shifting, within sixty days of filing the application.

(ii) where no consensus is reached at the hearings the company shall file an affidavit specifying the manner in which objection is to be resolved within a definite time frame, duly reserving the original jurisdiction to the objector for pursuing its legal remedies, even after the registered office is shifted, upon execution of which the Central Government shall pass an order confirming or rejecting the alteration within sixty days of the filing of application.

(9) The order passed by the Central Government confirming the alteration may be on such terms and conditions, if any, as it thinks fit,[***]:

Provided that the shifting of registered office shall not be allowed if any inquiry, inspection or investigation has

> been initiated against the company or any prosecution is pending against the company under the Act.
>
> [Provided further that where the management of the company has been taken over by new management under a resolution plan approved under section 31 of the Insolvency Bankruptcy Code, 2016 (31 of 2016) and no appeal against the resolution plan is pending in any Court or Tribunal and no inquiry, inspection, investigation is pending or initiated after the approval of the said resolution plan, the shifting of the registered office may be allowed.]
>
> (10) On completion of such inquiry, inspection or investigation as a consequence of which no prosecution is envisaged or no prosecution is pending, shifting of registered office shall be allowed.]"

39. The sub-rules relevant to the context are dealt with hereafter. Sub-rule 7 provides that, when no objection is received in response to the advertisement or otherwise, the application may be put up for orders without hearing and the order either approving or rejecting the application shall be passed within 15 days of receipt of the application.

40. Sub-rule 8 deals with the circumstance when objections are received. It provides that the central government shall hold a hearing as required and direct the company to file an affidavit to record the consensus reached at the hearing upon executing which, the central government shall pass order approving the shifting within 60 days of filing of the application.

41. Sub-clause (ii) of sub-rule 8 provides that when no consensus is reached at the meeting, the company shall file an affidavit specifying the manner in which the objection is to be resolved within a definite time frame, duly reserving the original jurisdiction to the objector to pursue his legal remedies even after the registered office was shifted, upon execution

of which, the central government shall pass an order either confirming or rejecting the alteration within 60 days of the filing of the application.

42. Sub-rule 9 provides that the order passed by the central government confirming the alteration may be on such terms and conditions as it thinks fit. However, two provisos have been incorporated in sub-rule 9 which operate as restrictions. The second restriction/proviso was incorporated in 2023. Under the first proviso, the shifting of the registered office shall not be allowed if any inquiry, inspection or investigation had been initiated against the company or any prosecution is pending against the company under the 2013 Act. The second proviso states that in cases where the management of the company had been taken over by the new management upon a resolution plan being approved under Section 31 of the IBC and no appeal against a resolution plan is pending in any court or tribunal and no inquiry, inspection, investigation is pending or had been initiated after the approval of the said resolution plan, the shifting of the registered office may be allowed. Thus, in a case where a successful resolution applicant takes over the management of the corporate debtor, the Regional Director may exercise his discretion and allow shifting, provided no appeal is pending from the order of approval of the resolution plan or no inquiry, inspection, investigation is pending or has been initiated after approval of the plan. In this case 'and' has to be read as 'or'. 'And' is disjunction. Two different situations have been contemplated under the said proviso and even if one of the two exists, the application of the successful resolution applicant for shifting of the registered office of the corporate debtor should not be

permitted. The proviso should be strictly construed. The proviso cannot be diluted by giving it an interpretation which is not in alignment with the legislative intent.

43. The application has to be approved by the central government in the form and manner as may be prescribed. In this context, prescribed means prescribed by rules. The relevant rules laying down the mode and manner in which the Regional Director should proceed has been provided in the 2014 Rules. The Rules were framed in exercise of powers under different provisions of the 2013 Act including sub-sections 3, 4 and 5 of Section 13 of the 2013 Act. The source of the power of the Ministry of Corporate Affairs to promulgate the 2014 Rules, is the 2013 Act. Rule 30 of the 2014 Rules emanates from sub-sections 3, 4 of Section 13, which deal with shifting of a registered office of a company from one state to another. The provisos to Rule 30(9) are not in derogation to the substantive provision of law under section 13(4) of the 2013 Act.

