IN THE HIGH COURT AT CALCUTTA
EXTRAORDINARY CIVIL JURISDICTION
ORIGINAL SIDE

BEFORE:
HON'BLE JUSTICE RAJA BASU CHOWDHURY

CA 136 of 2017

ARCL Organics Ltd.
Versus
Stressed Asset Stabilization Fund.

For the applicant	:	Mr. Ratnanko Banerji, Sr. Adv. Mr. Kanishk Kejriwal, Adv. Mr. Patit Paban Bishwal, Adv. Ms. Sohini Dey, Adv. Mr. Oishij Mukhopadhyay, Adv.
For the respondent	:	Mr. Sakya Sen, Sr. Adv. Mr. Sayan Banerjee, Adv. Ms. Pallavi Chatterjee, Adv. Mr. Ajay Gaggar, Adv. Mr. Uttiyo Mallick, Adv.
Heard on	:	11.11.2024, 12.12.2024, 08.01.2025, 15.01.2025, 29.01.2025, 28.03.2025 & 02.04.2025.
Judgment on	**:**	**30.06. 2025**.

RAJA BASU CHOWDHURY, J:

1. The instant application has been filed, *inter alia*, praying for execution of order sanctioning a scheme of arrangement / compromise dated 14th January, 2009 in CA No. 414 of 2008 arising out of CP No. 306 of 2008 under the provisions of Section 391(2) of the Companies Act, 1956 (hereinafter referred to as the "said Act"), as a deemed decree within the meaning of Civil Procedure Code, 1908, having regard to the

provisions contained in Section 634 of the said Act. The applicant seeks for a direction upon the respondent to issue "No Objection Certificate" for release of all charges on the assets and properties of the applicant on the ground that such charges have been extinguished and for release on the satisfaction of charge on the securities of the applicant from the Registrar of Companies, West Bengal. The above application has been contested by the respondent/judgment debtor.

2. In order to understand the scope of the aforesaid execution application, it is necessary to consider the order dated 14th January, 2009 whereby a scheme of compromise had been sanctioned between the Allied Resin and Chemicals Limited (hereinafter referred to as the "Allied Resin") on one hand and the secured creditors of the Allied Resin on the other.

3. The applicant claims to have complied with the terms of the scheme and having paid the entire settlement amount along with interest, the charge of the secured creditors over the assets and properties of the said Allied Resin stands released and extinguished and the said Allied Resin is relieved and discharged of all its liabilities and obligations towards the secured creditors under the loan agreement and the secured creditors have no further or other claim against the said Allied Resin and its successors.

4. At the very outset, it may be pointed out that though Mr. Sen, learned senior advocate representing the respondent had attempted to raise a point of maintainability as to whether, an application for executing an

order of this nature by filing an execution application in the form of a tabular statement under Order 21 rule 11(2) of the Code of Civil Procedure !908, is permissible especially when the Company Court has exclusive competence and jurisdiction to pass an order including enforcement of any of its order and having regard thereto, the execution application filed before a Civil Court is not maintainable. However, since the aforesaid issue has already been considered by a Coordinate Bench of this Court by its order dated 29th March, 2016 whereby the Coordinate Bench by taking note of the premise that the company Court has the exclusive jurisdiction to pass any order including enforcement of its own order, and having regard to the availability of the Company Court, expressed that the executing Court does not intend to entertain such application. However, taking note of the premise that a considerable time had elapsed since the date of filing of the execution application and service having been effected on the judgment debtor and considering the hardship that the applicant shall face if the application was to be dismissed, the execution case was sent back to the department to be placed before the company Court competent to execute the order by assigning a new number. Since then, in terms of the above order a new number has been assigned and the matter is being dealt with as company matter. Having regard thereto, the preliminary objection raised by Mr. Sen that the matter ought to have been moved before a company Court, can no longer be sustained and accordingly the application has been taken up for consideration.

5. It is the applicant's case that the applicant is the successor-in-interest of Allied Resin duly registered under the said Act. According to the applicant, by an order dated 15th September, 2010, the erstwhile Allied Resin merged with its assets and properties with the applicant. By operation of law the applicant i.e. ARCL Organics Limited became entitled to and has been vested with all rights and liabilities and properties of Allied Resin.

