NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) No. 143 – 145 of 2026

[Arising out of Order dated 13.04.2026 passed by the National Company Law Tribunal, Mumbai Bench – I, in CA No. 99/2025 in CA No. 226/2025 & CA No. 368 of 2025 in C.P. No.3638/MB/2018]

IN THE MATTER OF:

Infrastructure Leasing & Financial Services Ltd. **...Appellant**

Versus

Union of India & Ors. **...Respondents**

Present:

For Appellant	:	**Mr. Ramji Srinivasan, Sr. Advocate with Mr. Raunak Dhillon, Mr. Animesh Bhisht, Ms. Isha Malik, Mr. Niket Mehta, Ms. Angela Dua, Ms. Sheffali Munde, Ms. Anusha Sarkar and Mr. Arjun, Advocates.**
For Respondents	:	**Mr. Arun Kathpalia & Mr. Gaurav Joshi, Sr. Advocates with Ms. Pooja Mahajan, Mr. Saurabh Bachhawat, Mr. Savar Mahajan, Ms. Diksha Gupta, Mr. Aditya Dhupar and Mr. Srivastava Reddy, Advocates for R-8.**
		Mr. Anuj Lakhotiya, Advocate for R-14.

J U D G M E N T

ASHOK BHUSHAN, J.

These appeals have been filed by the Infrastructure Leasing & Financial Services Limited (**"IL&FS"**) challenging the order dated 13.04.2026 passed by the National Company Law Tribunal (**"NCLT"**), Mumbai Bench – I, in CA No.99/2025, CA No.226/2025 & CA No.368/2025 in C.P. No.3638(MB)/2018. By the impugned order, NCLT has dismissed the CA No.226/2025 filed by the appellant and allowed the CA No.368/2025 as well as CA No.99/2025 filed by the respondent. Aggrieved by the order dated

13.04.2026 passed in the above three applications, these three appeals have been filed.

2. Brief background facts, giving rise to these appeals are:

i. IL&FS has been registered with reserve Bank of India (**"RBI"**) as core investment company and has been engaged in business of giving loans and advances to its group companies and holding investments in its group companies. IL&FS Financial Services Ltd. (**"IFIN"**) is a wholly owned subsidiary of the appellant, which is registered as a Non-Banking Finance Company (**"NBFC"**) with the RBI.

ii. RBI after inspection held on 01.11.2017 gave a direction to the IFIN directing the company to run down its exposure to group companies with no fresh lending to them.

iii. From March 2017 to March 2018, IFIN, SREI Infrastructure Finance Limited (**"SIFL"**) and IL&FS Group Entities and SREI Group Entities undertook transactions wherein IFIN lend money to IL&FS Group Entities using SIFL/SREI Group Entities as third parties. 6 different transactions were undertaken during the above period by which IFIN lend money to group companies of SIFL and the SIFL lend money to IL&FS Transportation Networks Limited (**"ITNL"**) and its subsidiaries. Total amount of lending under the above transaction was ₹1080 crore, which amount by above different transactions were lend by IFIN to group companies of SFIL and to the same extent, SFIL lend money to the group companies of IL&FS.

iv. The Union of India filed a petition under Sections 241 & 242 of the Companies Act, 2013 before the NCLT, Mumbai Bench being C.P. No.3638(MB)/2018 alleging oppression and mismanagement by the IL&FS and its group companies. Union of India sought various directions in the petition alleging that affairs of the company are being conducted in manner prejudicial to public interest.

v. NCLT Mumbai passed an order dated 01.10.2018, directing for the reconstitution of the board of IL&FS by appointing a new Board of Directors to take charge of IL&FS and its group companies. In the appeal filed against the order dated 01.10.2018, this Tribunal passed an order dated 15.10.2018 staying all coercive creditor action against the IL&FS group entities. In Company Appeal (AT) No. 346/2018 filed by Union of India various directions were issued by this Tribunal from time to time. By order dated 12.03.2020, this Tribunal approved a mechanism for resolution of the IL&FS Company, IFIN was treated as a "Red" entity.

vi. RBI carried further inspection in March 2019, under Section 45N of the Reserve Bank of India, 1934 (for short the **"RBI Act"**) and found serious deficiencies in credit appraisal. Certain loan accounts were considered fraudulent. The RBI Inspection Report also noticed that in order to circumvent directions issued by RBI, IL&FS made arrangement with SIFL and took exposure of SREI Group Entities based on letter of awareness issued by SIFL. Similarly, SIFL lend funds to various subsidiaries of IL&FS, which ultimately reached ITNL. RBI opined that

both the groups were acting in concert with each other in order to reduce the group borrower exposure and bypass RBI direction.

vii. Serious Fraud Investigation Office (**“SFIO”**) also submitted a report on 28.05.2019, where it found that instead of directly lending to group companies, in a deceptive manner, IFIN lend loans to external parties which were transferred to IFIN group companies namely; ITNL in order to circumvent the RBI directions.

viii. Grant Thornton Bharat LLP (**“GT”**) also prepared a Report recording that loans were disbursed by IFIN to various third-party borrowers in the SREI groups post the RBI Report dated 01.11.2017, to circumvent RBI’s advice on reducing exposure to group companies. The money being lend by way of subject transaction and being lend to ITNL.

ix. SEBI also passed an order on 15.12.2022 finding that IFIN had lend monies to ITNL using external parties that is SREI Group Entities as intermediary. Various proceedings were initiated by IFIN against third parties under Section 7, namely; Attivo Economic Zone (Mumbai) Private Limited (**“Attivo”**), Sahaj E-Village Ltd. (“**Sahaj”**), Giridhan Projects Private Limited (**“Giridhan”**), Bharat Road Network Limited (**“BRNL”**) and Vistar Financers Private Limited (**“Vistar”**). Some of the petitions under Section 7 were admitted and some of the petitions under Section 7 were rejected.

x. Corporate Insolvency Resolution Process (**“CIRP”**) against SREI Equipment Finance Ltd. (**“SEFL”**)/SIFL also commenced in which proceeding the administrator was appointed by the RBI. Administrator

filed an application under Section 66 of the Insolvency & Bankruptcy Code, 2016 (for short the **“IBC”** or the **“Code”**) before the NCLT, Kolkata Bench in the same CIRP proceedings, specifically including the loan transaction of ₹200 crore between SIFL and FSEL as fraudulent, from the purposes of routing the funds a fund from SIFL to SEFL as device. The said application is said to be pending consideration.

xi. On 14.03.2023, new Board of the IL&FS took a decision to unwind circuitous transaction taking into consideration various aspects including the dismissal of the proceeding initiated by IFIN under Section 7 against third party. Taking into consideration the findings of various investigation agencies defined transaction as illegal mechanism devised to bypass RBI Regulation. Board decided to file an application before the NCLAT for collapse of the transactions.

xii. I.A. No.3169 of 2023 in Comp. App. (AT) No. 346/2018 was filed by the IL&FS on 18.07.2023, seeking collapsing/unwinding of the circuitous transaction entered into between IFIN, SIFL & IL&FS group and SREI Group Entities. Apart from seeking collapsing of six transactions which are subject matter of these appeals, there were prayers for collapsing various other transactions entered with third parties.

xiii. On 16.01.2025, this Tribunal passed and order on the collapsing application. Transactions which were unwound through mutual consent between the parties were allowed in terms of the applications. With respect to subject transaction wherein consent was absent, this Tribunal observed that direction as prayed in the application with

regard to R-8 to R-12 (in the collapsing application), a deeper and thorough consideration is required with regard to transaction with third parties, for which the collapsing application is not the appropriate proceeding. It was observed that said issue can be gone into and examined by NCLT in the pending proceeding. After the order dated 16.01.2025 passed by this Tribunal in the collapsing application on 09.07.2025, CA No.226/2025 was filed by the appellant before the NCLT Mumbai, seeking a declaration that 6 transactions between IFIN and SIFL/SREI Group Entities were sham, circuitous and fraudulent. CA No.99/2025 was filed by SIFL seeking disbursement of the residual FSEL settlement amount to SIFL. CA No.368/2025 was filed by the SIFL seeking permission to use the amount deposited by Cube Highways towards distribution to Chennai Nashri Tunnelways (**"CNTL"**) Creditors. CA No.226/2025 was opposed by SIFL by filing a reply/additional reply. Rejoinder was also filed by the appellant in CA No.226/2025. NCLT heard the parties and by impugned order has dismissed CA No.226/2025 and allowed CA No.99/2025 and CA No. 368/2025. Aggrieved by the impugned order 13.04.2026, these appeals have been filed.

xiv. NCLT Mumbai by the impugned order interpreting the order dated 16.01.2025 held that direction of the NCLT was clear that Mutual Agreement was mandatory for collapsing of any transaction and no consent having been given by SIFL, transaction cannot be collapsed. NCLT further held that reports by the RBI were only advisory and

breach of the advisory/directions cannot invalidate the transaction or void the financing arrangement between SIFL and IL&FS group entities.

xv. NCLT further held that IFIN having elected to take independent proceedings against third parties, it cannot be allowed to change its strategy and file a collapsing application. NCLT held that IL&FS cannot be allowed to approbate and reprobate. NCLT also interpreted the provisions of Sections 241 & 242 of the Companies Act 2013 and relying on Section 242(2)(f) proviso held that transaction cannot be collapsed in the absence of express consent and there being no consent by SIFL, application 226/2025 cannot be allowed. NCLT further after rejecting CA No. 226/2025, proceeded to allow the CA No.99/2025 and CA No.368/2025.

3. We have heard learned Sr. counsel Mr. Ramji Srinivasan appearing for the appellant and learned Sr. counsel Mr. Arun Kathpalia appearing for R-8, the contesting respondent and R-14, Grant Thornton Bharat LLP was also represented through learned counsel.