44. The second proviso to Rule 30(9) was inserted later, to incorporate a provision as to the treatment of an application for shifting of the registered office from one state to another, when the management of a company had been taken over by the new management, upon a resolution plan being approved under Section 31 of the IBC. The Rules provide that such shifting may be allowed only when no appeal against a resolution plan is pending before any court or tribunal or no inquiry, inspection and investigation is pending or initiated after the approval of the said resolution plan. If either of the situations exist, the shifting of a registered office may not be allowed. Under the second proviso, the second ‘and’ has

to be read as ‘or’ because the embargo exists in two classes of situations. One situation is, when no appeal against the resolution plan is pending in any court or tribunal and the second situation is, when no inquiry, inspection, investigation is pending or has been initiated after the said approval of the resolution plan. The rationale in incorporating the said proviso is fairly clear. If an appeal against the Resolution plan is pending, the very foundation of the new management's control is under challenge. Permitting interstate shifting during that period will complicate jurisdiction, regulatory supervision, creditors’ remedies and or even reversal of the plan. Therefore, in a literal interpretation of the proviso, pendency of an appeal before the NCLAT or the Supreme Court will bar shifting of the registered office under the second proviso. This appears to be an independent threshold and should be treated strictly. The arguments of the respondents that the appeal before the NCLAT is frivolous, no stay was granted to the resolution plan, and refusal to shift the registered office will defeat the entire purpose of the CIRP implementation, run contrary to the plain and simple interpretation of the proviso and the legislative intent behind it. Reading ‘and’ as conjunctively, to mean that both the situations should cumulatively exist, i.e., an appeal should be pending and an inquiry or investigation should also be pending against the corporate debtor, in order to prevent shifting of the registered office, would make the proviso extremely harsh and inoperative. Thus, a purposive reading should be given to the actual intention of the legislature as disclosed from the context of the amendment in 2023. In either of the two situations, shifting shall not be allowed. The expression ‘shifting may

be allowed' is qualified by the above two conditions. When either of the two situations does not exist, the shifting may be allowed.

45. The first proviso is a complete bar to shifting of the registered office in case inquiry, inspection and investigation or any prosecution is pending against a company which wants to shift its registered office from one place to another. The second proviso was incorporated to deal with an application for shifting of a registered office, by the successful resolution applicant, after approval of the resolution plan. The two provisos deal with two different situations and class of applicants. The second proviso is independent of the first, and has not been carved out of the first. Thus, the decision in ***Satnam Singh and Others (supra)*** does not apply.

46. Here, protection has been given to the creditors, workers or any person who is aggrieved by the resolution plan and has preferred an appeal under the provisions of Section 31 of the IBC. The learned Single Judge failed to take into consideration the effect of the second proviso. The second proviso to Rule 30(9) is not in conflict with the IBC, and this fact was lost sight of. Rule 30(8)(2), already provides for protection of debenture holders, creditors and other stakeholders and also requires a consensus. The procedure to be followed, if no consensus is reached has been provided for. In spite of that, the second proviso was added to specifically put a fetter on the exercise of statutory function by the Regional Director. It is in the nature of an additional restriction incorporated in 2023, as a restrictive condition to the general rule governing the procedure to be followed by the Regional Director, while disposing of an application under Section 13(4) of the 2013 Act. This

delegated piece of legislation is binding. It was deemed to be necessary by the Ministry of Corporate Affairs, to put such restriction. The Regional Director took note of the second proviso, but circumvented such restriction by importing Section 238, IBC, which was erroneous. The question before the Regional Director was not implementation of the resolution plan. He was exercising a statutory function under the 2013 Act. Thus, the Regional Director was not authorized by law to adjudicate on the overriding effect of the provisions of IBC to facilitate shifting. The decision in ***Ghanshyam Mishra & Sons (supra)*** or ***Innovative Industries Ltd. Vs. ICICI Bank*** reported in ***(2018) 1 SCC 407 and Duncan Industries Ltd. Vs. A J Agrochem*** reported in ***(2019) 9 SCC 725*** do not apply. The Regional Director was not deciding whether Resolution Plan should be given privacy or not.