6. It is also the applicant's case that on 24th September, 2004, the Central Government had constituted and formed the respondent by a Trust Deed dated 24th September, 2004 with the object of acquiring the stressed assets of IDBI for the purpose of recovering the amount due thereunder. Subsequently, the Central Government by a notification dated 29th September, 2004 notified the respondent as a Financial Institution, and on 30th September, 2004 IDBI had transferred to the respondent all the facilities granted to its borrowers together with all underlying security interest and all other right title and interest of IDBI in all agreements, deeds and documents in relation to and/or in connection with credit facilities and loans granted by IDBI. By reasons thereof, the respondent had stepped into the shoes of IDBI. It is also the applicant's case that on 16th June, 2008 Allied Resin had filed an application under Section 391 of the said Act, before this Hon'ble company Court for convening a

general meeting of its secured creditors for the purpose of considering and approving a scheme of compromise between Allied Resin and its secured creditors. On the date of filing of such application, the secured creditors of Allied Resin were as follows:

a) Industrial Investment Bank of India (Claim assigned to IFCI)
b) Industrial Development Bank of India (Claim assigned to Stressed Asset Stabilisation Fund)
c) The Industrial Finance Corporation of (India) Ltd.
d) Industrial Credit & Investment Corporation of India Limited (Claim assigned to Standard Chartered Bank)
e) West Bengal Industrial Development Corporation Ltd.
f) LIC
g) LIC Mutual Fund
h) UTI
i) Army Group Insurance Fund
j) National Insurance Co. Ltd.
k) New India Assurance Co. Ltd.
l) UCO Bank
m) UCO Bank (MDF Advance)
n) Allahabad Bank

7. The above scheme of compromise was approved by a majority of the creditors. Subsequently, by an order dated 14th January, 2009, the Hon'ble Court has sanctioned the scheme of compromise, which

according to the applicant became effective on 2nd March, 2009 and the certified copy of the order of the Company Court, sanctioning the compromise scheme, was filed in the officer of the Registrar of Companies. Under the scheme, Allied Resin was to pay an amount stated in the first schedule of the Compromise Scheme referred to as the (Settlement Amount) in full and final settlement to the secured creditors as specified therein. Clause 3.2 of the Compromise Scheme provides for payment of 20% of the Settlement Amount before expiry of 30 days from the effective date and the balance 80% in 36 equal monthly instalments. According to Clause 3.4 of the Compromise Scheme, the Settlement Amount shall not carry any interest for a period of 12 months from the effective date and thereafter, interest at the rate of 8.5% is payable on the balance settlement amount.

8. In compliance of the Compromise Scheme, the said Allied Resin being otherwise obliged to pay the entire Settlement Amount along with interest to the secured creditors of Allied Resin, had duly paid the same by 2nd April, 2012 and in support thereof, a chart showing details of payments made to IDBI has been enclosed. The relevant portion of the chart is extracted herein below:

Due Dates of Payment to SASF as per Calcutta High Court	Amount to be paid as per Court Order	Actual Date of Payment made to SASF	Amount paid
		22.11.2007	1,00,000
		04.02.2008	50,00,000
		08.02.2008	25,00,000
		08.02.2008	25,00,000
		26.03.2008	25,00,000
		26.03.2008	25,00,000
		07.07.2008	16,00,000
		19.07.2008	25,00,000
		23.07.2008	10,00,000
		01.08.2008	50,00,000
		22.08.2008	72,05,000
		27.09.2008	8,82,777
		31.10.2008	18,28,777
		01.01.2009	18,28,777
		29.01.2009	18,28,777
		25.02.2009	18,28,777
		31.03.2009	18,28,777
02.04.2009	1,64,58,528	22.04.2009	18,28,777
02.05.2009	18,28,777	29.05.2009	18,28,777
02.06.2009	18,28,777	02.07.2009	18.28,777
02.07.2009	18,28,777	29.07.2009	18,28,777
02.08.2009	18,28,777	28.08.2009	18,28,777
02.09.2009	18,28,777	29.09.2009	18,28,777
02.10.2009	18,28,777	29.10.2009	18,28,777
02.11.2009	18,28,777	04.12.2009	18,28,777
02.12.2009	18,28,777	30.12.2009	18,28,777
02.01.2010	18,28,777	30.01.2010	18.28.777
02.02.2010	18,28,777	29.03.2010	18,28,777
02.03.2010	18,28,777		
02.04.2010	18,28,777		
02.05.2020	18,28,777		
02.06.2010	18,28,777	31.05.2010	18,28,777
02.07.2010	18,28,777	30.06.2010	18,28,777
02.08.2010	18,28,777		
02.09.2010	18,28,777		
02.10.2010	18,28,777		
02.11.2010	18,28,777		
02.12.2010	18,28,777		
02.01.2011	18,28,777		
02.02.2011	18,28,777		
02.03.2011	18,28,777		
02.04.2011	18,28,777		
02.05.2011	18,28,777		
02.06.2011	18,28,777		
02.07.2011	18,28,777		
02.08.2011	18,28,777	03.08.2011	18,28,777
02.09.2011	18,28,777		
02.10.2011	18,28,777		
02.11.2011	18,28,777	09.11.2011	18,28,777
02.12.2011	18,28,777		
02.01.2012	18,28,777		
02.02.2012	18,28,777	01.12.2011	18,28,777
02.03.2012	18,28,777	10.02.2012	87,73,629
02.04.2012	18,28,777		
Total Amount	8,22,94,500		8,22,94,500