4. Learned counsel appearing for the appellant challenging the order submits that impugned order has been passed on incorrect interpretation of the order dated 16.01.2025 passed by this Tribunal. It is submitted that NCLT has read the order 16.01.2025 as mandatory pre-condition for unwinding/collapsing the transaction, the consent, whereas no such direction was issued by this Tribunal in order dated 16.01.2025. This Tribunal in the order dated 16.01.2025 itself has collapsed loan transaction, where consent was given and for loan transaction, where there was no

consent, this Tribunal had observed that the said transaction required a deeper and thorough consideration. NCLT having not correctly construed the order dated 16.01.2025, has fell in error in holding that consent is mandatory for unwinding/collapsing the transaction. NCLT has failed to undertake any adjudication on the subject transactions. NCLT has also not taken into consideration the RBI 2019 Report, SFIO Report, GT Report and SEBI order which had clearly observed that IFIN lent monies to its own group companies in a deceptive and fraudulent manner via external party/SFIO group entities to bypass regulatory oversites. It is submitted that the opinion of Regulatory Authorities/Investigating Authorities clearly prove that transaction in question were fraudulent and void transactions conducted in breach of statutory directions and the transactions being void were required to be unwound/collapse. NCLT has also erred in interpreting the scope and ambit of Sections 241 & 242 of the Companies Act 2013. NCLT erred in observing that as per Section 242(2)(f) proviso, only those transactions can be terminated, where consent is obtained from the third party. It is submitted that Section 242(2)(f) is not attracted in the facts of the present case where transactions were alleged to be fraudulent and void. Section 242(2)(f) which required consent was with respect to valid transactions and the said proviso is not attracted with respect to void and fraudulent transactions. It is submitted that Section 242(2) is only illustrative and not exhaustive, the powers under Section 242(1) are wide and general powers which are not controlled by illustration given in Section 242. It is submitted that resolution of IL&FS group is being carried under Section 241 & 242 of the Companies Act, 2013, as per the resolution framework approved by this Tribunal. In order

dated 12.03.2020, objection with regard by the various respondent relying on Section 242(f) was noticed and ultimately were not accepted. The order of the NCLT that directions of the RBI is only advisory is not correct. Directions issued by the RBI are statutory and they are binding on all NBFC. NCLT has also selectively read the Minutes of the Meeting dated 14.03.2023 of the new Board. New Board having considered all aspect of the matter decided to collapse/unwind transaction. Reliance on principle of estoppel are not applicable. When the transactions were fraudulent and void, any submission on basis of the principle of estoppel cannot be accepted. Further reasons given by the NCLT that applicant cannot approbate and reprobate, cannot be a reason to reject the application. New Board realised the difficulties with respect to Section 7 proceedings initiated by IFIN and then decided to collapse/ unwind the transaction. The appellant has also only carried out the decision of the new Board to collapse/unwind the transaction. The observation of the NCLT that SIFL having been resolved by approval of the plan submitted by NARCIL, in which information receivables from ILFS group entities were noted also cannot be a reason to reject the application which was alleging fraudulent and void transaction. Collapsing and unwinding of the transaction in no manner affect the resolution plan which was of the NARLIL, which was approved by the NCLT. There were several inconsistencies and illegalities in the impugned order, which order deserves to be set aside and the NCLT be directed to examine the application filed by the appellant on merits. It is further submitted that the amount which passed from IFIN to the group entities of SIFL and the amount which was lent by SIFL to group entities of the IL&FS, were with respect to same amount. SIFL is not entitled for any

benefit of the said landing, which was nothing but circuitous transaction and routing the money of IFIN through the group entities of SIFL and the SIFL. SIFL is not entitled to receive any amount from resolution of the group entities of IL&FS and the said amount be kept in the Escrow Account till the applications are decided on merits.

5. Learned counsel appearing for the SIFL opposing the submission of the counsel for the appellant submits that NCLT has correctly followed the directions of this Tribunal in order dated 16.01.2025. The SREI having not given consent for collapsing of the transaction, NCLT rightly refused to allow the application. The observation of the NCLT that order dated 16.01.2025 will not impact existing/pending investigation or application on such issues does not mandate to investigate and collapse transaction executed by IFIN or IL&FS group entities being third parties. NCLT has rightly delineated the scope of the order dated 16.01.2023 by holding that execution of the Mutual Agreement was necessary for collapsing. It is further submitted that NCLT Mumbai did in fact consider the collapsing application in detail and rejected the same by well-reasoned order on several grounds including lack of consent, no allegation of fraud being done RBI direction being advisory, ground of election and clean slate etc. NCLT cannot be directed to exercise powers of investigation collapsing a transaction in oppression and mismanagement petition, which jurisdiction does not possess. It is submitted that consent contemplated under Section 242(2)(f) of the Companies Act, 2013 is mandatory and *dehors* the consent, no agreement with third-party can be terminated. Reliance on Section 242(m) and inherent power of the NCLT are misplaced. General or inherent powers cannot be exercised in derogation of

statutory prescription. The interpretation of the NCLT on Sections 241, 242(2)(f) proviso is in accordance with the judgements of various High Courts. It is further submitted that IFIN having adopted a course of action by filing Section 7 application against SREI entities, it cannot change its strategy. IL&FS concisely elected to plead the transaction as valid, wherein by initiating proceeding under Section 7 against the SREI entities. IL&FS having concisely elected for several years to treat the two legs of the subject transactions as an independent, valid and enforceable and having acted upon that election cannot take a diametrically opposite stand and contend that same transactions were in reality of fraud liable to be collapsed. It is submitted that SREI has undergone CIRP process where NARCL's resolution plan has been approved, in the information memorandum of CIRP of SREI receivables from IL&FS entities was mentioned. Relief as prayed in the application if granted shall undermine the resolution plan of NARCL. Finances given by SREI and IL&FS group entities is not fraudulent or illegal and such pleas cannot be taken at the appellate stage. The argument that under Section 66 application of SREI administrator is pending has no bearing on the prayers made in collapsing application. Pendency of Section 66 proceeding will not operate as a legal bar to the assertion or enforcement of independent rights and claims. The present appeal filed by the appellant deserves to be rejected. SREI reserve its right to challenge finding in paragraph 5.38 of the impugned order.

6. Learned counsel for both the parties placed reliance on various judgements of the Hon'ble Supreme Court different High Courts and this Tribunal, which we shall refer while considering the submission in details.

7. From the submissions made by counsel for the parties, following are the questions which arise for consideration in these appeals:-

I. Whether NCLT in the impugned order has correctly construed the order dated 16.01.2025 of this Tribunal by holding that consent is mandatory for collapsing the transaction?

II. Whether for exercise of jurisdiction under Sections 241 & 242 by the Tribunal to terminate an agreement, obtaining consent of the parties concerned is condition precedent?

III. Whether the appellant in CA No.226/2025 has made sufficient pleadings and brought materials which necessitated the NCLT to examine the allegations of fraudulent and void transactions as alleged in the collapsing application?

IV. Whether application filed by the IL&FS was barred on the principle of election, estoppel, approbation, and reprobation on account of initiating independent proceeding under Section 7 against SIFL entities?

V. Relief, if any, to which appellant may be entitled?

Question No. (I)

8. As noted above collapsing application was initially filed by IL&FS in this Tribunal being I.A. No.3169/2023 & I.A. No.5300/2023. In the application 3169/2023 various transactions including the transactions which are subject matter of present appeal were subject matter of consideration. Out of 16 transactions which were prayed to be collapsed, 6 transactions which was subject matter of these appeals were also prayed to be collapsed. This

Tribunal noticed the steps which was proposed for collapsing and this Tribunal observed that one of the steps which was contemplated for collapsing the agreement when an agreement is entered. No agreement was given by SIFL with respect to transaction regarding R-8 to R-12 to the application, who were group entities of SIFL. It is useful to notice paragraphs 16 to 19 of the order where following directions were issued to:

> *"16. We have already noticed from the pleadings in IA No.3169 of 2023 that one of the steps, which has been contemplated is an Agreement between IL&FS and third party borrowers for collapsing the Agreement and the orders were sought only with respect to collapsing the Agreement, when Agreement is entered. Admittedly, there is no Agreement, which claimed to have been admitted / entered with regard to Respondent Nos.8 to 12 of IA No.3169 of 2023 and objections having been raised with regard to Respondent Nos.8 to 12 by SIFL , claiming that amount advanced to IL&FS entities by third party borrowers, like Respondent Nos.8 to 12 was the amount given by the SIFL and not by third party borrowers. Hence, the said transactions with IL&FS entities, cannot be collapsed. It is also relevant to notice that in the Application, which was filed by IL&FS, in paragraph 19, following was pleaded:*
>
> > *"19. It is clarified that the present application shall in no manner have a bearing on any investigations/proceedings that are being carried out with regard to whether the Subject Transactions were indeed fraudulent in nature or not. The rights/legal recourse/remedies available to IL&FS/IFIN with respect to the aforesaid are reserved, in the event the need so arises."*
>
> *17. Proceedings are already pending with regard to several third party borrowers for example, Attivo, where Section 7 Application is admitted and proceedings are going on. The pleadings in paragraph 19, clearly mentions that IA No.3169 of 2023 in no manner to effect the proceedings or investigations being carried out with regard to subject transactions. We, thus, are of the view that as on date direction for collapsing the Agreement with regard to Respondent Nos.8 to 12 in the Application, cannot be issued.*

However, we make it clear that direction permitting collapsing of the Agreement, shall have no bearing or effect on any pending proceedings, including proceedings under Section 7, or any other proceedings, pending before the NCLT. It shall be open for the Adjudicating Authority to examine any averments or pleadings made by the parties with regard to third party transactions and it is open for the Adjudicating Authority to come to a conclusion with regard to third party transactions and to issue any directions or orders as may be deemed fit.

18. In view of foregoing discussions and reasons, we are of the view that for issuing any directions as prayed by the Applicant with regard to Respondent Nos.8 to 12, a deeper and thorough consideration is required with regard to transactions with third party borrowers as well as lending money to IL&FS entities. Present Applications, are not the appropriate proceedings to grant declaration as prayed by the Applicant and direct for collapsing the third party Agreements and transactions entered with Respondent Nos.3 to 12. We, however, make it clear that the said issues can be gone into and examined by NCLT in the pending proceedings and appropriate decisions can be taken with regard to borrowing with respect to Respondent Nos.8 to 12.

19. In result, IA No.3169 of 2023 is partly allowed (except against Respondent Nos.8 to 12). As noticed above for collapsing transaction, necessary Agreement as contemplated in Step-2, noticed above is precondition. Mutual agreement for collapsing the transaction with other Respondents (except with regard to whom orders have already been passed) is necessary. We, however, clarify that rights and remedies of IFIN shall remain open and would not be prejudice by the submissions made by the IFIN in IA No.3169 of 2023. IA No.3169 of 2023 is disposed of accordingly."

9. With respect to transaction which are subject matter of the present appeal, it was observed that the I.A. No.3169/2023 is not the appropriate proceeding to grant the declaration as prayed by the applicant. This Tribunal, however, observed that the said issue can be gone into and examined by NCLT

in the pending proceeding. The above observation has been made in paragraph 18 of the order dated 16.01.2025, as extracted above.

10. The NCLT in the impugned order has construed the order dated 16.01.2025 passed by this Tribunal in paragraph 5.22, certain portion of the order date 16.01.2025 has been extracted and in paragraph 5.23 and 5.24 following has been observed:

> *"5.23. The directions of the Hon'ble NCLAT, make it clear that:*
>
> > *(i) the execution of a mutual agreement between IFIN, the third-party borrower, and the final borrower, as contemplated in Step 2 of the proposed modality, is a mandatory precondition for the collapsing of any transaction; and*
> >
> > *(ii) collapsing is permissible only where the parties have **voluntarily agreed** to restructure their obligations, and not otherwise.*
>
> *5.24. We are of the view that the Hon'ble NCLAT's direction was clear that the mutual agreement was described as a mandatory precondition for the collapsing of any transaction and no consent of SIFL has been obtained, nor has any consent been offered or agreed to, for the collapsing or modification of the Subject Transactions."*

11. The NCLT thus in the above paragraph has held that NCLAT direction was clear that mutual agreement was mandatory precondition for collapsing any transaction and no consent of the SIFL has been obtained.