47. Rule 30(9) provides that the decision of the Regional Director confirming the alteration of the registered office under Rule 30 (8), may be subject to terms and conditions. Thus in all other cases, except those covered under the two provisos under Rule 30(9), the shifting can be confirmed upon certain terms and conditions. The two provisos create restrictions on Rule 30(9) i.e. if these two situations exist, in that event, shifting cannot be allowed even on certain terms and conditions. It carves out an exception to the main provision i.e., Rule 30(9) and limits the power/jurisdiction of the Regional Director to permit shifting of the registered office of the corporate debtor even by imposing terms and conditions. The Regional Director was not deciding whether the resolution plan should be given primacy or not.

48. With regard to the *locus standi* of the appellants, it is an admitted fact that the proceedings before the NCLT and NCLAT are proceedings in rem.

49. The specific case of the appellants was that the appellant No. 1 was a stakeholder in the CIRP of the respondent No. 5. The appellants claimed to have supplied transportation services to ensure that the respondent no. 5 was a going concern during the CIRP. Several invoices were raised. The appellants alleged that the respondent no. 5 failed to make payment and the interest accrued on account of delayed payment of invoices. The appellants' case was that under sections 15, 16 and 17 of the MSMED Act, the respondent no. 5 was duty bound to make payment towards the invoices raised by the appellants within 45 days. However, the respondent no. 5 failed to do so and applications were filed before the NCLT. The principal amount without interest, was directed to be paid. Under such circumstances, an appeal was filed before the NCLAT at New Delhi. Another appeal was filed before the NCLAT challenging the order of approval of the resolution plan of the respondent no. 4 on various grounds and also on the ground that no sum had been allocated to the appellants against their pre-CIRP dues, amongst others.

50. The learned Single Judge recorded that 24 appeals are pending. The records reveal that the appellants had preferred an appeal from the resolution plan before the NCLAT. The Office of the Regional Director, Ministry of Corporate Affairs issued notice on January 14, 2026 to 11 notices with regard to the hearing of the application under Section 13(4) of the 2013 Act. The contents of the notices are quoted below:-

> "Sub:- Application under Section 13(4) OF Companies Act, 2013 – In the matter of M/s Hindusthan National Glass & Industries Limited for shifting of Registered Office of the company from the state of West Bengal to the State of Maharashtra.
> Madam/Sir,
> I am directed to refer to the subject application and to inform you that Regional Director, Eastern Regional, Ministry of Corporate Affairs, will conduct hearing of the subject application on 22nd January, 2026 at 11.30 A.M. at the office of the Regional Director (ER) Kolkata, at "Corporate Bhawan", 6th Floor, Plot No.- III-F/16, AA-IIIF, Rajarhat, New Town, Akandakesari, Kolkata – 700135.
> You are, therefore requested to convey your input/comments on the matter and to remains present for hearing personally and/or through your authorised representative along with Memorandum of Appearance/Power of Attorney/Vakalatnama and supporting Board resolution with document to enter appearance and make submissions, if any, in the matter with the documents."

51. Upon receipt of such notice, the appellants made their submissions by raising their objections to the shifting. The appellants had been asked to participate in the proceedings by the Regional Director. They are the appellants before the NCLAT, who challenged the resolution plan. The question of them not having locus to approach the writ court, in spite of being aggrieved and dissatisfied with the decision of the Regional Director, does not arise. They are the aggrieved party in a proceeding under Section 13(4) of the 2013 Act and they have challenged the said order before the writ court, in the absence of any alternative efficacious remedy.

52. The grounds of appeal of the appellants before the NCLAT challenging the order of approval of the resolution plan are set out from the application for interim order filed before the NCLAT :-

> "Grounds for challenge
>
> 5. The resolution plan has been approved despite INSCO having specifically admitted before the Adjudicating Authority that feasibility of the plan has been 'jeopardized' on account of the onerous conditions imposed with respect to the insurance claim of the Sinnar plant. Despite all such documents having been furnished before the

Adjudicating Authority the plan has been approved without even adverting to the said documents.