4,600

NOTARY

GOVT. OF INDIA

9. It is the applicant's case that upon payment of the entire amount covered by the Compromise Scheme along with interest, the charge of secured creditors over the assets and properties of the said Allied Resin stood released and extinguished and the secured creditors have no further or other claim against Allied Resin or its successor/s. Consequentially in terms of the scheme, upon payment of the Settlement Amount, the secured creditors are under an obligation to issue a "No Objection" for release of the charge as against all assets and properties of

Allied Resin. Unfortunately, the respondent instead of issuing the "No Objection" had purported to issue a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, "SARFAESI Act") by alleging default committed by the Allied Resin and accordingly, called upon the Allied Resin to make payment of a sum of Rs. 237,74,64,692/- as on 1st July, 2007. In response thereto, the said Allied Resin through its advocate's letter dated 18th November, 2011 intimated the respondent that the said Allied Resin had been making payment as per the scheme of compromise sanctioned by the Company Court and Clause 3.7 of the said scheme debars the respondent from initiating any new proceedings for recovery of its alleged dues and accordingly, the letter dated 2nd November, 2011 issued by the respondents under Section 13(2) of the SARFAESI Act be withdrawn.

10. Mr. Banerji, learned senior advocate representing the applicant has drawn the attention of this Court to not only the provisions of the scheme but also the schedule of payments as identified in the letter dated 23rd February, 2012. It is submitted that as per the said letter IDBI had received a sum of Rs.7,35,20,871/- out of settlement amount of Rs.8,22,94,500/-, as on 1st December, 2011. The subsequent payment including interest was lastly paid on 10th February, 2012, though as per the scheme the last date for payment was 2nd April 2012. According to Mr. Banerji, the No Due Certificates as are required to be issued by the

secured creditors apart from the respondent, have all been issued in due course, in discharge of their obligations upon receipt of payment under the compromise scheme. Unfortunately, the respondent has been wrongfully withholding the issuance of the "No Due Certificate". Mr. Banerji would submit that the scheme of arrangement approved by this Hon'ble Court under provisions of the said Act is binding on all stakeholders and cannot be unilaterally revoked. In support of such contention, he has placed reliance on the following judgments :

i. ***S. K. Gupta & Anr. v. K. P. Jain & Anr.***, reported in **(1979) 3 SCC 54**,

ii. ***Hindustan Lever & Anr. v. State of Maharashtra & Anr.***, reported in **(2004) 9 SCC 438**,

iii. ***Shri Kundanmal Dabriwala v. Haryana Financial Corporation & Anr.***, reported in **2011 SCC OnLine P&H 17373**.

11. He would submit that although, the notice under Section 13(2) of the SARFAESI Act had been issued, upon an objection being raised by the said Allied Resin as regards enforceability of such provision, having regard to the provisions of the scheme debarring the secured creditors from initiating further proceedings, no further steps have been taken by the respondent and the proceeding initiated under Section 13(2) has died a natural death, as no notice under Section 13(4) of the SARFAESI Act has been issued thereafter, till this date. He would submit that in absence of a notice under Section 13(4) of the SARFAESI Act being

issued, there is no scope for the applicant to challenge the same. On the aforesaid contention reliance is placed on the judgment delivered in the case of ***M/s. Vijay Laghu Udyog & Ors. v. Punjab National Bank & Ors.***, reported in **2004 SCC OnLine All 2038**. On the question, whether a standalone notice issued under Section 13(2) of the SARFAESI Act on 2nd November, 2011 without taking further recourse to the provisions of the SARFAESI Act, or by issuing a notice under Section 13(4) of the SARFAESI Act, can be said to be legal and valid and enforceable after 13 years, reliance has been placed on the judgment delivered in the case of ***Taher Ahmed Siddiqui v. Standard Chartered Bank***, reported in **MANU/HY/0048/2017**.