12. The order of the NCLT as extracted the paragraph 5 of the order dated 16.01.2025, where this Tribunal has noted about the modalities for unwinding/collapse the transaction. In the above background, this Tribunal proceeded to decide in I.A. No.3169/2023 and allowed the application insofar as with respect to those transactions where consent was recorded. The

transactions which are subject matter of this appeal (6 transactions in question), no consent of SIFL having been given, the said prayer was not allowed. In paragraph 18 it was observed that for this Tribunal issuing direction as prayed by applicant with respect to R-8 to R-12 (transaction in question) in these appeals, a deeper and thorough consideration is required with regard to transaction and third-party borrowers as well as lending money to IL&FS entities. It was further held that a present application (I.A. No.3169/2023) is not the appropriate proceeding to grant declaration as prayed by the applicant. The observation was made that the said issues can be gone into and examined by the NCLT in the pending proceeding and appropriate decision can be taken with regard to borrowing with respect to R-8 to R-12 (6 transactions in question). The observations of this Tribunal as noted above in no manner can be read to mean that this Tribunal has held that for collapsing/unwinding the transaction consent is precondition. The application 3169/2023 was proceeded to examine and decided, relying on the consent it was one of the steps contemplated in the application and it was due to this reason that transaction qua R-8 to R-12 was not collapsed since no consent was given. However, the fact that liberty was granted to raise the issue and the issue can be examined by NCLT clearly means that even without there being consent, the issue can be gone into by the NCLT. We, thus are of the opinion that interpretation of the order dated 16.01.2025 as made by the NCLT in paragraphs 5.23 and 5.26 as extracted above is incorrect. This Tribunal in its order dated 16.01.2025 has neither held nor issued any direction to the NCLT that prayer for collapsing any transaction can be considered only when there is consent given and when there is a Mutual

Agreement. Mutual Agreement was held to be necessary for deciding the application 3169/2023 and Agreements where mutual consent was provided were collapsed by this Tribunal in its order dated 16.01.2025 and Agreement were not collapsed where no consent was recorded. Thus, the consent was taken as a mandatory condition for collapsing the agreement for I.A.3169/2023, which was premised on the steps as was contemplated. However, there was neither any direction nor any declaration that for examining collapsing of any transaction, this Tribunal laid down that mandatory precondition of consent is required. We, thus are of the view that NCLT has misconstrued the order dated 16.01.2025 of this Tribunal that this Tribunal laid down that collapsing is permissible only when the parties have already agreed and no other parties.

Question No. (I) is thus answered in following manner:

(I) The NCLT in the impugned order (paragraphs 5.23 & 5.24) has misconstrued the order date 16.01.2025 of this Tribunal by holding that this Tribunal has held that collapsing is permissible only where the parties have already agreed, whereas this Tribunal in order dated 16.01.2025 has not issued any such declaration or direction.

Question No. (II)

13. NCLT in the impugned order has held that NCLT in exercise of jurisdiction under Sections 241 & 242 of the Companies Act 2013 can direct for termination of an Agreement only when there is a consent. Reliance has been placed by the NCLT on Section 242(2)(f) proviso.

14. Before we proceed to examine the question, we need to notice provisions of Section 242 of the Companies Act 2013. Section 242(1) & (2), which are relevant in the present case are as follows:

> ***"242. Powers of Tribunal.–***
>
> *(1) If, on any application made under section 241, the Tribunal is of the opinion--*
>
> > *(a) that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and*
> >
> > *(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up, the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.*
>
> *(2) Without prejudice to the generality of the powers under sub-section (1), an order under that subsection may provide for--*
>
> > *(a) the regulation of conduct of affairs of the company in future;*
> >
> > *(b) the purchase of shares or interests of any members of the company by other members thereof or by the company;*
> >
> > *(c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;*
> >
> > *(d) restrictions on the transfer or allotment of the shares of the company;*
> >
> > *(e) the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;*

(f) the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e):

Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;

(g) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;

(h) removal of the managing director, manager or any of the directors of the company;

(i) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;

(j) the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h);

(k) appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;

(l) imposition of costs as may be deemed fit by the Tribunal;

(m) any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made."

15. Section 242(1) uses the expression "the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit". Sub-section (2) begins with the expression "without prejudice to the generality of the powers under sub-section *(1)*, an order under that subsection

may provide for". The sub-Section (2) thus illustrates certain nature of direction as enumerated in clauses (a) to (m). Sections 241 & 242 of the Companies Act 2013 as well as the provisions of Sections 397, 398 & 402 of the Companies Act 1956 came for consideration before the Hon'ble Supreme Court and various High Courts on several cases. Bombay High Court had occasion to consider provisions of Sections 397 & 398 of the Companies Act, 1956. In ***'Bennet Colman & Co.' Vs. 'Union of India & Ors.',*** reported in **[1973 SCC OnLine Bom 41].** Interpreting the provisions of Section 397 & 398 and 402 of the Companies Act 1956, Bombay High Court laid down following in paragraph 14:

> ***"14.*** *...Similarly, under section 398 read with section 402 power has been conferred upon the court "to make such orders as it thinks fit". if it comes to the conclusion that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company or that a material change has taken place in the management or control of the company by reason of which it is likely that the affairs of the company will be conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company, "with a view to bringing to an end or preventing the matters complained of or apprehended". Both the wide nature of the power conferred on the court and the object or objects sought to be achieved by the exercise of such power are clearly indicated in sections 397 and 398. Without prejudice to the generality of the powers conferred on the court under these sections, section 402 proceeds to indicate what type of orders the court could pass and clauses (a) to (g) are clearly illustrative and not exhaustive of the type of such orders. Clauses (a) and (g) indicate the widest amplitude of the court's power: under clause (a) the court's order may provide for the regulation of the conduct of the company's affairs in future and under clause (g) the court's order may provide for any other matter for which in the opinion of the court it is just and equitable that provision should be made. An examination of the aforesaid sections clearly brings out two aspects, first,*

> *the very wide nature of the power conferred on the court, and, secondly, the object that is sought to be achieved by the exercise of such power with the result that the only limitation that could be impliedly read on the exercise of the power would be that nexus must exist between the order that may be passed thereunder and the object sought to be achieved by these sections and beyond this limitation which arises by necessary implication it is difficult to read any other restriction or limitation on the exercise of the court's power. We are, therefore, unable to accept Mr. Sen's contention that the court's powers under section 398 read with section 402 should be read as subject to the other provisions of the Act dealing with normal corporate management or that the court's orders and directions issued thereunder must be in consonance with the other provisions of the Act."*

16. Further in paragraph 15 of the judgement, Bombay High Court held that while acting under Section 398 read with Section 402, Court has ample jurisdiction and very wide powers to pass such orders and there will be no limitation and restriction on such powers. In paragraph 15, following was held:

> ***"15.*** *...In our view, therefore, the position is clear that while acting under section 398 read with section 402 of the Companies Act the court has ample jurisdiction and very wide powers to pass such orders and give such directions as it thinks fit to achieve the object and there would be no limitation or restriction on such power that the same should be exercised subject to the other provisions of the Act dealing with normal corporate management or that such orders and directions should be in consonance with such provisions of the Act."*

17. Learned counsel for the appellant has also further relied on the judgement of the Bombay High Court in ***'Ravi Kiran Agarwal & Anr.' Vs. 'Moolchand Shah & Ors.'*** reported in **[2009 SCC OnLine Bom 1750],** Hon'ble Mr. Justice D.Y. Chandrachud as he then was, had occasion to consider Sections 397, 398 & 402 of the Companies Act 1956. Bombay High

Court held that illustration contained in clauses (a) to (g) of Section 402, are but examples of the nature of the reliefs that can be granted and they are not exhaustive of the reliefs that can be granted but are only illustrative. In paragraph 9 of the judgement following was laid down:

> ***"9.*** *Section 402 is without prejudice to the generality of the powers of the Board under section 397 or 398. Section 402 describes the nature of the reliefs that can be granted in a petition under section 397 or 398. The illustrations which are contained in clauses (a) to (g) of section 402, are, but examples of the nature of the reliefs that can be granted in a petition under sections 397 and 398. Clauses (a) to (g) of section 402 are not exhaustive of the reliefs that can be granted by the Board but are only illustrative of the wide powers that are granted upon the Board with a view to ameliorating a situation of oppression and mismanagement."*

18. A very pertinent observation was made in paragraph 12 of the judgement that Board has wide power to pass orders as it thinks fit to bring to an end the matters complained of. It was further held that the exercise of power may in any given situation affect the interest of third-party. In paragraph 12 following was observed:

> ***"12.*** *Section 405 of the Act, deals with the power of the Company Law Board to implead additional respondents to an application under section 397 or 398. Under section 405, if the managing director or any director or a manager of a company or any other person, has not been impleaded and such person applies to be added as a respondent, the Company Law Board is empowered to pass an order adding him as a respondent, if sufficient cause for doing so is established to the satisfaction of the Board. The Company Law Board in the present case inferred that the power to add or implead a party as a respondent to an application under section 397 or 398 is to add only those parties who are referred to in clauses (d) and (e) of section 402. The Board applied the interpretative tool of ejusdem generis. The principle of ejusdem generis would have no application, where the court is required to construe, two separate statutory*

provisions which operate in different fields. Section 402 illustrates the powers which can be exercised by the Company Law Board on an application under sections 397 and 398. Section 402 is not an exhaustive catalogue of the powers of the Board. Section 405 deals with the addition of parties. There is no reason or justification for confining the words "any other person". under section 405 to those categories of persons who are elucidated in clause (e) of section 402. As a matter of first principle, it would be impermissible to do so. On an application under sections 397 and 398 the Board has, as already noted earlier, wide powers to pass orders as it thinks fit to bring to an end the matters complained of and, under section 398(2), to even prevent the matters complained of or apprehended. The exercise of those wide powers, may in a given situation affect the interest of third parties. To hold that a third party liable to be affected by an order under sections 397 and 398, would not be entitled to be heard on the ground that, it does not fall within the description of "a person". in clause (e) of section 402 who has an agreement with the company would be fundamentally violative of the basic postulate of natural justice. Nothing, except a clear statutory provision to that effect should lead the court to adopt such a construction…"

19. We may also notice the judgement of Delhi High Court in ***'Pearson Education INC (formerly Prentice Hall Inc.)' Vs. 'Prentice Hall India P. Ltd. & Ors.'*** reported in **[2005 SCC OnLine Del 945].** In the above case also Delhi High Court had occasion to consider the provisions of Sections 397, 398 & 402 of the Companies Act 1956. Delhi High Court in the above case has held that jurisdiction under Sections 397, 398 & 402 also can be exercised to terminate, set aside or modify the contractual arrangement between the companies and any person. Following was held by the Delhi High Court in the above judgement:

"…The jurisdiction of the Company Law Board (and ultimately of this court in appeal) under sections 397/398 and 402 is much wider and direction can be given even contrary to the provisions of the articles of

association. It has even right to terminate, set aside or modify the contractual arrangement between the company and any person (see section 402(d) and (e)). Section 397 specifically provides that once the oppression is established, the court may, with a view to bringing to an end the matters complained of, make an order as it thinks fit. Thus, the court has ample power to pass such orders as it thinks fit to render justice and such an order has to be reasonable. It is also an accepted principle that "just and equitable" provision in section 402(g) is an equitable supplement to the common law of the company to be found in its memorandum and articles of association…"

20. The above judgement of the Delhi High Court has been quoted with approval of the Hon'ble Supreme Court in ***'M.S.D.C. Radharamanan' Vs. 'M.S.D. Chandrasekara Raja & Anr.'*** reported in **[(2008) 6 SCC 750].** Hon'ble Supreme Court in the above case had occasion to consider Section 397, 398 & 402 of the Companies Act, 1956 and wide jurisdiction of Company Law Board was noticed. In paragraphs 22 & 23 of the judgement following was laid down:

> ***"22.*** *The provisions of the Act vis-à-vis the jurisdiction of the Company Law Board must be considered having regard to the complex situation(s) which may arise in the cases before it. No hard-and-fast rule can be laid down. There cannot be any doubt whatsoever that the acts of omission and commission on the part of a member of a company should be qua the management of the company, but it is difficult to accept the proposition that the just and equitable test, which should be held to be applicable in a case for winding up of a company, is totally outside the purview of Section 397 of the Act. The function of a Company Law Board in such matters is first to see as to how the interest of the company vis-à-vis its shareholders can be safeguarded. The Company Law Board must also make an endeavour to find out as to whether an order of winding up will serve the interest of the company or subvert the same. Further, if an application is filed under Section 433 of the Act or Section 397 and/or Section 398 thereof, an order of winding up may be passed, but as noticed hereinbefore, the Company Law*

Board in a winding-up application may refuse to do so, if any other remedy is available. The Company Law Board may not shut its doors only on sheer technicality even if it is found as of fact that unless the jurisdiction under Section 402 of the Act is exercised, there will be a complete mismanagement in regard to the affairs of the company.