6. The events that have occurred after approval of the resolution plan by the CoC on 13.06.2025 make it evident that the resolution plan is conditional and incapable of implementation. As is clear from averments in letter dated 30.06.2025, no provision has been made in the plan for upkeep and maintenance of the Sinnar plant de hors the insurance claim.

7. The plan has been approved by the Adjudicating Authority without satisfying itself as to the compliance of S. 30(2) of the Code and despite the plan being non-compliant with mandatory provisions of law. The plan has been approved despite being in violation of S. 30(2)(b), proviso to S. 31(4) of the Code, mandatory provisions of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP Regulations') etc.

8. The impugned order is a result of complete non application of mind. None of the objections raised by the stakeholders including the Appellant have been considered by the Adjudicating Authority. The applications raising objections including IVN. P. (IBC) No. 22/KB/2025, filed by the Appellant have been dismissed without any analysis of the objections raised on the mere ground of locus of the applicants therein despite all such applicants including the Appellant being 'persons aggrieved' under the Code.

9. IVN. P. (IBC) No. 22/KB/2025, filed by the Appellant has been erroneously dismissed by stating that, 'since the petitioner has been allotted payment in accordance with its admitted claim in the resolution plan, it has no locus standi to raise objections at this stage', without any analysis as to whether the amounts being paid to the Appellant under the resolution plan are in accordance with S. 30(2)(b) of the Code. In any case it is reiterated that the Appellant is a 'person aggrieved' under the Code and hence its locus could not have been questioned by the Adjudicating Authority.

10.Despite IVN. P. (IBC) No. 25/KB/2025 having been filed specifically seeking an oral hearing with respect to documents suppressed by the Respondents i.e., letter dated 30.06.2025 issued by INSCO to the CoC and minutes of the 42nd CoC meeting held on 14.07.2025, the said application has been dismissed without any consideration or analysis of the said documents. The Adjudicating Authority has failed, to even provide any reasons of dismissal of the said application.

11. The plan has been approved as a consequence of material irregularity in exercise of powers by the Respondent No. 1, throughout the CIRP period. Throughout the CIRP period, various illegal actions have been committed by the Respondent No. 1. In fact, the Respondent No. 1 has placed INSCO's resolution plan before the CoC, in complete contravention of S. 30(2)(e) of the Code. This is despite specific findings having been delivered by the Hon'ble Supreme Court in its Judgment dated 29.01.2025, for not complying with provisions of S. 30(2) (e).

12. The plan has been approved despite the fact that a substantial portion of the resolution plan amount is being paid from the cash

accruals of the Corporate Debtor, as is impermissible as per the scheme of the Code and specific clauses of the RFRP. The RFRP specifically restrains the SRA from using the cash accruals of the Corporate Debtor for making payments to the creditors. However, no objections have been raised by the RP or the CoC in this regard. In fact, despite the same having been pointed out in the 40th CoC, meeting, the plan has been found to be feasible and viable by the CoC.

13. The plan has been found to be feasible and viable only pursuant to false submissions made before the CoC as is evident from the minutes of the 40th CoC meeting.

14. The plan is inconsistent and vague in its approach towards payment of CIRP costs. While the financial plan in the resolution plan states that CIRP costs are to be paid out of the upfront cash, clause 3.2.2 of the plan states that CIRP costs are to be paid out of the internal cash accruals of the Corporate Debtor and in the event the said cash accruals are insufficient, CIRP costs will be paid out of the upfront cash. However, as per the RFRP, the internal cash accruals of the Corporate Debtor ought to be distributed amongst the financial creditors.

15. The plan envisages various amounts to be paid out of the internal cash accruals of the Corporate Debtor including the amount towards deferred payment, implementation expenses etc. Hence, the plan is not specific with regard to the payments being made, thereby raising doubts with respect to its effective implementation.

16. There is a substantial difference between the definition of the term 'CIRP costs' as defined under the plan and as defined under the Code. In view thereof, it is anticipated that it is anticipated that various amounts due and payable to the Appellant, which are due to be paid out of the CIRP costs, may be excluded.