12. On the issue whether a scheme of arrangement/compromise sanctioned by a Court can be frustrated by invoking the provisions of SARFAESI Act, reliance has been placed on an unreported judgment delivered by the Hon'ble High Court of Gujarat at Ahmedabad in the case of ***Kotak Mahindra Bank Ltd. v. Shree Narmada Aluminium Industries Ltd.***, in R/O.J. Appeal No. 143 of 2008 having neutral citation **C/OJA/143/2008**, case citation **(2025)ibclaw.in 388 HC**. In the facts noted hereinabove, he would submit that the objection raised by the respondent cannot be sustained, accordingly appropriate orders may be passed to enforce the scheme in the manner as has been sought for in the tabular statement.

13. *Per contra*, Mr. Sen, learned senior advocate by drawing attention of this Court to the provisions of the said Scheme and the payment details would submit that the Allied Resin had defaulted in making payment in terms of the sanctioned Scheme. According to him, the default commenced from April, 2010 which continued till July, 2011 and having regard thereto, a right had accrued in favour of the respondent to invoke its statutory right conferred under the SARFAESI Act. Accordingly, the respondent had rightly revoked the settlement and has resorted to invocation of SARFAESI Act by issuing a notice under Section 13(2) of the SARFAESI Act. He would submit that once, a notice under Section 13(2) has been issued, there is no scope to entertain the execution application as the same is barred under Section 34 of the SARFAESI Act. In support of this aforesaid contention, he has placed reliance on the following judgments:

i. ***Mardia Chemicals Ltd. & Ors. v. Union of India & Ors.***, reported in **(2004) 4 SCC 311.**

ii. ***Punjab & Sind Bank v. Frontline Corporation Limited***, reported in **2023 SCC OnLine SC 470.**

iii. ***Jyoti Bhushan Gupta & Ors. v. Banaras Bank Ltd.***, reported in **AIR 1962 SC 403.**

iv. ***Mrs. Pratibha Inderjit Kapur v. Nilesh Lalit Parekh***, reported in **2001 SCC OnLine Bom 1213.**

14. He would still further submit that the provisions of the SARFAESI Act has an overriding effect and in this context he places reliance on the provisions of Sections 34 and 35 of the SARFAESI Act and on the following judgments:

i. ***Pegasus Assets Reconstruction Private Limited v. Haryana Concast Limited & Anr.***, reported in **(2016) 4 SCC 47**

ii. ***Akola Oil Industries & Ors. v. State Bank of India & Anr.***, reported in **2005 SCC OnLine Bom 570**.

15. In any event, without prejudice for the aforesaid, he would submit that the terms of the scheme would show that the same was contingent in nature and the reciprocal liability of the respondent to perform its obligation could have only arisen upon payment of the entire amount with interest in terms of Clause 3.6 thereof, which the said Allied Resin had failed. Thus, the performance of the reciprocal obligation by the respondent cannot and does not arise at all. It is submitted that the aforesaid scheme has been given a go-by, due to reasons attributable to the said Allied Resin. The respondent is also proceeding with OA 86 of 2006 and the entire loan amount has now become due and payable to the respondent. In lieu of the fact that the scheme did not fructify, the said Allied Resin having only paid a sum of Rs. 4,44,134/- upto the date of revocation of the settlement, the original dues were restored and the amount paid to the extent of Rs.147.18 lakhs has been adjusted as per

the provisions of the loan agreement. In such circumstances, according to him, the applicant is not entitled to any relief.

16. Heard the learned advocates appearing for the respective parties and considered the materials on records. The primary question that falls for consideration in the present case is whether the said Allied Resin had complied with the terms of agreement. In order to answer the aforesaid question, it is necessary to consider whether the said Allied Resin had made payment in terms of Clause 3.2 of the scheme of compromise and if there was any default/breach, whether the respondent accepted such breach and/or whether the respondent was entitled to adjust the amount paid by the said Allied Resin after the said Allied Resin committing the breach, against the amount under the original loan agreement dehors the scheme, by treating that the scheme did not fructify.