23. *Sections 397 and 398 of the Act empower the Company Law Board to remove oppression and mismanagement. If the consequences of refusal to exercise jurisdiction would lead to a total chaos or mismanagement of the company, would still the Company Law Board be powerless to pass appropriate orders is the question. If a literal interpretation to the provisions of Section 397 or 398 is taken recourse to, may be that would be the consequence. But jurisdiction of the Company Law Board having been couched in wide terms and as diverse reliefs can be granted by it to keep the company functioning, is it not desirable to pass an order which for all intent and purport would be beneficial to the company itself and the majority of the members? A court of law can hardly satisfy all the litigants before it. This, however, by itself would not mean that the Company Law Board would refuse to exercise its jurisdiction, although the statute confers such a power on it."*

21. In the above case, the judgement of the Delhi High Court in ***'Pearson Education INC (formerly Prentice Hall Inc.)'*** **(supra)** was quoted with approval in paragraph 25. Paragraph 25 of the judgement of the Hon'ble Supreme Court is as follows:

"25. *In Pearson Education Inc. v. Prentice Hall India (P) Ltd. [(2007) 136 Comp Cas 294 : (2006) 134 DLT 450] as regards the jurisdiction of the Company Law Board and the High Court under Sections 397/398 and 402, a learned Single Judge of the Delhi High Court held: (DLT p. 466, para 27)*

> *"27. … Jurisdiction of the CLB (and ultimately of this Court in appeal) under Sections 397/398 and 402 is much wider and direction can be given even contrary to the provisions of the articles of association. It has even right to terminate, set aside or modify the contractual arrangement between the company and any person [see*

> *Sections 402(d) and (e)]. Section 397 specifically provides that once the oppression is established, the Court may, with a view to bringing to an end the matters complained of, make an order as it thinks fit. Thus, the Court has ample power to pass such orders as it thinks fit to render justice and such an order has to be reasonable. It is also an accepted principle that 'just and equitable' provision in Section 402(g) is an equitable supplement to the common law of the company to be found in its memorandum and articles of association.""*

22. The above judgement laid down that power under Section 402 now Section 242 of the Companies Act, 2013 are wide powers and the said powers can be also exercised by the Tribunal for terminating or modifying any contractual arrangement. Coming to Section 242(2)(f) proviso, the said is only an instance where termination, setting aside or modification of any agreement between the company and any person is to be made by the Tribunal in exercise of Section 242(2). When termination, setting aside or modification of any agreement is to be undertaken under Section 242(2)(f) notice and consent of party concerned is required, but the above clause cannot control the generality of the power which is vested in the Tribunal in Section 242(1) to make such order as it thinks fit. Termination, setting aside or modification of an Agreement which is contemplated in sub-Clause (f) of Section 242(2) is an agreement which is valid and subsist. The present is the case where the pleadings in CA No.226/2025 is not that transaction entered with SIFL and SIFL Group Entities were valid, rather pleading is that the said transaction were fraudulent transaction and void transaction. At this juncture, we may refer to the judgement of the Hon'ble Supreme Court in ***'Phoenix ARC Private Limited' Vs. 'Spade Financial Services Ltd. & Ors.'*** reported in **[(2021) 3 SCC 475],** in which case Hon'ble Supreme Court has occasion to consider the

financial transaction within meaning of Section 5(8) of the IBC. Hon'ble Supreme Court in the said case has held that the transaction which is a sham or collusive or only create an illusion that money has been disbursed to the borrower with the object of receiving consideration in the form of time value of money, when in fact the parties have entered into transaction with the different or ulterior motive. In paragraph 48 following observations were made by the Hon'ble Supreme Court:

> ***"48.*** *The above discussion shows that money advanced as debt should be in the receipt of the borrower. The borrower is obligated to return the money or its equivalent along with the consideration for a time value of money, which is the compensation or price payable for the period of time for which the money is lent. A transaction which is sham or collusive would only create an illusion that money has been disbursed to a borrower with the object of receiving consideration in the form of time value of money, when in fact the parties have entered into the transaction with a different or an ulterior motive. In other words, the real agreement between the parties is something other than advancing a financial debt. A useful elaboration of "sham transactions" can be found in the opinion of Diplock, L.J. in Snook v. London & West Riding Investments Ltd. [Snook v. London & West Riding Investments Ltd., (1967) 2 QB 786 : (1967) 2 WLR 1020 (CA)] : (QB p. 802)*
>
> > *"As regards the contention of the plaintiff that the transactions between himself, Auto Finance and the defendants were a "sham," it is, I think, necessary to consider what, if any, legal concept is involved in the use of this popular and pejorative word. I apprehend that, if it has any meaning in law, it means acts done or documents executed by the parties to the "sham" which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create."*
>
> *(emphasis supplied)"*

23. When we look into the application CA No.226/2025, the pleadings and prayers in the application were not to terminate the subject transaction, rather with respect to 6 transactions, various declarations have been sought. It is useful to notice reliefs made in the application with respect to first transaction only. In paragraph 51, following has been prayed:

> *"51. In the facts and circumstances set out above, the Applicant prays that this Hon'ble Tribunal be pleased to*
>
> ***First Transaction:***
>
> *A.*
>
> *(i) Declare and direct that IL&FS Financial Services Limited is the direct creditor claimant of IL&FS Transportation Networks Limited and consequently direct Grant Thornton Bharat LLP to substitute IL&FS Financial Services Limited in place of Bharat Road Network Limited (as SREI Infrastructure Finance Limited assigned to Bharat Road Network Limited) in the list of creditor of IL&FS Transportation Networks Limited to the extent of Bharat Road Network Limited's claim of INR 115.01 crores.*
>
> *(ii) Declare and direct that pursuant to prayer clause A(i) above, by way of discharge release no amounts are due and payable by IL&FS Transportation Networks Limited to Bharat Road Network Limited (as SREL Infrastructure Finance Limited assigned to Bharat Road Network Limited) and by Attivo Economic Zone (Mumbai) Private Limited to IL&FS Financial Services Limited;"*

The application CA No.226/2025 has not sought for termination of 6 transactions so as to make provisions of Section 242(2)(f) applicable.

24. Learned counsel for the respondent in support of his submissions has also placed reliance on the various judgements which need to be noticed. The first judgement which has been relied by the counsel for the respondent is ***'Incable Net (Andhra) Limited & Ors.' Vs. 'Apaksh Broadband Ltd. &***

Ors.' reported in **[2008 SCC OnLine AP 832].** In the above case, appellant had filed a proceeding under Section 397, 398, 402 & 403 of the Companies Act, 1956, alleging mismanagement by the majority shareholder of the first respondent company. The Company Law Board decline to grant the relief against which the appeal was filed in the High Court. The High Court has noted that an appeal under Section 10(f) of the Companies Act, 1956 contemplated appeal only on question of law. In paragraph 6 of the judgement, High Court has laid down following observation:

> ***"6.*** *After entrustment of corporate dispute resolution to the Company Law Board by reason of the Companies (Amendment) Act, 1988, many of the powers and functions hitherto exercised by the High Court under section 10(1) of the Act, are now exercised by the Company Law Board. Adjudication of dispute between minority shareholders and majority shareholders regarding controlling management of the company is one such subject which is in the realm of the Company Law Board's jurisdiction. All orders passed by the Company Law Board in exercise of their jurisdiction are judicial orders. The orders of the Company Law Board, therefore, cannot be lightly interfered with. That is the reason why section 10F of the Act which makes orders of the Company Law Board appealable to the High Court prescribes that an appeal against the order of the Company Law Board lies only on any question of law arising out of order of the Company Law Board. It is not an appeal on facts nor it warrants roving secondary enquiry. It is only an appeal on question of law; not every question of law — but a question of law arising out of such order. Keeping this in view when the matter came up before this court, notwithstanding the voluminous record filed along with appeal, this court directed learned counsel for the petitioners to address only on question of law arising out of the impugned order. Learned counsel for the petitioners and learned counsel for the respondents are heard elaborately on this aspect."*

25. High Court thus in the above case was to examine as to whether any question of law was raised in the appeal. Hon'ble High Court in paragraphs

12 & 13 has rejected the argument of the appellant that to exercise power under Section 402(e) to terminate, set aside and modify the Agreement is the question of law. It was held that the act of the respondent cannot be granted as an act of mismanagement and oppression by the major majority against minority. It was further noted that Govt. of Andhra Pradesh and APTS were not even before Company Law Board so as to exercise power under Section 402(e). In the above context, the observations were made that Company Law Board can exercise jurisdiction only after obtaining consent of the parties concerned. In paragraphs 12 & 13, following was laid down:

> ***"12.*** *Learned counsel for the petitioners relies on section 402(e) of the Act to contend that the Company Law Board's failure to exercise the power to terminate, set aside or modify the agreement between APAKSH and AKSH is the question of law under section 10F of the Act. The submission cannot be accepted. Assuming that the petitioners as shareholders made out genuine grievance of about alleged non-performance of obligations by AKSH under EPC contract resulting in financial loss to APAKSH, the same cannot be in the facts and circumstances of this case, be branded as an act of mismanagement and oppression by the majority against minority shareholders. Secondly, any such breach of contract or non-performance of obligations cannot and should not be in relation to only two players — respondents Nos. 1 and 5 — but such alleged breach can affect the rights and obligations of all the corporate players in the project.*
>
> ***13.*** *In the absence of two other players, namely, the Government of Andhra Pradesh and APTS, the Company Law Board could not have exercised their power under section 402(e) of the Act. Thirdly, any modification of an agreement by the Company Law Board can be only be after obtaining consent of the party concerned. It is nobody's case that the Government of Andhra Pradesh, APTS and AKSH gave consent for modification of EPC contract. Indeed, as rightly pointed out by learned senior counsel for the respondents, the petitioners never prayed to the Company Law Board either to terminate or modify EPC*

> *contract between APAKSH and AKSH. A statutorily constituted Tribunal no doubt would be committing an error if they failed to exercise jurisdiction vested in it or exercised jurisdiction, which does not vest in it and/or exercised jurisdiction vested in it erroneously. None of these is pleaded nor substantiated before this court."*

26. The above observations were in in background of the facts of the said case. Allegations in the application CA No.226/2025 are entirely different and they did not sought termination of Agreement within meaning of Section 242(2)(f), hence the said judgement is clearly distinguishable and does not help the appellant.