17. The plan has been approved in complete contravention to the provisions of S. 31(4) of the Code and the Competition Act, in as much as the plan did not have a valid CCI approval, as on the date of its approval by the CoC, as is a mandatory requirement. INSCO has also admitted in the plan that it did not have a valid CCI approval and in further erroneously stated that the requirement to obtain a 'prior' CCI approval, is merely directory. However, the 40th CoC meeting erroneously records that INSCO had a valid CCI approval.

18. The resolution plan is in complete violation of S. 30(2)(b) in as much as the operational creditors, such as the Appellant, are getting paid meagre amounts under the plan. The Impugned Orders are devoid of any analysis as to whether the amounts being paid to the operational creditors are in compliance with S. 30(2)(b) of the Code.

19. The plan is in complete contravention of the CIRP Regulations in as much as, it does not provide for the mandatory particulars are specified in Regs. 37 and 38. The plan does not specify a term, a cause of default or any necessary measures for insolvency resolution and maximization of assets of the Corporate Debtor."

53. The learned Single Judge only considered that an appeal from the order denying interest to the appellants by the NCLT was pending and as such, pendency of the appeal should not be treated as a bar. The pendency of the appeal from the resolution plan was not considered. The records were overlooked by the learned Single Judge. The NCLAT had also observed that appeal was pending.

54. The Single Judge considered the issue of prejudice, without considering the prohibition in the second proviso to Rule 30(9) of the 2014 Act. Illegal exercise of jurisdiction by the Regional Director was not considered by the learned court. The order of the Regional Director was in excess of jurisdiction and violative of the second proviso to sub-rule 9 of Rule 30. Moreover, both the Regional Director and the learned Single Judge erred in holding that the NCLAT, by the order dated December 23, 2025, had directed the Regional Director to dispose of the application. The NCLAT did not direct the Regional Director to exercise jurisdiction under Section 13 of the 2013 Act, in any particular manner. The NCLAT was approached by the respondent no. 4 to clarify whether the pendency of the appeals would be a bar for the Regional Director to consider the application for shifting of the registered office of the company. In our view, the application itself was misconceived. However, NCLAT opined that it was up to the Regional Director, who was a statutory authority under the 2013 Act to take a decision in accordance with law, with a further observation that the appeal was pending. This order of NCLAT was neither a clarificatory order, nor could the NCLAT confer jurisdiction upon the Regional Director to pass the order, inter alia, approving the change in

place of the registered office, contrary to the Rule. The order of NCLAT is quoted below:-

> "4. The above application filed by the Appellant has been opposed by learned Counsel appearing for the Respondents as well as learned Counsel appearing for the Appellant. It is submitted by learned Counsel appearing for the Respondents that by virtue of Companies (Incorporation) Rule, 2014, Rule 30, sub-rule (9), this Appeal being pending against the approval of Resolution Plan, registered Office, cannot be permitted to be shifted. On the other hand, learned Counsel for the applicant submits that Rule 30, sub-rule (9) of the Companies (incorporation) Rule, 2014 is not attracted in the facts of the present case.
> We, may quote Rule 30, sub-rule (9) of the Companies (Incorporation) Rule, 2014 for ready reference, which is to the following effect: "30(9) The order passed by the Central Government confirming the alteration may be on such terms and conditions, if any, as it thinks fit: Provided that the shifting of registered office shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act. Provided further that where the management of the company has been taken over by new management under a resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016) and no appeal against the resolution plan is pending in any Court or Tribunal and no inquiry, inspection, investigation is pending or imitated after the approval of the said resolution plan, the shifting of the registered office may be allowed.
> 5. The application filed by the Applicant for shifting of the Registered Office is admittedly pending for consideration before the Regional Director. In the present application, we need not enter into rival contentions raised by the parties regarding Rule 30, sub-rule (9) as noted above. We only observe and clarify that the pending application for shifting of Registered Office of the CD, can be considered by the Regional Director in accordance with law. We make no observations on merits of contentions raised by both the parties, and it is for the Regional Director, who is a Statutory Authority to examine the application to consider the submissions of the parties and take appropriate decision in accordance with law. We further clarify that there is no order passed in this Appeal affecting the Statutory Authority's exercise of its jurisdiction in deciding the application filed by the Applicant for shifting the Office of the CD. The fact remains that the present Appeal is pending."