17. Another important issue that arises for consideration is whether the respondent after having issued a notice under Section 13(2) of the SARFAESI Act, this Court retains any jurisdiction to decide the case having regard to the provisions contained in Sections 34 and 35 of the SARFAESI Act. At the very outset, in order to appreciate the issues involved, it is necessary to consider the scope of the Compromise Scheme. The relevant clauses of the Compromise Scheme is extracted hereinbelow:

"*SCHEME*

Part I

3.0. COMPROMISE WITH THE SECURED CREDITORS

3.1. The Secured Creditors agree to receive and accept the Settlement Amount as stated in the First Schedule hereunder in full and final settlement or their entire claim against the Company and the guarantors.

3.2. The Company shall pay the Settlement Amount to the secured creditors in the manner following :-

(a) 20% (twenty percent) of the Settlement Amount on or before expiry of thirty days from the Effective Date; and

(b) The balance 80% (eighty percent) of the Settlement Amount in thirty-six equal monthly instalments commencing from the end of the month succeeding the month in which the amount mentioned in Clause (a) hereinabove is paid by the Company.

3.3. Notwithstanding anything contained in Clause 3.2 hereinabove, the Company shall be at liberty to pay the Settlement Amount prior to sanction of the Scheme in instalments stated in sub-clauses (a) and (b) of Clause 3.2 above to any Secured Creditor who enters into a firm settlement with the Company prior to sanction of the Scheme.

3.4. The Settlement Amount shall not carry any interest for a period of twelve months from the Effective Date.

3.5. Immediately after expiry of the period of twelve months, the Settlement Amount shall carry interest at the rate of 8.5% per annum on the outstanding Settlement Amount and shall be calculated upto 31st day of December every year and shall be payable on or before 31st day of March of the succeeding year subject to the condition that the entire interest shall be paid along with the last instalment on or before expiry of thirty-seven month from the Effective Date.

3.6. Upon payment of the entire Settlement Amount along with interest as aforesaid –

(a) the charge of the Secured Creditors on the assets and properties of the Company shall stand released and extinguished;

(b) the Company shall be relieved and discharged of all its liabilities and obligations towards the Secured Creditors under the loan agreement and the Secured Creditors shall have no further or other claim against the Company;

(c) the personal guarantees given by the Guarantors shall stand discharged and revoked and the Guarantors shall be relieved of all their liabilities and obligations towards the Secured Creditors under the guarantees;

(d) the proceedings mentioned in the Second Schedule shall stand dismissed as unconditionally withdrawn by the Secured Creditors.

3.7. During the sanction and implementation of this Scheme the Secured Creditors (save and except as otherwise expressly provided) shall not –

(a) proceed any further with the proceedings mentioned in the Second Schedule hereunder;

(b) file any suit or legal proceeding against the Company or the Guarantors for recovery and/or realisation of any part of portion of their claims;

(c) take any step for enforcing or invoking any security or guarantee against the Company or the Guarantors.

(d) proceed against the Company or the Guarantors before BIFR or the Appellate Authority or take any step for sale of the assets or properties of the Chemical Division of the Company;

(e) initiate any action for winding up of the Company.

3.8. This Scheme upon approval by the requisite majority under Section 391 of the Companies Act, 1956 and sanctioned by the

Hon'ble Calcutta High Court and shall be binding upon all the Secured Creditors of the Company including the dissenting Secured Creditors of the Company.

....

The SECOND SCHEDULE ABOVE REFERRED TO
(Particulars of the proceedings initiated by the Secured Creditors)

	Name of the Court	Case No.	Applicant
1.	Debt Recovery Tribunal Kolkata	OA No. 305 of 1998	UCO Bank
2.	Debt Recovery Tribunal Kolkata	OA No. 6 of 2004	IFCI
3.	Debt Recovery Tribunal Kolkata	OA No.11 of 2004	IIBI
4.	Bankshall Court Kolkata	2413/1998	WBIDC
5.	Calcutta High Court	AST 293 of 1999	WBIDC
6.	Debt Recovery Tribunal, Kolkata	OA No.86 of 2005	Stressed Assets Stabilization Fund of IDBI"