27. Learned counsel for the respondent has also placed reliance on the judgement of the Delhi High Court in ***'Jai Kumar Arya & Ors.' Vs. 'Chaya Devi & Anr.'*** reported in **[2017 SCC OnLine Del 11436].** In the above case, Delhi High Court has occasion to consider provisions of Section 242. Delhi High Court has also made observations on Section 242(2)(m) that in the said clause, collapse can also not be the prayers made in the proceeding, to bring under clause (m) and clause (m) has to be read in ejusdem generis with the preceding clauses. In the above case, Delhi High Court held that Section 242(1) is in applicable, since the dispute raised in suit was not amenable to Section 241. In paragraph 108, Delhi High Court made following observations:

> ***"108.*** *As already reproduced hereinabove, the relief, in CS(OS) 285/2017, as also in IA 7856/2017 and IA 9618/2017 filed therein, was essentially seeking restraint, against the defendants, from acting upon the notice issued by the directors, or on any resolution taken at the meeting contemplated by such notice which, in turn, contemplated removal of Plaintiff No. 1 from Directorship of the Company. Was such a dispute amenable to adjudication by the NCLT, under Section 169(4) or Section 241? The fate of this innings, in the*

present litigative tournament, would depend on the answer thereto."

28. Further in paragraphs 115 to 117, following was laid down by the Delhi High Court:

> ***"115.*** *Does the grievance ventilated by the plaintiffs in CS (OS) 285/2017, or the relief prayed for by them therein, fall within any of the species of cases contemplated by Section 242 of the Act? In our considered opinion, no.*
>
> ***116.*** *Section 242(1) is clearly inapplicable, as it applies only in a case where the Tribunal is of the opinion that "the winding of the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up". Even if the notice, dated 8th August 2017, or the Board meeting of 26th August 2017 proposed therein, were illegal, it cannot be said that any case for winding up of the Company, even prima facie, was made out.*
>
> ***117.*** *Adverting, now, to Section 242, clauses (a) to (g) and (i) to (l) thereof are obviously inapplicable. Clause (h) would, in fact, indicate that the reliefs prayed for in CS (OS) 285/2017 were outside the jurisdiction of the Tribunal, as the said clause empowers the NCLT to pass an order providing for removal of the managing director, manager or any of the directors of the Company. If one were to apply the expression unius est exclusion alterius principle, by inference, it would not be open to the NCLT to adjudicate on the validity of a notice calling for a meeting, of the Board, to decide whether to convene an EGM proposing to remove one of the Directors of the Company. For that reason, such a relief may not, properly, even be sought under clause (m) of Section 242(2), despite the expensive wording of the said clause. That apart, clause (m) of Section 242(2) would, in our opinion, have appropriately to be read ejusdem generis with the preceding clauses of the said subsection, and a species of case which is impliedly excluded from one of the said preceding clauses could not be, by implication, brought into clause (m). Any attempt to do so may amount to doing violence to the legislative intent."*

29. The Delhi High Court held in the above case that since grievance ventilated by the plaintiffs is not covered by Section 242(1) which is inapplicable, there is no question of relying on Section 242(2)(m) for grant of relief. There can be no dispute to the above proposition, however, the facts of present clause are entirely different, the petition Sections 241/242 by the Union of India has been admitted and it is not the case of the any of the parties that Section 242(1) is not attracted. The above case of Delhi High Court is thus clearly distinguishable and is not applicable.

30. Learned counsel for the respondent has also relied on the various judgement on Section 62 of the Contract Act, 1872. Relying on judgement of Hon'ble Supreme Court in ***'Satya Pal Anand' Vs. 'State of Madhya Pradesh & Ors.'*** reported in **[(2015) 15 SCC 263].** It is submitted by the counsel for the respondent that contract cannot be substituted, rescind without agreement of the relevant parties. Section 62 of the Contract Act, 1872 provides for is on effect of novation, rescission and alteration of the contract. Hon'ble Supreme Court in ***'Satya Pal Anand'*** **(supra)** in paragraph 52 has laid down following:

> ***"52.*** *Thus, the decision of this Court and the Madras High Court in the cases referred to supra, aptly apply to the fact situation of the present case. In the present case also such an extinguishment deed, which is unilaterally registered would be rescinded, particularly, in the case of sale deed or extinguishment deed. In this context, Section 62 of the Contract Act, 1872 would come into play which provides that—*
>
> > *"**62. Effect of novation, rescission and alteration of contract**.—If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed."*

Thus, for any novation, rescission and alteration of the contract, it can be made only bilaterally and with the amicable consent of both the parties. Thus, a deed of cancellation of the earlier registered sale deed executed in favour of the Smt Veeravali Anand would amount to an illegal rescission of the absolute sale deed because if the issue in question is viewed from the application of Section 62 of the Contract Act, 1872, then it is clear that any rescission must be done only bilaterally."

31. There can be no dispute to the proposition laid down by the Hon'ble Supreme Court in the above case. The judgement of the Hon'ble Supreme Court was on the novation of contract. Present is not a case where reliance is placed on Section 62 by the appellant/applicant. Section 62 of the Contract Act, 1872, is wholly inapplicable and not attracted. Similarly, the judgement of Hon'ble Supreme Court in ***'Lata Constructions & Ors.' Vs. 'Dr. Rameshchandra Ramniklal Shah & Anr.'*** reported in **[(2000) 1 SCC 586]** also dealt with novation of contract under Section 62 of the Contract Act, 1872, which provisions is not attracted in the facts of the present case.

32. The present is also not a case for exercise of any inherent powers by the NCLT under Rule 11 of the NCLT Rules, 2016. The powers of NCLT which can be exercised in CA No.226/2025 is power conferred on the NCLT by virtue of Section 242(1) which is a general and wide power granted to the NCLT, where in case of oppression and mismanagement, the Tribunal is empowered to pass any order which it thinks fit. The present is the case where the pleadings by the appellant in CA No.226/2025 was to the effect that money lend by IFIN to the group companies of SIFL, were for the purposes of lending money to its own subsidiaries to get out from the statutory direction issued by RBI that IFIN may no more lend any money to its own subsidiary. It is

useful to notice pleadings in CA No.226/2025 with respect to 6 transactions. In paragraph 21 subject transactions under which IFIN lend Money to SIFL Group Companies and equivalent transactions were SIFL lend the money to group companies of IL&FS has been mentioned. It is useful to notice paragraphs 19 to 21 of the application:

"Particulars of the Subject Transactions involving IFIN, IL&FS Group entities, SIFL and Srei Group entities

19. As set out above, upon receipt of RBI's advisory, to circumvent the regulatory prescriptions and the applicable norms on intra-group lending, IFIN (under its erstwhile management) started lending funds to IL&FS Group entities through third-party entities. The broad construct of such transactions was as follows:

(i) Monies were lent by IFIN to certain third-party borrowers (of the Srei Group), such as Attivo, Sahaj, Vistar and Giridhan, on the basis of letters of assurances issued by SIFL to IFIN..

(ii) Parallelly SIFL advanced monies on or around the same date for the same amount to IL&FS Group entities, such as FSEL, CNTL, ITNL, SPPL, GIMCO etc. on the basis of letters of assurance issued by IFIN to SIFL.

20. Pertinently, when monies were advanced to and from the third-party borrowers, SIFL exercised control over such third-party borrowers either by shareholding or by control over management, as admitted and acknowledged in the letters of support/ letters of awareness issued for the loan sanctioned by IFIN to the third party borrowers, as more particularly set out below.

21. The particulars of such transactions involving IFIN, IL&FS Group entities, SIFL and Srei Group entities, the unwinding of which is sought in the present Application (the "Subject Transactions"), are detailed hereinbelow:

S.N.	*IL&FS Group Lender*	*Srei Group Borrower and*	*IFIN Loan (principal) (INR Crores)*	*Srei Group Lender*	*IL&FS Group Borrower*	*Srei Loan (princip*

		Loan Date			and Loan Date	al) (INR Crores)
1.	IFIN	Attivo on August 23, 2017	110	SIFL (assigned to BRNL)	ITNL on August 23, 2017	110
2.	IFIN	Attivo on March 31, 2018	195	SIFL	FSEL on March 29, 2018, and on-lent to ITNL	200
3.	IFIN	Vistar on March 26, 2018	205	SIFL	CTNL on March 27, 2018 and on-lent to ITNL	90
					CTNL on March 28, 2018 and on-lent to ITNL	110
4.	IFIN	BRNL on March 31, 2017	70	SIFL	SPPL on March 31, 2017	100
5.	IFIN	Sahaj on March 30, 2017	68	SIFL	GIMCO on March 30, 2017	68
		Sahaj on March 31, 2017	212		GIMCO on March 31, 2017	182
6.	IFIN	Sahaj on March 27, 2018	90	SIFL	ITNL on March 26, 2018 (assigned to Attivo)	200
		Giridhan on March 28, 2018	110			
	IFIN TOTAL		1060	SIFL TOTAL		1060

i. First transaction

*a) INR 110 crores was received by Attivo from IFIN on August 23, 2017. On the same date, SIFL also lent an amount of INR 110 crores to ITNL. Pertinently, the loan advanced by IFIN on August 23, 2017 to Attivo was backed by two letters of awareness, both dated August 11, 2017, issued by SIFL to IFIN, copies of which are annexed hereto and marked as **Annexure 11** and **Annexure 12.** The loan advanced by SIFL to ITNL,*

was backed by a letter of awareness dated August 17. 2017, issued by IFIN to SIFL, a copy of which is annexed hereto and marked as Annexure 13. Further, it is pertinent to note that the said amounts lent by IFIN to IL&FS Group entities (and ultimately to ITNL) through Attivo and other SREI group entities were backed by letters of assurances issued by ITNL to IFIN, which is annexed hereto and marked as ***Annexure 13A.***

b) Thereafter, the loan between SIFL and ITNL was assigned by SIFL to BRNL, another entity in the Srei Group, by an assignment agreement dated December 30, 2019. A copy of the said assignment agreement is annexed hereto and marked as ***Annexure 14.***

c) Subsequently, BRNL has filed its claim in respect of ITNL with GT for an approximate amount of INR 115.01 crores, despite the loan actually originating from IFIN. A copy of the list of creditors of ITNL showing BRNL's claim status is annexed hereto and marked as ***Annexure 15.***

ii. Second transaction

a) An amount of INR 200 crores was advanced by SIFL to FSEL on March 29, 2018. Simultaneously, an amount of INR 195 crores was advanced by IFIN to Attivo on March 31, 2018. Pertinently, this loan advanced by SIFL to FSEL (and onward transferred to ITNL) was backed by a letter of awareness dated March 29, 2018 issued by IFIN to SIFL, and the loan advanced by IFIN to Attivo was backed by a letter of awareness dated March 22, 2018, issued by SIFL to IFIN. Copies of the said letters of awareness are annexed hereto and marked as ***Annexure 16*** *and* ***Annexure 17*** *respectively.*

b) Thereafter, SIFL has filed its claims against FSEL with GT. A copy of the list of creditors of FSEL as published by GT showing SIFL's claim status with respect to the said transaction is annexed hereto and marked as Annexure 18.

iii. Third transaction

a) INR 205 crores was received by Vistar from IFIN on March 26, 2018. SIFL also lent an amount of INR 90 crores and INR 110 crores to CNTL on March 27, 2018, and March 28, 2018, respectively which was on-lent to ITNL. Pertinently, the loan advanced by IFIN to Vistar was backed by a letter of awareness dated March 22,