55. The order was not adverse to the interest of the appellants and the same was not required to be challenged by them. The NCLAT recorded

that the pending application should be considered by the Regional Director in accordance with law and it was for the statutory authority to hear the submissions of the parties and take an appropriate decision. This order, under no circumstances, can be treated as a direction to allow the application for shifting. The NCLAT did not enter into the rival contentions of the parties.

56. The Regional Director had initially kept the application under Section 13(4) of the 2013 Act in abeyance, on account of pendency of the appeal. The respondent No. 4 approached the NCLAT with the following prayers:-

> "a) Pass an order clarifying that the pendency of Appeals challenging the Impugned Order dated 14.08.2025 approving the resolution plan of INSCO shall not come in the way of Application (SRN No. AB8591403 dated October 28, 2025) filed by HNGIL (erstwhile Corporate Debtor) for changing its Registered Office from Kolkata, West Bengal to Mumbai, Maharashtra;
>
> b) Pass any such other or further order(s) as this Hon'ble Appellate Tribunal may deem fit and proper in the interests of justice."

57. The NCLAT did not allow the prayers. It opined that the Regional Director should decide the issue in accordance with law. This order was misconstrued both by the Regional Director and the learned Single Judge, by treating the decision of the NCLAT as an interpretation of the second proviso of Rule 30(9), and conferring jurisdiction upon the Regional Director to proceed with the application in spite of pendency of the appeals. The Regional Director had the discretion to allow shifting of the registered office, but exercise of such discretion is circumscribed by Rule 30 of the said Rules and cannot be de hors the Rules.

58. The Regional Director had further exceeded his jurisdiction in holding as follows :-

> "11. In view of the above, this is a classic scenario where IBC, 2016 v Companies Act, 2013 are clashing as they are in conflict with each other. When the resolution plan is approved, the goal of the resolution plan is to give the company a fresh start i.e., clean slate theory which has been recognized by Hon'ble Supreme Court in various judgments from time to time.
> 12. The hurdle of Rule 30(9) of the Companies (Incorporation) Rules, 2014 often act as speed bumps as it essentially freezes the registered office, if an appeal is pending, which is intended to prevent the company from jurisdiction shopping or evading creditors while the case is sub-judice. The resolution plan is a binding document and if the plan or commercial necessity requires the company to streamline operation, the IBC aims to facilitate the transition and therefore the provision of Section 238 of IBC, 2016 comes to rescue.
> 13. There have been many cases wherein Section 238 of IBC, 2016 has superseded other previous laws and subsequent laws as well. The Hon'ble Supreme Court from time to time has recognized the clean slate theory emphasizing that a successful Resolution Applicant should start on a fresh slate. Accordingly, the shifting of registered office is part of the new life of the company and invoking a technical rule to frustrate the mandate of IBC, 2016 may go against public interest as the company is a going concern as per the submissions of the applicant."

59. While being conscious of the fact that the Companies (Incorporation) Rules, 2014 essentially would freeze the registered office when an appeal is pending, and the proviso was intended to prevent the company from jurisdiction shopping and / or evading creditors while the matter was *sub judice,* the Regional Director went on to hold that in spite of the legal bar, the resolution plan being a binding document, should be enforced and if the plan or commercial necessity required the company to streamline the operation, shifting should be allowed. He drew his authority to allow such shifting, in spite of being aware of the legal embargo, by placing reliance on Section 238 of the IBC, which could not

be pressed into service in the said situation. Shifting of the registered office was not under the provisions of the IBC and the jurisdiction of the Regional Director is under the 2013 Act. The exercise of jurisdiction should be as per the procedure laid down under Rule 30 of the 2014 Rules. Thus, seeking refuge under Section 238 of the IBC, to hold that the implementation of the resolution plan would be of primary consideration and would override any prohibition in any other statute, was incorrect. Clause 6.1.5 of the resolution plan has been quoted in CAN 4 of 2026, which provides as follows:-

> "Clause 6.1.5.(xx) of Resolution Plan- From the date of NCLT approval till the management is not taken over by the reconstituted board, the CD and Monitoring Committee shall ensure that the registered office is not shifted to any other state."