18. It must also be noted that the scheme of compromise that had been sanctioned by the Court pertains to all the secured creditors of the said Allied Resin and is not limited to the respondent alone. Clause 3.2 of the scheme provides that the Allied Resin shall pay the settlement amount to the secured creditors in the manner as indicated therein. Clause 3.3 provides that notwithstanding Clause 3.2, Allied Resin will be at liberty to pay the settlement amount prior to sanctioning of the scheme in instalments stated in sub-clause (a) and (b) of Clause 3.2 to

any secured creditor who enters into a firm settlement with the company prior to sanction of the scheme. As per the settlement, the settlement amount shall not carry interest for 12 months from the effective date. However, on the expiry of 12 months the settlement amount shall carry interest @ 8.5% on the outstanding settlement amount.

19. It may be noted here that the said Allied Resin has made payment of the entire settlement amount as noted in the chart above. Though, the payment is not disputed, Mr. Sen has claimed that the said Allied Resin had defaulted in making payments of the settlement amount since April, 2010 and such default had continued upto July, 2011. However, the notice under Section 13(2) of the SARFAESI Act was issued only on 2nd November, 2011. Records would reveal that the said Allied Resin had duly responded to the said notice by advocate's letter dated 18th November, 2011, *inter alia*, contending that the sanctioned scheme debars the respondent from initiating any proceeding for recovery of its dues and accordingly, the letter dated 2nd November, 2011 issued under Section 13(2) of the SARFAESI Act should be withdrawn. It may be noted that the said Allied Resin had duly paid 20% of the Settlement Amount prior to expiry of 30 days from the effective date of the scheme which was sanctioned on 14th January, 2009. The subsequent payments made by the said Allied Resin corroborates from the chart appearing at page 45 of the affidavit affirmed on behalf of the applicant on 16th December, 2013. Such payments are not disputed. It would transpire that even after the

notice was issued by the respondent on 2nd November, 2011 and upon receipt of the Allied Resin's advocate's reply on 18th November, 2011, the respondent had received the payments without any objection. Although, Mr. Sen, would submit that consequent upon the respondent resiling from the above scheme, the amount paid by the said Allied Resin had been accepted and adjusted towards the original loan amount, I, however, find that there is nothing on record apart from the letter dated 2nd November, 2011 to hold out that the respondent had ever claimed that the Allied Resin had committed breach, or that such breach had been accepted by the respondent. In any event, it would be relevant to consider whether the respondent could unilaterally resile from the scheme by claiming that the said Allied Resin had committed breach since, the Scheme for compromise was no ordinary compromise to operate as an agreement but a compromise which has a statutory force and is not only binding on the said Allied Resin but also on all the creditors identified in the Scheme. Having regard to the scheme of the said Act, especially as reflected in Section 391 and Section 392, I am of the view that ordinarily there is no scope to either of the parties to unilaterally resile from a scheme of arrangement duly sanctioned by a Court and in this context, it will be relevant to refer to paragraphs 12 and 13 of the judgment delivered in the case of ***S. K. Gupta & Anr.*** *(supra),* as is reproduced hereinbelow:

"12. *Section 391 envisages a compromise or arrangement being proposed for consideration by members and/or creditors of a company liable to be wound up under the Companies Act, 1956. Compromise or arrangement has to be between creditors and/or members of the company and the company, as the case may be. It was always open to the company to offer a compromise to any of the creditors or enter into arrangement with each of the members. The scheme in this case is essentially a compromise between the company and its unsecured creditors. The scheme when sanctioned does not merely operate as an agreement between the parties but has statutory force and is binding not only on the company but even dissenting creditors or members, as the case may be. The effect of the sanctioned scheme is "to supply by recourse to the procedure thereby prescribed the absence of that individual agreement by every member of the class to be bound by the scheme which would otherwise be necessary to give it validity" [see J.K. (Bombay) Pvt. Ltd. v. New Kaiser-i-Hind Spg. & Wvg. Co. Ltd. [AIR 1970 SC 1041 : (1969) 2 SCR 866, 891 : (1970) 40 Com Cas 689]]. Further Section 391(1) itself, by a specific and positive provision, prescribes who can move an application under it. Only the creditor or member of that company or a liquidator in the case of a company being wound up is entitled to move an application proposing a compromise or arrangement. By necessary implication any one other than those specified in the section would not be entitled to move such an application.*