2018, issued by SIFL to IFIN, a copy of which is annexed hereto and marked as Annexure 19. Similarly, the loan advanced to CNTL by SIFL, was backed by a letter of awareness dated March 23, 2018, issued by IFIN to SIFL, a copy of which is annexed hereto and marked as ***Annexure 20.***

b) Thereafter, SIFL has filed its claims against CNTL with GT. A copy of the list of creditors of CNTL as published by GT showing SIFL's claim status with respect to the said transaction is annexed hereto and marked as ***Annexure 21.***

iv. Fourth transaction

a) INR 70 crores was received by BRNL from IFIN on March 31, 2017. On the same date, SIFL also lent an amount of INR 100 crores to SPPL. Pertinently, the loan advanced by IFIN to BRNL was backed by a letter of awareness dated March 29, 2017, issued by SIFL to IFIN, which acknowledges that BRNL is promoted by SIFL and that it supported the loan of INR 70 crores sanctioned by IFNL to BRNL. A copy of the said letter dated March 29, 2017, is annexed hereto and marked as Annexure 22. Similarly, the loan advanced to SPPL by SIFL, was backed by a letter of awareness dated March 30, 2017, issued by IFIN to SIFL, a copy of which is annexed hereto and marked as ***Annexure 23.***

b) Thereafter, SIFL has filed its claims against SPPL with GT. A copy of the list of creditors of SPPL as published by GT showing SIFL's claim status with respect to the said transaction is annexed hereto and marked as ***Annexure 24.***

v. Fifth transaction

a) IFIN lent the following amounts to the following Srei Group entities:

- *Sahaj on March 30, 2017 – INR 68 crores*
- *Sahaj on March 31, 2017 – INR 212 crores*

Pertinently. SIFL issued letters of awareness dated March 29, 2017, and March 27, 2018, to IFIN, acknowledging that Sahaj is promoted by SIFL and that it extends its support for the loan amounts advanced by IFIN to Sahaj of INR 280 crores and INR 90 crores, respectively. The copies of the letters dated March 29, 2017 and March 27, 2018 issued by SIFL to IFIN are annexed hereto and marked as ***Annexure 25***

*and **Annexure 26,** respectively. In this regard, it is also pertinent to note that Sahaj has issued end-use certificates dated April 29, 2017 and April 19, 2018 to IFIN, in relation to the loan amounts advanced by IFIN to Sahaj of INR 280 crores and INR 90 crores respectively, admitting that these amounts were used to repay Sahaj's indebtedness to SIFL, i.e., Sahaj onward transferred sums disbursed by IFIN to SIFL. Copies of the said end-use certificates dated April 29, 2017, and April 19, 2018, are annexed hereto and marked as **Annexure 27** and **Annexure 28.***

b) On or around the same date, SIFL lent the following amounts to the following IL&FS Group entities:

- *GIMCO on March 31, 2017 – INR 68 crores*
- *GIMCO on March 31, 2017 – INR 182 crores*

Similarly, the loans advanced to GIMCO by SIFL, were backed by letters of awareness dated March 30, 2017, issued by IFIN to SIFL, copies of which are annexed hereto and marked as Annexure 29.

*c) Thereafter, SIFL has filed its claims against SPPL, GIMCO with GT. A copy of the list of creditors of GIMCO as published by GT showing SIFL's claim status with respect to the said transaction is annexed hereto and marked as **Annexure 30.** The claims status for SPPL and ITNL are already set out at Annexure 24 and Annexure 15 above.*

Note: The amounts involved in the fourth and fifth transaction aggregate to INR 350 crores as reflected in SIFL's claim against SPPL approximately amounting to INR 100 crores and SIFL's claim against GIMCO approximately amounting to INR 250 crores.

vi. Sixth transaction

a) IFIN lent the following amounts to the following Srei Group entities:

- *Sahaj on March 27, 2018 – INR 90 crores*
- *Giridhan on March 28, 2018 – INR 110 crores*

b) INR 200 Crores was received by ITNL from SIFL on March 26, 2018. Parallelly INR 90 Crores was received by Sahaj from IFIN on March 27, 2018 and INR 110 crores was received by Giridhan from IFIN on March 28, 2018. Pertinently, the loan advanced by IFIN to Sahaj and Giridhan was backed by letters of awareness dated March 27, 2018, and March 28,

2018, respectively, issued by SIFL to IFIN, which acknowledges that Sahaj and Giridhan were directly and/or indirectly promoted by the Srei Group. The said letter dated March 28, 2018, further set out that "We further confirm that we have sanctioned Rs. 260 crore to GPPL out of which an amount of Rs. 110 crore is being availed by GPPL now. We hereby undertake that the loan shall not be repaid before the repayment and servicing of the "the Loan" from IFIN. We also confirm that the loan amounting Rs. 110 crore extended by SREI shall remain subordinated to "the loan" extended by IFIN". A copy of the said letter dated March 27, 2018, is annexed hereto and marked as ***Annexure 31.*** *A copy of the said letter dated March 28, 2018, is annexed hereto and marked as* ***Annexure 32.*** *Similarly, the loan advanced to ITNL by SIFL, was backed by a letter of awareness dated March 23, 2018, issued by IFIN to SIFL, a copy of which is annexed hereto and marked as* ***Annexure 33.***

c. Thereafter, it appears that SIFL assigned the loan it advanced to ITNL (amounting in all to INR 200 crores comprising INR 110 crores pertaining to the transaction with GPPL and remaining INR 90 crores pertaining to the transaction with Sahaj) to Artivo, which has in turn filed its claim with GT for the said amount. A copy of the assignment agreement dated March 23, 2020 entered into between SIFL and Attivo is annexed hereto and marked as ***Annexure 34.*** *A copy of the list of creditors of ITNL as published by GT showing Attivo's claim status with respect to the said transaction is annexed hereto and marked as* ***Annexure 35.”***

33. We, thus are of the view that the provision of Section 242(2)(f) was not resorted in CA No.226/2025, so as to make consent of the party condition precedent. We have already held that order of this Tribunal dated 16.01.2025 did not contemplate proceeding of termination of contract within meaning of Section 242(2)(f), rather liberty was granted to appellant to take recourse to the pending proceeding for unwinding 6 transactions which was not collapsed by this Tribunal in I.A. No.3169/2023. We thus are of the view that Section 242(2)(f) proviso does not cause a fetter on the power of Tribunal to

unwind/collapse the transaction where applicant has alleged fraudulent and void transactions and where declaration was sought as noted above.

We thus, answered Question No. (II) in following manner:

(II) For exercise of jurisdiction under Sections 241 & 242 by the Tribunal, obtaining consent of the parties concerned is not condition precedent when the collapsing/winding of transaction is sought on the ground of fraudulent transactions/void transactions.

Question No. (III)

34. The copy of the CA NO. 226/2025 has been brought on record as an (Annexure A–2) to the appeal. CA No. 226/2025 is accompanied by 48 annexures and to the applications, all details regarding 6 transactions in question have been narrated. It is useful to notice details as given in paragraphs 1P & 1Q of the application:

> *"P. Through the Subject Transactions, on the basis of documents and records available, it appears that IFIN had provided loans to Srei Group entities and SIFL advanced corresponding loans to IL&FS Group entities on or around the same date, basis letters of awareness/assurance issued by SIFL.. Further, it is pertinent to note that the said amounts lent by IFIN to IL&FS Group entities (and ultimately to ITNL) through Attivo and other SREI group entities were backed by letters of assurance issued by ITNL to IFIN.*
>
> *Q. These transactions were undertaken by IFIN and SIFL to bypass RBI's norms on intra-group lending exposure and to continue to lend monies within the Srei Group and the IL&FS Group, as more particularly set out below. Subject to this Hon'ble Tribunal's order(s), the unwinding of the Subject Transactions inter alia will entail the recognition of IFIN as the legitimate creditor of the IL&FS Group entities, and the de-recognition of SIFL and/or Srei Group entities as the creditors of the intermediate IL&FS Group entities,*

respectively, by GT in the claims management process of the IL&FS Group.”

35. Facts and circumstances in the application have been given in detail regarding new board’s decision in litigation, inspection and audit undertaken with respect to IL&FS group has also been pleated in paragraph 18. It is useful to notice paragraph 18 of the application which are as follows:

> *“18. Parallelly, various investigations, inspections and audits were undertaken after the commencement of the IL&FS Group's payment defaults in September 2018. Pursuant thereto, the following observations have been made in respect of the internal and external lending practices of the IL&FS Group:*
>
> *(1) The RBI (the primary regulator of IFIN), in its inspection report under Section 45N of the Reserve Bank of India Act, 1934 ("**RBI Act**") dated March 22, 2019 ("**IFIN RBI Report**"), in respect of IFIN for FY 2018, specifically noted that a significant proportion of IFIN's exposure is routed to ITNL through its own group companies and other companies, including companies in the Srei Group. In this regard, RBI also observed that IFIN had made arrangements with SIFL and took exposure qua Srei Group entities based on letters of awareness issued by SIFL. Similarly, SIFL lent funds to various subsidiaries of IL&FS, which ultimately reached ITNL. The relevant extracts of the IFIN RBI Report are annexed hereto and marked as **Annexure 9;***
>
> *(ii) The Serious Fraud Investigation Office ("**SFIO**") in its report dated May 28, 2019 in respect of IFIN ("**IFIN SFIO Report**") prepared under Section 212(1)(c) the Act as well as the Criminal Complaint filed by SFIO dated May 30, 2019 before the court of Ld. Additional Sessions Judge cum Special Judge (Companies Act), at Mumbai, being Criminal Complaint No. 20 of 2019 ("**IFIN Criminal Complaint**"), has red flagged instances of loan evergreening, non-compliance with various norms including inter alia instances where accounts of borrowers of IFIN and or Third Party Borrowers were used for onward lending to ITNL and or its subsidiaries. SFIO is also in the process of carrying out a supplementary investigation into IFIN. IFIN has not been issued any preliminary or final investigation report for the supplementary*

investigation. Since the IFIN SFIO Report and the IFIN Criminal Complaint are voluminous in nature, the Applicant craves leave to refer to and rely upon the same, if and when required/produced.

*(in) The forensic audit report dated April 21, 2019 prepared by GT (commissioned by the New Board) relating to the external and internal lending practices of IFIN ("**IFIN Forensic Audit Report**"), also records that the loans disbursed by IFIN to various third-party borrowers in the SREI Group, were identified as circuitous transactions. Specifically, the IFIN Forensic Audit Report sets out that loans were advanced by IFIN inter alia to Stei Group entities, backed by letters of awareness issued by SIFL, which in turn transferred the loans to other IL&FS group companies, primarily ITNL. The relevant extracts of the IFIN Forensic Audit Report in relation to the Subject Transactions are annexed hereto and marked as **Annexure 10.** Since the IFIN Forensic Audit Report is voluminous in nature, the Applicant craves leave to refer to and rely upon the same, if and when required produced."*

36. Particulars of the subject transaction involving IFIN, IL&FS Group Entities SIFL and SREI Group Entities are detailed in paragraph 19 & 20. Paragraphs 19 & 20 have already been extracted in preceding paragraphs.

37. Details as contained in paragraph 21 has already been extracted in preceding paragraph of this judgement. In paragraph 19 itself details of all 6 transactions have been given. The application also details the proceeding initiated by IFIN against third-party borrowers.