60. In fact, it appears from the averments that the resolution plan did not provide for shifting. It had provided that the registered office shall not be shifted to any other state till the management was not taken over by the reconstituted Board. This is also recorded in the order of the Regional Director, which is quoted below :-

> "As the company is a going concern and not shifting of the registered office till the management is taken over by the Re-constituted Board was the part of the plan and now the company has been taken over by the Re-constituted Board and as such taking in consideration of all the submission and in the interest of justice, the shifting of registered office from the state of West Bengal to the state of Maharashtra is allowed which shall be subject to outcome of all the Company Appeals pending before the Honourable NCLAT in respect of the resolution plan in the present matter. Further the company shall be required to give the following undertaking in the office of this Directorate."

61. Thus, the submissions of the respondents and the reasoning of the Regional Director on the supremacy of the resolution plan in the instant situation and a pressing need for implementation thereof, are misplaced.

62. With regard to the plea of alternative remedy, Section 60(5) of the IBC is quoted below:-

> 60 (5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—
>
> (a) any application or proceeding by or against the corporate debtor or corporate person;
>
> (b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and
>
> (c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

63. The NCLT does not have the jurisdiction to adjudicate on the legality of the order of the Regional Director passed under the provision of Section 13(4) of the said Act. The decisions of ***Tata Power Western Odisha (supra)*** and ***Paschimanchal Vidyut Vitran Nigam Ltd. (supra)*** and ***Embassy Property Developments Private Limited (supra)*** do not have any application.

64. As the decision of the Regional Director was beyond jurisdiction, being in violation of the rules, the prejudice test will not be applicable. Minor procedural irregularity or breach of principles of natural justice may not be set aside on the ground that despite such irregularities, the ultimate result would have been the same. In such cases, test of real prejudice can be applied. In this case, there is a legal bar and as such

both the Regional Director and the learned Single Judge erred in holding that the shifting would not be prejudicial to the intent of the appellants.

65. With regard to the contentions that the relief under Article 226 of the Constitution of India is a discretionary relief and the writ court should not interfere with the decision of a statutory authority unless the decision was unjust, unfair or unreasonable, we are of the opinion that the writ court should exercise jurisdiction whenever it finds that a statutory authority had contravened the law or had acted in excess of jurisdiction vested upon it by law. Moreover, had the Regional Director been of the opinion that shifting may be allowed and the second proviso was not a bar, in that event, shifting would not have been made subject to the result of the appeal. The second proviso is clear and unambiguous. It should be read as it is. When an appeal is pending from the resolution plan or an inquiry, investigation or inspection is pending after the approval of the resolution plan has been accepted, the shifting may not be allowed. The learned court erred in holding that the Regional Director acted pursuant to the order of the NCLAT and proceeded to deal with the application for shifting of the registered office of the company and passed the order dated February 4, 2026. NCLAT's observation was to the limited extent that, the Regional Director, being a statutory authority, should discharge his function, by dealing with the application in accordance with law.

66. The learned Judge also erred in holding that, unless there was a specific stay of the resolution plan in the appeal, the second proviso to Rule 30(9) would not be an embargo in allowing the application for shifting of the registered office. By so observing, the learned Judge has

rewritten the Rules. Thus, the appeal is allowed. The order of the learned Single Judge and the order of the Regional Director are set aside. The application for shifting of the registered office filed by the resolution applicant shall be kept in abeyance till the embargo under the second proviso acts as a bar.

67. The connected applications are disposed of.

68. Urgent Photostat certified copies of this judgment, if applied, for be supplied to the parties upon fulfilment of requisite formalities.

(**Shampa Sarkar, J.**)

I agree.

(**Ajay Kumar Gupta, J.**)

Later

The learned Advocate for the respondent no.4 prays for stay of the judgement and order. Such prayer is considered and rejected.

(**Shampa Sarkar, J.**)

I agree.

(**Ajay Kumar Gupta, J.**)