13. *When a scheme is being considered by the Court, in all its ramifications, for according its sanction, it would not be possible to comprehend all situations, eventualities and exigencies that may arise while implementing the scheme.*

When a detailed compromise and/or arrangement is worked out, hitches and impediments may arise and if there was no provision like the one in Section 392, the only obvious alternative would be to follow the cumbersome procedure as provided in Section 391(1) viz. again by approaching the class of creditors or members to whom the compromise and/ or arrangement was offered to accord their sanction to the steps to be taken for removing such hitches and impediments. This would be unduly cumbersome and time-consuming and, therefore, the legislature in its wisdom conferred power of widest amplitude on the High Court under Section 392 not only to give directions but to make such modification in the compromise and/ or arrangement as the Court may consider necessary, the only limit on the power of the Court being that such directions can be given and modifications can be made for the proper working of the compromise and/or arrangement. The purpose underlying Section 392 is to provide for effective working of the compromise and/or arrangement once sanctioned and over which the Court must exercise continuous supervision [see Section 392(1)], and if over a period there may arise obstacles, difficulties or impediments, to remove them, again, not for any other purpose but for the proper working of the compromise and/or arrangement. This power either to give directions to overcome the difficulties or if the provisions of the scheme themselves create an impediment, to modify the provision to the extent necessary, can only be exercised so as to provide for smooth working of the compromise and/or arrangement. To effectuate this purpose the power of widest amplitude has been conferred on the High Court and this is a basic departure from the scheme of the U.K. Act in which provision analogous to Section 392 is absent. The sponsors of

> *the scheme under Section 206 of the U.K. Act have tried to get over the difficulty by taking power in the scheme of compromise or arrangement to make alterations and modifications as proposed by the Court. But the legislature, foreseeing that a complex or complicated scheme of compromise or arrangement spread over a long period may face unforeseen and unanticipated obstacles, has conferred power of widest amplitude on the Court to give directions and, if necessary, to modify the scheme for the proper working of the compromise or arrangement. The only limitation on the power of the Court, as already mentioned, is that all such directions that the Court may consider appropriate to give or make such modifications in the scheme, must be for the proper working of the compromise and/or arrangement.*"

20. Similar view has been taken by the Hon'ble Supreme Court in the case of ***Hindustan Lever & Anr.*** *(supra)*. It is not the case of the respondent that any attempt was made to approach the Company Court for variation of the Scheme framed under Section 391 of the said Act. In the light of the above and the respondent having accepted the entire amount along with interest, even after issuance of the notice under Section 13(2) of the SARFAESI Act on 2nd November, 2011, and also having not acted further on the basis thereof, it cannot be said that the respondent has resiled from the said scheme or could have unilaterally resiled from the compromise. It may however be noted that Mr. Sen has also contended that by reasons of the notice under section 13(2) of the SARFAESI Act being issued and having regard to Sections 34 and 35 of the SARFAESI

Act, this Court is not competent to entertain the present petition. In this context, it may be noted that in order to invoke Section 13(2) of the SARFAESI Act in the given facts, in my view, the respondent at the first instance ought to have approach the Hon'ble Company Court and could not have unilaterally resiled from the said compromise. The provisions of Sections 34 and 35 of the SARFAESI Act cannot be construed so as to give unilateral powers to the respondent to reopen issues which have been closed especially having regard to the scheme of compromise being sanctioned by the Company Court under Section 391 of the said Act. The judgments delivered in the case of ***Pegasus Assets Reconstruction Private Limited*** *(supra),* ***Jyoti Bhushan Gupta & Ors.*** *(supra)* and ***Mrs. Pratibha Inderjit Kapur*** *(supra)* are distinguishable on the facts of this case. While in the case of ***Pegasus Assets Reconstruction Private Limited*** *(supra)* the issue for consideration was whether the Company Court could directly or through the official liquidator yield any control in respect of sale of secured assets by a secured creditor in exercise of power available to such creditor under the SARFAESI Act. The case did not concern a compromise sanctioned under section 391 of the said Act. The aforesaid judgment, in my view, does not assist the respondent at all. It is well settled that a judgment is an authority for what it decides as a slight variation in facts is likely to provide an entirely different outcome. The case of ***Mrs. Pratibha Inderjit Kapur***., (supra), proceeds on the premise that the company having failed to make payment despite admitting its liability and despite agreeing to pay the same in instalments in connection with a winding up proceedings, could the secure creditor upon the failure of the company to make payment in accordance with the order of company Court recording the compromise terms, apply before a Court for issue of an insolvency notice under the provisions of Presidency Town Insolvency Act 1909 as a consent order is enforceable as a decree under section 634 of the said Act. It is in this context it was clarified that though the power of Court to direct payment of money in a winding up proceedings was not disputed, the power to proceed with the insolvency notice was sustained, the said case also did not involve a compromise under section 391 of the said Act. The same dealt with the scope of a winding up petition viz a viz enforceability of a consent order passed in a winding up petition and the remedy therefor, including the power to invoke the proceedings under the provisions of Presidency Town Insolvency Act 1909. The above judgment does not assist the respondent.