38. As noted above in the application, CA 226/2025, various materials have been brought on record including RBI's Inspection Report, SFIO Report and GT Report and SEBI order. We need to notice certain part of the above reports, which are part of the CA226/2025. RBI Report dated 22.03.2019 had been filed along with the CA226/2025. In the annexures, which was a

part of the Report 22.03.2019, in (v) following has been stated in the RBI inspection report:

> *"(v) Transaction between SREI group and IL&FS Group:*
>
> *The company was advised since 2016 to reduce its group exposure with no fresh landing to them. However, it was observed that in order to circumvent the above direction, the company made arrangements with SIFL and took exposure on SREI group entities based on a Letter of Awareness issued by SREI Infrastructure Finance Limited (SIFL). Similarly SIFL lent funds to various subsidiaries of ILFS which ultimately reached ITNL. Thus it was clear that both the groups were acting in concert with each other in order to reduce the group borrower exposure and bypass Bank's direction."*

39. The above report of the RBI clearly mentions that company was advised since 2016 to reduce the group exposure with no fresh lending to them and to circumvent the above directions, company made arrangement with SIFL and took exposure on SREI Group Entities based on letter of awareness issued by SIFL.

40. Further, SFIO Report dated 28.05.2019, was also part of CA226/2025. It is useful to notice paragraphs 4.56 & 4.56.1 under the heading **"loan to group companies to third parties",** which is as follows:

> *"4.56. RBI in its Inspection Report for Financial Year 2016 had advised that "the classification of group companies in order to arrive at the NOF and CRAR, needs to be done as specified in the RBI Act (Section 451A) "listed out group companies and pointed out the exposure in excess of 10% of Owned Funds to arrive at Net Owned Funds (NOF). It further advised that "the company should run down its exposure to group companies with no fresh lending to them". Subsequently, in its letter dated July 20, 2018 to IFIN signed by Ramesh Bawa, it has been stated that IFIN "has not undertaken any fresh exposure post November2017 to the IL&FS group entities which was*

also confirmed vide its response dated December 26, 2017".

4.56.1. Investigation revealed that IFIN, from November 2017 onwards, instead of directly lending to group companies, in a deceptive manner, lent loans to external parties which were transferred to the IFIN's Group companies, mainly II.&FS Transportation Networks Limited ('ITNL') in order to circumvent RBI Directions. The loans given in this manner are tabulated as below

S. No.	*Name of the external parties to whom the loan was lent by IFIN*	*Amount Disbursed (in Rs. crore)*	*Name of the IFIN's Group companies to whom the loans were transferred by external parties.*	*Amount Transferred (in Rs. crore)*
1	*GHV Hotels (India) Private Ltd*	*100*	*IL&FS Transportation Networks Limited*	*100*
2	*Wavell Investments Private Ltd*	*100*		*100*
3	*Beigh Construction Company Private Ltd*	*200*		*200*
4	*New India Structures Private Ltd*	*270*		*270*
5	*Kalyan Sanga Infratech Ltd*	*100*		*100*
6	*Sangam Business Credit Ltd*	*150*		*150*
7	*Avance Technologies Ltd*	*150*		*150*
8	*Empower India Ltd*	*170*		*169*
9	*Attivo Economic Zone (Mumbai) Pvt Ltd*	*305*		*310*

10	*Vistar Financier Private Ltd*	*205*		*200*
11	*Prakash Constrowell Ltd.*	*19.82*		*19.82*
12	*Giridhan Projects Private Ltd*	*110*		*110*
13	*Bharat Road Network Ltd*	*70*	*Sea Land Ports Limited*	*70*
14	*Sahaj e-Village Ltd*	*370*	*IL&FS Transportation Networks Limited*	*90*
			Sea Land Ports Limited	*30*
			Gujarat Integrated Maritime Complex Private Limited	*250*
	Total	***2319.82***		***2,318.82”***

41. The SFIO above report clearly indicate that IFIN from November 2017 onwards instead of directly lending to group companies, in a deceptive manner lend loan to external parties which were transferred by IFIN Group Companies. The above report confirms circuitous transaction and has revealed the real nature of transaction were something different from which was apparently shown. Similarly in CA 226/2025, GT Report was also relied, where GT has also noted about the loans indirectly provided to group companies of IL&FS via external parties. Under the above heading, following was noticed:

> ***“Annexure 40 – Summary of observations***
>
> ***<u>Loans indirectly provided to group companies of IL&FS via external parties</u>***
>
> *RBI had advised IFIN to reduce its exposure to the group companies with no fresh lending to them which*

impacted IFIN's ability to lend its group companies. During our review, it was noted that post 01 November 2017, loans were lent to external parties which in turn transferred the loans to IL&FS group companies primarily IL&FS Transportation Networks Limited ('ITNL').

Sr. No.	***Group***	***Name of the borrower***	***INR in crs***
1	*SREI*	*Sahaj E Village Limited*	*370*
2	*SREI*	*Attivo Economic Zone (Mumbai) Private Limited*	*305*
3	*NISPL*	*New India Structures Private Limited*	*270*
4	*Vistar*	*Vistar Financiers Private Limited*	*205*
5	*BCC*	*Beigh Construction Company Private Limited*	*200*
6	*Empower*	*Empower India Limited*	*170*
7	*Avance*	*Avance Technologies Limited*	*150*
8	*Sangam*	*Sangam Business Credit Limited*	*150*
9	*Others*	*Giridhan Projects Private Limited*	*110*
10	*GHV*	*GHV Hotels (India) Private Limited*	*100*
11	*Sangam*	*Kalyan Sangam Infratech Limited*	*100*
12	*Dynamatic*	*Wavell Investments Private Limited*	*100*
13	*SREI*	*Bharat Road Networks Limited*	*70*
14	*PCL*	*Prakash Constrowell Limited*	*20*
	Total		*2,320"*

42. The pleadings and materials which were brought on record by appellant in CA226/2025, clearly necessitated to unearth the true nature of transaction. The Reports indicate that amount which was initially lend to the group companies of the SREI was from IFIN and which amount was

subsequently routed by the SIFL to the group companies of IL&FS. We, thus are satisfied that IL&FS in its CA226/2025 has made out sufficient pleading and materials which necessitated the NCLT to examine the allegation of fraudulent and void transaction as alleged in collapsing application.

Question No. (III) is answered accordingly.

Question No. (IV)

43. NCLT in the impugned order has also given other reasons for rejecting the application CA226/2025. NCLT has relied on the principle that one cannot approbate and reprobate. NCLT held that a party has made a conscious deliberate and sustained elections and having derived benefit therefrom cannot be permitted to resign from that position and assert a wholly inconsistent stand. NCLT has also relied on doctrine of election and relied on the judgement of the Hon'ble Supreme Court in ***'Union of India & Ors.' Vs. 'N. Murugesan & Ors.'*** reported in **[(2022) 2 SCC 25].** Hon'ble Supreme Court in the above case while dealing with under the heading **"approbate and reprobate".** In paragraph 26, following has been observed:

> ***"Approbate and reprobate***
>
> ***26.*** *These phrases are borrowed from the Scots law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. This principle has to be*

applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in this principle. It is also a species of estoppel dealing with the conduct of a party. We have already dealt with the provisions of the Contract Act concerning the conduct of a party, and his presumption of knowledge while confirming an offer through his acceptance unconditionally."

44. The present is the case where we have noticed that initially application under Section 7 was filed by the IL&FS against the third parties including Attivo, Sahaj, Giridhan, BRNL and Vistar. CIRP of Attivo and Sahaj were admitted and were adjourned on account of pendency of collapsing I.A. With regard to Vistar, Section 7 application was rejected which is pending consideration in this appeal. The present is not a case where IFIN has obtained any benefit out of the aforesaid proceedings. It is true that proceedings were initiated by IFIN against third-party borrowers, which were SIFL Group Entities. The new Board of the IL&FS after taking consideration of all relevant facts and sequence of the events in its Meeting held on 14.03.2023 and in the Meeting held on 30.05.2023, decided that the necessary application could be filed before the NCLT for collapse of the transaction. The Minutes of the Meeting of the Board of Directors of IL&FS dated 14.03.2023 are part of the record. In Board Meeting dated 30.05.2023 decision was taken to file collapse compile application with NCLAT.

45. The new Board of the IL&FS had every jurisdiction to take decision and take steps to take remedial action to combat the mismanagement which was done by the earlier management of the IL&FS and in the facts of the present case, we are of the view that filing of Section 7 application to protect interest

of the IL&FS could not have been any reason to preclude the new Board to take decision to file a collapsing application for transactions, which were fraudulent transactions under which transaction money lend to SIFL Group Companies ultimately was routed to group companies of the IL&FS that is ITNL. At this stage, we may also note one more observation of the NCLT in the impugned order, where NCLT has observed that report issued by RBI were only contained advisory and directions and breach of advisory and direction cannot invalidate the transaction or void the financing arrangement. In paragraph 5.26 following has been observed:

> *"5.26. We find that Inspection Reports issued by the RBI to IL&FS under Section 45N of the RBI Act, 1934 contained advisories/directions. The Report mentioned the following: "6. The company was advised since 2016 to reduce its group exposure with no fresh lending to them. However, it was observed that in order to circumvent the above direction, the company made arrangements with SIFL and took exposure on SREI group entity based on a Letter of Awareness issued by SREI Infrastructure Finance Limited (SIFL). Similarly, SIFL lent funds to various subsidiaries of IL&FS which ultimately reached ITNL. Thus, it was clear that both the groups were acting in concert with each other in order to reduce the group borrower exposure and bypass the Bank's direction." Breach of the advisories/directions by IL&FS cannot invalidate the transactions or void the financing arrangements between SIFL and IL&FS Group Entities, but would only expose the company/NBFC to penalties under Section 58B(5)(aa) and Section 58G of the RBI Act, 1934. Further, the Inspection Report does not term the said transactions as "fraudulent"."*

46. It is settled law that directions issued by RBI are statutory directions and are binding of NBFC. Learned Counsel for the appellant has relied on the judgement of the Hon'ble Supreme Court in ***'Nedumpilli Finance Company***

Limited' Vs. 'State of Kerala & Ors.' reported in **[(2022) 7 SCC 394],** wherein paragraphs 48 to 50 of the judgement, following has been observed:

> ***"48.*** *It is too long in the day to dispute the fact that the directions issued by RBI are statutory in character and binding on all NBFCs. It is so, in respect of the directions issued both under the RBI Act and under the Banking Regulation Act.*
>
> ***49.****Once it is found that Chapter III-B of the RBI Act provides a supervisory role for the RBI to oversee the functioning of NBFCs, from the time of their birth (by way of registration) till the time of their commercial death (by way of winding up), all activities of NBFCs automatically come under the scanner of RBI. As a consequence, the single aspect of taking care of the interest of the borrowers which is sought to be achieved by the State enactments gets subsumed in the provisions of Chapter III-B.*
>
> ***Regulations/Master Circulars/Directions issued by RBI from time to time***
>
> ***50.*** *Apart from the provisions of Chapter III-B, the Regulations, directions and Master Circulars issued by RBI from time to time, also bind the NBFCs. There is a long list of Regulations/ directions or Master Circulars issued by RBI from 1977 onwards, which shows that even before the 1997 Amendment to the RBI Act, some kind of control was exercised by RBI over NBFCs. After the 1997 Amendment, every aspect of the business of NBFCs, including loans, is covered by Master Circulars/ directions issued by RBI. In other words, the only field occupied by the State enactments stands appropriated by the Master Circulars/ directions."*

47. Hon'ble Supreme Court had occasion to consider the doctrine of approbate and reprobate in ***'Commissioner of Income Tax, Madras' Vs. 'V. MR. P. Firm Muar'*** reported in **[1964 SCC OnLine SC 98].** Hon'ble Supreme Court in the above case held that doctrine of approbate and reprobate is only a species of estoppel it applies only to the conduct of the parties and it cannot operate against the provisions of statute. In paragraph 13 of the judgement following was held:

> ***"13****… The contention is that the assessees having opted to accept the scheme, derived benefit thereunder, and agreed to have their discharged debts excluded from the asset side in the balance sheet subject to the condition that subsequent recoveries by them would be taxable income, they are now precluded, on the principle of "approbate and reprobate", from pleading that the income they derived subsequently by realization of the revived debts is not taxable income. The doctrine of "approbate and reprobate" is only a species of estoppel; it applies only to the conduct of parties. As in the case of estoppel, it cannot operate against the provisions of a statute…"*

48. When under the RBI Act, 1934, statutory directions have been issued, breach of which was alleged by IL&FS, IL&FS cannot be precluded from raising the issue of transaction being void and fraudulent, relying on principle of approbate and reprobate or estoppel or election as contended by the learned counsel for the respondent.

49. Hon'ble Supreme Court has again occasion to consider the case in ***'Immai Appa Rao & Ors.' Vs. 'Gollapalli Ramalingamurthi & Ors.',*** reported in **[1961 SCC OnLine SC 43],** where plea of fraud was raised with respect to transaction relating to immovable property. Hon'ble Supreme Court clearly held in the above case that there is no question of estoppel in such a case for the obvious reason that fraud in question was agreed by both the parties and both parties have assisted each other in carrying out the fraud. In paragraph 15 of the judgement following was laid down:

> ***"15.*** *There can be no question of estoppel in such a case for the obvious reason that the fraud in question was agreed by both the parties and both parties have assisted each other in carrying out the fraud. When it is said that a person cannot plead his own fraud it really means that a person cannot be permitted to go to a court of law to seek for its assistance and yet base his claim for the Court's assistance on the ground of his fraud. In this connection it would be relevant to*

remember that Respondent 1 can be said to be guilty of a double fraud; first he joined Respondent 2 in his fraudulent scheme and participated in the commission of fraud the object of which was to defeat the creditors of Respondent 2, and then he committed another fraud in suppressing from the Court the fraudulent character of the transfer when he made out the claim for the recovery of the properties conveyed to him. The conveyance in his favour is not supported by any consideration and is the result of fraud; as such it conveys no title to him. Yet, if the plea of fraud is not allowed to be raised in defence the Court would in substance be giving effect to a document which is void ab initio. Therefore, we are inclined to hold that the paramount consideration of public interest requires that the plea of fraud should be allowed to be raised and tried, and if it is upheld the estate should be allowed to remain where it rests. The adoption of this course, we think, is less injurious to public interest than the alternative course of giving effect to a fraudulent transfer."

50. Hon'ble Supreme Court further held that if the plea of fraud is not allowed to be raised, the Court would in substance be giving effect to a document which is *void ab initio.* The above judgement of the Hon'ble Supreme Court clearly laid down that plea of fraud cannot be negated on the ground that appellant is estopped from raising the plea of fraud in the transaction, since it elected to file Section 7 application against third-party borrowers and choose to file collapsing application subsequently. In the above case, Hon'ble Supreme Court further in paragraph 22 has held that no Court will lend its aid to a man to founds his cause of action upon an immoral or an illegal act. In paragraph 22 following was observed:

"22. *In judicial decisions where this question has been considered a passage from the judgment of Lord Mansfield, C.J. in Holman v. Johnson [(1775) 1 Cowper, 341.] is often quoted. If we may say so with respect the said passage very succinctly and eloquently brings out the true principles which should govern the decision of such cases. Said Lord Mansfield,*

C.J., "the objection that a contract is immoral or illegal as between plaintiff and defendant sounds at all times very ill in the mouth of the defendant. It is not for his sake, however, that the objection is ever allowed; but it is founded in general principles of policy which the defendant has the advantage of, contrary to the real justice, as between him and the plaintiff, by accident, if I may say so. The principle of public policy is this : ex dolo malo non oritur actio. No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. If, from the plaintiff's own stating or otherwise the cause of action appears to arise ex turpi causa or the transgression of a positive law of this country, there the court says he has no right to be assisted. It is upon that ground the court goes; not for the sake of the defendant, but because they will not lend their aid to such a plaintiff"."

51. The above judgement is also a clear authority to hold that examination of allegation of fraudulent transaction or void transaction cannot be refused to be examined on plea of estoppel, election or approbate or reprobate as contended by the respondent. NCLT erred in refusing to examine the allegations relying on principal of election, approbate and reprobate, which were not applicable in the facts of the present case. Hon'ble Supreme Court again in ***'Waman Shriniwas Kini' Vs. 'Ratilal Bhagwandas & Co.'*** reported in **[1959 SCC OnLine SC 120]** has held that plea of waiver cannot be raised because as a result of giving effect to the plea, the Court would be enforcing an illegal agreement and thus contravene the statutory provisions and based on public policy. It was held that Court would not aid the appellant in enforcing the term of the Agreement which Section 15 of the Act declares to be illegal. In paragraph 13 of the judgement following was laid down:

"13. *The plea of waiver was taken for the first time in this Court in arguments. Waiver is not a pure question of law but it is a mixed question of law and fact. This plea was neither raised nor considered by the courts below and therefore ought not to be allowed to be taken*

at this stage of the proceedings. But it was argued on behalf of the appellant that according to the law of India the duty of a pleader is to set up the facts upon which he relied and not any legal inference to be drawn from them and as he had set up all the circumstances from which the plea of waiver could be inferred he should be allowed to raise and argue it at this stage even though it had not been raised at any previous stage not even in the statement of case filed in this Court and he relied upon Gouri Dutt Ganesh Lal Firm v. Madho Prasad [AIR (1943) PC 147] . Assuming that to be so and proceeding on the facts found in this case the plea of waiver cannot be raised because as a result of giving effect to that plea the Court would be enforcing an illegal agreement and thus contravene the statutory provisions of Section 15 based on public policy and produce the very result which the statute prohibits and makes illegal. In Surajmull Nargoremull v. Triton Insurance Co. [(1924) LR 52 IA 126 128] Lord Sumner said:

> *"No Court can enforce as valid that which competent enactments have declared shall not be valid, nor is obedience to such an enactment a thing from which a Court can be dispensed by the consent of the parties, or by a failure to plead or to argue the point at the outset : Nixon v. Albion Marine Insurance Co. [(1867) LR 2 Ex 338] . The enactment is prohibitory. It is not confined to affording a party a protection of which he may avail himself or not as he pleases. It is not framed solely for the protection of the revenue and to be enforced solely at the instance of the revenue officials, nor is the prohibition limited to cases for which a penalty is exigible."*

In the instant case the question is not merely of waiver of statutory rights enacted for the benefit of an individual but whether the Court would aid the appellant in enforcing a term of the agreement which Section 15 of the Act declares to be illegal by enforcing the contract the consequence will be the enforcement of an illegality and infraction of a statutory provision which cannot be condoned by any conduct or agreement of parties. Dhanukudhari Singh v. Nathima Sahu [(1907) II CWN 848, 852] . In Corpus Juris Secundum Vol. 92 at p. 1068 the law as to waiver is stated as follows:

> *"… a waiver in derogation of a statutory right is not favoured, and a waiver will be inoperative*

and void if it infringes on the rights of others, or would be against public policy or morals....”

In Bowmakers Ltd. v. Barnet Instruments Ltd. [(1945) I KB 65, 72] the same rule was laid down. Mulla in his Contract Act at p. 198 has stated the law as to waiver of an illegality as follows:—

> *“Agreements which seek to waive an illegality are void on grounds of public policy. Whenever an illegality appears, whether from the evidence given by one side or the other, the disclosure is fatal to the case. A stipulation of the strongest form to waive the objection would be tainted with the vice of the original contract and void for the same reasons. Wherever the contamination reaches, it destroys.”*

This, in our opinion, is a correct statement of the law and is supported by high authority. Field, J. in Oscanyan v. Winchester Arms Company [(1881) 103 US 261, 268 : 26 LEd 539] quoted with approval the observation of Swayne, J. in Hall v. Coppell [Wallace 542] :

> *“The principle is indispensable to the purity of its administration. It will not enforce what it has forbidden and denounced. The maxim Ex dolo malo non oritur actio, is limited by no such qualification. The proposition to the contrary strikes us as hardly worthy of serious refutation. Wherever the illegality appears, whether the evidence comes from one side or the other, the disclosure is fatal to the case. No consent of the defendant can neutralise its effect. A stipulation in the most solemn form, to waive the objection, would be tainted with the vice of the original contract, and void for the same reasons. Wherever the contamination reaches, it destroys.”*

Waiver is the abandonment of a right which normally everybody is at liberty to waive. A waiver is nothing unless it amounts to a release. It signifies nothing more than an intention not to insist upon the right. It may be deduced from acquiescence or may be implied. Chitty on Contract 21st Ed. p. 381 : Stackhouse v. Barnston [(1805) 10 Ves 453, 466 : 32 ER 921] . But an agreement to waive an illegality is void on grounds of public policy and would be unenforceable.”

52. From what has been observed as above, we are satisfied that the examination of the allegations made in CA226/2025, regarding fraudulent nature of transaction and transaction being void as raised in CA226/2025 could not have been refused to be examined by the NCLT on the ground of election, estoppel or on the principle of approbate and reprobate for the reasons as indicated above.

We thus answer Question No. (IV) accordingly.

Question No. (V)

53. We have held above that the NCLT incorrectly construed the order of this Tribunal dated 16.01.2025 passed in a collapsing application filed by the IL&FS before this Tribunal to the extent NCLT held that this Tribunal held that collapsing is permissible in only where the parties have voluntarily agreed and not otherwise. Further, we have also held that NCLT had not correctly appreciated the ambit and scope of power and jurisdiction of the Tribunal under Sections 241 & 242 of the Companies Act 2013. The reasons given by NCLT for rejecting the application CA226/2025 have also been held to be unsustainable.

54. We, thus are satisfied that NCLT committed error in rejecting CA226/2025. In result the order impugned deserves to be set aside by reviving CA226/2025 for fresh consideration in accordance with law and in accordance with the observations as made in this order. CA No.99/2025 and CA No.368/2025 were allowed by NCLT relying on dismissal of CA No.226/2025. We having found the order passed by NCLT in CA226/2025

unsustainable, order passed by NCLT in CA No.99/2025 & CA No.368/2025 also becomes unsustainable.

55. In result, all the appeals are allowed. Order dated 13.04.2026 passed by the NCLT, Mumbai Bench – I, is set aside. CA No.226/2025 is revived for fresh consideration in accordance with law and in accordance with the observations made in this order. CA No.99/2025 & CA No.368/2025 are also revived for passing fresh order in accordance with the law. NCLT had already directed that amount payable to SIFL due to resolution of a group company of the IL&FS has been kept in the Escrow Account, we having also directed that amount under resolution of group companies of IL&FS payable to SIFL be kept in the Escrow Account, the said amount shall remain in the Escrow Account till CA226/2025 and other CAs as noted above are decided by the NCLT as per the order passed in these appeals.

All the appeals are allowed accordingly. No order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

30th June, 2026

himanshu