21. This apart although, by relying on the case of ***Akola Oil Industries & others***., (supra), an attempt was made to make out a case that since, the intervention of the Court is not necessary for invoking the provisions of the SARFAESI Act, and since the intent to recover secured debt is to be given primacy, there was no necessity for the respondent to seek leave of the company Court to issue notice under section 13(2) of the SARFAESI Act., or to proceed with its application being O.A. 86 of 2005 before the Tribunal, I however, find that the issue that fell for

consideration in the said case was entirely different. The question that fell for consideration in such case was whether the secured creditor for the purpose of realising his security could remain outside the winding up proceedings or whether any leave was necessary to be obtained from the company Court. It is in that context that the Hon'ble Court in paragraph 32 of the said judgement was pleased to hold that the objection of the official liquidator that the Debt Recovery Tribunal (DRT) could not have been approached without the leave of the Court, or proceedings under the SARFAESI Act could not have been initiated without such leave, is misconceived and rejected. Such is not the case here. Admittedly, the respondent has not only accepted the compromise but in furtherance thereof, had accepted payments under the compromise, duly sanctioned by the Court. Therefore, the question that has arisen in the instant case was whether the respondent could resile from the compromise unilaterally. Admittedly, in this case notwithstanding issuing a further notice under section 13(2) of the SARFAESI Act, the respondent chose not to proceed thereunder, on the contrary, the respondent claims to have revived the proceedings being O.A. 86 of 2005 which was subsisting as on the date when the scheme was sanctioned by the company Court. In the light of the specific bar provided for in clause 3.7 of the scheme sanctioned by the company court, which prevents the respondent from filing any suit or legal proceedings or from enforcing or invoking the security or the guarantee against the company or its guarantors during the subsistence of the scheme, and from proceeding further with O.A. 86 of 2005 filed by the respondent, the above procedure could not have been adapted by the respondent. The sanctioning of the scheme under the provisions of section 391 to 394 of the Companies Act 1956 is binding on all and sundry interested in the company. Once, a scheme is sanctioned in a particular manner and is acted upon, it is no longer permissible for the secured creditor to resile therefrom unilaterally. If the same is permitted, the very essence of the scheme in restructure/revival of the company will stand frustrated, rendering the provisions otiose. Further in the instant case in terms of clause 3.8 of the scheme, the same was made binding on all the secured creditors including the dissenting creditors. Thus, the order sanctioning a scheme for compromise under section 391 to 394 of the said Act stand on a different footing than an order in a winding up petition, which is yet to be advertised under rule 99 of the Company Court Rules 1959. The above observations are also in tune with the observations made in the case of ***Kotak Mahindra Bank***., (supra) by a Coordinate bench of the Gujrat High Court.

22. In the light of the above, the judgments delivered in the case of ***Mardia Chemicals Ltd. & Ors.*** *(supra)* and ***Punjab & Sind Bank*** *(supra)* also does not assist the respondent as the overriding effect of Sections 34 and 35 cannot dilute the Compromise Scheme sanctioned by the Court, especially when the same has been acted upon. In view thereof, both the issues having been answered against the respondent,

the objection fails. The respondent is directed to issue "No Objection" for release of all charges on assets and properties of the applicant within four weeks from date of receipt of this order.

23. The application is thus, allowed.

24. There shall be no order as to costs.

25. Urgent photostat certified copy of this order, if applied for, be made available to the parties, on priority basis, upon compliance of all formalities.

(RAJA BASU CHOWDHURY, J.)